

## Military Privatisation and its Impact on the Nature of Warfare

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### **Abstract**

*The rise and proliferation of private military companies (PMCs) came in response to the changing political, strategic and economic environment following the Cold War. Certain places more than others, particularly sub-Saharan Africa, have required the services of such external actors to maintain even a minimum level of order. PMCs however represent an uneasy dilemma insofar as our present understanding of international relations and international law is concerned, facilitating highly-sought on-call military capability on the one hand and creating immense ethical and even socioeconomic complications on the other. What is certain is that the privatisation of military affairs reflects, rather than merely accelerates, the changing nature of state-centric politics and of warfare, and is thus a fixture of the present era. Rather than categorically condemning them, a nuanced and balanced approach is required that takes into consideration potential benefits especially amid intractable conflicts.*

**Keywords:** privatisation, military, companies, security, war, business

### **Introduction**

If the conduct of war within the Westphalian state-centric framework ended the chaotic feudalisms of the preceding age, the unraveling of Cold War superpower patronage appears to have upset the peace-security equation in developing regions, normalising the increasing incidences of low-intensity warfare and attendant humanitarian crises. At the same time, the neoliberal superlogics of economic rationalisation and deregulation, compounded by professional military downsizing worldwide brought back to the fore what is now *corporate* mercenarism – private

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military companies (PMCs, the general term henceforth employed).<sup>1</sup> Against this backdrop, much of the standard Clausewitzian rules of engagement involving the trinity of government, military and citizenry and clear dichotomies 'between public and private, internal and external, economic and political, civil and military, combatant and non-combatant' have crumbled.<sup>2</sup> In its place, something arguably approximating Mary Kaldor's 'new wars' based on a 'globalised war economy' and ascribed identities have emerged.<sup>3</sup> With respect to the international community, intrastate repression is now the commonly invoked *casus belli* rather than traditional interstate aggression. Israeli military historian Van Creveld noted some fifteen years ago that the notion of the modern state, conventional warfare, as well as modern weapons systems, were already facing increasing irrelevance due to the haphazard character of low-intensity conflicts on the one hand and the unmistakable madness of the nuclear bomb on the other.<sup>4</sup>

Nowhere is the state more challenged today than in Sub-Saharan Africa, where organised violence has become a torridly privatised affair, an aggregated consequence of terminal corruption, economic cannibalisation, a disproportionate yield of natural resources in select parts and, worse, the virtual decomposition or non-existence of effective state governments and hence legitimacy. Lock noted nothing new about mammon-mesmerised mercenaries apart from their conjunction with weak states.<sup>5</sup> As we see further, many African dictatorships are forthwith plugged into the world economy through a variety of means including enterprising multinational companies (MNCs), through whose brokerage transnational flows of strategic resources from 'blood' or 'conflict' diamonds to hardwood timber permit the procurement of Cold

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<sup>1</sup> According to the most commonly accepted but somewhat outdated definition laid out in Article 47 of the 1977 Additional Protocol I to the Geneva Conventions (1949), a mercenary is one who: is recruited to fight in an armed conflict; takes direct part in the hostilities; does so in view of and in exchange for material gain 'substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of [the client] party'; is neither a citizen nor a resident, much less an employee of the armed forces in the territory concerned; and has not been dispatched by another state acting under international auspices in the territory concerned.

<sup>2</sup> Martin Shaw, 'The Contemporary Mode of Warfare', *Review of International Political Economy*, vol.7, no.1, 2000, p.173.

<sup>3</sup> Mary Kaldor, *New and Old Wars: Organized violence in a global era*, Cambridge, Polity, 1999, p.9; It is worth recalling Colmar von der Goltz and more precisely, Erich Ludendorff's anti-trinitarian idea of 'total war', in which the divisions separating government, army and people collapse into a massive mobilisation of polity, economy and society towards the waging of absolute war. See Martin Van Creveld, *The Transformation of War*, New York, Free Press, 1991, pp.42-9.

<sup>4</sup> Van Creveld, *The Transformation of War*, p.207.

<sup>5</sup> Peter Lock, 'Africa, Military Downsizing and the Growth in the Security Industry', in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, p.13.

War-era light weapons stockpiles – which in turn escalate local and regional conflicts. This brings to mind Jean-François Bayart's thesis that Africa is finally in the process of (re)shaping its own indigenous political economy and modes of political production.<sup>6</sup> Elsewhere, Ali Mazrui was incisive in his observation that 'ultimate power resides not in those who controlled the means of production, but in those who controlled the means of destruction'.<sup>7</sup>

While privatised violence encompasses other such diverse actors from warlord militias to child soldiers, the twilight and immensely ambiguous status of commercially registered and influential military businesses provides an interesting perspective from which to consider the changing nature of contemporary war. This essay does not adopt the moral and legal high ground vis-à-vis so-called mercenaries and their professional conduct, the literature being rife with animated debate as it stands. Instead it attempts to provide a balanced outline of their consequences on the nature of contemporary warfare from both the empirical and ethical perspectives. More significant is the core argument that military privatisation also reflects the presently evolving security order rather than simply throwing a spanner into the state-centric conduct of war as is traditionally understood, a perspective that if carefully considered fits in with the opportunistic individualism and (systemic) anarchy of the realist and neorealist worldviews.

## **Private military companies in context**

The privatisation of military affairs has since the end of the Cold War undergone voluminous debate especially in the wake of apparent operational successes of the PMCs Executive Outcomes (Angola in 1993-95, Sierra Leone in 1995), Sandline International (Sierra Leone in 1997), and to an allegedly less 'hands-on' degree, Military Professional Resources Incorporated (Croatia in 1995), for instance. Indeed, the 2002 UK Green Paper emerged in response to the legal black hole of the 'arms to Africa' affair, which involved Sandline International and the Sierra Leonean

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<sup>6</sup> Ibid., p.30.

<sup>7</sup> Cited in Jakkie Cilliers and Richard Cornwell, 'Africa – From the Privatisation of Security to the Privatisation of War?', in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, p.227.

government in exile.<sup>8</sup> Elsewhere, typologies have been developed that delineate private military companies or private combat companies properly speaking from (government) proxy military companies, private security companies, commercial security companies and finally freelancers, no doubt mercenaries in the purest sense.<sup>9</sup> By means of the ‘tip-of-the-spear’ metaphor, Peter W. Singer categorises the relevant actors into military provider firms (EO, Sandline), military consultant firms (MPRI, Vinnell, Dyncorp) and military support firms (Kellogg, Brown and Root, Pacific Architects and Engineers).<sup>10</sup> In line with this continuum, the range of services offered typically includes: deployment of full combat forces including aerial (fixed and rotary wing) support; provision or procurement of weapon systems and equipment, maintenance and logistical support; military combat and staff training, doctrine and tactical advice; intelligence, threat and risk assessments; installation and asset – especially mines and oilfields – protection, as well as police-type bodyguards and even ordnance disposal cum de-mining services. Though mercenaries originating mainly from countries such as the US, Britain and France have been around for some time (one might alternatively consider the French Foreign Legion, the British Gurkhas, or even the Vatican’s Swiss Guard), it was the dismantling of the South African Apartheid-era security establishment in 1994 that has most prominently fueled the post-Cold War charge in the rise of PMCs.<sup>11</sup> Despite their checkered past, what distinguishes these from classical, ‘dogs of war’ mercenaries is the former’s rapidly evolving status as legal and presumably disciplined corporate organisations staffed by ‘military consultants’ or ‘security advisers’ and fronted by a formidable public relations machinery. As we see further however, this is precisely that which renders them so difficult to be reconciled with established modes of thinking about war.

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<sup>8</sup> UK Foreign and Commonwealth Office, *HC 577 Private Military Companies: Options for regulation 2001-02*, Green Paper presented to the House of Commons, 12 February 2002.

<sup>9</sup> Christopher Kinsey, *Corporate Soldiers and International Security: The rise of private military companies*, London, Routledge, 2006, pp.13-21.

<sup>10</sup> Peter W. Singer, *Corporate Warriors: The rise of the privatized military industry*, Ithaca, New York, Cornell University Press, 2003, p.93.

<sup>11</sup> Notable sources of PMC recruitment include units within the former South African Defence Force, 32 (Buffalo) Battalion, 44 Parachute Brigade, First to Fifth Special Forces Reconnaissance regiments, as well as internal security outfits such as the Koevoet counterinsurgency unit, the infamous Civilian Co-operation Bureau (CCB) and the Directorate of Covert Collection (DCC), see Khareen Pech, ‘Executive Outcomes – A corporate conquest’, in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, p.81.

## Modalities of change

The practical and ethical consequences of PMCs as the prime manifestation of privatised, non-state violence are aplenty and increasing. Broadly however, four main areas of impact may be delineated: state sovereignty, international relations, commercial-civilian ‘creep’ as well as the ‘new wars’ thesis which lies largely at the confluence of the preceding three. Firstly, privatised violence severely undermines the seemingly unassailable notion of state sovereignty, and this, since Max Weber identified the monopoly of legitimate, organised violence as the *sine qua non* of state sovereignty. Kaldor however argues that ‘what is crucial is not the privatisation of violence, as such, but the breakdown of legitimacy’ in the event that such a monopoly is lost.<sup>12</sup> Importantly, the threat to national sovereignty affects recipient (developing or failed) states *as well as* provider (developed) states. The former as an analytic category is highly problematic when we consider, say, failed states that, to begin with, never achieved sovereignty in any meaningful sense, much less legitimacy. In any case, Singer points out that the introduction of a third party contradicts the very force of the social contract by dint of which governments furnish security to their citizens who in turn pay taxes.<sup>13</sup> Worse still, variegated and discriminate application of private force inevitably polarises any given society into the protected (‘haves’) and the unprotected (‘have-nots’), and in developing nations these usually correspond to foreign business interests or national elites on the one hand and the local populace on the other, whence the appearance of security enclaves. While it is true that globalisation as a process has largely been economic in nature and somewhat institutional in expression, the neoliberal encroachment in the province of organised violence represents the final nail in the coffin of the state as an ideal type dating back to the 1648 Peace of Westphalia. While ‘[economic] efficiency and the public provision of security [merely] happened to coincide, historically, with the emerging nation-state’ in the late 19<sup>th</sup> century, this is no longer the case today.<sup>14</sup>

Secondly, privatised violence on-call challenges international relations as we presently understand it – that is in state-centric and unitary ‘billiard ball’ terms – and as

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<sup>12</sup> Kaldor, *New and Old Wars*, p.115.

<sup>13</sup> Singer, *Corporate Warriors*, p.226.

<sup>14</sup> Jurgen Brauer, ‘An Economic Perspective on Mercenaries, Military Companies, and the Privatization of Force’, *Cambridge Review of International Affairs*, vol.13, Autumn/Winter, 1999, p.5.

such threatens to complicate balance of power considerations. A large number of high-technology defence and security-related weapons and gadgetry limited to government agencies until only recently have become widely available, and not only to the highest bidder. The difference is that goods are now supplemented by service providers, enabling all manner of organisations (Colombian and Mexican drug cartels, Jihadist armies, etc) and even wealthy individuals to shape their immediate socioeconomic, political and geostrategic environments.

With the concentration and stratification of military expertise within the private sector, many states are increasingly opting for an economically viable 'surge' capacity over the costly long-term maintenance of a standing army, in the process introducing a high degree of uncertainty into relative combat power (RCP) calculations.<sup>15</sup> Already marred by misperception, force assessments between states may lead to a number of end scenarios, including successful deterrence or an inflated sense of impregnability on the part of a would-be aggressor. MPRI's assistance to Croatia ('Operation Storm') and Russia-based Sukhoi's assistance to Ethiopia ('Operation Sunset') in the 1990s illustrated the nasty surprise that the receiving ends, in this case Krajina's Serbs and the Eritreans, respectively encountered.

The privatisation or 'proxyisation' of foreign military and defence policy, though controversial, has its merits. By outsourcing sensitive and even covert black ops-type military activities, governments are able to circumvent budgetary constraints, legal-ethical restrictions and the sort of public opinion backlash resulting from the 'bodybag syndrome' and the so-called 'CNN factor'. This is all the more the case in the *absence* of an inevitable war. In so doing, governments can afford to accomplish contradictory objectives, support less savoury allies, even create a semblance of evenhandedness vis-à-vis parties to a conflict, a slightly more sophisticated and subtle course of action than Cold War superpower patronage. Britain's vague support for Sierra Leone in favour of the ousted Kabbah regime in 1997, Clinton's thinly veiled approval for MPRI to conduct the Train and Equip Program in Tudjman's Croatia and the present Bush administration's propping up of the Saudi monarchy, among a list of others, are exemplary. Plausible deniability has its drawbacks, however. In the event that 'hostile' parties perceive the true nature of the situation, no distinction is made on

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<sup>15</sup> Singer, *Corporate Warriors*, pp.174-5.

the battlefield between official troops and private military companies originating from the same country. Even at the ‘friendly’ end of the bargain, civilian contractor casualties in war zones such as Iraq – where over 280 are believed to have been killed and some three thousand wounded at this time of writing –<sup>16</sup> are hardly, if ever, reported by government statistics. Though feigning ignorance in the wake of a PMF operational disclosure is one thing, completely disowning one’s own citizens during capture is quite another, as when Washington absolved itself of the three employees of California Microwave Systems (a subsidiary of corporate giant Northrop Grumman) whose aircraft crashed in territory belonging to the Revolutionary Armed Forces of Colombia (FARC) in 2003. That a ‘mercenary shall not have the right to be a combatant or a prisoner of war’ according to Article 47 of the 1977 Additional Protocol I to the Geneva Conventions throws their status into further ambiguity.

In this connection, it is worth pointing out that while the activities of US-registered PMCs dovetail to a comparatively high degree with official government policy – the Pentagon alone signed over three thousand contracts with them in the last ten years – PMCs originating from elsewhere including Britain and most prominently South Africa tend towards corporate involvement, pursuing their own agendas insofar as is legally feasible. Furthermore, the ability to call upon non-state security actors goes some way in modifying standing alliances such as NATO. The result is a modular operational format flexible enough to circumvent problems deriving from the lack of multinational consensus but that, at the same time, threatens to render multilateral commitments irrelevant.

Thirdly, however scrupulous and benign they may portray themselves to be, PMCs are inexorably driven by a sole bottom line: profit maximisation, and violence thus marketised provokes far more complications than the marketisation of any other state function. Without effective oversight mechanisms and legislative frameworks to regulate their activities, PMCs score unsurprisingly low on accountability and transparency and as a result often end up with charges of human rights violations. The indiscriminate use of fuel air explosives (wide-area, vacuum-induced firestorms) in

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<sup>16</sup> Peter W. Singer, ‘Humanitarian Principles, Private Military Agents: Some implications of the privatised military industry for the humanitarian community’, in Victoria Wheeler and Adele Harmer (eds) *Resetting the Rules of Engagement: Trends and issues in military-humanitarian relations*, Humanitarian Policy Group Report 21, March 2006, p.15.

jungle assault missions (e.g. EO in Angola) is often cited. Other examples include DynCorp's implication in the Bosnian sex-trade as well as the recent Abu Ghraib prisoner abuse scandals. Though the potential for, and the perception of, abuse are reminiscent of the 'vagabond' mercenaries operating within the context of African decolonisation, and the so-called 'wars of liberation' in the 1960s (Congo's Katanga province, Biafra in Nigeria) and 1970s (Angola), Kinsey argues that PMCs have built-in constraints that take the form of business ethics, reputation or 'branding' and socialisation in general.<sup>17</sup> In the words of Sandline International's Tim Spicer, 'the supplier is only as good as his last contract'.<sup>18</sup> In truth, a company's reputation is only as good as the moral rectitude of its individual employees. Moreover, if even official armed forces have been known to indulge in rape, pillage and torture if not summary executions in the midst of a civil war, it is not clear how private contractors hired on the side of these same forces will always remain impervious, and whether the fact of partisanship contradicts their self-touted objectivity.

That PMCs usually operate in failed states rife with lawlessness complicates the fact that they already lack clear (extra)territorial jurisdiction, never mind their actual commitment to the laws of armed conflict. Furthermore, PMCs by definition thrive on the maintenance and creation of instability as Nana Busia pointed out.<sup>19</sup> While the more prominent firms claim to work only for legitimate governments and actors, others have been linked to non-state criminal and rebel elements as well as rogue state dictatorships and even two al-Qaeda-affiliated groups prior to September 11. Within this (often) lower-cost end of the security bazaar, profit-driven private contractors fighting for two or more warring sides at the same time are not unheard of, in some cases even crossing swords among themselves over lucrative concessions.

A principal-agent dilemma also arises when considered from a purely economic perspective. In view of their exclusive answerability to shareholders, a perennial tension exists between PMCs, whose goal is to secure maximum profit on the one hand, and their clients, whose goal is to secure maximum utility on the other. Given their existential dependence on sustained conflict, PMCs are not foresworn from

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<sup>17</sup> Kinsey, *Corporate Soldiers and International Security*, p.156.

<sup>18</sup> Tim Spicer, *An Unorthodox Soldier: Peace and war and the Sandline Affair (an autobiography)*, Edinburgh, Mainstream, 1999, p.25.

<sup>19</sup> UK Foreign and Commonwealth Office, *Options for regulation*, p.16.



manipulating the situation so as to extend a given contract, in the process overriding and in some cases compounding clients' actual requirements. Despite its relatively limited impact upon the nature of warfare, this is one possible scenario in which PMCs may prolong instability and undermine cost-effectiveness. Other typical problems include overcharging and phantom personnel and equipment manifests.

Just as the nature of contemporary force projection has become more diffused, so the ratio of civilian to military actors in war zones has increased by bounds. The prominent security and logistical support assumed by Halliburton's Kellogg, Brown and Root in post-Saddam Iraq represents only the proverbial tip of the iceberg. Indeed, private defence contractors there constitute the second largest contingent after the US army.<sup>20</sup> Aside from economic rationalisation, the phasing-in of extremely sophisticated military-adaptable technology (e.g. B-2 stealth bombers, Apache helicopter gunships, Global Hawks, unmanned Predator drones, Patriot and Aegis missile systems) often requires the usually long-term expertise of private sector civilians, which also means their growing presence within the entire battlespace, and no longer solely within the rear supply area. The problems are manifold. Even the inclusion of non-core/tail-end – not to mention close fight – operational support risks undermining military command and control vectors.<sup>21</sup> Private contractors are not typically embedded within command hierarchies, and even if they are, tensions may emerge with regard to regular soldiers, the more so if these believe that in analogous positions the former were more highly paid. Moreover, screening and recruitment procedures vary from company to company, and while the trend is to rely on 'old boys' networks, there have been occasional instances of employees actually *unqualified* for their designated tasks.<sup>22</sup> Finally, commercial military interests do not necessarily translate into military-grade dedication, and it is not difficult to imagine the catastrophic consequences of employees resigning, or an entire contract being rescinded in the middle of an operation with usually no indictment other than unto reputation, even as the client state sinks into further chaos. The UK-based Gurkha Security Guards (GSG) in Sierra Leone suffered a number of

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<sup>20</sup> Stéphanie Jung, 'Les Nouveaux Entrepreneurs de Guerre: Défis juridiques et implications politiques du recours aux sociétés militaires privées', thesis submitted to the Institut d'Etudes Politiques, Université Robert Schuman, June 2006, p.9.

<sup>21</sup> Ibid., p.28.

<sup>22</sup> For instance, approximately 35% of the interrogators contracted by CACI in the Abu Ghraib affair were found to have lacked formal military interrogation training, see Singer, 'Humanitarian Principles, Private Military Agents', p.18.

surprise casualties – including the death of its British leader – so that it decided to pull out unilaterally, before Eben Barlow's EO stepped in to fill the gap.<sup>23</sup> True, wartime desertion within national armies has been observed to no small extent, yet even these do not depend so heavily on external freelancers for critical functions such as is the case with a number of present-day militaries. In any case, spilling blood for one's motherland – contrary to the sarcastic conclusion '*Dulce et decorum est pro patria mori*' in Wilfred Owen's World War One poem – is indubitably perceived to be a far greater cause than mammon, taking us back to the waning notion of national sovereignty.

Operational and even organisational dependency characterise a number of states such as Saudi Arabia, where the armed forces as a whole are virtually trained and armed only by private defence contractors. Although Washington is unlikely to leave the desert kingdom in the lurch given strategic interests, abandonment in any less strategically intertwined scenario portends grave consequences. Another glaring problem that also affects national sovereignty concerns the appeal of switching from government service to private practice, especially since the latter invariably commands far wider profit margins and may even offer up to ten times the former by way of wages.<sup>24</sup> In some cases, military enlistment becomes exploited as a waystation and training grounds funded by the public purse for eventual private gain. Moreover, many PMCs provide free death-and-disability insurance packages. Given that the state-controlled military most prominently symbolises the sovereignty of a given territory, the internal challenge facing many governments at present is to update the structure of incentives so as to compete against the brain-and-brawn drain. Finally, the deployment of PMCs by government elites risks wrecking civil-military imbalance. In structurally weak states, Sierra Leone and Papua New Guinea for instance, the military command considered this so serious an affront to their prestige that grievance-motivated coups developed under Major Johnny Koroma and Brigadier-General Jerry Singirok respectively in about the same year.

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<sup>23</sup> Alex Vines, 'Gurkhas and the private security business in Africa', in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, pp.129-132.

<sup>24</sup> Peter W. Singer, 'Outsourcing War.(Private Military Firms)', *Foreign Affairs*, vol.84, no.2, March-April, 2005.

The most compelling perspective arguing against military privatisation is located in Mary Kaldor's 'new wars' thesis, which combines all the preceding elements and weaves them into what may be described as a fractured, postmodern world hanging onto a razor's edge. In her vision of inter- and intra-state anarchy, the simultaneous dilution of state-centric boundaries and interconnectedness of all manner of non-state actors render each of these a force unto itself. More significantly, such new wars based on exclusionary identities are accompanied by a novel, globalised and criminalised warlord economy reflective of a 'predatory social condition'; in other words, the 'warring parties need more or less permanent conflict both to reproduce their positions of power and for access to resources'.<sup>25</sup> Economics has come to supplant politics as the central motive for war. From this perspective, privatised violence and specifically PMCs appear to contribute to socio-territorial disintegration, particularly in Sub-Saharan Africa, as well as provide an agent complement for the international light arms bazaar. The demand for individual private protection in those social segments or 'gated communities' that can afford it is engendered and intensified by the inability of the state to adequately finance its instruments of physical coercion and thus maintain a modicum of law and order, which in turn ties back to endemic corruption. Again, traditional state-to-state wars with underlying political motives have now blurred to include private economic interests, organised crime, and massive human rights abuse.<sup>26</sup>

The deployment of PMCs in dysfunctional and failed states – the latter term being employed here in its narrowest sense – is very often accompanied by the use of natural resources as partial or full payment.<sup>27</sup> Kinsey for example pointed to the inseparable symbiosis between development (poverty) and security (conflict) as well as its wider connections to the construction and extractive industries.<sup>28</sup> Khareen Pech's enumeration of the South Africa/UK-controlled business consortium for which EO (and later, Sandline) was only the most visible appendage includes such companies as Heritage Oil and Gas, Diamond Works and the Branch group (Branch Mining Ltd,

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<sup>25</sup> Kaldor, *New and Old Wars*, p.107.

<sup>26</sup> Kinsey, *Corporate Soldiers and International Security*, p.82.

<sup>27</sup> This has not always been the case however: mercenaries from the decolonisation period were not involved in concession-type deals in their host states, presumably because of the covert or occasionally ideological character of their ilk, see Gerry Cleaver, 'Subcontracting Military Power: The privatisation of security in contemporary sub-Saharan Africa', *Crime, Law and Social Change*, vol.33, March, 2000, p.135.

<sup>28</sup> Kinsey, *Corporate Soldiers and International Security*, pp.52, 57.

Branch Energy, Branch Minerals) among others.<sup>29</sup> Hand-in-hand with corporate interests, PMCs serve as indispensable 'investment enablers' in extremely volatile areas. Likewise, by engaging PMCs to secure strategic resources, local elites are able to consolidate neopatrimonial rule by nourishing patronage networks (and the shadow economy by extension) as the primary basis for their power, procure weapons and suppress rival strongmen. Besides revenue generation, the apparent or at least limited remonopolisation of violence with the help of private contractors plugs somewhat the vacuum of legitimacy and sovereignty, as long as these do not come to be perceived as veritable 'palace guards'. The problem becomes acute when, though strategic resources go some way in fueling domestic conflict, eventual depletion as a result of outsourcing security provision produces a backlash on the local populace. Furthermore, decisions made with regard to on-the-spot security urgencies rarely take into account long-term consequences. By 1997, as Singer noted, the Sierra Leone government had mortgaged off 'roughly \$200 million worth of long-term diamond concessions, in exchange for a military bailout from the Sandline firm that was valued [only] at \$10 million'.<sup>30</sup> Cornwell sums up well this novel form of corporate imperialism: 'It is for all the world as if Africa has returned to the 1880s, and the age of the chartered companies, marking out their enclaves in an otherwise disorderly environment....In effect, Africa is again divided, between those under protection and those without'.<sup>31</sup>

## Counter-arguments

On a more optimistic note, several arguments may be made in favour of military and security privatisation. Firstly, the Somali debacle (October 1993) and the subsequent humanitarian disasters in Rwanda (1994) and Srebrenica (1995) among others painfully underscored the West's reluctance to intervene in conflicts peripheral to the national interest,<sup>32</sup> or alternatively the inconsistent invoking of national

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<sup>29</sup> Pech, 'Executive Outcomes', pp.87-8.

<sup>30</sup> Singer, *Corporate Warriors*, p.167.

<sup>31</sup> Richard Cornwell, 'The Collapse of the African State', in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, p.76; in the 19<sup>th</sup> century for instance, the British East India Company commanded a private army of some hundred and fifty thousand soldiers.

<sup>32</sup> American non-intervention in the absence of national interest considerations was effectively codified in Clinton's Presidential Decision Directive (PDD) 25 of May 1994; In contrast, successful episodes of humanitarian intervention have occurred, most notably in Bosnia (1995), Kosovo (1999), East Timor

sovereignty to justify non-interference.<sup>33</sup> Moreover, UN peacekeeping initiatives regularly suffer from red tape, lack of coordination and intermember vetoes, while humanitarian delegates in the field often end up becoming clay pigeons.<sup>34</sup> Unfortunately, Western initiatives to indigenise African peacekeeping forces (e.g. the African Crisis Response Initiative) are piecemeal at best and retarded if not retrogressive at worst. The combination of these factors has come to constitute one of the foremost arguments for deploying PMCs as peacekeepers, or more controversially, as *private* peacekeepers in the legal and human rights literature.<sup>35</sup> Similarly, for lack of effective external assistance, benighted governments often have no choice other than to call for private military intervention. Of course, once incorporated into the UN peacekeeping framework a certain degree of red tape will be expected to follow; because of their nature however, private military practitioners will most likely be able to sidestep the larger problems linked to interstate agreement and coordination.

Also, though they recoil from the idea, humanitarian aid agencies and related NGOs have much to gain by working in tandem with PMCs subject to oversight and specified rules of engagement, particularly since declarations of neutrality and impartiality – previously undermined by the presence of PMCs – no longer retain their charm. Their rhetoric notwithstanding, these groups are often obliged, sometimes at gunpoint, to pay for local protection anyway. Beyond colony- and convoy-type protection, PMCs may also be deployed as an actual part of the humanitarian effort. As Kinsey suggested, in order to facilitate humanitarian assistance and development in conflict-ridden states, so-called strategic complexes – the thickening network of governments, militaries, civilian organisations of all stripes, MNCs etc. – see the utility

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(1999), Sierra Leone (2000), and though only successful in the short term, Haiti in 1994, see James Kurth, 'Humanitarian Intervention after Iraq: Legal ideals vs. military realities', *Orbis*, Winter, 2006, pp.91-2.

<sup>33</sup> For the main clauses evoking the principle of sovereign equality, see Chapter I, Articles 2(1), 2(4) and 2(7) of the UN Charter.

<sup>34</sup> See Singer's statistics concerning humanitarian workers killed worldwide, 'Humanitarian Principles, Private Military Agents', p.6.

<sup>35</sup> The futurist Alvin Toffler posed the following question as early as 1993: 'Why not, when nations have already lost the monopoly of violence, consider creating volunteer mercenary forces organized by private corporations to fight wars [or stop ongoing wars] on a contract-fee basis for the United Nations?', cited in Robert Mandel, *Armies without States: The privatization of security*, Boulder, Colorado, Lynne Rienner Publishers, 2002, p.16; As observers such as Kurth and Malan have pointed out, an empirically viable solution seems to be middle-range regional organisations sponsoring 'coalitions of the willing' such as NATO, ECOWAS, and in particular, the Organisation of African Unity (OAU); see Kurth, 'Humanitarian Intervention after Iraq', p.101, and Mark Malan, 'The Crisis in External Response', in Jakkie Cilliers and Peggy Mason (eds) *Peace, Profit or Plunder?: The privatisation of security in war-torn African societies*, Pretoria, South Africa, Institute for Security Studies, 1999, p.48.

in engaging PMCs to establish a secure and, in time, stable environment.<sup>36</sup> Furthermore, in failed and failing states, the sovereignty argument may be turned on its head when one considers that any government's first duty is to establish law and order. Without this prerequisite however short-lived, the notion of sovereignty becomes a highfalutin farce. EO turned the situation around and helped secure Ahmed Kabbah's democratically constituted presidency in Sierra Leone. Likewise, MPRI's involvement in the Balkans paved the way to the Dayton Accords. As we saw above, PMCs often strengthen even their parent states, providing 'a flexible new foreign-policy tool...[that eases] the political restraints typical among democracies'.<sup>37</sup>

Alongside disrupting the cycle of warlord violence, PMCs possess the potential and wherewithal to create populational safe havens, enforce DDR (Disarmament, Demobilisation and Reintegration), and administer security sector reforms as part of a long-term indigenising development program, thus establishing the first step towards Kaldor's 'islands of civility'.<sup>38</sup> At the moral level, Malan perceptively argued that:

Where the means of orchestrated coercion has devolved, without legal authority, into the hands of a number of factions in a failing state, the stability function has already been 'privatised' – for it is beyond the ambit of state control. Under such conditions, it is extremely difficult for other state actors to intervene within the framework of state-centric international law. However, the private security or stability practitioner may thrive in such a 'free enterprise' environment.<sup>39</sup>

As such, PMCs may also be considered a dynamic response to rather than simply a negative catalyst for the developing anarchy. There comes a point in time when decision-makers must decide whether to close both eyes on massive regime-level violation of *International Humanitarian Law* (IHL) or, for want of better, to allow other external actors to restore a modicum of security even at the risk of potential but restricted *human rights* abuses on their part.<sup>40</sup> As was discussed earlier, even state armies are not exempt from human rights abuses themselves. This then is the response

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<sup>36</sup> Kinsey, *Corporate Soldiers and International Security*, p.131.

<sup>37</sup> Deborah Avant, 'Think Again: Mercenaries', *Foreign Policy*, vol.143, July/August, 2004, p.28.

<sup>38</sup> Kaldor, *New and Old Wars*, p.120.

<sup>39</sup> Mark Malan, 'The Crisis in External Response', p.56.

<sup>40</sup> In broad strokes, International Humanitarian Law is distinguished from International Human Rights Law in that while the former offers *protection from* the vagaries of both international and non-international armed conflict, the latter offers the *right to* the various freedoms in pursuit of self-actualisation. Both bodies of law however do guarantee the individual basic protection from torture, degrading treatment, violence and being taken hostage.

to the moral-ethical argument. As a human-rights activist remarked, ‘watching a Rwanda genocide or a Srebrenica unfold without anyone’s lifting a finger is what I find obscene – not using paid professionals to put a stop to it’.<sup>41</sup> The world is unfortunately far from perfect, and to choose between the lesser of so many evils is often the least imperfect solution.

Financially, PMCs cost but a fraction of UN peacekeeping operations. Shearer pointed out that EO’s twenty-two-month contract in Sierra Leone cost \$35 million as compared to the \$47 million for a mere eight months planned by the UN.<sup>42</sup> There are problems with the economic rationalisation argument though, since competitive contract bidding and operational flexibility, two prerequisites of cost-effectiveness are patently lacking in certain cases especially involving the US government.<sup>43</sup> With regards to their soldiering-for-pay ethos, undoubtedly the worst portrayed mercenary characteristic, it is worth noting that even some countries (Bangladesh and Pakistan for instance) receive material returns in exchange for troops contributed to peacekeeping efforts. Moreover, deliberately prolonging conflicts hardly ever reflects well on the firm’s professional expertise, and this is usually more plausible with lower-profile, lower-end military provider firms. In any case, there will certainly be no shortage of conflicts around the world. If anything, it is not the *extension* but rather the *expansion* of contracts to include affiliated but non-security-related firms in the share of the spoils that should be subject to greater debate.

Finally, it is commonly emphasised that military provider firms merely offer superficial solutions to deep-seated problems.<sup>44</sup> Although true, it is worth remembering that a PMC’s brief only promises ‘particular solutions to specific problems’ and that moreover even the UN in its descriptive grandeur has failed in long-term resolutions.<sup>45</sup> Again, the obvious solution is to integrate PMCs within a more holistic and multifaceted conflict-resolution framework involving other working components.

<sup>41</sup> Cited in Mandel, *Armies without States*, p.132.

<sup>42</sup> David Shearer, ‘Outsourcing War.(Mercenary Organizations)’, *Foreign Policy*, vol.112, Fall, 1998.

<sup>43</sup> Avant, ‘Think Again: Mercenaries’, p.22; Mandel, *Armies without States*, p.129.

<sup>44</sup> Abdel-Fatau Musah and J. ‘Kayode Fayemi (eds), *Mercenaries: An African security dilemma*, London, Pluto Press, 2000, p.28; Alex Vines, ‘Mercenaries, Human Rights and Legality’, in Abdel-Fatau Musah and J. ‘Kayode Fayemi (eds) *Mercenaries: An African security dilemma*, London, Pluto Press, 2000, pp.176, 189.

<sup>45</sup> Gerry Cleaver, ‘Subcontracting Military Power’, p.141; UK Foreign and Commonwealth Office, ‘Green Paper,’ p.18.

## **Conclusion: cushioning the impact**

Willy nilly, PMCs have become an inseparable part of the post-Cold War security order. In highlighting the violability and fluidity of supposedly discrete public and private actors, Brauer cogently argued that ‘the debate about privatisation of force is neither about privatisation *per se*, nor merely about its control and use, but about *legitimacy, authority, authorisation, and delegation of force*’.<sup>46</sup> In other words, what is relevant, at least from an individual agency and cost-benefit perspective is not so much deciding between personal bodyguards or pooled security collectives, but rather the appropriate option mix that best benefits decision-makers. Acting out age-old prejudices and enforcing a blanket ban such as South Africa’s Foreign Military Assistance Act (1998) would only push PMCs underground, not eradicate their existence. Rather, in line with the UK Green Paper’s central argument, it would be a matter of judicious foresight to develop widely recognised regulatory as well as legislative frameworks encompassing all conceivable aspects of PMC operations, given that market forces alone in this case are extremely inadequate. To date, there have been few signatories to the various international conventions concerning mercenaries including the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which was ratified only in 2001.

As it stands, the UN’s legal framework and International Humanitarian Law address the state as the basic unit of analysis and are hence inadequate in dealing with the proliferation of increasingly important non-state actors. An alternative institutional approach by way of an international association of private military practitioners may pave the way for the beginnings of a regulatory framework binding upon its signatories. Governance-wise, this may be international, intergovernmental or even private in nature involving relevant and committed segments of civil society. Moreover, the juridical status of ‘mercenaries’ should be clarified, for instance as clear-cut combatants in the case of military providers to begin with. In order for this category of persons to be conferred protection by the Geneva Conventions, they should clearly distinguish themselves by means of emblems, uniforms, command structures and the visible bearing of arms, as well as rigorous adherence to the laws of armed conflict. Cameron clearly points out three reasons for disambiguation: to define such parties as legitimate

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<sup>46</sup> Brauer, ‘An Economic Perspective,’ p.5.



military objectives; to render lawful their participation in hostilities; and to subject them to the laws of armed conflict in the event of contravention.<sup>47</sup> Insofar as regards the ‘responsibility void’, arms bearers could be registered and licensed right down to the individual with restrictions on the type of weapons systems deployed proportionate to the military objective, and certainly not civilian targets. States contracting or importing such services should be assigned equal responsibility for the conduct of third parties, although in the case of violation and eventual prosecution, problems may arise since these are also usually the same states incapable of consistently ensuring order and justice internally.

The increasing privatisation of military affairs reflects rather than merely accelerates the changing nature of state-centric politics and of warfare. Indeed, realist and neorealist proponents seldom realise how perfectly privatised military corporations and even warlord-type economies with their attendant ‘orgies of primordial savagery’ fit within a Macchiavellian-Hobbesian state of nature.<sup>48</sup> To be clear, instances of mercenarism and contracted warfare have figured throughout human history, from the ancient Semites and Greeks to the *condottieri* of the Italian city-states. In several cases, mercenarism even facilitated the formation of present-day states.<sup>49</sup> In the final reckoning, the privatisation of military affairs and its consequences relates to the elusive balance between order and justice, to what should be done as a matter of moral imperative and to what can *actually* be achieved when it comes to the crunch. After all, like almost everything else, private military companies and practitioners too may be utilised for good, as ‘precision instruments that can save lives, protect properties and investments’.<sup>50</sup>

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<sup>47</sup> Lindsey Cameron, ‘Private Military Companies: Their status under international humanitarian law and its impact on their regulation’, *International Review of the Red Cross*, vol.88, no.863, September, 2006, p.582.

<sup>48</sup> Cited in Musah and Fayemi, *Mercenaries*, p.217.

<sup>49</sup> Mandel, *Armies without States*, p.31.

<sup>50</sup> Cited in *ibid.*, p.10.

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