

Dr. Joanna Spear

Market Forces

The Political Economy of Private Military Companies

Economies of Conflict: Private Sector Activity in Armed Conflict



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Contents

Preface 5

Executive Summary 7

1 The Rise of Private Military Companies 11

The Growth of Private Military Companies 11

Categorisation and Terminology of Private Security Provision 16

2 PMCs in Sierra Leone: a case study 25

3 Regulatory Options 41

'Self-Regulation' 42

Dilemmas of International and Regional Regulation 47

National Regulation 51

4 Conclusion 57

Appendix: Existing Regulations at a Glance 63

Bibliography 64

Preface

There is increasing demand for private military services in today's global marketplace. That demand is being met by a relatively new creature. Half-mercenary, half-service sector offshoot of the military-industrial complex, the private military company (PMC) has emerged in recent years to occupy a prominent position in today's battlefield. But at the same time that these 'market forces' seek to establish their legitimacy, they face the reality that the privatisation of the use of force – long a monopoly of the state – remains deeply contested.

The notion that states should or could maintain a monopoly on the use of force is a modern one. Accordingly, the rise of PMCs and the privatisation of military functions have prompted some scholars to describe certain contemporary states as pre-modern. But the notion of "pre-modern states" fails to capture the ways in which many of the most advanced nations have become reliant on privatised military forces to fight their wars. The pre-modern, it seems, has gone global.

In *Market Forces*, Dr. Joanna Spear looks beyond the corporate personality of the PMC to focus on the activities and effects of PMCs in the political economies in which they operate. Dr. Spear suggests that the distinction between PMCs, private security companies (PSCs), mercenaries, and vigilantes is, in practice, often blurred in terms of what they do, who they hire, and who they work for. If for no other reasons than these, the debate over the legitimacy and use of PMCs is likely to continue for years to come.

As long that debate remains polarised, PMCs are likely to remain unregulated. At present, governments and multilateral organisations suffer the twin devils of poor international law on the issue, and little prospect of political capital to take the issue on. And, while it may be argued that the more brand-visible PMCs face significant incentives to behave responsibly and in accordance with human rights rules, the lack of regulation amounts to impunity for all 'market forces' – whether they seek the legitimacy of the corporate label or not.

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Executive Summary

Private military companies (PMCs) are corporate entities that provide military expertise and other professional services essential to combat and warfare. Newly prominent PMCs have become major nonstate external actors in many contemporary conflicts, providing support to government and nongovernmental clients alike, and in the process becoming an integral part of contemporary warfare. Yet they have also been described as representing the ‘evolution, globalisation, and corporatisation of the age-old mercenary trade’.¹

This study attempts to understand the political economy of PMCs and to suggest policy options for regulating the private military industry. The study analyses how and why the industry grew so rapidly in the 1990s; where and how PMCs – specifically those that directly participate in hostilities – have been most active; and why there continues to be serious concerns about the nature, definition, and legitimacy of PMCs.

The report argues that regulation of PMCs requires an understanding of the industry and the way in which companies operate – an understanding that today barely exists outside a limited core of analysts and industry insiders and partners. Private military companies are estimated to operate in over 50 countries and generate \$100 billion of annual global revenue. PMC activities range from providing actual fighting forces to logistical support, battlefield training, and military advice. This report focuses in particular on those PMCs that have acted as combatants, with PMC operations in Sierra Leone as a case study. It is in their combatant role that PMCs pose the greatest potential for human rights abuse, and it is mainly related to this capacity that calls for monitoring and regulatory systems at the national, regional, and international levels are made.

However, this active level of participation in combat is by no means the industry norm: the majority of PMCs offer services that, while essential to military effectiveness or capacity, do not extend to direct participation in combat. For example, the United States still pays thousands of private military contractors to provide security to supply convoys and key installations in Iraq, train the Iraqi army, police, and paramilitary units, and feed and clean up after U.S. troops. The United Kingdom has also used PMCs to provide similar services. A number of

¹ Peter W. Singer, ‘The Dogs of War Go Corporate,’ *The London News Review*, March 19, 2004.

countries have already privatised key logistical functions of their armed forces, such as field and base catering or logistics. Nevertheless, in carrying out these duties employees of PMCs are often armed (for protection) and sometimes become involved in conflict.²

As a result, PMCs are integrated to the economies of armed conflict: even if PMCs do not act as combatants, the services they provide are based upon the needs and requirements of potential, actual, or concluded hostilities. Private military companies also facilitate conflict trade, particularly when they are hired by governments or companies in order to provide security for resource extraction in war-torn countries. In this regard, it is significant that many PMCs are not stand-alone companies, but part of a larger web of corporate activity. Indeed, it is not unusual for PMCs and extractive interests to be controlled by the same parent company (though the ownership and corporate affiliations of PMCs are typically obscure).

Yet despite the growing importance of the private military industry, both in terms of its financial weight and its impact on the contemporary battlefield, the sector remains essentially unregulated. The absence of regulation can be attributed to several factors: the secrecy and opacity that characterize PMC corporate structures and dealings between PMCs and clients; the existing regulatory focus on mercenarism (a legal designation that PMCs can easily evade); the continuing debates over the legitimacy of PMCs; and the concomitant lack of political will to address the issue on the part of client states.

The diversity of activities undertaken by PMCs, and the importance of these activities to powerful (as well as not-so-powerful) states, also complicates efforts to impose strict regulatory regimes – much less outright bans – on PMCs, even in relation to those that operate more in a traditional mercenary capacity. Indeed, current attempts to deal with PMCs have progressed little beyond debates on whether and how to differentiate and regulate them. Accordingly, PMCs operate in a grey area outside the full reach of international law. This situation is compounded by the fact that domestic legal systems and regional organizations have yet to substantively and meaningfully address the complexities posed by PMCs. As a result, the private military industry is essentially self- and market-regulated. The current climate of PMC self-regulation would be significantly strengthened if PMCs adopted the U.K.-U.S. ‘Voluntary Principles on Security and Human Rights’ and built them into contracts with their clients.³ That said, considering that this industry is characterised by a lack of transparency and accountability –

² Josh White and Griff Witte, ‘Tension, Confusion Between Troops, Contractors in Iraq’, *The Washington Post*, July 10, 2005, p. A12.

³ “The Voluntary Principles on Security and Human Rights” are found at http://www.state.gov/www/global/human_rights/001220_fsdrl_principles.html.

and that there are few real incentives for good behaviour, or punishment for bad – the claim that self-regulation is sufficient is suspect to all but the industry itself.

Given the complexity – in terms of actors, activities, and structure – of the private military industry, it is likely that any successful regulation must be tiered, featuring national, regional, and international regulatory responses. At the national level, differentiated licensing regimes may be necessary, such as general licenses that allow PMCs to operate and specific licenses that govern the activities companies may undertake. Economic measures, such as specialised taxes and control over employee pensions, could also be used by national governments to structure PMCs' economic incentives and regulate the labour markets that sustain both them and national armed forces. In addition, governments should actively audit PMCs registered or operating in their countries or abroad – perhaps using the authority of military attachés at embassies – to ensure compliance with their own laws and policies and with international law. This could be mirrored at an international level by a list of acceptable clients (governments and companies) that could be monitored and maintained by an existing international agency.

Ultimately, however, international regulation is largely predicated on the resolution of key definitional issues – specifically, the distinction between mercenaries and PMCs. The 1977 Protocol to the Geneva Convention outlawed mercenarism, and UN officials have preferred not to distinguish between mercenaries and PMCs. This poses a significant challenge to a UN-based regulatory regime for PMCs: if all PMC activity, like all mercenarism, is officially banned, than how could there be further regulation on their activity? The political space for regulatory measures and an eventual regulatory regime may emerge at the UN, not least because the conflation of PMCs and mercenarism may be unpopular with some member states. Moreover, in the context of the review of the Statute of the International Criminal Court, there may be opportunities for establishing the applicability of international humanitarian and criminal law to PMCs.

1 The Rise of Private Military Companies

The rise of the private military industry is dizzying. Almost non-existent fifteen years ago, private military companies (PMCs) now account for approximately \$100 billion of annual global revenue – a figure that is projected to double by 2010.⁴ This astonishing growth has been enabled by three inter-dependent systemic and structural changes that converged in the 1990s: post-Cold War great power apathy about many areas of the world; a post-Cold War glut of trained manpower and arms; and the ascendancy of the neo-liberal agenda, particularly privatisation, in developed and developing countries. These factors have, in turn, largely shaped the form, function, and methods of private military companies. The following section will examine the reasons behind the explosive growth of the private military industry, and discuss how and why PMCs are used by governments and non-governmental clients, including resource extraction corporations.

The Growth of Private Military Companies

A post-Cold War 'niche'

The decisive starting point for the development of the private military industry is the end of the Cold War in the late 1980s. A subsidiary effect of the collapse of the Cold War system was an increasing disinclination on the part of 'great powers' to intervene in civil wars unless their own vital interests were at stake. This attitude also negatively affected the ability of the United Nations to dispatch competent peacekeeping or peace enforcement forces to countries or regions in conflict – a problem that persists today. Accordingly, there exists a demand for protection and peacekeeping that is not being met by traditional actors such as states

⁴ Alex Vines, "Mercenaries and the Privatisation of Security in Africa in the 1990s", in Greg Mills and John Stremmler (eds.), *The Privatisation of Security in Africa* (Johannesburg: South African Institute of International Affairs), p. 47.

and international organizations. This demand has been effectively exploited by PMCs.

Of course, private military companies do not act in the same capacity as UN or other multinational peacekeepers. In particular, PMCs are not neutral: they are directly or indirectly in the employ of one side in the conflict, and therefore have no incentive or mandate to work towards a political solution between the warring parties. As Elizabeth Rubin notes, private military companies “...offer to do what the United Nations blue helmets cannot and will not do: take sides, deploy overwhelming force, and fire ‘pre-emptively’ on its contractually designated enemy”.⁵ Indeed, some advocate using PMCs instead of multinational peacekeepers precisely for this reason. Whereas multinational peacekeepers are presumed to be neutral (though in practice this is not always the case, as evidenced by events in Sierra Leone), and can even act as “honest brokers” in attempts to find compromises and political solutions to conflicts,⁶ PMCs operate under permissive mandates and can attack as well as defend.⁷ Advocates of PMCs thereby contend that PMCs facilitate victory one way or the other, and that a conclusive end to the conflict – rather than an uneasy or unstable stalemate requiring a prolonged peacekeeping operation – is ultimately a better outcome for the warring country.⁸

An expanding pool of military labour

A second structural factor behind the rise of PMCs is the post-Cold War draw-down of armed forces and the end of apartheid-driven conflicts in Africa, which has led to a glut of trained manpower. According to the Bonn International Conversion Centre, the world’s armies shrank by over six million soldiers between 1987 and 1996.⁹ The downsizing of the 1990s has also contributed to a general trend from public to private service of skilled soldiers. As Shearer has noted:

⁵ Elizabeth Rubin, “An Army of One’s Own”, *Harper’s Magazine*, (February 1997), p. 45.

⁶ Funmi Olonisakin, “Mercenaries Fill The Vacuum”, *The World Today*, Vol. 54, No. 6 (June 1998), pp. 146-

⁷ “Peacekeepers and PMCs” Interview with Doug Brooks by Stephen Mbogo, *West Africa Magazine*, September 3-9, 2001.

⁸ Stephen John Stedman, “Spoiler Problems in Peace Processes”, *International Security*, Vol. 22, No. 2 (Autumn 1997), pp. 5-53; Roy Licklider, *Stop the Killing: How Civil Wars End* New York: New York University Press, 1993); Edward N. Luttwak, “Give War A Chance”, *Foreign Affairs*, Vol. 78, No. 4 (July-August 1999), pp. 36-44.

⁹ Bonn International Centre for Conversion, *Conversion Survey 1998: Global Disarmament, Defence Industry Consolidation and Conversion* (Oxford: Oxford University Press, 1998), p.39.

... the contraction of a state's armed forces has narrowed opportunities for promotion and advancement and encouraged others to leave. The net result is a sharp increase in expertise in the private sector.¹⁰

These demobilisations are relevant to the private military industry in two ways. First, in the aftermath of a conflict, the inadequate disarmament, demobilisation, and reintegration (DDR) of military personnel can actually *provoke* insecurity and conflict that necessitates the employment of PMCs and private security companies (PSCs). This leads directly to the second point. Many demobilisations return soldiers into domestic economies that are contracting and cannot absorb the manpower.¹¹ In the absence of other career opportunities (such as those provided by effective reintegration packages), demobilised soldiers may offer their services to PMCs.¹² As Singer noted, "...downsizing fed both supply and demand, as new threats emerged and demobilization created fresh pools of PMF [Private Military Firm] labour and capital".¹³

At the individual level, working for PMCs was, and is, an attractive economic proposition, even for personnel still serving in the national armed services.¹⁴ Many PMC employees in the two companies examined below were veterans of the apartheid-era South African military. These men had extensive experience in counter-insurgency operations – precisely the skills most in demand for tackling civil wars and insurgency – and could therefore command generous pay. It was claimed that a soldier working for Executive Outcomes (EO) in the early 1990s would have been paid at least \$15,000 per month.¹⁵ Shearer disputes this, putting average monthly salaries for soldiers at around \$2,440, for officers at \$4,000, and for some specialists, such as aircrew, at \$6-7,000. Because EO paid its employees in U.S.

¹⁰ Shearer, *Private Armies*, p. 27.

¹¹ Joanna Spear, "The Disarmament and Demobilisation of Warring Factions in the Aftermath of Civil Wars: Key Implementation Issues", *Civil Wars*, Vol. 2, No. 2 (Summer 1999), pp. 1-22.

¹² Although Kees Kingma points to this phenomena in the conclusion of his edited book, he admits that the three case studies used reveal no evidence of this happening. This may be attributable to effective reintegration packages. Kees Kingma, "The Impact of Demobilization", in Kees Kingma (ed.), *Demobilization in Sub-Saharan Africa: The Development and Security Impacts* (Basingstoke: Macmillan & BICC, 2000), p.238.

¹³ Singer, "Corporate Warriors", p. 194.

¹⁴ Interestingly, in the aftermath of the U.S.-led war against Iraq, U.S. military commanders have complained that PMCs operating in Iraq are poaching some of their best-trained soldiers with economic packages that the armed forces can't match.

¹⁵ Lindsay Murdoch and Phillip van Niekerk, "Mercenaries Who Show No Mercy", February 25, 1997.

dollars, even these lower totals came out to approximately four times the salary of equivalent jobs in the South African Defence Force (SADF).¹⁶ EO employees also received generous life insurance policies, another stark contrast to the SADF. Clearly in that instance, working for a PMC was a good economic strategy for the individual soldier.

Interestingly, in this sense, the role of PMCs vis-à-vis demobilisation is not always perceived as negative.¹⁷ For example, in the run-up to the first post-apartheid elections in South Africa, a leaked British intelligence document reported that African National Congress leaders accepted the recruitment by PMCs of ex-South African Defence Force members, believing that “it would remove personnel which might have had a destabilising effect on the forthcoming multiracial elections”.¹⁸

The transformation of the state

Finally, the prevalence of the neo-liberal agenda was, and continues to be, a crucial factor driving the growth of PMCs. The ideology of the market and the notion that privatisation is the most efficient means of delivering services has influenced the way governments operate in both rich and poor countries. The neo-liberal agenda of free markets has been proselytised in Africa by many of the international financial institutions (IFIs)¹⁹ – yet it is not just developing countries that are privatising elements of their military operations. Indeed, the fact that the privatisation of various aspects of security provision is seen as cost-effective by many rich countries implies that, in an advanced industrial economy, the bureaucratic and organisational dimensions of service delivery make it impossible to achieve the ‘lean’ approach desired in the armed forces without contracting out. In certain cases, the closeness between private military companies and governments is such that Shearer has coined the term ‘proxy companies’ to capture the dynamic.²⁰

¹⁶ Shearer, *Private Armies*, p. 42.

¹⁷ For an interesting discussion of the effects of demobilisation and privatisation on the private security industry, see Peter Lock, “Military Downsizing and Growth in the Security Industry in Sub-Saharan Africa”, *Strategic Analysis*, Vol. 22, No. 9 (Dec. 1998), pp. 1393-1426. At <http://www.idsa-india.org/an-dec8-10.html>.

¹⁸ Khareen Pech and David Beresford, “Corporate Dogs of War Grow Fat in Africa”, *Guardian Weekly*, January 26, 1997, p. 8.

¹⁹ Emmanuel Kwesi Aning, “Africa’s Security in the New Millennium: State or Mercenary Induced Stability?”, *Conflict Trends*, No. 1 (2000).

²⁰ David Shearer, “Private Military Force and Challenges for the Future”, *Cambridge Review of International Affairs*, Vol. 8, No. 1 (Autumn-Winter 1999), p. 83.

The privatisation philosophy has been popular amongst African elites for another reason. An unintended effect (at least in the eyes of the IFIs) of privatisation has been that incumbent elites have overwhelmingly benefited from the process by cheaply acquiring valuable assets.²¹ As illustrated by Reno, Clapham, and others, privatisation and the consequent externalisation of state functions keeps elites wealthy and in power through the logic of commercial opportunity offered by weak states, leading to the criminalisation of politics and the informalisation of state and economy.²² Clapham describes this phenomenon as the “project of external governance”, with which the emergence of elite-owned private security firms is entirely consistent.²³ The increasing privatisation of state security is therefore only one element of a major change in the role of the state. As Cilliers and Cornwell explain:

It is at the nexus between the processes of the privatisation of the state in Africa, central to the structural adjustment agenda, globalisation and the response to privatisation by many post-colonial African élites that the opportunities for growth in the private security industry in Africa must occur.²⁴

The rise of PMCs in Africa can thus be linked to the ongoing transformation in the organisation of African states. Indeed, Reno argues that African warlord politics and mercenary activity should be understood as a manifestation of the manner in which Africa states are integrating to the global economy, often on the basis of the adaptation (informalisation and privatisation) of political and economic relationships established during the Cold War.²⁵ Moreover, the rise of PMCs, whatever the cause or form, is facilitated by the fact that the economies of scale and barriers to entry for the international private security market are relatively low:

All the necessary tools are readily available on the open market, often at bargain prices from the international arms bazaar. The labour input – predominantly former soldiers with skill sets unique to the industry – is also relatively inexpensive and widely available.²⁶

²¹ Barbara Harris-White and Gordon White, “Corruption, Liberalisation and Democracy”, *IDS Bulletin*, Vol. 27, No. 2 (April 1996), p. 4. Cited in Lock, “Military Downsizing”, p. 7.

²² William Reno, “Shadow States and the Political Economy of Civil Wars”, in Berdal & Malone *Greed and Grievance*, p. 49.

²³ Christopher Clapham, *African Guerrillas* (Ed), Indiana Univ (1998). Cited in Lock, “Military Downsizing”, p. 7.

²⁴ Cilliers and Cornwell, “Mercenaries”, p. 35.

²⁵ William Reno, *Warlord Politics and African States* (Boulder, CO: Lynne Rienner, 1998).

²⁶ Singer, “Corporate Warriors”, p. 199.

In short, the combination of global systemic and structural factors – and local responses to them – has created both the demand for private military companies and the supply of labour and capital investment to meet that demand.

Categorisation and Terminology of Private Security Provision

The Company

At first glance, there appears to be three main types of privatised security groups: mercenaries, private military companies,²⁷ and private security companies. It is the second category that is of primary concern in this study. Private military companies are the major nonstate external military actors involved in contemporary conflicts. They are also intrinsically implicated in economies of conflict, in that the services they provide are based upon the needs and requirements of potential, actual, or concluded hostilities. Moreover, private military companies' increasingly corporate nature and structures link them to other elements of the international political economy, including natural resource extraction. But how are they different from security companies or mercenaries?

Mercenaries and PMCs

The use of private military forces is not a new phenomenon, as anyone familiar with the history of companies such the British East India Company is aware:²⁸ the mercenary has been a feature of warfare since it began.²⁹ With the nationalisation of warfare in the twentieth century, the mercenary became less used and accepted, but never completely disappeared. After a long period of decline,

²⁷ Singer sets out three classes of military firms: military provider firms, military consulting firms, and military support firms. P. W. Singer, "Corporate Warriors: The Rise of the Privatised Military Industry and its Ramifications for International Security", *International Security*, Vol. 26, No. 3 (Winter 2001/02).

²⁸ Janice E. Thomson, *Mercenaries, Pirates and Sovereigns* (Princeton, NJ: Princeton University Press, 1994); Christopher Coker, "Outsourcing War", *Cambridge Review of International Affairs*, Vol. 8, No. 1 (Autumn-Winter 1999), pp. 95-113.

²⁹ For a brief history, see James Larry Taulbee, "Reflections on the Mercenary Option", *Small Wars and Insurgencies*, Vol. 9, No. 2 (Autumn 1998), pp. 145-163; Anthony Mockler, *The Mercenaries* (London: Macmillan, 1971); Anthony Mockler, *The New Mercenaries* (London: Sedgwick and Jackson, 1985).

Mercenary activity worldwide escalated during the 1990s. Conflicts in [the] former Yugoslavia, Armenia, Azerbaijan, Georgia, Moldova and Tajikistan ...were one series of magnets for mercenary enrolment and deployment and in these central Asian conflicts the majority of mercenaries were drawn from former officers and soldiers of the Soviet military.³⁰

Mercenaries have also been deployed in Latin America and, most prominently, in Africa. In 1997, for example, the embattled government of then-Zairian president Mobutu Sese Seko attempted to create a mercenary force to stave off rebel forces led by Laurent Kabila.³¹

Mercenaries are customarily described as motivated essentially by personal (monetary) gain. This does not encompass those people that fight on an individual basis but not for money, such as the volunteers that fought on both sides in the Spanish Civil War or contemporary *mujahideen* fighters in Bosnia and pro-Taliban fighters in Afghanistan. At the moment, such 'volunteers' are not covered under the Geneva Convention.

Singer differentiates today's profit-seeking PMCs from past private military forces (including mercenaries) as follows:

Today's PMFs [private military firms] represent the evolution of private actors in warfare. The critical analytic factor is their modern corporate business form. PMFs are hierarchically organized into incorporated and registered businesses that trade and compete openly on the international market, link to outside financial holdings, recruit more proficiently than their predecessors, and provide a wider range of military services to a greater variety and number of clients.³²

The view of contemporary PMCs as corporate entities was a perspective endorsed by Lt. Col. Tim Spicer, then a director of the private military company Sandline International, who contended that:

There are a number of different distinctions that are worth highlighting. A private military company is a permanent structure. It has a permanent staff with

³⁰ Guy Arnold, *Mercenaries: The Scourge of the Third World* (London: Macmillan, 1999), p. 165.

³¹ PanAfrican News Agency (Kampala), "Mercenary Chief Detained in Zaire", March 24, 1997. At <http://www.africanews.org/PANA/news/970324/feat5.html>. Accessed February 1997; Howard French, "In Zaire's Unconventional War, Serbs Train Refugees for Combat", *New York Times*, February 12, 1997. At <http://www.nytimes.com/yr/mo/day/news/world/zaire-unrest.html>. Accessed February 1997.

³² Singer, "Corporate Warriors", p. 191

a large number of people on the books. It has a permanent presence, an office, uses promotional literature, and a vetting system, it has a doctrine, and a training capacity, internally as well as externally. It draws on the normal support that you would expect from a business.³³

In other words, it is the corporate aspects of today's PMC that allow companies to both maximise profits and sidestep accusations of mercenarism.

However, Spicer's own career shows that PMCs are not necessarily permanent nor trustworthy structures. Spicer left Sandline International (which subsequently ceased trading) and created a number of new PMCs including Strategic Consulting International, Trident Maritime and in 2002, Aegis Defence Systems Ltd.³⁴ Aegis appears to employ some of the same workers and consultants who had previously worked for Sandline.³⁵ In 2004 Aegis secured a large contract with the U.S. Department of Defense for work in Iraq. Early news reports about concerns raised by the deal, concerns based on Aegis having virtually no track record, were replicated when audits prepared by the Special Inspector General for Iraq Reconstruction (SIGIR) reportedly showed the company failing to comply with requirements in five key areas of the \$293 million contract.³⁶

It is possible that these corporate aspects are more characteristic of PMCs operating in or out of the northern hemisphere than of *all* PMCs. International transactions by PMCs – that is, activities that transcend state borders – are often marked by a lopsided North-South dynamic, with northern companies providing leadership, technology, and know-how to, and extracting profit from, southern clients. This dynamic can be seen in, for example, Angola, where the U.S. companies Military Professional Resources Incorporated (MPRI) and AirScan have been active; Mozambique, where British-based Defence Systems Limited has operated; the Middle East, with KAS Enterprises; and Congo-Brazzaville, where the Israeli firm Levdan had a three-year contract to train the Presidential Guard and the armed

³³ Interview with Lt. Col. Tim Spicer, *Cambridge Review of International Affairs*, Vol. 8, No. 1 (Autumn-Winter 1999), p. 165.

³⁴ Pratap Chatterjee, "Controversial Commando Wins Iraq Contract" *Corpwatch*, June 9, 2004. At <http://www.corpwatch.org/article.php?id=11350> Accessed November 29, 2005; Barry Yeoman, "Dirty Warriors", *Mother Jones*, November 2004.

³⁵ "Iraq: A Mercenary's Paradise", *Corporate Watch News*, June 22, 2004. At <http://archive.corporatewatch.org/news/mercenary.htm> Accessed November 29, 2005.

³⁶ Christopher Shumway and Brian Dominick, "U.S. Took Eyes Off Mercenaries, \$96m in Iraq, New Audits Find", *The New Standard*, 2005. At http://newstandardnews.net/content/?action=show_item&itemid+1790&printmode=true Accessed November 29, 2005.

forces.³⁷ Yet there is also a burgeoning South-South trade in the private military industry, exemplified by security companies operating out of South Africa into neighbouring states until legislation in the late 1990s halted the trade. Prominent South African PMCs include Executive Outcomes (now defunct),³⁸ Strategic Concepts, Omega Support Ltd, Panasec Corporate Dynamics,³⁹ Bridge Resources, Corporate Trading International, Longreach Pty Ltd,⁴⁰ and Stabilco.⁴¹

PMCs and Private Security

The privatisation of security is a global phenomenon, as evidenced by the growth of private security companies (PSCs). PSCs and PMCs are similar in certain respects, detailed below, but are not synonymous. PSCs are used to protect individuals and property in both developed and developing countries. In South Africa, for example, the number of registered security firms soared from 525 in 1991 to 3,500 in 1995 in reaction to the post-apartheid crime wave,⁴² so that by 1998 private security in South Africa was a £13.5 billion business.⁴³ Private security firms in the United States and Great Britain also saw a sharp increase in business following the attacks of September 11, 2001.⁴⁴

However, PSCs are not just found in developed countries: indeed, weak and unstable states – particularly those with exploitable natural resources – are particularly attractive areas of operation for private security companies, an investment pattern not dissimilar to that of PMCs. Some firms have found a niche in protecting oil pipelines in places such as Sudan, Russia, and Angola; in these cases,

³⁷ O'Brien, "Military-Advisory Groups", p. 92.

³⁸ For example, in 1992 *Executive Outcomes* was hired by the oil companies Gulf Chevron and Sonangol to protect their oil installations in Angola. Yves Goulet, "Executive Outcomes: Mixing Business with Bullets", *Jane's Intelligence Review*, September 1997, p. 427

³⁹ William Reno, "Privatizing War in Weak States", Paper presented at the annual meeting of the International Studies Association, Toronto, 1997, p. 1.

⁴⁰ O'Brien, "Military-Advisory Groups", p. 92. . Thomas K. Adams, "The New Mercenaries and the Privatization of Conflict", *Parameters* (Summer 1999), pp. 103-16.

At <http://carlisle-www.army.mil/usawc/Parameters/99summer/adams.html>. Accessed August 13, 2001

⁴¹ Patrick J. Cullen, "Keeping the New Dogs of War on a Tight Leash", *Conflict Trends*, No. 6 (July 2000) at <<http://www.accord.org.za/publications/ct6/issue6.htm>>

⁴² Sudarsan Raghaven, "Africa Puts Its Money Where Its Fear Is", *Business Weekly*, July 15, 1996, p. 52. Cited in Reno, "Privatizing War in Weak States", p. 12.

⁴³ Arnold, *Mercenaries*, p. 170, citing *The Independent* July 2, 1998.

⁴⁴ Oliver Burkeman and Julian Borger, "Spoils of War", *Guardian*, G2, p. 2.

the PSCs are typically in the employ of the oil companies rather than the host governments. In 1997, Mark Galeotti estimated that there were 9,800 private security firms operating in Russia.⁴⁵ In the same year, it was estimated that there were 90 private security companies operating in Africa, 80 of them in Angola alone – necessitated by the Angolan government’s demand that commercial firms provide their own security.⁴⁶

The post-Cold War privatisation phenomenon has also led to the emergence of private security businesses closely allied to African governments; Herb Howe notes the examples of Alpha-5 and TeleServices in Angola, Kampala-Saracen in Uganda, and Osleg in the Congo.⁴⁷ TeleServices had many prominent Angolan government officials amongst its shareholders.⁴⁸ Alpha-5 was allegedly a partnership between the South African firm Executive Outcomes and Angolan Chief of Staff Joao De Matos.⁴⁹ Kampala-Saracen, meanwhile, was reportedly thirty per cent owned by retired General Salim Saleh (half-brother of President Musaveni, who reportedly also had “interests in a Heritage oil concession”⁵⁰). This relationship at times has reportedly involved the use of Ugandan government assets, such as the secondment of 500 active-duty soldiers to the company.⁵¹

‘The Competition’

This suggests that there are other groups, too, that compete in the security provision industry, the most obvious of these being states. In the 1990s, for example, the Kinshasa government of the Democratic Republic of Congo was “...effectively renting military expertise from Zimbabwe in a manner not dissimilar to a private company”.⁵² Britain has played a key role in training Zimbabwe’s armed forces,

⁴⁵ Mark Galeotti, “Boom Time for the Russian ‘Protectors’”, *Jane’s Intelligence Review*, August 1997, p. 339.

⁴⁶ William Reno, “Privatizing War in Sierra Leone”, *Current History*, Vol. 97, No. 610 (May 1997), p.228-30.

⁴⁷ Herb Howe, “African Private Security”, *Conflict Trends*, No. 1 (2000).

⁴⁸ Jakkie Cilliers and Richard Cornwell, “Mercenaries and the Privatisation of Security in Africa”, *African Security Review*, Vol. 8, No. 2 (1999), p. 40.

⁴⁹ Cullen, “Keeping the New Dogs...”.

⁵⁰ Herbert M. Howe, “Private Security Forces and African Stability: The Case of Executive Outcomes”, *The Journal of Modern African Studies*, Vol. 36, No. 2 (1998), p. 320, ff. 42.

⁵¹ Herb Howe, “African Private Security”, *Conflict Trends*, No. 1 (2000).

⁵² David Shearer, “Private Military Force and Challenges for the Future”, *Cambridge Review of International Affairs*, Vol. 8, No. 1 (Autumn-Winter 1999), p. 87.

begun at independence and only recently terminated in response to the activities of President Mugabe.⁵³ The United States also has extensive programmes for training foreign military forces.⁵⁴ Another historical example includes the role of Cuba in Angola.⁵⁵ Militaries also sometimes work for private companies, enabling them to continue functioning. For example, British Petroleum has employed battalions of the Colombian armed forces to guard its oil operations.⁵⁶

There are also other, non-corporate and nonstate actors that compete with PMCs, such as international peace operations. At times, the motivation for troop contributing countries departs from the state or international security issues seemingly at hand. As Møller writes:

Even though neither the cosmopolitan spirit of the...third world countries nor the quality of their troops is automatically dubious, there is a lingering suspicion that at least some of these troop contributions may also be economically motivated. If so, their use by the world community would seem to be morally quite comparable to use of PMC[s].⁵⁷

In addition, security at the sub-state level, particularly in the form of communal self-defence units or vigilantes, forms part of the market in which PMCs operate. As Comfort Ero has emphasised, the formation of local militias is a vital element of the privatisation of security in African states.⁵⁸ Such militias are a cheap, 'home-grown' response to insecurity. They can emerge as a result of 'top-down' demand – that is, as a result of elite attempts to protect themselves:

⁵³ Some African militaries have a history of operating this way. For example, current Zimbabwe army mining activities in the Democratic Republic of Congo, run through their commercial arm *OSLEG*, mimic their (less successful) economic activities in Mozambique during the 1980s. "Harare Rejects UN Panel Report", *Integrated Regional Information Network (IRIN)*, United Nations, Office for the Coordination of Humanitarian Affairs, November 29, 2001.

⁵⁴ Federation of American Scientists, "U.S. Foreign Military Assistance". At <http://www.fas.org/asmp/profiles/aid/aidindex.htm> Accessed November 29, 2005.

⁵⁵ For an evocative account of the start of the Cuban involvement in the newly independent Angola, see Ryszard Kapucinski, *Another Day of Life* (London: Penguin Classics, 2001).

⁵⁶ British Petroleum has been heavily criticised for hiring the army. However, the company took a principled decision to use the state military, rather than hiring a PMC, as they had feared that the latter option would be much criticised. Author's conversation with a BP official, 1999.

⁵⁷ Bjørn Møller, "Private Military Companies and Peace Operations in Africa", Paper presented at the seminar on *Private Military Companies in Africa: To Ban or Regulate*, Department of Political Sciences, University of Pretoria, February 8, 2002, p. 8.

⁵⁸ Comfort Ero, "Vigilantes, Civil Defence Forces and Militia Groups: The Other Side of Security in Africa", *Conflict Trends*, No. 1 (2000).

...particularly in Africa, we have seen elites repeatedly recruiting civilians into unpaid or underpaid armies or militias. Such recruitment has typically, but not always, been along ethnic lines. Very often, some combination of fear, need, and greed has created a willingness to be mobilized for violence among this civilian population.⁵⁹

They can also develop out of a 'bottom-up' desire on the part of local populations to defend themselves *from* the government.

Their response is to search for security from outside the formal security structures of the state. For the ordinary citizen, creating a defence mechanism against insecurity has become a necessity and not an option. Often the answer has been to create private self-defence units. Thus, we have the era of vigilante groups, CDFs [Civil Defence Forces] or local militia groups – alternative strategies to survive the daily violence that their public servants exact or fail to prevent.⁶⁰

The overlapping functions of these various forms of organised force mean that there are often human links between them. Personnel often move from one realm to another; for example, some employees of Executive Outcomes later turned up as freelance mercenaries in Zaire in 1997,⁶¹ while others have been implicated in a coup plot against the government of Equatorial Guinea that was uncovered by Zimbabwe in 2004.⁶² Moreover, private security companies (guarding people and property) are often present before, during, and after conflicts, reflecting the fact that conflict-torn states are typically unable to provide an effective police force to deal with domestic crime and security issues.⁶³

Thus, the distinction between PMCs, PSCs, mercenaries, and vigilantes is blurred by their potentially overlapping and crisscrossing activities, personnel, and relationships. Singer argues that the PMC is a new phenomenon, which represents a new kind of firm that is responding to real demand. However, the line demarcating the corporate definition of a PMC is easily crossed in the kinds of forces deployed, the sorts of force used or threatened, and the kinds of state- and non-

⁵⁹ David Keen, "Incentives and Disincentives for Violence", in Mats Berdal and David M. Malone (eds.), *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder: Lynne Rienner Publishers, 2000), p. 24.

⁶⁰ Ero, "Vigilantes", p.26.

⁶¹ David Shearer, *Private Armies and Military Intervention*, Adelphi Paper 316 (London: IISS, 1998), p. 21.

⁶² IRIN News, "Guns still for hire for troubled continent", 26 Mar 2004.

⁶³ Michela Wrong, "Fear Drives Africa's Boom Business: Security Companies Trade on Lawlessness and Crime", *Financial Times*, May 8, 1996, p. 6.

state interests invested. Human, corporate, and functional links exist between all four variants that cumulatively comprise the phenomenon of privatisation of the use of force. The confusion that has resulted from these similarities has resulted in a debate over PMCs that has been dominated by charges of mercenarism versus protestations of legitimacy by the industry. In reality, the picture is more complex. Below the case of Sierra Leone is analysed for clues as to how PMCs have performed and what that might imply for policy.

2 PMCs in Sierra Leone: a case study

Private security was used in Sierra Leone as long ago as 1936, when the government handed over security of the diamond fields to companies prepared to field their own armed forces.⁶⁴ As Abdel-Fatau Musah notes:

Private security involvement in Sierra Leone has always been linked to mining operations. Expatriate mining concerns, and at times the government on the insistence of the former, hired private security firms to guard mines against illegal encroachment or pilfering by employees.⁶⁵

In 1991, the initial incursions into Sierra Leone by the RUF – a previously unknown group in the country – involved forces of around 100 people, composed of a mixture of Sierra Leonean exiles and Burkinabe and Liberian mercenaries.⁶⁶ Their links to Liberia prompted members of the Economic Community of West African States Monitoring and Observation Group (ECOMOG) – specifically Nigeria, Ghana, and Guinea – to send troops in support of Sierra Leone. Throughout 1992 and 1993, government forces scored some notable military successes against the RUF. However, these military advances were soon squandered, as troops became distracted by the opportunities for banditry and officers established *de facto* control of private mining operations.⁶⁷

In the early stages of the conflict, Sierra Leone's president, Joseph Saidu Momoh, asked Britain as the ex-colonial power to provide military advisers, communications, and intelligence capabilities to aid the government against the RUF rebels. Britain's refusal prompted the government to turn to PMCs.⁶⁸ According

⁶⁴ John L. Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy*, International Peace Academy Occasional Paper Series (Boulder, CO: Lynne Rienner, 2001), p. 66.

⁶⁵ Abdel-Fatau Musah, "A Country Under Siege: State Decay and Corporate Military Intervention in Sierra Leone", in Abdel-Fatau Musah and J. 'Kayode Fayemi (eds.), *Mercenaries: An African Security Dilemma* (London: Pluto Press, 2000), p. 77.

⁶⁶ Richards, *Fighting For the Rain Forest*, p. 5.

⁶⁷ Reno, *Warlord Politics and African States*, p. 125.

⁶⁸ William Shawcross, *Deliver Us From Evil: Warriors and Peacekeepers in a World of Endless Conflict* (London: Bloomsbury, 2000), p. 172.

to Musah, the first PMCs in the country were the German firm, Specialist Services International; the British firms, Marine Protection Services, Frontline Security Forces, and Special Projects Services Ltd.; and the U.S. firm, Sunshine Boule.⁶⁹ This was followed by an influx of PMCs in 1995, including the British firm, the Gurkha Security Guards (headed by Colonel Robert MacKenzie). The Gurkha Security Guards initially functioned as a PSC but were later sub-contracted by the British arms dealers J & S Franklin to train the Sierra Leonean army, with grisly results:⁷⁰

...the Ghurkha Security Guards, made up primarily of Nepalese soldiers... lost its commander in a rebel ambush. Reports suggest that the commander was later cannibalized. The firm decided to break its contract, and its employees fled the country, leaving its client without an effective military option until it was able to hire another firm.⁷¹

Executive Outcomes and Sandline

In 1992, President Momoh was ousted in a military coup led by Captain Valentine Strasser, who formed the National Provisional Ruling Council. In March 1995, Strasser's government hired Executive Outcomes (EO). Strasser claimed to have learned about the company through an article in *Newsweek* about EO's operations in Angola; others claim that Tony Buckingham, the ebullient British ex-Special Air Service (SAS) entrepreneur with interests in mining and security, suggested its services.⁷² Regardless, it seems that the arrival in Sierra Leone of EO parallels that of the Branch Group of companies (with which EO and its parent company, Strategic Resource Corporation, had numerous corporate linkages) in Sierra Leone.⁷³ Indeed, EO's contract was apparently negotiated by Michael Grumberg, a major Branch shareholder.⁷⁴

⁶⁹ Musah, "A Country Under Siege", p. 77.

⁷⁰ Isenberg, "Soldiers of Fortune Ltd.", p. 10 citing: Jim Hooper, "Sierra Leone: The War Continues", *Jane's Intelligence Review*. No date provided.

⁷¹ Singer, "Corporate Warriors", p. 206. The firm has subsequently lost most of its business.

⁷² David J. Francis, "Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?", *Third World Quarterly*, Vol. 20, No. 2 (1999), p. 326.

⁷³ Jeremy Harding, "The Mercenary Business: 'Executive Outcomes'", *Review of African Political Economy*, Vol 24, No. 71 (1997), pp. 88 & 93.

⁷⁴ Howe, "Private Security Forces", p. 313.

Executive Outcomes was brought in to provide training, intelligence, and combat assistance, and to facilitate night-time raids with its radars.⁷⁵ For this work, the Government agreed to a fee of \$60 million and future mining revenues from the Koidu diamond field (whilst retaining 60 percent ownership).⁷⁶ In addition to retaining nearly 40 percent of the net profit from the field, the Government received five percent of the value of all diamonds extracted. Executive Outcomes also bought shares in the Sierra Rutile mine.⁷⁷ All in all, President Strasser declared that this was the best arrangement any foreign company had ever given Sierra Leone.⁷⁸

According to Eben Barlow, founder of Executive Outcomes, “(y)ou cannot keep peace if there is no peace...but we can help a country to achieve some form of stability before the UN comes in”. This perception of the company as an ‘advance guard’ for the UN is one that EO favoured; however, it masks the fact that EO’s first priority was business.⁷⁹

The role of Executive Outcomes, as set out in its corporate statement, was to “create a climate for peace and stability for foreign investment, focussing on military training, including a particular emphasis on special forces and clandestine warfare”.⁸⁰ In Sierra Leone, EO was to secure the capital city, Freetown, regain control of the mines in the Kono region, destroy the headquarters of the RUF, and push the RUF out of the country. That is, it was to be militarily engaged itself, not just functioning in support of the Sierra Leonean Army (SLA). It began by training the SLA.

Working in tandem with Nigerian and Ghanaian ECOMOG troops, EO quickly enjoyed notable success, pushing the RUF back from within 36km of Freetown to 126 km into the interior, re-taking the diamond region of Kono, and destroying the RUF headquarters. Although EO failed to clear the RUF out of the remaining areas of the country, after ten months of action the security situation had improved to the extent that the country was able to hold its first presidential election for 23 years.

A month before the election, in 1996, Strasser was overthrown and replaced by Julius Maada Bio. Suspicion lingers that Executive Outcomes played some role in his ousting, perhaps to curry favour with a local general with whom the firm

⁷⁵ Reno, “Privatizing War in Sierra Leone”, p. 229.

⁷⁶ Adams, “The New Mercenaries”, p. 4.

⁷⁷ Richards, *Fighting For the Rain Forest*, p. 17.

⁷⁸ Hirsch, *Sierra Leone*, p. 39.

⁷⁹ Rubin, “An Army of One’s Own”, p. 45.

⁸⁰ Cited in Shawcross, *Deliver Us From Evil*, p. 173.

had a better relationship.⁸¹ Popular pressure ensured that the election proceeded anyway. The first round of voting, in February, was inconclusive and a second round was held in March, from which Ahmad Tejan Kabbah emerged as president with 59.9 percent of the vote. Despite widespread intimidation, turnout was high and, as Shawcross notes, “nowhere was the election conducted so peacefully as where the South Africans were deployed”.⁸²

Soon after Kabbah’s victory, peace talks were initiated with RUF leader Foday Sankoh. The result was the Abidjan accord of November 30, 1996. In the talks, the RUF sought to ensure that EO was expelled from the country and that the payments they received be made public. Whilst the RUF was publicly demanding EO’s expulsion:

...attempts were uncovered to deploy other (in this case white) mercenaries, apparently on the payroll of the RUF, to seize control of a diamond mine being guarded by EO, presumably against payment in the form of diamond concessions which were subsequently sold to BE [Branch Energy].⁸³

EO’s contract was not renewed. In 1997, shortly after EO’s withdrawal, Johnny Paul Koroma led a military coup that overthrew the elected government. The 900 Nigerian troops in the country were unable to prevent the coup, although they had helped to foil an earlier one.⁸⁴ Koroma’s forces and the RUF combined to form the Armed Forces Revolutionary Council (AFRC) in May 1997. The AFRC government sought to abolish the paramilitary *Kamajors*, the only force prepared to stand up to them.⁸⁵ As Keen posits:

When in 1996 and 1997 democracy and peace came to pose too great a threat to the system of economic exploitation that had evolved under the cover of war, the RUF combined with disgruntled soldiers in the May 1997 coup to oust the democratic government of Tejan Kabbah and to launch a coordinated assault on the civil defense fighters, or *Kamajors*, who had stood up to the twin threat of government soldiers and rebels.⁸⁶

⁸¹ Singer, “Corporate Warriors”, p. 206.

⁸² Shawcross, *Deliver Us From Evil*, p. 178.

⁸³ Møller, “Private Military Companies”, p. 5.

⁸⁴ Adebajo, “Sierra Leone: A Feast for the Sobels”, p. 85.

⁸⁵ Howe, “African Private Security”.

⁸⁶ Keen, “Incentives and Disincentives for Violence”, p. 36.

Some in Sierra Leone blamed the coup on the Kabbah government for its failure to renew EO's contract.⁸⁷ While the departure of EO may have encouraged the coup makers – EO had stopped at least two coups in Sierra Leone in 1996⁸⁸ — the opportunity to launch the coup likely had more to do with the instability created by the decision to hold elections prior to reaching a peace deal.

Attempts to mediate between the AFRC and the exiled Kabbah government resulted in the Conakry Peace Accord of 23 October 1997. However, it soon became clear that the accord was being ignored by the AFRC.⁸⁹ Skirmishes ensued between the junta and the Nigerian-dominated peacekeeping forces in the country. PMCs also continued to play a role in the conflict, both in support of and as an alternative to the ECOMOG forces in the country. Of these, Sandline International, a British PMC, was the most prominent.

Sandline was hired on behalf of Kabbah (in exile in Guinea) to provide logistical, transport, air, and intelligence support to pro-Kabbah forces and to supply ECOMOG with 35 tons of military equipment from Bulgaria.⁹⁰ The company also directly supported the Nigerian ECOMOG forces in various offensives against the RUF in January and February 1998.⁹¹ By March 1998 – even before the Bulgarian weapons arrived – Kabbah was back in Freetown and reinstated as President. Sandline's contract ended.

Sandline's role in assisting Kabbah's restoration to power later proved highly controversial in Britain, when it was revealed that the British High Commissioner in Sierra Leone, Peter Penfold, had known of Sandline's involvement in shipping arms to Sierra Leone – despite the fact that the arms shipment was in contravention of UN sanctions and UK law. It was also asserted that Penfold had played a role in encouraging Sandline to train and equip a local force capable overthrowing AFRC.⁹² The British Government subsequently denied British endorsement of the Sandline mission.⁹³ However, it has since been suggested that British intel-

⁸⁷ Donald G. McNeil Jr., "Pocketing the Wages of War", *New York Times*, February 16, 1997; Isenberg, "Soldiers of Fortune Ltd.", p. 15

⁸⁸ Howe, "Private Security Forces", p. 317.

⁸⁹ "Cracking Koromah", *Africa Confidential*, Vol. 38, No. 23 (21 November 1997).

⁹⁰ Cilliers and Cornwell, "Mercenaries", p. 32.

⁹¹ "Sandline assisted ECOMOG in 1998 in a direct supportive role. Its helicopters ferried ECOMOG commanders across the country, at one point rescuing ECOMOG commander, Brigadier Maxwell Khobe and UN officials from an RUF firefight." Cilliers and Cornwell, "Mercenaries", p. 32.

⁹² Hirsch, *Sierra Leone*, p. 67.

⁹³ See for example, Prime Minister Tony Blair's defence of the Government's ethical foreign policy, *Sunday Times*, May 17, 1998.

ligence agencies engaged in intelligence gathering in Sierra Leone did, in fact, have the contacts with Sandline that the government later denied (government denials, of course, being standard in the case of intelligence operations).⁹⁴ A Parliamentary investigation into the affair led to new British government interest in regulating PMCs.⁹⁵

After Sandline's departure, the government and its allies remained unable to decisively defeat the RUF.⁹⁶ By January 1999, the RUF again threatened Freetown. The battle for greater Freetown caused widespread devastation and civilian trauma. Although the rebels were eventually driven out of the capital, they were still not a spent force. Further pressure was placed on the rebels by efforts to restrict the flow of 'conflict diamonds', thus undermining the conflict economy that allowed the RUF to buy arms and reward combatants.⁹⁷ This, combined with intense political and military pressure, convinced the RUF to enter into talks with the UN and the Kabbah government in Abuja, Nigeria.

Despite, or perhaps because of, the indifference of the UN Security Council, the Lomé peace agreement was made in July 1999. Under the terms of the Lomé agreement, the RUF were brought into government as partners and Foday Sankoh was awarded the Vice Presidency and chairmanship of the Strategic Mineral Resources Commission. This arrangement gave Sankoh legitimate ministerial control over Sierra Leone's diamond mines.⁹⁸

The situation culminated in April and May of 2000, when the RUF took hostage more than 500 UNAMSIL personnel and Indian peacekeepers.⁹⁹ Subsequently, RUF forces began marching on Freetown, spreading panic in the capital. Although the UN Secretary-General's attempt to mobilise a rapid reaction force

⁹⁴ "Sandline Affair, the True Story", *New African Magazine*, July 3, 2001. Found on the website of the Center for Media, Education and Technology, http://www.cmetfreetown.org/Media/Print/Articles/CSS_Articles/Exclusive/EX-010703-03.stm. Accessed November 16, 2001.

⁹⁵ Sir Thomas Legg and Sir Robin Ibbs, *Report of the Sierra Leone Arms Investigation*, House of Commons, Select Committee on Foreign Affairs, (London: Her Majesty's Stationary Office, 1998).

⁹⁶ Dennis Bright, "Implementing the Lomé Peace Agreement", in David Lord (issue ed.), *Paying the Price: The Sierra Leone Peace Process, Accord: An International Review of Peace Initiatives* (September 2000), p. 2.

⁹⁷ See: Ian Smillie, "Dirty Diamonds: Armed Conflict and the Trade in Rough Diamonds", *Economies of Conflict* CD Rom, Version 1. Programme for International Co-operation and Conflict Resolution, (Oslo: Fafo Institute for Applied International Studies, 2002).

⁹⁸ "A Deal in Lomé", *Africa Confidential*, Vol. 40, No. 14, July 9, 1999; Ismail Rashid, "The Lomé Peace Negotiations", in David Lord (issue ed.), *Paying the Price: The Sierra Leone Peace Process, Accord: An International Review of Peace Initiatives* (September 2000), pp. 1-9.

⁹⁹ Third Report on the UN Mission in Sierra Leone, S/2000/186, March 7, 2000, pp. 3-4.

to rescue the UN personnel and calm the crisis ended in failure, the British launched a unilateral intervention.¹⁰⁰ The ostensible aim of the intervention was to evacuate British nationals as the RUF closed in on Freetown, but British forces remained in the capital and had the effect of deterring rebel attacks on the city. The British also assisted UNAMSIL in freeing the hostages and recapturing some important territories, and helped train and equip the Sierra Leonean army.¹⁰¹ For its part, UNAMSIL became increasingly assertive after the hostage situation was resolved. But even by the end of 2000, an unnamed senior Indian officer acknowledged that, “We’re at a kind of stalemate. No country is ready to lose its troops here. So we have to accept the fact there is no military solution – militarily we cannot beat the RUF”.¹⁰² Yet eventually, the RUF’s tactics of intimidation and destabilisation backfired: in Freetown, Sankoh’s home was attacked by angry citizens, and he was eventually captured and handed over to the authorities for trial.¹⁰³ In November 2000, a ceasefire agreement was announced.

Military Effectiveness

In the two periods of significant PMC involvement in Sierra Leone, PMCs had important but short-term effects. RUF leader Foday Sankoh noted after the signing of the 1996 Abijan Agreement that, had it not been for the EO intervention, he would have taken Freetown and won the war.¹⁰⁴ The impact of Executive Outcomes was considered to be so militarily significant that, in the 1996 Abijan Peace Accord, the RUF insisted that the peace settlement explicitly include a clause that all foreign PMCs should leave the country.

This may be one measure of EO’s effectiveness – or at least, of the perception of their effectiveness by those on the ground. However, neither EO nor Sandline were able to establish a peace that endured much beyond their withdrawals from Sierra Leone. Shearer notes that, in the major offensives in which EO personnel

¹⁰⁰ “Mission Leap”, *Africa Confidential*, Vol. 41, No. 11 (26 May 2000); “The Battle for Freetown”, *Africa Confidential*, Vol. 41, No. 10 (12 May 2000).

¹⁰¹ There followed a significant ‘mission creep,’ with the British increasingly involved with the military situation of the government; John Sweeney and Peter Beaumont, “Britain May Arm Civil War Fighters: Sierra Leone’s Plea for Bullets Risks Sucking Army Deeper into Conflict”, *The Guardian*, May 21, 2000. At <<http://www.guardianunlimited.co.uk/Archive/Article/0,4273,4020634,00.html>>. Accessed May 22, 2000.

¹⁰² N. Onishi, “Peacekeeper’s Exit Will Leave Vacuum in Sierra Leone”, *International Herald Tribune*, November 21, 2000, p. 4. Cited in Bullion, “India in Sierra Leone”, p.89.

¹⁰³ “Kabbah, the Survivor”, *Africa Confidential*, Vol. 41, No. 14 (7 July 2000).

¹⁰⁴ Shearer, *Private Armies*, p. 51.

played an active role, five were strategically significant, in terms of being short-term tactical successes that provided a 'strategic pause' that set back the RUF and bought time for the government.¹⁰⁵ Yet PMCs – even when working with multinational forces – could not comprehensively defeat the rebels. Moreover, Adebajo concludes that, in the case of Sandline, the company's role in the operation to restore Kabbah was negligible, arguing that, "as President Kabbah later noted, it was Nigerian troops and not Sandline that had restored constitutional rule in Freetown".¹⁰⁶

Conversely, much of the impact of the British forces, as opposed to PMCs, seems to have been psychological, rather than military, and a direct result of a willingness to stay over a longer period of time. As the International Crisis Groups concluded:

The Abuja I cease-fire agreement was largely the result of the British arrival: their training and reconstitution of the armed forces, crushing defeat of the West Side Boys in a rescue invasion in August 200 at Occra Hills, and 'over the horizon' strike force all had a significant psychological impact on the RUF. Through military convoys and deployments, fly-bys of RUF bases by Harrier jets and combat helicopters, and demonstrations of naval artillery power, the British waged an extraordinary campaign of intimidation.¹⁰⁷

The British benefited from two strategic advantages, unrelated to their intervention, that the PMCs lacked. First, Liberia's support for the RUF was curtailed by its own regime struggles.¹⁰⁸ Second, the RUF's disastrous campaign to destabilise Guinea significantly sapped its strength.¹⁰⁹ Still, Britain's intervention – even with fairly modest amounts of military equipment and personnel (peaking around 800) – eventually had a more significant effect on the strategic situation than previous applications of private, national, or international military force. A crucial element of its success was the fact that it dealt with more than just the immediate military problems, also tackling the long-term security problems that dog Sierra Leone. Thus, security sector reform (including military training), development aid, and technical assistance were all employed as part of a holistic strategy. The British resolve to remain involved in the country beyond the immediate intervention –

¹⁰⁵ Ibid: p. 49.

¹⁰⁶ Adebajo, "Sierra Leone: A Feast for the Sobels", p. 89.

¹⁰⁷ International Crisis Group, *Sierra Leone: Managing Uncertainty*, pp. 1-2.

¹⁰⁸ "Precarious Calm", *Africa Confidential*, Vol. 42, No. 13 (29 June 2001); "The Cost of Kabbah", *Africa Confidential*, Vol. 42, No. 5 (9 March 2001).

¹⁰⁹ International Crisis Group, *Sierra Leone: Managing Uncertainty*, p. 2.

as evidenced by the investment of development aid and a prolonged military presence – also bolstered morale in Sierra Leone and sent a signal to the RUF that they could not wait out the situation. Ultimately the intervention was ended in July 2002.

Throughout much of the conflict, the most significant troop contributor to the ECOMOG forces was Nigeria – to the point where other ECOWAS members questioned the country's motives.¹¹⁰ In terms of military effectiveness, the ECOMOG forces scored some strategic successes, including the February 1998 Nigerian (counter) attack on the AFRC junta that re-took Freetown and enabled President Kabbah's return to power in March. In this operation, the Nigerians used heavy weaponry to flush the junta out of the city, but did not capitalise on this success to deplete rebel capacity further – perhaps out of a desire to minimise casualties and avoid provoking the cornered RUF forces into perpetrating further crimes against the local population.¹¹¹ Most importantly, the ECOMOG presence in the country prevented the RUF from taking and permanently holding the capital.

Despite this success there were also serious problems, notably the fact that ECOMOG did not adequately protect Freetown from RUF attacks in 1999: "For ECOWAS, the Freetown attack [in January 1999] dented the prestige of its ECOMOG peacekeeping force by reviving criticisms of the effectiveness of the regional peacekeeping mechanism".¹¹² During these attacks, Adebajo reports, some Nigerian commanders were not in the country and some Nigerian officers abandoned their troops during the fighting.¹¹³ Also of relevance is that:

Prior to April 1999, ECOMOG operations had failed to dislodge the alliance fighters from the major urban centres in the Northern and resource-rich Eastern Province, where they still controlled and profited from the diamond mines.¹¹⁴

Eventually, the fact that ECOMOG peacekeepers were neither trained nor equipped for guerrilla warfare in the dense forests of Sierra Leone meant that they were unable to defeat the RUF (or the later AFRC/RUF alliance) in their chosen form of warfare. ECOMOG also suffered from operational and communications problems,

¹¹⁰ Adebajo, "Sierra Leone: A Feast for the Sobels", pp. 79-109.

¹¹¹ Ibid: p. 88.

¹¹² Rashid, "The Lomé Peace Negotiations", p. 1.

¹¹³ Adebajo, "Sierra Leone: A Feast for the Sobels", p. 96.

¹¹⁴ Rashid, "The Lomé Peace Negotiations", p. 2.

typified by the failure of both Anglophone and Francophone countries to provide bilingual officers.¹¹⁵ Most damningly, some of the national contingents failed to follow orders; for example, the Ghanaians withdrew forces from Lungi airport in 1999 during the rebel attack on the capital, and later refused to attempt to retake Waterloo. The Malians also withdrew from positions at Port Loko and hunkered down with the Ghanaians at Lungi in March 1999.¹¹⁶ Overall, the performance of the ECOMOG peacekeepers was decidedly patchy.

With the signing of the peace accord in July 1999, the United Nations Observer Mission (UNOMSIL) was transformed into a peacekeeping force (United Nations Mission in Sierra Leone, or UNAMSIL). UNAMSIL began to deploy at the end of 1999. In the meantime, fighting continued between the various armed groups in Sierra Leone, including the RUF, the AFRC, and the Civil Defence Forces (CDF), principally the *Kamajors*.

As with many UN missions, UNAMSIL's deployment was slow, and some military units were deployed without proper training and equipment.¹¹⁷ There were also problems between UNAMSIL's commander, the Indian general Vijay Jetley, and the Nigerian component of the force. These problems were in large part due to differing interpretations of the mandate, with Jetley taking a more robust approach after May 2000 (when UNAMSIL peacekeepers were taken hostage) than that favoured by other national contingents.¹¹⁸ Jetley's shift was in line with UN Secretary-General Kofi Annan's statement that "the mission initially was peacekeeping. In the changed circumstances the mission is peace enforcement".¹¹⁹ Nevertheless, Annan, along with West African governments, was also obliquely critical of Jetley.

The Balance Sheet

Providing military services in Sierra Leone was a lucrative business. Sandline had a \$10 million contract for its provision of weapons to Sierra Leone.¹²⁰ In the case of Executive Outcomes, the Sierra Leone government signed three separate con-

¹¹⁵ Adebajo, "Sierra Leone: A Feast for the Sobels", p. 91.

¹¹⁶ Ibid: pp. 91-2.

¹¹⁷ Fifth Report on the UN Mission in Sierra Leone, S/2000/751, July 31, 2000, p. 9.

¹¹⁸ Alan Bullion, "India in Sierra Leone: A Case of Muscular Peacekeeping?", *International Peacekeeping*, Vol. 8, No. 4 (Winter 2001), pp. 77-91.

¹¹⁹ V.K. Jetley, "Situation regarding the Hostages is Unchanged", *India Today Online*, June 13, 2000. Cited in Bullion, "India in Sierra Leone", p. 82.

¹²⁰ Francis, "Mercenary Intervention", p. 328.

tacts over a 22-month engagement, ultimately paying the company a total of \$35 million – an average of more than \$1.5 million per month – in cash.¹²¹ Furthermore, PMCs are uniquely capable of leveraging governments for payment, if necessary. In December 1995 (and at regular intervals afterward), there was a showdown between the Strasser government and Executive Outcomes over payment, after the government had fallen behind. EO made it clear that it would leave Sierra Leone if payments were not made – and each time the threat was made, partial payments were promptly delivered. Although the government still owed EO money at the time that it left Sierra Leone –\$19.5 million, according to some sources – this was to be repaid at \$600,000 a month between March 1997 and December 1999.¹²²

Cases elsewhere in Africa and Asia display similar potential for profit. In Angola, the MPLA government initially signed a one-year contract with EO in September 1993. The contract was worth \$40 million, of which \$20 million was for military supplies and the rest to the PMC. Additionally, as Howe has noted, “Some observers believe that Angola also granted some concessions to Branch [Energy] as additional payment for EO’s services”.¹²³ Later, Sandline was paid £22.5 million (\$36 million) by Papua New Guinea to instruct local forces in counter-insurgency techniques.¹²⁴

For their part, international extractive firms incur indirect economic benefits from the presence of PMCs, if the latter provide the stability necessary for extractive firms to continue their business. Moreover, there is sometimes a more direct relationship of economic benefits, such as when extractive firms in business networks with PMCs gain new or renewed concessions to extract resources. In Sierra Leone, for example, there has been an alleged correlation between the use of EO and the granting of mining and diamond concessions to extractive firms in the same business networks as the PMC, although a causal relationship has not been established. As Shearer concluded:

There is, however, little doubt that Branch Energy’s relationship with EO worked to its competitive advantage in securing the diamond concessions. Once EO had established itself as the government’s security provider, it became

¹²¹ Kofi Oteng Kufuor, “The OAU Convention for the Elimination of Mercenarism and Civil Conflicts”, in Musah and Fayemi (eds.), *Mercenaries: An African Security Dilemma*, p. 199.

¹²² Francis, “Mercenary Intervention in Sierra Leone”, p. 331.

¹²³ Howe, “Private Security Forces and African Stability”, p. 312, ff. 14.

¹²⁴ Ian Bruce, “Guns for Hiring and Firing”, *The Glasgow Herald*, February 19, 2002. At <http://www.theherald.co.uk/perspective/archive/19-2-19102-22-7-39.html>; Keith Suter, “Mercenaries, Mines and Mistakes”, *The World Today*, Vol. 53, No. 11 (November 1997), pp. 278-280.

unlikely that another mining company could compete or be able to guarantee comparable security for the diamond fields, which had been closed since the outbreak of the war. By the same token, Branch Energy was only willing to contemplate investing the \$8m necessary to begin the first stage of production once it was confident that its security needs would be met. For this it clearly relied on EO and its Lifeguard Security affiliate.¹²⁵

In 1998, when the Kabbah government was exiled from Sierra Leone by the RUF, a causal relationship between PMCs and mining concessions did exist. The exiled President was keen to employ Sandline International but was unable to pay for their services outright. Instead, Kabbah persuaded a renegade Thai banker, Rakesh Saxena, to provide the money in return for future mineral concessions once Kabbah's government was restored. Two Canadian diamond mining companies that had lost their concessions when the Kabbah government was overthrown also allegedly contributed and both companies were reportedly part of the EO-Branch Energy business network, although by then the names had changed and the ownership was even more opaque.¹²⁶

Unpacking the relative costs and benefits generated by these business networks is complicated by functional cooperation in the field. Throughout the Sierra Leone conflict, PMCs worked in combination with the other forces involved, including the SLA, ECOMOG troops, and, significantly, civil defence militias. These relationships are important for understanding the role of PMCs in relation to war-torn societies, their governments, and international peace operations.

At key junctures in the conflict, the Sierra Leone Army (SLA) proved unable to defeat the RUF forces. After initial successes in 1992 and '93 (soon undermined by the diversion into *sobel* activity), and despite several advantages – including a quadrupling in size (to 14,000 men by 1994), training from EO and the British, and assistance from Nigerian forces – the army's effectiveness was limited. Indeed, at times the SLA was actually a military liability, both as a source of coups and coup attempts and because some elements of the SLA were more interested in profit than victory. By 1995, the Sierra Leonean military budget was \$41 million, so the \$35 million paid to EO was hefty in comparison. Yet as Shawcross notes:

This was a lot for a bankrupt little country to pay. But it only represented one third of the cost of the government's war and, by comparison, the UN observ-

¹²⁵ Shearer, *Private Armies*, pp. 52-3.

¹²⁶ R. T. Naylor, "Gunsmoke and Mirrors: Financing the Illegal Trade", in Lora Lumpe (ed.), *Running Guns: The Global Black Market in Small Arms* (London: Zed Books, 2000), p. 162.

er force, which would only spend eight months in the country after the peace agreement was signed, was to cost \$47 million.¹²⁷

Weighed against the costs to the government of hiring PMCs, however, should be the costs (in terms of lost revenues) to the government of continuing the war. In 1995, when EO was contracted by the government, the economy was shattered and much of the country was a 'no-go' area.

The war's disruption of Sierra Leone's extensive diamond and titanium dioxide (rutile) deposits saw the gross national product decline by at least 10 percent in 1995, and inflation soar to 35 percent. Clandestine diamond and agricultural production cost the government about \$200 million: government domestic revenues were only \$60 million.¹²⁸

As Reno has noted, EO provided enough stability for foreign investors to be tempted into Sierra Leone. The additional revenue raised through these investments helped to lower its foreign debt by 20 percent in 1995 and 1996.¹²⁹

Arguably, the high cost of employing PMCs could potentially cripple an already-weak state's economy, and leave it too sapped to establish a distributive system necessary to sustain peace in a post-conflict society. In this regard, it is interesting that the International Monetary Fund (IMF) initially accepted the role of EO in Sierra Leone: payments to the company were included in the country's budget, most of which was provided by the IMF.¹³⁰ Later, however, the IMF "insisted in mid-1996 that the Sierra Leonean government cut its overall spending, which resulted in fewer payments to EO, to which it owed \$19.5 million".¹³¹ To ensure that the government complied, the IMF withheld \$200 million in foreign exchange funding. This led to a re-negotiation of the contract with EO and their early departure from the country.¹³²

Despite the expense of using private companies in conflict or peacekeeping environments, it has been suggested in some quarters that they are a bargain compared to the alternatives. For example, the initial budget for the deployment of 13,000 soldiers in the service of the UN Mission in Sierra Leone was estimated at

¹²⁷ Shawcross, *Deliver Us From Evil*, p. 179. No UN observer force was ever deployed as the RUF refused to allow it.

¹²⁸ Howe, "Private Security Forces", p. 313.

¹²⁹ Reno, "Privatizing War in Sierra Leone", p. 229.

¹³⁰ Shearer, *Private Armies*, p. 53.

¹³¹ Howe, "Private Security Forces", p. 321.

¹³² Zack-Williams, "Sierra Leone", p. 152.

\$476 million.¹³³ The British Government Green Paper on PMCs noted that UNAMSIL costs approximately \$600 million per year, and suggested that, “it is at least possible that if the tasks of UNAMSIL were put out to tender, private companies would be able to do the job more cheaply and more effectively”.¹³⁴ That said, however, in cases where PMCs are considered due to a general unwillingness of others to intervene, the issue of who pays can be a deal-breaker. For example, when in 1994 the UN Security Council considered employing PMCs to return Hutus to Rwanda from Zaire, the issues surrounding cost and payment were prohibitive.

Another aspect of this issue should be highlighted. In the case of Sierra Leone, the Nigerian regime of President Abacha and his military elite profited from the conflict. As noted by Adebajo, “By restoring democracy to Sierra Leone, Abacha and his generals could continue to divert millions of dollars from government coffers to private bank accounts while billing them as ECOMOG expenses”.¹³⁵ The Nigerian National Petroleum Corporation (NNPC) also purchased Sierra Leone’s oil refinery; and later there were allegations involving Nigerian officers in UNAMSIL having links to the Sierra Leone and Liberian diamond trades.¹³⁶ The ECOMOG operation is reported to have cost the country of Nigeria – as opposed to the Nigerian elite – one million dollars per day.¹³⁷ Adebajo concludes, however, that the Nigerian involvement was ultimately about their strategic interests as well as profit.¹³⁸

Finally, it should be noted that there are a number of British firms with significant economic interests in Sierra Leone.¹³⁹ However, as in the case of Nigeria, the costs of involvement for the British government and people far exceeded any economic revenue earned by private British companies from interests in Sierra Leone. Overall, the international community has, over the course of the conflict,

¹³³ Adebajo, “Sierra Leone: A Feast for the Sobels”, p. 100.

¹³⁴ *Private Military Companies: Options for Regulation*, Return to an Address of the Honourable the House of Commons dated 12th February 2002, HC 577 (London: The Stationary Office, 2002), p. 19.

¹³⁵ Adebajo, “Sierra Leone: A Feast for the Sobels”, p. 92.

¹³⁶ Chris McGreal and Ewan MacAskill, “Britain Builds Up Sierra Leone Force”, *The Guardian*, October 11, 2000. The allegations were alleged to have been made by Major-General Jetley, but he subsequently denied this. Concerns remain that he was being pressured by the Nigerians and the UN to retract.

¹³⁷ Rashid, “The Lomé Peace Negotiations”, p. 1.

¹³⁸ Adebajo, “Sierra Leone: A Feast for the Sobels”, p. 93.

¹³⁹ *Ibid*: p. 93.

invested significant ‘blood and treasure’ in Sierra Leone. However, their willingness to do the same in conflicts in the future is questionable.

The Lessons of Sierra Leone

Sierra Leone, like many African states in crisis, showed a high degree of criminalization and informalisation but the distinct element here was the way in which well organised PMCs and their corporate partners took advantage of the situation and played significant roles in both the war and the moves towards peace. Additionally, PMCs played a role in the further informalisation of the state that was not helpful. According to Aning:

The combination of corporate mercenary activities in Sierra Leone and the successful, but incomplete, restructuring of the political space for the reinstated Kabbah government, have worsened the recurrence of widespread poverty, social fragmentation and the criss-crossing refugee movement in Sierra Leone. As mercenaries come and go, the destructive forces of a violent culture unleashed in the countries where they operate, do not simply disappear with them. In many cases their presence actually proliferates and worsens the underlying causes of instability, affecting communities with rising levels of violence.¹⁴⁰

This argument, essentially one about ‘structural violence’, is echoed by Lock, who adds a note of caution in considering the effects of PMCs on conflicts:

In purely military terms, large parts of sub-Saharan Africa develop into a vacuum where the infusion of a small, well organised (*sic*) external force can tip the balance in on-going confrontations. However, in many cases, state structures have collapsed to such an extent, that a military victory is likely to have little impact on levels of societal violence, social fragmentation and criminalisation of the economy.¹⁴¹

Some in the local community saw benefits from the use of PMCs in Sierra Leone; for example, those living in resource-rich areas benefited from EO clearing out rebel groups and providing a higher standard of local security. Indeed, after Kabbah’s election in 1996, when there was talk of EO being pulled out, there was consternation among the local merchants and businessmen that had flourished under their

¹⁴⁰ Aning, “Africa’s Security”.

¹⁴¹ Lock, “Military Downsizing”, p. 9.

protection. In these areas, EO's presence was welcomed by the local community.¹⁴² However, as Harding makes clear:

The trouble was that they only went where the pay-off was high....If you did not live in one of Sierra Leone's mineral-rich enclaves, and yet you were beset by rebels and soldiers, EO was not disposed to help you: that was the case in Bo, where the Army, or the rebels, or both, had made their point at election time.¹⁴³

Because PMCs can do very little to solve the root problems that underlie the conflict, they may in fact worsen the situation. As Shearer makes clear, "threatened governments are most interested in tackling the immediate crisis, rather than establishing the framework for a lasting settlement".¹⁴⁴ Thus PMCs are employed as a temporary solution to problems that have much deeper and more challenging roots, and which therefore remain unresolved at a fundamental level even if events at the surface-level seem settled.

The primary benefit of PMCs therefore seems to be that they can provide a beleaguered government with a 'strategic pause', which can be vital for a government on the edge of collapse. For the international community, it may provide time in which to organise an international or state-based military response to the crisis. But the medium to long-term effects of PMC operation is to undermine the re-constitution of state effectiveness, primarily through the violence unleashed by reversion to the military option combined with the decreased perception of the government as the provider of security. In this, PMCs, alongside vigilantes and rebels, are part of a larger dynamic of state recession.

¹⁴² Francis, "Mercenary Intervention in Sierra Leone", p. 327.

¹⁴³ Harding, "The Mercenary Business", p. 93.

¹⁴⁴ Shearer, *Private Armies*, p. 73.

3 Regulatory Options

Given the projected growth in the international trade in private security – annual global revenues are expected to increase by seven percent annually, reaching \$ 200 billion by 2010 – this is a market that cannot be ignored.¹⁴⁵ However, the existing literature on PMCs is characterised by fundamental disputes over definitional issues, and the legitimacy of PMC activity.

The options considered for dealing with PMCs range from outright bans (as for mercenaries) to allowing the market to dictate their conduct and future growth. Much of the debate has focused on the ground between these two extremes, involving various forms of licensing, transparency, and monitoring. All the same, efforts to devise regulatory frameworks and determine the likely effects of regulation remain inchoate. Brauer suggests that this is because 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*”.¹⁴⁶ The development of regulatory frameworks to deal with the PMC issue is also complicated by a number of substantive and logistical problems:

- The field is anecdote-rich and hard-data poor.
- PMCs seem to work through opaque business practices and questionable methods of payment. Some PMCs are elements of wider multinational conglomerates. As such, they can be sheltered from view or transformed into something else – all adding to the problems of regulation.
- Many PMCs are transnational, enabling them to avoid national regulations. For example, although *Sandline* operates from London, it is actually registered in the Bahamas.¹⁴⁷

¹⁴⁵ Alex Vines, “Mercenaries and the Privatisation of Security in Africa in the 1990s”, p. 47.

¹⁴⁶ Brauer, “An Economic Perspective”, p. 135.

¹⁴⁷ Møller, “Private Military Companies”, p. 4.

- Unlike extractive companies, PMCs have no plant or infrastructure to tie them to a particular place; they have great flexibility and can move at will. There have also been several examples of new PMCs being formed from the ashes of defunct ones.¹⁴⁸
- The market operates in a decentralised manner with multiple actors (state and nonstate, including small groups of individuals). This decentralisation, and the concomitant high degree of differentiation, complicates efforts to establish common regulations.
- Many firms can perform a range of functions, making it difficult to classify whether it is a PMC or a PSC.
- The ideology of the market, which has been so influential since the end of the Cold War, militates against a heavy regulatory approach.
- There is a problem of political will. Until recently, the level of political will has not been high; indeed, it should not be forgotten that several powerful states use these ‘proxy companies’ as elements of their foreign policies, nor that other states want PMCs to exist in case they themselves need them. Generally, the regulation that has taken place has been in response to recognised (and often embarrassing) problems. In this respect, it will be interesting to see whether there are breakthroughs in regulation in the wake of the Iraqi prisoner abuse scandal.

These substantive and logistical realities suggest that there will not be one form of regulation that is sufficient to cover the range of private military actors and activities. The following sections examine in more detail both current and proposed regulation efforts. It concludes that, for regulation to succeed, it must be tiered (featuring national, regional, and international levels) and multi-layered (including general and specific licensing).

‘Self-Regulation’

Much discussion on the legitimacy and utility of PMCs dwells on the fact that they are unregulated, unaccountable (even to shareholders), often dismissive of human rights, unreliable, expensive, and lacking transparency in their contractual arrangements. As the debate about the legitimacy of PMCs and likely forms of

¹⁴⁸ “Guns for Hire Again”, *Africa Confidential*, November 23, 2001.

regulation gathers steam, some PMCs have attempted to rebut these allegations – and to head off tight regulation by emphasising the discipline imposed by the competitive market and the companies themselves.

Prominent PMCs, such as Sandline, argue that they are not *unregulated* but *self-regulated*. They claim that their reputation is crucial for attracting business and must be guarded; and that working for objectionable clients or using questionable or abusive methods is therefore self-defeating. According to Tim Spicer of Sandline, “We do not run a mercenary outfit. We provide regulated, professional military assistance to established governments.... We have standards to maintain and we do not want 1960s-style freebooters or psychopaths. This is not a game for bandits”.¹⁴⁹ Similarly, EO’s claim that it only worked for reputable governments is at least partly backed up by Howe’s research, which reveals that EO turned down a Sudanese government offer to protect oil companies in the country.¹⁵⁰

The corporate reputations of PMCs can be damaged in a number of ways. An important element of reputation is reliability. Firms that abandon jobs when the risk gets too high – as was the case with the Ghurkha Security Guards in Sierra Leone – will find their reputation suffering and contracts diminishing. As Christopher Spearin has pointed out:

Whereas a state may lose international reputation if it withdraws because of casualties, the state and its armed forces have the capacity to withstand criticism in the context of state-to-state relations. PSCs, however, are subject to market forces and cannot rely on similar institutional strengths.¹⁵¹

Simply put, PMCs know that failure in the field may cost them their business. This ensures that most PMCs see their contracts to completion. But where reputation is concerned, reliability is not enough: PMCs must also be effective. For example, in Sierra Leone, ECOMOG forces experienced problems with the U.S. PMC Pacific Architects and Engineers (PA&E).¹⁵² The firm was contracted to provide ECOMOG with helicopter support and servicing of equipment. However, Adebajo found that the firm was “criticized by ECOMOG officers for provid-

¹⁴⁹ Cited in Ian Bruce, “Guns for Hiring and Firing”, *The Glasgow Herald*, February 19, 2002. At <http://www.theherald.co.uk/perspective/archive/19-2-19102-22-7-39.html>.

¹⁵⁰ Howe, “Private Security Forces”, p. 330. It has also been claimed that EO turned down a contract to assist the beleaguered President Mobutu of Zaire because he was not considered a reputable figure, though this has not been substantiated.

¹⁵¹ Spearin, “Private Security Companies and Humanitarian”, p. 28.

¹⁵² PAE has a long-standing relationship with the Pentagon, having assisted U.S. forces during the Vietnam War. Today it employs both ex-U.S. military personnel and former Soviet-bloc pilots. Shearer, *Private Armies*, pp. 36-7.

ing bad service *and for refusing to release helicopters during times of crisis*".¹⁵³ This behaviour deters a government or international organisation from using PMCs, even in support roles. Similarly, the prominent U.S. PMC, MPRI, allegedly bungled a contract from the Pentagon to help support the 'war on drugs' in Colombia; among the basic errors allegedly made by the company were to put inexperienced, non-Spanish speaking operatives in the field. This led the Colombian military to be critical of MPRI and, subsequently, the Pentagon chose not to renew the Colombia contract.¹⁵⁴

Reputational concerns also underlie PMCs' claims that the protection of the human rights, besides being a normative good, is in the self-interest of the company and its corporate affiliates. Isenberg writes:

Today's corporate mercenary groups could be less likely to be guilty of such abuses. Many of them are associated with numerous nonmilitary corporate firms who fear bad publicity that would result if a mercenary subsidiary carried out a massacre or other egregious human rights abuse. Thus, a corporate association might well be a restraining influence in regard to the battlefield conduct of such groups.¹⁵⁵

Isenberg's argument seems buttressed by events in Sierra Leone: after the bad publicity that greeted initial reports of EO activities, the firm went out of its way to demonstrate respect for human rights and good corporate citizenship by assisting in the rehabilitation of child soldiers. Demonstrating this learning curve, Nic Van Den Bergh of EO declared, "The fastest thing that would get us out of business is human-rights violations".¹⁵⁶

Moreover, the Sierra Leonean case provides ample evidence that the PMCs there behaved no worse and often much better than other militarised parties to the conflict. The RUF had a well-earned gruesome reputation, as did the SLA. The civil defence forces and Nigerian ECOMOG troops were also tainted by vicious retaliatory actions, such as the operation known as 'Death Before Dishonour' against RUF suspects and sympathisers.¹⁵⁷

¹⁵³ Adebajo, "Sierra Leone: A Feast for the Sobels", p. 95. Emphasis added.

¹⁵⁴ Sean Creehan, "Soldiers of Fortune 500: International Mercenaries", *Harvard International Review* (January 2002).

¹⁵⁵ Isenberg, "Soldiers of Fortune Ltd", p. 3.

¹⁵⁶ Spearin, "Private Security Companies and Humanitarians", p. 30.

¹⁵⁷ This operation was revealed to the world by photojournalist Sorious Samura in the documentary *Cry Freetown*, which was shown on CNN in 2000.

However, the evidence is not wholly in favour of PMCs, nor is PMC misconduct limited to recent events in Iraq. For example, employees of DynCorp, a U.S. private military company, were alleged to be connected to a sex trafficking ring in Bosnia while serving as members of the International Police Task Force (IPTF).¹⁵⁸ Yet these revelations did not destroy the company's business: in 2003, DynCorp was acquired by Computer Sciences Corporation, a Fortune 500 company, and today is active in Iraq and Colombia, among other places.

Another issue that cuts both ways is profit-taking. As noted above, key issues for PMCs' reputations are commitment and capability. To PMCs, however, the commitment is to making a profit, not to the cause: PMCs only stay in theatre as long as they are getting paid.¹⁵⁹ Accordingly, there may be tensions between a PMC client's security objectives and a firm's desire to maximise profit.¹⁶⁰

PM[C]s have incentives not only to prolong their contracts but also to avoid taking undue risks that might endanger their own corporate assets. The result may be a protracted conflict that perhaps could have been avoided if the client had built up its own military forces or more closely monitored its private agent.¹⁶¹

PMCs and their supporters argue that a company that intentionally prolongs a conflict for financial gain would actually damage its long-term interests, as future contracts would be lost. The same argument applies to the prospect of opportunistic PMCs working for both sides of a conflict simultaneously – the loss of credibility would hurt the PMC's ability to garner future contracts. However, these claims of PMCs have been met with a degree of cynicism:

Some PMF executives contend that their firms work just for states, and more specifically, only for those with reputable governments. They argue that PMFs will not do business with unsavory customers because it could harm their ability to obtain future contracts. Both the structure of the market and the record so far, however, argue against this. Much the way that PMFs may decide to break contracts for their own interests, under certain conditions high, single-shot payoffs might prove too great a temptation in client choice. In the cur-

¹⁵⁸ "American firm in Bosnia sex trade row poised to win MoD contract", Jamie Wilson and Kevin Maguire

Friday November 29, 2002, [The Guardian](#). Accessed 25 May 2005.

¹⁵⁹ O'Brien, "Military-Advisory Groups", p. 101.

¹⁶⁰ Singer, "Corporate Warriors", p. 203.

¹⁶¹ *Ibid*: p. 205.

rent unregulated market, the firms decide for whom they work. Thus far, they have contracted with all types of clients, the only limitation being the affordability of their services.¹⁶²

In fact, there is some evidence of a political economy of private security for challenger groups. Many of the initial RUF insurgents were Liberians (and therefore could be defined as mercenaries). Also, by 1996 there was evidence of RUF attempts to hire more mercenaries, indicating that there is a latent demand for security from private sources on behalf of challenger groups – who could be prepared to pay more than states would. According to Shearer, the number of mercenaries who fought for the RUF was “in the hundreds” and included men from Ukraine (giving technical assistance), Italy, and other African states.¹⁶³ Currently the vast majority of private security actors shun this potential market. Indeed, as in this case, it tends to be individual mercenaries who become involved in supplying services to groups of dubious legitimacy. However, this will not always be the case, for as the market reaches saturation, even these contracts will appear attractive to a ‘hungry’ PMC. Also, the fact that some PMCs are refusing to service this sector of the market means that it presents opportunities to less scrupulous companies.

In the absence of industry-wide regulation, some companies are turning to existing codes of conduct to buttress their own self-regulation. For example, the British PMC, DSL, claims to adhere to the Red Cross / NGO Codes of Conduct.¹⁶⁴ It is arguably more valuable for a company to adhere to an existing code of conduct than to create its own because, in accepting an existing code of conduct, the company accepts commonly agreed norms of behaviour, and heads off the proliferation of self-regulating codes of conduct that are potentially incompatible.¹⁶⁵ However, the fundamental flaw in PMCs’ argument for self-regulation is that, in a market economy, self-regulation is inherently constrained by self-interest. For example, in an attempt to create legitimacy through some form of transparency, Sandline details on its website the standards that guide its choice of contracts.¹⁶⁶ Yet in 1999 – counter to previous claims that it only works for ‘legitimate’ gov-

¹⁶² Ibid: p. 213.

¹⁶³ Shearer, “Private Military Force and Challenges for the Future”, p. 87.

¹⁶⁴ Spearin, “Private Security Companies and Humanitarians”, p. 30.

¹⁶⁵ *Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses*, A report of the Fafo Institute for Applied Social Science Programme for International Cooperation and Conflict Resolution and the International Peace Academy project on “Economic Agendas in Civil Wars”, April 19, 2001, p. 11.

¹⁶⁶ See <http://www.sandline.com/company/index.html>.

ernments – Sandline added a new category of acceptable client: “genuine, internationally recognised and supported liberation movements”.¹⁶⁷ This subjective threshold may bring the company new work, but it undermines claims to self-imposed limits on behaviour. In particular, self-regulation fails to tackle one of the key objectives of regulation from the perspective of the state: avoiding situations where PMCs damage national interests.¹⁶⁸

Dilemmas of International and Regional Regulation

The attempts of PMCs to head off external regulation by emphasising their own self-regulation have not convinced most observers. The notoriety of some of the activities of PMCs has increased international attention to the issue; nongovernmental organisations (NGOs) have been particularly instrumental in highlighting the concerns surrounding PMCs. However, current regulatory frameworks have done little to address private military activities, outside of the narrow context of mercenarism (see the table *Existing Regulations at a Glance* in the Appendix).

As the majority of current international and regional regulations concerning private military action are solely concerned with outlawing mercenary activities, it is important to understand what constitutes mercenarism before thinking about regulating PMCs. The clearest definition of what constitutes a mercenary is found in Article 47 of the 1977 Additional Protocol I of the Geneva Conventions. Under this definition, an individual has to meet *all* of the following criteria to be considered a mercenary:

- Is specifically recruited locally or abroad in order to fight in an armed conflict;
- Does, in fact, take direct part in the hostilities;
- Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
- Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

¹⁶⁷ Shearer, “Private Military Force and Challenges for the Future”, p. 82.

¹⁶⁸ *Private Military Companies: Options for Regulation*, p. 26.

- Is not a member of the armed forces of a party to the conflict; and
- Has not been sent by a state that is not a party to the conflict on official duty as a member of the armed forces.¹⁶⁹

This detailed list of conditions has led many to conclude that it is almost impossible to classify employees of PMCs or PSCs as mercenaries. David Shearer notes that, “As long as these companies and their clients word contracts in a manner that excludes them from the cumulative effects of Article 47, they will fall outside its purview”.¹⁷⁰ Indeed, the noted international legal scholar Geoffrey Best has been cited as saying: “Any mercenary that cannot exclude himself from this definition deserves to be shot - and his lawyer with him”.¹⁷¹

Indeed, some PMCs have used the definition of mercenarism – which focuses on activities that undermine or overthrow the constitutional order – in their own defence. PMCs in the public eye have consistently stated that they only work for legitimate (constitutional) governments. In this way, they argue, they are a force that can be used *against* mercenaries.

Nevertheless, the attempt by PMCs and their supporters to draw distinctions between their activities and mercenarism is not accepted by all. Enrique Bernales Ballesteros, the Special Rapporteur of the UN Commission on Human Rights, has said that “to suggest that some mercenary activities are illegal and some legal is to make a dangerous distinction which could affect international relations of peace and respect between states”.¹⁷² UN Secretary-General Kofi Annan expressed a similar sentiment in 1997 in the context of Sierra Leone, arguing that there is no “distinction between respectable mercenaries and non-respectable mercenaries”.¹⁷³

This lack of consensus over the legality and acceptability of private military companies complicates efforts to regulate them. Counter to the absolutist position of Ballesteros and Annan, there appears to be opposition among some UN member states, particularly within the General Assembly, to banning PMCs. This suggests that some states would prefer regulatory measures short of outright prohibition, particularly if those measures are presented as necessary to prevent PMCs

¹⁶⁹ Article 47 of the 1977 Additional Protocol I of the Geneva Conventions. Cited in Shearer, *Private Armies*, p. 17.

¹⁷⁰ Shearer, *Private Armies*, pp. 18-19.

¹⁷¹ Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (London: Weidenfeld and Nicholson, 1980), p. 328. Cited in Shearer, “Private Military Force and Challenges for the Future”, p. 89.

¹⁷² Talif Deen, *Jane's Defence Weekly*, November 13, 1996. Cited in Arnold, *Mercenaries*, p. 166.

¹⁷³ David Shearer, “Outsourcing War”, *Foreign Policy*, (Fall 1998), p. 68.

from being outlawed. Thus, the UN is currently stymied on the regulation issue: its official stance of condemning mercenary activity is actually pre-empting the establishment of a UN regulatory regime.

The regional regulations outlined in the appendix also have problems. As Aning has noted:

Implementation of the constitutive principles and norms under the OAU Convention against Mercenaries will be difficult, if not impossible. This is because its drafters, unable to use the rich history of the continent's experiences with the incidences of mercenary activity in Angola, Benin, Congo and Guinea, only conceive mercenary activity as enduring due to its use of illegitimate actors.¹⁷⁴

This central idea of the OAU Convention is out of step with the increasing legitimacy and credibility of private military companies. Moreover, given that many of the 'successful' uses of PMCs have been to support beleaguered African governments, there is unlikely to be much support for banning – or even heavily regulating – such PMCs. Indeed, where there have been calls to ban PMCs, it has been from those whose designs have been thwarted by them, such as former Liberian president Charles Taylor. However, there is also some resistance to granting PMCs the legitimacy that a regulatory regime implies.¹⁷⁵

In an encouraging sign, meetings of experts have been held under the auspices of the UN Commission on Human Rights to analyse the evolution of mercenaries, and consider the status of private security firms that participate in military activity. Unfortunately, little substantive progress has been made, with the principal conclusion of the gathering being that further meetings on the subjects were needed.¹⁷⁶

Another important – although for the purposes of this paper, tangential – aspect of the private military/mercenary issue concerns the fact that the Geneva Convention excludes only those who fight for 'personal gain' rather than religious or other motives. Indeed, the idea of personal gain is central to the definition of mercenary. Attempts are being made to get around this issue by suggesting that, for example, Islamic militants fight as much for money as for religion. As the British Government's Green Paper noted, more than half the Taliban forces were from

¹⁷⁴ Aning, "Africa's Security".

¹⁷⁵ Sean Creehan, "Soldiers of Fortune 500: International Mercenaries", *Harvard International Review* (January 2002).

¹⁷⁶ Fifty-sixth General Assembly, A/SCH/3600, Third Committee, October 31, 2001, 26th meeting. Discussion of document A/56/224 summarising the activities of the Special Rapporteur.

outside Afghanistan and, “although most would probably describe themselves as volunteers rather than mercenaries it is likely that financial rewards are an important part of the picture”.¹⁷⁷ However, a more satisfactory consideration of this issue – based on fact rather than conjecture – is desirable.

Assuming that the UN regulatory stalemate is eventually broken, what should international regulation look?

Isenberg has argued for a transparency mechanism comparable to the UN Register of Conventional Arms, with both importers (i.e. states and firms that employ PMCs) and the PMCs themselves filing annual reports.¹⁷⁸ Given the well-publicised failings of the UN Register, this is not an inspiring approach.¹⁷⁹ Furthermore, it would only allow the international community to mull over past actions rather than take a preventive approach.

One flexible option is to devise a mechanism for registering – ideally within the UN system – the private military or security groups that operate across state borders. Once a registry and licensing system is established, transparency requirements (in both contract arrangements and activities) could be imposed. Transparency should be mandatory for all registered/licensed PMCs regardless of whether their clients are governments or nonstate groups, such as mining companies, NGOs, or armed liberation movements.

Some have also advocated international efforts to revise the 1989 Convention against the Recruitment, Use, Financing and Training of Mercenaries. Specifically, the Convention should be revised to define and regulate activities rather than actors, thus sidestepping most of the difficulties with nomenclature.¹⁸⁰

An alternative approach is to regulate the demand side. For example, Møller has suggested that a “positive list” of acceptable customers for PMCs be established. The list could be maintained by an existing international body, and created and amended using public sources and with NGO involvement.¹⁸¹ Møller also calls for ‘world opinion’ – as shaped by media and NGOs – to monitor and report on the behaviour of PMCs.¹⁸² However, Møller’s option carries the risk of funnelling business to less scrupulous PMCs, who might see a country being taken off the “positive list” as an invitation to offer their services.

¹⁷⁷ See for example: *Private Military Companies: Options for Regulation*, p. 10.

¹⁷⁸ Isenberg, “Soldiers of Fortune Ltd.”, p. 18.

¹⁷⁹ Joanna Spear, “Lessons Learned in Managing Conventional Weapons”, in *Managing Global Issues: Lessons Learned*, edited by Chantal de Jonge Oudraat and P. J. Simmons. Carnegie Endowment for International Peace, 2001. pp. 564-609.

¹⁸⁰ Kevin O’Brien, “Leash the Dogs of War”, *Financial Times*, February 19, 2002.

¹⁸¹ Møller, “Private Military Companies”, p. 10.

In the end, progress on this issue may come from an unexpected direction. Within the UN, a vigorous debate over the future of peacekeeping is ongoing. Some have advocated the funding and formation of a UN Rapid Reaction Force; the potential use of PMCs to undertake some peacekeeping missions has also been floated. The Rapid Reaction Force idea is running into opposition on the basis of cost. Thus, it may be the shortcomings of the UN system – specifically the inability to fund and field forces – that finally provide PMCs with the legitimacy that some of them crave.

National Regulation

The consequence of the regulatory stalemates at the international and regional levels is that much of the current debate over regulation is taking place either at the national level or amongst the PMCs themselves, as they seek to legitimise themselves as international actors.

A number of states have instituted national legislation to regulate the activities of PMCs. Where PMCs are specifically considered, the tendency has been to permit them to operate under license; this is the case in the United States. South Africa – which enacted legislation concerning PMCs in 1998, in the wake of Executive Outcomes' activities elsewhere in Africa – also has a licensing regime.¹⁸³ The general lack of outright bans indicates that states recognise both PMCs' potential utility – either in support of their own armed forces or as proxies to implement unpopular policy ends – and potential profits (and thereby tax revenues).

In the absence of formal regulation, Patrick Cullen suggests that home states have other tools that enable them to hold PMCs accountable. Specifically, he documents the myriad networks that exist between PMCs and the military and intelligence services of their home states, and argues that these informal networks

¹⁸² Ibid: p. 11.

¹⁸³ There has also been pressure for the legislative exclusion of non-South African private security firms from the country. This may be motivated by concerns to keep profits in the country and also a means to empower black entrepreneurs in a market where there is a heavy foreign presence. As William Reno makes clear, the role of South African security firms in other parts of Africa can be seen as a form of economic pre-emption – an attempt to capture the market before extra-African firms seek to take the territory. See Henri E. Cauvin, "South Africa May Ban Foreign Security Services", *New York Times*, October 9, 2001. At <http://www.nytimes.com/2001/10/9/business/worldbusiness/09SECU.html>, accessed October 10, 2001, and Reno, "Privatizing War".

may effectively constrain the activities of PMCs more than formal, legal methods of accountability.¹⁸⁴ The importance of these networks is evidenced by the fact that PMCs have been known to use, or imply the existence of, such relationships in order to gain an edge with clients. For example, Sandline has on occasion suggested that it acts with the tacit support of the British government – an assertion that *Africa Confidential* has given credence to by reporting that the previous (Conservative) government had relationships with both EO and Sandline before either became involved in Sierra Leone.¹⁸⁵

Theoretically a PMC is legally accountable to the client state that hires it. Often this is the ‘host’ state, separate from the ‘home’ state where the PMC is based; other times, as in the case of private military companies used by the U.S. government, the home and host states are the same. The ability of the client state to monitor a PMC will obviously vary depending on the strength of the state and the tasks that the PMC is hired to perform. As Cullen has noted:

...[the] formal/legal mode of host state accountability, may at times find itself reduced to a mere technicality, given the nature of the relationship between a host state and the PMC it hires. Legal and technical accountability are not the same as practical oversight, and the fact that a PMC is able to transport men and material across national boundaries without passport or customs controls, is a severe curtailment of a state’s ability to effectively monitor the PMC it hires. Moreover, a weak state that hires a PMC, while technically accountable for its actions, may not be in a powerful enough bargaining position to enforce this accountability in the form of punitive sanctions against the PMC.¹⁸⁶

Essentially, a weak and desperate regime that hires a PMC to engage in combat is less likely to be concerned about the legality of a PMC’s actions than about its own (regime) survival. Furthermore, the recent scandals over the human rights abuses committed by staff of PMCs (and aid agencies) in Iraq, Sierra Leone, and Bosnia indicate that even superpowers like the United States may be unable to adequately monitor the activities of PMCs engaged in non-combat duties during complex emergencies.

Relying upon the combination of home state and the host state regulation to ensure PMC accountability also does not adequately account for a worrying trend

¹⁸⁴ Cullen, “Keeping the New Dogs”.

¹⁸⁵ That said, the furore created by Sandline’s involvement in Sierra Leone and its contract with Papua New Guinea casts doubt on the strength of Sandline’s relationship with the current British government. “Private Armies, Public Relations”, *Africa Confidential*, Vol. 40, No. 11 (28 May 1999).

¹⁸⁶ Cullen, “Keeping the New Dogs”.

that is developing in Africa: the joint ownership of PMCs between government ministers in weak states and private firms.¹⁸⁷ For example, TeleServices has many prominent Angolan government officials amongst its shareholders.¹⁸⁸ The discipline of the market (discussed above) cannot compensate for this.

Like the U.S. and South African governments, the British government has also dealt specifically with private military companies, in reaction to the scandal that erupted out of Sandline's contract to supply Bulgarian weapons to the exiled Kabbah government, in contravention to UN sanctions against Sierra Leone. At the heart of the scandal were questions about the involvement of the British High Commissioner in Sierra Leone, Peter Penfold – and by implication, the Foreign and Commonwealth Office (FCO) and the Blair government – in the arms deal.¹⁸⁹ The government's promise of a White Paper on the issue of regulating PMCs was actually welcomed by Sandline, whose director, Tim Spicer, saw it as necessary to restore faith in the industry.¹⁹⁰

The first document to emerge from the process was a Green Paper, issued in February 2002. Whereas a White Paper is a statement of legislative intent, a Green Paper is akin to a consultation document. Released more than a year late, the Green Paper reflected “a change in government tone and an awareness of the increasing presence of private military providers on the world stage”.¹⁹¹

The Green Paper covers many of the issues prevalent in the academic and policy literature on these issues, including definitional questions, potential problems with PMCs, and the scope for government action. It makes the case for regulation, but, having done so, is deliberately neutral on the form of that regulation, merely laying out a number of options. Interestingly, the Green Paper uses the language of business and the market. This suggests an implicit acceptance of the case for PMCs as legitimate actors in a sector of the international market.

The delay in the Green Paper's release – due to internal disputes over its content – and the tenor of the subsequent public debate indicate the strong feelings that PMCs provoke. The appearance of the Green Paper was met with a flurry of media attention and a fairly polarised (and not necessarily well informed) debate.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ For Penfold's account of the “arms to Africa” affair see, Transcript of BBC Newsnight, “A hero's Return to Sierra Leone”, broadcast February 8, 2002. At http://news.bbc.co.uk/1/hi/english/events/newsnight/newsid_1816000/1816794.stm. Accessed February 12, 2002.

¹⁹⁰ “Green Paper on Mercenaries and Private Military Companies Released”, *Reuters*, February 12, 2002.

¹⁹¹ Hasham, “Regulating Private Military Companies”.

On the one hand, Secretary of State for the Foreign and Commonwealth Office Jack Straw was lambasted for endorsing mercenaries.¹⁹² On the other, advocates of a role for PMCs responded warmly to the Paper and some of the regulatory options it contains.¹⁹³ One commentator, Kevin Myers, even felt obliged to remind Britain that the Ghurkhas (Nepalese units of the British army) are technically mercenaries, as were the many Irish who served in the British armed forces during the two world wars.¹⁹⁴

It is suggested that some members of the British government favour a system of general licensing, which will cover a company for the range of its activities. However, given the fact that some PMCs are known to move between licit and illicit activities, it is questionable whether general licensing alone will be sufficient. Others advocate copying the two-tier approach of the 1998 Regulation of Foreign Military Assistance Act in South Africa. This Act requires a general license for the company and specific licenses for individual operations. This mix of general and specific licenses seems to be the most effective way of ensuring the monitoring and accountability of PMCs.

Predictably, perhaps, Tim Spicer has argued against a national regulatory approach, stating: "Creating a register of accepted companies is fine. But if you then have to vet every project, the ensuing bureaucracy, with summer holidays or Christmas, undermanning, whatever, could cause delays, during which refugees could die or the war could be lost".¹⁹⁵ He fails to mention the threat that another PMC will get the job while he waits for a specific license, but this is no doubt a prevalent consideration as well. Spicer's objections are undermined by the fact that the two-tiered system is already employed in the United States, and does not seem to particularly affect the ability of 'proxy companies' to get contracts. Indeed, Spicer's objection to specific licensing may be more than anything else a concern that Sandline's connection to the government was not sufficiently close for it to be a 'proxy company' that only takes on business on the behest of, and acceptable, to the national authority.

¹⁹² Editorial, "It Is Foolish to Rely on Mercenaries for Security", *The Independent*, February 14, 2002.

¹⁹³ David Isenberg, "Regulated Private Military Firms Have a Role", *Defense News*, March 11-17, 2002, p. 13.

¹⁹⁴ Kevin Myers, "Mercenaries Are Much Misunderstood Men", *The Daily Telegraph*, February 17, 2002. At <http://www.opinion.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2002/02/17/do1708.xml>. Accessed February 17, 2002. Despite officially being part of the British armed forces, the Ghurkhas do not currently get the same pension entitlements as British personnel. This issue is currently going through the British courts.

¹⁹⁵ Interview with Lt. Col. Tim Spicer, p. 165.

As yet, nothing concrete has resulted from the release of the Green Paper and the response by the Parliamentary Foreign Affairs Committee.¹⁹⁶ Recently the Government has been under new pressure on the issue because of the human rights abuses perpetrated by employees of PMCs in Iraq and the recognition that British employees of PMCs are virtually unregulated. Secretary Straw was reported as saying that “the government came down against a new law because of the difficulties involved and suggested that controlling the companies was now a matter for the Iraqi authorities.” This has not gone down well with Members of Parliament.¹⁹⁷ There are suggestions that in response to the concerns, particularly from within the ranks of the ruling Labour Party, a licensing scheme will be announced in the future.¹⁹⁸

¹⁹⁶ Foreign Affairs Committee, *Private Military Companies: Response to the Secretary of State for Foreign and Commonwealth Affairs*, Ninth Report, Session 2001-2, Cm 5642.

¹⁹⁷ Andrew Grice, “British Link to the Oil-For-Food Scandal Probed”, *The New Zealand Herald*, July 30, 2004. At http://www.nzherald.co.nz/section/print.cfm?c_id=2&objectid=3581331 Accessed November 29, 2005.

¹⁹⁸ Jan Jun, “British Government Wants to Regulate Private Security Contractors in Iraq”, *Radio Free Europe/Radio Liberty*, September 3, 2004. At <http://www.rferl.org/featurarticleprint/2004/09/54f0d5f5-1d1a-4cel-89a5-d603f5b44c7>; George Monbiot, “Pedigree Dogs of War”, *The Guardian*, January 25, 2005.

4 Conclusion

None of the policy responses to date – at either the international, regional or national levels – have focused explicitly on the political economy aspects of the issue. Above, I have described the political, economic, and security ramifications of PMC activity in Sierra Leone, and the political economy of PMCs more generally. PMCs can be understood as firms, as state proxies, as challenger groups, and as potential peacekeepers. Their principle clients are, at present, limited to states and multinational companies.

Governments use private military companies for different reasons. In wealthy industrialised countries such as the United States, PMCs have been pressed into service as the Department of Defense increasingly outsources tasks not deemed necessary to war-making. Most of these tasks relate to ‘tail’ – everything that supports military action, such as guarding reconstruction projects and political offices, escorting supply convoys, providing security for political officials, and looking after latrines and mess halls – as opposed to ‘teeth’ (actual fighting forces).¹⁹⁹ PMCs have also been strategically employed to provide security assistance to politically sensitive recipients – for example, when the U.S. contracted a private company to train the Croatian army while hostilities in the former Yugoslavia were ongoing.

For governments that hire PMCs to serve in combatant rather than supporting roles, other motivations may apply. Rather than using PMCs as a means of downsizing their militaries, governments may hire them to rectify manpower, equipment, and skills shortfalls in the armed forces. Procuring new weapons, recruiting soldiers, and training them to an adequate standard are time-consuming endeavours. Thus, in a newly emerging crisis, or an ongoing scenario where the military has been defeated and demoralised, PMCs present a viable alternative. For example, the (now-defunct) South African PMC Executive Outcomes marketed itself as able to put forces in the field within seventy-two hours, a feat that exceeds the capacity of most contemporary western armed forces.

¹⁹⁹ Although the United States government uses PMCs in a supporting rather than combative capacity, this distinction has become blurred as events deteriorated in Iraq throughout the spring of 2004. David Barstow, ‘Security Companies: Shadow Soldiers in Iraq,’ *The New York Times*, April 19, 2004.

As noted above, cost is also an issue that may work in favour of PMCs, particularly in less-developed countries. Standing armies are expensive – as is rehabilitating armed forces that have been undermanned, ill-equipped, and poorly trained – it can be cost-effective for governments to bring in PMCs as and when required. Cost may also be determinative if a country is subject to financial controls by the IFIs, particularly if those institutions demand savings on the military budget from the government. For example, in Sierra Leone the International Monetary Fund (IMF) and World Bank pressed the government to lower military spending after it had quickly built up the army to tackle rebel insurgents.²⁰⁰ To the government of Sierra Leone, using a PMC seemed like a cost-effective solution.

Governments that question the loyalty of their armed forces may also turn to PMCs in order to avoid granting the military more funding, power, and responsibility. In these cases, the political calculus is clear. If the armed forces are built up sufficiently to be effective, they may pose an alternative to the present regime; the government's motivation is therefore to avoid bolstering the capacity of potential coup-makers. This reasoning can be taken to ridiculous extremes, as for example when Sierra Leone's Siaka Stevens issued each soldier with only one bullet per year. That said, given the propensity to coups of many failed or failing states, particularly in Africa, it is hardly surprising that PMCs are seen by some governments as the 'safe' alternative.

Crucially, governments may also hire PMCs at the behest of foreign resource extraction companies operating in their country. In many weak states, an important feature of the political economy is the foreign ownership of key economic resources and/or the exclusive right of foreign companies to exploit profitable natural resources such as minerals, oil, timber, and diamonds.²⁰¹ In these situations, PMCs have been employed to protect the investment of extractive companies. Often extractive companies will pressure the host government to hire a particular PMC, or governments require extractive companies to foot the bill themselves; for example, in 1992 Executive Outcomes was hired by Gulf Chevron and Sonangol to protect their oil installations in Angola.²⁰²

International extractive firms reap indirect economic benefits from the presence of PMCs if the latter provide the stability necessary for firms to continue their business. Moreover, there is sometimes a more direct relationship of economic

²⁰⁰ Howe, "Private Security Forces", p. 314.

²⁰¹ See, e.g., Global Witness, *Logs of War*, Fafo AIS (Report 379, 2002); Ian Smillie, *Dirty Diamonds*, Fafo AIS (Report 377, 2002); Leiv Lunde and Mark Taylor *Commerce or Crime? Regulating Economies of Conflict*, Fafo AIS (Report 434, 2003).

²⁰² Yves Goulet, "Executive Outcomes: Mixing Business with Bullets", *Jane's Intelligence Review*, September 1997, p. 427.

benefits, when extractive firms in business networks with PMCs gain new or renewed concessions to extract resources, as appeared to be the case of the Branch Energy and Executive Outcomes in Sierra Leone. In this regard, it is significant that PMCs are often not stand-alone companies, but part of a web of corporate activity or networked organisation. Accordingly, they sometimes have a pre-existing economic relationship with the company that lobbies for them to be brought into the country – as was the case with *Executive Outcomes* in Sierra Leone. Some extractive companies and PMCs have common shareholders and may have shared personnel. Thus, when considering the political economy of PMCs, it is not enough to consider the clients alone: the wider web of economic and corporate relations has to be taken into account.

The private military industry has evolved in recent years and, as described above, is increasingly concerned for its legitimacy and an increasing demand for regulation of the sector. The two are directly related. For those PMCs that seek legitimacy, a combination of industry regulation and national legislation, perhaps based on global norms, is likely to be the end result of efforts to grapple with the problem of regulation. On an optimistic note, industry consolidation within the sector has created more of those kinds of companies:

The reason for this industry consolidation centres on the global branding necessary to compete in the world market. Large international companies have social capital and established records that allow them to increase their market share rapidly, while more easily offering a wider range of services to tackle complex security situations.²⁰³

However, regulation is also likely to create incentives for marginal actors to defect from regulatory regimes. Niche markets will undoubtedly emerge, and rogue companies may profit by securing areas of the market abandoned by more legitimate actors. Thus:

There remains a niche, however, for aggressive smaller firms that can make informal deals that bigger firms cannot. Such companies can more easily insinuate themselves into the political networks of local regimes or utilize the barter system of payment. Larger firms, with their highly scrutinized accounting procedures and close monitoring by institutional investors, are restricted from engaging in such practices.²⁰⁴

The reality is that there will always be some PMCs that gain contracts by being willing to play outside the rules. These may be fly-by-night operations created to

²⁰³ Singer, “Corporate Warriors”, p. 200.

²⁰⁴ Ibid: p. 200.

do particular jobs and then wound up, only to appear in a different guise for other illicit operations. This implies the creation of a two-tier market consisting, on the one hand, of major corporate players, and, on the other, a ‘lumpenproletariat’ of semi-formed companies and clandestine forces.

Given the importance of states to PMC markets, the role of extractive industries in PMC activities, and the predominance of nonstate military actors in PMC operating environments, it is worth considering the feasibility of a number of economic regulatory strategies – such as codes of conduct, company registration, licensing, taxation, and financial audits²⁰⁵ – alongside attempts to un-block the international legal logjam that currently obstructs regulations. Some steps in this direction include:

- *Codes of Conduct*: Given the ‘corporate’ nature of the modern PMC and the fact that they work with a variety of industrial sectors, PMCs should adopt the “Voluntary Principles on Security and Human Rights” drawn up by the UK, U.S., and extractive energy companies and NGOs.²⁰⁶ The Voluntary Principles are not a guarantee against future liability, but they do contain guidelines over the use of security services. In addition to the normative good of adhering to those guidelines, PMCs may also gain market share and stave off criticism by demonstrating good ‘corporate citizenship’. To ensure that the guidelines are followed, the Principles should be built into contracts.²⁰⁷
- *Home State Licensing*: In the area of private security and private military activities, the legality of an action depends upon both the employer of the PMC (i.e. whether the client is a legitimate entity or a rogue actor) and the activity being undertaken. It is apparent that many PMCs slip in and out of illegality – sometimes behaving as rogue companies, sometimes not. This makes blanket judgements on PMCs – through such mechanisms as a general licensing regime – problematic. Instead, it is recommended that regulation of PMCs at the national level involve two tiers: general licensing of a firm, and specific licensing of specific kinds of services. Licensing should clearly reinforce international norms being developed in other, related fields, not least being corporate governance. Efforts by the Organisation for Economic Co-operation and

²⁰⁵ Møller also suggests that states could use their control over individuals’ pensions to regulate the employees of PMCs. However, any such measures should apply to employees of PMCs convicted of international crimes as well as to member of the state armed forces who committed such offences. Møller, “Private Military Companies”, p. 11.

²⁰⁶ “The Voluntary Principles on Security and Human Rights” are found at http://www.state.gov/www/global/human_rights/001220_fsdrp_principles.html.

²⁰⁷ *Private Sector Actors in Zones of Conflict*, p. 12.

Development (OECD) to crack down on tax havens imply that PMCs that establish themselves in poorly regulated and untransparent jurisdictions should probably not qualify for licenses. In addition, national legislation should specifically exclude PMCs from the legal cover provided in many jurisdictions by provisions of national security, which trump all other regulations, both criminal and civil.

- *Clarifying International Law:* A priority on the international level should be to resolve the definitional issues that are preventing progress on regulation in the United Nations. Given that many of the African states that originally supported the conventions dealing with mercenaries are the same ones that see a role for PMCs, the General Assembly could be a fruitful forum for dealing with the issue. In addition to defining problematic activities, international law and policy will have to grapple with how to administer regulations governing PMCs, as a global phenomenon linked directly to contemporary wars. One way to do this is to revise the Statute of the International Criminal Court to ensure the applicability of international humanitarian and criminal law to PMCs and their personnel.
- *Monitoring:* Licensing alone is not sufficient, as demonstrated by the abuses committed in Iraq by U.S. PMCs (which are subject to a licensing regime). It is also imperative that national governments actively audit the PMCs registered and/or operating in their country, to ensure that PMCs adhere to both domestic laws and policies and international law. These audits should be both financial and physical. One way of conducting the latter would be to authorise the military attaché attached to embassies to monitor the activities of their PMCs, much in the way that they are supposed to oversee the end-user certificates of weapons sold. The use of these personnel would also build some flexibility into the system in favour of PMCs – for example, by allowing a change in the license due to a changed situation on the ground.

Appendix: Existing Regulations at a Glance²⁰⁸

| | |
|----------------------|---|
| Global Regulations | 1969 The United Nations General Assembly passed Resolution 2548 condemning the use of mercenaries, especially by colonial powers against national liberation movements.1977 The United Nations Security Council passed a resolution condemning the use of mercenaries to overthrow the government of any member state.1977 Protocol to the 1949 Geneva Convention, Article 47: signatories to the protocol treat mercenaries as outlaws and criminals. Denies mercenaries combatant or prisoner of war status, but does not make their activities illegal under international law.1989 International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries. Adopted by the UN General Assembly in 1990. Came into force in 2002 when the 22nd state ratified it. Signatories: Azerbaijan, Barbados, Belarus, Cameroon, Costa Rica, Croatia, Cyprus, Georgia, Italy, Libya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Surinam, Togo, Turkmenistan, Ukraine, Uruguay, Uzbekistan. Convention contains no measures for monitoring its implementation.1992 General Assembly Resolution Against the use of mercenaries. |
| Regional Regulations | Organisation of African Unity 'Convention for the Elimination of Mercenaries' of 1972. (Not in force) 12 countries have outlawed mercenary activity by signing the Convention (however, 3 signatories: Angola, Congo and Zaire have subsequently employed mercenaries)Organisation of African Unity 'Convention for the Elimination of Mercenarism in Africa' of 1977. |
| National Regulations | Australia: 1978 Australian Crimes (Foreign incursions and Recruitment) Act makes it an offence to recruit mercenaries in the country, but does not legislate against recruitment abroad.Great Britain: 1870 Foreign Enlistment Act in theory makes it an offence to engage mercenaries at home or abroad. However, the history of British mercenaries shows that the Act has been consistently flouted. The Government recently issued a Green Paper (a fore-runner to legislation) advocating a system of licensing PMCs. This is discussed below.Russia: Article 359 of the Criminal Code makes mercenary activity a criminal act. However, there are a number of private security companies that are licensed by a variety of bodies.South Africa: 1998 Regulation of Foreign Military Assistance Act (uses a similar definition of mercenaries as the 1977 Protocol to the Geneva Convention). Companies have to be licensed to operate and get licensed approval for each contract. The Act monitors both companies and individuals.United States: 1794 and 1937 Neutrality Acts outlaw the recruitment of mercenaries in the state. The 1976 International Security and Arms Export Control Act ensures that a PMC seeks a government license - covered by the International Traffic in Arms Regulations (ITAR) for each contact it wishes to undertake. These are issued by the State Department.Expulsion sometimes part of peace settlement, e.g. Sierra Leone in the 1996 Abidjan Peace Accord.The Lusaka Protocol of 1994, designed to end the war in Angola, included a clause for the repatriation of all mercenaries from Angola. (This was only partially obeyed, as many EO personnel stayed one to work for PSCs). |

²⁰⁸ Sources: Møller (2002); Guy Arnold (1999); United Nations GA Res. 47/84, 47 UN Supp. (No. 49) at 165, UN Doc. A/47/49 (1992); Organisation of African Unity document CM/433/Rev.L. (1972); *Organisation of African Unity Convention for the Elimination of Mercenarism in Africa*, Organisation of African Unity document CM/817 (XXIX) (1977); Information from, Mariyam Hasam, "Regulating Private Military Companies", *RUSI Newsbrief*, Vol. 23; Howe (1998).

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Market Forces

There is increasing demand for private military services in today's global marketplace. That demand is being met by a relatively new creature. Half-mercenary, half-service sector offshoot of the military-industrial complex, the private military company (PMC) has emerged in recent years to occupy a prominent position in today's battlefield. But at the same time that these 'market forces' seek to establish their legitimacy, they face the reality that the privatisation of the use of force – long a monopoly of the state – remains deeply contested. In *Market Forces*, Dr. Joanna Spear looks beyond the corporate personality of the PMC and finds that because of what they do, who they hire, and who they work for, the debate over the legitimacy and use of PMCs is likely to continue for years to come. Dr. Spear makes several suggestions about how to approach the issues raised by the privatisation of military activity and outlines several steps forward in the development of policies to grapple with the phenomenon.



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