

**Return to an Address of the
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**Private Military Companies:
Options for Regulation**

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CORRECTION

Please note that the following correction should appear on the page as indicated:

Page 6, paragraph 5

Please note that the date of the First Additional Protocol to the Geneva Conventions should read 1977, not 1997 as printed.

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DISCLAIMER

The factual information in this paper is based on the secondary sources listed at Annex D. The Foreign and Commonwealth Office has done its best to ensure the accuracy of all information in this paper but is unable to guarantee this.

Abbreviations

DSL	Defence Systems Limited (a British-based part of Armor Group, a subsidiary of Armor Holdings (US))
DRC	Democratic Republic of the Congo
ECOMOG	Economic Community of West African States Ceasefire Monitoring Group
EC	European Communities
EO	Executive Outcomes (A South African PMC. Now disbanded)
EU	European Union
FNLA	National Front for the Liberation of Angola (an Angolan liberation movement. Now defunct, led by Holden Roberto)
IMF	International Monetary Fund
MPLA	Popular Movement for the Liberation of Angola (the Angolan liberation movement which now forms the government of Angola)
MPRI	Military Professional Resources, Inc. (a US PMC)
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
PMC	Private Military Company
PSC	Private Security Company
RUF	Revolutionary United Front (the rebel movement in Sierra Leone)
UNAMSIL	United Nations Assistance Mission in Sierra Leone
UNITA	National Union for the Total Independence of Angola (an Angolan liberation movement still in armed rebellion against the MPLA)

FOREWORD BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

This Green Paper originates in a request from the Foreign Affairs Committee of the House of Commons. It was a timely and useful suggestion. The control of violence is one of the fundamental issues – perhaps the fundamental issue – in politics. The export of private military services is therefore a subject we need to take very seriously. As Tolstoy says: *‘War is not polite recreation but the vilest thing in life, and we ought to understand that and not play at war.’*

The post Cold War world has given rise both to new problems and new opportunities. In many areas we need to test the received wisdom against an evolving post Cold War reality. The global confrontation of the Cold War and its massive military establishments have been winding down; instead we find ourselves in a world of small wars and weak states. Many of these states need outside help to maintain security at home. There may also be an increasing need for intervention by the international community. At the same time, in developed countries, the private sector is becoming increasingly involved in military and security activity. States and international organisations are turning to the private sector as a cost effective way of procuring services which would once have been the exclusive preserve of the military. It is British Government policy for example to outsource certain tasks that in earlier days would have been undertaken by the armed services.

The demand for private military services is likely to increase. The cases that attract most attention are those where a government employs a private military company to help it in a conflict – as the governments of Sierra Leone and Angola have done. Such cases are in practice rare and are likely to remain so; but we may well see an increase in private contracts for training or logistics. Some of this demand may come from states which cannot afford to keep large military establishments themselves. But demand may also come from developed countries. It is notable for example that the United States has employed private military companies to recruit and manage monitors in the Balkans.

A further source of demand for private military services could be international organisations. The private sector is already active and effective in areas that would once have been seen as the preserve of the military – demining for example. And both the UN and international NGOs employ private companies to provide them with security and logistics support. A strong and reputable private military sector might have a role in enabling the UN to respond more rapidly and more effectively in crises. The cost of employing private military companies for certain functions in UN operations could be much lower than that of national armed forces. Clearly there are many pitfalls in this which need to be considered carefully. There are, for example, important concerns about human rights, sovereignty and accountability which we examine in this paper.

Today's world is a far cry from the 1960s when private military activity usually meant mercenaries of the rather unsavoury kind involved in post-colonial or neo-colonial conflicts. Such people still exist; and some of them may be present at the lower end of the spectrum of private military companies. One of the reasons for considering the option of a licensing regime is that it may be desirable to distinguish between reputable and disreputable private sector operators, to encourage and support the former while, as far as possible, eliminating the latter.

This Green Paper does not attempt to propose a policy. I believe that a wide debate on the options is needed. There are many dimensions to this question some of which we have tried to set out in the paper. I hope it will give rise to a constructive debate. I will welcome contributions from all quarters and from all points of view.

A handwritten signature in black ink, appearing to read "Jack Straw". The signature is written in a cursive, flowing style with a small flourish at the end.

INTRODUCTION

- 1 This Paper is a response to the recommendation of the Foreign Affairs Committee in its report on Sierra Leone (HC116-I) that in respect of mercenary activities, the Government publish a Green Paper outlining options for the control of private military companies which operate out of the UK, its dependencies and the British Islands.
- 2 This is a complex subject. Before examining the options for regulation it is worth looking at some of the difficult issues raised.

DEFINITIONS AND TYPES OF MILITARY ACTIVITY ABROAD

- 3 Any examination of possible regulation must begin by defining its object: the people or activities that it means to regulate. In practice the terms ‘mercenary’, ‘private military company’ (PMC) and ‘private security company’ (PSC) cover a wide range of different kinds of people, corporations and activities.
- 4 The Oxford English Dictionary defines a mercenary as ‘a professional soldier serving a foreign power’. This is a wide definition, which would include many people engaged in legitimate activities, for example Gurkha troops in the British and Indian Armies, troops in the British Army who have been recruited in Commonwealth countries, loan service personnel, the French Foreign Legion and the Swiss Guard in the Vatican.
- 5 On the other hand the most widely used legal definition of a mercenary is very narrow. Article 47 of the First Additional Protocol of 1997 to the Geneva Conventions defines a mercenary as one who:
 - (a) is specifically recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
 - (d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
 - (e) is not a member of the armed forces of a party to the conflict; and
 - (f) has not been sent by a state which is not a party to the conflict on official duty as a member of the armed forces.

It should be noted that this definition is cumulative, ie a mercenary is defined as someone to whom **all** of the above apply.

- 6 A number of governments including the British Government regard this definition as unworkable for practical purposes. In particular it would be difficult to prove the motivation of someone accused of mercenary activities. Contracts can also be drafted so that those employed under them fall outside the definitions in the convention: for example, in its aborted contract with Papua New Guinea (1997), Sandline International's employees were to be termed Special Constables; they would thus not have been classified as mercenaries since (under (e) above) they would have been members of the armed forces of a party to the conflict. There are also cases of foreign nationals providing military services who have been granted or have applied for local citizenship with the effect that – under (d) above – they could not be described as mercenaries.
- 7 An alternative definition is provided by the OAU Convention for the Elimination of Mercenarism in Africa. This defines a mercenary as anyone who is not a national of the state against which his actions are directed, is employed, enrolls or links himself willingly to a person, group or organisation whose aim is:
- (a) to overthrow by force of arms or by any other means, the government of that Member State of the Organisation of African Unity;
 - (b) to undermine the independence, territorial integrity or normal working institutions of the said State;
 - (c) to block by any means the activities of any liberation movement recognised by the Organisation of African Unity.
- 8 This defines mercenaries narrowly according to their purpose. This definition would not have included employees of Executive Outcomes in Sierra Leone or Angola, nor anyone else working for a recognised government, probably including the so-called 'White Legion' employed by President Mobutu during his last days in power.
- 9 In practice a wide spectrum of people and companies – some of them respectable and legitimate, some of them not – may be involved in the supply of military services abroad. These include:
- **Mercenaries** in the traditional sense; ie 'soldiers of fortune', occasionally misguided adventurers, often disreputable thugs, ready to enlist for any cause or power ready to pay them.
 - **Volunteers:** these are excluded by the Geneva Convention definition under (c) if their motives are idealistic rather than financial. In practice it may be difficult to distinguish volunteers from traditional mercenaries. Volunteers (eg Islamic militants in Afghanistan, Chechnya or the Balkans) are frequently paid and money may be as much a part of their motivation as ideology.
 - **Servicemen enlisted in foreign armies:** the Gurkhas in the British and Indian armies are a legitimate example of such forces but other governments may recruit, either temporarily or permanently, people much closer to the traditional concept of a mercenary.
 - **Defence industrial companies:** many companies which supply equipment also supply training and maintenance packages with it. The equipment, if it is supplied from the UK, will be exported under licence. Nevertheless the services provided with the equipment may

in some circumstances not be very different from those which a private military company might supply. Arms suppliers may for example arrange to supply people to operate the equipment eg pilots to fly aircraft. In extreme cases this might involve combat missions.

- **Private military companies (PMCs).** These may provide a range of different services. At one extreme they may provide forces for combat. The number of PMCs doing this appears to be limited. Two of the operations by Executive Outcomes (EO) are described later: see boxes 1 and 2. Although these have received much attention such operations are in practice relatively rare.

10 Much more usual are other services such as:

- **Advice:** this may cover anything from advice on restructuring the armed forces, to advice on purchase of equipment or on operational planning.
- **Training:** this is a major activity by PMCs. In some cases it may be linked to combat – as was the case with EO's training in Angola and Sierra Leone. Or it may be free standing. For example in the 1970s the UK company, Watchguard, trained forces in the Middle East including personal bodyguards of rulers. The US company, Vinnell, is reported as training the Saudi Palace guard today. (For a further example see box 3).
- **Logistic support:** this is provided by a number of companies. For example MPRI have assisted the US Government in delivering humanitarian aid in the former Soviet Union; Dyncorp and Pacific A&E provided logistic support for the UN force in Sierra Leone (UNAMSIL); Brown and Root is said to provide US forces in the Balkans with everything from water purification to the means of repatriating bodies.
- **Supply of personnel for monitoring roles:** DynCorp and Pacific A&E have both recruited and managed United States' contributions to monitoring operations in the Balkans.
- **Demining:** this is handled both by specialist companies (eg the South African company Minetech) or as part of a wider security package – as the EO offshoot Saracen does in Angola.

11 The distinction between combat and non-combat operations is often artificial. The people who fly soldiers and equipment to the battlefield are as much a part of the military operation as those who do the shooting. At one remove the same applies to those who help with maintenance, training, intelligence, planning and organisation – each of these can make a vital contribution to war fighting capability. Other tasks such as demining or guarding installations may be more or less distant from active military operations according to the broader strategic picture.

12 It should be noted that most private military companies are not exclusively involved in business overseas. The largest PMCs, in the United States, provide a range of services principally for the US Government which include logistics services, drawing up specifications for equipment and testing it, training and strategic advice. For most of these companies activities abroad are a relatively small part of their business.

- **Private security companies (PSCs):** these provide security services abroad for companies, for governments and for other bodies, including the UN and some NGOs. In Angola, for example, the government makes it a requirement for foreign investors that they provide their own security – usually by hiring a private company. Their job is similar to that done

by security companies in the domestic context; some estimates suggest that the ratio of private security guards to police in developed countries is 3:1. In less developed countries it may be 10:1 or more. Where companies provide services overseas this will usually be through a local subsidiary subject to local law.

- 13 The services some PSCs provide may not be very different from those available in the domestic market. Others, particularly those operating in more dangerous territory, make use of armed guards who may be difficult to distinguish from soldiers. In some cases PSCs have become involved in training local forces, negotiating with rebel groups and in the use of sophisticated intelligence equipment. At this end of the spectrum PSCs can be difficult to distinguish from PMCs.
- 14 An illustration – admittedly an extreme one – of the way in which roles may merge is provided by the case of Gurkha Security Guards in Sierra Leone. This company’s principal activity had been security services until 1994 when it accepted an invitation to train the Sierra Leone armed forces. In the course of this work some members of its team were ambushed by rebel forces in Sierra Leone, became involved in fighting and were killed.
- 15 More recently a number of private security companies have become involved in fisheries protection, or in training for protection against pirates. Both of these tasks might equally well be undertaken by private military companies.

Conclusion

- 16 This analysis suggests that the problem of definition is not merely one of wording. The internationally agreed definitions have been shaped to suit the agendas of those drafting them and are not necessarily very useful. The fact is that there are a range of operators in this field who provide a spectrum of military services abroad. It is possible to devise different labels according to the activities concerned, the intention behind them and the effect they may have; but in practice the categories will often merge into one another. If the Government were to conclude that it was desirable to regulate this activity then choosing the right definitions will be an important challenge.

THE EXTENT OF PRIVATE MILITARY COMPANY/ MERCENARY ACTIVITY

- 17 Information about private military activity abroad is, perhaps not surprisingly, hard to obtain and is often unreliable. One man’s volunteer is another man’s mercenary. It is therefore difficult to make an accurate estimate of the extent and impact of private military services. The NGO, International Alert, reported in May 1999 that there had been official reports of such activities in, among other places, Kashmir, Afghanistan, Liberia, Democratic Republic of the Congo, Angola, Republic of Congo, Sierra Leone, former Yugoslavia, Ethiopia and Eritrea.
- 18 James Larry Taulbee (1998, p146) writes of the period after 1967: ‘[M]ercenaries surfaced in numbers large enough to generate notice in the Nigerian Civil War, the Angolan and Rhodesian conflicts, Vanuatu (New Hebrides), the Contra effort against the Sandanista regime in Nicaragua, Sierra Leone, New Guinea and Bosnia. Additionally, between 1970 and 1995, small groups of mercenaries participated in coup attempts: Guinea, Equatorial Guinea, Benin, Togo, the Comoros Islands (four times), the Seychelle Islands, Dominica, Haiti, Ghana, Suriname and the Maldive Islands’. Annex A presents a table of mercenary/PMC interventions in Africa since the 1950s (Abdel-Fatau Musah and J. Kayodi Fayemi, 2000, by kind permission of the editors).

- 19 The scale of these interventions varies. Some cases involve no more than a handful of traditional mercenaries; others have been by large groups or companies. The largest scale intervention by non-nationals is probably in Afghanistan where forces fighting first the Russians and then other Afghan groups have included major foreign elements. Some estimate that more than half the Taliban forces were from outside Afghanistan. Although most would probably describe themselves as volunteers rather than mercenaries it is likely that financial rewards are an important part of the picture.
- 20 In some cases the impact of foreign forces will be insignificant. Frederick Forsyth commented on the mercenaries involved in the Biafra conflict that most of them were ‘little more than thugs in uniform... Those who did fight at all fought with slightly greater technical know-how but no more courage or ferocity than the Biafran officers.’ (The Biafra Story quoted in Mockler, p142). In other cases a small number of men can make a large difference. This is particularly likely where the handling of sophisticated equipment is involved. There have been for example reports of foreigners flying (Russian built) fighter-bombers for the Ethiopian Air Force – providing the Ethiopian Government with a critical capability. Both Sierra Leone and Guinea have employed foreigners with specialist military skills in their battles against the RUF. These have played a vital role in re-establishing security in the region.
- 21 Operations performed by private military companies are likely to be more significant than those by individuals. The UN Special Rapporteur on Mercenaries, Senor Enrico Ballesteros, has argued that ‘...today’s mercenaries do not work independently. They are more likely to be recruited by private companies offering security services and military advice and assistance, in order to take part or even fight in internal or international armed conflicts.’
- 22 The following table (based on the work of Kevin O’Brien and David Shearer) lists some private military and security companies and their activities. It is noted that Executive Outcomes was disbanded in 1999. It is however closely related to other companies which remain extant, including Sandline International: see box 4.

TABLE 1: Activities, examples and users of private military and security companies

Activities and services provided	Examples of Companies	Main Users of Services
Combat and Operational Support	Executive Outcomes, Sandline International, Gurkha Security Guards	Governments
Military Advice and Training	DSL, MPRI, Silver Shadow, Levdan, Vinnel, BDM	Governments
Arms Procurement	Executive Outcomes, Sandline International, Levdan	Governments
Intelligence gathering	Control Risk Group, Kroll, Saladin, DynCorp.	Governments, Multi-National Companies
Security and Crime Prevention Services	DSL, Lifeguard, Group 4, Control Risk Group, Gurkha Security Guards, Gray Security, Coin Security	Multi-National Companies, Humanitarian Agencies
Logistical Support	Brown & Root, DynCorp, Pacific Architects and Engineers (PAE)	Peacekeeping organisations, Humanitarian Agencies

- 23 This list is purely illustrative: it is probably both incomplete and out of date. This is especially the case with respect to private security companies. Some estimates suggest that as many as 100 companies may be active in Africa and in countries such as Colombia and Indonesia where there are risks of violence. The extractive industries – whose operations are often located in remote or dangerous areas, are particularly important consumers of services of PSCs. As far as countries of origin are concerned the literature suggests that the United States, South Africa, the UK and Israel are particularly prominent.
- 24 In spite of the rapidly growing literature on private military companies the number of major combat operations which PMCs have undertaken is limited, as is the number of companies willing to engage directly in combat and operational support. This point is worth underlining. Analysts have focussed on the activities of Executive Outcomes in Angola and Sierra Leone; these were, however, exceptional operations and it is not clear if anything like them will be repeated – see paragraph 26 below. There are however some grounds for thinking that both the supply and demand for PMCs may grow.

BOX 1: Executive Outcomes in Angola

Mercenaries have played a (largely undistinguished) part in the Angolan conflict on several occasions. British and American mercenaries fought for the FNLA in 1975/6; the MPLA had support from exiled Katangese gendarmes (and later from Cuban forces for whom it paid the Cuban Government, though these were not mercenaries in the traditional sense). A variety of mercenaries have been associated with UNITA. In 1992 elections were held in Angola under UN supervision and were won by the MPLA. A month later UNITA, having withdrawn its troops from the army, attempted a coup. This failed and the civil war was resumed.

In 1992 Executive Outcomes was hired by Sonangol, an Angolan parastatal company, to secure the Soyo oilfield and the computerised pumping station owned by Chevron, Petrangol, Texaco and Elf-Fina-Gulf. A small force from Executive Outcomes backed by two Angolan battalions regained the oilfield early in 1993. Executive Outcomes then withdrew leaving the Angolan battalions in place. Soyo was subsequently recaptured by UNITA.

Later in the year, in September, the Angolan Government agreed a more far-reaching contract with Executive Outcomes to train their troops and to direct operations against UNITA. The contract, reportedly worth \$40 million, included a supply of arms as well as training. With the assistance – and on some occasions direct participation – of Executive Outcomes Angolan Government forces won a series of victories during 1994. The recapture of the diamond fields in Lunda Norte in June 1994 is regarded by many as a turning point in the war (one effect it had was to reduce UNITA's capacity to pay for its operations). In November 1994 UNITA signed a peace agreement in Lusaka. This included a provision for the withdrawal of foreign forces. In spite of this Executive Outcomes remained in Angola until December 1995 when it was withdrawn, reportedly at US insistence.

Although the numbers involved were small – Executive Outcomes never had more than 500 men in Angola and were usually fewer, compared with Angolan armed forces of more than 100,000 men – it is generally regarded as having played a critical part in securing victory for the government forces, the ceasefire and the Lusaka Peace Agreement – shaky as these last two remain.

BOX 2: Executive Outcomes in Sierra Leone

Executive Outcomes (EO) was hired by the Sierra Leone Government in 1995 (at the time a military regime led by Captain Strasser) to train Sierra Leone Government forces, who until then had been notorious for ineffectiveness in everything except attacks on the civilian population. It led a number of offensives which secured the capital Freetown, the Kono diamond mining area and (in December 1995) the Sierra Rutile Mine. At the same time it improved the quality of Sierra Leone's forces and also created a militia among the Karamajor, which proved useful in combat with the RUF. In January 1996 EO attacked a major RUF base in the Kangari Hills. Following this the RUF agreed to negotiate with the government. The relative stability achieved following Executive Outcomes operations enabled elections to be held. Late in the year a peace agreement was signed with the RUF. One of the clauses in this required the withdrawal of Executive Outcomes. Their contract was terminated on 31 January 1997. Following the withdrawal of Executive Outcomes a coup took place which brought a military/RUF government to power and led to the exile of the elected government of President Kabbah. Executive Outcomes were reportedly paid \$35 million for their assistance. (Numerous analysts have pointed out that this was a lower cost for a 21-month operation than the \$47 million budget for a UN observer force for eight months. These costs fell on the UN rather than the Sierra Leone government, which could ill afford them).

Commentators have also drawn attention to the corporate connections between EO and various mining interests including Branch Energy, which acquired concessions in Sierra Leone. Shearer however records the view of an IMF official that there is no evidence to support the allegation that EO was paid in concessions – though Branch Energy's relationship with EO was a factor in its securing them.

- 25 On the supply side many observers associate the growth of PMCs with the end of the Cold War, taking the view that the reduction in the size of armed forces in the West and the former Warsaw Pact countries, has created a pool of professional soldiers looking for employment. It is difficult to know how significant this factor has been. It is clear that a number of ex-servicemen from Central Europe and Ukraine have been operating as mercenaries in Africa. PMCs are however so far an overwhelmingly Western phenomenon having been established by former professional servicemen from the US, UK, France, Israel and Southern Africa. Whether the end of the Cold War had much to do with this is not obvious. It is however clear that the change of regime in South Africa, and the subsequent restructuring of the armed forces there, was an important factor in the formation of Executive Outcomes.
- 26 It is possible Executive Outcomes will turn out to have been a one-off phenomenon (and consequently that the literature on PMCs gives too much weight to its successes). As a result of changes in South Africa it was relatively easy to create a private force which had a common language, common training in counter insurgency and common experience, including of combat. The fact that this was an African force gave it an invaluable local knowledge, especially in the case of Angola. It must be open to question whether it will be possible to maintain the high standards of these or other forces over a long time. Private companies cannot normally afford the kind of training and readiness that is available to professional national military establishments. Putting together a force at short notice out of disparate elements is bound to result in a lower degree of effectiveness than was demonstrated by Executive Outcomes.
- 27 If these were the only factors behind the growth of PMCs then it might be possible to write them off as probably a passing phenomenon, the end of the Cold War and the change of regime in South Africa being events that will not be repeated. It remains however likely that the number of PMCs will grow as governments outsource more functions previously performed by the military. This is what lies behind the development of the major American military corporations

in the mould of MPRI or Pacific A & E. The same trend is already developing in Europe, and may create a supply of expertise in the private sector which could, on occasions, be available for foreign markets. If this speculation is correct then it is companies like MPRI, DynCorp or Pacific A&E rather than Executive Outcomes that will be prominent in the future.

- 28 For a number of years it has been the British Government's policy to outsource certain defence functions. Notably, a significant proportion of training of the Armed Forces is already undertaken by civilian contractors or with their participation. Up to 80% of all army training now involves civilian contractors in some way. The Royal Navy also conducts most of its shore based training in partnership with a commercial consortium, Flagship Training Limited which provides some specialist instructors – often ex-military – and facility management services. Additionally, Flagship Training Limited, among others, provides training packages to meet government to government requests. It is to be expected that the firms which provide training or other services for UK Armed Forces will increasingly seek commercial opportunities abroad.

BOX 3: MPRI in the Balkans

MPRI is a US company based near Washington. It employs a large number of former military personnel and undertakes work for the US Government in a number of areas such as training and evaluation. Most of its work is for the US Government but it has undertaken contracts elsewhere including for example a small training operation in Nigeria.

In 1994 MPRI was contracted by the Croatian Government to design a programme to improve the capabilities of the Croatian armed forces and 'to enhance the possibility of Croatia becoming a suitable candidate' for NATO's Partnership for Peace Programme. It received a licence from the State Department for this contract. The MPRI Programme began in January 1995.

Many people have noted that later in 1995 Croatian forces performed unexpectedly well in 'Operation Storm' an offensive against Serb forces in the Krajina region. MPRI deny any connection and maintain that their involvement was limited to classroom instruction. Nevertheless the fact that the Croatian attack was better planned and co-ordinated than on any previous occasion has left many analysts with the view that the Croatian armed forces had profited from their relationship with MPRI, though no one has suggested that MPRI was directly involved.

Later, MPRI won a contract to 'assist the Army of the Federation [in Bosnia] in becoming a self-sufficient and fully operable force'. Unlike its contract in Croatia this involved MPRI with teaching combat skills to the Bosnia/Croat armed forces. This contract was paid for by a trust fund to which a number of Muslim countries contributed. It was licenced by the US State Department as a part of their 'Train and Equip' policy in Bosnia. It involved some 200 former US military personnel and is thought to have had a major impact on the effectiveness of the Federation armed forces

- 29 On the demand side, a number – perhaps a growing number – of countries will continue to have legitimate needs but inadequate capabilities. If recent trends persist we may expect there to be a number of weak governments who will have to deal with problems of internal instability. During the Cold War a government could often persuade one or other side to give its support. This is no longer the case. In the absence of an intervention by the UN or a regional organisation, governments may be tempted to turn to private military companies, for advice and training if not for combat itself. This will not however be an easy option: such companies are expensive and may be unpopular domestically.

- 30 At the same time if the trend towards outsourcing continues then there will probably be continued growth in the demand for the services of PMCs among governments not troubled by instability but simply lacking the resources or expertise to perform certain functions themselves. There could also be a growing demand from multilateral institutions and from NGOs, if the trends of recent years continue.
- 31 Predictions are necessarily speculative, but there are some grounds for guessing that there will be continued growth in the market for the services of private security companies, many of whom may work both for the private sector and governments. If the arguments above hold good private military companies are likely to be focussed on tasks such as logistics, maintenance and training, with involvement in combat operations a comparative rarity.

THE DEBATE ON PRIVATE MILITARY COMPANIES

- 32 In modern times mercenaries have a bad reputation, so much so that the word has become almost a form of abuse¹. This is based partly on the experience of the 60s and 70s when, starting with the Congo, mercenaries were associated with instability and secessionist movements. They were also involved both in a number of attempted coups and in human rights abuses.
- 33 In the last five years – stimulated perhaps by the multiple crises in Africa and the successes of Executive Outcomes – there has been a renewed debate on the usefulness and the dangers of private military companies. Some commentators perceive these as a radically new development, others as the continuation of mercenarism by another name. Some recent books and articles are listed at Annex D. Especially important contributions to this debate have been made by Shearer, O’Brien, Zarate and Musah/Fayemi. The following section summarises some of the arguments and counter-arguments.

Accountability

- 34 Some commentators draw attention to lack of clear lines of accountability as a problem associated with PMCs. National armies are accountable domestically through the political process. Soldiers who commit war crimes together with their military commanders and political superiors who bear responsibility can be prosecuted in national courts and (once it is in operation) the International Criminal Court. This liability under international humanitarian law would also apply to employees of PMCs who became involved in armed conflict. In many cases however this is a highly theoretical proposition – a weak government which is dependent for its security on a PMC may be in a poor position to hold it accountable. In practice the real extent of accountability by PMCs may depend on who is employing them.
- 35 Some commentators (Herbst 1998) argue that private military companies are different from freelance mercenaries since they have a continuing corporate existence and will wish to maintain a reputation as respectable organisations. This may be true in particular for PMCs who work for Western governments – for example MPRI or DynCorp; but others, far from having a continuing existence, seem regularly to mutate. Other commentators (Zarate 1998) believe that regulation by respectable host governments is an important element in the accountability of PMCs.

¹ Historically attitudes were different. ‘Soldier’ comes from ‘Solde’ meaning ‘pay’; a ‘commission’ was in effect a contract to hire men. Alexander and Hannibal employed mercenary forces and in Europe many commanders preferred them to recruited forces until the creation of national armies in the 19th Century.

- 36 A key issue for accountability is transparency. When PMCs operate in a war zone it will always be difficult to know what they are doing. Sandline International have proposed monitoring (which they argue should be paid for by the International Community). Shearer has also argued for this. It is not clear however how far this would be a practical proposition in a war zone.

Sovereignty

- 37 Some commentators see the existence and activity of PMCs as, *ipso facto*, a threat to sovereignty. For example in his report to the Commission on Human Rights (January 1999) the UN Rapporteur writes ‘Within the historical structure of the nation State, which is still the basis of international society, it is inadmissible for any State legally to authorise mercenary activities, regardless of the form they take or the objectives they serve. Even where legislation is lacking or deficient, mercenarism is an international crime. Mercenary activity arises in the context of situations that violate the right of peoples to self-determination and the sovereignty of States..... The mere fact that it is a Government that recruits mercenaries, or contracts companies that recruit mercenaries, in its own defence or to provide reinforcements in armed conflicts, does not make such actions any less illegal or illegitimate. Governments are authorised to operate solely under the Constitution and the international treaties to which they are parties. Under no circumstance may they use the power conferred on them to carry out acts that impede the self-determination of peoples, to jeopardise the independence and sovereignty of the State itself or to condone actions that may do severe harm to their citizens’ lives and security.’ This is an extreme point of view which does not appear to take account of all the principles of the UN Charter, including the right of self-defence in Article 51. There are, notwithstanding, a number of ways in which mercenaries or PMCs may be a threat to legitimate governments.
- 38 In the 1960s and 70s mercenaries were a real threat to legitimacy and self-determination. They were often associated with attempts to preserve quasi-colonial structures; and they took part in a number of attempted coups. Neither of these has been the case with PMCs in the 1990s. There remains however a theoretical risk that they could become a threat to the governments that employ them². Although this danger cannot be completely discounted, it is difficult to see what a modern PMC would have to gain from trying to take over control of a country. A PMC which attempted anything of the sort would damage its reputation and reduce its prospects of obtaining business elsewhere.
- 39 Behind the sometimes inchoate concerns expressed by Mr Ballesteros and others lies the perception that the monopoly on violence remains essential to our notion of a state. ‘Good laws and good armies’ are the foundation of the state. The idea of a state relying for its security on a foreign force is contrary both to this reasoning and to our concept of citizenship. Nevertheless the fact that a force is private or foreign does not prevent it from being under the control of the state and although such arrangements may not be ideal they may be far less damaging to sovereignty than an unchecked rebel movement.

² As Machiavelli argues in Chapter 12 of the Prince.

Economic exploitation

- 40 One way in which PMCs could be considered a threat to sovereignty is through economic exploitation. It is striking that the countries in Africa most associated with the use of mercenaries and PMCs – Angola, Sierra Leone and Zaire – are those with readily available mineral resources. Observers have drawn attention in particular to Executive Outcomes' links to extraction companies (see box 4). A number of commentators (eg Francis 1999, Musah and Fayemi 2000) argue that it is wrong for governments to pay for security by mortgaging future returns from mineral exploitation. Nevertheless if a government is faced with the choice of mortgaging some of its mineral resources or leaving them entirely in the hands of rebels, it may be legitimate for them to take the former course.
- 41 Other commentators (Zarate 1998) have argued that the association of PMCs with mineral extraction has a positive side. First, from their point of view, it may be one of the few ways they can be sure of getting paid. Second, an interest in mineral extraction will give a PMC a vested interest in peace and stability.

BOX 4: Executive Outcome: Corporate Links

Executive Outcomes was founded in 1989 in South Africa by Eben Barlow. A number of analysts have noted its close connections with the Branch-Heritage group, a group of companies with interests in energy and mining. Tony Buckingham a senior director in a number of Branch-Heritage companies is said to have introduced Eben Barlow to Sonangol who employed EO in its first operations in Angola. Part of the payment for these may have been guaranteed by Ranger Oil West Africa Ltd which shares oil blocks with Heritage Oil and Gas (a member of the Branch-Heritage group). In Sierra Leone, where Tony Buckingham is also said to have made the initial introductions, Branch Energy obtained concessions in the Kono diamond fields after they had been secured by EO action. Following the departure of EO security for Branch Energy (and subsequently for Diamondworks) has been provided by Lifeguard Security, an affiliate of EO.

The extent of corporate links – that is, cross shareholdings or directorships – is not clear, nor is it necessarily important, since it is manifest that the two companies have a close business relationship. This need not in itself be a cause for concern: companies mining in unstable areas need security and need people they can trust to provide it. For EO, recapturing mineral resources for the government was the best way of ensuring that it was paid. (Some reports suggest that the Branch-Heritage group may have financed EO's operations at a point when the Sierra Leone government was unable to pay them.)

Although EO dissolved in 1999 a number of its subsidiaries remain active in both Angola and Sierra Leone.

(Fuller accounts of the complex corporate relationships are contained in Shearer 1998 and Musah and Fayemi 2000)

A vested interest in conflict?

- 42 Since PMCs are paid to deal with conflict situations some argue that they have no interest in bringing conflict to an end (unlike national armies who are paid in peacetime). For example, Nana Busia writes: 'the raison d'être and modus vivendi of mercenaries is instability and it is in their interest that a perpetual state of instability is maintained.' (Campaign against Mercenarism in Africa, Africa World Report). This problem is surely a matter for those hiring PMCs – if they write

performance clauses into the contracts they should be able to give the PMCs a clear incentive to complete whatever tasks they have been employed for. In practice it is often the parties to the conflict who have reasons for prolonging it – for example in order to exploit mineral resources illegally.

- 43 An extension of this view is the argument that PMCs are prone to switch sides, selling their services to a higher bidder if one emerges. This is always possible but it is the kind of behaviour that would in the long run ruin a PMC's reputation and its business prospects. More of a problem is the tendency of employees of PMCs to offer their services to rivals. There have for example been reports of former EO employees working for the RUF in Sierra Leone or for the government in Kinshasa.

Human Rights

- 44 It is a frequent charge against mercenaries and PMCs that they are guilty of abuses of human rights, and with good reason. In the 1960s and 1970s mercenaries committed many abuses. The position is less clear for PMCs in the 1990s. There are reports of misconduct by EO forces in Angola (eg looting) and of use of controversial weapons such as cluster bombs and fuel air explosions (Alex Vine in Musah and Fayemi). Of the former the best that can be said is that EO probably behaved better than any of the other combatants; of the latter that these weapons have also been used by Western armed forces. In contrast there have been only limited accusations and not always well substantiated accounts of abuses by Executive Outcomes during its operations in Sierra Leone.

- 45 The question that has to be answered about human rights however is less whether there are instances of abuses having been committed – national armies, including forces in UN peacekeeping roles, have not been immune from this – but whether such abuses are inherent in the nature of PMCs. (This is the thesis of the UN Special Rapporteur: 'The participation of mercenaries in armed conflicts... always hampers the enjoyment of the human rights of those on whom their presence is inflicted.') Such an argument could be made in the case of traditional mercenaries – men free of any constraining system looking for opportunities to fight may well be prone to violence. With companies however there should be greater incentives to discipline. A company normally wants to have a continuing corporate existence: if it acquires a bad reputation, it will rule itself out of certain business – if Vines' (op cit) analysis is correct it may well be that EO decided to clean its act up for Sierra Leone, following the stories about its behaviour in Angola. Mr Van der Berg then its Chief Executive is reported as saying 'The fastest thing that would get us out of business is human rights violations.' This would surely be even more obviously the case for companies such as MPRI or DynCorp who work for clients including the US Government.

Underlying problems and stability

- 46 A number of serious critics argue that private military companies are not a real solution to the problems of conflict. The UN Rapporteur writes 'The presence of the private company which was partly responsible for the security of Sierra Leone created an illusion of governability, but left untouched some substantive problems which could never be solved by a service company'. Or David Francis (Third World Quarterly 1999) writes 'the putative strategic impact of EO is often exaggerated. Its so-called stability and coercive security is often fragile and does not address the fundamental political and socio-economic issues that prompted the conflict.'

- 47 These assertions are unquestionably true. EO was however hired for a military task; it is not a criticism of a military body that it has failed to address underlying socio-economic problems. The function of military and other security organisations is to create an environment in which it becomes possible to tackle those problems. The fact that others may not have exploited this opportunity – and the problems are frequently intractable – is hardly a criticism of EO or of PMCs in general.
- 48 Nevertheless an over-reliance on coercive means of achieving security whether public or private, will rarely provide long-term solutions. The easy availability of such means through private companies might represent a temptation for states who did not wish to face the more difficult long-term challenges of creating inclusive and pluralistic political communities.
- 49 Account should also be taken of the impact that the employment of a PMC may in itself have on stability. At the least this is likely to be resented by the regular military. Sandline's aborted contract with the government of Papua New Guinea led to tension between the government and the army; some observers associate the coup in Sierra Leone that replaced Captain Strasser with the presence of EO and their training programmes.

Proxies for Governments

- 50 This is a frequent accusation against PMCs. In some cases it is true. MPRI has undoubtedly functioned as an instrument of US policy in the Balkans. The fact that MPRI's actions are at least consistent with US Government policy is made plain by the State Department's issue of licences.
- 51 It is striking how many commentators assume a link between governments and PMCs or mercenaries, often on the basis of little evidence. Denials by governments make little difference since the commentators merely assume that the link is covert. The fact that PMCs usually include former members of the armed services lends some plausibility for those who like conspiracy theories.
- 52 There is nothing wrong with governments employing private sector agents abroad in support of their interests; but where such links are transparent they are less likely to give rise to misinterpretation. Some might consider this an argument for a licensing or other regulatory system.

Moral Objections

- 53 Given the values of modern society there is a natural repugnance towards those who kill (or help kill) for money. This applies even if the killing is necessary and is done in a just cause. 'Professional military competence unleavened by a primary loyalty to community' (Taulbee, 2000) leaves us uneasy. To encourage such activity seems contrary both to our values and to the way in which we order society. In a democracy it seems natural that the state should be defended by its own citizens since it is their state. And it is not an accident that the business of fighting for money often brings in unattractive characters.
- 54 That does not mean that there may not be a valid and defensible use for private military companies. For a state under threat from armed insurgents or from criminal gangs with a military capability, the first requirement is to re-establish its monopoly on violence. The temporary use of a PMC to do this may occasionally be the only realistic option available. It may be cheaper and will certainly be quicker than attempting to train national forces (who may bring with them a risk of coup d'état). Where the existence of the state itself is under threat measures may be needed which would not be called for in the well ordered world of democratic societies.

Double Standards

- 55 The debate on PMCs is sometimes conducted as though PMCs are *ipso facto* bad and national armies good. In practice national armies are in many cases guilty of precisely those abuses with which PMCs are charged. Often they are unaccountable, a danger to stability and frequent violators of human rights. It is widely acknowledged, for example, that in Sierra Leone the national army was undisciplined, violent and a threat to the civilian population. The same has been said of a few in the Nigerian forces operating under ECOMOG. Nobody has suggested anything like this in Executive Outcome's record. In some cases – for example the DRC in the late 1990s – state authority has declined so far that it is no longer possible to distinguish sharply between state and non-state violence.

PMCs and International Operations

- 56 It is striking that a number of those who are prepared to consider a role for PMCs are people who have had experience in humanitarian operations or UN work (for example Shearer). The UN and other International Organisations frequently employ PMCs or PSCs in an ancillary role for logistics or security. For example UNAMSIL in Sierra Leone has had logistics support from Pacific A&E. DSL has provided security services for a wide range of international organisations. And there are many areas of the world where foreign industry and NGOs would be unwilling to operate without protection from companies in which they have confidence – who in the nature of things will often be foreign.
- 57 The question of employing private military companies in wider roles for the UN is something which needs debate. The Secretary General has said 'When we had need of skilled soldiers to separate fighters from refugees in the Rwandan refugee camps in Goma, I even considered the possibility of engaging a private firm. But the world may not be ready to privatise peace.' The final sentence of Kofi Annan's remarks is probably true. There may nevertheless be a case for examining this option.
- 58 In one sense the United Nations already employs some mercenary forces. It is clear that at least some countries who contribute to UN peacekeeping do so largely for financial reasons³. Forces supplied are often of poor quality and badly equipped; but since the UN is dealing with a sovereign state and since it has great difficulties in recruiting forces for peacekeeping operations in the first place, it is rarely able to hold the providing states to account. A private company which had an interest in continuing business for the UN could be held to much higher standards – and these would include standards on behaviour and human rights as well as efficiency in carrying out agreed tasks.
- 59 The United States has used DynCorp and subsequently Pacific A&E to recruit and manage monitors for it in the Balkans; so it is possible to imagine the UN as a whole adopting such a practice. This might turn out to be cheaper than current methods. The UN operation in Sierra Leone, UNAMSIL, costs about \$600mn a year. 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. It is also possible that such forces might be available more quickly to the UN and that they would be more willing to integrate under a UN command than is the case with such national contingents.

³ Although excluded by the Geneva definition, governments have often acted as contractors for mercenary forces – this was the practice of the Swiss Cantons and some German principalities – sometimes as a way of supporting their national forces in peacetime.

- 60 Many of the problems that arise when a sovereign government employs a PMC would not apply if it were contracted to the UN or to another international or regional body. It would not for example be a threat to sovereignty or stability; and the question of exploitation of raw material resources would not arise. There would also be no difficulty in monitoring the performance and behaviour of a PMC employed by the UN. As the UN Secretary General has suggested however there is not yet much political support for such ideas.

SCOPE FOR GOVERNMENT ACTION

- 61 Although successive governments have deplored the activities of mercenaries, no effective legislation exists to prevent either their recruitment or their participation in conflict. The 1870 Foreign Enlistment Act⁴ makes it an offence for a British subject without licence from Her Majesty, to enlist in the armed forces of a foreign state at war with another foreign state which is at peace with the UK; or for any person in Her Majesty's Dominions to recruit any person for such service. However none of the prosecutions under the 1870 Act, or its predecessor of 1819, have concerned enlistment or recruitment. It appears that the Director of Public Prosecutions considered prosecution in connection with enlistment for service in the Spanish Civil War but abandoned this because of the practical difficulty of assembling evidence of an activity taking place abroad. It is also questionable whether the Act would cover internal conflicts such as those in Africa today. The Diplock Committee, having examined the question in some detail, concluded that the Act was ineffective and should be repealed or replaced. The 1870 Act is paradoxical in that, were every country to adopt a similar law, it might mean that the recruiting activities of the British Government in Nepal and other countries would become illegal.

The Case for Regulation

- 62 There are a number of reasons for considering action to regulate activity by PMCs, PSCs or mercenaries. First, two general considerations:
- Bringing non-state violence under control was one of the achievements of the last two centuries. To allow it again to become a major feature of the international scene would have profound consequences. Although there is little risk of a return to the circumstances of the 17th and 18th centuries when privateers were hard to distinguish from pirates, and Corporations commanded armies that could threaten states, it would be foolish to ignore the lessons of the past. Were private force to become widespread there would be risks of misunderstanding, exploitation and conflict. It may be safer to bring PMCs and PSCs within a framework of regulation while they are a comparatively minor phenomenon.
 - Actions in the security field have implications which go beyond those of normal commercial transactions. They may involve the use of force and the taking of lives. Or they may impact on stability within a country or a region; this may be the case even where PMCs are not engaged directly in combat (MPRI's training programmes clearly altered the balance of forces in the Balkans for example).

⁴ This Act followed the case of the Alabama, a warship fitted out in Britain for use by the Confederate Forces in the American Civil War. Britain was in fact one of the last of the European countries to abandon mercenary forces (which were hired for Crimea though not deployed since they arrived too late).

63 More specifically:

- **Activity in this area by individuals or companies could cut across Britain's foreign policy objectives.**
- **British forces could find themselves confronting forces which had been assisted by a British company.** This contingency is not as remote as it might seem. In a world in which know-how is as important as hardware, consultancy and training abroad may have a significant impact. The techniques used by Special Forces, for example, are often highly classified.
- **Activity by British companies will also reflect on Britain's reputation.** Whatever the facts of any particular action, there are always likely to be people who will assume that if a British company is involved then it has some degree of approval from the Government. At the minimum, therefore, perceptions of British policy will be affected and there will be a risk of misinterpretation.
- **A major operation abroad by a British PMC might put British lives at risk.** Could the British Government be obliged to intervene if such an operation went badly wrong?

64 Regulation could also have a number of positive benefits:

- **It would set guidelines for the industry** and give them an indication of what was and was not expected of them by the government.
- **It could help establish a respectable and therefore more employable industry.** A number of commentators, including representatives of PMCs, have called for regulation on the grounds that establishing a respectable private military/security sector would help marginalise disreputable companies and individuals. If regulation encouraged the development of a reputable private military sector this could be of benefit to international organisations, NGOs and on occasion, sovereign governments.

65 There would on the other hand be two general difficulties in legislation or regulation:

- **The cost of regulation** including the burden it would place on both government and the private sector: this is covered in Annex C which comprises a regulatory impact assessment drawn up in accordance with the government guidelines.
- **The effectiveness of legislation.** This will be explored further below. There are however two problems that should be underlined. First, the activities for which regulation is being considered take place abroad, that is, outside the normal scope of British law. Second, PMCs are highly mobile. These are companies which often have few fixed assets or permanent employees and which can move relatively easily from one jurisdiction to another if they find the regulatory environment inconvenient (Herbst 1998).

66 Neither of these difficulties is necessarily insurmountable. Although a regulatory system might be less than completely foolproof it would have a good chance of working if the sector as a whole believed that it was in their interests. And if the regulatory regime was viewed as fair and reasonable those companies who chose to place themselves outside it by going offshore would be putting themselves on the margins of the sector and their reputations would suffer accordingly.

The international legal framework and legislative provision in other countries

- 67 One answer to the problem of mobile companies would be an international regulatory regime. Despite a certain amount of activity in this field it is clear that a workable international regime is still some way away. In 1989 the UN General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. This declared mercenary activity to be an offence under the Convention and called on states to take preventative measures against their recruitment, financing, training and use. The Convention's definition of a mercenary follows both that in the First Additional Protocol to the Geneva Conventions and the OAU Convention (discussed above in paragraphs 5 to 7). The Convention finally came into force on 20 October 2001 when Costa Rica became the 22nd state to deposit instruments of ratification or accession with the UN Secretary General. The other 21 states who have already done this are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.
- 68 The UK, in common with most other Western Governments, has not become party to the Convention mainly because it does not believe that it could mount a successful prosecution based on the definitions in the Convention. This is because of the extreme difficulty of establishing an individual's motivation beyond reasonable doubt. It is doubtful whether it would be practical to try to amend the Convention at this stage.
- 69 Details of legislative or regulatory provisions on PMCs or mercenaries in a number of foreign countries are set out at Annex B. Of these the two most interesting cases are those of the United States and South Africa: both of these are countries with an active PMC/PSC sector. The United States operates a licensing system. South Africa has passed new legislation though this is not yet fully in force.

OPTIONS FOR REGULATION

- 70 This section examines the main options for regulation on a national basis. The options outlined are not exhaustive, but are intended as a stimulus to thought and debate. Intermediate alternatives between the various options could be devised, as could ways of combining some of the features of the different options. In each case the paper outlines the possible measure and indicates some of the arguments for and against it.

71 A ban on military activity abroad.

This could be achieved either by an amendment of the 1870 Foreign Enlistment Act or by independent legislation.

Arguments for:

- This would be the most direct way of dealing with an activity that many find objectionable. The legislation could apply either to all such activities or to a limited range, for example direct participation in combat.

Difficulties:

- There would be difficulty in enforcing this legislation. Since the activity in question takes place abroad it would not be easy to assemble evidence which meets the standards required for a successful prosecution in British courts.
- A ban on military activity abroad would raise definitional problems. If the ban were applied only to active participation in combat, it would be open to a charge of inconsistency since training, strategic advice and other support may be vital to military operations. On the other hand if the ban were extended to the provision of services to combatants, it might apply to medical services – making the activities of some humanitarian organisations illegal. Would it apply to the provision, for example of electricity or water services? It would also be difficult to determine whether military activity should be defined to include activities such as guarding property.
- The Diplock Committee took the view that such a blanket ban would be an unwarranted interference with individual liberty.
- Such legislation could deprive weak but legitimate governments of needed support – which the international community is often unable or unwilling to offer.
- A blanket ban would deprive British defence exporters of legitimate business – services are often a necessary part of export sales.

72 **A ban on recruitment for military activity abroad**

The Diplock Report, which was published in 1976 following the involvement of British mercenaries in Angola, recommended legislation directed against activities in the UK to recruit people to take up service abroad in specified armed forces (although it did not recommend that that service itself should be made illegal). Those giving publicity to the recruitment opportunity would be liable for prosecution as well as those directly concerned. It also recommended that this legislation should be in the form of an Enabling Act empowering the government from time to time to specify particular armed forces for which it should be illegal to recruit. (The Diplock Report contains a full and interesting account of the merits and demerits of legislation in this area).

Arguments for:

- This avoids some of the difficulties in legislating for activities that take place abroad. In the form recommended by the Diplock Committee it would enable the government to intervene only when there were compelling policy reasons to do so.

Difficulties:

- This proposal was directed primarily towards the recruitment of freelance mercenaries who are normally employed on a relatively casual basis. It might not work so well in the case of private military companies. For example, it would not prevent permanent employees of the companies from acting as consultants. It is also questionable whether it could prevent a company which had recruited men for one conflict transferring them to another.

- This sort of approach would enable the government to prevent the worst kind of interventions by the private military sector. But it would do little to contribute to the creation of a respectable and responsible industry.
- It might be possible to evade such measures today by using an offshore centre and advertising through the internet.

73 **A licensing regime for military services**

Legislation would require companies or individuals to obtain a licence for contracts for military and security services abroad. The activities for which licences were required would be defined in the legislation. They might include, for example, recruitment and management of personnel, procurement and maintenance of equipment, advice, training, intelligence and logistical support as well as combat operations. It would be for consideration whether or not to include consultancy services on security measures for commercial premises – a large number of small consultants exist in this field; or to establish a threshold for contracts so that only those above a specified value required a licence. For services for which licences were required, companies or individuals would apply for licences in the same way as they do for licences to export arms (though not necessarily to the same Government Department). Criteria for the export of services would be established on the same lines as those for exports of arms.

Arguments for:

- Since the government licences the export of military goods, it seems logical that it should also licence the export of military services.
- The United States has operated a licensing system over two decades without apparently giving rise to major problems.
- This would be a more flexible instrument than an outright ban. The government would have the opportunity to consider the nature of the service in question and the political and strategic background against which it took place.

Difficulties:

- There again would be enforcement difficulties. Since the activity which is licenced takes place abroad, it would be difficult to know (or prove) whether the terms of the licence were breached (though transparency conditions could be included in the licence eg licencees could be required to facilitate access to places where their activities were taking place).
- The circumstances under which a licence was issued might change. Should the government require the licence to be re-examined every time there is a change in the political situation on the ground?
- Licensing could give rise to delay. This could work to the disadvantage both of British companies and their customers.
- The industry would need reassurance on the question of confidentiality. In some cases it would not merely be commercial confidentiality that would be at stake but also military security.

- Companies not wishing to be subject to a licensing regime could move their operations offshore. (This would however mark them as possibly being less than wholly respectable.)
- Unless special provisions were made a licensing regime could put British defence exporters at a competitive disadvantage. This could however be dealt with either by ensuring that licences for arms exports included provision for associated services eg training and maintenance. Or there could be an Open General licence allowing companies to support UK equipment that has already been exported under a licence.

74 **Registration and notification**

Legislation would require UK firms wishing to accept contracts for military or security services abroad to register with the government and to notify them of contracts for which they were bidding. Under normal circumstances the government would not react; but it would retain reserve powers to prevent the company from undertaking a contract if it ran counter to UK interests or policy.

Arguments for:

- This would be a light regulatory framework. In most cases it would impose a minimal burden on the companies.
- It would increase the government's knowledge of the sector and would provide an opportunity to deal with potential problems before they arose.

Difficulties:

- This option is essentially a licensing system, though one in which a licence is automatically granted unless the government takes action to withhold it. It is therefore subject to many of the same difficulties as the option above. There would be difficulties with **enforcement**, with **changing circumstances**, with **confidentiality** and with **evasion**. However the risks of delay would be less and costs would be lower.
- A less explicit licensing system along these lines would also confer less benefit in terms of helping establish a reputable industry.

75 **A General Licence for PMCs/PSCs**

Instead of issuing licences for specific contracts the government could licence the company itself for a range of activity possible in a specified list of countries. In doing so the agreement could set out standards it expected the companies to meet eg that they should not employ people with criminal records or ex-servicemen without an honourable discharge.

Arguments for:

- On its own such a system would provide little protection for the public interest but it might be useful in conjunction with one of the other options.
- This could be employed as an alternative to licensing individual service contracts or, more credibly perhaps, as an additional measure. The latter is the practice in the United States.

Difficulties:

- This could put the government in the position of lending credibility to companies of whose operations it knew little or whose character might change.

76 **Self-regulation: a Voluntary Code of Conduct**

Companies in the private military and security sector would become members of a trade association (the British Security Industry Association, for example, is already active in the field of domestic security; many companies operating overseas are already associate members of it). The government would ask the Association, in consultation with the companies, with their clients, with NGOs and with the government itself, to draw up a Code of Conduct for work overseas. Members of the Association would undertake to adhere to this. Those who did not would have to resign from the Association (a partial model for a Code of Conduct exists in the form of the US/UK code for multinational companies employing security services in third countries). The Code might cover matters such as:

- Respect for human rights.
- Respect for international law including international humanitarian law and the laws of war.
- Respect for sovereignty.
- Transparency including access for monitors or government representatives.

Arguments for

- The government would regard membership of the Trade Association as providing an assurance of respectability. It would be able to recommend to companies or foreign governments that they should employ only companies who are members; and it would be able to promote business abroad for them.
- This would not involve the government in unenforceable legislation or regulation. And the voluntary code would be policed by the industry itself who often have a better idea than anyone else of what is happening in the field. The provision for external monitoring could provide a further check.
- It would be a relatively unburdensome form of regulation.
- It would help establish standards of behaviour within the industry and would enable outsiders to identify respectable business partners.

Difficulties

- This would not meet one of the main objectives of regulation, namely to avoid a situation where companies might damage British interests. The lack of legal backing would mean that the Government might be compelled to watch while a company pursued a course that was plainly contrary to the public interest.
- The Industry Association could find itself in difficulties either because of an inability to be sure exactly what was going on abroad; or if it was obliged to discipline one of its more important members.

PARLIAMENTARY SCRUTINY

- 77 If the Government decided to adopt a licensing or other regulatory regime for the export of military services, it would be logical for this to be subject to the same reporting requirements vis à vis Parliament as is the case for arms export licences.
- 78 If legislation were to be passed, the Government would consult the Crown Dependencies and the Overseas Territories with a view to extending it to these jurisdictions.

THE EUROPEAN UNION

- 79 There is no explicit mention of trade in military services in the EC Treaty. Article 296, which allows Member States to take measures necessary for the protection of essential interests of its security, refers only to the production of and trade in arms, munitions and war material; services are not covered. It is nevertheless likely that national action to restrict or licence trade in military services would be permitted provided it was non-discriminatory as between the nationals and companies of different Member States. The EC Treaty contains derogations on grounds of public policy and public security under which there would be reasonable arguments that this action would be justified.
- 80 Although national action in this field would probably be lawful it would make sense if possible to act in concert with European Union partners. If, following consultations, the Government decided that some restrictions on trade in military services were desirable it would be sensible to discuss this with EU partners to see whether common or coordinated action would be feasible.

COMMENTS ON THE GREEN PAPER

- 81 The FCO is publishing this paper to solicit the views of Members of Parliament, NGOs, companies, other organisations and individuals with an interest in this subject. Comments are invited so that the options for regulation set out in this paper – or any other options that may be suggested – receive the widest possible consideration and debate.
- 82 Comments should be addressed to:

Green Paper Unit
Room K.142, UND
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH

or by e-mail to: greenpaper@fco.gov.uk

They should reach us no later than 12th August 2002.

- NB: Unless you ask for your views or name to remain confidential the FCO reserves the right to make public any comments we receive. Additional copies of this paper can be obtained from the FCO website at www.fco.gov.uk or by writing to the address given above.

ANNEX A

Mercenaries: Africa's Experience 1950s-1990s						
Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Sierra Leone	1950s			Harry Oppenheimer of De Beers	Sir Percy Stilltoe (UK) To conduct anti-smuggling activities	
Kenya, Malawi, Tanzania	1960s-70s	Kulinda Security Ltd (Watchguard)	Various	Governments	Military training	
Zambia	1967 - 69	Watchguard	Various	Zambian Government	Provision of forces for counter-coup; guarding national border	
Belgian Congo (now DRC)	1960-1961	Compagnie Internationale	200 mercenaries mainly Belgian and South African	Secessionist leader Moise Tsonbe and Belgian company, Union Minière (UM)	To promote secession of Katanga (now Shaba) from the Congo and protect UM concessions	Mercenaries defeated by combined UN and Congo forces
Belgian Congo	1964-1965	'Five Commando', led by Col 'Mad Mike' Hoare	1,000-strong force, mainly South African, Belgian, French and Rhodesian	The CIA and then President Moise Tshombe	To fight patriotic nationalist forces led by PM Patrice Lumumba	Nationalists defeated, Lumumba assassinated, neo-colonialism established
Belgian Congo	1967	Remnants of 'Five Commando' led by Bob Denard and Jacques Schramme	Same as above	Unknown	To overthrow President Sese Seko Mobutu	Seized border town Bukavu but failed in plot

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Rhodesia (now Zimbabwe)	1965-80	Mostly former UK soldiers, recruited into Rhodesia Light Infantry (RLI) and Special Forces (SAS)	Mainly British	Rhodesian Government	Support white minority rule against Mugabe's ZANU and Nkomo's ZIPRA	High casualties; minority government defeated, elections held in 1980, power transferred to Mugabe
Biafra, Nigeria	1967	Group of French mercenaries led by Robert Faulques, veteran of Katanga, and later Rolf Steiner	53-strong; mainly French and German	French Secret Service and secessionist leader Col. Ojukwu	To help Biafra secede from Nigeria	Defeated by federal troops, 5 killed
Angola, Zaire	1975-	Security Advisory Services Ltd	UK, former paratroops	Donald Telford, UK and recruiting agency run by John Banks	Force recruiting support CIA-backed FNLA in Angola against Moscow-backed MPLA and South Africa-backed UNITA	Defeated by MPLA, some tried and executed as war criminals (1976)
Benin	1977	'Force Omega' led by Bob Denard	'60 white and 30 black mercenaries'	Opponents to the Government	Overthrow the President	Coup failed, some killed; Denard later stages successful coup on Comoros Islands
Mozambique	1980s	Lonrho	Gurkhas		Rural security	
Mozambique, Sudan, Kenya and others	1980s-early 1990s	Defence Systems Ltd (DSL)	British	International organisations (World Bank, UN, humanitarian NGOs)	Installation security and force training	Ongoing
Seychelles	1986-?	Longreach Pty Ltd			Military intelligence support	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Southern Africa	1986-90	KAS Enterprises (WatchGuard)			Anti-poaching operations	Terminated
South Africa	1989	Executive Outcomes (EO)			Special forces training	
Algeria	1992	Eric SA			Oil pipeline security	
Angola	1992	EO	Southern African and European		Covert reconnaissance for De Beers and other South African mining houses; discussions begun with Heritage Oil & Gas (Soyo)	
Angola	1993	EO	Southern African and European	Angolan MPLA-government	Defeat UNITA, using air force and high tech communications	UNITA substantially weakened
Angola	1993-	EO	Southern African and European	Angolan MPLA Government	Military training facilities	TERMINATED January 1997
Angola (Soyo)	1993-94	EO	Around 500 South African	Oil companies	Oil facilities seizure from UNITA rebels and security	Successful; recaptured by UNITA after EO left
Angola	1994	EO	Southern African and European	MPLA Government	Air and logistical support for Angolan army (FAA)	Diamond fields and rebel stronghold seized from UNITA; EO withdrew January 1996
Angola	1994	Capricorn Systems International	RSA, Others		Air logistical support; combat air support	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Angola	1994-95	Saracen International	RSA, Others	FINA	Mining facilities security	
Angola	1994	Teleservices International	RSA, Others		Mining and oil facilities security	
Angola	1995-96	Alpha-5	RSA, Others		Mining facilities security	
Angola	1995-98	Teleservices International			Mining facilities security	
Angola	1995-96	Ibis Air International (formerly Capricorn Systems International)	Southern African and Others		Air logistical support; combat air support Demining; mining facilities security; establishing special rapid reaction police unit	
Angola	1996	Saracen International	Southern African and Others			
Angola	1996	Stabilco	As above		Mining and other commercial facilities security	
Angola	1996	Omega Support Ltd	As above		Mining and other commercial facilities security	
Angola	1996-?	Panasec Corporate Dynamics; Bridge Resources; COIN Security; Corporate Trading International			Mining and other commercial facilities security	
Angola	1996	Shibata Security			Demining; mining facilities security	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Angola	1996	Longbeach Pty Ltd			Rural security, mining and other commercial facilities security	
Angola	1996	Defence Systems Ltd (DSL)	1000 personnel by October 1997, mostly Angolan		Oil facilities security (Soyo); mining facilities and transportation security; Humanitarian assistance security	
Angola	1996	Military Professional Resources Incorporated (MPRI)	US, others		Negotiations about military training	FAILED
Angola	1997-98	Stabilico (1998:SafeNet)	South African, Others		Military support to UNITA	
Angola	1997-98	Omega Support Ltd (Strategic Concepts Pty Ltd)			Military support to UNITA	
Angola	1997-98	Panasec Corporate Dynamics			Military support	
Angola	1997-98	International Defence and Security (IDAS)	Various		Military support; mining facilities seizure and security	
Angola	1997-98	AirScan		Angolan government	Military support and training; Air combat support	
Angola	1998	IRIS	Recruited 300 South African and British personnel	Backed by British, South African and US businesses	Military support to UNITA?	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Botswana	1991	EO		De Beers	Covert reconnaissance for De Beers	
Botswana	1992	EO		De Beers, Others	Covert reconnaissance for De Beers and other South African mining houses	
Cameroon	1992	Secrets			Military training of Presidential Guard	
Congo-Brazzaville	1994-96	Levdan	65 former Israeli military personnel	Brazzaville government	Military training to Presidential Guard and armed forces	
Liberia	1995	MPRI		Government	Military training	
Malawi	1995	EO		Government	Military training	
Mozambique	1995	EO		Government	Military training, demining	
Mozambique	1996-97	Ronco Consulting Corporation			Demining	
Namibia	1991	EO		De Beers	Covert reconnaissance for De Beers	
Sierra Leone	1991	Specialist Services International		Sierra Leonean Government	Port security	
Sierra Leone	1992	Marine Protection Services		Sierra Leonean Government	Policing of fisheries; tax collection	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Sierra Leone	1994	Special Protection Services		Mining Companies	Mining facilities security	FAILED
Sierra Leone	1994	Frontline Security Services		Sierra Rutile and SIEROMCO	Mining facilities security	FAILED
Sierra Leone	1995	EO, assistance from South African Army soldiers and Russian aircraft pilots	500 South African EO-personnel	Sierra Leonean Government	Against rebel movement Revolutionary United Front; military training and support; siege relief, humanitarian assistance, and repatriation, mining facilities seizure and security	Rebels split up and driven back to Liberian border
Sierra Leone	1995-96	Ibis Air International (formerly Capricorn Systems International)			Air logistical support; combat air support	
Sierra Leone	1995	J&S Franklin (Gurkha Security Guards Ltd)		Sierra Leonean Government	Military training and support for Republic of Sierra Leone Defence Forces (RSLDF) and mine protection	Terminated a few weeks later following rebels killing the leader
Sierra Leone	1995	Control Risks Group; Group 4			Mining facilities security	TERMINATED
Sierra Leone	1995	DSL			Military training, mining facilities security	TERMINATED

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Sierra Leone	1996	EO			Military training and support; rebel HQ seized	
Sierra Leone	1996	Sandline International (EO UK)		Government	Military training	
Sierra Leone	1996	LifeGuard Management (from EO)			Mining facilities security	
Sierra Leone	1996-97	Teleservices International			Mining facilities security	
Sierra Leone	1997	EO			Operations transferred to LifeGuard and Sandline International, January 1997	
Sierra Leone	1997	LifeGuard Management	285 employees (Zimbabwean, Namibian, Angolan, Mozambican and South African mercenaries)		Mining facilities security, military training and support; intelligence gathering	
Sierra Leone	1997-98	Sandline International	At least 30 personnel		Logistics, intelligence and air support to Nigerian ECOMOG force based in Freetown; intelligence and reconnaissance; military training and logistics for Kamajor fighters	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
Sierra Leone	1997-98	Cape International Corporation		Sam Norman, head of Kamajor fighters	Military training, mining facilities security	
Sierra Leone	1997-98	ICI (Pacific Architects Engineers)			Logistics and air transport security; personnel protection	
Sierra Leone	1998	EO			Management services to LifeGuard and Sandline	
Sierra Leone	1998	Lifeguard Management			Mining facilities security, military training and support; intelligence gathering; counter-insurgency operations	
Sierra Leone	1998	DSL		UNDP	Security for UN humanitarian relief convoys	
Uganda	1995	EO			Military training, mining facilities security	
Uganda	1996	Saracen Uganda			Mining facilities security	
Uganda	1997-98	AirScan			Military support to rebels	
Rwanda	1994-?	Ronco Consulting Corporation		Rwandan Patriotic Front	Demining; Limited military training for Rwandan forces	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
South Africa	1990-91	EO			Special Forces training	
Togo	1995	Service and Security			Police paramilitary training	
Zaire	1996	2000 mercenaries with tanks, helicopters and jets involved, EO denied involvement allegedly	French, British, South African, Angolan, Serbian, Moroccan, Belgian, Mozambican	Zairean Government	Military support against rebels	Mobutu was defeated White Legion disappeared into Congo-Brazzaville
		French security officials recruited around 300 mercenaries for Mobutu's so-called White Legion				
Zaire	1996-97	Omega Support Ltd		Kabila	Military training and support to rebels	
Zaire	1997	EO/Sandline			Military support and training	FAILED
Zaire	1997	International Defence and Security (IDAS)		Kabila	Military training and support to rebels	
Zaire	1997	Stabilco			Military support	FAILED
Zaire	1997	GeoLink			Military support	TERMINATED
Zaire/DRC	1997	Intercon Consulting Services			Military training, mining facilities security	
DRC	1998	DSL		DRC-Government	Oil facilities security; protection of US embassy	

Country	Dates	Mercenaries Involved	Nationality	Recruited by	Objective	Outcome
DRC	1998	SafeNet (formerly Stabilco)			Military support and training against Kabila government	FAILED
DRC	1998	IRIS			Military support and training	
DRC	1998	Silver Shadow			Military training	CANCELLED
DRC	1998	Angolan EO spin-offs		DRC-Government	Aerial reconnaissance, intelligence-gathering, operations planning	
DRC	August 1998?		More than 100 South African and French troops	DRC-Government?	Defence of mining installations in Katanga province	
Zambia	1995	EO			Military training	

ANNEX B: Legislation outside the UK

Few countries have national legislation on PMCs. The following is our understanding of the position of different countries following informal contact with officials. Anyone wishing to obtain an authoritative account should contact the government in question.

United States

The US Arms Export Control Act of 1968 regulates both arms brokering and the export of military services. These were included in the Act by amendment in the 1980s following the discovery by the State Department that a number of private companies were giving military training to individuals from countries with whom the US did not have good relations. This Act now constitutes the primary law in the US establishing procedures for the sale of military equipment and related services.

The Act stipulates the purposes for which weapons and services may be transferred; these range from self-defence to internal security. Defence services are defined as including the provision of and assistance in the design, manufacture and use of defence equipment, any provision of technical data on that equipment, any provision of military advice and any training of foreign units and forces, both regular and irregular. Training includes training delivered by correspondence courses and media of all kinds, and through exercises.

US companies offering military advice to foreign nationals (in the US and overseas) are required to register with and obtain a licence from the State Department under the International Transfer of Arms Regulations (ITAR), which implement the Arms Export Control Act. The Government maintains the right to take action to confirm that licensing provisions are being met. In addition to this licensing procedure, congressional notification is required before the US Government approves exports of defence services worth in excess of \$50 M.

The US Federal Criminal Statute prohibits US citizens from enlisting or from recruiting others from within the US to serve a foreign government or party to a conflict with a foreign government with which the US is at peace.

South Africa

The South African Regulation of Foreign Military Assistance Act (FMA) entered into force in September 1998. It will become fully effective shortly when enabling legislation is passed into law. Before the FMA was passed only members of the South African National Defence Force (SANDF) were prohibited from engaging in mercenary activities. The government's decision to address the issues of mercenaries and PMCs in legislation was inspired mainly by the controversy surrounding the activities of South Africa's PMCs. The best known of these was Executive Outcomes.

The FMA creates an integrated mechanism for addressing the issues of mercenaries, PMCs and conventional arms control. It provides that no person within South Africa or elsewhere may recruit, use or train persons for, or finance or engage in mercenary activity. Mercenary activity is defined as 'direct participation as a combatant in armed conflict for private gain.' The Act regulates rather than prohibits foreign military assistance. Requests to supply such assistance and all arms related materials are scrutinised by the National Conventional Arms Control Committee (NCACC) which is chaired by a Minister from a government department having no direct links with the defence industry.

In most cases the Act's application depends upon the existence of armed conflict. The recipient of the service must be party to the conflict. If, for example, the recipient was a private company in need of protection services for legitimate concerns, the Act would not apply.

The NCACC has the power to refuse an application, or to grant a licence. Decisions are based on principles of international law, including human rights law. Licences may be revoked should there be a change in circumstances in the recipient state.

Australia

The Australian Crimes (Foreign Incursions and Recruitment) Act of 1978 makes it an offence to recruit mercenaries within Australia or for Australians to fight abroad in non-governmental forces.

The Commonwealth Director of Public Prosecutions is responsible for bringing any prosecutions under the Act. To date there have been few successful prosecutions but the Act is thought to have value as a deterrent. In 1998-9 the Director of Public Prosecutions laid 5 charges for indictable offences under the Act.

Austria

The Austrian Criminal Code has sections relating to the formation of military associations, building up of weapons stores and threats to Austrian neutrality. There has been no legal action against mercenaries or private military companies during the past two years. There are no plans to become party to the 1989 UN Convention.

Belgium

The Belgian Parliament passed legislation in 1979 banning the participation of Belgians in foreign armies in foreign countries, but the necessary Royal Decree to make this law has not issued. Belgium is in the process of becoming a party to the 1989 UN Convention.

Canada

Under the Foreign Enlistment Act 1937 a Canadian is liable to prosecution for enlisting in an army which is actively engaged in warfare against a country allied to Canada. We are not aware of any prosecutions under this legislation. Canada has no plans to become party to the 1989 UN Convention.

Denmark

Denmark has no legislation specifically aimed at regulating mercenaries or private military companies. However, paragraph 128 of the Penal Code makes it an offence (punishable by a fine or up to two years' imprisonment) to recruit in Denmark for foreign war service. There is also a law dating from 1914 (introduced in connection with Danish neutrality in the First World War) which makes it an offence to encourage enrolment in armed forces, or to provide any other support in a war where the Danish state is neutral. This law also gives the government the power specifically to forbid military service in a given country. It is understood that the concept of military service in these laws includes service in armed rebel groups as well as state armies. There have been no recent prosecutions under these laws. The Danish Government has no plans to become party to the 1989 UN Convention.

France

The French Government is actively looking at the possibility of including in the Penal Code measures to deal more effectively with criminal activities linked to mercenaries. France has no plans to become party to the 1989 UN Convention.

Finland

Chapter 16 Section 22 of the Penal Code provides punishment for recruiting Finnish citizens to the armed forces of another State. Crimes committed by Finnish citizens or residents abroad can be punished under Chapter 1 Section 6 of the Code, provided that they are punishable also in the country where they were committed. This would be the case for many of the crimes typically committed by mercenaries. Chapter 1 Section 7 provides for universal jurisdiction concerning crimes against international law, including genocide, war crimes and crimes against humanity. Finland has no plans to become party to the 1989 UN Convention.

Germany

Germany has no legislation covering the activities of PMCs. Individual German citizens may sign up as mercenaries or join organisations such as the French Foreign Legion. Germany signed the 1989 UN Convention in 1990, but has not yet ratified it and is unlikely to do so in the foreseeable future.

Greece

The recruitment of mercenaries in Greece is illegal. There are no plans to change this legislation nor to ratify the 1989 UN Convention.

Italy

Italy ratified the 1989 UN Convention in 1995 and subsumed the Convention into Italian law by amendments to the relevant articles of the Penal Code. Under the legislation, all mercenary activity is prohibited. Paragraph 4 of the law covers activities other than direct combat and sets a penalty of 4 to 14 years imprisonment for hiring, using, financing or training of mercenaries. We are unaware of any prosecutions brought under the legislation.

Japan

Japan has no relevant legislation and no plans to introduce any. Nor are there any plans to become party to the 1989 UN Convention.

Netherlands

Since 1984 it has been illegal under Article 101 of the Dutch Criminal Code for Dutch nationals to enter military service for a nation with which the Netherlands is at war or is about to be at war. Violation of this article is punishable with a maximum of four years imprisonment or a maximum fine of Dfl 100,000 (£30,000). Under Article 107a, the same punishments apply in the event of an armed conflict other than a war in which the Netherlands is involved, either in individual or collective self-defence, or to restore international peace and security. The relevant articles do not include restrictions on activities other than in enemy military service. Article 205 of the Criminal Code states that the recruitment in the Netherlands of personnel for a foreign military service is an offence punishable with a maximum one year imprisonment or a maximum fine of Dfl 25,000 (£7,000). No prosecutions have ever been brought under these articles. There are no plans at present to extend this legislation, nor for the Netherlands to become party to the 1989 UN Convention.

New Zealand

New Zealand does not have legislation relating to the regulation or restriction of mercenary activity or the activities of private military companies; there are no immediate plans to introduce legislation. New Zealand is however taking steps to ratify the 1989 UN Convention. This is likely to take place in 2002.

Norway

The Norwegian Civil Penal Code includes provisions which criminalise the recruitment, without the King's permission, of troops in the realm for foreign military service. The Code also criminalises the formation, participation in or support of a private organisation of a military character. We are unaware of any prosecutions under these regulations. A 1937 Act also relates to measures preventing participation in wars in foreign countries. The Act provides that the King may issue an order prohibiting 1) anyone in the realm being recruited for military service for a country of which he is not a national and in which he has not resided for a prescribed period; and 2) anyone from leaving Norway for such a country in order to take part in a war. The purpose of the Act was to prevent Norwegians from participating in the Spanish civil war. Since then, the King has never made use of the authority the Act provides. There are at present no plans to extend existing legislation nor for Norway to become party to the 1989 UN Convention.

Portugal

The activity of Portuguese nationals engaged in mercenary activity abroad is banned under provisions of the Portuguese Criminal Code. These cover combat activities but not advice or technical assistance to foreign military forces. No prosecutions have been brought under the existing legislation.

Russia

Article 359 of the Russian Criminal Code makes the recruitment, training or financing of mercenaries, and participation by a mercenary in an armed conflict, punishable by imprisonment (4 to 8 years and 3 to 7 years respectively).

Spain

Spain has no legislation or regulation to prevent a private citizen from working abroad as a mercenary. The Code of Military Law makes it a punishable offence for a serving member of the armed forces. There are no plans to introduce legislation in this field nor for Spain to become party to the 1989 UN Convention.

Sweden

The concept of mercenary is not known in Swedish law. Thus the Swedish Penal Code does not explicitly prohibit a Swedish citizen serving as a mercenary, nor activities such as the training and financing of mercenaries. However, Section 12 of Chapter 19 of the Code prescribes that a person who, without the permission of the government, recruits people for foreign military service or service comparable to it or induces people to leave the country unlawfully in order to enter such service, shall be sentenced for unlawful recruiting to pay a fine or maximum imprisonment of six months or, if the country is at war, to imprisonment for a maximum of two years. Sweden has not become party to the 1989 UN Convention, some aspects of which are not compatible with Swedish law.

Switzerland

The Penal Code prohibits Swiss nationals from joining a force that is designed to fight abroad. The sole exception is the Vatican Swiss Guard. Between 1994 and 2000, 17 persons were sentenced for having served in foreign armed forces (eg the Foreign Legion).

Ukraine

Article 63 of the Ukrainian Criminal Code covers mercenary activities with a maximum sentence on conviction of 10 years' imprisonment. There are no plans to extend current legislation; Ukrainian legislation gives a basis for prosecution in the event of non-combatant support (eg medical) of a mercenary force. Ukraine ratified the 1989 UN Convention in 1993.

ANNEX C: Regulatory impact assessment

Introduction and summary

- 1 This Paper is a response to the recommendation of the Foreign Affairs Committee in its Report on Sierra Leone (HC116-I) that in respect of mercenary activities the Government publish a Green Paper outlining options for the control of private military companies which operate out of the UK, its dependencies and the British Islands. It does not make any recommendations. It is a consultative document, setting out a range of options for public discussion. In considering the case for regulation it is important to note the difficulty of assessing the administrative burden thereby entailed. Neither the nature of regulation nor the number of affected companies can be predicted at this stage.
- 2 There are a number of reasons for considering action to regulate the activity of PMCs, PSCs or mercenaries. Actions in the security field have implications which go beyond those of normal commercial transactions, eg they may involve the use of force and the taking of lives or have impact on the stability of a country or region. Activity in this area by individuals or companies could cut across British foreign policy objectives. British forces could find themselves confronting forces which had been assisted by a British company. Activity by British companies will also reflect on Britain's reputation.
- 3 Regulation would, however, place an administrative and financial burden on both government and the private sector. There are difficulties both for government and industry in seeking to arrive at precise estimates of the impact of the imposition of any controls. There is little hard data available about the likely impact on export businesses.
- 4 The options outlined in the paper are not exhaustive, but are intended as a stimulus to debate. A full regulatory impact assessment cannot be made at this stage. The Government would however welcome comments on the impact and cost to business the implementation of any of these options might impose.

Risks

- 5 A principal difficulty of regulation would be that since the activities in question take place overseas, successful prosecutions would be difficult to mount in the event of a suspected offence. Additionally, PMCs can be highly mobile; with few fixed assets or permanent employees, they can move relatively easily from one jurisdiction to another should they find a regulatory environment inconvenient.

Benefits

- 6 Regulation would help reduce the risk that the activities of private sector companies or individuals could undermine Britain's policies and interests abroad. While a regulatory system might be less than foolproof, it would have a good chance of working if the sector as a whole believed that it was in their interests; some in the industry might welcome clearer guidelines. If the result of regulation was to help establish a reputation for British companies in this sector as reliable and responsible partners it could have the effect of making it easier for them to win business, for example from international organisations. And if the regulatory regime was viewed as fair and reasonable, those companies who chose to place themselves outside it by going offshore would be putting themselves on the margins of the sector and their reputations would suffer accordingly.

Options

- 7 The options set out in the Paper are:
- a) a ban on military activity abroad;
 - b) a ban on recruitment for military activity abroad;
 - c) a licensing regime for military services;
 - d) registration and notification;
 - e) a general licence for PMCs/PSCs;
 - f) self-regulation: a voluntary code of conduct.

Small Business Impact

- 8 Many PMCs are small businesses with few permanent employees; staff are contracted as required. A total ban on military activity overseas could lead to the demise of many of these companies. Any form of regulation would have a cost impact (see paras 9-15 below).

Issues of Equity and Fairness

- 9 It is difficult to gauge the impact of any new controls on every business which might be affected by them. Depending on the services covered by any form of regulation, there would be some companies where the burden would not be that great because they would already be involved in applying for licences for the supply of goods and technology, or to undertake trafficking and brokering. However, there would be others that were not involved in such business. For them the requirements of any licensing process might add significantly to their costs.

Costs

- a) a ban on military activity abroad*
- 10 An outright ban on the provision of all military services would deprive British defence exporters of contracts for services of considerable value. Since exports of defence equipment are frequently dependent on the supplier being able to provide a service package a large volume of defence export sales would be lost in addition to the value of the services themselves. It is not possible to estimate what this could amount to but it is clear that the cost to British industry would be considerable. Significant losses could also impact on the defence industrial base to the detriment of our defence capability.

b) a ban on recruitment for military activity abroad

- 11 A ban on recruitment would incur costs to individuals who are potential recruits. Recruiting companies would either cease to exist or would move off-shore. Rigorous policing to ensure that breaches were discovered would be expensive, time-consuming and unlikely to be cost-effective, since recruitment activity is very small-scale.

c) a licensing regime for military services

- 12 The regulatory impact of any new controls would be based on the requirement to obtain a licence for contracts for military and security services abroad and maintain records for inspection for the purpose of ensuring compliance. This requirement would only apply to those persons who propose to engage in the activities that would be defined in the legislation. Such a regime would impose a burden on companies; staff time would be needed to prepare and support licence applications. Delays in decisions to issue a licence would be expensive if they led to loss of contracts. As noted in para 3 above, it is difficult to gauge the cost impact of such new regulation on companies as there is little hard data available.

- 13 The administrative burden to government of a licensing regime would be significant in terms of staff resources and IT investment, and may add to the work load of those operating the existing export licensing system. It is too early to estimate what this might be with any sort of precision. Additionally, there is no real basis for estimating how many licences might be processed as it is yet to be decided how widely any such controls might be drawn. An example of the sort of costs that might accrue, however, are those estimated in relation to the Export Control Bill: in the scenario proposed there, the cost of processing 200 to 400 additional licences for HMG as a whole was estimated to be in the range of £700,000-£800,000 in the first year and between £470,000 and £570,000 for subsequent years. It is clear that additional costs would be incurred by whichever Department acts as the licensing authority and also by those other Departments consulted about licence applications. Such costs would include recurrent staff and IT costs and also one-off IT investment. Costs would also be incurred by the agencies designated to ensure compliance and enforce the controls. The sum involved would depend on whether the licensing regime sought to control all military and security services or only certain services. It would be premature to place a figure on these.

d) registration and notification

- 14 If a registration and notification system were to be introduced, companies would incur costs, as above, in preparing and submitting registration and contract notification applications. The overseeing government department would also incur additional costs in creating a registration system, staff to receive, register and arrange scrutiny of contract notification forms. Other interested government departments would also need to provide staff time for consultation purposes.

e) a general licence for PMCs/PSCs

- 15 Depending on the scope of a regime licensing military services overseas, the costs of a general licensing scheme for PMCs/PSCs (paragraphs 12-13 above) should be less.

f) self regulation: a voluntary code of conduct

- 16 The costs of self-regulation would fall entirely upon companies, since they would need to finance the industry association to oversee the scheme. It is not possible at this stage to quantify precisely the compliance of a voluntary scheme, since the code of conduct which would set the standard has yet to be devised.

ANNEX D: Bibliography

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