

Conference Report

The Involvement of the Private Security Sector in Peacekeeping Missions



Compiled by Margaret Gichanga, Melanie Roberts and Sabelo Gumedze
Institute for Security Studies, Nairobi Office, Kenya, 21 – 22 July 2010

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Participants in the Nairobi conference

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Acronyms

ACOTA	African Contingency Operations Training and Assistance Programme
ACRF	Africa Crises Response Force
ACRI	African Crisis Response Initiative
ASF	African Standby Force
AU	African Union
BAPSC	British Association of Private Security Companies
CPRD	Centre for Policy Research and Dialogue for Public Affairs
DDR	Disarmament, Demobilisation and Reintegration
DRC	Democratic Republic of Congo
GPOI	Global Peace Operations Initiative
ICC	International Criminal Court
ICRC	International Committee for the Red Cross
IDRC	International Development Research Centre
IPOA	International Peace Operations Association
IPSS	Involvement of the Private Security Sector in African Conflicts, Peacekeeping and Humanitarian Assistance Operations
ISS	Institute for Security Studies
JEM	Justice and Equality Movement
MEJA	Military Extraterritorial Jurisdiction Act
MONUC	The United Nations Mission in the Democratic Republic of Congo
OAU	Organisation of African Unity
PASA	Pan-African Security Association
PMC	Private Military Company
PMP	Peace Missions Programme
PMSC	Private Military/Security Company
PSC	Private Security Company
SPLM	Sudan People's Liberation Movement
SSG	Security Sector Governance Programme
SSR	Security Sector Reform
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
US	United States

Overview

The Security Sector Governance (SSG) Programme of the Institute of Security Studies (ISS), supported by the International Development Research Centre (IDRC), conceptualised, organised and hosted a two-day conference on The Involvement of the Private Security Sector in Peacekeeping Missions. The conference took place on 21 and 22 July 2010 at the ISS offices in Nairobi, Kenya. The event was organised under the auspices of the ISS project entitled The Involvement of the Private Security Sector in African Conflicts, Peacekeeping Missions and Humanitarian Assistance Operations (IPSS).

Funded by the International Development Research Centre (IDRC), the IPSS project seeks to critically investigate the role of the private security sector in African conflicts, peacekeeping missions and humanitarian assistance operations, in order to inform the development and application of appropriate norms and standards at international, regional and sub-regional levels, as represented by the United Nations (UN) the African Union (AU), and the Regional Economic Communities (RECs) respectively.

Expected outcomes of the IPSS project include an improved understanding of the role of the private security sector in African conflicts, peacekeeping missions and humanitarian assistance operations in Africa; a contribution towards an appropriate regulatory framework for private military engagement in Africa, including a revision of the 1977 Organisation of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa; and the development of normative standards by Private Military/Security Company (PMSC) users in African conflicts, peacekeeping missions, and humanitarian assistance operations.

The two-day conference was attended by the outgoing IDRC Regional Director for Eastern and Southern Africa, Dr Constance Freeman; the IDRC Senior Programme Specialist responsible for the Peace, Conflict and Development Programme Initiative, Ms Njeri Karuru; the Swiss Ambassador Designate for Kenya, Rwanda, Burundi, Uganda, Somalia and the Seychelles, His Excellency Mr Jacques Pitteloud; and the First Secretary at the Swiss Embassy for Kenya, Rwanda, Burundi, Uganda, Somalia and the Seychelles, Mr Michael Cottier.

During the conference, Ms Njeri Karuru gave a keynote speech and Dr Freeman followed with a few words highlighting the importance of thorough research and an understanding of the private security sector in order to inform improved policy options geared towards a more peaceful and secure African continent. On behalf of the ISS, Dr Wilson Kipkore gave the welcoming address and finally Mr Henri Boshoff, again on behalf of the ISS, made the closing remarks. Despite the fact that the conference was a PMSC-free zone, Mr J.J. Messner from the International Peace Operations Association (IPOA) represented the private security industry.

The following members from the ISS made presentations during the conference: Them bani Mbadlanyana ('At the crossroads between Moralpolitik and Realpolitik: in search of common ground for the use of private military and security companies in African peacekeeping missions'); Margaret Gichanga ('Fusing the privatisation of security with peace and security initiatives'); Xavier Ejoyi ('Between principles and practice of safety and security in African peacekeeping contexts'); and Sabelo Gumedze ('The draft International Convention on the Regulation, Oversight and Monitoring of Military and Security Companies: implications for peacekeeping missions in Africa'). The rest of the presenters, from diverse fields and backgrounds, came from Africa and beyond. Ms Margaret Gichanga and Ms Melanie Roberts were the conference rapporteurs. Ms Mmakwena Rabele and Ms Samira Yusuf were responsible for the logistics.

The conference was divided into six different sessions as follows:

- Session I: The nature of the debate on PMSCs and peacekeeping missions
- Session II: Implications for the use of PMSCs in peacekeeping missions
- Session III: Challenges and opportunities of PMSCs in peacekeeping missions
- Session IV: Perspectives on PMSCs and peacekeeping missions
- Session V: Impact of PMSCs on national armed forces, human security, and safety and security
- Session VI: Regulatory approaches to the use of PMSCs

The presenters were made up of both upcoming and seasoned researchers in the field of private security.

Day 1

21 July 2010

Welcome and Introduction

WELCOMING ADDRESS

DR WILSON KIPKORE

On behalf of the ISS Nairobi Office, the Acting Office Director Dr Kipkore welcomed the participants to the Conference on the Involvement of the Private Security Sector in Peacekeeping Missions. In his welcoming address, he highlighted the ISS' mission to conceptualise, inform and enhance the debate on human security in Africa in order to support policy formulation, implementation and decision making at all levels. It was for this reason that the ISS organised the conference, with the aim of deliberating on the involvement of private security in Africa's peacekeeping missions.

Dr Kipkore highlighted the fact that the conference was organised under the auspices of the ISS Project on the Involvement of the Private Security in African Conflicts, Peacekeeping Missions and Humanitarian Assistance Operations. The project, he stated, was funded by the IDRC, which since 2006 had supported the ISS in conceptualising, informing and enhancing the debate on the privatisation of security in Africa. Dr Kipkore expressed his hope that the conference would engender a robust debate and contribute to making peace happen not only in 2010 but also for the generations to come. Dr Kipkore noted that this would be in line with the key objectives of the partnership between the African Union (AU) and the ISS of making peace happen on the continent.

In his address, Dr Kipkore postulated that the complexities of African peacekeeping operations were not in dispute. The issue of non-state actors' involvement in inherent state functions presented a plethora of challenges in the use of PMSCs in peacekeeping missions. The perception of PMSCs as a reincarnation of mercenaries was noted, and Dr Kipkore emphasised that this, arguably,

hindered an informed analysis of the role that PMSCs play in peacekeeping. He emphasised that the objective of the conference was not to deliberate on mercenaries but, rather, to focus on how PMSCs could enhance African peace and security. In particular, the conference was intended to interrogate the role of PMSCs in non-core military functions of peacekeeping.

Dr Kipkore also mentioned that the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (Working Group) has provided the opportunity to discuss the fundamental question of the role of the state to exercise the monopoly on the use of force. He averred that the forum was aimed at improving effective information sharing and fostering the introduction of legislation or other measures in order to regulate and monitor activities of PMSCs on the international market.

Dr Kipkore noted that since 2007, the ISS had co-operated and engaged with the Working Group during its sessions and regional consultations. He mentioned that the ISS had made extensive comments on the draft of a possible convention on the regulation, oversight and monitoring of PMSCs. He further noted that states were also given an opportunity to comment on the draft of a possible convention that, after revision by the Working Group, was to be presented to the Human Rights Council for consideration in September 2010.

Dr Kipkore stated that the conference brought together experts from within and outside Africa in order to share knowledge on the privatisation of the security phenomenon as it applied to peacekeeping operations. With these remarks, the Conference on the Involvement of the Private Security in Peacekeeping Missions commenced.

KEYNOTE ADDRESS

MS NJERI KARURU

Ms Karuru, the IDRC's Senior Programme Specialist responsible for the Peace, Conflict and Development Programme Initiative, began her keynote address by highlighting that the IDRC was a Crown Corporation that was created by the Parliament of Canada in 1970. She noted that the main objective of the IDRC was to assist developing countries in applying science and technology to find practical, long-term solutions to the social, economic, and environmental problems they faced. She noted that the IDRC's support was directed towards creating a local research community whose work would build healthier, more equitable and more prosperous societies.

Ms Karuru noted the partnership between the IDRC and the ISS, which has been ongoing since 2006, was aimed at facilitating African dialogue around the manifestations of the private security industry. The lack of research undertaken towards a more thorough understanding of the private security sector, especially by African scholars, informed the IDRC's support for the project managed by the ISS. Certainly initiatives such as this one, she noted, would engender robust dialogue and contribute to viable policy options for the effective regulation and control of the private security industry in Africa.

Ms Karuru stated that the IDRC's regional offices, such as the one in Nairobi, sought to provide a local perspective to the Centre's programming, nurture partnerships, and provide a first point of contact for researchers in developing countries. The regional offices were also aimed at ensuring a closer monitoring of risks associated with the Centre's work and to allow the IDRC to respond to opportunities in a timely and coherent way. She noted that these regional offices manage activities in Southeast and East Asia, Latin America and the Caribbean, Middle East and North Africa, West and Central Africa, South Asia and China and finally Eastern and Southern Africa.

The aim of establishing a research centre for international development is to foster 'a new instrument concentrating more attention and resources on applying technology to the solution of [...] economic and social problems on a global basis'. The IDRC's founding principles are, therefore, to facilitate forward-thinking approaches to international challenges that cannot be addressed through more conventional programmes.

Ms Karuru stated that, through nurturing partnerships with foundations around the world and collaborating with researchers, the IDRC sought to embolden discourse regarding pertinent challenges facing the developing world and the inevitable relationship with

the developed world. She averred that the IDRC believed that this would highlight the importance of information sharing, and ultimately lead to the resolution of some of the pertinent issues facing the world. This is in line with the IDRC's objective of 'empowerment through knowledge'.

Ms Karuru then noted that the inter-connectedness of the global world order, particularly with regard to the privatisation of security and the possibilities that abound with this sector in terms of improving international peace and security, required further interrogation. She believed that the conference aimed at providing the platform for meaningful engagement and discussion about the involvement of private security in peacekeeping missions.

Ms Karuru highlighted the IDRC's focus on issues of security, the state and access to justice. These issues fall under the thematic issues of human development and human security. She noted the lack of cohesion between the private security sector and the national police and emphasised the importance of the ISS in working with national governments, regional organisations and inter-governmental organisations to contribute to the regulating and monitoring of PMSCs in Africa.

Highlighting the controversy surrounding the fusion of the public and private security provision, Ms Karuru asserted that the private security sector did indeed provide opportunities to lighten the load of the international community with regard to international peace and security. She believed that private security could provide an alternative that should not be allowed to slip through our fingers. She concluded her speech by stating that through effective dialogue and a realisation of the appropriate role that private security could play, the possibilities for future peace and security in Africa were endless.

DR CONSTANCE FREEMAN

Dr Freeman, the outgoing IDRC Regional Director for Eastern and Southern Africa, noted rather sagaciously that the issue of the private security sector was an old one, and that the only difference now was that over the past decade this phenomenon had been institutionalised. She stated that the privatisation of security was no longer simply a mercenary issue, although these elements were always there and were in fact manifestations of the misuse of power. Dr Freeman placed emphasis on the importance of the industry, noting how military operations could not work without input from the private security sector. She noted that it was the IDRC's Crown Corporations mandate to be at the cutting edge of the debate on PMSCs, and hence this emphasis on research that would influence policy and people's mindsets.

INTRODUCTION TO THE SSG PROJECT ON PRIVATE MILITARY/ SECURITY COMPANIES

MR SABELO GUMEDZE

Mr Gumedze, a senior researcher and the project leader for the IPSS project, highlighted the steady increase of PMSCs in the past decade in African conflicts, peacekeeping missions and humanitarian operations. He quoted a Finnish scholar by the name of Creutz, who argued that ‘the mixture of state and private actors within the field of security is here to stay and consequently the international community has to find a way to, if not embrace it, at least cope with it’. He noted that Africa was certainly not insulated from the proliferation of private security companies (PSCs) and private military companies (PMCs). These are, for the sake of convenience, grouped together as private military and security companies (PMSCs).

In detailing the elements of the IPSS project, Mr Gumedze said that the important questions that the IPSS project sought to address included a clear definition of what role the private security sector should play in Africa and whether or not PMSCs were effectively regulated. If the answer to this revealed that they are not, the next question would have to concern what the best approaches would be for Africa to adopt regarding PMSCs’ engagement in armed conflicts, peacekeeping missions and humanitarian assistance operations.

Mr Gumedze stated that the IPSS project’s objectives were aimed at enhancing an understanding of the role of the private sector in conflicts, peacekeeping missions and humanitarian assistance operations; to critically explore the trends in the outsourcing of non-core military functions, and the increased involvement of the private security sector in the United Nations (UN) and African Union (AU) peacekeeping missions in Africa, particularly in the logistic design and concept of the African Standby Force (ASF) and the UN-AU hybrid mission (UNAMID); to explore the interplay between the private security industry and gender, with a particular focus on women; to continue to positively influence policy processes; to develop regulatory frameworks at the international and sub-regional levels; and to investigate what type of framework would best address some of the challenges they pose. He noted that this would require

an identification of PMSCs’ roles in various dimensions, such as those required during conflicts in Africa; peacekeeping missions and humanitarian operations; and security sector reforms.

Mr Gumedze highlighted the project’s envisaged results and desired outcomes as those that would in due course contribute towards an appropriate regulatory regime for private military sector engagement in Africa, including the elimination of mercenary activity. He further stated that the project also sought to have an impact on the revision of the 1977 OAU Convention for the Elimination of Mercenarism in Africa. This would include the development of normative standards by PMSC users in African conflicts, peacekeeping missions and humanitarian assistance operations. Mr Gumedze also shared with the participants the long-term goal of the IPSS project, which is to contribute towards shaping the private security architecture in Africa with a view to ensuring human security for the African peoples. The project therefore seeks to ensure an effective regulatory mechanism for the private security sector on the continent.

Mr Gumedze also briefly discussed the main purpose of the Nairobi Conference, which is to interrogate the implications for the use of PMSCs, particularly with their increased involvement in non-core military functions, in peacekeeping missions. This would include their use in disarmament, demobilisation and reintegration (DDR) processes, security sector reform (SSR), logistics, and maintenance and security management. He also informed participants that the conference outputs would include a report detailing the proceedings of the conference and an ISS monograph comprising of the papers presented at the conference.

In conclusion, Mr Gumedze noted that the regulation of PMSCs seemed to be the best way of coping with the mixture of state and private actors within the security field. He then quoted the Geneva Centre for the Democratic Control of Armed Forces’ (DCAF) Privatisation of Security Programme Co-ordinator, Anne-Marie Buzatu, who argued that ‘effective approaches to regulating PMSCs will likely require a multi-tier approach, combining regulatory efforts on the level of international, regional, national and self-regulation, as well as capacity-building’.

Session I

The nature of the debate on PMSCs and peacekeeping missions

FROM A MARKET FOR CONFLICT TO A MARKET FOR PEACE – EXAMINING THE ROLE OF PRIVATE SECURITY COMPANIES IN UNITED NATIONS PEACEKEEPING OPERATIONS IN AFRICA

DR ERIC GEORGE

Dr George began his presentation by postulating that society was a collage of many pieces and all cultures had the capacity to find a way to live in peace. The central question was whether and in what way PMSCs could help societies build the capacity for peaceful co-existence and contribute to the goal of effective conflict transformation. He then proposed that PMSCs have moved from a market for conflict to a market for peace. He followed this with an assertion that the privatisation of security did not have to be linked with mercenaries, and that the UN had the duty to investigate the proposal in order to develop better tools for peace and security initiatives. Essentially, peacekeeping is framed as a tool to help resolve African conflicts, and the key questions then are how, to what extent and under what conditions PMSCs can be useful to this end.

Dr George noted that there remained a political debate about the governance of security and who should be trusted with this duty. Certainly it seems unlikely that the UN will contract PMSCs into core-peacekeeping. The question is therefore whether there is a role for private military/security agents in peacekeeping. Dr George duly noted that some scholars had seen the question of authority with regards to the UN contracting PMSCs as being approached in a ‘schizophrenic’ manner in that states are allowed to contract PMSCs, while the UN is denied this right. This schizophrenic attitude has been attributed to what scholars call ‘knee-jerk reactions’ – particularly

from African governments – to this phenomenon, and to the inadequate anti-mercenary laws currently in place.

Dr George argued that, previously, PMSCs had emphasised their role in support of the state, and sought to help the government hold onto its power. The question was therefore whether this reflected the legitimacy of a regime or whether a PMSC could be supporting an illegitimate regime. Furthermore, an important question raised was whether PMSCs should be allowed to operate if the legitimacy of a regime was unclear. The discussion has since moved away from combat operators, who are associated with mercenaries, to the modern entities that have developed into larger corporations. This transformation has been underway since the 1990s, and Dr George noted how in the Balkans PMSCs have been used for protection and construction. These developments contribute to their legitimacy and enable them to branch out into the peace market. He mentioned that the role that PMSCs could play in post-conflict settings has only recently been considered.

The onus is, therefore, on the international community to regulate the private security sector, which is inherently structured to continue pushing for access into the market for peace. Dr George noted that framing the issue of PMSCs as an exclusively moral one, as well as viewing firms as immoral entities, deflected attention away from finding regulatory mechanisms.

He further noted that issues surrounding the contracting of PMSCs, and the implications thereof in relation to the host state, might be addressed through effective regulation and monitoring. He gave the example of Liberia, where firms had supported the Liberian government by ensuring that former fighters underwent stringent vetting processes, and the demobilisation of combatants had been done with transparency and professionalism.

However, this raised the thorny issue of the secrecy of the contract between the entity that pays for the PMSC and the host country. He averred that this presented limitations regarding PMSCs' legitimacy and effectiveness, but was quick to point out that this formed a 'natural' part of transactions within the private sector. Dr George was of the view that this also presented a problematic situation for PMSCs' involvement in peacekeeping. For example, PMSCs had been employed bi-laterally with the South Sudanese government and therefore they did not fall under UN authorisation, and it was thus possible for private companies to work alongside UN missions. The complexity that arises as a result of the growing number of actors in international peacekeeping produces layers of accountability that can prove problematic if not properly regulated.

An additional problem, identified by Dr George, occurs particularly within the peacekeeping context: certain services may be additionally outsourced by larger PMSCs to other, smaller companies. Some small companies have been accused of contravening laws, for example, providing arms to Somalia. In some cases PMSCs without the appropriate capabilities, or seeking to reduce costs, have outsourced services to other companies, which has ultimately presented more complex contractual challenges.

In conclusion, Dr George argued that fostering more policy at the international, sub-regional and national levels is a good direction for the future of PMSCs. He emphasised the importance of this, noting that policy decisions made in the US regarding PMSCs affected decisions made elsewhere, such as in Canada (which happens to be his home country). He underscored the point that the manner in which certain services and public goods could be privatised varied greatly, even between these two neighbouring countries. He noted that outsourcing should be based on the capacity of governments and the values of the societies to which they were accountable. It should therefore be context-determined and not be a result of what has been decided in the abstract elsewhere.

Finally Dr George wondered if the role of PMSCs in post-conflict reconstruction and peace-building did not suggest the appearance of what he termed 'Private Human Security Agents'. He did not dismiss the idea that they could play a potentially positive role in international security but cautioned against the uncontrolled, creeping privatisation of the market for peace.

PRIVATISATION OF SECURITY IN AFRICA – REFLECTIONS ON THE PAST, PRESENT AND THE PROSPECTS FOR THE FUTURE

MR PAUL OMONDI

Mr Omondi began his presentation with a proposal to analyse how PMSCs affect our changing circumstances in

Africa. He argued that cross-border conflicts, such as the one occurring between the Democratic Republic of Congo (DRC) and fourteen other states in the region, and the emergence of terrorism, challenged the way in which peace was managed. Mr Omondi posed the question as to how these new challenges were being managed and whether or not we should change our approach to dealing with them.

The speaker argued that Africa's bad experience with mercenaries informed the hesitancy on the part of governments to outsource to PMSCs, and there was therefore a need to establish regulatory mechanisms for the use of PMSCs on the continent. Mr Omondi identified a substantive definitional gap in terms of PMSCs, stating that both the 1977 OAU Convention for the Elimination of Mercenarism in Africa and the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries failed to address the issue of PMSCs, principally because they dealt only with the issue of mercenaries.

Mr Omondi queried whether we should abrogate the responsibility of national security to the private sector, but he was prompt in noting that the only country in Africa with the legislation to regulate PMSCs was South Africa. He observed that due to the wording of the South African Foreign Military Assistance Act, however, the South African government did not effectively undertake the regulation of PMSCs or ensure adequate accountability. Indeed, the exact number of PMSCs and how many contracts have been awarded is unknown, which raises new threats. The private security sector could provide security but, due to the lack of regulation, there are underlying risks.

Mr Omondi acknowledged that regional organisations had made various efforts to enhance African peace and security with initiatives such as the African Peace and Security Architecture (APSA), which sought to establish Regional Standby Forces (RSF). He then posed the question: if there are not enough troops or the capability within the RSF to enforce peace and security in Africa, as is the case in Darfur and Somalia, then how feasible is the RSF agenda?

Mr Omondi stated that regional political dynamics, such as those in the Horn of Africa or in West Africa, displayed shared rivalries, with groups sympathetic to one another attempting to influence political dynamics within a region. This ultimately undermines peacekeeping operations. He further noted that part of the difficulty with the Somalia peacekeeping effort was the lack of regional support for the Transitional Federal Government (TFG). The recent bombings in Uganda by Al-Shabaab reveal the security risk posed to the entire region, and the question remains as to whether the use of PMSCs might guarantee more security.

Furthermore, Mr Omondi noted that non-governmental organisations (NGOs) were already co-operating with PMSCs, despite the fact that the short-term focus of PMSCs is clearly inadequate. He recommended, rather, a long-term engagement, coupled with international diplomatic initiatives, as the more favourable option for the involvement of PMSCs in African peace and security.

DISCUSSION OUTCOMES

- Although mercenaries preceded PMSCs, there is no longer a link between legitimate companies and mercenaries. The possibilities presented by the use of PMSCs should therefore not be overlooked, with the understanding that supervision within the private security sector is essential
- Two arguments emerged. The first proposed that non-state actors could become saboteurs of peace, which would introduce another dimension of warfare. The opposing argument was that the increasing reluctance of UN members to contribute peacekeepers, together with the emerging benefits of using PMSCs, means that there is the need to look beyond the state-centric approach
- The issue of mandate crafting was raised. Neutrality, impartiality and consent are felt to be the three fundamental principles of peacekeeping. It was acknowledged that PMSCs have assumed a military posture, have a chain of command and are bound by requirements. Furthermore, it was asserted that proper mechanisms for mandate crafting would ensure a more effective contribution from the private security sector, and could present an opportunity for PMSCs to be involved as neutral entities
- Regulation becomes particularly important when considering the issue of the armament of PMSCs, and the potential danger lack of such regulation could pose in a conflict or post-conflict environment
- Soldier for soldier, it was noted that PMSCs might be more expensive but that the critical issue remained one of effectiveness. It was remarked that it remained a political question of a state's interest to engage with PMSCs

Implications for the use of PMSCs in peacekeeping missions

KEEPING THE PEACE – PRIVATE MILITARY AND SECURITY COMPANIES IN PEACEKEEPING OPERATIONS IN AFRICA

MAJOR (RTD) PASCHAL BADONG

Major Badong began by commenting on the pervasive nature of private security, mentioning that during the recent Soccer World Cup held in South Africa, the private guards had gone on strike and the police had to be called in. He maintained that the issue of ethnic identity within African states and the collapse of effective state institutions played a major role in perpetuating African conflicts. He argued that although the involvement of the international community in peacekeeping had evolved over time, there were many new areas in which peacekeepers were involved, such as election monitoring and DDR. The use of force is therefore no longer the overriding issue in peacekeeping.

He attributed the failures of the UN in Rwanda and Somalia, as well as of the Economic Community of West African States Monitoring Group (ECOMOG) in Sierra Leone in the 1990s, to the nature of the mandates. He mentioned the African Mission in Sudan (AMIS) in particular, where peacekeepers were supposed to protect refugees and internally displaced people (IDPs), but had not been mandated to use pre-emptive force unless danger was imminent.

Major Badong noted that peacekeeping forces were increasingly made up of troops from third-world countries (whose capacity is severely limited). This is largely because first-world countries are increasingly reluctant to intervene in African conflicts. There is also the issue of language barriers and differences in procedure, for example, the use of Arabic and French, which many Africans do not understand. He also noted that further challenges

arose when some interpreters seemed to have loyalties to one or more factions involved in the conflict. Added to this, the issue of incompatible equipment decreases the effectiveness of a mission, which in turn decreases operational security. He suggested that the use of PMSCs could perhaps provide the answer to many of the challenges that have been experienced in African peacekeeping missions.

Major Badong examined self-regulatory initiatives such as the International Peace Operations Association (IPOA) and the British Association of Private Security Companies (BAPSC), arguing that these had not been sufficient in addressing the use of PMSCs in peacekeeping missions. He observed that state regulation of PMSCs was currently done only in South Africa, the US and the UK. The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict was the only international, non-binding document that identified the role of PMSCs in the context of armed conflict. The UN Working Group is currently engaged in drafting an international convention for the regulation of PMSCs that will have a binding effect.

Major Badong identified the support that PMSCs could lend to African peacekeepers with regard to pre-deployment training, in-theatre support, camp construction, maintenance, equipment servicing, troops and logistics. The rapid deployment of PMSCs presents an enormous benefit in that they display a willingness to undertake dangerous tasks. He postulated possible roles that PMSCs could take, which included vanguard forces to create stability, and quick reaction standby forces for the AU, the UN and ECOWAS. Major Badong concluded by noting that internal regulation could positively contribute to the conduct of PMSCs but that an international, legally binding, regulatory framework was certainly needed.

AT THE CROSSROADS BETWEEN MORALPOLITIK AND REALPOLITIK – IN SEARCH OF A COMMON GROUND FOR THE USE OF PRIVATE MILITARY AND SECURITY COMPANIES IN AFRICAN PEACEKEEPING MISSIONS

MR THEMBANI MBADLANYANA

Mr Mbadlanyana began by emphasising that the ongoing debate in the international community about the crossroads between moralpolitik and realpolitik meant that the debate about the use of PMSCs could continue indefinitely. He stated, however, that PMSCs were here to stay and they could not simply be chased away, as this might only cause their reverting to mercenary activities. He encouraged the international community to share their perspectives in the ongoing intellectual debate about African peacekeeping and to engage PMSCs in more mature and mutually beneficial ways.

Mr Mbadlanyana argued that, since the end of the Cold War, many complex humanitarian crises had emerged, of which 70 per cent had been in Africa. It is therefore essential that ways be found that could better explicate the use of PMSCs in the market for force. Military downsizing in the 1990s has made security expertise available and PMSCs have been used to exploit the continent's incapacities and insecurities. Now, however, PMSCs' technical expertise presented a viable alternative to the deployment of conventional peacekeeping forces that should at no point be overlooked.

A critical question Mr Mbadlanyana raised concerned whether PMSCs were just 'old wine in new bottles', or whether they could indeed become born-again entities (freed from their past sins) and considerably different from their mercenary forefathers like 'Mad Mike' Hoare with his abhorrent past. He made reference to Isenberg, who asserts that the international community engages in meaningless debate that generates much heat but not much light. These debates, Mr Mbadlanyana believed, were visceral debates characterised by jingoism. Furthermore, he argued, the media sensationalised and polarised these debates. Nevertheless, there is clear support for the use of PMSCs in peacekeeping, while some critics oppose such a proposal entirely.

The speaker maintained that only moralists believed that there was a need to stick to principles. The involvement of PMSCs had had what Gumedze viewed to be 'a significant bearing on both International Humanitarian Law (IHL) and the International Human Rights Law (IHRL)'. PMSCs that operate in the new market for force engage in a balancing of interests, as dictated by realities on the ground, without paying attention to moral concerns. As a result of their supposed independence and

impartiality, they respond to UN deficiencies by both balancing interests and the strategic considerations of nation states.

Mr Mbadlanyana also maintained that pragmatists or realists believed that the current deficiencies in the UN peacekeeping approach lent credence to the argument in favour of using PMSCs that were smarter, more innovative and more alert than previously, and had already contributed enormously towards humanitarian efforts. Moralists, he argued, were not convinced and cited a plethora of ethical challenges regarding the accountability of PMSCs. Hence there is a need for the international community to find a workable alternative. He also maintained that the use of PMSCs in peacekeeping missions had become more of a theoretical issue, due to the limited development of appropriate intellectual frameworks to help guide practitioners on the ground. Furthermore, the emphasis on practice, with less focus on the theories that should guide this practice, has created a lack of discipline and inter-operability.

Mr Mbadlanyana described what he termed the 'Steering and Rowing Approach' (SRAP), in which he presented the analogy of steering and rowing a boat to represent the division of labour between the government and the private sector. He asserted that governments should maintain a leading and guiding role, and referred to the paradigm shift from public to private administration in the 1980s. He suggested that the role of PMSCs should be that of the 'rowers'. Rowing, he believed, should be a non-state actor's role because that would allow for greater specialisation. In conclusion, Mr Mbadlanyana asserted that governments, the UN and the AU should maintain a leadership (steering) role, while PMSCs should co-ordinate their efforts as rowers. He maintained that co-operation and co-ordination were the way forward for the future of international peace and security.

UNORTHODOX PEACEKEEPERS AND RESPONSES IN AFRICA

DR AZEEZ OLANIYAN

Dr Olaniyan began his presentation by asserting that the principle of using PMSCs in peacekeeping represented a fundamental change in the Westphalian conception of the state. He highlighted that the term 'unorthodox' (reflected in the title of his paper) was used to emphasise the shift in the provision of private security from public/state to private/market. He explained that this was particularly evident as, traditionally, the legitimate use of force was a function of the state.

Dr Olaniyan emphasised the efficiency and successes of PMSCs, particularly in dealing with an increasing number of internal conflicts as a consequence of the

increasing reluctance of UN member states to provide troops. Examples of this were the involvement of PMSCs in border monitoring in Bosnia and Slovenia; the Africa Crisis Response Initiative (ACRI); and the Africa Contingency Operations Training Assistance (ACOTA). PMSCs have also been contracted by the US government to provide logistical support for the Darfur peacekeeping mission. The UN had also hired a private firm to provide intelligence on the National Union for the Total Independence of Angola (UNITA)'s involvement in the guns-for-gems trade.

Dr Olaniyan asserted that PMSCs were becoming a viable alternative that could be considered for peacekeeping initiatives, and that two responses to this had come from Africa: one from a governmental position and the other from a continental position. Governments remain cautious about the use of PMSCs due to Africa's history with mercenaries, whereas the continent appears to be more concerned with the fact that most PMSCs maintain their head offices outside Africa. However, it was noted that this allows for a better financial scenario as a consequence of the technical expertise that PMSCs could provide, particularly for Africa.

Dr Olaniyan concluded by emphasising that PMSCs were a reality in conflict management and could be used to complement the efforts of regular armies, especially in terms of logistical support and transportation. He suggested a revision of the 1977 OAU Convention on the Elimination of Mercenarism that would accommodate the involvement of PMSCs, particularly in peacekeeping. He maintained that PMSCs should be restricted to a non-combatant role and should be registered as partners of the state, as this would prevent PMSCs from being hired by the 'wrong' side. Finally, Dr Olaniyan underscored the

need for a regional registration and monitoring system for PMSCs, to be co-ordinated by the AU Peace and Security Commission.

DISCUSSION OUTCOMES

- A question was raised regarding the extent to which (if at all) PMSCs are involved in direct combat. It was noted that not all PMSCs were involved in direct operations. It was noted that the role of PMSCs had mostly shifted from being involved in combat operations to providing logistical support
- A point of concern was raised regarding the combat and non-combat activities of PMSCs in stateless societies. There was a consensus that in such cases the responsibility to regulate PMSCs should fall upon the international community
- A remark was made that, if the same regulatory processes were applied, non-state actors could fall prey to the same trap of bureaucracy, political will and accountability as official peacekeepers had in the past
- Furthermore, it was noted that the tradition of peacekeeping under the auspices of the UN and the AU had shown limited effectiveness, particularly as a consequence of the ambiguity of each organisation's mandate. It was noted that the peacekeeping mandate for Somalia had not been compatible with the traditional requirements of peacekeeping and peace enforcement. It was also asserted that, had these shortcomings been rectified, PMSCs would likely not be needed
- Another suggestion was that PMSCs should not be involved in combat operations and, rather, should be used for providing security services

Challenges and opportunities of PMSCs in peacekeeping missions

FUSING PRIVATISATION OF SECURITY WITH PEACE AND SECURITY INITIATIVES IN AFRICA

MS MARGARET GICHANGA

Ms Gichanga began by asserting that opportunities for enhanced peace were compromised by a lack of accountability and there was therefore a real need for effective international regulation. She noted that many states worldwide were increasingly outsourcing to private contractors. This trend, she argued, was due to public sector downsizing and the changing nature of warfare, among other things. In theory, this model of security provision allows governments to increase their efficiency and transfer their surplus responsibilities to private companies.

Ms Gichanga observed that as yet there was no legal framework set up to monitor and regulate the activities of PMSCs. The lack of accountability of PMSCs' activities could be attributed to their ambiguous definition, which has been exacerbated by the incorrect association of PMSCs with mercenaries. She emphasised that, in order to develop and consolidate regulatory and oversight mechanisms, it would be crucial to distinguish between the two entities.

She explained that this association of PMSCs with mercenaries could be attributed to the primary motive of financial gain, which was also a necessary motivation for the troops from contributing member states. Small states, such as Nepal and Fiji, have exploited their military traditions to grow their small national economies through the remuneration of troops who are UN peacekeepers. Financial gain, therefore, could not be used to link the activities of PMSCs' employees with those of mercenaries.

Ms Gichanga asserted that the absence of a universal definition of what PMSCs were contributed to the lack of a viable legal framework that might be used to regulate

them. For example, some companies that claim only to provide security services also engage in military-related activities, and vice versa. She further noted that military jurisdiction did not apply to civilian contractors, and extending this jurisdiction had proven to be a cumbersome and flawed process.

Ms Gichanga explained that a PMSC's 'home state' referred to the state where the company was based; the 'sending state' was the state that sent the PMSC to operate in another state; and the 'host state' was the country where the PMSC was sent or contracted to conduct its operations. She noted that these classifications often overlapped: sending states could also be the home state and perhaps even the host state. This was the case when the PMSC, Blackwater, was contracted to provide security in the aftermath of Hurricane Katrina, in which case the host state was also the home state.

Ms Gichanga made reference to the Montreux Document, which refers to PMSCs as private business entities that provide military and/or security services, irrespective of how they describe themselves. She averred that the Montreux Document demonstrated that both International Humanitarian Law and Human Rights Law had a bearing on PMSCs, and that PMSCs did not operate in a legal vacuum. The Montreux Document was clearly limited, however, in that it was not legally binding and only applied within the context of armed conflict.

She further stated that, at the international level, efforts to close this accountability gap were ongoing within the United Nations (UN) Working Group. In addition, there is the Draft Convention on the Regulation, Oversight and Monitoring of Military and Security Companies.

Ms Gichanga also highlighted the lack of a co-ordinated approach from PMSCs' clients, not to mention government inaction, which exacerbated the violation of

human rights. She also underscored the importance of states ensuring that PMSCs were held responsible for their actions, which was clearly a critical aspect for their regulation. This was particularly important within the context of peacekeeping, which has over time expanded to include non-military as well as humanitarian elements.

Considering the African capacity deficit and the increasing reluctance of UN member states to commit troops to African peacekeeping, Ms Gichanga argued that PMSCs could potentially fill this gap, particularly with regard to much-needed logistical support. She emphasised that African governments must work towards developing a regulatory and oversight mechanism for PMSCs. This approach is necessary in order to establish boundaries without eliminating prospects. In conclusion, Ms Gichanga stated that previous experiences regarding the impunity and lack of accountability of PMSCs showed that it would be difficult, if not impossible, to control their activities in offensive combat operations.

PRIVATE MILITARY/SECURITY COMPANIES AND PEACE-BUILDING IN WEST AFRICA – CHALLENGES AND PROSPECTS

MR CHRIS KWAJA

Mr Kwaja highlighted the impact that the outbreak of violence had in West Africa during the 1990s, and discussed the severe humanitarian crisis that followed. He explicated the shift to privatisation of security as being necessary to fill the gap in post-conflict societies, and that this required security sector reform (SSR). He lamented the absence of an adequate legal framework, as this hampered prospects for durable peace. Peace-building, he asserted, was necessary for fomenting support structures and avoiding a relapse into conflict. He noted that adequate legal frameworks would also contribute to strengthening the capacity of the state.

Mr Kwaja attributed the problems associated with using PMSCs in the peace-building process to the lack of ownership by the societies or communities in which they operated, which jeopardised the pursuit of long-term peace. The involvement of PMSCs is legitimised by a weak state's inability to provide security, coupled with the involvement of external regimes that are characterised by insecurity and uncertainty. Mr Kwaja proposed that the Economic Community of West African States (ECOWAS) should institutionalise a sub-regional framework for action into its agenda and that this framework should emulate the Kimberley Certification Scheme, which is designed to prevent the trade in conflict diamonds. He emphasised the importance of surveillance mechanisms in ensuring parameters of accountability for PMSCs, contracting states and recipient states.

Mr Kwaja noted that within ECOWAS a fundamental change in its response to conflict was required, and that PMSCs could significantly influence this response. In addition, it is essential that both states and civil society operate within the law. He suggested that ECOWAS should provide compensation for the victims of human rights violations, and concluded by endorsing the idea that, with proper regulation, PMSCs could prevent the relapse of states into conflict.

DISCUSSION OUTCOMES

- The point was raised that it was a fundamental collective state responsibility to ensure peace, security and democracy. The concern was that states were conceding this role to PMSCs, which are essentially profit-driven entities. The response to this concern was that effective international regulation could enhance the role of PMSCs in peacekeeping operations
- It was also stated that there is a need to decrease reliance on PMSCs and rather strengthen regional organisations, in particular the African Standby Forces (ASF). Although this is true, the ASF requires a lot of support and co-ordination, which for the time being can be achieved through the use of PMSCs. This would ensure that regional organisations are able to have a direct impact on issues affecting the region
- There is a degree of apprehension about the cost of contracting PMSCs. However, it was noted that a smaller number of PMSCs' employees would cost substantially less than national, standing armies
- Growing vigilantism lends credence to the concern raised about the use of PMSCs in conflict or post-conflict scenarios, and reiterates the need to implement a workable, international, legal framework
- The absence of accountability in Liberia was noted, and was attributed to the weakness of state institutions. The African economies are so donor-dependent that African governments have to allow PMSCs to function, sometimes without any oversight mechanism. There are serious concerns regarding the future of SSR, particularly if the beneficiaries or people are not consulted
- There was concern expressed regarding the storage of PMSCs' arms. It was agreed that extensive dialogue was required on this topic
- It was noted that PMSCs currently engendered an illusion of stability, particularly due to the short duration of their engagement. However, post-conflict environments need long-term peacekeeping and humanitarian engagement. It is envisioned that PMSCs may complement the deficiencies in UN and AU peacekeeping in the future, provided that effective oversight is established

Day 2

Thursday 22 July 2010

Session IV

Perspectives on PMSCs and peacemaking missions

PRIVATE CORPORATIONS IN PEACE OPERATIONS – KEEPING PACE WITH PEACEKEEPING

DR DAN KUWALI

Dr Kuwali began by stating that over the years there had been a gradual privatisation of the military, or what he referred to as ‘the civilianisation of warfare’. It is just such privatisation that forces us to ask how PMSCs could fit in with peace support operations. Asserting that PMSCs were corporate entities, he argued that a means of enforcing their compliance had to be sought, and that private companies needed to be liable for the actions of their employees.

According to Dr Kuwali, outsourcing had become a common occurrence in Peace Support Operations (PSO). When PMSCs work with the military, they act as force multipliers, complementing the traditional military. He noted that the nature of PSO usually meant that PMSCs operated primarily in weak states. The lack of capacity or capability usually inherent to weak states means that companies may often act with impunity, and the issue of accountability is therefore a major cause for concern. Dr Kuwali noted that one of the problems encountered with PMSCs operating in weak states was that the courts in these states were often dysfunctional. This problem highlights the need for security sector transformation. He noted that the ‘grey zone’ within which these companies operated posed a risk for civilians in that if these companies were not forced to operate in accordance with international laws, they could aggravate rather than ameliorate the situation. It was therefore important, Dr Kuwali observed, to differentiate between private/corporate military groups and mercenaries.

Dr Kuwali further emphasised that PMSCs did not operate in a security vacuum. Chapter 6 of the UN charter discusses the issue of peacekeeping – albeit inadequately for these purposes – and Chapter 7 deals with peace enforcement. He questioned the feasibility of PSOs that have an increasingly humanitarian element using PMSCs, which are profit-driven entities. This fundamentally challenges the ideals of impartiality, neutrality and restraint.

Dr Kuwali also expressed concern regarding the differences in composition of private employees as opposed to the UN troops. The difference between the UN forces and the PMSCs, he emphasised, was that the UN forces were made up of state troops whereas the PMSCs were made up of individuals who were accountable only to the organisation that employed them. A private company is essentially results-driven, and this, he felt, needed a critical review, especially as, in a bid to achieve results, it was possible that private military forces could implement their strategies too harshly.

Dr Kuwali noted that the role of the private sector within PSOs was expanding and that Max Weber’s idea that the state should hold the monopoly on force seemed increasingly less feasible. The validity of Weber’s theory would determine whether PMSCs should be directly involved in military activity or whether their role should be relegated to one of support. Traditionally the military is a disciplined and organised body, and it remains questionable whether PMSCs can be controlled in a similar manner.

Dr Kuwali acknowledged that it could be possible to control PMSCs by way of contracts, but in order for these to be effective it would be necessary for the contract to be ‘water-tight’. To prevent private companies from acting with impunity, the deployment of troops and the status of such forces should be made clear in a contract.

The responsibility for such clarity should fall to the government, which must ensure that all relevant issues are covered in the contract and that the document can ensure a reasonable degree of accountability. Related to this, Dr Kuwali emphasised the need to redefine PMSCs, as these companies were currently performing certain state functions, such as policing. He noted that the role of PMSCs and the context within which they acted should be clearly outlined. Furthermore, there is a need to establish courts and a legal framework within which PMSCs could be regulated, including the licensing and registering of companies. An adequate system of vetting should be in place if mercenaries are to be kept separate from legitimate companies. Dr Kuwali recommended that PMSCs receive appropriate training in Human Rights Law and International Humanitarian Law.

Dr Kuwali further noted that the role of international law became important particularly with regard to weak states and those private companies that were often active in areas of armed conflict. Where there is either limited or no capacity to hold private companies to account within a host state, that responsibility should, in such cases, fall to the international community. Dr Kuwali concluded his presentation with a quote from the former UN Secretary General, Dag Hammarskjöld: 'Peace-keeping is not a job for soldiers but only soldiers can do it ...'

BIDDING ON THE BLUE BERETS – THE SHARED FUTURE OF THE UN AND THE PRIVATE SECTOR IN AFRICAN PEACEKEEPING

MR JJ MESSNER

Mr Messner began with an acknowledgement that PMSC regulation had become an issue of increasing concern. He outlined ways in which PMSCs could be regulated through an organisation such as the International Peace Operations Association (IPOA), also known as the Association of the Stability Operations Industry. Mr Messner then discussed the approach the IPOA had adopted to address the challenges posed by PMSCs.

Mr Messner explained that private sector support was multi-dimensional and based on three pillars: logistics and technical support; security and sustainable development; and training and SSR. He noted that the primary contractors of PMSCs were governments, non-governmental organisations and international/international governmental organisations such as the North Atlantic Treaty Organisation (NATO) or the AU. The employment of PMSCs, he noted, was not necessarily direct; for example, an AU mission could be supported by the United States, who then outsourced to PMSCs to complement their forces.

According to Mr Messner, such military contracting had a long-standing tradition, and it had come back into favour after the end of the Cold War and the subsequent downsizing of military forces. Outsourcing has also gained favour in response to the unpopularity garnered by a particular government when national troops are lost in battle. Due to these unfavourable attitudes and perceptions, the burden of peacekeeping will often fall on developing states, which end up contributing troops for peacekeeping purposes. Mr Messner maintained that this scenario was often problematic, as developing states ended up with diverse equipment (if any at all), insufficient training, a lack of capabilities, incompatibility of forces and quality deficits.

Mr Messner drew attention to the fact that there were currently a large number of private companies active in Iraq and Afghanistan, many of which employed third-party nationals. For example, there are many South Africans who are employed by an American company working in Iraq and are therefore not citizens of either the host or the sending state. Mr Messner discussed the specific benefits of private contracting, which included speed, engagement with the population, reconstruction and specialisation. He noted that these benefits went beyond what was currently offered by official peacekeepers, as they included client control and the minimisation of political risk, to mention but a few.

From a legal perspective, PMSCs are now regulated, albeit sometimes inadequately on several levels. Mr Messner briefly discussed a few of the regulatory mechanisms that were currently operational. First, he noted that private companies were regulated by civilian law and he gave the example of the USA Military Extraterritorial Jurisdiction Act (MEJA), which dealt with USA contracts and citizens but was only semi-inclusive as it did not deal with the civilian laws of the host countries. Mr Messner recognised that there were therefore problems regarding the enforcement of these laws. He asserted that the problem of poor regulation occurred not necessarily as a result of the desire for impunity, but rather as a result of sheer complexity, as evidenced by the fact that various countries have different rules and regulations. However, there has been a great deal of improvement in this sector, for example, an increasing number of trials are being conducted under the Military Extraterritorial Jurisdiction Act (MEJA).

Mr Messner also noted that PMSCs were regulated to some degree under international law, with the Mercenary Convention, the Montreux Document and the UN draft Convention forming part of this relatively recent international legal framework. Mr Messner identified the Montreux Document as a particularly successful initiative, primarily because of its practical nature.

He noted that the IPOA was a self-regulating association, which aimed at involving only ethical companies of a certain standard who maintained a code of conduct. Mr Messner explained that the IPOA had developed a compliance mechanism to ensure that its member companies abided by the code of conduct. This code of conduct has been developed with the assistance of various human rights organisations. If a complaint is lodged against a company, the complaint is addressed by a review panel that has to verify the relevance of the complaint. If the panel finds that there has been a violation of the code of conduct then the matter is referred to a standards committee. This committee, Mr Messner explained, would then decide what measures needed to be taken to correct the problem, for example, sanctions or corrective measures. He asserted that the first priority was to bring companies who were in violation of the code of conduct back on track before attempting harsh punitive measures. If the company in question fails to implement corrective measures the matter is then transferred to a disciplinary panel where the company faces expulsion from the association.

Mr Messner drew attention to the fact that the IPOA was only able to supplement national legislation and could not enforce state law. He noted that there were 15 companies that had gone through the review process to date, and all had implemented strategies to ensure that they complied with measures set out by the association. He emphasised that in the private sector the importance of reputation could not be underestimated, and concluded his presentation by stating that it was in the best interests of companies in the private military and security sector to maintain their good reputation. However, there is only so much that can be done in the processes of self-regulation and these processes have their own limitations.

DISCUSSION OUTCOMES

- Clarification over the precedence of the law was discussed. If a PMSC becomes involved in some form of human rights violation, then the law of the state with the most at stake will take precedence or will be applicable. It was expressed that a distinction must be made between neutrality and impartiality: for example, peacekeepers may not be neutral but they must be impartial
- It was noted that the issue of impartiality could prove problematic, as evidenced by the DRC when the United Nations Mission in the Democratic Republic of Congo (MONUC) supported the military of the DRC (FARDC) despite the fact that it was a gross violator of human rights. As stated in Chapter 7 of the UN

Charter, MONUC had a duty to remain impartial, and should have kept the protection of the civilian population as its top priority, although it was understood that at the same time MONUC needed the support of the government to remain in the DRC. It was suggested that, in reality, the impartiality of peacekeepers could only really be achieved in observer missions. PMSCs will inevitably side with their employers and therefore cannot remain impartial

- Regarding the issue of the supremacy of the law, it was explained that domestic law had precedence over international law, but should a state lack the capabilities to enforce that law then the responsibility to do so fell to the international community
- The credibility of the IPOA as a professional organisation was scrutinised. The IPOA recently lobbied for third-party certification and is now an advocacy group for the US, the UN and NATO. Contracting is central to the peacekeeping reality today, and the IPOA aims to create a situation in which there are only reasonable options available to contractors. By doing this, IPOA seeks to ensure that a selection can be made only from 'good' companies
- It was observed that the majority of complaints lodged against PMSCs were labour related. Due to the competitive nature of the industry, complaints are generally settled by the company in question, which fears that the reputation of the company may be damaged
- Although PMSCs are not involved in direct combat it was acknowledged that the most direct involvement would be seen by security companies that were charged with protecting either people or a building and which could therefore be implicated in a conflict as a result of self-defence
- It was noted that the new peacekeeping doctrine in the UN and the AU extended to PMSCs. The development industry contributes substantially towards humanitarian assistance, and increasingly aid agencies are beginning to outsource
- It was clarified that it was confidentiality rather than secrecy that governed the relationship between the IPOA and its member companies. It was noted that the IPOA acted on the assumption that companies were more likely to be co-operative and forthcoming with information when they felt that their business affairs were confidential. The IPOA does not release a complaint lodged against a company as its first option, as its objective is to bring companies into compliance. It was further emphasised that the IPOA was a self-regulating association and, as such, could not fine or jail members

Impact of PMSCs on national armed forces, human security, and safety and security

IMPACT OF PRIVATE SECURITY ON NATIONAL ARMED FORCES' CAPACITY AND CAPABILITIES

PROF LINDY HEINECKEN AND
MS MICHON MOTZOURIS

The central tenet of Professor Heinecken's argument was that the growth of PMSCs threatened to weaken military forces. She postulated that the changes in the security context were having a marked effect on the profession and that the practice of outsourcing was leading to the division of military work between the public and private sector. She maintained that the core military component was primarily geared towards offensive purposes, but with the increase in outsourcing the private sector it was increasingly performing functions that transcended support and veered towards more defensive roles. However, PMSCs have the superb capacity to perform even offensive roles, should this be required. As armed forces struggle to call up sufficient reserves to augment their capacity, so they have become the new private military reserve for support and defensive purposes and, in future, possibly even for offensive roles.

According to Professor Heinecken, the military was attempting to hold onto its core military function of warfare, but it faced problems relating to recruitment. Many no longer view military service as long-term employment and therefore join the military with a transitional mindset, aware that they will likely pursue a second career at a relatively young age in the private sector. This has an impact on the loyalty traditionally associated with national service.

Taking the discussion further, Ms Motzouris argued that this shift had resulted in a loss of skills from the public to the private sector as a vacuum was created by the

outflow of skilled military professionals into the private sector. She asserted that national forces now contributed troops of a lower quality to various peacekeeping operations.

Ms Motzouris explained that the private sector was able to employ a higher calibre of soldiers, and that PMSCs were therefore better equipped to rapidly put together a high-quality force than national or inter-state operations. She noted that there was a major blurring of public/private roles. In conclusion, Ms Motzouris argued that it was necessary for the national forces to become more skilled within the private sector and then transfer those skills back into the national forces in order to provide effective public security.

BETWEEN PRINCIPLES AND PRACTICES OF SAFETY AND SECURITY IN AFRICAN PEACEKEEPING CONTEXTS

MR XAVIER EJOYI

Mr Ejoyi commenced by contextualising peacekeeping in the current era. According to Mr Ejoyi, peacekeeping had opened up an arena in which international actors could intervene within various bodies ranging from the UN and the AU to regional communities. He noted that the internationalisation and evolution of peacekeeping had resulted in forces that were made up of a myriad of nationalities.

Peacekeeping has become necessary due to the evolving nature of conflict. In the 21st century it is evident that intra-state conflict has become more prevalent than inter-state conflict. Mr Ejoyi postulated that in this 'new era of conflict' it was apparent that governments were both less effective and less in control of military operations. He noted that it was frequently the case that states were

composed of fractional political groupings or leadership. Mr Ejoyi asserted that the breakdown of state and physical infrastructure led to a proliferation of weapons and the 'rules of war' were no longer adhered to. The fact that there is a full range of civilian agencies and NGOs, as well as the private security sector (PSS), as opposed to previously minimal civilian involvement, adds further complexity to this issue.

Mr Ejoyi emphasised that due to this transformation in the nature of conflict, it stood to reason that the nature of intervention should also be different. He cited the current complexities of war that could be found in the case of Sudan, where there were various groups such as the Justice and Equality Movement (JEM), the Sudanese People's Liberation Army (SPLA), the government of South Sudan, and the Khartoum government, all pushing their own agenda. He noted that this was ongoing while at the same time some factions were establishing alliances with the government as well as with other groups, which were opposed to the government. In light of such complicated security environments, the concept of peacekeeping needs to be rethought.

The current peacekeeping decision-making processes occur at the UN level, predominantly within the Security Council. Peacekeeping therefore occurs within the legal framework of the UN Charter. Sections of the Charter, in particular Chapters 6, 7 and 8, reaffirm the need to consolidate regional organisations to address regional security concerns. Asserting that regionalisation was in response to the evolution of peacekeeping, Mr Ejoyi voiced his concern that the Charter was vague in many respects, particularly regarding the use of force. Peacekeeping forces are established with the consent and the co-operation of the states involved and Mr Ejoyi expressed doubt with regard to the question of impartiality in implementing a mandate. He also noted that the status of the force was the result of an agreement with the host state in question, and that the use of force was prohibited unless it was used in self-defence or in defence of the mandate. The pivotal principles emerging from the Department of Peacekeeping Operations (DPKO) are therefore consent, impartiality, the non-use of force, legitimacy and credibility.

Mr Ejoyi discussed the emerging trend of hybridisation, particularly with the regional standby arrangements. He explained that, as a result of the West's commitment to the 'war on terror', there had been a change in Western priorities, which has impacted upon peacekeeping activities. Within the context of unequal power relations many actors have come into play, including unregulated actors and spoilers, and he therefore questioned to what extent consent could be extracted from African States, which are always in a weaker position. He underscored

the importance of paying attention to emerging issues that included the question of security, which was still a key state function. Peacekeeping is an extension of the state function to provide security for its citizens. In his conclusion, Mr Ejoyi stated that PMSCs had a role in the evolution of the peacekeeping system, which increasingly called for a division of labour. Accordingly, PMSCs could complement the state and UN forces.

HUMAN SECURITY AND CHALLENGES RELATED TO PMSCs IN AFRICA

MS IRENE NDUNG'U

In assessing human security, Ms Ndung'u explained that PMSCs have had both a positive and negative impact on human security. She was quick to note that human security was not a clearly defined concept, but generally implied freedom from risk or danger. Ms Ndung'u noted that the concept could be applied more broadly to imply freedom from want and the absence of fear. Considering the broader definition of human security, which had become particularly pertinent in the African context, Ms Ndung'u argued that the logical step would be to broaden the role of peacekeeping beyond the traditional state military function. From 1994 onwards, under the Human Security Commission, there has been a shift in focus from state to human security.

Ms Ndung'u advocated for early intervention as a means to adequately protect human security. The objective should be to prevent conflict before security becomes an issue. She asserted that there are several levels of security, starting from individual security, to community, national, regional and eventually international security. She averred that security threats in the 21st century were predominantly those linked to organised crime and terrorism.

In her presentation, Ms Ndung'u acknowledged that PMSCs were a reality in the 21st-century context and their activities should be regulated, particularly as there was a demand for the services that PMSCs provided. PMSCs are able to offer different forms of security and have developed a greater capacity to deal with the demands of the dynamic security industry. They therefore fill what has become a security gap. She further noted that filling this security gap had a positive outcome for human security as it had reduced risks to human security, and benefits associated with this ranged from employment opportunities to contributions to legitimate peace-building processes. In such cases PMSCs are able to contribute towards providing a space for states to develop. Ms Ndung'u asserted that terrorism constituted a new threat to human security, and PMSCs were able to move quickly and prevent such situations from escalating far more efficiently than a state was able to.

Although she remained positive about the benefits of using PMSCs, Ms Ndung'u conceded that PMSCs had their drawbacks. There are PMSCs that have mercenary elements, and in such cases their involvement can have a destabilising effect and ultimately damage the peace-building process in a country. Examples were cited of cases where PMSCs had been involved in weak states and had taken advantage of the environment of instability, plundering the natural resources of the host state as a form of payment.

The main contractors of PMSCs are governments. Ms Ndung'u asserted that the loss of government control over the military had resulted in the increased use of PMSCs. In an era in which there is increasing utilisation of these companies, it has become abundantly clear that the regulatory framework within which they work is not adequate. Ms Ndung'u noted that PMSCs should operate within the human rights framework. In order for this to be accomplished there is a need to put in place a proper screening system that will separate the companies with good business ethics from those with a potential to aggravate a conflict situation. Ms Ndung'u concluded by stating that early prevention was a priority for human security.

DISCUSSION OUTCOMES

- The effect of national forces migrating to PMSCs was deliberated. It was suggested that the loss of personnel in the national forces could present opportunities for disadvantaged groups but the concern remained that the loss of personnel to PMSCs still resulted in a loss of control over the profession and, ultimately, the military's ability to secure national security. Retraining forces is very time-consuming and expensive
- The question was raised as to why the capture of Joseph Kony had not been contracted to PMSCs. It was asserted that Kony was not operating in a vacuum but, rather, was being hosted by national governments such as that of Sudan. It is therefore necessary to verify the legitimacy of any such action, and whether this would result in a violation of a state's sovereignty
- The importance of analysing the balance-of-power debate was emphasised, with reference to the state losing its power within the international arena. Power, it was noted, was moving beyond the traditional military connotations towards technology-based approaches
- A remark was made that there was a substantial role PMSCs could play in developmental initiatives, through their involvement in post-conflict reconstruction and development. It was noted that this should not be viewed as a potential problem as employees of private companies ultimately fell under the government that is the contractor
- It was argued that the national military had always been an important tool in state building and played a symbolic role in forming nationhood. The loss of this symbolic value would have an effect on the future shape of the state and it was therefore imperative that if decentralisation and outsourcing occurred it should be properly planned and organised
- The point was raised that state formation in Africa focused more on regime security than national security. The security sector was mostly used as an apparatus of the state to silence opposition and as a consequence there was an erosion of the state monopoly over violence aimed at quashing dissenting views. This was not in accordance with democratic principles

Regulatory approaches to the use of PMSCs

THE SWISS INITIATIVE ON PRIVATE MILITARY AND SECURITY COMPANIES

MR MICHAEL COTTIER

Mr Cottier agreed that PMSCs were here to stay and therefore required regulation. PMSCs, he noted, operated most frequently in conflict zones. In light of the environment in which private companies operated, he maintained that the objective now should be how best to avoid harm to the civilian population. He noted that it had become necessary to clarify international law and, in particular, International Humanitarian Law and Human Rights Law, and that the Montreux Document was developed for precisely this purpose.

Mr Cottier explained that, due to the practical limitations attached to developing a binding document, the Swiss initiative had developed a non-binding document that had successfully attracted support from 34 states at the time of its formulation and 17 more states since then. The document to which he referred was developed as a tool that could assist in mitigating the negative consequences of PMSCs.

Mr Cottier asserted that the Montreux Document was not based on any normative assumptions. The document aims to clarify the legal obligations involved in the employment of PMSCs, with specific application to states and international organisations. The document covers issues concerned with the good practices of contracting, with a particular focus on the conflict and the post-conflict environment. He noted that the Montreux Document was used as a key reference document and had garnered support from major companies due to its practical approach and its subsequent ability to provide practical guidelines.

Mr Cottier described the formulation process of the document as one in which various relevant actors, ranging from states to academics to NGOs, were consulted. Quality comes at a cost when selecting a company and specific criteria, such as proper vetting, training and the use of past records, are used. The PMSC employed should be regulated and monitored on a set of specific guidelines. The document requires clarity on the use of force and, in particular, compliance with International Humanitarian Law (IHL) and Human Rights Law.

Mr Cottier noted that the document reiterated the responsibility of the state and the requirement that it act in accordance with good practices. The state should essentially outline the tasks that can be outsourced so as to separate them from activities that fall within the responsibilities of the state. PMSCs outsourced by the state should be registered and licensed, and Mr Cottier observed that this implied that there should be set criteria for granting contracts.

Although the Montreux Document was adopted in 2008 it has not been implemented everywhere due to the complexity of the system: for example, not all clients are states. Furthermore, not all states have the same laws and regulations at a national level. The release of the final draft of the document was planned for August 2010, but because there is no credible accountability mechanism the document will have less impact than desired. Mr Cottier stated that an accountability mechanism should be impartial and independent, owing to the fact that the document was not legally binding and could only be used as a point of reference. The document does, however, have relevance in so far as it can be used to formulate policy and as a benchmark for future documents of a similar nature.

THE DRAFT INTERNATIONAL CONVENTION ON THE REGULATION, OVERSIGHT AND MONITORING OF MILITARY AND SECURITY COMPANIES – IMPLICATIONS FOR PEACEKEEPING MISSIONS IN AFRICA

MR SABELO GUMEDZE

In this presentation, Mr Gumedze explained that the UN was an organisation that had been charged with the responsibility to maintain peace and security within the global arena. Mr Gumedze outlined how the UN, through the Working Group, had attempted to identify the challenges posed by the arrival of PMSCs on the peacekeeping scene. He highlighted that the draft UN convention aimed at regulating and monitoring the use of PMSCs involved in both conflict and non-conflict situations, but that it was still a work in progress.

Mr Gumedze noted that the issue of PMSCs was particularly contentious in Africa because in the past mercenaries had played a prominent role in undermining the self-determination of certain African states. It is for this reason that it has become a primary concern to monitor and regulate private companies that provide their services on the international market. The draft UN convention, he noted, hoped to move beyond the limited idea of mercenaries and create a set of basic principles for PMSCs that would encourage private companies to protect human rights.

It was noted that all the member states of the UN had been given a copy of the draft UN Convention with the aim of encouraging feedback. Mr Gumedze highlighted that the comments from Africa had been somewhat limited, which he felt was unfortunate, especially considering the possible implications this document could have for the continent. Having a voice in the creation of the UN Convention should be deemed important for all states as the document hopes to go beyond the Montreux Document and be legally binding in nature.

Mr Gumedze emphasised the importance of establishing which activities would fall within the responsibility of the state and which activities might be outsourced to PMSCs. He noted that this had not yet been done and that it was necessary to find clarity on which activities could be classified as military activities and which classified as security activities. Mr Gumedze re-emphasised the fact that the document did not deal with mercenaries but rather specifically with PMSCs.

In terms of its legal principles, Mr Gumedze asserted that it was essential that the rule of law prevailed. The document, he noted, outlined numerous human rights protection mechanisms and specific functions prohibited to PMSCs. Ultimately, what the document hopes to achieve is the regulation, systemisation and control of the military and security sectors.

By virtue of the UN being an inter-state organisation, the obligations it outlines would be state-oriented. Mr Gumedze conceded that if the document was to be binding it was necessary that it achieved broad ratification from UN member states. He concluded by emphasising the need for an international oversight committee that was capable of reporting on ratifying states.

DISCUSSION OUTCOMES

- A query was raised concerning the challenges that the Montreux Document faced in garnering support for its ratification by states. It was noted that states had expressed support for the document, but such support had not been binding. The Montreux Document had been a creative and practical response to a current issue, and it was this that had made the document realistic. The main aim is clearly to make a difference but there is a serious need for more input from African states. The document can now be used to complement the UN convention
- The Montreux Document is not binding and self-regulation proved insufficient; therefore it is necessary to formulate a binding legal framework
- It was identified that the UN convention may not be applicable to weak states because under international law there is no existing definition of a weak state
- The USA, it was noted, was a major contractor of PMSCs and a supporter of the Montreux Document. USA support for this document is deemed very important as it bolsters the entire process of regulation. The final draft of the UN convention would have to make a clear distinction between the role of the state and that of private companies
- At the national level, change has occurred at different places and sometimes in different directions. The fact that the role of the state varies from country to country makes it difficult to create one universally applicable international law
- A final point was made that if a state felt that it was willing to outsource, then it was unlikely to sign the regulating document

Closing remarks

MR HENRI BOSHOFF

Mr Boshoff began the closing remarks by thanking the ISS partner programmes, SSG and PMP, and the International Development Research Centre, Canada, for organising the conference. Mr Boshoff also thanked all the speakers and participants for making the conference a success.

Mr Boshoff emphasised the importance of debating this topical issue for the African continent, not just within civil society but also at governmental and regional levels. Discussions of this type, and what participants are able to learn from one another, he deemed to be invaluable.

The point was made that PMSCs had been used in Iraq and Afghanistan and played an increasingly important role in both modern warfare and peacekeeping, a fact that could not be ignored. Likewise, the role that Executive Outcomes played in supporting the government in Sierra Leone had forced Africa to move beyond

the concept of such organisations as mere mercenaries. PMSCs currently play a primarily support role in peace missions in Africa.

It is possible that South African legislation contributed to changing the playing field, although mercenary activities still take place in Africa. The question posed was how the UN, the AU, the RECs and national governments would deal with this phenomenon. It is vital to have a regulating legislation within this industry, but Mr Boshoff predicted that the implementation of a legal framework to regulate national governments was not likely in the near future. Until such time that an independent international regulatory system is in place, the industry will have to find mechanisms to regulate itself.

In his concluding remarks, Mr Boshoff again thanked the participants and wished everyone a safe trip home.

Appendices

Appendix A – Programme

Appendix B – List of participants

Appendix A

Programme

The Involvement of the Private Security Sector in Peacekeeping Missions, 21-22 July 2010

CONFERENCE ROOM, INSTITUTE FOR SECURITY STUDIES, NAIROBI OFFICE, NAIROBI, KENYA

Tuesday, 20 July 2010	Arrivals and welcoming of guests (Jacaranda Hotel)
DAY 1: Wednesday, 21 July 2010	
08h30 – 09h00	Registration (ISS Nairobi Conference Room)
09h00 – 09h15	Welcoming address Dr Wilson KIPKORE Acting Director: Institute for Security Studies, Nairobi Office
09h15 – 09h30	Keynote address Ms Njeri KARURU Senior Programme Officer: Peace, Conflict and Development Programme Initiative, International Development Research Centre (IDRC)
09h30 – 09h45	Introduction to the SSG Project on Private Military/Security Companies Mr Sabelo GUMEDZE Senior Researcher: Private Security Sector, Security Sector Governance Programme, Institute for Security Studies
09h45 – 10h00	Group Photo Shoot
10h00 – 10h15	Tea/Coffee
SESSION I – The nature of the debate on PMSCs and peacekeeping missions	
10h15 – 11h30	Chair: Dr Dan KUWALI From a market for conflict to a market for peace: Examining the role of private security companies in United Nations peacekeeping operations in Africa Dr Eric GEORGE Privatisation of security in Africa: Reflections on the past, present and prospects for the future Mr Paul OMONDI Discussion
SESSION II – Implications for the use of PMSCs in peacekeeping missions	
11h30-13h00	Chair: Prof Lindy HEINECKEN Keeping the peace: private military and security companies in peacekeeping operations in Africa Major (Rtd) Paschal BADONG At the crossroads between Moralpolitik and Realpolitik: In search of a common ground for the use of private military and security companies (PMSCs) in African peacekeeping missions Mr Thembanani MBADLANYANA Unorthodox peacekeepers and responses in Africa Dr Azeez OLANIYAN Discussion
13h00 – 14h00	Lunch Break

Session III – Challenges and opportunities of PMSCs in peacekeeping missions	
14h00 – 15h30	Chair: Mr Xavier EJOYI Fusing the privatisation of security with peace and security initiatives in Africa Ms Margaret GICHANGA Private military/security companies and peace-building in West Africa: Challenges and prospects Mr Chris KWAJAJA Discussion
End of day 1	
DAY 2: Thursday, 22 July 2010	
08h45 – 09h00	Registration
SESSION IV – Perspectives on PMSCs and peacekeeping missions	
09h00 – 10h30	Chair: Ms Michon MOTZOURIS Private corporations in peace operations: Keeping pace with peacekeeping Dr Dan KUWALI Bidding on the Blue Berets: The shared future of the UN and the private sector in African Peacekeeping Mr JJ MESSNER
10h30-11h00	Tea/Coffee
SESSION V – Impact of PMSCs on national armed forces, human security, and safety and security	
11h00-13h00	Chair: Major (Rtd) Paschal BADONG Impact of private security on national armed forces' capacity and capabilities Prof Lindy HEINECKEN and Ms Michon MOTZOURIS Between principles and practice of safety and security in African peacekeeping contexts Mr Xavier EJOYI Human security and challenges related to PMSCs in Africa Ms Irene NDUNG'U Discussion
13h00-14h00	Lunch
Session VI – Regulatory approaches to the use of PMSCs	
14h00 – 15h30	Chair: Dr Eric GEORGE The Swiss initiative on private military and security companies Mr Michael COTTIER The draft International Convention on the Regulation, Oversight and Monitoring of Military and Security Companies: Implications for peacekeeping missions in Africa Mr Sabelo GUMEDZE Discussion
15h30 – 15h45	Closing remarks Mr Henri BOSHOFF, Programme Head: Peacekeeping Missions Programme, Institute for Security Studies, Pretoria Office
End of day 2	

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