

# Fusing Privatisation of Security with Peace and Security Initiatives

## INTRODUCTION

The growth of private companies that provide alternatives to the way peace and security can be attained increasingly challenges the foundational structures of security provision that have traditionally operated as a fundamental state function. The involvement of these private companies in global peace and security initiatives increases the possibility of quick responses to conflict and post-conflict situations, and humanitarian disasters. The availability and rapid deployment of these forces may offer a possible solution to conflicts that erupt in the future. The burgeoning private security sector and its assimilation into international peace and security initiatives has prompted a more critical analysis about the manner in which peace is transacted.

The privatisation of security refers to the increasingly popular trend whereby business entities provide military and security services that were once monopolised by the state (Singer, 2003). A distinction must be made between the private companies that offer private security services and those that offer private military services. The former refers to the armed guarding of property and people, as well as knowledge transfer that has military and police applications.<sup>1</sup> The latter refers to specialised military actions, including strategic planning; intelligence; land, sea or air reconnaissance; flight operations; satellite surveillance; technical support to armed forces; and other related activities.<sup>2</sup> Some companies that claim to perform only security services also provide military services. For the purposes of this paper the term Private Military and Security Companies (PMSCs) refers to those companies that provide both.

The rapid and unprecedented growth of PMSCs continues to challenge the way states interact with each other and PMSCs increasingly are fostering a new approach to post-conflict situations. With their focus on profit maximisation, PMSCs, as corporate entities, embrace neo-liberal economic ideals, thereby transcending the traditional functions and confines of national

standing armies. PMSCs provide specialised personnel with effective skills at an affordable cost. They provide a seemingly indispensable service to an otherwise defunct international community. Companies such as these may even be used to complement diplomatic and humanitarian missions, contribute to reconstruction, and support training and peacekeeping.

Encouraging as this may seem for international peace and security in the future, there are various issues that must first be assessed to determine the viability of PMSCs. A major concern is their accountability because, at the international level, there is currently no comprehensive and constructive legal framework to regulate the operations of PMSCs. On the domestic level, within Africa, only South Africa has established legislation to address the activities of PMSCs.<sup>3</sup> As important as this is, there is a need to implement international and regional regulatory and monitoring mechanisms that can be effectively and comprehensively enforced. PMSCs' transnational qualities, with individuals involved in security- and military-related functions, create situations where impunity and immunity may occur.

Africa, with its diversity and, one could argue, vast resources, has been the recipient of some of the most complex peacekeeping missions ever undertaken by the United Nations (UN). Ensuring African peace and security has proved to be a mammoth task. This was clearly illustrated by the complexities encountered in the 1999 United Nations Mission in the Democratic Republic of Congo (MONUC)<sup>4</sup> and the United Nations Operations in Somalia.<sup>5</sup> The continent's experience with civil wars and sporadic conflicts requires a more tailored approach to security provision that could create improved conditions for political stability, economic growth and development and, ultimately, improved human security.

The various opportunities and obstacles associated with the use of PMSCs are highlighted in the first part of this paper, and the question of their feasibility in peace and security initiatives on the continent is addressed. The second part of the paper looks at definitional issues,

particularly the association of PMSCs with mercenaries, which arguably hinders progress in the efforts to regulate the privatisation of security. The third section analyses the different attempts that have been made to hold PMSCs to account while the fourth section addresses the use of PMSCs in Africa. The fifth section then identifies various aspects of African peacekeeping that could benefit from the utilisation of PMSCs, in particular Security Sector Reform (SSR). Lastly, conclusions are drawn.

## OPPORTUNITIES AND OBSTACLES ASSOCIATED WITH THE USE OF PMSCs

The unprecedented and rapid rise of the private security sector has resulted in great complexity with regard to the definition of military and security service providers. A role that traditionally belonged to the state has become corporatised, allowing civilians to take part in military- and security-related activities. The rise in this industry is due to a series of events that shifted the axis of traditional security structures. The end of the Cold War represents a critical juncture as it fundamentally changed the foundations of security provision. This became evident with the UN's process of reform, in which the organisation's approach to maintaining international peace and security, particularly peacekeeping, changed drastically. The changing nature of war transformed peacekeeping from predominantly inter-state to intra-state conflicts (MacQueen, 2006). Whereas previous peacekeeping initiatives required peacekeeping troops to intervene in conflicts between warring states, now multi-dimensional operations have to contend with the myriad complexities of a state's internal dynamics. The end of the Cold War also marked the end of states' focus on building their military arsenal. Downsizing the military became more common. Richards and Smith (2007) note that as a result of this:

[M]any states worldwide are increasingly outsourcing functions to private contractors that were traditionally undertaken by their military and police, partly in response to public sector downsizing, but also because of the changing nature of warfare. In theory at least, this new model of security provision allows governments and public institutions to increase efficiency by concentrating on their core functions whilst transferring surplus responsibilities to private companies.

States are increasingly contracting security to private companies, which 'specialize in the provision of military skills, including tactical combat operation, strategic planning, intelligence gathering and analysis, operational support, troop training and military technical

assistance' (Singer, 2003:3). The employees of PMSCs are essentially civilians. This creates difficulties in terms of their accountability. Healy (2010) contends that this is because the scope of military jurisdiction does not apply to civilian contractors, and extending this jurisdiction over civilians has proven to be a cumbersome and flawed process. Efforts to close this accountability gap are ongoing with, at the international level, the United Nations (UN) Working Group addressing both this issue and the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of the people to self-determination. The Working Group has, as of the end of July 2010, pushed forward its proposal for a possible international convention on the regulation of activities of PMSCs.<sup>6</sup> This could pave the way for a regulatory framework that can ensure the accountability of PMSCs and that they will be answerable for any excesses incurred by them.

The difficulty of establishing jurisdiction over PMSCs, and subsequently prosecuting civilian contractors employed by PMSCs, is exacerbated by the difficulty in distinguishing between the different functions carried out by some companies. This represents a critical juncture in the realisation of PMSCs' potential, as without regulation the enhanced capacity that they could offer becomes minimal. Some companies that claim only to perform security-related functions such as protection are also involved in military-related roles (Gumedze, 2009:3). The 2009 Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict refers to PMSCs as private business entities that provide military and/or security services, irrespective of how they describe themselves.<sup>7</sup> Military and security services include armed guarding and the protection of persons and objects such as convoys, buildings and other places; the maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.<sup>8</sup>

The Montreux Document was the conclusion of a joint initiative between the International Committee of the Red Cross (ICRC) and the Swiss government. It is the first international document to describe the activities of PMSCs as viewed by international law, when these activities are present in the context of armed conflict. The document's main aim is to demonstrate that international law, in particular International Humanitarian Law (IHL) and Human Rights Law (HRL) has a bearing on PMSCs and that there is no legal vacuum.<sup>9</sup> The Montreux Document is limited, however, as it is not legally binding. Despite this, the Montreux Document reaffirms assertions of international law and is a step in the right direction with regard to the regulation and oversight of

PMSCs. Angola, Sierra Leone, South Africa and Uganda (as of July 2010) are the only countries in Africa that have adopted the Montreux Document.<sup>10</sup>

The ongoing process of drafting a 2010 Global Code of Conduct for Respect of Human Rights and International Humanitarian Law is a follow-up to the Montreux Document.<sup>11</sup> This code aims to better enable non-state actors to fulfil their obligation to respect International Humanitarian Law and Human Rights Law.

Because there is no universally accepted definition of what PMSCs are, their lack of definitional clarity may be used to evade responsibility in the face of criminal offences with which they may be charged. Legal technicalities are a critical issue in the argument against the use of PMSCs, and rightly so. In order for the private security sector to be effective in providing their highly specialised security services, the emphasis must be on formulating legally binding accountability measures. The unfortunate Blackwater (now Xe) shooting incident of 16 September 2007 proved to be a turning point for PMSCs, as it shed light on contractor abuses and, more importantly, on the lack of accountability that these contractors enjoyed. As a United States (US) military official stated at the time, 'If our people had done this, they would have been court-martialled' (Healy, 2010:2).

As Maffai (2009:2) rightly asserts, 'for every soldier prosecuted under the Uniform Code of Military Justice for criminal activities and human rights violations, there are PMSC employees that cannot and will not be prosecuted under any existing law'. Without punitive measures to check the excesses of PMSCs and their employees, it becomes rather difficult to assert with confidence that their involvement would be beneficial to enhancing international peace and security. The uncertainties about PMSCs' activities and their consequences are of grave concern. PMSCs' potential excesses highlight the need to create and harmonise international laws that can address their operations.

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It is worth noting that the Working Group welcomed the US government's appeal against the decision from a US Federal District Court<sup>12</sup> that sought to dismiss an indictment against the Blackwater guards charged with voluntary manslaughter and firearms violation

in connection with the shooting. This shows that, increasingly, measures are underway to ensure that such violations are not overlooked.

Assessing the potential impact of PMSCs with a post-conflict perspective may perhaps be more suitable. Pertinent issues regarding PMSCs' abuses may be avoided if the industry's expertise is concentrated in post-conflict security initiatives and processes that foster sustainability. These processes will be discussed in more detail later.

Singer (2006) explains that the privatisation of security essentially means that different actors on the global stage, at their own discretion, can gain access to military capabilities on the open market and pay for them. PMSCs' clientele ranges from ruthless dictators, rebels and drug cartels to legitimate sovereign states, respected multinational corporations and humanitarian non-governmental organisations (NGOs) (Singer, 2006). The government traditionally provides services to its citizens through the public sector and these services are generally paid for through taxation (Singer, 2003). The privatisation of security changes the future of security provision on a national, regional and international level, as these services are now available on the open market. In addition, this also challenges state sovereignty and 'weakens the state's monopoly over the use of force, an unregulated private security industry can hinder rather than help law enforcement' (Singer, 2003:7). This highlights the need for effective oversight mechanisms to ensure the accountability of PMSCs. This will certainly contribute to enhancing the different processes required for achieving peace and security on the continent.

Central to understanding the complexities surrounding the use of PMSCs is understanding the challenges posed by the definition of exactly what they are. The confusion can be attributed to both the transnational nature of PMSCs' operations and the difficulty of classifying their activities according to international law, because there are so many different actors involved and they undertake such diverse activities. These actors include states that contract PMSCs to perform certain activities; territorial states where PMSCs operate; and home states, the state of origin for a PMSC.<sup>13</sup>

This diversity of both actors and activities, it can be argued, provides the means for PMSCs to evade restrictions and laws that may affect the nature of their trade. For example, a PMSC's 'home state' refers to the state where the company is based. The 'sending state' refers to the state that sends the PMSC to operate in another state. The 'host state' refers to the country the PMSC is sent to, to conduct its operations. These classifications often overlap, and sending states may also be the home state and perhaps even the host state.<sup>14</sup> This creates a convoluted web of linkages that is essentially market

based but, because of state involvement, increasingly takes on a political dimension. It is therefore difficult to simply classify PMSCs as traditionally conceptualised corporate entities because of the political-economy element embedded in their structure. In 1999 the United Nations Development Programme (UNDP) inferred that despite the dominance of these multi-national corporations in the global economy, their actions are frequently unrecorded and unaccounted for. The UNDP emphasised that they need to be ‘brought within the framework of global governance, not just the patchwork of national laws, rules and regulations’ (Mehra, 2010:6).

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Clarification about the definition of a ‘home state’ becomes particularly important when PMSCs are registered in offshore tax havens such as the Bahamas or Cayman Islands (Cockayne, 2008). Certainly this creates the idea that PMSCs are purposefully trying to evade restrictive legislation and accountability mechanisms in their home states. Although the Montreux Document is not legally binding, it clarifies this issue of PMSCs’ offshore activities by asserting that ‘the State where the PMSC has its principal place of management is the “home state”.’<sup>15</sup> This helps remove ambiguity and enhances regulatory initiatives.

The need for an international legal framework is evidenced by the difficulties encountered when a sovereign state attempts to exercise legal jurisdiction over another sovereign state (Singer, 2006). As mentioned earlier, although some states do have domestic legislation, without international laws, domestic mechanisms are not easy to enforce. South Africa and Nepal have tried to control and regulate PMSC employees from their countries as there are a considerable number of citizens from these countries working in Iraq, although the exact number is not known (Singer, 2006).

These are just some of the various obstacles involved with the use of PMSCs. Accountability and oversight mechanisms are crucial to ensuring that the legitimacy and potential benefits of PMSCs are realised. More responsible PMSCs might then function according to the necessary boundaries and thereby present important

opportunities for more effective international peace and security.

## ASSOCIATION OF PMSCs WITH MERCENARIES

Further complications to ensuring the accountability of PMSCs arise from their association with mercenaries. The profit-maximisation approach adopted by PMSCs has led to this incorrect association. It would, however, be unrealistic to assume that military and security services offered by PMSCs do not have a price tag even for their proposed role in the context of peacekeeping. Conversely it is not difficult to understand the financial incentives associated with joining the army and the remuneration that official soldiers stand to gain when they form part of UN peacekeeping forces. MacQueen (2006) emphasises this by detailing how the UN pays troops that volunteer to contribute to peacekeeping efforts. Small states such as Nepal and Fiji have been able to exploit their military traditions and grow their small national economies through their contribution to peacekeeping forces (MacQueen, 2006). It is clear that financial incentives are necessary for any person or organisation to engage in any conflict or post-conflict setting, save for humanitarian organisations.

Certainly PMSCs have harboured mercenaries, as conceded in 2004 by Mr Ballestros, the then Special Rapporteur of the Working Group on Mercenaries. In paragraph 43 (h) of his report to the Human Rights Commission in its 60th session he asserted that the new definition of mercenaries should include those employed by PMSCs (Ballestros, 2004). Indeed this is why it is imperative for states, civil society and PMSCs to lend support to the current processes that aim to regulate the privatisation of security. It must be noted that this association with mercenaries hinders any progress that may be made with regard to the regulation of PMSCs’ activities.

Nevertheless, although critics have associated the activities of PMSCs with those of mercenaries, it is important to draw a clear distinction between the two:

[O]ne problem associated with this discourse is the meaning of the word ‘mercenary’. While mercenaries are generally private armies, not all private armies are mercenaries. It is therefore incorrect to assume that the private security sector comprises [...] mercenaries. (Baker and Gumedze, 2007)

Despite the fact that both PMSCs’ and mercenaries’ services are characterised by an exchange of their expertise in security provision for financial gain, the term ‘mercenary’ refers to an individual while a PMSC is



a company that recruits individuals. Indeed, both types of these individuals are notable for their expertise in security provision.

With the wave of independence movements in the second half of the 20th century, mercenary activity became a feature of the African political landscape. The destabilisation that these rogue forces posed to the emerging states was particularly worrying. This concern prompted the Organisation for African Unity (OAU) to draft the 1977 Convention for the Elimination of Mercenaries in Africa.<sup>16</sup> This Convention suffered from various definitional problems that resulted in its incapacity to regulate all the activities of mercenaries.<sup>17</sup>

In 1980, the UN, in an effort to eliminate the mercenary activity that had become a common occurrence on the African political stage, established the Ad Hoc Committee to draft an international convention to curtail the recruitment of mercenaries. Resolution 44/34 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was finalised on 4 December 1989.<sup>18</sup> Article 1(2) of the Convention also conceded that a mercenary is also any person who is specially recruited locally or abroad to take part in acts of violence aimed at '(i) overthrowing a Government or otherwise undermining the constitutional order of a State; or (ii) undermining the territorial integrity of a State'.<sup>19</sup> Mercenary activity was viewed as a violation of international law, and the Convention sought to garner and foment international co-operation among states in order to prevent, prosecute and punish such offences. However, despite their fervent approach, the Convention did not lead to a complete ban on mercenaries, who became increasingly adept at evading the definitions of their trade.

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Signing the Mercenary Convention would serve to demonstrate that unaccountable security service providers are unacceptable

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In addition to this, the 1989 UN Convention on the Recruitment, Use, Financing and Training of Mercenaries failed to gather any kind of tangible momentum among heads of state. In July 2005, the Working Group asserted that only 30 states have ratified this particular Convention.<sup>20</sup> The Working Group expressed its concern about both this and the lack of regulation,

oversight and accountability of private military and security companies at the regional and national levels. Through consultations with states in different regions of the world, the Working Group has sought to draw on the experience of different states and to engender national and international regulation and oversight of the activities of PMSCs with the aim of encouraging the protection of human rights.<sup>21</sup>

Despite the fact that mercenaries are no longer a pervasive problem, signing the Mercenary Convention would serve to demonstrate that unaccountable security service providers are unacceptable. As important as domestic legislation is regarding the criminal prosecution of individuals involved in mercenary-related activity, this is insufficient for addressing indiscretions committed by employees of PMSCs (Mehra, 2010). The two cannot be painted with the same brush, and separate attention must be dedicated to each. Certainly, pertinent international legislation pertaining to PMSCs is at the moment of paramount importance as the growth of the privatisation of security continues to challenge traditional security provision.

Again it must be emphasised that PMSCs are not mercenaries and this association hinders progress in terms of an internationally accepted inclusion of PMSCs to fortify peace and security efforts. There is a need to legitimise PMSCs. This can only be done through open and robust dialogue and binding laws against any excesses that may be committed on their behalf. If corporate security is to harness the specialised skills of the individuals employed as security providers, they must be able to act in a complementary role to existing peace and security initiatives. This would go a long way to creating transparency and enhanced international peace and security.

Just as the international community attempts to curtail the excesses of PMSCs, so the excesses of governments should also be taken into account. It is impossible to create a legal framework to allay fears of PMSCs' indiscretions without looking to their contractors. During the elaboration of the new Draft Convention it was noted that the use of PMSCs has impacted on the enjoyment of human rights, and blurred the line between the responsibility of states and that of PMSCs.<sup>22</sup> The Draft Convention seeks to reaffirm the state's responsibility and emphasise the importance of its monopoly on the legitimate use of force, while ensuring respect for human rights.<sup>23</sup>

## ACCOUNTABILITY OF PMSCs

Identifying the various complex challenges and opportunities that arise with regard to the structure of PMSCs – such as the issues of ambiguous definition and the potential for impunity – illustrates the need for this

definitional gap to be addressed. It is therefore imperative that enforcing accountability mechanisms becomes a priority, particularly with the potential for PMSCs to be utilised for enhanced peacekeeping.

Cases where PMSCs have shown a lack of respect for human rights during armed conflict can be linked to the lack of a co-ordinated approach in holding PMSCs to account from the different actors that employ their services. The aggressive approach of some contractors has been exacerbated by government inaction. The failure to investigate and bring offenders to book is simply a way to avoid responsibility (by both the state and the PMSCs involved), and creates the opportunity for more abuses. In 2004, accounts of physical, sexual and psychological prisoner abuse (including torture) in the Abu Ghraib prison in Iraq began to reveal the inhumane tactics used by US military personnel. In a report, Red Cross delegates asserted that the military intelligence officials in charge of the interrogation process claimed that these methods for physical and psychological coercion were 'just part of the process' (Benvenisti and Ehrenreich, 2004). The culture of impunity that surrounds the activities of PMSCs is far from being resolved, especially with the blatant lack of political will shown by more powerful states to prosecute their citizens for human rights violations. In fact, the Human Rights First Report highlights the complicity of the US government in protecting private contractors when things go wrong. The Report notes that:

In the face of continuing US government inaction, some contractors removed from service under circumstances of alleged abuse have been redeployed by their companies or transferred to other companies for continued service on US government contracts elsewhere. In October 2007, for example, it was confirmed that the security contractor suspected in the December 2006 killing of a member of the Iraqi vice president's security detail, who was flown out of Iraq less than 48 hours after the crime, found continued employment with another private security contractor operating in Kuwait under a Department of Defense.<sup>24</sup>

The likelihood of reaching a consensus on the actions of PMSCs is questionable because, in most cases, states that are the 'home states' are trying to evade responsibility. Conveniently, due to the implications that their involvement may have on the state's public image, they choose to use private contractors. This essentially means that they can exert their hard power without having to worry about the consequences. Although these states may have established restrictions within their respective territories with regard to the compliance of PMSCs, these unfortunately do not amount to much, because enforcing

them proves increasingly difficult. As mentioned earlier, enforcing legislation from the domestic level in order to control PMSCs at the international level can suffer from a variety of problems. A comprehensive and international legal framework is therefore essential for resolving the plethora of issues pertaining to PMSCs and their trade.

If there is a lack of commitment to criminalise and take appropriate legal action against PMSCs and their employees, claims of licensing and vetting procedures amount to little more than abstract terms. In international and non-international armed conflict it is the duty of the hiring state to ensure respect for International Humanitarian Law (IHL) under Common Article I (Hoppe, 2008). States have to properly vet and train the contractors they hire as well as issue clear rules of engagement that conform to IHL. They must also ensure that violations are reported. Although this is necessary it is not sufficient for narrowing the responsibility gap (Hoppe, 2008). Particularly in the context of peacekeeping, which has taken on a non-military and humanitarian element, emphasis must be on drafting legislation that pertains to this. The laws should contextualise the role of PMSCs in post-conflict situations and their conduct should be limited to a complementary support role.

The fact that states contract PMSCs either as a convenient tool to allay their responsibility in the face of the inappropriate conduct of PMSCs, or as a means to avoid public condemnation, does not bode well for the future of international peace and security. It is important to highlight the responsibility gap that exists for states that contract PMSCs. Hoppe (2008) attributes this gap to the extraterritorial applicability that currently hinders the prosecution of foreign civilian contractors in the state in which they are operating. He fears this may pose a risk to the maintenance of international responsibility, as states strategically exploit this gap to minimise their responsibility. The Draft Convention addresses this, stating that each state will take the necessary measure to establish its jurisdiction through domestic law.<sup>25</sup>

PMSCs and the states that contract them must adhere to the 2003 UNESCO document 'Norms on the responsibility of transnational corporations and other business enterprises with regard to human rights'.<sup>26</sup> This conceptual and policy-based framework seeks to address the shortfalls in justice that can occur when businesses undermine human rights. The three main principles are drawn from existing international and legal principles found in treaties and customary law, including various UN declarations and resolutions (Mehra, 2010).

The framework seeks to ensure that both states and corporations acknowledge their responsibility to protect human rights and to find more effective remedies to deal with matters pertaining to this. The Norms clearly state that, within their respective spheres of activity

and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights as recognised in international law as well as national law.<sup>27</sup> It is indefensible to have the state absolved from any responsibility simply through the outsourcing of one of its basic functions. State and non-state actors should be actively engaged in the necessary processes that are crucial to the regulation and oversight of this industry. Their commitment to establishing institutions that can hinder impunity is essential to ensuring that this industry does not become a vestige of counterproductive expertise and experience. Acknowledging the importance of states' ensuring that corporations and their employees act responsibly is critical to the regulation of PMSCs. Indeed, this should form a necessary juncture in all future attempts to regulate the activities of PMSCs.

The Draft Convention is aimed at ensuring that states that contract PMSCs commit to the responsibility of their stated objectives. This process seeks to capture PMSCs in all their stature in order to guarantee their accountability and regulation. For example, the issue of their definition – ultimately one of semantics – continues to create loopholes. Their definition therefore requires clarification before the effective regulation of all PMSCs' activities can occur.

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The Draft Convention encounters some difficulty with this, particularly in its attempt to define what a state's inherent functions are. Article 2 (i) of the Convention regards these as functions consistent with the principle of the state monopoly on the legitimate use of force, which cannot be outsourced to PMSCs under any circumstances.<sup>28</sup> Certainly this is in contradiction to Article 4 (5), which requires each state to take legislative measures in accordance with its domestic law to fully or partially prohibit the outsourcing of military and security services.<sup>29</sup> Perhaps the Draft Convention precludes the inevitability of a possible conflict of interest that would arise, given the different levels of financial and physical capacity to provide certain military and security services. This provides flexibility for states that require increased capacity with regard to security provision and for the home states of PMSCs that can provide this additional support.

Article 32 of the Draft Convention proposes the International Committee on the Regulation, Oversight and Monitoring of PMSCs deals with this issue (Haile, 2009), but how this body would contribute to holding PMSCs to account is not entirely clear. Their stated role would be one of collecting information on PMSCs found violating international law and human rights norms, and informing the concerned state of their findings (Haile, 2009). There is no indication of whether this would decrease or end contractor abuses. Without any authority to enforce punitive measures the Committee, and ultimately the Convention, cannot control PMSCs' activities and curb the potential for abuses. Nevertheless, it is a step in the right direction and could create opportunities for far-reaching mechanisms for regulation and accountability in the future. This is imperative, particularly with the need to enhance the applicability of international laws, which in this context are increasingly crucial due to the transnational nature of PMSCs.

With the amendment of the military justice system, attempts to close the jurisdiction gap came to a head with the first civilian contractor criminally charged for stabbing a man in a US military base in Baghdad (Healy, 2010). Controversy ensued as critics questioned the constitutionality of the amendment. Especially interesting is that the contractor Alaa 'Alex' Mohammad was not even an American citizen, and his attorney accused the government of using him as 'a legal lab rat' (Healy, 2010). Complexities abound when accountability is compromised due to issues of jurisdiction. The transnational nature of PMSCs and their employees has created a monumental challenge for policy makers and legislators. It is seemingly an insurmountable task to co-ordinate national, let alone international, laws to address the activities of PMSCs. Ultimately it was decided that the amendment was indeed constitutional and the charges levied against Mohammad met the requirements to exercise criminal jurisdiction. These included the incapacitation of the local civil authority as a result of ongoing military conflict and the fact that Iraq falls within the category of an occupied territory (Healy, 2010).

Perhaps some measure of change is being fostered with regard to the need to hold PMSCs to account. A good example of this is the 2008 Status of Forces Agreement (SOFA), executed by the United States and Iraq, which denies contractor immunity and allows PMSCs' employees to be prosecuted under Iraqi law (Haile, 2009). In 2008, the US Congress also enacted the National Defense Authorization Act 'which required new regulations – issued by the Department of Defense in July – for the selection, training, equipping and conduct of PMSC personnel in combat areas' (Haile, 2009). This indicates an earnest step towards ensuring the

accountability of PMSCs. This is particularly important because during the Working Group's country visit to the US, it was noted that American PMSCs dominate this industry.<sup>30</sup> The need to galvanise international support for international regulation of PMSCs under the Draft Convention would therefore require the support of such a major player, pursuant to the realisation of enhanced peace and security.

Certainly accounts of PMSCs' conduct and deplorable impunity do not help their case as a possible force for good. Such incidences are certainly unfortunate and lend credence to the need to fortify accountability and regulatory mechanisms for PMSCs. Nevertheless, these incidences should not cloud all perspective as it is impossible to compare the actions of the PMSCs contracted by the US State Department in Iraq and Afghanistan with those that would be needed in African peace and security initiatives. These PMSCs could provide support parallel to official UN and African peacekeeping efforts on the continent, which suffer from various capacity shortcomings. Fostering an international legal framework to monitor the activities of PMSCs would certainly strengthen and ensure more effective mandate crafting, and peacekeeping initiatives could be greatly enhanced as a result.

## PMSCs AND PEACEKEEPING IN AFRICA

With regard to the success of peacekeeping missions to which PMSCs could greatly contribute, and particularly to embattled African operations, it is necessary to tighten the definition of PMSCs' activities. As a Westphalian function of stabilising the state-based international system, peacekeeping has been instrumental both in demarcating national frontiers in inter-war Europe and in managing the transfer of power and the creation of new states in the Cold War and post-Cold War period (MacQueen, 2006). It is important to co-ordinate PMSCs' activities in line with the main objective of the UN, that is, international peace and security. In order for this to be possible there must be a move to ensure that the regulation of PMSCs manifests in a tangible opportunity to enhance peace and security around the world. This can only be achieved through a comprehensive and effective regulatory framework, while ensuring that neutrality and impartiality are maintained. PMSCs could provide logistical support in peacekeeping initiatives and facilitate and strengthen SSR within the broader narrative of peace and security.

The UN has had to shift and expand its field operations from 'traditional' missions involving strictly military tasks, to complex 'multidimensional' enterprises designed to ensure the implementation of comprehensive

peace agreements and assist in laying the foundations for sustainable peace. Today's peacekeepers undertake a wide variety of complex tasks, from helping to build sustainable institutions of governance, to human rights monitoring, to security sector reform, to the disarmament, demobilization and reintegration of former combatants.<sup>31</sup>

The ability to intervene in conflict situations is also hindered by the organisation's principle that is based on the sovereign equality of all its member states, as stated in Chapter 1, Article 2/1 of the UN Charter.<sup>32</sup> There is also the issue of political will and financial resources, as UN capacities are determined by member states' contributions. A parliamentary hearing at the UN conceded that while efforts to enhance peacekeeping were ongoing, the organisation's capacity was severely strained in meeting peacekeeping demands.<sup>33</sup> On numerous occasions peace and security has been jeopardised because of its unwillingness to ensure that peacekeeping mandates allow for the necessary use of force to protect civilians.<sup>34</sup>

To ensure that the debate about the regulation and monitoring of PMSCs moves beyond the threshold of mere rhetoric and that proposed regulatory and monitoring mechanisms are enforced, more robust debate is needed. It is important that the scope of the debate is broadened, in particular regarding the issue of the arming of PMSCs. The potential danger that such arming could pose in a post-conflict environment must be addressed, particularly the issue of PMSC complicity through self-defence.

States, international organisations, Regional Economic Communities (RECs), NGOs and civil society groups should be part and parcel of this debate concerning the regulation of PMSCs. This will enhance the quality of the proposals in terms of finding a resolution to the uncertainties surrounding PMSCs and their activities. In Africa particularly, where the issue of PMSCs and their regulation is given scant attention, robust public discourse should be encouraged. Certainly concerted efforts to engage in the regulation of PMSCs in their home states will go a long way towards ensuring that PMSCs can be held to account.

Current multi-dimensional peacekeeping missions in Africa require support for more effective security provision. More accountable PMSCs could certainly meet these demands. The privatisation of security, for financial gain, may provide the incentives needed for a commitment to ensuring sustainable peace and security become a reality. In October 2008, 163 Bangladeshi officers arrived in the Darfur region of Sudan to enhance the logistical support of the UN African Union peacekeeping mission there.<sup>35</sup> However, despite this



boost of additional logistical and engineering capabilities in the areas of supply, transport, maintenance and force protection, vital essentials such as helicopters were still lacking.

An example of just one PMSC enhancing capabilities in African peace and security initiatives is that of Pacific Architects and Engineers' (PAE) support for the African Union (AU) Mission in Darfur (Cole, 2007). 'The company became the logistical backbone of the mission and under a US State Department contract provided 34 base camps, vehicle maintenance and telecommunications equipment' (Cole, 2007). It is undeniable that Africa requires assistance with regard to stabilising parts of the continent. Ensuring responsible and accountable security providers that perform vital duties parallel to official peacekeepers should be a joint continental effort that reflects the need on the ground.

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It is undeniable that Africa requires assistance with regards to stabilising parts of the continent

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Advocators for more accountable private security providers should take these examples into consideration, and not allow PMSCs' services to be carried out without first determining the nature of the boundaries and opportunities of the industry. Whether or not there is participation from African governments in the ongoing process of regulating PMSCs, the industry will continue to grow and influence various aspects of security on the continent. It would therefore only make sense for members of the AU, the RECs and the NGOs to become involved in the steps necessary to fortify a responsible private security sector. Regardless of the obstacles that abound regarding a comprehensive regulatory framework, an emphasis on continued discussion will lead to the drafting of a far more comprehensive and, subsequently, more effective system to address PMSCs' activities. In Africa it is even more essential that momentum be mobilised towards addressing the shortcomings of current peacekeeping missions, many of which have failed rather dismally to achieve sustainable peace and security on the continent. The capacity deficit of African peacekeepers to achieve and maintain stability can be greatly enhanced by employing PMSCs whose expertise could be utilised to support various peacekeeping activities. PMSCs could assist in overcoming the UN weakness of the ad hoc recruitment of peacekeepers and instead build on the organisation's strength in multilateral legitimacy (Patterson, 2008).

## CAPACITY SHORTFALL AND DONOR FATIGUE

African regional organisations have contributed tremendously to peacekeeping but the complexities surrounding challenges of implementation and lack of capacity drastically hinder the success of attaining sustainable peace. The involvement of the Economic Community of West African States (ECOWAS) in the Mano River entanglements serves as a case in point. The regional organisation's monitoring group, ECOMOG, was also involved in Sierra Leone in 1991, in Liberia from 1990–1998, and in Ivory Coast in 2003.<sup>36</sup> The engagement in Sierra Leone placed a tremendous amount of pressure on Nigeria because, of the 13 000 ECOMOG troops, all but 1 000 were Nigerian (Howard, 2008). Nigeria, after the death of hundreds of its troops, was no longer able or willing to bear the burden of peacekeeping alone, and the UN had to intervene (Howard, 2008).

The UN had embarked on a policy that sought to scale down the size of the peacekeeping operations, due to the embarrassment of the organisation's failures in Somalia in 1993 and its inaction in the face of the Rwandan genocide (Howard, 2008:300). ECOWAS's response had been partly due to an increased realisation that the continent needed to have home-grown initiatives in the resolution of its conflicts, but was also due to the open secret of the decreasing support from Western states for intervention in African peacekeeping. This was evident in the small operations with limited mandates that the UN had committed to these three countries, and which had initially been mere observer missions (Aboagye, 2007).

Ultimately these operations had to be transferred to the UN. Effectively becoming the UN Observer Mission in Sierra Leone (UNOMSIL), whose mandate was the disarmament of 70 000 troops on both sides of the conflict: the Revolutionary United Front (RUF) and the government-supported Civil Defense Force, also known as the Kamajors. This was successfully completed in early 2004 (Howard, 2008). Successful UN elections were held and Ahmed Tejan Kabbah was re-elected. Other major tasks such as the reintegration of former combatants through training and resettling programmes were all completed (Howard, 2008). However, the success of this mission was almost compromised with a return to violence after ECOMOG had withdrawn its forces and UNOMSIL took over. Unfortunately the quality of troops offered by the UN member states had been marginal and the disastrous results were predictable (Brooks, 2000). The situation was salvaged by the United Kingdom, which unilaterally sent in 750 troops to help stabilise the capital city, with UN Security Council approval (Kaldor and Vincent, 2006). The UN and ECOWAS had to send

in more troops to stabilise other parts of the country (Kaldor and Vincent, 2006).

Donor fatigue is another major factor that contributes to the failure of African peacekeeping operations. The failure of some peacekeeping operations, compounded by the continued instability and, inevitably, the need for more resources, makes African peace and security a thorn in the side of the international community. As Brooks (2000:1–2) notes, ‘few states are willing to commit their own armed forces to these dreadfully dangerous missions and increasingly “donor fatigue” is matched by “peacekeeper fatigue”’. This is evident in the developed world’s growing indifference to Africa’s prolonged needs. The lack of capacity of African troops and debilitating donor fatigue makes a case for the use of PMSCs in Africa, particularly with regard to peacekeeping, which could be greatly enhanced by the inclusion of PMSCs in support of the continent’s peace and security architecture. It is evident that Africa needs the help and, provided that PMSCs’ activities are in support of African peacekeeping initiatives, the future of African peace and security may not be so bleak.

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UN members’ disinclination to contribute military troops has proved most reliable when the need has been most urgent

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Peacekeeping on the continent has gone through a rebirth as African initiatives have asserted their commitment to peace and security. Particularly notable is the 2001 AU Constitutive Act, which provides as its main objective the promotion of ‘peace, security and stability on the continent.’<sup>37</sup> Since 1948, there have been 54 UN peacekeeping missions in Africa. African troops have been involved in all but ten of these. According to a report from the Henry L. Stimson Center, at the start of 2005 peacekeepers in Africa made up nearly 50 000 of the 65 000 UN peacekeepers deployed worldwide (Pan, 2005). Recently, regional groups have been focusing on building their own capacity to carry out peacekeeping operations in Africa. These missions are conducted with support from the UN, which is happy to have African soldiers patrolling African conflicts (Pan, 2005). PMSCs could therefore undoubtedly strengthen the capacity and capabilities of African peacekeepers.

The AU must be applauded for its realisation that the importance of ensuring peace and security is critical to the future sustainability of political and

socio-economic stability. The unsuccessful efforts to deal with the unprecedented challenges presented by the shortcomings of the African security architecture may be attributed to a lack of coherence and co-ordination amongst the regional organisations. A lack of consistent and co-ordinated operational command can effectively undermine the success of any peacekeeping operation. This can explain some of the failed peacekeeping initiatives in Africa, coupled with poor capacity in terms of equipment, transport, provision of humanitarian aid and, most importantly, an effective mandate.

The issue regarding mandates is essentially tied up with international prescriptions about the nature and requirements of deploying peacekeeping forces in a post-conflict situation. These categorically call for a cessation of hostilities between the warring parties and the establishment of a Comprehensive Peace Agreement (CPA). These requirements seek to ensure that the peacekeepers do not enter a situation where fighting breaks out and there is no peace to keep, rendering mandate implementation null and void. The AU Constitutive Act seeks to break away from this, as Article 4(h) stipulates that the AU has the right to intervene in a member state ‘pursuant to a decision of the Assembly in respect to circumstances, namely: war crimes, genocide and crimes against humanity’.<sup>38</sup> Certainly an AU Standby Force (AUSF), which could be the answer in terms of speedy responses to the outbreak of conflict, would be better suited to receive support from PMSCs. This is especially why it is so important for African governments to engage in the discourse and partake in outlining boundaries for PMSCs, which could provide complementary support for the AUSF. Africa should not throw out the proverbial baby with the bathwater and the dialogue should concentrate on weeding out the negative aspects of PMSCs, such as their lack of accountability, and encourage aspects that could lead to more effective peacekeeping, such as logistical support to enhance various aspects of the African peacekeepers.

UN member disinclination to contribute military troops has proved most reliable when the need has been most urgent. Kofi Annan eventually acknowledged the merit in the UN African Mission in Rwanda (UNAMIR) commander’s belief that a single mobile brigade emplaced in theatre within weeks of the deaths of the Rwandan and Burundian presidents would have saved thousands of lives, and if deployed promptly in Kigali, ‘might have stabilized the situation.’ No state was inclined to provide suitable resources’ (Patterson, 2008:2).

This was in reference to the then UN Secretary-General’s desperate attempt to expand the United Nations

Assistance Mission for Rwanda (UNAMIR). Of the 19 states then participating in the UN Standby Agreements System, none was willing to contribute its forces (Patterson, 2008).

Peacekeeping involves an extremely broad set of processes and requires multi-faceted approaches that are not readily defined. Each situation presents dynamic challenges and opportunities. The UN has gone through a process of reform in the organisation's approach to international peacekeeping. Since the end of the Cold War straightforward inter-positional peacekeeping between states ceased to exist (MacQueen, 2006). Beginning in the 1990s, the changing nature of war transformed peacekeeping missions such as those in Cambodia, Angola, Sierra Leone and Somalia, where such missions sought to address the problem of failing or collapsed states (MacQueen, 2006). Today the complex internal dynamics of states, particularly in Africa, continue to demand cross-cutting and innovative approaches to securing a lasting peace.

According to the 2005 Human Development Report, disorder, crime and violence must be addressed before there can be any hope of achieving the Millennium Development Goals (MDGs) of reducing poverty and improving the standard of living.<sup>39</sup> In order for states to create the conditions for sustainable peace, which would ultimately foster economic growth and socio-political stability, there is a need to engage in effective SSR initiatives. This is especially true for post-conflict settings, where such SSR could be facilitated by more accountable PMSCs.

## USE OF PMSCs IN SSR

SSR refers to the long-term process, once the fighting has stopped, whereby various processes are implemented to stabilise institutions in a post-conflict setting, and thus contribute to the respective state's sustainability. Certain elements of SSR may form part of a larger peacekeeping framework.

The UK Government's Global Conflict Prevention Pool (GCPP) defines SSR as: 'a broad concept that covers a wide spectrum of disciplines, actors and activities. In its simplest form, SSR addresses security related policy, legislation, structural and oversight issues, all set within recognised democratic norms and principles.'  
(Department for International Development, Ministry of Defense and Foreign and Commonwealth Office, 2004)<sup>40</sup>

Building the foundations for sustainable peace after a country has emerged from conflict requires a concerted effort to ensure that the legacy of the conflict has been resolved. This would mean addressing the root causes of the conflict, which takes a significant amount of time

and energy to achieve. SSR needs to build support across the justice and security systems. The 2007 Organization for Economic Cooperation and Development (OECD) Handbook on SSR proposes that strategic options to carry this out should include:

1. A problem-solving approach that means focusing on one security or justice problem (such as crime) as an entry point in order to mobilise system-wide engagement.
2. An institutional approach where there are existing pro-reform initiatives at an institutional level which can be supported (such as government-initiated security system reviews).
3. A phased approach to post-conflict situations that focuses on understanding and, where possible, integrating stabilisation – 'securing the peace' – and development-oriented objectives.
4. Multi-stakeholder projects and programmes are core instruments for SSR, but donor budget support programmes provide important opportunities to consider security sector financing issues.<sup>41</sup>

The process of ensuring accountable PMSCs is experiencing 'teething problems', particularly with regard to what extent they should be involved in the provision of peace and security. Appropriate attention given to SSR would better ensure that peace and security is sustainable, and this could certainly be facilitated by incorporating PMSCs in SSR. The multi-faceted realm of SSR has serious capacity shortfalls, particularly in the African post-conflict context, and would greatly benefit from PMSCs' involvement. The UN Security Council asserts that various factors of SSR are interconnected, including 'transitional justice, disarmament, demobilization, repatriation, reintegration and rehabilitation of former combatants, small arms and light weapons control, as well as gender equality, children and armed conflict and human rights issues'.<sup>42</sup> These form part of important foundations for sustainable peace and security.

These processes would require long-term engagement and perhaps it is this factor that deters donors from maintaining their support in post-conflict settings. Additionally, there is the problem of the capacity for SSR processes, and increasingly this suggests the need to engage with PMSCs on these initiatives. These would inevitably include non-military functions as well, such as disarmament, demobilisation and the re-integration of former combatants. Another crucial aspect of a successful peacekeeping operation is the provision of humanitarian assistance; basic needs like food, water, clothing and shelter are essential.

Again it must be emphasised that the only way to ensure the positive inclusion of PMSCs into African

peacekeeping is to enact laws that ensure that they maintain a primarily supportive role. Any proposed legal framework should maintain this, because past experience with PMSCs' impunity and lack of accountability shows that it would be difficult, if not impossible, to control their actions in offensive combat operations. This means that PMSCs should be limited to a logistical, support role.

PMSCs' involvement in post-conflict SSR programmes may offer benefits in the long term. Certainly, if the accountability of PMSCs cannot be guaranteed then the risks would be incompatible to attaining peace and security. This prescription can only be an effective tool in managing PMSCs if states commit to it themselves, and do not contract out services that their own national armies could execute. States that do contract out SSR should ensure that transparency is maintained between the home state and the PMSCs themselves. The lack of capacity in African military forces should be incrementally enhanced through a democratic process of security sector governance to ensure that the army, at the national and regional level, becomes a force capable of peacekeeping from an African perspective.

Commitment must also come from the parties to the conflict themselves. Once the democratic process has produced a leader of the state, he or she must maintain a commitment to ensuring an economically and politically sustainable society. Post-conflict stability can be compromised and the withdrawal of peacekeepers should not lead to a breakdown in the country's path towards peace and security. For example, while UNAMSIL has been successful in accomplishing many of its tasks, corruption, lack of jobs for retrained combatants and a generally poor economic outlook means that Sierra Leone's security structures will require further assistance (Howard, 2008).

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For PMSCs to support the peacekeeping initiative there needs to be stringent rules with regard to their services

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The civilian aspect of the peacekeeping force must also be able to engage the local population and create the environment for democratic elections. However, elections do not automatically signal the exit of peacekeepers, as often elections do not immediately translate into political and social stability. It is also important to encourage the revival of the economy, which typically

has collapsed during the conflict. Hence it is important for the international community to continue its engagement for donors to remain committed to post-conflict reconstruction. It is counter-productive to stop financial support at the most critical juncture. Without stability there is no peace and without peace there is no stability. The vicious cycle can only be ended once there is a firm commitment from all sectors to ensuring political, economic and social sustainability. The creation of jobs for the disaffected youth is increasingly linked to this emerging stability because if the youth are not occupied with constructive work, often they are drawn back to fighting.

Furthermore, civilian contractors are necessary to support the establishment of institutions that are equipped to address the root causes of the conflict. Sustainable peace and security may only be guaranteed through the establishment of institutions that can begin the process of rebuilding the country. This underlines the importance of actively engaging with the private security sector on these issues. Implementation of SSR programmes is increasingly being contracted out to a range of external providers, including NGOs, consultancy companies and, in some cases, PMSCs.<sup>43</sup>

Peacekeeping should address not only physical security needs but humanitarian needs as well. The growing humanitarian aspect of peacekeeping reveals that increased violence increases the need for humanitarian support. Basic needs such as food, water, shelter and clothing become scarce and humanitarian aid can only be delivered if the area is secure. For PMSCs to support the peacekeeping initiative there needs to be stringent rules with regard to their services. For instance, PMSCs should not under any circumstances be involved in any role other than providing logistical support. In this manner PMSCs could provide African peacekeepers with much needed support in the form of, for example, the construction of roads to help NGOs gain access to villages that are not easily accessible. The presence of PMSCs can give the impression of increased security and they could therefore be helpful in securing the post-conflict perimeter so that victims of the conflict have access to basic needs. PMSCs could be mandated solely to protect themselves, the civilians and the NGO personnel. From a birds-eye view it almost seems as though the two critical junctures that would determine the success of a peacekeeping operation involving PMSCs are in direct competition. The military force required to secure the post-conflict area may present a challenge to the provision of vital humanitarian assistance. A coordinated approach between the different actors – states, PMSCs and NGOs – is critical and could determine the successful achievement of improved international peace and security.



## CONCLUSION

This paper has highlighted the numerous obstacles to, and opportunities for, the consolidation of PMSCs into a security-provision role on the African continent. Obstacles include the lack of definition as to what PMSCs actually are. The inability to fully define the activities of PMSCs allows opportunities for their evading accountability, and this is exacerbated by the fact that there is no international legal framework to address PMSCs and any possible abuses that may form part of the industry. This paper argues that there is a need to encourage more robust dialogue concerning the privatisation of security in order to achieve a comprehensive understanding of PMSCs' activities, and enable international legislation that can address these activities.

Furthermore, this paper has analysed the complexities surrounding the regulation and monitoring of PMSCs' activities and argued for the tighter regulation of PMSCs and, most importantly, contextualising the services that may be provided by them in a post-conflict setting. This has serious implications for International Humanitarian Law and Human Rights Law. Perhaps the use of PMSCs to secure post-conflict theatres and to provide support to official peacekeepers would serve to avert contractor abuses. However, this does not preclude the need to establish a comprehensive legal framework that is applicable on national, regional and international levels.

This framework is essential if PMSCs are to be held accountable for any excesses that may occur when they are conducting an operation. Although these are isolated incidents, some PMSCs operating in Iraq and Afghanistan have revealed not just a serious lack of respect for human rights but also how lack of international regulation will result in continued opportunities for such excesses to occur in the future. As a consequence of Africa's tumultuous experience with mercenaries and the major risk to stability that these forces have engendered in the past, there is great awareness of the dangers that an unregulated wave of private security contractors may pose. In Africa, this concern, however, has yet to manifest in support for the processes of international regulation.

The Montreux Document provides an initial approach to regulating and monitoring PMSCs. Unfortunately it is limited in that it is not legally binding and applies only to PMSCs engaged in armed conflict. Nevertheless it acts as a good reference point for policy formulation and sets a good precedent in encouraging legally binding, regulatory initiatives. The Montreux Document's overarching principles are critically important as they seek to reiterate the responsibility of the state in ensuring that PMSCs act in accordance with good practices.

The Working Group has tabled the proposed Draft Convention, which will be considered by the Human

Rights Council in September 2010. The onus is on the international community to endorse this legal instrument and, consequently, to take part in the effective regulation of PMSCs. The access to military and security services on the open market certainly creates the potential for impunity and immunity, as various incidences of contractor criminality have demonstrated. What is particularly worrying about PMSCs is that, because there have not been comprehensive and effective laws to curtail these excesses, contractors, and the companies they work for, have gone unpunished. The services offered by PMSCs could greatly enhance the provision of security on the local, regional and international level, but for this to happen, emphasis must be placed on ensuring oversight of PMSCs and establishing a legal framework that ensures criminal penalties are awarded for criminal conduct.

The future of international peace and security will be greatly influenced by the outcomes of the Draft Convention, which perhaps will manage to minimise future risks associated with an unregulated private security sector. The ultimate objective would be to reach an agreement between peace and security initiatives and PMSCs that enhances international peacekeeping, thereby moving Africa and the rest of the world closer towards international peace and security.

## NOTES

- 1 Draft Convention Article 2 (c) A/HRC/15/25, 2 July 2010, <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
- 2 Ibid, Article 2 (b).
- 3 The South African Foreign Military Assistance Act 1998 (Act 15 of 1998) asserts that South Africans should be registered with the Directorate Conventional Arms Control (DCAC) and be in possession of a permit authorised by the Committee and issued by the DCAC. Available at: <http://www.dti.gov.za/nonproliferation/ArmsControl.html> (accessed 13 July 2010).
- 4 UN Peacekeeping mission: MONUC background, 18 May 2009. Available at: <http://www.un.org/en/peacekeeping/missions/monuc/> (accessed 4 August 2010). In accordance with Security Council Resolution 1925 of 28 May 2010, MONUC was renamed as of 1 July the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to reflect the new phase reached in the country.
- 5 UN Peacekeeping UNOSOM I took place between April 1992 and March 1993, 2003. Available at: <http://www.un.org/en/peacekeeping/missions/past/unosomi.htm> (accessed 4 August 2010). UNOSOM II took place between March 1993–March 1995, <http://www.un.org/en/peacekeeping/missions/past/unosom2.htm> (accessed 4 August 2010).
- 6 Mercenaries: UN expert panel pushes for stronger regulation of private military and security companies, 23 July 2010. Available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10227&LangID=E> (accessed 4

- August 2010). Draft Convention A/HRC/15/25, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
- 7 Montreux Document 2009. On pertinent international legal and good practices for states related to operations of private military and security companies during armed conflict, ICRC, International Humanitarian Law – Treaties and Documents.
  - 8 Ibid.
  - 9 Ibid.
  - 10 Ibid.
  - 11 Federal Department of Foreign Affairs (FDFA) Global Code of Conduct for Respect of Human Rights and International Humanitarian law 2010. Available at: [http://www.dcaf.ch/privatisation-security/PSC\\_PMC-CoC-Comments-2010-06-10-results.pdf](http://www.dcaf.ch/privatisation-security/PSC_PMC-CoC-Comments-2010-06-10-results.pdf) (accessed 13 July 2010).
  - 12 Draft Convention A/HRC/15/25, Press release 11, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 13 Montreux Document 2009. On pertinent international legal and good practices for states related to operations of private military and security companies during armed conflict, ICRC, International Humanitarian Law – Treaties and Documents.
  - 14 This was the case when Blackwater was contracted to provide security in the aftermath of hurricane Katrina. Griff Witte, 'Private Security Contractors Head to Gulf' Washington Post, 8 September 2005. Available at: <http://www.washingtonpost.com/wpdyn/content/article/2005/09/07/AR2005090702214.html> (accessed 18 June 2010).
  - 15 Montreux Document 2009. On pertinent international legal and good practices for states related to operations of private military and security companies during armed conflict, ICRC, International Humanitarian Law – Treaties and Documents, 10.
  - 16 OAU 1977, Convention for the Elimination of Mercenarism in Africa, CM/817 (XXIX) Annex II. Available at: [www.africa-union.org/...%20Conventions.../Convention\\_on\\_Mercenaries.pdf](http://www.africa-union.org/...%20Conventions.../Convention_on_Mercenaries.pdf) (accessed 14 July 2010).
  - 17 The problems of the precedents that attempted to prohibit mercenary activity were numerous. Despite the fact that they criminalised mercenary activities, enforcement and penalties of this crime depended on legislation being implemented by the state affected. Regarding the International Convention against the use of mercenaries, only 32 States are party to the Convention and only 10 have signed it. Mehra, Amol Bridging Accountability Gaps: the proliferation of private military and security companies and ensuring accountability for human rights violations, *Pacific McGeorge Global Business & Development Law Journal*, 2010:3.
  - 18 UN General Assembly 1989, A/RES/44/34, International Convention against the Recruitment, Use, Financing and Training of Mercenaries.
  - 19 Ibid.
  - 20 National Model United Nations, 2009. Available at: [www.nmun.org/dc\\_09%20downloads/09DC\\_GA1\\_Guide.pdf](http://www.nmun.org/dc_09%20downloads/09DC_GA1_Guide.pdf) (accessed 7 June 2010).
  - 21 Regional meeting brings together UN, African nations to discuss mercenaries, 3 March 2010. Available at: <http://www.un.org/apps/news/story.asp?NewsID=33951&Cr=human+rights&Cr1=> (accessed 6 July 2010).
  - 22 Draft Convention A/HRC/15/25, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 23 Draft Convention Article 1 (a) A/HRC/15/25, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 24 Private Security Contractors at War: Ending the culture of impunity, Human Rights First 2008, 16–17.
  - 25 Draft Convention Article 21 (1) A/HRC/15/25, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 26 UNESCO 2003, Commission on Human Rights, Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, E/CN.4/Sub.2/2003/12/Rev.2. Available at: <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.2003.12.Rev.2.En> (accessed 6 July 2010).
  - 27 Ibid.
  - 28 Draft Convention A/HRC/15/25 Article 2 (i), 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 29 Ibid, Article 4 (5).
  - 30 Draft Convention A/HRC/15/25, 2 July 2010. Available at: <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 4 August 2010).
  - 31 United Nations Peacekeeping. Available at: <http://www.un.org/en/peacekeeping/> (accessed 24 May 2010).
  - 32 Charter of the United Nations. Available at: <http://www.un.org/en/documents/charter/chapter1.shtml> (accessed 14 July 2010).
  - 33 UN Department of Peacekeeping Operations (DPKO) Parliamentary hearing at the United Nations 2004, The challenges of peacekeeping in the 21<sup>st</sup> century. Available at: [www.ipu.org/splz-e/unga04/peacekeeping.pdf](http://www.ipu.org/splz-e/unga04/peacekeeping.pdf) (accessed 7 June 2010).
  - 34 Ibid.
  - 35 Bangladeshi officers enhance UN troops logistical support in Darfur, 23 October 2008. Available at: <http://www.un.org/apps/news/story.asp?NewsID=28691&Cr=darfur&Cr1=> (accessed 17 June 2010).
  - 36 Sierra Leone- UNAMSIL background, 2005. Available at: <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html> (accessed 5 June 2010).
  - 37 African Union Constitutive Act. Available at: [http://www.africa-union.org/root/au/aboutau/constitutive\\_act\\_en.htm#Article3](http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article3) (accessed 5 July 2010).
  - 38 African Union Constitutive Act 2001. Available at: [http://www.africa-union.org/root/au/aboutau/constitutive\\_act\\_en.htm#Article4](http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article4) (accessed 5 July 2010).
  - 39 Organization for Economic Cooperation and Development (OECD) handbook on security sector reform: supporting security and justice 2007, 20. Available at: <http://www.oecd.org/dataoecd/43/25/38406485.pdf> (accessed 5 July 2010).

- 40 Ibid.
- 41 OECD HANDBOOK 2007. Available at: <http://www.oecd.org/dataoecd/43/25/38406485.pdf> (accessed 5 July 2010).
- 42 Global facilitation network for security sector reform, a beginner's guide to security sector reform, December 2007. Available at: <http://www.securitytransformation.org/bli2.php?id=304> (accessed 5 July 2010).
- 43 OECD Handbook 2007. Available at: <http://www.oecd.org/dataoecd/43/25/38406485.pdf> (accessed 5 July 2010).

## REFERENCES

- Aboagye, F. The hybrid operation for Darfur: a critical review of the concept of the mechanism. ISS Paper 149, August 2007.
- Baker, D.P. and Gumedze, S. Private military/security companies. *African Security Review* 16(4) (2007). Available at <http://www.iss.co.za/pgcontent.php?UID=18870> (accessed 24 May 2010).
- Ballestros, Enrique. *The use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination*, UN Economic and Social Council (UNESCO): Commission of Human Rights, 2004.
- Brooks, D. *Creating the renaissance peace: the utilization of private companies for peacekeeping and peace enforcement activities in Africa*. Pretoria, South Africa, South African Institute of International Affairs, 2000.
- Benvenisti, M. and Ehrenreich, B. *Abu Ghraib: the politics of torture*. Berkeley, California: North Atlantic Books, 2004.
- Cockayne, J. Regulating private military and security companies: the content, negotiation, weakness and promise of the Montreux Document. *Journal of Conflict & Security Law*, 13 J. Conflict & Security L. 401, (2009) Oxford University Press.
- Cole, A. US: Lockheed looks beyond weapon: contractor targets growth with service in strife-torn area. *Wall Street Journal*, September 24 2007. Available at <http://www.corpwatch.org/article.php?id=14707> (accessed 7 June 2010).
- Federal Department of Foreign Affairs (FDFA) Global Code of Conduct for Respect of Human Rights and International Humanitarian law 2010. Available at [http://www.dcaf.ch/privatisation-security/PSC\\_PMC-CoC-Comments-2010-06-10-results.pdf](http://www.dcaf.ch/privatisation-security/PSC_PMC-CoC-Comments-2010-06-10-results.pdf) (accessed 13 July 2010).
- Gumedze, S. *Addressing the use of private security and military companies at the international level*. Pretoria: ISS Paper 206, 2009.
- Haile, J.C. *New UN Draft International Convention on the regulation, oversight and monitoring of private military and security companies*. International Government Contractor, Vol. 6, No. 9, 2009.
- Healy, A. The constitutionality of amended 10 U.S.C § 802(A)(10): does the military need a formal invitation to reign in 'cowboy' civilian contractors? *Florida Law Review*, 62 Fla. L. Rev. 519, 2010.
- Hoppe, C. Passing the buck: state responsibility for private military companies. *European Journal of International Law*, 19 Eur. J. Int'l L. 989, 2008.
- Howard, L. M. *UN Peacekeeping in Civil Wars*. New York: Cambridge University Press, 2008.
- Human Rights First Private security contractors at war: ending the culture of impunity, New York, 2008.
- Kaldor, M. and Vincent, J. Evaluation of UN Development Programme (UNDP) assistance to conflict afflicted countries, Sierra Leone case study, 2006:7. Available at [www.undp.org/evaluation/documents/thematic/conflict/SierraLeone.pdf](http://www.undp.org/evaluation/documents/thematic/conflict/SierraLeone.pdf) (accessed 7 June).
- MacQueen, N. *Peacekeeping and the International System*. Routledge, New York, 2006.
- Prado & Maffai, M. United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of people to self determination & the Wisconsin International Law Society: model law for the regulation of private military and security companies. *Wisconsin International Law Journal*, 26 Wis. Int'l L. J. 1078, (2009).
- Mehra, A. Bridging Accountability Gaps: the proliferation of private military and security companies and ensuring accountability for human rights violations. *Pacific McGeorge Global Business & Development Law Journal*, 22 Pc. McGeorge Global Bus. & Dev. L. J. 323, 2010.
- National Model United Nations, 2009, <http://www.nmun.org/> (accessed 7 June 2010).
- Pan, E. African Peacekeeping Operations. 2005. Available at [http://www.cfr.org/publication/9333/african\\_peacekeeping\\_operations.html](http://www.cfr.org/publication/9333/african_peacekeeping_operations.html) (accessed 9 June 2010).
- Patterson, M. A corporate alternative to United Nations ad hoc military deployments. *Journal of Conflict & Security Law*, 13J. Conflict & Security L. 215, 2008.
- Richards, A. and Smith, H. Addressing the role of private security companies with security sector reform programmes. *Journal of Security Sector Management* 5 (1) 2007.
- Singer, P. W. *Corporate warriors: the rise of the privatized military industry and its ramifications for international security*. New York: Cornell University Press, 2003.
- African Union Constitutive Act, 2001. Available at: [http://www.africa-union.org/root/au/aboutau/constitutive\\_act\\_en.htm#Article4](http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article4) (accessed 5 July 2010).
- Global facilitation network for security sector reform, a beginner's guide to security sector reform, December 2007, <http://www.securitytransformation.org/bli2.php?id=304> (accessed 5 July 2010).
- Organization for Economic Cooperation and Development (OECD) handbook on security sector reform: supporting security and justice 2007, 20, <http://www.oecd.org/dataoecd/43/25/38406485.pdf> (accessed 5 July 2010).
- UN Charter, 2010, <http://www.un.org/en/documents/charter/> (accessed 24 May 2010).
- UN DPKO. 2004. The challenges of Peacekeeping in the 21<sup>st</sup> century, Parliamentary Hearing at the United Nations, New York. Available at [www.ipu.org/splz-e/unga04/peacekeeping.pdf](http://www.ipu.org/splz-e/unga04/peacekeeping.pdf), (accessed 24 May).
- UNESCO. 2003. Commission on Human Rights, Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights A(1), E/CN.4/Sub.2/2003/12/Rev.2. Available at <http://www.unhcr.ch/hu>

ridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.2003.12.  
Rev.2.En (accessed 5 July).

UN Peacekeeping 2010. Available at <http://www.un.org/en/peace-keeping/> (accessed 24 May 2010).

Witte, G. Private Security Contractors Head to Gulf.  
*Washington Post*, 8 September 2005. Available at <http://www.washingtonpost.com/wpdyn/content/article/2005/09/07/AR2005090702214.html> (accessed 18 June 2010).

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8774&LangID=E>, 17 July 2009 (accessed 24 May 2010).

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9648&LangID=e>, 30 November 2009 (accessed 24 May 2010).

<http://www.un.org/en/peacekeeping/missions/unmil/>, (accessed 18 June 2010).

<http://www.un.org/en/peacekeeping/missions/unoci/>, (accessed 18 June 2010).

<http://www.un.org/apps/news/story.asp?NewsID=28691&Cr=darfur&Cr1> (accessed 17 June 2010).









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## ABOUT THIS PAPER

This paper seeks to highlight the numerous obstacles to, and opportunities for, the consolidation of PMSCs into a security-provision role on the African continent. Obstacles include the lack of definition as to what PMSCs actually are. The inability to fully define the activities of PMSCs allows opportunities for evading accountability, and this is exacerbated by the fact that there is no international legal framework to address PMSCs and any possible abuses that may form part of the industry. This paper argues that there is a need to encourage more robust dialogue concerning the privatisation of security in order to achieve a comprehensive understanding of PMSCs' activities, and enable international legislation that can address these activities.

## ABOUT THE AUTHOR

Margaret Gichanga is a research intern at the Institute for Security Studies' Security Sector Governance Programme (SSG) in the Tshwane (Pretoria) office. Currently her main focus is on the private security industry and its role in peacekeeping in Africa. She majored in Political Studies and International Relations, and holds a BA with Honours in International Relations from the University of the Witwatersrand. Her other broad research interests include liberty, justice and the politics of difference, gender, international political economy, development and political sociology.

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