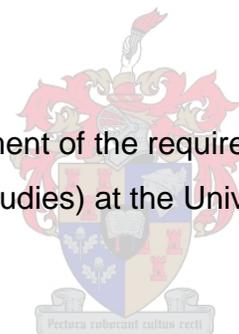


# **The Role of Private Military Companies in African Conflicts**

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Thesis presented in partial fulfilment of the requirements for the degree of Master of Arts (International Studies) at the University of Stellenbosch



Supervisor: Prof W. Breytenbach

March 2007

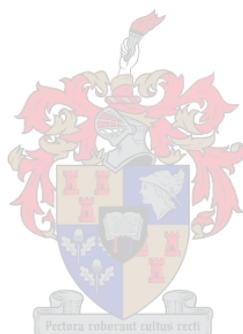
## DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature:

A handwritten signature in black ink, appearing to be 'RR', written over a light grey rectangular background.

Date: 23 Februarie 2007



## SUMMARY

Private military companies (PMCs) are increasingly becoming involved in modern conflicts providing specialised skills such as combat services, planning, intelligence, training, support and technical assistance. They provide an alternative to weak state governments as Western governments have become increasingly reluctant to commit their own troops to be involved in the civil conflicts of the developing world. Supporters of the employment of private forces see them as an effective solution to this combination of need from conflict-ridden weak states and reluctance of Western governments and international organisations to intervene in these conflicts.

PMCs have been accused of mercenarism but they differ from mercenaries in specific ways. They operate legitimate businesses, advertising their services openly. Furthermore, international laws against mercenarism do not apply to PMCs. Only South Africa and the United States (US) have legislation to regulate PMCs. Even with this legislation there are problems of accountability and transparency for these companies. The United Kingdom (UK), where many PMCs are based, has discussed the regulation of PMCs but is yet to implement legislation in this regard.

PMCs are particularly active in weak and resource-rich states where the state cannot provide its own security and civil conflicts threaten the state's access to its resources. South African PMC Executive Outcomes (EO) was hired to fight rebel groups in Angola and Sierra Leone and to regain rebel held resource areas. It was successful in accomplishing its missions but these successes were overturned once the company left. Its activities also created controversy about the use of private force in conflicts. Companies can gain a great deal of power, especially when they are paid in mineral concessions that allow them to extend their influence over the economy of the state in which they are operating. The activities of PMCs have raised questions about accountability and transparency that need to be addressed by international law.

## OPSOMMING

Privaat militêre maatskappye (PMMe) raak toenemend betrokke by moderne konflikte waar gespesialiseerde dienste soos gevegskuns, beplanning, intelligensie, opleiding, ondersteuning en tegniese bystand benodig word. Hulle dienste is in groot aanvraag in swak state, veral die met hulpbronryke ekonomieë. Westerse regerings is ook nie altyd bereid om bilateraal of selfs multilateraal as deel van VN vredesmagte in sulke konflikte betrokke te raak nie. Voorstanders van PMMe beskou hulle dan ook as doeltreffender en goedkoper rolspelers teenoor duurder militêre magte waarvoor internasionale organisasies en Westerse regering traag is om in te staan.

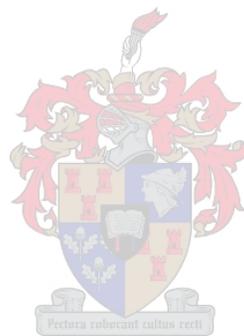
PMMe word daarvan beskuldig dat hulle huursoldate is, hulle verskil van huursoldate op spesifieke punte. Hulle opereer as wettige besighede, adverteer hulle dienste en het ook aandeelhouders, veral in die Verenigde Koninkryk. Die internasionale wetgewing teen huursoldate is ook nie op PMMe van toepassing nie. Slegs Suid-Afrika en die VSA beskik oor wetgewing om hulle te reguleer. Maar selfs hier, is daar probleme van verantwoording en deursigtigheid veral wat ekstra-territoriale aksies betref. In die VK, waar meeste PMMe gebaseer is, is die regulering van PMMe in 'n Groenskrif uiteengesit, maar nog geen wetgewing is aanvaar hieroor nie.

PMMe is besonder aktief in swak en hulpbronryke state waar die betrokke regerings nie hulle eie sekuriteit kan verskaf nie. Die Suid-Afrikaanse PMM, Executive Outcomes (EO) was gehuur om teen rebelgroepe in Angola en Sierra Leone te veg, ten einate hulpbronryke gebied in rebelle hande te verower. Executive Outcomes was suksesvol in hulle militêre missies, maar probleme het ontstaan sodra hulle onttrek het. Hulle bedrywighede was kontroversieël omdat privaat militêre maatskappye groot magte bekom, veral as hulle in minerale konsessies besoldig word, wat hulle instaal stel om hul invloed oor die swak staat uit te brei. Die aktiwiteite van PMMe het vroe laat ontstaan wat aangespreek behoort te word deur internasionale reg.

## ACKNOWLEDGMENTS

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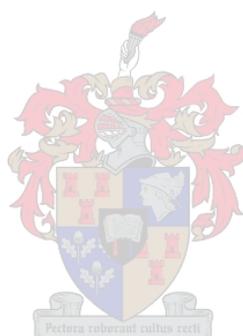
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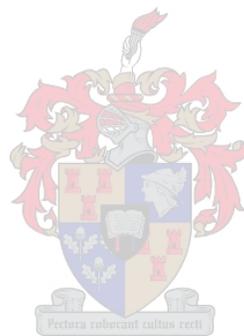
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## ABBREVIATIONS

ANC	African National Congress
APC	All People's Congress
AU	African Union
CEMA	Convention for the Elimination of Mercenarism in Africa
DRC	Democratic Republic of the Congo
DSL	Defence Systems Limited
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EO	Executive Outcomes
FAA	Forças Armada de Angola of Angola
FAPLA	Força Armada Popular de Libertação de Angola / Popular Armed Forces for the Liberation of Angola
FMA Act	Foreign Military Assistance Act
FNLA	Frente Nacional de Libertação de Angola / National Front for the Liberation of Angola
GA	United Nations General Assembly
GSG	Ghurkha Security Guards
ICC	International Criminal Court
IMF	International Monetary Fund
MNC	Multinational Corporation
MPLA	Movimento Popular de Libertação de Angola / <i>Popular Movement for the liberation of Angola</i>
MPRI	Military Professional Resources Incorporated
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
PMC	Private Military Company
PSC	Private Security Company
PSI	Private Security Industry
RUF	Revolutionary United Front
SADF	South African Defence Force
SAS	Special Air Services
SLPP	Sierra Leone People's Party

SRC	Strategic Resources Corporation
UCMJ	Uniform Code of Military Justice
UNAVEM II	Second UN Angolan Verification Mission
UN	United Nations
UNAMSIL	UN Assistance Mission to Sierra Leone
UNITA	União Nacional para a Independência Total d'Angola / <i>National Union for the Total Independence of Angola</i>
UNOMSIL	United Nations Observer Mission to Sierra Leone



# CHAPTER 1

## Introduction

### 1.1 Background

Private military companies (PMCs) are becoming an increasingly common feature in modern conflicts. PMCs are businesses that provide services linked to warfare. These include specialised skills such as combat services, planning, intelligence training, support and technical assistance. PMCs have operated all over the world, hired by governments, international organisations, multinational corporations and even rebels and insurgents (Singer, 2003: 8). They have been able to take advantage of the growing unwillingness of Western governments to commit their own troops to become involved in the increasing number of civil conflicts in the developing world. Supporters of the employment of private forces see them as an effective solution to the combination of need from conflict-ridden weak states and the reluctance of Western governments and international organisations to intervene in these conflicts. However, critics view them as the new mercenaries, willing to use violence to gain personal wealth.



There are different types of PMCs that offer different services with specialised skills. There are four categories of non-combat PMCs: military consulting companies that provide training, such as the American firm Military Professional Resources Incorporated (MPRI); military support companies like Kellogg Brown and Root; private security companies, such as Defence Systems Ltd (DSL), that provide security for assets and individuals, usually in “high threat environments” (Fredland, 2004: 208); and intelligence gathering companies, such as Control Risk Group and Dyncorp. Military provider companies are PMCs that provide direct combat services, such as the South African company Executive Outcomes or British PMC Sandline (Singer, 2003: 92-97). These categories are not mutually exclusive and many companies offer a combination of these services. Although direct participation in conflict is less common, it is the firms that provide combat services that are the most

controversial and that pose the biggest problem as it is difficult to differentiate them from mercenaries. PMCs are aware of the negative connotations associated with their image and have tried to define themselves as private security companies (PSCs) instead. Their main function is not only to increase their employer's military force but also to provide other services related to security. The aim is to have "a strategic impact on the security and political environment of weak states facing a significant military threat" (Cleary, 1999: 148).

PMCs are part of a global security industry that includes legitimate businesses, operating openly and legitimately. They are legally registered, often listed on stock exchanges, and offer a variety of military skills to specific target markets, using legal contracts to secure the terms of their employment (Singer, 2003: 45 and Small, 2006: 3). They also do not fall into the category of mercenaries as defined by United Nations (UN) and Organisation for African Unity (OAU) conventions. However, it can be difficult to distinguish between mercenaries and the types of PMCs that provide combat services in weak states. PMCs do face accusations of mercenarism, especially from those who oppose their activities.

It is important to distinguish between mercenaries and PMCs. The biggest difference is what Singer (2003: 40) calls the "corporatization of military services". PMCs are companies, and as such they are influenced by the market and motivated by long-term profits, not by the immediate gain or adventure that motivates mercenaries. They are accountable to shareholders and are constrained by legislation that is applicable to private companies, although laws that apply specifically to PMCs are at present limited. Mercenaries on the other hand operate outside of international and national law. PMCs are more likely to take into consideration the effect of their actions on future employment. This includes issues such as human rights, humanitarianism and legality, although proper behaviour is not guaranteed by such constraints and it is important to note that holding PMCs accountable for their actions requires the motivation and cooperation of both the host and home country (Brooks, 2000a: 34-35 and Cullen, 2000: 37).

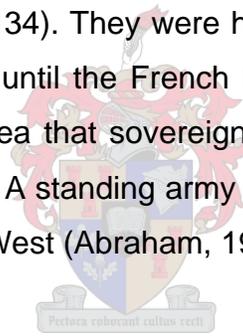
Non-combat firms that provide training, surveillance and security are not as controversial as combat PMCs. This business is booming worldwide, especially due to the “war on terror”. US President Bush’s coalition-of-the-willing includes many private security companies and private military companies (Zavis, 2006). However, the line between combat PMCs and PSCs can be blurred at times. In theory they are different: PMCs train soldiers and participate in combat operations using specifically military-related skills whereas PSCs provide bodyguards, and protect buildings and pipelines. While formally different, in conflict situations it becomes almost impossible to distinguish between the two (Smith, 2005: 22).

The provision of security services in conflict zones is very different from the security provided in the developed world for shopping malls and neighbourhood watches, although this business is also booming. Security companies are also increasingly playing a large role in their own countries, even in the West. Rising crime, or perhaps the growing perceptions of insecurity, has dramatically increased spending on private security. In the US, spending on private security by citizens is more than double government spending on the police force (Shearer, 1998b: 26). These services however, do not require military or combat forces and skills. This type of security is therefore not as problematic as companies that do provide military-related skills. The key problem is companies that provide military-related services and expertise, which was a function that traditionally fell within the sole domain of the state (Cleaver, 2000). Most PMCs employ former soldiers from elite forces around the world. These include former Green Berets, French Foreign Legionnaires, South African paratroopers and Gurkhas (Singer, 2003).

Many PMCs also provide security services in unstable or risky environments, or they form spin-off companies to do so. In Angola for example, Airscan protected Gulf Oil’s Cabinda oilfields and International Defence and Security protected the Cuango diamonds. Even though the government gained considerable revenue from those resources, it could not provide the protection that was required because resource areas were at continual risk of attack (Clapham, 1999: 40-41).

Africa has a “special attractiveness as a market for mercenaries.” Conflict and violence is widespread on the continent, arising as a result of authoritarian rule and the exclusion of sections of the population from governance as well as poverty, inequality and the state’s inability to control conflict or provide security (Mills & Stremmler, 1999: 2). Control of resources is almost always a factor in conflicts, no matter what the underlying cause. The combination of weak state structures and civil conflicts as well as the presence of natural resources creates a huge opportunity for private gain from the business of war. In Angola, for example, over 80 companies have played a role of some kind in the conflict, for both sides (Singer, 2003: 9).

The use of foreign combatants is not a new phenomenon. Machiavelli wrote about them in the 1500s, warning rulers against being dependent on them. Mercenaries were a common feature in the West until the development of the nation state and national armies (Cleaver, 2000: 134). They were hired by states and rulers and their use was an acceptable practice until the French Revolution. The concept of liberal democracy brought with it the idea that sovereign states should hold the monopoly on the legitimate use of violence. A standing army loyal to the state led to the decline in the use of mercenaries in the West (Abraham, 1999: 82).



PMCs accused of undermining a state’s monopoly on the legitimate use of physical force, because of Max Weber’s definition of state sovereignty, linking sovereignty with the state’s sole right to the legitimate use of force. PMCs and mercenaries are often presented as a threat to this. Critics have also argued that national development is not served through the support of a weak state. Machiavelli argued that mercenaries are unprofessional and cannot be trusted. Critics of PMCs compare their activities to that of mercenaries. Because both PMCs and mercenaries are motivated by financial gain, their commitment to the cause can be questioned as it is conceivable that they could switch sides if they are offered a more lucrative contract, and if this happened they would also take valuable intelligence with them (Howe, 2001: 193).

The employment of mercenaries was always combined with a struggle by the state to control their behaviour and performance. “This conflict ultimately was about the authority and legitimacy of the state versus the very real power of these privatized means to wage war on anyone they chose” (Smith, 2002).

Mercenaries once again became a prominent feature in conflict after African states became independent because these new states were weak and prone to internal hostilities (Abraham, 1999: 82). Throughout the 1960s mercenaries were involved in what was then the Belgian Congo. Mercenaries were also active in Nigeria, Benin and the Seychelles, among others (Musah & Fayemi, 2000: 265-266). Even though mercenaries were outlawed through international conventions, they continued to operate. Within the last two decades, PMCs have developed and dramatically increased in prominence across the world.

South African PMC, EO, is probably the most well-known of the military provider PMCs. The company was established in 1989 by Eben Barlow, a former officer in 32 Battalion of the South African Defence Force (SADF). He had also done work for the covert unit of the SADF, the Civil Cooperation Bureau (Venter, 2003: 295). Executive Outcomes provided Special Forces training to the SADF. It also worked for diamond company De Beers and Anglo American (Pech, 1999: 85), and possibly did counter-narcotics work in Columbia in the early 1990s (Vines, 1999: 51). Executive Outcomes has been described as “the modern world’s first fully equipped private army” (Brayton, 2002: 307) and provided its services in almost a dozen states in Africa, its most well-known operations being the work it did in Angola and Sierra Leone (Venter, 2003: 322).

The early days of the company are shadowy, with its roots in front companies of the apartheid SADF. It was only later that EO became “legitimate”, deciding to operate within the law. It then signed a contract with the Angolan government and it was its performance in Angola, regaining mineral areas from rebel forces that gained EO both respect and notoriety that led to further contracts but probably ultimately led to the company’s demise (Pech, 1999).

PMCs operate all over Africa. For example Israeli firm Levdan reportedly trained the presidential guard in Congo-Brazzaville in the 1990s. Executive Outcomes offshoot, LifeGuard Security provided security for humanitarian agencies and reportedly organized and trained locals to guard diamond concessions in Sierra Leone. Pacific Architects and Engineers and OCI Oregon were both contracted to supported Economic Community of West African States Monitoring Group (ECOMOG) forces in West Africa (Shearer, 1998b: 24 and McIntyre, 2004: 101).

A British company, DSL, provided protection in conflict zones for international organisations including the World Bank, the UN and humanitarian non-governmental organisations (NGOs) in the 1980s and 1990s (O'Brien, 2000a: 48). PMCs support of international organisations and aid agencies has created controversy, but they provide PMCs with some legitimacy and are also a more secure payment source (Howe, 2001: 192). PMCs also perform a necessary function, as aid organisations are increasingly targeted, but states cannot or will not provide the protection they need.

It has been argued that the increase in the supply of PMCs and of potential employees might increase professionalism as might the permanent and corporate nature of these companies. Rogue behaviour would affect business opportunities through unfavourable media reports that could anger or embarrass both home and host states. Some believe these companies have strong control over employees because there is large pool of retired, highly professional soldiers. They have the time to check the background of applicants, and can control their prospects for future employment (Howe, 2001: 190).

The growth of the PMC industry has been attributed to a number of causes. Firstly, the trend towards outsourcing and free-market models led to governments privatising many of their functions including telecommunications, transportation and the provision of other services that traditionally fell within the sphere of state responsibility. This move was associated with increased efficiency and effectiveness.

Privatisation is aimed at lowering costs and increasing efficiency while also reducing state responsibility (Howe, 2001: 18 and Mandel, 2002: 35). This has even gone as far as privatising some military functions. The US government uses private companies to conduct military training and other military-related services because they say it can save taxpayer money and can be more effective (Burton-Rose & Madsen, 1999). The outsourcing of government functions or powers in weak states where governments are unconsolidated has generated opportunities for PMCs (Cilliers & Cornwell, 1999).

Secondly, the rise in PMCs is often related to the end of the Cold War and the end of apartheid in South Africa. Military downsizing led to a large pool of military personnel and weapons that became available on the open market. The major powers started to disengage from their entanglements in the developing world, leading to many post-Cold War conflicts and arms proliferation (Clapham, 1999: 41; Singer, 2003; Lawyer, 2005). Weapons and trained personnel were dumped onto the market and the sale of small-arms dramatically increased. Lighter and easier to use weapons assisted insurgents and increased the number of combatants. Transport routes for illegal weapons were enabled by Africa's porous borders and unmonitored airports (Howe, 2001: 80-83). The end of apartheid in South Africa also greatly contributed to military down-sizing in sub-Saharan Africa because South Africa was the dominant military power in Africa. With South Africa's transformation came the down-sizing of the apartheid era military, which not only released many experienced personnel but also contributed to a "military vacuum" in the region. This vacuum provides the space for PMC activity (Lock, 1999: 16).

Private means of security, such as PMCs, can only operate in a state with certain conditions that make it necessary and open to this. Many African states do not have the capabilities to defend their countries against the security threats that they face. Personalised rule and the weakness of these states contributed to conflict. Governments often served narrow private interests and were more concerned with the survival of their regime than of the state. They were not able to control basic government functions and lacked legitimacy, which meant they were only states in

name and not because of the duties or responsibilities they performed (Howe, 2001: 76). The increased availability of weapons and the lack of will to intervene on the part of the West, especially after their failed intervention in Somalia, meant that insurgents and rebel groups could increasingly pose huge threats to African regimes (Howe, 2001: 73).

Part of the reason that states do not have the capabilities to provide their own security is that they have purposefully limited the power of their own militaries. A fear of military coups is well founded, as about 90 have taken place in sub-Saharan Africa since 1963. Government leaders have responded by either filling their militaries with their own ethnic group, restricting ammunition, fuel or spare parts and/or to create parallel forces loyal to the president, such as the Siaka Steven's Special Security Division in Sierra Leone (Howe, 2000: 22-23).

During the Cold War colonial rulers and the superpowers helped to prop up weak African states. This delayed the need for them to develop their own military capabilities because, as Robert Jackson (1990, in Reno, 1997) noted, these regimes were protected from strongmen within the state by foreign aid, loans and diplomatic and military support. Foreign aid enabled weak states to manage internal problems they had inherited from colonial rule. These problems made it difficult to develop strong state structures. Rulers favoured their allies to prevent rivals from gaining power and used foreign support to withstand the bureaucratic problems this caused (Reno, 1997: 165-166).

The end of the Cold War led to Africa's strategic importance being drastically diminished; it also reduced the influx of unconditional foreign military and economic assistance. Aid became linked to economic and political reforms. Along with the growing influence of powerful international governments and private organisations, this weakened the legitimacy of African regimes and often assisted the cause of rebel groups, providing them with an initial platform from which to oppose the existing regime. Governments did not have the resources to overcome a growing armed opposition (Howe, 2001 3-4 and Reno, 1997: 166).

Regimes were able to “rework other ties to outsiders” creating new alliances involving state and international non-state actors such as foreign firms. Demands for privatisation and market liberalisation were used by some regimes as justification for hiring foreign firms that employ foreign soldiers (PMCs). Foreign soldiers benefited the state and the foreign firm by securing access to the resources. This both provides the state with revenue and denies the rebels access to resources. They served the interests of aid organisations, creditors and the international community by providing a structure and form of stability that was preferable to the anarchy of a “failed” state where relations would need to be sought with various competing strongmen (Reno, 1997: 166-167).

The employment and activities of PMCs is not limited to Africa. The US is one of the biggest employers of private military contractors. In 2004 it pledged \$200 million for private contracts to support the AU mission in Sudan. American firm, Military Professional Resources Incorporated (MPRI), trained the Croat army before their 1995 offensive that forced the Serbs to negotiations. Dyncorp was also hired as the US contribution to the Organisation for Security and Cooperation in Europe monitoring force in Kosovo. It is likely that Dyncorp was used because the domestic political risk of sending US national troops unarmed into a situation where they may be in danger was too great (O'Brien, 2000b). In Iraq, there are at least 20 000 private contractors guarding coalition bases, protecting US officials, training Iraqi security forces and interrogating detainees. They also provide protection for businessmen, journalists and humanitarian workers (Zavis, 2006). Not all interventions are successful. Sandline was employed by the Papua New Guinean government, which led to a mutiny by the country's own army (Singer, 2003: 11-15).

MPRI is the largest US PMC. Based in Virginia it is run by retired military personnel with the encouragement of the US government. The company has been contracted by the US government to carry out various international activities. It has not played a large role in Africa but was in line for a contract with Angola after the US government

pressured Angola to end its contract with EO. It was also contracted to implement the Africa Crisis Response Initiative (Cilliers & Douglas, 1999: 118).

In cases where Western governments would like action to be taken but are hesitant to commit the financial and political resources required of a foreign military intervention, private companies are able to become involved. PMCs have the advantage of providing governments with a cheaper alternative as well as a way to avoid the political costs of sending in the national armed forces.

The UN rarely sends peace-enforcers or combat units. PMCs are able to take action that UN troops may not, such as taking sides, pre-emptive action or using overwhelming force (Howe, 2001: 192). PMCs cost less than national armies because they only work when they have been contracted, they do not necessarily need to own equipment and they require little training. Privately contracted forces are able to deploy faster, and do not have the same political problems regarding casualties. When compared to multinational forces such as those working for UN missions, PMCs may have a clearer chain of command, work with compatible military equipment, and have similar training, sometimes even having had past experience of working together. They could even be more loyal than the nationals of the country in which they are fighting because they are unlikely to threaten those in power (Howe, 2001: 193).

According to Clapham (1999: 38) certain conditions of supply and demand are required for PMCs to be employed. Demand typically comes from an African employer, who is often a recognised government. This employer would require security services of a standard not provided locally, but they do need to have enough support, to endure the opposition relating to the employment of foreign, and what can be illegitimate forces that require huge payouts. The conflict must not be so militarised that the employed forces, which consist of a small number of troops, could be easily overwhelmed. The contracted security also needs to have a much greater quality and skill level in order to have a disproportionate impact on the outcome. The employer needs to be in possession of resources to pay for the services it requires.

This is especially important as it has meant that the employment of mercenaries and PMCs has generally been limited to African states that have abundant mineral resources, specifically diamonds, oil and coltan (Clapham, 1999: 39-40).

It has not been shown that PMCs aid in long-term conflict resolution, as conflicts in both Angola and Sierra Leone restarted once the PMC left. It has been argued that their presence is more likely to exacerbate the conflict by increasing militarization. Once they leave, parties to the conflict have more military skills and enhanced weapons capabilities, which may create an incentive to continue fighting instead of seeking to negotiate. In Sierra Leone, the PMCs worked with a local militia, the Kamajors, which resulted in an additional faction being involved in the fighting once the company had left. The other side of the argument is that they are temporary solutions to the maintenance of order, useful to create sufficient stability to allow the political problems to be resolved. It is inevitable though that they will be drawn into the situation in some way, having been hired by one of the parties. In both Angola and Sierra Leone, the signing of peace agreements was conditional on the company's departure (Clapham, 1999: 44).

Various arguments have been made about the benefits of PMCs as well as the problems associated with hiring them. The issue is a contentious one and strong arguments have been made at both extremes. Some advocate the use of PMCs, hailing them as the solution to Africa's conflict problems. Brooks (2000a: 33) views PMCs as having the ability to bring peace to Africa. He sees a use for them in peacekeeping, monitoring, NGO protection, humanitarian rescue and as well as a way to end wars "decisively". On the other hand, there are commentators who prefer the term "corporate mercenaries" (Aning, 2000 and Renou, 2005) and do not distinguish between illegal mercenary activity and legitimate PMCs.

Howe argues that the functions that PMCs perform should ideally be handled by UN or African standby forces. However, these forces are slow and expensive to deploy and there is an increasing lack of political will from the West to commit more troops to African conflicts. Further to this problem, is the difficulty in securing definitive action

when the interests of the Security Council's permanent five members are involved. PMCs offer a cheaper, more effective solution without the political or diplomatic risks associated with direct involvement by Western governments (Howe, 1998: 308).

## **1.2 Problem Statement**

The outsourcing of military functions raises questions about accountability and the abuse of force. Even as these companies grow and become more prominent in conflicts, there are still very limited ways to ensure correct behaviour. It is very difficult to charge human rights abusers in these circumstances. Democratic states can use PMCs to escape public or legislative oversight, bypassing national institutions and reducing regime accountability. PMCs could also encourage governments to use force rather than explore peaceful resolutions. Questions have been raised about how effective a settlement imposed by foreign military victory can be (Howe, 2001: 194). PMCs have also been portrayed by some critics as “neo-colonial exploiters” because of their connections to Western mining interests (O'Brien, 2000a: 45).

There are legal and moral issues involved with profit-motivated violence. PMCs claim that they are not strictly mercenaries and provide a legitimate service. They do operate as legitimate businesses and argue that they only work where a recognised government has invited them. Nevertheless transparency and accountability are still very difficult to maintain. The nature of PMC activity requires secrecy, and often the lack of law and order in the states in which they operate means that it is very difficult to keep track of their activities and ensure that, for example, human rights are not violated. Because of the weakness of the states in which PMCs operate, they are unlikely to have the will or capability to hold these companies accountable for their actions.

There are various problems involved with the implementation of laws against mercenaries and PMCs. Firstly; there is a lack of ability to precisely define the term. Whereas foreigners enlisted in the French Foreign Legion, the Swiss Guard or

Britain's Gurkhas, for example, have been acceptable, mercenaries seen as "rogue elements" have not. Private military companies blur the boundaries between what is acceptable and what is not. It is this definitional problem that creates controversy and problems over how to implement legislation that can regulate PMCs, while at the same time outlawing mercenaries (Abraham, 1999: 83).

Secondly, extraterritorial jurisdiction is an extremely difficult problem to overcome. Most companies are hosted in developed countries, hiring soldiers from various places and are mostly contracted to work in developing countries. If individuals have not committed a crime on the soil of the prosecuting state, they are unlikely to be held accountable for their actions. The collective political will to create and enforce effective international laws governing PMCs is lacking, although international regulation would be the most useful for this transnational industry.

There are difficulties in applying mercenary law to PMCs. In addition to the problem of defining mercenaries, legitimately operating PMCs do not actually contravene existing mercenary laws (Abraham, 1999: 85). The Organisation of African Unity (OAU) called for international action against mercenaries because of the destabilising effect they were having on new regimes (Abraham, 1999: 83). Mercenary activity is illegal under the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, which was adopted by the UN General Assembly in 1989 and the OAU's Convention for the Elimination of Mercenarism in Africa (CEMA). However, international law does not deal with PMCs (Holmqvist, 2005, Addo, 2004 and Aning *et al*, 2004).

The hiring country of a PMC is formally responsible for its actions. This is assuming that it is hired by a country rather than a rebel group or a business. However, because of the nature of many states in which PMCs are active, there is likely to be little will or capacity to hold it accountable if violations of laws or human rights did occur. Employees of PMCs are also easily able to cross borders without passport or customs control, which is an additional hindrance to holding them accountable for their actions (Cullen, 2000: 38). Porous borders, especially in Africa facilitate this

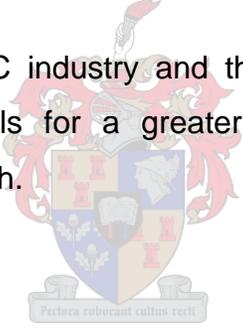
evasion of control and even with laws, such as in South Africa, prosecution can be avoided. PMCs may have greater military resources at their disposal than their employer states, yet they are not subject to the same constraints as governments (Mills & Stremlau, 1999: 9). In spite of the difficulties involved with legislation, it is still necessary to at least provide some form of regulation for the industry.

It seems that PMCs are a reality and will play an increasing role in conflicts. This means that the issue is not whether they are right or wrong but how they can be properly incorporated into the international legal framework. Given the size and growth of the industry, as well as its control over resources and its force capabilities, the absence of effective legislation to govern it is a serious concern (McIntyre, 2004).

### **1.3 Purpose and Significance**

The massive growth of the PMC industry and the power that it can attain, both politically and economically, calls for a greater study of its activities and the international response to its growth.

The purpose of this study is:

- 
- a) to discuss the characteristics of PMCs and how they differ from traditional mercenary activity
  - b) to consider and evaluate existing legislation in the area governing PMCs
  - c) to discuss the activities of PMCs in weak states in Africa
  - d) to provide examples of PMC involvement in Africa by using the cases of Angola and Sierra Leone

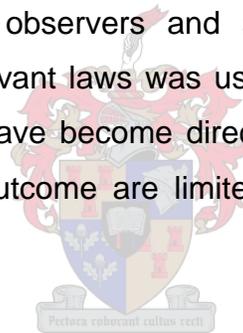
Chapter 2 will discuss and evaluate legislation that pertains to the employment of PMCs at both the international and the domestic level. At the international level this includes the UN, the Geneva Conventions and the African Union (AU). Three countries' domestic legislations are discussed namely the United States, the United Kingdom and South Africa. Chapter 3 explores the link between weak, resource-rich states and the employment of PMCs. The case studies of Angola and Sierra Leone

provide examples of where PMCs have had a significant impact on an internal conflict. Conclusions will be drawn in Chapter 4.

## **1.4 Methodology**

The study of private military companies is restricted by the limited empirical information that is available. There is a certain amount of secrecy involved in the industry, especially with regards to the specific terms of contracts, commercial links and mineral concessions. Some of the detail that is available about the activities of PMCs has been speculated on by various commentators and observers and cannot be confirmed.

The nature of the study did, therefore not allow for interviews to be used. The study thus relies upon the work of observers and academics in order to draw its conclusions. The text of the relevant laws was used to discuss their applicability to PMCs. Incidents where PMCs have become directly involved in conflicts and have had a profound effect on the outcome are limited. Combat PMCs are much less common than other types.



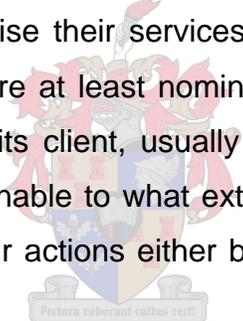
Angola and Sierra Leone are fairly unique in their experiences and it is therefore difficult to make generalisations about the behaviour of the combat type of firm. This study thus aims to be explanatory and descriptive. The research strategy is of a qualitative inductive nature as there are limited examples of where PMCs have had such a significant impact on the outcome of conflicts.

## CHAPTER 2

### Regulation

#### 2.1 Problems with Regulation

According to the UN Special Rapporteur for mercenaries, “over the last decade, the proliferation of international private military companies operating in over 50 countries around the world has outstripped the effectiveness of the existing legal framework and enforcement mechanisms” (United Nations Special Rapporteur, 2004). The legal position of the private security industry is vague. While sharing similarities with mercenaries, PMCs do not fall under the same definition, and laws referring to mercenary activity cannot simply be extended to apply to PMCs. Neither international nor domestic legislation effectively addresses this problem. PMCs are legally registered companies that advertise their services. Their employees are hired with fixed terms and conditions and are at least nominally accountable to the company. The company is accountable to its client, usually under a legal contract (Shearer, 1998b: 21). It is however questionable to what extent PMCs or their employees are currently held responsible for their actions either by their home state or the state in which they are active.



Historically, there was never a real problem with the employment of mercenaries. Mercenary activity had declined in the West with the development of a national army and nationalism. In the late 20<sup>th</sup> century however, international interest on this issue grew, in large part due to their activities in Africa after independence. Newly independent African states were weak, which gave mercenary activity a chance to be revived (Abraham, 1999: 81-82).

Mercenaries are now outlawed under both the Geneva Convention and the AU's CEMA, although neither deal with the use or activities of PMCs. The South African FMA Act of 1998 also bans mercenaries and is the only law in Africa that attempts to regulate PMCs. There has been little political interest worldwide in regulating PMCs

and the public is generally not aware of the extent of their activities (McIntyre, 2004: 102).

A vast number of PMCs are involved in Africa, in all the sectors of the industry: training, support, security and combat. The major problem is mercenaries, and PMCs that perform combat-type services. Private security companies that provide non-combat services and security in the form of neighbourhood watches and building or individual security are not problematic.

Exceedingly strict regulation against PMCs could potentially have the effect of reducing transparency and increasing clandestine operations. Many PMCs are actually in favour of regulatory frameworks and are willing to allow their activities to be monitored. If the industry had formal standards for good business practice it would benefit the firms by legitimising them, increasing possibilities of garnering further contracts. It would also benefit society by providing a mechanism for civil oversight (McIntyre, 2004: 103).

Because PMCs do not operate within their home country, the enforcement of domestic laws is extremely difficult. Furthermore, the activities of these firms take place in situations of war, within weak states where the ability or will to enforce another country's laws is likely to be minimal, if it exists at all. International laws and conventions are therefore needed to overcome the problem of extra-territoriality.

Critics of PMCs have argued that regulations for the private security industry would legitimise illegitimate actors. Some argue that the industry should be banned altogether and the services they provide should be supplied by the state or UN-mandated peacekeepers because PMCs undermine the state's monopoly on the "legitimate use of violence" within its territory. However, the legitimate use of violence or force implies that force is sanctioned, not necessarily executed, by the state. It is more likely that the state's monopoly on violence is eroded by other groups such as, guerrillas, warlords, non-state militias or traditionally defined mercenaries (Brayton, 2002: 303). To completely ban PMCs would be unrealistic given the size of the

industry. It would furthermore be impossible to implement, and likely to undermine attempts to increase their accountability and transparency (Holmqvist, 2005: 42).

Some have argued that PMCs will be regulated by the market and the media. Herbst (1999: 120) regards regulation as potentially unnecessary because it is unlikely to work and cannot force these companies to work in the interests of their home states. He argues that they can simply move to a more tolerant country if their home government makes too many demands and that PMCs are more likely to align themselves with the interests of their home state in an attempt to create further business opportunities. Howe (2001: 226) also argues that it would be impossible to outlaw PMC activity and may even be counterproductive. Certain PMCs may need to maintain good human rights records in order to secure future contracts. These companies are usually based in a Western nation and employ personnel from professionally trained militaries. They might be kept in check to *some* degree by the government and market forces.

In spite of the potential of other factors to regulate the industry, international laws are still needed. If PMCs are not regulated they can worsen a conflict situation, and supply and demand for such companies will exist regardless of attempts to eradicate or disregard them. The market has not prevented crimes, such as violations of human rights, committed by PMCs or their employees until now, and it also cannot address the issues of accountability and transparency (Holmqvist, 2005: 42).

The PMC industry has few barriers to entry, and there are opportunities for almost any former military officer with the right connections to start up his own firm. Smaller firms, with low profiles and no corporate image to uphold, could be as, if not more dangerous than firms like EO, that offer “upmarket security solutions”, emphasising that they are legitimate and only work for governments. Companies set up for a specific, lucrative operation will not necessarily be affected by the informal controls of the media and the market. They are able to attract business because they are willing to accept employment from any source with the means to pay for their services (Herbst, 1999: 120-121 and Howe, 2001: 227).

When firms continue to operate in spite of international or domestic law there is no system to enforce legislation (Herbst, 1999: 121-122). Unchecked, PMCs could harm both Western and African interests by supporting illegitimate forces. Effective legislation can increase transparency and accountability in the industry. The host country of a PMC often has a weak, corrupt government that is confronted with armed political opposition. These governments often have networks linking them with multinational corporations and PMCs, with huge profits at stake.

PMCs are frequently part of a complicated network of companies that link international business interests. It can be difficult to distinguish various interests from others and to trace the origins of companies that can be registered in any variety of countries. Contracts are also often subcontracted, which further distances those carrying out the service from the core company, and limits the ability to place responsibility firmly in someone's hands (Cilliers & Mason, 1999: 3). For example EO was registered in both South Africa and the UK. Eben Barlow, set up a holding company in South Africa called Strategic Resources Corporation (SRC). Operations managed in South Africa were controlled by EO directors but conducted under SRC. British directors controlled UK operations and also ran Branch Energy and Heritage Oil. Executive Outcomes also had connections to a variety of other companies including Diamond Works, Ibis Air International, Sandline, Ranger Oil and Plaza 107 Ltd, among others (Pech, 1999: 86-88).

Regulation faces both practical and political problems. Finding an acceptable definition of a mercenary and what behaviour is acceptable or not has proven difficult. Attempts at regulation are likely to be further weakened by those states that benefit from the activities of PMCs, and will act in their own national interest (Howe, 2001: 226-228 and Mills & Stremlau, 1999: 12).

## **2.2 International Law**

In the 1960s mercenaries were associated with attempts to overthrow recognised, sovereign governments and thus called into question the control that international law assumed new leaders had over their territories. They were particularly a threat in Africa because it did not require many soldiers to take over a weak African country (Herbst, 1999: 113). International calls for regulation specifically limiting the use of mercenaries originated in Africa, where they were the most active because of the large number of post-independence conflicts (Shearer, 1998b: 16). From the 1960s well into the 1990s, they were persistently involved in Africa. The Congo, Nigeria, Guinea, Sierra Leone and Angola have all had experiences with mercenaries (Abraham, 1999: 93).

The three international conventions that are specifically important regarding mercenaries are Article 47 of the 1977 Additional Protocol of the Geneva Convention; the 1977 OAU Convention for the Elimination of Mercenarism in Africa; and the UN's 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (Shearer, 1998b: 16). All have struggled to find an acceptable definition of mercenaries and none address the activities of PMCs. The PMC industry is transnational, one company's activities can span across countries and continents. MPRI, for example, is known to have worked in Colombia, Croatia, Bosnia, Nigeria, Equatorial Guinea, and in the US (Singer, 2003: 125-131). Because of this nature of the industry, regulation by international organizations can be more effective than regulation at the domestic level, until this happens, internationally, PMCs are "in a legal no-man's land" where they are outside the Geneva Convention and the International Criminal Court (ICC) and have neither rights nor obligations (Smith, 2005: 22-24).

### **2.2.1 The Geneva Convention and the United Nations**

Before 1945 customary international law on mercenaries was limited and focused on the law of neutrality. It was understood that states would not become involved in

another state's internal affairs. Nations held the sole right to deploy armed forces, and assumed responsibility for acts of violence committed by nationals (Fredland, 2004: 207). Allowing mercenaries to be recruited to fight within another state was viewed as an act of aggression that could provoke retaliation. The 1907 Hague Convention regarding the *Rights and Duties of Neutral Powers and Persons in Case of War on Land* allowed individuals to fight for another state but they would not be protected by their home state's neutrality and would receive the same treatment as a national of the state for which they were fighting (Abraham, 1999: 88-89).

After 1945 article 2(4) of the UN Charter prohibited member states from using "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations", but there were no mechanisms that specifically dealt with the use and recruitment of mercenaries. Only the 1949 Geneva Convention dealt with mercenaries under the *Treatment of Prisoners of War*. According to the Convention, mercenaries were entitled to prisoner-of-war treatment if they were part of the armed forces or militia of a state whose forces were entitled to such treatment (Abraham, 1999: 90-91).

International attention on mercenary activity in African conflicts after independence caused only a limited reaction. UN General Assembly resolutions focused mainly on opposing mercenaries fighting against movements for national liberation and independence. The *Basic Principles of the Legal Status of Combatants Struggling Against Colonial and Alien Domination and Racist Regimes* declared that the use of mercenaries by colonial or racist regimes against liberation movements was illegal and the mercenaries themselves were criminals. Even though the use of mercenaries was limited here, it was a significant shift in international law for mercenaries to be declared outlaws, as they became individuals with criminal liability as opposed to a responsibility of the state only (Abraham, 1999: 91-92).

In 1976 13 mercenaries, 10 Britons, two Americans and an Argentine were tried and prosecuted in Angola using various UN and OAU resolutions. The trial resulted in the execution of four of them, the remaining nine were imprisoned. They had been employed to fight against the People's Movement for the Liberation of Angola

(MPLA) government in the war that followed Angola's independence from Portugal in 1975 (BBC News, 1976). Following these prosecutions, the *Luanda Convention on the Prevention and Suppression of Mercenaries* was drafted. The Convention declared that mercenaries were not lawful combatants and consequently not entitled to prisoner of war status. This was then included in Article 47 of Additional Protocol I of the Geneva Convention after pressure from African nations at the Diplomatic Conference on International Humanitarian Law in Armed Conflicts that was held between 1974 and 1977, at which the Additional Protocols to the Geneva Convention were drawn up (Abraham, 1999: 95-96 and Shearer, 1998b: 16).

Article 47 of the 1977 Additional Protocol 1 to the Geneva Convention states that:

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
  - (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
  - (b) Does, in fact, take a direct part in the hostilities;
  - (c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
  - (d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
  - (e) Is not a member of the armed forces of a Party to the conflict; and
  - (f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces (Office of the High Commissioner for Human Rights, 2002).

The definition is cumulative, all the sections need to apply for a person to be defined as a mercenary (Shearer, 1998b: 17).

Combatant status entitles participants in conflicts to certain rights including prisoner of war treatment and exemption from national prosecution for actions taken that are aimed at directly furthering the war effort. Article 47 meant that mercenaries could be tried as criminals in the state in which they operated because they do not have combatant status. However, PMCs cannot be classified as mercenaries under this definition. PMCs have been accused of hiring mercenaries, which is illegal, thus making the company's activities illegal. But employees of PMCs may be regularly employed by a company and are therefore not necessarily recruited for a specific conflict, as paragraph a implies (Cleaver, 2000: 133).

Most firms also do not take *direct part in hostilities* (paragraph b), but act as advisors or trainers. Furthermore, proving the motivation for involvement in a conflict as *desire for private gain* (paragraph c) was rejected by the British commissioned Diplock Report of 1976. The report said that mercenaries could only be defined by what they do, not by their motivation.

Finally, hired soldiers could be integrated into the host state's own armed forces, as happened with EO in Sierra Leone. They would then not be recognised as mercenaries as the Protocol does not forbid foreign nationals from serving in the armed forces of another country (Shearer, 1998b: 18). Singer (2003: 41) argues that it is because states made political compromises, adding "overly specific descriptions" that the Additional Protocol could not provide a stronger mechanism for regulating mercenaries.

The Article is also weakened because it has not been signed or ratified by the US, a major supplier of mercenaries. The UK only ratified the Additional Protocol in 1998 and France only acceded in 2001. South Africa, another major supplier of mercenaries, acceded in 1995 but the following year South African mercenaries were reportedly working for the government of the former Zaire. Angola and Sierra Leone have both acceded to the Additional Protocol, but both mercenaries of the traditional kind and PMCs have fought in Angola and Sierra Leone on both sides of the conflict (International Committee of the Red Cross, 2006 and Musah & Fayemi, 2003: 273).

Following the Additional Protocols, UN General Assembly resolutions affirmed “the accepted principle that states are obliged not to allow, whether by way of action or omission, armed groups from within their territories to invade another territory.” But states continued to fail to prevent their citizens from joining mercenary groups, and in December 1989 the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* was adopted by the General Assembly. The Convention bans mercenary activities that specifically oppose “the legitimate exercise of the inalienable right of peoples to self-determination”. In this case self-determination is from colonialism and not from a repressive group within an independent African state (Herbst, 1999: 115). The proliferation of civil wars, not necessarily aimed specifically at overthrowing or destabilising the government means that this Convention fails to address a large aspect of the employment of mercenaries.

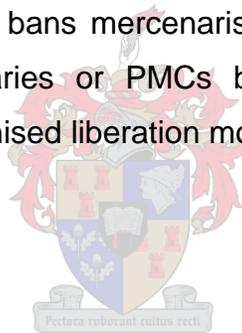
The UN Convention is weakened by definitions that focus on the maintenance of state sovereignty, attempts at overthrowing or destabilising the government and, like the Geneva Convention, the reliance on motive (Holmqvist, 2005: 4). Furthermore, only the state in which mercenary activities take place or the state of which the mercenary is a national, has the authority to deal with the crime. The Convention does not allow an offended state to take action against an offending state. It also fails to provide mechanisms to ensure its provisions are adhered to, which means that accountability depends on individual states. The Convention ultimately has no means to enforce its provisions (Abraham, 1999: 98).

It took until October 2001 before the Convention was ratified by the required 22 states for it to come into force (Office of the United Nations High Commissioner for Human Rights, 2006). Only 26 States have ratified the Convention. Angola, the Democratic Republic of Congo (DRC) and Nigeria have signed but not ratified it and since signing, have all hired mercenaries or PMCs. Ukraine is also a signatory, but was a large supplier of pilots to EO. Sierra Leone, South Africa, the UK and the US

have neither signed nor ratified the UN Convention (Abraham, 1999: 100, Howe, 2001: 228 and United Nations Special Rapporteur, 2004).

Other resolutions regarding mercenaries that have been passed by the UN are also limited and reflect international concerns regarding *individual* mercenaries or are targeted at specific conflicts where mercenaries have been perceived as increasing the level of conflict, and posing a threat to international peace and security. They have addressed the employment of mercenaries to destabilise other states, to initiate a coup, to suppress national liberation movements and the violation of human rights. They are targeted at preventing mercenaries from working against sovereign, legitimate states, national liberation movements, and attempts to achieve national self-determination. Many PMCs working in Africa would not fall within these classifications (Abraham, 1999: 98-99). The UN has not been able to create an international law that completely bans mercenarism. Nor have its resolutions dealt with the regulation of mercenaries or PMCs being hired to protect legitimate governments or to support recognised liberation movements.

### 2.2.2 The OAU/AU



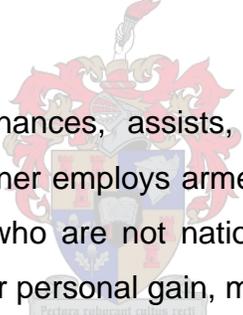
The AU is crucial in the regulation of the private security industry because of the degree of PMC activity in Africa. PMCs are often hired by external actors (foreign governments or multinational corporations) and the AU needs to take the responsibility of working towards safeguarding the interests of the weak states in which these companies operate (Holmqvist, 2005: 55). Currently, like the UN and Geneva Conventions, it only has laws dealing with the use of mercenaries.

The OAU responded to the threat of mercenaries with declarations of condemnation, resolutions and calls to outlaw their recruitment and use. In 1971 the Assembly of Heads of State declared that mercenaries threatened the “independence, sovereignty, territorial integrity and the harmonious development of Member States of the OAU” (Abraham, 1999: 93-94).

CEMA was adopted in 1977 and entered into force in 1985. Mercenaries were banned, in part due to the threat they were seen to pose to newly independent African states, or liberation movements within states that were not yet independent. This Convention was written specifically to protect the interests of the states that wrote it and to protect liberation movements in colonial and white-ruled regimes (Herbst, 1999: 114). According to Abraham (1999: 94) it “has influenced all subsequent thinking on the international control of mercenaries”.

The CEMA definition of mercenarism states that:

The crime of mercenarism is committed by the individual, group or association, representatives of a State and the State itself with the aim of opposing by armed violence a process of self-determination or the territorial integrity of another State that practices any of the following acts:

- 
- (a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs armed forces partially or wholly consisting of persons who are not nationals of the country where they are going to act, for personal gain, material or otherwise;
  - (b) Enlists, enrolls or tries to enrol in the said forces;
  - (c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces (Department of Foreign Affairs, 2006).

This was the first attempt at practical legislation against mercenaries, attempting to surpass national jurisdiction (Abraham, 1999: 94). The Convention does not apply to PMCs however. Mercenaries are only defined as such if they are in opposition to an existing state. Signatory states are obliged to “prohibit activities by persons or organisations who use mercenaries against any African State member of the

Organisation of African Unity or the people of Africa in their struggle for liberation”. Therefore private soldiers fighting for a legitimate government are not outlawed (Herbst, 1999: 115 and Howe, 2001: 228). In contrast the UN argues that “the mere fact that it is a government that recruits mercenaries or contracts companies that recruit mercenaries for its own defences or to provide reinforcements in armed conflict does not make such actions any less illegal or illegitimate” (Howe, 2001: 228).

CEMA differs from Article 47 of the Geneva Convention Additional Protocol in its definition of mercenary activity. CEMA states that mercenarism can only occur if it opposes state sovereignty as opposed to a general reference to “armed conflict”. This means that mercenary activity in civil wars, which now constitute the majority of conflicts in Africa, does not amount to “mercenarism” under this definition. Article 47 treats mercenaries only as individuals who participate directly in hostilities, whereas under CEMA they can be individuals, groups or states who are involved in or support mercenary forces in any way.

Furthermore, Article 47 qualifies personal gain by saying that it should be “substantially in excess of that promised or paid to combatants of similar rank...” CEMA does not qualify personal gain, which means that any form of payment to a non-national soldier constitutes mercenarism, regardless of personnel connections to the cause or motivation. However, since motivation as a definition of mercenarism has been discredited by the 1976 Diplock Report, this highlights the inherent difficulty in suitably defining the term mercenary so as to include those that it is necessary to outlaw and exclude legitimate actors.

Both laws have weaknesses: Article 47 does not make mercenarism a crime in itself, but merely prevents mercenaries from claiming the rights of combatant status while CEMA is limited in its application. It has furthermore only been ratified by 27 of the 53 AU nations. Notably, it has not been signed or ratified by South Africa, while Angola and Sierra Leone signed but never ratified it (African Union, 2006). South Africa has enacted strict domestic legislation, which means that it could be argued that it is

unnecessary for it to accede to the Convention. However countries such as Angola and Sierra Leone have a limited legislative framework in which to tackle the problem of mercenaries, and an even more limited framework in which to regulate or hold liable the PMCs that they have employed.

## **2.3 Domestic Legislation**

Because international law regarding mercenaries is so weak, and regarding PMCs is almost non-existent, domestic laws have greater responsibility to address the problem (Vines, 1999: 49). States however, have not taken the regulation of mercenaries very seriously. Few have implemented comprehensive laws that address either mercenaries or PMCs. Only South Africa and the US have made serious attempts to do this. This is important because along with the UK, South Africa and the US are amongst the largest suppliers of PMCs (Abraham, 1999: 102 and Holmqvist, 2005: 50).

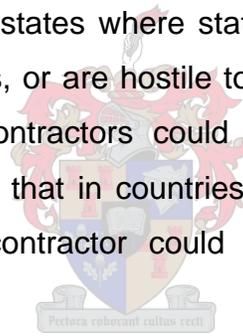
### **2.3.1 United States Legislation**

In the US the Neutrality Act of 1937 prohibits the recruitment of mercenaries within the country but actually being a mercenary is not an offence. In spite of this, no legal action was taken when mercenaries were recruited within the US to fight against the MPLA government in Angola (Herbst, 1999: 118 and Vines, 1999: 49).

US law also requires a licence to be obtained from the government before committing to providing security or military goods and services to a foreign client (Cilliers & Mason, 1999: 3). The *International Trafficking in Arms Regulation*, the *Arms Export Control Act*, and the *Export Administration Act*, require PMCs to obtain licences from the Department of State's Office of Defence Trade Controls to provide military knowledge, services or goods. For example, to work in Africa they would need to submit their proposals to the US State Department, where it would be reviewed by the Africa Bureau and Human Rights office, sent to the Defence Department, and possibly even to the Treasury or Energy departments (Howe, 2001: 226).

Commentators have argued that this system is not adequate as there is no procedural consistency between the various departments. Additionally, once a contract has been granted, there is limited oversight of its implementation. Congress must be notified when contracts are valued at over US\$ 50 million, but contracts can be split up or subcontracted to avoid this (Holmqvist, 2005: 51).

There are around 20 000 private contractors working for coalition forces, protecting US officials, providing training for Iraqi security forces, interrogating detainees, protecting businessmen, journalists and humanitarian workers (Zavis, 2006). American soldiers are always subject to the Uniform Code of Military Justice (UCMJ), regardless of where they are. Military contractors however, are only subject to the laws of the state in which they are working. This is particularly problematic when contractors are hired to work in states where state infrastructure is weak, they are reluctant to prosecute Americans, or are hostile to US presence. In these situations crimes committed by civilian contractors could easily go unpunished. Campbell (2000) raises a point of concern that in countries such as Somalia, where there is effectively no government, a contractor could commit any crime without legal accountability.



The Military and Extraterritorial Jurisdiction Act of 1999 extends jurisdiction of the UCMJ but only to contractors hired by the Department of Defence (Campbell, 2000). This means that there are still gaps in the law and military contractors employed by other actors can easily escape prosecution. Government reports in the US for example, have implicated private contractors in serious human rights violations in Iraq and Afghanistan, including participation in the widely publicised torture scandal at Abu Ghraib prison in 2004. However, only one civilian contractor has faced charges. Employees of PMCs in Iraq may not be charged under Iraqi law because of a 2003 order from the Coalition Provisional Authority, yet they do not fall under the military chain of command. Twenty known cases of alleged misconduct by civilians in the war on terror have been forwarded by the Pentagon and CIA to the US

Department of Justice for investigation, only one case has been prosecuted, two were dismissed, and the other 17 have been left open (Amnesty International, 2006).

### 2.3.2 United Kingdom Legislation

The UK's Foreign Enlistment Act of 1870 prohibits the enlistment or recruitment of British citizens for foreign militaries. However, British citizens still play important roles in mercenary-like activities and the Diplock Report noted that there had never been a prosecution under this law (Smith, 2005: 24).

The British government has expressed concern about the growth of PMCs but has not enacted regulation in this regard. It has considered updating its legislation to take into account firms like Sandline because international laws are too weak to be effective (Cilliers & Mason, 1999: 3, Herbst, 1999: 118 and Vines, 1999: 49).

On the recommendation of the Foreign Affairs Committee, the British Government published a Green Paper in 2002 entitled *Private Military Companies: Options for Regulation*, outlining how regulation of British PMCs could be dealt with. According to the Green Paper, the British Government outsources some of its defence functions, specifically training. Almost 80 percent of army training involves civilian contractors. The Paper also says that firms that provide training or other services for UK Armed Forces are expected to increasingly look for opportunities abroad.

The Green Paper outlined six options for the regulation of the private military industry. These included:

*A ban on military activity abroad.* According to the Green Paper, this “would be the most direct way” of addressing the problem but would be difficult to enforce, it would encounter definitional problems and could also be construed as interfering with individual liberty. The Green Paper also mentions that it could remove the possibility for weak states to acquire support when they do not receive international support from other sources in times of crisis.

*A ban on recruitment for military activity abroad*, which would circumvent the problems associated with defining military activity. However, it would also face enforcement problems and the law would be easy to avoid through the use of communications technology.

*A licensing regime for military services*. This would be more flexible than a ban but would also face enforcement problems. Other areas in which it would be problematic would be the maintenance of confidentiality, evasion of the system or a change in the political situation in the area of activity during the term of a contract.

*Registration and notification*. This would require UK PMCs to register with the government and notify them about contracts. The government would only intervene if a contract did not comply with UK interests. This option would face many of the same problems as a licensing system.

*A general licence for PMCs or PSCs*. This option would licence the company as opposed to licensing individual contracts. The licence would set out terms and conditions for the company's behaviour. It would however not allow for the oversight of companies activities.

*Self-regulation*. This would take the form of a trade association with a general Code of Conduct covering issues such as human rights, international law and transparency. It is unclear how an association would more easily overcome the difficulties that governments face in terms of enforcement and accountability (Green Paper, 2002).

These options provided a good starting point for debate on the issue and any one or combination of options would be a step towards achieving some oversight of the industry. However, in spite of the Green Paper and the debate in the UK around regulation of PMCs, the government did not follow up with national legislation. London is the world's unofficial headquarters for PMCs because British laws

governing them are so lax. They only have to comply with Britain's arms-export law to avoid prosecution

### 2.3.3 South African Legislation

The South African FMA Act was prompted by EO's activities, specifically in Angola where the company allegedly worked for UNITA against the Angolan government, before it was contracted by the MPLA government to fight against UNITA in 1993. The company also had links with the apartheid military (Herbst, 1999: 118). It has been argued that the company benefited the new government by providing opportunities for former apartheid military personnel to work outside the country. In this way they were occupied and could not become involved in destabilising the democratic transition (Fredland, 2004: 213). However, the new South African government did not approve of South Africans being employed to fight in Africa's civil wars (Abraham, 1999: 85). It was also concerned about maintaining its new position as a middle power in international politics with an emphasis on its position in and relations with the rest of Africa.

The FMA aimed to both ban mercenary activity and to regulate the provision of military assistance outside South Africa. Those intending to provide this service (including advice, training, personnel, logistics, finance, operations, recruitment, procurement of equipment and "any other action that has the result of furthering the military interests of a party to the armed conflict") are required to obtain authorisation and approval from the government's National Conventional Arms Control Committee (NCACC).<sup>1</sup> (Herbst, 1999: 119, Holmqvist, 2005: 52, and Vines, 1999: 49).

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<sup>1</sup> The required approval will only be obtained if the foreign military assistance is in line with South Africa's national interest. Approval will not be attained if the proposed activities would:

- a) be in conflict with the Republic's obligations in terms of international law;
- b) result in the infringement of human rights and fundamental freedoms in the territory in which the foreign military assistance is to be rendered;
- c) endanger the peace by introducing destabilising military capabilities into the region where the assistance is to be, or is likely to be, rendered or would otherwise contribute to regional instability and would negatively influence the balance of power in such region;
- d) support or encourage terrorism in any manner;
- e) contribute to the escalation of regional conflicts;

Executive Outcomes' leadership even claimed to support such regulation, saying that it had submitted 36 amendments to the Act, 28 of which were accepted. Eben Barlow is reported to have said that he doubted the legislation was aimed at his company (Herbst, 1999: 119). Nevertheless EO was not trusted by the new South African government because of its links to apartheid forces and because its roots were in a covert front company for the South African Directorate of Military Intelligence.

When the FMA Act was announced in 1998, EO announced its closure (Cilliers & Mason, 1999: 3). Many sources have maintained that it merely broke up into smaller companies, reopening them under different names, and basing them in other countries.<sup>2</sup> Even after EO's demise, organisations that had links to the company, such as Saracen and LifeGuard Security continued to operate in Uganda and Sierra Leone respectively (Burton-Rose & Madsen, 1999).

South Africa is one of the few countries that has the political will to enact legislation that seriously attempts to control the activities of PMCs and mercenaries. Yet in spite of having "the most complete legislation in the world" (Mills & Stremmlau, 1999: 14), there are still factors that weaken its effectiveness. There is no sufficient system for public and parliamentary scrutiny and accountability of the activities of PMCs (Vines, 1999: 49). Companies can fairly easily avoid regulation by moving to a more tolerant country, and domestic legislation would need extra-territorial jurisdiction if it were to be enforced. The Act does claim such jurisdiction but this would in fact be very difficult to apply (Abraham, 1999: 103). Furthermore, there are many types of private security, some of which do not necessarily include combat activities, and it is very difficult for the government to regulate them all. In fact the problems with the legislation are such that Abraham (1999: 103) says there have been suggestions that

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- f) prejudice the Republic's national or international interests;
  - g) be unacceptable for any other reason (Abraham, 1999: 103).

<sup>2</sup> For example, according to Cilliers & Mason (1999: 3), "[EO] has, however, apparently merely fragmented, with many new companies being established under new names". Herbst (1999: 117-118) says "EO mutated with ease into a different corporate form in December 1998" and Singer (2003: 75) claims that because of domestic regulation "the original firm based in South Africa transformed itself into several firms located outside of the country".

the South African legislation was enacted as a symbolic gesture to appease the international community, not to seriously prevent the activities of mercenaries.

Abraham (1999: 104) argues that the Act does not achieve what it sets out to do. The definition of “foreign military assistance” includes activities that are not conventionally related to military matters. It also gives the NCACC wide powers of discretion, without the appropriate parliamentary oversight (Abraham, 1999: 105 and Malan & Cilliers, 1997). The Geneva Convention on mercenaries was aimed at excluding mercenaries from the protection of prisoner of war status, but not to ban their activities. It is difficult to prove many components of the definition of mercenaries. To overcome this problem, the FMA was written to include all forms of foreign military services to parties to armed conflicts (Malan & Cilliers, 1997).

The Act could be interpreted as contradicting some of the rights set out in the Constitution, such as freedom of religion, belief and opinion; freedom of expression; freedom of association; freedom of movement and residence; and freedom of trade, occupation and profession. These rights can be limited but a constitutional challenge would require the legislator to show that the limitations of the Act are “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom” (Abraham, 1999: 106 and Malan & Cilliers, 1997).

Enforcement of the legislation is also a huge challenge. The FMA is “the strictest existing form of national legislation on private security service exports” but there have been few prosecutions under this legislation (Holmqvist, 2005: 54). When the plot, by a group of mercenaries led by Mark Thatcher, to overthrow the government of Equatorial Guinea was uncovered, 68 fighters were convicted in Zimbabwe, including Simon Mann, a co-founder of EO. It highlighted not only the importance of regulating the private military industry but the problems encompassed by their existence. It also set back the process of legitimising PMCs. The PMC business is growing in war zones around the world but many governments do not know who runs them and what to do about them. Regulation would require an international consensus that seems

unlikely at the moment. South Africa attempted to prosecute under its FMA Act but ended up giving Mark Thatcher a plea bargain deal.

The South African Government has passed new legislation to cover all war-zone work by its nationals. The new legislation is much broader but it faces the same problems mentioned above including the problem of how it can be enforced. Holmqvist (2005: 54) points out that South Africa's legislation is significant because it recognises that the private security industry is one where it is impossible to draw clear lines between "controversial" and "non-controversial" services and between "defensive" and "offensive" services. But South African legislation is too strict as it encompasses services beyond military ones, such as humanitarian work.

The new South African legislation, the *Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict* aimed to tighten the FMA has been controversial. It completely bans any form of South African involvement in conflict zones abroad, including humanitarian work, without government authorization (Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflicts Bill, 2005 and Zavis, 2006). It has been particularly opposed by the British government because there are over 700 South Africans in the British armed forces. The new law requires that South Africans get authorisation to enlist in foreign armies, but this authorisation would be automatically revoked once the armed force is deployed. It also restricts South Africans doing humanitarian work, providing services, assistance and security in conflict zones, requiring authorisation each time. It is estimated that between 4 000 and 20 000 South Africans are providing military services outside South Africa, including in Iraq (The Citizen, 2006 and Keet, 2006).

## **2.4 Assessment**

PMCs cannot be classified simply as the new type of mercenary. There are too many differences; in definition, set-up, operations, and functions. Because of these differences, laws and regulations that were written following the high incidence of

mercenary activity after independence in Africa do not neatly apply to the types of military companies that have been developing since the 1990s. Attitudes perceiving mercenaries as “destructive, amoral, rogue elements” do not necessarily reflect the characteristics of PMCs. This has effectively blurred the boundaries of the morality of mercenarism (Shearer, 1998b: 22).

Abraham (1999: 84) argues that PMCs are more like corporate enterprises than the mercenary organisations of years ago, seeming to have “competent intelligence capacities and a concern for good public relations”. Countries that have serious threats to their security are more likely to seek outside help first, before being concerned about morality or whether it can be classified as mercenary activity or not. They will most likely only be concerned about such issues regarding the extent to which they could generate international criticism (Shearer, 1998b: 22).

International law cannot be applied to PMCs hired by legitimate governments or internationally recognised movements of national liberation, for training or combat support. The UN Special Rapporteur on Mercenaries notes that it is problematic to apply mercenary law to PMCs, because of changing attitudes towards mercenaries and the weaknesses of international law to address the issue (Abraham, 1999: 85). Some PMCs claim that because they will only work for legitimate governments they are exempt from the terms of international conventions. The UN Special Rapporteur strengthened this argument by saying that PMCs could not “be strictly considered as coming within the legal scope of mercenary status” (Vines, 1999: 48).

As the international body with the aim of maintaining peace and security, the UN seems the clear choice for addressing PMCs in the international arena. The UN itself has used PMCs extensively to support its peace operations. Addressing the PMC industry at the international level is beneficial because the industry is transnational and has the ability to affect international peace and security (Holmqvist, 2005: 44). However, none of the major Western powers have signed the international conventions and in spite of concerns from the public about PMCs, Western governments have done little to restrict their activities (Shearer, 1998b: 22).

The failure of both international and domestic law to address this issue effectively is in large part due to the difficulty of defining the term 'mercenary'. There has been much debate over this issue, especially over what behaviour is acceptable or if any form of mercenary activity can be legally accepted. The answers often refer to the legitimacy of the employer and the type of services provided. For example, the Gurkhas and the French Foreign Legion are not stirring international debate over mercenaries while the legitimacy of PMCs to offer their services is contested (Abraham, 1999: 83).

There is also a lack of international political will to effectively address PMC activity. Laws that have been put in place have not received the support they need from the relevant states or they have been written to address the specific interests of the regulators. CEMA, for example was drawn up with the specific needs of African states in mind and provides a leeway for them to use mercenaries if they are hired by the state. The British government outlined options that could be used for regulation but it has yet to implement any of them.

Amending the AU and the UN conventions to include PMCs in the definition of mercenaries would be counter-productive, if not impossible. It is not a clear-cut task to distinguish between "combat" and "non-combat" activity. Direct combat by PMCs is fairly uncommon; a ban on this would only affect a very small section of the industry. It may not even have a significant impact if companies continue to operate in the world's troubled spots where lack of effective governance would allow such companies to continue their operations (Holmqvist, 2005: 44). To outlaw training, strategic advice and operational support would not be beneficial to any government, given the extent that both Western and developing militaries rely on military contractors. Furthermore, enforcement would continue to be problematic and strict laws could lead to an increase in illegal firms. Achieving accountability or any form of public control over illegal activities would be impossible.

In light of the huge presence of PMCs in Africa, it is essential to discuss why they are so active on this continent and what the results have been in cases where they have been involved. There are specific conditions that encourage PMC activity; they are particularly prevalent in conflict-ridden, weak and resource-rich African states.



## CHAPTER 3

### The Nature of the African State and PMCs

#### 3.1 African weak states: Inability to deal with threats to order and security

Worldwide there has been a decline in interstate conflicts and a rise in civil wars. Internal conflict makes it very difficult for states to maintain control over their populations, trade and capital flows, a requirement for a stable state. The way that African states were created and their low levels of economic development has, on the whole, not permitted the construction of effective states (Clapham, 1999: 32). The use of personal-rulers, the encouragement of ethnic, religious or regional tensions, and the centralisation of many of the necessary functions of the state has led to intense competition for control of the state. Control of the state is connected to control over its resources because many governments use their position to represent private interests or for personal gain (Howe, 2001: 76).

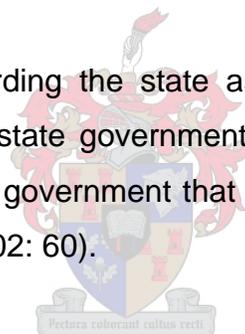
The combination of weak states, without sufficient control over their own security, the decline in international security assistance and a rise in internal conflicts as well as the presence of specific minerals has created a gap into which PMCs have been able to move. The presence of mineral resources is specifically important, without them, weak states are usually unable to hire PMCs because they do not have the necessary funds.

African weak states are weak for a variety of reasons; the unnatural creation of borders and national identity, weak government structures without sufficient rules governing the political system, and limited economies that are externally dependent and vulnerable (Mills & Stremlau, 1999: 9). A system of states did not form part of the African context before European colonisation, which meant there was no common perception of the state, nor was there a cohesive identity. This left no platform from which to build security structures. The result was that the systems that did develop were weak and after the Cold War, privatisation favoured certain groups over others,

rather than being aimed at the benefit of society as a whole (Clapham, 1999: 30 and Howe, 2001: 76).

Colonial powers were able to maintain order through direct or indirect means, or at least create the perception that they were providing law and order. Indigenous security systems were destroyed or subordinated as African kingdoms were not recognised by colonial administrations (Clapham, 1999: 25-26). When African states gained independence they were not only left with a political system that was foreign to the African social structure, the nation-state, but also with a society devoid of strong security structures. They constituted states only because they were recognised by the international system but were in fact “little more than juridical entities” and were unable to cope with the security threats that they encountered (Howe, 2001: 2).

There was no tradition of regarding the state as the provider of public security. Citizens identified little with the state government or ideology, making it difficult to develop effective or accountable government that was perceived as the best means of providing security (Mandel, 2002: 60).



As a result of the lack of *de facto* sovereignty, a priority of the OAU was to establish an international understanding of sovereignty that prevented existing African states from being challenged. Any attempt to alter the boundaries they had inherited held the potential for massive conflict and in 1964 the OAU adopted a resolution that committed member states to the boundaries that existed upon independence (Herbst, 1999: 112). International actors also benefited because they have an interest in the maintenance of the sovereignty of weak states. It is easier to deal with a weak state government, even if it relies on commercial ties and mercenaries than the anarchy of a “failed” state where relations must be sought with various competing strongmen (Reno, 1997: 167).

African states never had a monopoly on legitimate violence. After independence administrative control only extended to coastal, or urban industrial areas and states

started losing control of the distribution of weapons in their territories (Lock, 1999: 21). During the Cold War, former colonial powers and the superpowers provided diplomatic and military support for these states. This protected the governments from internal threats but also delayed their need to develop a strong bureaucracy and sufficient armed forces of their own. Rulers used foreign support to gain favour with their local allies and to prevent their rivals from gaining power (Reno, 1997: 166).

The end of the Cold War brought about a further decline in the security of African states and facilitated the changing nature of African conflicts. Weapons and personnel from the world's demobilising militaries became freely available on the open market and Africa lost its strategic significance to the rest of the world. Foreign military support was severely cut, and the amount of aid dropped, yet it came with more conditions (Howe, 2001: 77).

Military downsizing in sub-Saharan Africa created a military vacuum and states were often left without an effective military or police force. Filling this vacuum with private security became a feasible option, in part because it was condoned by Western governments (Lock, 1999: 16). Under the doctrine of the coalition-of-the-willing the same happened in Afghanistan and Iraq where PMCs provide a big proportion of all security personnel, many of whom are hired by the American and British governments.

When the Cold War ended the militaries of the US, Europe and the former Soviet Union drastically downsized and many soldiers were demobilised (Singer, 2004: 53). In 1990, world military forces totalled 6,873,000. By 1997 this had been reduced to 3,283,000 (O'Brien, 2000b). The result was that weapons and other military equipment were dumped on the market, as were trained personnel who were now without employment. Prices of military equipment dropped but regulation was limited, especially of the end users of equipment (Mills & Stremlau, 1999: 4 and Howe: 2001: 79). Countries like Bulgaria and China were not concerned about who they sold their arms to. Angola for example spent billions of dollars of oil and diamond revenue on weapons, with Bulgaria supplying both the MPLA and UNITA (Howe, 2001: 80-81).

Private arms sales during the Cold War amounted to US\$ 2-3 billion. In 1996, they totalled over US\$ 25 billion (Hutchful, 1999: 217).

The end of apartheid in South Africa also led to military downsizing. The apartheid military had been very active on the continent, which meant that there were many experienced personnel with in depth knowledge of the region without employment (Lock, 1999: 15-16). Former members of the SADF have provided their services in Angola, on both sides of the war, in both the Congos, Uganda and Sierra Leone, among others, usually as force multipliers, providing advice and training but sometimes also as combatants (Howe, 2001: 86). The combination of demobilisation without providing employment alternatives and the growth of civil wars in weak states created both the supply and demand for foreign private military support (Lock, 1999: 13). However, only a small number of demobilised personnel in the region joined the private security sector, others joined the informal sectors in weak states. Because rearmament was so easy they became part of the security problem (Lock, 1999: 31).

The explosion of internal conflicts around the world meant that peacekeeping resources were stretched too thinly. Foreign powers became increasingly unwilling to become embroiled in Africa's domestic problems (Howe, 2001: 73); especially since sub-Saharan Africa's strategic importance had been reduced after the Cold War, with the exception of countries with oil. Once Cold War rivalries came to an end there was no reason for either side to continue to provide security for the weak states that had been used in their "ideological and strategic battles" (Musah & Fayemi, 2000: 4). World powers provided the region with more than US\$ 5 billion a year at the height of the Cold War. In 1995, only US\$ 270 million was provided for arms transactions. Except for South Africa, military budgets in Africa were only able to cover very basic military equipment and stock could not be replaced regularly (Lock, 1999: 14).

Even though the West is able to provide the military and economic support that the world's weakest states need, they are less inclined to do this now unless their national interests are threatened (Howe, 2001: 112). The international community's tragic failure in Rwanda in 1994 led to many proclamations that it would never

happen again but international reluctance to intervene in Sudan tells another story. Responsibility for security has therefore shifted from the West and the UN to the states themselves and regional organisations. According to UN Secretary General Kofi Annan, the UN “does not have... the institutional capacity to conduct military enforcement” (Howe, 2001: 1-2).

Creditor and donor demands increased after the Cold War, yet they also provided less money and support. Demands for liberalisation, privatisation and democratisation as well as World Bank and International Monetary Fund (IMF) structural adjustment programmes increased the pressure on personal-rule regimes and removed some of their support (Howe, 2001: 78). These demands created opportunities for local strongmen to put pressure on the regime (Reno, 1997: 166).

Liberalisation and privatisation meant that private actors gained a great deal of power. The economy was effectively being run by international actors colluding with the local elite-turned-entrepreneurs who were able to manipulate privatisation to their own benefit. Military and security privatisation is a continuation of this (Lock, 1999: 19). The privatisation of security helped weak states' leaders deal with security problems. For private security firms to link with foreign firms working in unstable environments was a natural development that benefited both the firms and the regime (Reno, 1998: 219).

In certain cases democratisation increased conflict, especially in a winner-takes-all situation. Losers of elections who would not accept defeat may resort to perpetuating a conflict. For example, the Angolan conflict was restarted in 1992 by Savimbi when preliminary election results suggested that he had been defeated (Howe, 2001: 79).

Cilliers & Cornwell (1999) argue that structural adjustment programmes and the way that African leaders have responded to them have created an opening for PMCs to operate in Africa. They link the militarisation of politics and the privatisation of the state in Africa. The role of mercenaries and PMCs reflects this connection. Structural adjustment programmes, sponsored by international financial institutions did not

improve Africa's economic problems such as aid dependency, unmanageable foreign debt and decaying infrastructure (Lock, 1999: 17). They resulted in a cut in social and military spending, which both increased the threats to stability and also reduced the ability to deal with threats. Support for personal-rule regimes was reduced as they were forced to decrease expenditure (Mandel, 2002: 60).

The incumbent elite neglected their social responsibilities, focusing on protecting their own financial interests instead. They were able to use privatisation to their personal benefit, gaining ownership of state-owned industries at rock-bottom prices. Core functions of the state were increasingly outsourced to private and international actors, further reducing the role of the already weak state. Poverty, ethnic and religious friction, corruption and the use of informal business networks to maintain control became the norm. These networks became entrenched and increasingly relied on violence and illegal activities (Lock, 1999: 19-20 and Musah & Fayemi, 2000: 4). The state progressively lost its ability to perform its functions. Civil servants and public security forces were paid irregularly, if at all, and their salaries were then devalued by inflation. Many resorted to illegal activities, in the private or informal sectors. In the general climate of insecurity, security became a commodity that could be bought by the highest bidder (Lock, 1999:20)

Once foreign support had been removed, insurgents were able to gain more power as states had less to offer to attract support. The increased availability of weapons also meant that there were more factions in conflicts, more combatants, more destruction and less likelihood of foreign peacekeepers (Howe, 2001: 79).

New weapons technology created arms that were lighter and easier to use. This also increased the number of combatants, including child soldiers, who could operate light weapons easily. Small-arms sales significantly increased, but states did not have the resources to overcome growing armed opposition. Many of Africa's borders and airports are unguarded and therefore easy to cross, enabling weapons and the minerals that paid for the weapons to be transported from country to country without much difficulty and without any state control (Howe, 2001: 82).

It became increasingly difficult to negotiate a peace agreement, especially when there were participants who had no cause or ideology and fought for economic motives (Howe, 2001: 83). During the Cold War, insurgencies were strongly motivated by ideology, especially in Southern Africa. Supporting superpowers also had some influence and local leaders were largely able to control their troops (Howe, 2001:88). After the Cold War economic motives became more important and were used to recruit troops.

Control of the state becomes less appealing without a strong political motive, particularly when the perpetuation of conflict secures economic gains. Since the supply of arms from superpowers had been curtailed, it became necessary for insurgents to capture national resources such as mines, in order to pay for privately purchased weaponry. Rebel groups fought governments for control of diamond and oil producing areas. The RUF for example was in control of most of the diamond-producing areas in Sierra Leone between 1998 and 2000. Illicit diamonds worth about \$70 million were transported from Sierra Leone through Burkina Faso and Liberia every year, to be sold in Europe and South Africa. This money bought weapons, mercenaries and advisors. In Angola “UNITA ran the worlds largest smuggling operation between late 1992 and early 1998”, controlling 75-90 percent of the country’s diamond production (Howe, 2001: 89). Not only does the control of resources strengthen rebel groups, but it denies funds to the state. Recapturing these resources then becomes the primary reason for governments to hire PMCs such as EO.

The new emphasis on economic gain has had many negative consequences. There was no political goal and therefore no clear framework that could limit the extent and nature of violence, and there was clearly now a material interest in prolonging the conflict. It also led to greater mistreatment of civilians, because the rebels did not need to appeal politically to the population (Howe, 2001: 110). Insurgent leaders may not even aim to capture the state because the economic gains of insurgency are

paramount, nevertheless, there may be economic advantages in gaining international recognition through *de jure* rule (Howe, 2000: 24).

Without the high level of external support that governments and insurgents received during the Cold War, humanitarian aid has been used to fund the continuance of civil wars (Lock, 1999: 29). Humanitarian assistance, humanitarian NGOs, national aid agencies, and international organisations increasingly became targets because they usually carry expensive and undefended resources such as money, vehicles and equipment. Humanitarian relief supplies were used to gain power and finances for military operations. Western governments would not provide security for aid agencies and the UN did not have the resources or support to do this either. The result was that the NGOs and other foreign actors that did not decide to leave required the protection of private forces (Mills & Stremlau, 1999: 6-7 and Howe, 2000: 24).

This structure of economic, financial and political power meant that the state increasingly lost its ability to function. Civil servants were not paid regularly, and those in office resorted to illegal activities, or to the private or informal sectors. National security forces also sold their services or lived on criminal activities of some kind. In the general climate of insecurity, security became a commodity and violence became a means to achieve economic ends. Militaries and police became private means of violence, selling their services or pillaging, looting and extorting. In Sierra Leone the population called fighters “sobels” referring to their activities as soldiers during the day and rebels at night (Lock, 1999:20-23).

Parallel and illegal sectors result in the arming of economic actors. Access to markets is controlled by violence and intimidation, with battles escalating potentially into armed conflict. The conflict is not about hegemony but to acquire economic sectors, regions and trade routes. New alliances are formed during conflicts between sub-state, international and supranational actors because all want access to revenue in some or other form. These activities are made possible because sub-state actors have the ability to operate in the world market without going through the state or being regulated (Lock, 1999: 30).

The methods that personal-rulers used to try and ensure their own political survival further weakened the armed forces and the development of state institutions. Like colonial governments, they used ethnic criteria to recruit soldiers to try and ensure loyalty and they also used the national army for partisan purposes. Military corruption grew and parallel militaries were created that were loyal to the ruler (Howe, 2001: 28). When the military becomes politicised it is dangerous because it may be forced to take sides if interests are at stake. When officers have a political and then financial agenda, the armed force becomes a sectional one (Clapham, 1999: 30).

African private security is defined by Howe (2000:22) as “armed groups who use their coercive power primarily for individual or group gain, rather than for that of the nation.” These armed groups can be regime-sponsored groups or insurgents. In Angola both the MPLA and UNITA were concerned with gaining revenues from oil and diamonds (Clapham, 1999: 35-36). When national armies are privatised they are used for personal or regime gain, like PMCs they secure access to the resources that fund them. Alternatively, they become groups of armed individuals plundering because of poor conditions in the military and no formal controls or leadership. Clapham argues that African security has been commercialised because many states have not developed public security systems, and security has therefore always been privatised in some way (Mills & Stremlau, 1999: 11). Privatisation tends to prioritise access to resources. Access and control over limited resources are the primary concern of actors in African conflicts. Because resources are often derived from a limited part of the country, control over these areas becomes the primary target (Clapham, 1999: 33-34). For example the resources concentrated in eastern DRC, southern Sudan or north-eastern Sierra Leone have prolonged the conflict in those areas.

Private security affiliated with governing regimes is generally aligned with non-elected officials and involved in the pursuit of narrow, private interests. They are mostly parallel forces, not connected to the national armed forces, such as presidential guards, reporting directly to the president’s office. They are “virtually

private militias” (Mandel, 2002: 13), used to prolong the leader’s survival by defending the regime and are created because presidents fear the possibility of a military coup if the national army is too strong. Parallel forces only benefit individual rulers. They impact negatively on the state by creating resentment in the national military because it implies that the president does not trust them. They are also outside the military’s chain of command, are not subjected to the same restrictions on supplies and are better paid, better trained and better equipped than the national military (Lock, 1999: 22 and Howe, 2000:22-24).

According to Howe (2001: 188) mercenaries are a reflection of problems rather than the cause. Colonising powers had not created strong enough institutions, such as professional militaries, leading to the rise in mercenary activity in Africa around the time of independence. It then declined around the 1970s because foreign intervention especially by France, Cuba and the Soviet Union increased (Clapham, 1999: 30 and Howe, 2001: 189). At this time PMCs did not exist, and mercenaries did not claim to be legitimate operators.

Clapham (1999: 44) questions whether mercenaries can ultimately be effective, arguing that they are more likely to exacerbate than help to resolve the underlying causes of the conflict. They cannot solve the security problems in Africa because their “presence is only temporary” (Clapham, 1999: 44). Military “solutions” do not deal with underlying social, economic and political causes of conflict (Howe, 2001: 13).

Even though they are supposed to be a temporary answer while real solutions are developed, they could in fact prevent this from happening or aggravate a conflict. They will always be associated with one of the political actors. In Angola and Sierra Leone, EO’s military successes were turned around due to political developments and the company’s withdrawal, leading to the conflict being revived (Clapham, 1999: 44-45).

Much of the reason that these states are so weak is because they were not able to pay their own security forces because their economy has collapsed, cutting off government revenue. This means that expensive private security working for these states will always be concerned with whether or not they will be paid (Herbst, 1999: 122-123).

Because PMCs can only be hired if the resources to pay them are available, and they are often paid in access to the mineral resources of the territory where they operate, their employment is restricted to states that have “particularly valuable reserves of raw materials” (Clapham, 1999: 40). Resource-protecting PMCs will both improve the client government’s military performance and protect mining operations because the mining operations generally guarantee payment (Brayton, 2002: 309-310). Many PMCs have close links with multinational oil and mineral companies that supply them with both financial support and political contacts (Vines, 1999: 47). Private security, multinational mining companies and governments in these states are often linked. This forms a complex relationship usually involving secret payment methods (Cilliers & Mason, 1999: 6). The link between Branch-Heritage being awarded mining concessions in Sierra Leone and EO’s activities in the country are still not clear. Most commentators assert that Branch-Heritage was awarded special concessions because of its relationship with EO.

The presence of mineral resources has been shown to contribute to a decline in a country’s stability. Studies conclude that there is a negative correlation between the presence of natural resources and economic development and social progress. Countries with resources are also more prone to conflict. Angola, Liberia, Sierra Leone and the DRC are all very rich in resources, and all have experienced civil wars in recent years (Hodges, 2001: 2-3).

Wars over resources in weak African states usually involve either insurgents fighting for political control, such as UNITA in Angola, or warlords such as Foday Sankoh of the RUF in Sierra Leone. Warlords do not fight for control of the state, they are able to extend their power when the state is already weak and they can then act without

state intrusion. What both types of rebels have in common however is that access to resources is of great or paramount importance. In the DRC for example, coltan, diamonds, gold, cobalt and copper have been mined to the advantage of rebels and international commercial interests (Breytenbach, 2002: 7).

Private security has flourished in the mineral rich areas of Africa because security is vital to obtaining the foreign capital needed to extract the resources (Lock, 1999: 31). Governments of resource-rich African countries began to encourage international mining investment, because it was preferable to these governments to have their state's assets under reliable foreign control than for it to be held by political rivals. Concessions or future profits were granted as payment for arms, services or favours (Reno, 1997: 172). Foreign firms in these weak states had to provide both their own infrastructure and their own security for their property and employees (Cilliers & Mason, 1999: 6), seeking private protection against sabotage, hostage taking and other threats associated with Africa's deteriorating security environment (Mills & Stremlau, 1999: 5-6).

Diamonds provide a good collateral for contracts because they are easy to mine, light and valuable. This means that even when infrastructure has collapsed, diamonds can still be supplied. UNITA was funded by diamonds in Angola even though infrastructure had collapsed. Oil is the only other resource that can continue to be supplied regardless of the state of infrastructure or stability. Oil in Africa is either on the coast or offshore so it can still be pumped irrespective of national conditions. This means that countries with oil are able to guarantee contracts with a PMCs. Agricultural resources like tea or coffee cannot provide the same kind of guarantee because their supply usually diminishes along with the collapse of infrastructure. They are also high in volume and low in price. Likewise other minerals like copper, ferrochrome, gold, or asbestos need infrastructure to be mined and do not provide the quick and easy cash that PMCs might be looking for, at least as proof that a government can afford its services. Diamond concessions provided collateral or even payment for EO's contracts in both Sierra Leone and Angola (Herbst, 1999: 123-124).

Access to foreign exchange is also critical but this is often controlled by multinational companies. These companies can access international markets that domestic participants do not have access to. They are thus needed in order to realise the value of the resources. To this end the state developed a complementary relationship with commercial partners. Security was privatised because commercial partners require protection for their operations that the state cannot provide. Privatised security forces are often involved in protecting installations and resource-rich areas for governments, as well as being paid by the very resources that they are protecting (Clapham, 1999: 34).

The links between multinational companies and private forces – both PMCs and PSCs – enable these companies to gain immense influence over a government. This has led to accusations of neo-colonialism when private forces participate in the exploitation of weak states' resources (Brayton, 2002: 310). Executive Outcome's holding company in South Africa, Strategic Resource Corporation (SRC) was set up in 1995, after EO had started work in Angola. SRC was connected to between 30 and 50 other companies that included security, intelligence, air transportation, mining, communications, medical travel and tourism and exploration equipment. These companies operated in various countries across Africa and the rest of the world. The variety of enterprises allowed EO and SRC to gain considerable influence. The involvement of SRC or EO connected companies is especially significant in Angola (Pech, 1999).

The cases of Sierra Leone and Angola are good illustrations of the impact of PMCs in post-Cold War African civil wars, where UN or Western peacekeeping has failed to materialise in a sufficient or timely manner. These cases also highlight “how liberal, market-oriented, globalisation forces provide economic opportunity for mercenary companies” by linking low-intensity conflicts and the acquisition of strategic minerals (Brayton, 2002:305).

### 3.2 Case study: Angola

The origins of Angola's conflict stem from the failure of the Portuguese to prepare the country for its transition to independence and to deep divisions resulting from the colonial power's preferential treatment of certain sections of the population. These divisions formed the basis of the different liberation movements and UNITA's resentment of the MPLA urban elite. The country's struggle for independence entailed violent conflict between the Portuguese and liberation parties, the MPLA, FNLA (*National Front for the Liberation of Angola*) and UNITA (*Union for the Total Independence of Angola*) (Cleary, 1999: 141 and Hodges, 2001: 7)

Independence in 1975 led to hundreds of thousands of the Portuguese population leaving the country, stripping it of everything valuable. They had also constituted the majority of the educated population. A civil war between the MPLA, who had seized the government, and UNITA continued for years. The war also attracted the involvement of the Soviet Union and Cuba, who supported the MPLA, and the US and South Africa supporting UNITA (Singer, 2004: 107). At the end of 1988 the Brazzaville accords were signed by the different parties, leading to the withdrawal of South African forces when Namibia gained independence in 1990, and the withdrawal of Soviet and Cuban forces. However, even without these foreign forces the war continued well into the 1990s (Arnold, 1999: 43 and Howe, 2001: 198).

The Bicesse Peace Accords were signed in 1991. The negotiations were aided by the involvement of what was known as the "Troika" which included Portugal, the Soviet Union and the US. The Troika also agreed that once the ceasefire had begun and a timetable for elections had been decided they would also withdraw military support to both sides (Comerford, 2005: 10).

The Bicesse Accords were flawed, significantly in respect of its treatment of the UN, making it difficult to have a lasting impact on the peace process. Margaret Anstee, the head of the UN Angolan Verification Mission (UNAVEM II) and also UN Special

Representative for Angola, criticised the Bicesse negotiations because the UN had not been a part of the process but was then requested to implement the agreement. The UN was just involved at a military and not a political level, and only towards the end of negotiations. The UN was also only given the role of verification and was limited to sending monitors at the invitation of the Angolan government. The UN was thus very restricted in what it could in fact do, especially when the situation deteriorated and actually required some form of intervention. The UN operation was further hampered by limited funding (Comerford, 2005: 10-13).

The problem with the elections organised in 1992 was that neither party was really prepared to lose. When the first democratic elections were held in September, tensions rose because UNITA's leader, Jonas Savimbi, would not accept the results reflecting an MPLA victory. Clashes increased between the MPLA government's armed forces, Forças Armada de Angola (FAA) and UNITA. Even though negotiations were arranged in October, fighting continued (Cleary, 1999: 153).

The MPLA suffered without foreign support and by the end of January 1993, UNITA controlled the majority of the Angolan countryside, including strategic diamond areas. UNITA's control of these regions financed much of its side of the war (Arnold, 1999: 43). UN and internationally organised peace talks in Addis Ababa and Abidjan failed because UNITA would not withdraw its forces before a UN peacekeeping force was deployed. Initially both parties were blamed for the breakdown of peace but eventually the UN held UNITA responsible for the failure of the peace talks and the US extended recognition to the Angolan government (Cleary, 1999: 156).

Many reports confirm that UNITA made use of mercenaries, but it is unclear if EO was employed by the rebel organisation before it was hired by the Angolan government. Human Rights Watch Africa reported that EO assisted UNITA until April 1993, even claiming that when EO was contracted to work for the government EO employees were working for opposite sides. However, there is little information on UNITA's mercenary forces and it is uncertain whether EO did in fact work for UNITA prior to its contract with the government (Cleary, 1999: 150).

In March 1993 UNITA captured the oil installations at Soyo owned by the Angolan state-owned oil company, Sonangol and Branch-Heritage Oil. Equipment valued at US\$ 80 million was at risk in Soyo and was costing the companies US\$ 20 000 a day in rental even though it was no longer under their control. It was at this point that many commentators observed that EO as a company was first introduced to Angola (Singer, 2004: 108). Whether or not the company had worked for UNITA prior to its contract with the government, many of EO's personnel had already fought in Angola when they were with the SADF as South Africa had provided support for UNITA as part of its apartheid destabilisation policy (Reno, 1997: 176).

The government was introduced to EO by a British contact of Eben Barlow, Tony Buckingham of Branch-Heritage. Through this connection EO was hired to recapture Soyo from UNITA. Soyo was extremely important to the Angolan government's oil revenues as it pumped about 45 percent of the country's oil. Many companies, such as Fina from Italy, Elf from France and America's Texaco used the area as a base for their offshore operations (Venter, 2003: 296-297). About EO 80 employees fought UNITA and retook the oil installations. When the company left, UNITA recaptured Soyo and the government, recognising both EO's ability and their own armed forces' failure, signed a one year contract, worth \$40 million in September 1993 (Singer, 2004: 109). The initial \$40 million contract was renewed until early 1996. Executive Outcomes' job was to act as a "force multiplier", boosting the effectiveness of a small force by providing it with specialised skills (Shearer, 1998b).

Many PSCs have been involved in Angola including DSL, Gray Security, Teleservices and Alpha 5. The government actually requires that MNCs provide their own security for their installations in the country (Brooks, 2000b: 131). Teleservices and Alpha 5 are controlled by Angolan military officials and contract former Angolan military personnel. They are both assisted by Gray Security in providing protection for oil and diamond producing sites. It has been suggested that there were over eighty firms working in Angola, mostly providing security for embassies, hotels, assets or equipment. Executive Outcomes' involvement in Angola was different from these

security companies because it provided offensive combat services, training and equipment that greatly enhanced its employer's ability to fight in the war (Cleary, 1999: 147-148).

EO trained about 5 000 troops and 30 pilots, playing a vital role in improving the effectiveness of the FAA. They also enabled the purchase of new equipment estimated to be worth about US\$ 2 billion. Executive Outcomes instructed the FAA in motorised infantry, artillery, engineering, signals, medical support, sabotage and reconnaissance (Howe, 2001: 199). Executive Outcomes personnel planned campaigns with the FAA against UNITA, trained Angolan forces, teaching them tactics that they had previously taught UNITA. Prior experience of working with UNITA under the SADF gave them valuable knowledge of UNITA's abilities and tactics. Pilots from Ibis Air, a company linked to EO and the Branch Group provided reconnaissance and support, and also flew combat missions that included the bombing of UNITA held towns (Cleary, 1999: 152). The deal also included helping the government to buy sophisticated weapons (Venter, 2003: 311).

According to Arnold (1999: 43) it was ironic that the Angolan government decided to turn to "mercenaries" in the form of a PMC for assistance after mercenaries had been executed in 1976 for their work. Although PMCs are different from mercenaries and because the company was hired by the legitimate government of Angola it did not break any international laws. As the legitimate government they also had the right to ensure the security of the nation, even if it meant contracting that security to outside forces.

In spite of ongoing negotiations between the two conflicting parties that had begun during 1993, by mid-1994 about 500 EO employees were in Angola, and the FAA and EO recaptured territory from UNITA. The company's first major achievement was in mid-1994 when the Angolan 16th Brigade, trained by EO, defeated a strong UNITA force at N'dalatando, a strategic town outside Luanda. The battle was planned and executed by both the FAA and EO. Executive Outcomes also helped recapture

diamond areas around Cafunfo in July 1994 and oil installations at Soyo by November (Howe, 2001: 199)

The FAA/EO forces defeated UNITA at all major cities in Angola and most of the resource areas. They secured all of the oil and most of the diamond producing areas. UNITA's defeat led it to sign the Lusaka protocol in November 1994 in which they requested that EO withdraw from the country (Singer, 2004: 109).

The MPLA requested that EO remain but in December 1995, US President Clinton pressured President Dos Santos to end EO's contract and the government announced their withdrawal. In January 1996, the company officially left Angola (Cleary, 1999: 163 and Howe, 2001: 200). Many of the company's employees stayed on and were employed by other security companies including Branch Mining, Shibita Security, Stuart Mills Associates, Saracen and Alpha 5. In 1998, there were reports in the press that former SADF members under EO's Lafras Luitingh were providing air intelligence for the Angolan government (Vines, 1999: 52). Arnold (1999: 45) also refers to mercenaries supplied by EO being employed to use ground-to-air missiles to bring down planes flying into Savimbi's headquarters in Huambo.



Resources played a major role in Angola's war. UNITA used the diamond areas that it controlled to pay for its weapons, earning about US\$ 300 to US\$ 600 million per year from diamond operations. Executive Outcomes' contract was negotiated by Tony Buckingham of Branch-Heritage Oil and Simon Mann, a British officer who had moved into the mineral business. The PMC, it seems, was paid by the state from funds generated from a Buckingham-linked Canadian firm, Ranger Oil that had major interests at stake in the country. Firms involved reportedly received payments in concessions (Singer, 2004: 109). For example, Cleary notes that payment for EO's services was partially granted in concessions to Branch Energy, and later transferred to Carson Gold, later converted to Diamond Works Limited. Concessions were also given to some FAA generals and senior officers. Ultimately the capture of strategic mineral areas formed part of a vital goal of personal gain for the combatants (Cleary, 1999: 163). Foreign mining and security firms also helped the government prevent its

own generals from using their control over mining areas to attract clients of their own thereby gaining revenue with which to form another challenge to the government (Reno, 1997: 179).

EO has been credited with greatly assisting the MPLA to turn back UNITA's forces and forcing them to negotiate (Howe, 2001: 199 and Singer, 2004: 109). Although Cleary (1999: 158) argues, that EO did not play any role in forcing Savimbi to negotiations, as the negotiations were in fact initiated by a cease-fire proposed by UNITA, which the government rejected in August 1993, before the government had signed the first contract with EO. Cleary (1999: 163) also points out that EO could have in fact prolonged the war by increasing the FAA's capability and that without EO's involvement the government would most likely have supported Savimbi's initial cease-fire proposal (Cleary, 1999: 163).

Even though EO was pressured to leave Angola, it was able to maintain its influence through other companies in the same holding group. These include Saracen International, Bridge Resources International, Stuart Mills International, Advanced Systems Communications and Trans Africa Logistics. These companies provided a wide range of services such as security, reconstruction, medical support and communications (Pech, 1999: 91).

The Lusaka Protocol was never completely successful. By the end of 1998 the parties were at war again. It was reported that Savimbi also hired mercenaries from Ukraine and South Africa. Some were possibly even former EO employees and according to news reports in 2000, Soviet pilots were still on his payroll (Brayton, 2000: 313). It was only with the death of Savimbi in February 2002 that Angola was given a real chance to finally end the conflict.

### 3.3 Case Study: Sierra Leone

Like Angola, private military activity in Sierra Leone can be linked to attempts to control its mineral resources and, like in Angola, EO played a large role in the outcome of the war in Sierra Leone. Unlike Angola however, there were other private forces that were involved and also impacted on the outcome of the war. These include Gurkha Security Guards, a local force, the Kamajors and Sandline International.

Sierra Leone gained independence from Britain in 1966. It was led by the Sierra Leone People's Party (SLPP) under Milton Margai. In 1967 a controversial victory at the polls, the All People's Congress (APC), formed by Siaka Stevens, took over the leadership of the country (Douglas, 1999: 175). However Stevens' regime "quickly developed into a one-party kleptocracy." The military was weakened deliberately so as not to threaten the incumbents who used the country's wealth for personal advantage, and allowed the economy to spiral (Singer, 2004: 110).

The war began due to a variety of political and socioeconomic factors and was mostly over resources, in a country that had been underdeveloped and its resources continuously used by ruling elites, bureaucrats and the military for their own private purposes. Personalised rule and patron-client relationships left the country without sufficient institutional authority or organisational capacity. The military became politicised and all the organs of state became instruments aimed at ensuring regime survival as opposed to protecting the state (Francis, 1999: 325).

In March of 1991, the Revolutionary United Front (RUF) under Foday Sankoh launched a rebellion against the government from neighbouring Liberia. RUF leaders had been trained in Libya, where Sankoh had met Liberian warlord Charles Taylor, who would use south-eastern Sierra Leone as a base from which to launch attacks on the Liberian government. After Taylor became president of Liberia, he provided the RUF with arms and fighters to try and prevent the Sierra Leone government from supporting the ECOMOG in his country (Douglas, 1999: 177). In 1991, an ECOMOG

force had hindered Taylor in his attempt to gain power in Liberia. The Nigerian led ECOMOG force had been supported by the Sierra Leone government, so in an attempt to destabilise Sierra Leone, Taylor helped the RUF launch its campaign (Singer, 2004: 111).

The RUF had no specific political agenda and was particularly known for its brutal tactics, and for terrorising the local population. However it was still able to gain support, utilising the divisions in Sierra Leone's society between the repatriated-slave elite and indigenous people and between the urban and rural areas. The poor state of the country's economy meant that there was a large pool of unemployed and alienated people from which the rebel group could draw support. It also made use of child soldiers, abducting them and then forcing them to fight (Singer, 2004: 111).

The national military had many limitations that encouraged PMC growth, including a lack of the basic attributes of a military organisation. The previous governments had ethnicised it and cut its budget, while World Bank and IMF pressures led the government to further lower military spending, and corruption in the military was endemic (Howe, 2001: 200).



Government forces were unable to fight off the RUF and increasingly added to, rather than reduced Sierra Leone's problems. Soldiers with little training and only very basic equipment were sent to fight, even using criminals and street children. The result was that the military became even less successful and behaved more like armed criminals, targeting civilians. Some even colluded with the rebels. The declining economy resulted in a further decline in the behaviour of military personnel, because soldiers were not paid or equipped sufficiently. Soldiers on both sides began to use the war to make profits, illegally mining diamonds and looting the civilian population. National military soldiers became almost indistinguishable from rebels (Douglas, 1999: 178).

This gave the RUF time to reconsolidate and in late 1994 it launched raids all over the country from its camps in the forests. Reportedly with the help of the army, who

was also profiting from the prolonged war, the RUF took control of the alluvial diamond fields in the south, east and north-east as well as the bauxite and rutile mining areas. The result was that production came to a halt, cutting off the government's access to foreign exchange (Douglas, 1999: 178). Two foreign firms, Sierra Rutile and SIEROMOCO, left in 1995 after employees had been kidnapped, resulting in the loss of firms that had contributed to 57 percent of 1994 export earnings (Reno, 1997: 180).

Gurkha Security Guards (GSG) was the first PMC to arrive in Sierra Leone, hired by J & S Franklin, manufacturers and suppliers of non-lethal military equipment to train the Sierra Leone military. They arrived in February 1995, commanded by Col Robert McKenzie, an ex-Rhodesian SAS soldier. In February McKenzie and others were killed in an ambush and GSG left the country (Francis, 1999: 326).

The general breakdown in order and disloyal government soldiers, helped the RUF advance within 20 miles of the capital, Freetown, by May 1995. War had devastated the country and 1 ½ million of its 4 million population were refugees, 15 000 had been killed since 1992 and the economy was in tatters. The RUF had managed to close most road traffic. Diamond and bauxite mining operations mostly came to a halt and GDP declined at least 10 percent in 1995, while inflation rose to 35 percent. Clandestine diamond and agricultural production cost the government US\$ 200 million (Howe, 2001: 200).

EO's activities in Angola attracted a lot of attention for the company and resulted in its contract with the Sierra Leone government for a campaign against the RUF in May 1995. Like in Angola there were also links to mining interests. Branch-Heritage had mining operations in Sierra Leone and as in Angola, it was Tony Buckingham who introduced EO to the government, while Branch Group owner Michael Grunberg, negotiated EO's contract (Howe, 2001: 200).

EO's first contract for about US\$ 15 million was to remove the RUF from the capital and strategic economic areas. The government however did not have the funds to

pay them so it seems that the company may have been paid in concessions in the Kono diamond field. The concession was given to Branch Energy apparently owned by Strategic Resources (Brayton, 2002: 313). The first contract was extended and EO's total bill came to US\$ 35 million for the 21 months it was in Sierra Leone (Singer, 2002: 113).

EO arrived in May 1995, bringing its own aircraft. The government provided the company with uniforms, weapons, and armoured vehicles. Its objectives were to remove the RUF from the Freetown area, control the diamond area around Koidu and locate and destroy RUF headquarters. They also used psychological warfare and public relations to achieve their objectives and were supported by selected members of the Sierra Leone military and the local militia, the Kamajors (Francis, 1999: 327). In a surprisingly quick success, EO routed the rebels and pushed them back over a hundred kilometres from the capital. Their achievement was largely due to their use of helicopter gunships that until then had not been used in the conflict. Hundreds of rebels were killed and over a thousand deserted (Reno, 1997: 180 and Singer, 2004: 113).

As in Angola, EO's job was to be a force multiplier by providing technical services, combat forces and training. They trained 150 government soldiers in a few weeks although apparently the government feared an EO-trained force and did not provide more troops to be trained, which is why EO turned to the Kamajors (Howe, 2001: 201). The Kamajors were hunters with extensive knowledge of the jungle. Executive Outcomes provided them with ammunition and communications equipment and used them to provide intelligence as well as form part of their ground attack forces (Pech, 1999: 95). Only about 550 EO troops were used in Sierra Leone, but they trained more than 10 000 Kamajors (Lawyer, 2005: 101). Executive Outcomes' involvement with the Kamajors was important because after the company left they became another armed force without connections to the government and EO has been blamed for exacerbating Sierra Leone's problems because of this (Singer, 2004: 113).

In January 1996, Julius Maada Bio, who worked with EO under the Strasser government, overthrew Strasser in a coup. The coup, which EO apparently knew of but neither assisted nor prevented, led to few changes in policy or war strategies (Reno, 1997: 181). By the end of January 1996, the government and EO had taken back the southern coastal rutile and bauxite mines. In February 1996, new elections were held, which led to Ahmed Kabbah taking power in March. Kabbah's government continued the war against the RUF (Howe, 2001: 201).

EO solidly defeated the RUF, who then agreed to negotiate with the government. In late November a peace settlement was signed in Abidjan. As part of the agreement it was decided that EO would leave. The company's contract was terminated and EO left Sierra Leone in January 1997 (Brayton, 2002: 314).

According to Howe (2001: 201), EO helped Sierra Leone improve its economic and political situation and like in Angola helped facilitate a cease-fire. Executive Outcomes' military successes have been linked with the RUF's willingness to negotiate (Brayton, 2002: 314 and Shearer, 1998b). William Reno (1997) also argues that their presence created enough stability to attract foreign investors, whose revenue lowered foreign debt 20 percent in 1995 and 1996 and allowed nationwide elections in March 1996 (Howe, 2001: 202). Even Foday Sankoh, the RUF leader admitted that without EO his forces would have taken Freetown in 1995. Executive Outcomes had only cost about a third of Sierra Leone's defence budget (Brayton, 2002: 313-314).

The Abidjan peace agreement was only signed by the RUF on the condition that EO left the country. Even though a promised UN force failed to arrive because donors were unwilling to provide the funds, Kabbah ended the company's contract (Lawyer, 2005: 104). Executive Outcomes' departure left the new government in a vulnerable position. RUF opposition was renewed and a UN force was not deployed due to a lack of international support. A Nigerian led ECOMOG force arrived instead, extending its mission in Liberia to Sierra Leone. However, safety and security continued to diminish while the RUF and the national military persisted in their looting

of the rural areas. The government trusted the Kamajors more than the military and the Kamajors launched several attacks against the national military (Douglas, 1999: 198 and Singer, 2004: 114).

The national military was unhappy with the civilian government and overthrew Kabbah in May 1997, only a few months after EO had left. Kabbah fled to Guinea and the coup leader, Koroma took over as leader of a military junta. Freetown was looted and the population subjected to much cruelty in what they termed “Operation Pay Yourself”. Nigerian peacekeepers failed to remove the new leaders, who also released prisoners. The RUF announced that it would become allies with the People’s Revolutionary Army and senior RUF members later gained high level positions in the new administration (Brayton, 2002: 314; Douglas, 1999: 188 and Singer, 2004: 114). The junta controlled Freetown until the elected government of President Kabbah was restored to power in a counter-coup in March 1998 (Vines, 1999: 53).

Koroma’s junta banned political parties, dissolved parliament and suspended the constitution. The result of their government was that the country “descended in chaos”. Even though the junta was isolated diplomatically, this did nothing to weaken its hold on power in Sierra Leone. In spite of the murders it committed and general criminal behaviour, international efforts to remove Koroma were very limited (Cleaver, 2000: 143). The Nigerian ECOMOG force that was sent to Sierra Leone to maintain law and order only managed to control Lungi International Airport near Freetown. Communities relied heavily on the Kamajors for security and private security companies had to attempt to defend mining infrastructure and equipment (Douglas, 1999: 188). The UN response was to place sanctions on oil, arms and travel on Sierra Leone. The Economic Community of West African States (ECOWAS) decided to share the UN position, and use sanctions against Koroma (Douglas, 1999: 190).

In March 1998, President Kabbah, whilst still in exile, hired the EO-connected PMC, Sandline International, to help restore him to power. Even after the coup and public

atrocities committed by the military junta, the West had failed to take effective action (Brayton, 2002: 316). The British High Commissioner to Sierra Leone had apparently suggested that Kabbah contact Sandline. Kabbah had been able to organise funding from an Indian national, Rakesh Saxena who was wanted in Thailand for embezzlement, and who had controlling shares in Diamond Works, which had acquired Branch Energy. He apparently wanted to protect his diamond operations and was also promised concessions when the government was restored (Douglas, 1999: 189).

Sandline's involvement in Sierra Leone was portrayed publicly as a security company hired to guard mining and construction interests. Sandline's story was that it had been approached by the British High Commission in Sierra Leone to "equip and assist a local force" in order to remove the military junta. It would also appear that the US State Department was aware of the situation (Brayton, 2002: 317). The company's role was to give advice on air strikes, provide intelligence and equipment, deliver medical supplies and transport troops, weapons and logistics by helicopter. Before the arms that Sandline had organised arrived ECOMOG, responding to attacks, overthrew the junta and restored Kabbah to power (Francis, 1999: 328 and Malan, Rakate and McIntyre, 2002).

Sandline also acquired LifeGuard Security, which came to guard strategic areas including Sierra Rutile and Kono. It was headed by an ex-EO commander. LifeGuard's personnel, including ex-EO personnel, significantly helped Sandline operations (Douglas, 1999: 191). It employed many EO tactics, specifically training and equipping the Kamajors. ECOMOG took control of the capital in February and the Kamajors took back two major towns, Bo and Kenema. Koroma and the RUF retreated to the north-east, committing many atrocities along their way (Douglas, 1999: 192).

When President Kabbah returned to Freetown in March 1998, he began to regain control of the country. With the help of Sandline the government controlled about 90 percent of the national territory by April. Sporadic junta/RUF offensives were still

reported in remote areas and a stalemate developed as the RUF settled in the alluvial diamond areas, supported by Charles Taylor's government in Liberia (Douglas, 1999: 193).

While Sandline had been successful in helping return Kabbah to power, its involvement created a scandal in the West, particularly in Britain. The company had attempted to obtain an exemption from the UN arms embargo, and based on talks with the US, the UK and ECOMOG authorities, the company understood that ECOMOG and Kabbah were exempt from the embargo (Douglas, 1999: 192). In late February 1998, 28 tons of small arms arrived in Sierra Leone from Bulgaria via Sandline's offices. In May it was revealed that a customs investigation was being launched into the arms supplies to ECOMOG that had potentially violated the UN arms embargo. Also in question was whether the British government had been aware of Sandline's role in the Sierra Leone conflict (Douglas, 1999: 193).

The British official response was to deny any involvement in the Sandline deal but it became clear that there were senior officials who had known about Sandline's involvement. The PMC was able to detail meetings with senior British and US officials and the company claimed that it had understood that its operations were supported by both London and Washington (Douglas, 1999: 193). UN lawyers later changed their minds about the embargo violation and argued that since the sanctions had been aimed at restoring the elected government in Sierra Leone and ECOMOG was working towards that end it should benefit from an "implied partial exemption from the ban." (Douglas, 1999: 194).

Sierra Leone remained unstable and even more forces and companies became caught up in the conflict. In July 1998, 4 000 more Nigerian troops arrived. LifeGuard and DSL provided security to UN relief operations. TeleServices also supported LifeGuard at Branch Energy properties in Koindu and a US company, ICI provided protection to businessmen, and aid workers (Douglas, 1999: 194).

The UN only authorised an intervention force in 1999. The force arrived slowly and because it was too small it could not be deployed across the country and could not halt the fighting. The RUF even launched attacks against the UNAMSIL peacekeepers in 2000 (Malan, Rakate and McIntyre, 2002). Fighting continued in Sierra Leone until the RUF collapsed because the Sierra Leone army had been rebuilt and the UN brought in a more effective force. Before elections were eventually held in 2002 about 10 000 civilians had been killed in the conflict since EO had defeated the RUF (Singer, 2004: 115).

### **3.4 Assessment**

EO made a significant impact on the conflicts in Angola and Sierra Leone. However, because neither of the conflicts were resolved due to the involvement of EO, there has been no agreement as to whether its presence in these countries was constructive or harmful.

Many commentators including Vines (1999: 5) argue that EO's involvement in Angola "did not create peace or stability" because the Lusaka accords did not last and the war was restarted. Cleary (1999: 166) also argues that EO contributed to prolonging the war and increasing suffering in Angola by strengthening the FAA in 1993.

EO has been criticised for its involvement in Sierra Leone for the same reasons. Soon after the company left, the war was resumed. Executive Outcomes did not trust the national army in Sierra Leone and therefore strengthened the paramilitary group, the Kamajors. These local militias were used extensively by EO, and also by Sandline. The Kamajors later launched their own operations, and contributed to the unstable environment in Sierra Leone after EO's departure (Shearer, 1998b). It was partly the national military's resentment of the Kamajors that led to the coup following the termination of the company's contract. Because of the complications that EO's involvement brought to the conflict situation, Aning (2000: 32) blames EO and Sandline for compounding "the cycle of violence unleashed" in Sierra Leone, and for creating a "volatile situation."

The other side of the argument maintains that “an apparently stabilising force in Angola” (Vines, 1999: 53) and according to Mills and Stremmler (1999: 11) foreign military assistance played a large role in the survival of both the Sierra Leone and Angolan states.

The failure of the Lusaka Protocol had much to do with UN problems in implementing the measures that the Protocol set out and failure of the parties involved to comply, rather than with the involvement of EO. According to Comerford (2005: 16) Human Rights Watch criticised the UN’s tolerance of human rights abuses by both sides. The UN also failed to implement its embargos, lacked transparency and thus lost the respect of UNITA. The death of UN Special Representative, Alioune Blondin Beye, in June 1998 was also a major setback for the peace process. President Dos Santos also blamed the UN for its failure to disarm UNITA and allowing Savimbi time to build up his arms again.

The war was resumed in December 1998. It was only when Savimbi died in February 2002 that the peace process could truly move forward. A Memorandum of Understanding was eventually signed in April 2002 by the government’s armed forces and UNITA. The Lusaka Protocol was a shaky peace agreement that was poorly implemented. It is likely that EO did play a role in putting pressure on UNITA to sign the peace agreement, although once the company left it cannot be held responsible for the agreement’s failure.

EO brought short term stability to Sierra Leone and allowed the peace process to start during a cease-fire, and elections to be held. Even though the company trained some of the soldiers who overthrew the government after its departure, EO cannot be blamed for this as Sierra Leone has a history of military coups (Pech, 1999: 95). Furthermore, while enhancing the capabilities of military forces that later become a security threat is a mistake, it is one that has not been exclusively made by PMCs. For example during the Cold War the CIA spent hundreds of millions on support for

Afghan guerrillas, providing them with weapons and ammunition. It is therefore not a sufficient argument against the use of PMCs.

The break down in peace and stability that followed EO's departure in Sierra Leone can also be attributed to other reasons. The company's contract was terminated before the situation was stable enough for its departure or before other international troops could take over its work, as well as international failure to act effectively and take advantage of the window of opportunity that had been created to find a solution to the problems and work on developing a sustainable peace. The country did not immediately receive the necessary international support that could have ensured that peace lasted. In the absence of a UN or international force, private forces are a better option than giving in to insurgents. The security that EO provided was crucial and at the time was not being provided or offered by any other force (Cleaver, 2000: 141).

Francis (1999: 332) argues that mercenaries erode political sovereignty, and lead to the mortgaging of mineral resources and national security to private corporations. While EO may have benefited from a resource-rich weak state in a vulnerable position, both countries' options were extremely limited, and without this foreign support both were in danger of being taken over by rebels. Without EO and Sandline involvement in Sierra Leone, there would not have been as much public attention on the country's problems, especially in Britain, who eventually committed £1 million to the support of ECOMOG (Douglas, 1999: 196).

The drawback of using PMCs as a means of ending civil conflicts is that they do not address the causes of the war, and lasting peace can only be achieved when this has been done. A focus on military intervention only is unlikely to bring about a lasting cessation of conflict. If peace operations are geared solely towards achieving elections and a legitimate government before departing, without tackling other deep-seated problems, the chances of the peace lasting are limited (Malan *et al*, 2003). When EO managed to retake Freetown for the government in 1995, the peace talks that followed began with elections, which were held before a solid peace agreement

had been signed (Malan, Rakate and McIntyre, 2002). Executive Outcomes departed before peace had been solidified and the government was soon overthrown. However, it would not have been realistic to expect EO to deal with the Sierra Leone government's long-term security problems caused by the country's undisciplined army, ethnic rivalry and the collapse of the economy and state functions. Executive Outcomes was hired, most likely as a last resort, by a desperate government to provide a quick solution (Francis, 1999: 330).

Some commentators, such as Brooks (2000: 33) have compared the cost of EO favourably to the huge cost of UN peacekeeping. The entire cost to Sierra Leone for EO's involvement is not certain because of the mining concessions the company or its associates are likely to have received. US\$ 35 million is approximately what the force cost, far less than the UN force, which amounted to over US\$ 2 billion (Brooks, 2000a: 33 and Malan *et al*, 2003). This is not necessarily a fair comparison given that UN involvement took many years and extended to areas beyond only military force to other humanitarian and peace building measures. The cost of a UN mission is also shared by UN members as opposed to a private force that must be paid by the state who hired it (Lawyer, 2005: 102). Executive Outcomes furthermore, did not succeed on its own but worked with the Angolan FAA and the Kamajors in Sierra Leone and the costs of utilising these forces is not taken into account. The long term cost of the concessions that EO-linked companies reportedly received is also not taken into account as part of the total cost of EO's involvement.

The UN mission in Sierra Leone, UNAMSIL, completed disarmament and demobilisation and held elections by 2002. The UN, the Sierra Leone government and other actors also facilitated the resettlement of both internally displaced people and those who had sought refuge in neighbouring countries (Malan *et al*, 2003). The 2002 elections were the first non-violent elections the country had held. Malan *et al* (2003) attribute this largely to the disarmament and a significant peacekeeper presence. In this sense the UN was far more successful in bringing about a true end to the conflict and putting Sierra Leone onto the path of recovery than was either EO or Sandline. However, peace and the beginning of the reconstruction process began

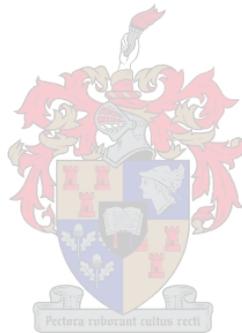
over five years after EO had chased the rebel forces from Freetown and retaken the resource areas. The length of time it took for the UN to ready the country for elections, was much longer than when the EO force was employed. If the country had obtained the necessary support immediately after the EO imposed stability, Sierra Leone could possibly have been spared another five or six years of fighting.

EO was accused of human rights abuses in Angola and of using an indiscriminate weapon, the fuel air cluster bomb, which is illegal under international law. While there have been reports that the Angolan government does possess such weapons and that they were used against UNITA, it is not clear whether they were obtained through EO or whether EO actually used them, although it is likely (Venter, 2003: 311). There were fewer accusations of human rights abuses in Sierra Leone, where according to Shearer (2002: 30), many would have liked EO to have returned because the UN peacekeepers were much less efficient and the time that EO had been involved was a unique experience of security for them. Weiss on the other hand does report some resentment for the South African firm but this was because of the mining concessions rather than their behaviour (Weiss, 2005: 64). According to Venter (2003: 311) EO would have used fuel-air bombs against the RUF in Sierra Leone but they were stopped by senior commanders who had relatives amongst Sankoh's staff and were possibly even RUF sympathisers.

The role of other firms in Angola and Sierra Leone is also worth mentioning. In Sierra Leone Gurkha Security Guards' limited involvement underlines one of the major concerns regarding PMCs when combat is required or unexpected circumstances arise, that is the question of whether they will stay and fight. GSG made the decision that they would not tolerate the loss of personnel and cut their contract short. The uncertainty of how a company will perform under pressure increases the risk of employing military forces.

Both countries have seen a proliferation of security companies, some of which have EO connections, or are linked to the government and military. These firms are heavily involved in protecting mineral and other commercial assets. Angola's chief of staff for

example has interests in the Branch or Diamond Works concession as well as the EO spin-off security firm, Alpha-5 security. In 1997, Branch Group and the Sierra Leone government were also partners in a major diamond concession (Howe, 2001: 208). This emphasises the connection that exists involving the privatisation of security, force, resources, business and government, which encourages corruption and undemocratic practices.



## CHAPTER 4

### Conclusion

The most effective way to prevent PMCs from operating would be to ensure that poverty and the corrupt use of resources are ended, equality and accountability are ensured and that other issues are resolved, preferably before a conflict begins, and failing that, by a willing and effective international community (O'Brien, 2000a). Because this will not happen in the near future and is unlikely to happen for some time to come, PMCs will operate because there is a demand for their services.

According to Musah and Fayemi (2000: 24) PMCs exploit the resources of the world's poorest countries; resources that should be used for development are instead being used to fight wars. It is however unclear that these resources would be used any differently without the presence of PMCs or mercenaries. Furthermore Africa's resources have not only been exploited by PMCs but also by Western powers, and other international business interests.

PMCs have not been the only forces to intervene for economic gains. Zimbabwe's military intervention in the DRC was related to Zimbabwean leaders' desire to exploit the natural resources there rather than any other motive (Clever, 2000: 147). The Nigerian ECOMOG force was also accused of intervening to gain access to resources. It initially entered without seeking approval from the UN (Shearer, 2001: 30).

Small (2006) argues that the private security industry, even if it has been accepted by the state, still challenges the state's sole right to use force and takes away its exclusive right to war and the maintenance of security. In situations of internal conflict and civil wars, however, this right has already been removed by the parties confronting the government and the state has already shown a lack of ability to provide security.

For Brooks (2000: 33) PMCs can create “a window of peace for political negotiation, state building and democratic change”. He credits EO with ending two African wars, “cheaper and faster than would have been possible using a multinational organisation.” Saying that EO ended two African wars exaggerates their impact on the conflicts, especially considering that the wars referred to were restarted, definitely implying that PMCs are not the crucial answer to peace in Africa or the developing world. However, the window of opportunity that can be created by PMCs should not be completely disregarded without further consideration. Adams (1999) for example sees PMCs like EO, MPRI and Sandline as a success. For him they could be “a realistic option for governments that see privatised military activity as an effective way to stretch their military budget” and they can also “help to overcome political reluctance [of foreign governments] to become involved in situations where risks are high” and there is little domestic support for the involvement of national troops.

The role of PMCs in the final resolution of conflict seems to be limited. It has generally been with other forms of international involvement that conflicts have ultimately come to long-term conclusions. PMCs cannot deal with the underlying social, ethnic, religious and/or economic problems that cause conflicts, but military forces are not generally expected to do that. International diplomatic efforts are needed to accompany the force required to stop conflicts or prevent rebels from maiming and killing civilians (Brooks, 2002: 33).

PMCs may however have a role to play as part of the solution. Studies have shown that it is “outright victories, rather than negotiated peace settlements” that have ended most of the civil wars in the twentieth century. Force is often needed to bring parties to negotiations. In Angola and Sierra Leone, negotiated settlements continuously failed, whereas the military success achieved by EO enabled negotiations and elections to take place. Ultimate long-term success, however, also relies on the type of peace agreement and the subsequent support that it gets in the form of demobilisation, disarmament and rehabilitation of soldiers (Shearer, 1998a: 75).

Peacekeeping that is backed by force has shown to be more effective than an unarmed third party presence. Furthermore a *biased* intervention seems to be required. According to Reagan (2002, in Lawyer, 2005) neutral interventions actually have the effect of lengthening conflicts whereas a force that supports one side of the conflict shortens its duration.

Malan *et al* (2003) argue that it is the combination of a “credible intervention force, a successful reorganisation of the state’s security apparatus, and an effective new government” that has increased the success levels of operations geared towards obtaining lasting peace. They refer to four areas in which peace-building should be effective so as to contribute to reconstruction: security, justice and reconciliation, social and economic well-being and governance and participation. It is through addressing these issues that a peace process is able to make progress.

The UN’s actions are usually beset with inadequacies. Its bureaucracy, the Security Council veto and reliance on states volunteering to provide troops contribute to slowing down its missions and making them both more expensive and less effective. Its peacekeeping missions are based on the principle of neutrality, which further hampers its effectiveness (Small, 2006: 22).

PMCs have thus far worked towards restoring the state system, as opposed to threatening it and arguments in support of using private forces for peacekeeping efforts are growing. As demand for peacekeeping remains high, while international commitment to peace missions drops, there do not seem to be many other alternatives. The benefits of private force peacekeeping is that they can be deployed more quickly, unlike the lengthy process to deploy a UN contingent; they have a clear chain of command, whereas UN forces are often made up from various nations who then struggle to work together; they have their own equipment and supplies and would not have their own political agenda. PMCs also have fewer hindrances in terms of what they are allowed to do in order to maintain order, although this point could also be construed as a drawback (Mandel, 2002: 18). Results could be achieved more quickly and at lower cost. Their job would be to create the window for

other organisations to move in and provide humanitarian aid, peace building and reconstruction. Furthermore, casualties among private forces seem to be more politically acceptable (Small, 2006: 24).

The benefit of UN missions is that they do, on the other hand tackle the complex issues that PMCs do not. They also focus on other areas of conflict resolution whereas PMCs are predominantly concerned with achieving a military victory. UN peacekeepers have greater accountability and legitimacy than private forces do and therefore they enjoy greater public acceptance (Mandel, 2002: 17).

Nevertheless, as Shearer (2001: 30) questions, how important is the means when the aim is to prevent the death and abuse of civilians? Once it has been decided that force is required, the most important factor is effectiveness and possibly cost efficiency, PMCs may fit the bill in certain situations.

PMCs are not an ideal solution to security problems and they deserve much of the criticism they have received but there are not always easily available alternatives for countries in a crisis. PMCs thus can and do have a role to play. The question is not whether they are good or bad, there are many examples of both types of behaviour and both positive and negative consequences of PMC involvement. The problem is how they can be used effectively to ensure that they do act in the interests of the societies in which they work, with full accountability for their actions. By being incorporated into the international legal system it would also be easier for international organisations to work with them so as not to miss opportunities to further the cause of peace and stability merely because PMCs are involved.

There is a real need for the international community to implement effective international legislation regulating the activities of private armed forces. This will serve to both control their activities and enable nations and international organisations to work with them if they are aiming towards a common goal. PMCs have acted no worse than some government's security forces have done in the past.

They cannot be monitored or held accountable if they are simply outlawed or if they are ignored.

The private military industry is one of the few areas of international commerce that is unregulated. For PMCs to become useful and less controversial actors in international conflict resolution the following issues need to be addressed: accountability, reliability, extreme behaviour, and their availability to undemocratic governments.

PMCs are criticised because they lack accountability, the potential economic influence they may gain, and because they act in order to acquire a financial reward, not for the benefit of the population. They are also accused of threatening sovereignty (Brayton, 2002: 319). They are seen as the modern “dogs of war” because they benefit from weak states’ “incapacities and instabilities”. It is vital that companies are accountable under international law because of their access to economic power and force, two of the “core properties of the state” (Small, 2006: 26-27).

The reliability of armed forces motivated by profit will always be in question. There is the chance that they will not stand and fight when tough situations arise. This is the benefit of services provided by governments. There is also a chance that the company or its personnel could switch sides. Some former EO personnel later assisted UNITA and the RUF.

If employees of PMCs are merely viewed or treated as mercenaries by the international community then they are already “non-combatants” and therefore have no motivation to adhere to the law of armed conflict under the Geneva Conventions as they are already operating outside of the law. Human rights abuses, including the use of indiscriminate weapons such as those that were possibly used in Angola, are much more easily committed without anyone taking responsibility, when forces operating outside of the law are involved. Without applicable laws they will never be faced with the consequences of their actions or be held responsible for violations or

abuses. Human rights abuses may have a negative effect on companies' future business but this factor is not likely to prevent individual poor behaviour, nor will it be of any use once abuses have taken place. The negative effect on business is more likely to encourage companies to try to cover up the illegal activities of their personnel.

PMCs claim to work only for legitimate governments but legitimate governments can be defined in different ways and it does not necessarily mean democratic governments. Because a regime is recognised by the international community does not automatically mean that the regime is representative of its people. Furthermore, organisations that have once been classified as terrorist organisations, such as the African National Congress (ANC) in South Africa, are now legitimate governments. Access to a private military force is then dependent on money and not on legitimacy, effectively equalising democratic and undemocratic states in terms of their access to military force.

As O'Brien (2000b) argues "the way forward is clear: effective regulation, at both national and international levels, and not prohibition is the key." Banning PMCs will not prevent them from operating. The activity of mercenaries is different and the two should be differentiated by the law, allowing the industry increase in transparency and legitimacy.

Western powers have shown that they will no longer necessarily provide the assistance that governments facing insurrection require. PMCs "in recent years have shown that they are both efficient and cost effective" (Venter, 2003). While the US and SA legislation is imperfect and has not prevented rogue actors, it is a step in the right direction and some form of legislation is better than nothing. They "have established clear guidelines for the PSI which makes it easier to distinguish between the shady type of firm versus the more legitimate type of firm" (Small, 2006: 28).

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