

Corporate Warriors: Scourge or Solution in African Conflict Resolution

by

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University

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Declaration

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, and that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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Summary

Private Military and Security Companies (PMSCs) are fast becoming a permanent structure in international security. PMSCs are made up of two groups, namely Private Military Companies (PMCs) and Private Security Companies (PSCs). Antagonism towards their existence and involvement in African civil wars is the result of some damaging effects of PMSCs- more specifically PMCs- including misconceptions. Both PMCs and PSCs are compared to mercenaries and definitional issues plague the private security industry. Private Military and Security Companies however are legal entities, different to mercenaries. This is why PMCs are sometimes referred to as “corporate warriors”. As private companies PMCs often fill the security gaps left by international responses to African civil wars. Their contracts with legitimate governments offer a cheap and effective end to the violence of civil war.

In recent years the use of PMSCs has increased among both weak and strong states. Antipathy however remains the prominent attitude in the international community, thus challenging the use of PMSCs. From this point of view, they are a “scourge” because PMCs are not only likened to mercenaries of old who fight for private gain, but the arguments are also that they undermine the sovereignty of weak states, that they are unaccountable to the citizens of these states, that they violate human rights, that they don’t solve root causes and that they contribute to militarisation.

The increase of civil conflicts in Africa and the surplus of military professionals after the Second World War meant that mercenaries became involved in African liberation struggles. By the end of the Cold War however- in an era that favours liberal economic practices and privatisation- professional legal Private Military and Security Companies were established to supplement the security gap left at the end of the Cold War. As mentioned, these are legal companies that don’t breach international conventions; are accountable to some home state legislations and brought peace to Angola and Sierra Leone.

International responses to security concerns- especially those in Africa- are burdened by the plethora of complex civil conflicts that simultaneously demand attention from the United Nations. PMCs may be equipped to execute Chapter VII mandates of the UN Charter, as

these deal with robust enforcement functions at a time when the West is reluctant to intervene. What is perhaps required is more accountability (also to host state legislation) and oversight.

The services of PMCs are beneficial to a number of stakeholders. These include the states in which they are registered, the states in which they operate, the citizenry that they protect, and they are profitable to the shareholders of the PMCs and diamond and oil companies they are contracted to.

It is thus the conclusion of this thesis that Private Military Companies provide a faster and more cost- effective option for peacemaking in Africa. As private companies they are not bound by protocols and conventions but they must satisfy the company and its shareholders. And although the use of Private Military Companies is not dependent on the regulation of the industry, the PMSC industry would benefit from more self- regulation in the market place. Thus with relevant and more effective regulation, PMCs could become Africa's solution to her civil conflicts. Unlike in the Ballesteros report, the UN has to recognise this role.

Opsomming

Private Militêre- en Sekuriteitsmaatskappye (PMSMe) is vinnig besig om 'n permanente struktuur in privaatsekuriteit te word. Skadelike uitwerkings van hierdie PMSMe, wanpersepsies ingesluit, is 'n gevolg van die antagonisme teenoor die maatskappye en hul betrokkenheid in burgeroorloë. PMSMe word met huursoldate vergelyk en gevolglik word die privaatsekuriteitsindustrie met kwessies rondom definiëring gekwel. PMSMe, anders as huursoldate, is egter wettige entiteite. Om hierdie rede word PMSMe dikwels as “korporatiewe krygsmanne” (corporate warriors) beskryf. PMSMe, as private maatskappye, vul dikwels die sekuriteitsgapings wat deur die internasionale reaksies tot burgeroorloë in Afrika gelaat is. Hul kontrakte met legitieme regerings bied 'n goedkoop en effektiewe middel om die geweld van burgeroorloë te beëindig.

Die gebruik van PMSMe het, gedurende die afgelope jare, in beide swak- en sterk state toegeneem. Antipatie dien steeds as in vername afkeur in die internasionale gemeenskap. Dit daag dus die gebruik van PMSMe uit. Hulle word steeds met huursoldate in die internasionale gemeenskap verwar. Terselfdertyd word geargumenteer dat PMSMe die soewereiniteit van swak regerings ondermyn, dat hulle nie verantwoordbaar aan die burgers van hierdie state is nie, dat hulle inbreuk maak op menseregte, dat hulle nie die kernoorsake van konflik oplos nie, en dat hulle tot militarisering bydra.

Die toename in burgerlike konflikte in Afrika, tesame met die oorskot militêre vakkundiges na die Tweede Wêreldoorlog, het gemaak dat huursoldate in Afrika se vryheidstryde betrokke geraak het. Teen die einde van die Koue Oorlog – gedurende 'n tydperk waar liberale ekonomiese praktyke en privatisering voorrang geniet het – was professionele wettige PMSMe byderhand om die sekuriteitsgaping aan te vul. Hierdie is dus wettige maatskappye wat nie internasionale konvensies skend nie, wat verantwoordbaar is aan sekere tuisstaatwetgewing, en wat vrede in Angola en Sierra Leone meegebring het.

Internasionale reaksies tot sekuriteitskwessies – veral dié sigbaar in Afrika – word deur 'n oormaat van komplekse burgerlike konflikte, wat gelyktydig aandag van die Verenigde Nasies (VN) verg, belas. Hiervolgens is dit moontlik dat PMSMe wel toegerus mag wees om Hoofstuk II-mandate van die VN Handves uit te voer. Die rede hiervoor is dat die PMSMe wel toegerus is om robuuste toepassings funksies te verrig. Dit het veral vorendag gekom

gedurende 'n tydperk toe die Weste huiwerig was om by sekuriteitskwessies in te meng. Hoër vlakke van verantwoordbaarheid en oorsig word moontlik meer vereis.

Die dienste van PMSMe is voordelig vir vele belanghebbendes. Hierdie sluit die state in waar hul gekontrakteer het, die state waarin hulle optree, die burgers wat hulle beskerm, die winsgewendheid vir aandeelhouers van die PMSMe en die diamant- en oliemaatskappye deur wie hul gekontrakteer mag wees om installasies te beskerm.

Die gevolgtrekking van hierdie tesis is dus dat PMSMe 'n vinniger en meer koste-effektiewe opsie vir vredemaking in Afrika bied. Al is die gebruik van PMSMe nie afhanklik van die regulering van die industrie nie, sal die PMSMe-industrie by 'n verhoging in self-regulering in daardie sektore baat vind. Met relevante en meer effektiewe markregulering, kan PMSMe dus as 'n oplossing in Afrika se burgerlike konflik dien. Anders as in die Ballesteros verslag, sal die VN dit moet erken.

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Table of Contents

Declaration	i
Summary	ii
Opsomming	iv
Acknowledgements	vi
Table of Contents	vii
List of Abbreviations.....	ix
Chapter 1. Introduction	1
1.1. Overview	1
1.2 Problem Statement	5
1.3 Purposes and Significance of the Study	8
1.4 Research Methodology.....	9
1.5 Concepts:.....	9
1.5.1. Mercenaries	9
1.5.2. International law banning mercenarism	11
1.5.3 Private Security Companies.....	12
1.5.4. Private Military Companies.....	13
Chapter 2: PMCs as Scourge: The Damaging Effects of PMSCs	16
2.1 Introduction	16
2.2 Mercenary Similarity.....	19
2.3 Breaching of International Conventions by PMCs	21
2.4 The Weak State	24
2.4.1 How PMCs undermine state sovereignty	25
2.4.2 PMCs: unaccountable to the citizens of the states they are meant to protect	26
2.4.3 Violating human rights: The Blackwater case.....	27
2.5. PMSCs Don't Solve Conflicts: Not Equipped to Deal with Root Causes	28
2.6 Contracted to Weak States with Money or Mineral Wealth: the Lack of Transparency about Funding.....	29
2.7 Moral Objections.....	32
2.7.1 Militarisation	32
2.7.2 Opposing sides: Same PMCs.....	33
2.7.3 New Modalities of Mercenarism	33
3. Assessment.....	34
Chapter 3: PMCs as Alternative 'Peacemakers' in Africa.....	35
3.1 Introduction.....	35
3.2. Shortcomings of UN interventions	36
3.2.1. Chapter VI, 'VI½' and VII	37
3.2.2 "No peace unless there is peace to keep"	39
3.2.3. Western reluctance to intervene	40
3.2.4. PMCs more cost-effective than UN peacekeepers?	41
3.3 Imperfect Regulation is Better than Nothing	42
3.3.1 Self-regulation: Voluntary regulation and market regulation.....	43
3.3.2 International conventions of 1977 and 1989	45
3.3.3 Africa's convention: CEMA, 1977.....	45
3.3.4 National legislation: The US and South African acts.....	47
3.3.5 Licensing for PMCs: The USA and South Africa	48

3.4 Accountability and Oversight	49
3.4.1 Home state accountability	50
3.4.2. Host state accountability.....	50
3.4.3 PMCs do not reject foreign observers	51
3.5 Lessons from Angola and Sierra Leone: Any peace dividends?	51
3.5.1 Angola	52
3.5.2 Sierra Leone.....	53
3.6 Conclusion	55
 Chapter 4: Conclusion.....	 57
4.1 Overview	57
4.2 Issues for Further Research	60
4.3 Final Assessment: Who Benefits?.....	63
4.4 Final Assessment.....	66
 Bibliography	 66

List of Abbreviations

CEMA	Convention for the Elimination of Mercenarism in Africa
DRC	Democratic Republic of Congo
ECOWAS	<i>Economic Community of West African States</i>
EO	Executive Outcomes
IHL	International Humanitarian Law
MNC	Multinational Corporations
MPLA	Movimento Popular de Libertação de Angola
NGOs	Non- Governmental Organisations
NPM	New Public Management
OAU	Organisation of African Unity
OSS	Omega Strategic Services
PMC	Private Military Company
PMSC	Private Military and Security Company
PSC	Private Security Company
PSIRA	Private Security Industry Act
RSA	Republic of South Africa
UK	United Kingdom
UN	United Nations
UNITA	Union for the Total Liberation of Angola
USA	United States of America
USSR	Union of Soviet Socialist Republics

AU	African Union
AMIB	African Mission in Burundi
UNOSOM	United Nations Operations in Somalia
RUF	Revolutionary United Front
UNAMSIL	United Nations Mission in Sierra Leone
ITAR	International Traffic in Arms Regulation
RMFA	Regulation of Foreign Military Assistance Act
NCACC	National Conventional Arms Control Committee
FNLA	Frente Nacional para a Libertação de Angola
SANDF	South African National Defence Force
ECOMOG	Economic Community of West African States Monitoring Group

Chapter 1. Introduction

1.1. Overview

The renewed debate surrounding the privatisation of security comes as a result of the problems of weak capacities of many African states as well as the emergence of ‘corporate warriors’. The title of this study derives from P.W Singer (2003: *Corporate Warriors: the Rise of the Privatised Military Industry*. Ithaca, Cornell University Press). Private security in itself is not a new phenomenon. Private military security on many occasions has been used by rebels, and states, even strong states to settle conflicts. It is however the increased use of private security by weak African states- that are involved in internal conflicts or civil wars- that has raised alarms in the international community (Cilliers, 1999: 1; Singer, 2000: 192).

Regardless of the reasons behind the renewed debate, private security has gained prominence. It is also the focus of much discourse in places such as the UK, the USA and in South Africa.

Post- Cold War politics, new wars, cost- effective alternatives to state militaries, as well as the failure of mercenary conventions to prevent mercenarism are relevant. Much ink has been spilled regarding whether or not private security and military companies contribute to the ending of violent civil wars and whether they are useful in the maintenance of peace and security in the world and specifically in Africa. However much of this debate takes place without a clear understanding of the distinction between mercenaries, Private Military Companies and Private Security Companies. These three concepts are related broadly, but distinct in their functioning. So it is necessary to clarify this distinction in order not to confuse the issues (Gumedze, 2007: 5; Mandel, 2002: 55-56).

The post- Cold War era is characterised by insecurity typical of the realist perspective of a unipolar world order without the balance of power (Mandel, 1999: 55-56). In this sense then, for the duration of the Cold War states in Africa were able to benefit from the bipolar international setting in the form of material compensation in the case of East- West conflict. At the end of the Cold War this donor-recipient relationship came to an end or rather changed in a way that would now be determined by the only remaining superpower, the USA and some of the international financial institutions controlled largely by the USA (Lock, 1999: 13-14; McIntyre, 2004). African states were however no longer able to benefit materially or

otherwise from such Cold War relationships which changed after 1989. Soviets and others withdrew from Africa after independence, no longer offering incentives to African states for their support. When African liberation movements fought colonial powers for independence, mercenaries were hired to bolster both fighting sides, introducing a new dimension to African conflict: private security (Ndlovu- Gatsheni and Dzinesa, 2008: 77; Brooks and Solomon: 2000: 1, Schulz, 2008: 124). This phenomenon set off alarms in the international community, galvanising public opinion into the making of international and African conventions aimed at the elimination of mercenarism, worldwide and in Africa (Brooks and Solomon, 2000: 1).

Plunged into civil war- especially in the case of resource wars, African states in the post-Cold War era have had little alternative but to hire private security in order to prevent the seizure of power and valuable commodities in their states (Lock, 1999: 26-28). Because of the similarities with mercenaries these companies are often viewed in a negative light by the international community. They have been accused of mercenary activity disguised by their corporate appearance. The UN General Assembly is one such institution that regarded the privatisation of security as the introduction of 'new modalities of mercenarism' (Gumedze, 2008: 3).

Mercenaries are by no means a new phenomenon in the international arena. Their existence dates back to ancient Egypt and the Turkish Ottoman Empire. Here mercenaries became crucial to imperial control as they bolstered the armies of these empires. The Nubians that served the Pharaohs and the Janissaries that served the Ottomans are testament to the fact that in some cases mercenaries were slaves. Thus for centuries mercenaries have been used by states to compensate for the military shortfall of their own manpower (Arnold, 1999: ix- x; Lumina, 2008: 102). During the fifteenth to the eighteenth centuries- when modern states arose- mercenaries enjoyed favourable reputations (except that Machiavelli distrusted medieval mercenaries). In the post- World War Two era mercenaries became more notorious as they became involved in the coups that ousted governments of national liberation. The case of mercenaries in the former Belgian Congo during the early sixties comes to mind, after which the United Nations took a hard line against private security (Smith, 2005: 22, Lumina, 2008: 102). African states adopted similar measures, but with few ratifications ever since. The message was clear: if they themselves can use mercenaries, why not we?

Mercenaries have thus become the focus of much recent academic study for their role in Africa since independence. Their reputation waned as mercenaries became distasteful when

they destabilised African states (Arnold, 1999: x-xi). Because they worked for private gain, they were frowned upon by the international community as “soldiers of fortune”/ “dogs of war” (Harris, 2004:34). Hence they were illegal. This is made clear by the Geneva Convention of 1977, the OAU’s Convention on the Elimination of Mercenarism in Africa of the same year, the UN’s Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, wherein mercenaries and their activities are conceptualised (Lumina, 2008: 105-107). However, these conventions failed to eliminate mercenarism for a number of reasons which will be discussed in Chapter 2.

The International Conventions prohibiting Mercenarism however are not relevant to Private Military and Security Companies. But even as legal entities PMSCs have had to deal with many arguments against their use. These include the impact of private security on the weak state, the militarisation of society, the fact that PMSCs don’t solve the root causes of conflicts and the fact that PMCs are only contracted to states rich in mineral wealth. These issues will be further discussed in chapter two. Despite the lack of international regulation of the private security industry their consistent existence in international security is recognised by three states who have home state legislation in this regard.

The three home states are the USA, the RSA and the UK prohibiting mercenaries and mercenary activity (Cullen, 2000: 37). The South African Regulation of Foreign Military Assistance Act of 1998, the South African Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflicts Act of 2006 are the acts in South Africa that have been passed to prevent the activities of mercenaries from and within South Africa. The South African Acts require private security companies to register under this act in order to acquire licences. About 100 companies have done so already (Taljaard, 2008: 74-75). This is especially so since South Africa, both during and at the end of the Apartheid era, was the source of much private security activity in Africa both in the form of mercenaries and corporate private military and security personel. The USA’s US International Transfer of Arms Regulation of 1993 similarly prohibits private military companies from engaging in illegal arms trade. The United Kingdom’s Green Paper of 2002 proposes the strict regulation of the activities private security because of the similarities between them and mercenaries. Except for banning arms trade in the UK, it allows PMCs and PSCs to operate openly as corporate entities.

Private Military and Security Companies then engage as corporate entities with shareholders and balance sheets- hence the concept of “corporate warriors” used by P W. Singer (2003). These companies are therefore relatively new in the international arena, and their existence is owed to market forces that have created a demand for their services, which include advice, training and even combat services (Harris, 2004:35, Brooks and Solomon, 2000: 1, Lumina, 2008: 103).

The new corporate status of private security started during the Second World War when David Stirling recruited former British officers to provide security advice to “newly independent states in Africa and Asia” (Small, 2005: 22; Smith, 2005: 22). More recently they have been contracted by developed states to assist in foreign conflicts as a means of enhancing the capabilities of their state armies (Small, 2006: 3-4; Mandal, 2002: 1; Brooks and Solomon, 2000: 1), especially in the “War on Terror” by the ‘coalition of the willing’, the USA and Britain plus others, as well as private contractors, who fought in the Middle East (Singer, 2004: 522; Gumedze, 2008: 3-4).

In Africa however, their use and influence has been much more extensive to the point that few African countries have not made use of Private Military and Security Companies (Gumedze, 2008 ;4), especially for purposes of training, surveillance and logistics (McIntyre, 2004). For example, Uganda has 58 PSCs, whereas South Africa has about 100 PMCs and PSCs (Taljaard, 2008: 74-75). In cases such as Angola and Sierra Leone, PMCs were also hired for combat. According to Brooks and Solomon (2000:2), two main factors account for the ineffectiveness of the UN and OAU endeavors to outlaw mercenarism, namely the lack of a clear definition of a ‘mercenary’ and the lack of interest of states in outlawing mercenaries. It is within this context then that this study seeks to look at reasons in favour of and arguments against their conflict resolution roles in African states.

Because PMSCs are not prohibited by international law, states are free to use them. For instance, while South Africa does not use any PMCs, PSCs are found everywhere, mainly in crime prevention services. In Britain however governmental sentiments toward Private Military and Security Companies are complementary, thus creating an environment that has won London the reputation as the “PMC capital of the world” (Smith, 2005:22). This is based on the understanding that while PMSCs are contracted by either legitimate governments or multinational corporations (who have chosen to outsource their security requirements) undertaking contracts distinct from mercenary activity, their existence and operation are

valid. British companies are corporations with shareholders operating on the London Stock Exchange. Singer's six criteria for “corporate warriors” later clarifies this more thoroughly. And as such why can't they be used to assist in the resolution of African conflicts?

1.2 Problem Statement

The problems dealt with in this study relate to the where, what and why of “corporate warriors”. Although it takes note of trends in the Middle East, the focus is on Africa. This will be done to learn whether or not security problems or civil wars in Africa are more likely to end quickly in African states where PMCs are used. The renewed debate regarding the role of private security in the world stems from their persistent involvement in African states, not always however in combat roles. The second set of problems relate to the 'what' of PMCs. As they are not mercenaries what are they then?

The lack of universally accepted definitions (Brooks and Solomon, 2000: 2) are of particular relevance seen most recently in the accusation that the PSC Omega Strategic Services (OSS) (having contracted South African ex-policemen) is involved in bolstering the illegitimate government of Guinea (Fabricius, 2009:4). But the OSS is based in Dubai not South Africa. Situations such as these foster the confusion about PMSCs. Although OSS itself may be a legal company in Dubai and in Guinea, its acceptance of a contract by an unelected and hence an illegitimate government, is questionable. They apparently never became involved in combat. This once again has brought to light the definitional issues regarding PMSCs and mercenaries. It reminds one of Guy Arnold's claim that PMSCs are but mercenaries modified to fit the corporatism of the liberal capitalist world. Hence the view that PMSCs are but a new modality of mercenarism.

The lack of clear definition is foremost in the argument against the use of PMSCs. It in turn raises issues of the breaching of International Conventions- as if they were mercenaries, which they are not. Additionally other issues surrounding the existence and use of PMSCs include the fact that they are seen to take contracts from weak states that are rich in mineral wealth, while they do not solve the root causes of the conflicts they become involved in. These issues that will be discussed more in chapter two contribute to the reluctance of the UN to use PMSCs in Africa.

What prevents the UN from including PMSCs in peacekeeping missions despite strong states like the USA and Britain already having used them in overseas conflicts? This last point draws attention to the fact that PMSCs are not only hired by weak African states, but strong states also see the advantages of their use especially in foreign conflicts in unstable parts of the world. This contrasts with old style mercenaries that only worked for foreign forces, never own states. This brings the question as to why PMCs persist.

Reasons will be given as to why PMSCs could possibly become Africa's alternative "peacemakers" through either privatisation or more likely, through outsourcing. As mentioned, the UN remains reluctant to incorporate PMCs into its peacekeeping missions in Africa as a result of the similarities between PMCs and illegal mercenaries. The reasons for the reluctance of the UN to incorporate the services of PMCs into peacekeeping as argued by the Ballesteros Report will be discussed.

This study focuses on Africa because antagonism towards the use of private security comes as a result of their involvement in African civil conflicts. Many African states have failed to move beyond the challenges that hinder their role in stabilizing the international community. Not much has changed in recent years as Africa slid into debt, poverty and disease. In this unfortunate state Africa experiences most acutely the insecurity characteristic of the post Cold War era in the form of civil wars (Cilliers, 1999:1; Cleaver, 2000: 137; Mandel, 2002: 56). In Africa civil wars often erupted in weak states generating and generated by greed and grievances, joblessness and poverty. Despite the UN mandating many missions in these countries, such as the DR Congo, peace enforcement mandates were seldom granted, and only on the basis of African instructions, making the peace for the UN to keep. And yet, Ndlovu- Gatsheni and Dzinesa (2008: 76) argue insightfully that "the exploration of mercenarism is inextricably intertwined with conflicts in Africa". This is the context in which this study takes place.

Another reason why PMCs continue to be relevant in Africa is that many African governments have been unable to meet the responsibilities of the state- with little help from the Western community. This situation has been exasperated by an international setting that requires African states to function along liberal democratic and capitalist lines. This has meant that many African states have sometimes privatised state owned enterprises and in the case of security, outsourced many functions traditionally held by the state. According to Harris (2004: 33) this privatisation of the public good- security- has led to the uneven

distribution of benefits of this service to the public. In weak states security has thus become thus a commodity for sale to the highest bidder. In this setting, states no longer fulfill their responsibilities to their citizens in protecting them (Lumina, 2008: 110; Shultz, 2008: 128). Jakkie Cilliers (1991:1) refers to this as the “hollowing out” of the African state. Herein private companies (which include NGOs) provide basic services to the public. Geoff Harris (2004: 34) says that this fosters “greater efficiency” in the delivering of the-once- public good.

In the past two decades many governments have hired private security companies to provide or bolster security services within their states, ranging from logistics, to protection services and crime prevention. In South Africa alone, according to Gumedze (2008:99-102) there are almost a hundred PSCs who sell their services to companies and home owners. South African PMCs, however, exported their combat services in line with African demands, as in Angola and Sierra Leone.

In Africa, regional legislation highlighted the contemporary use of Private Military Security. Similar to international legislation on the matter, the Organisation of African Unity (OAU) Convention on Elimination of Mercenarism in Africa (CEMA) highlighted the use of individuals who used their expertise to plot coups in order to overthrow governments or destabilise nations newly under governments of former national liberation movements (Singer, 2004: 528, Brooks and Solomon, 2000: 1). It is then understandable why regional and international law on the matter was relevant at the time of its establishment. But these are outdated today (Ndlovu- Gatsheni and Dzinesa, 2008: 77).

The shortcomings of the UN and OAU Conventions banning mercenarism (as previously mentioned) are irrelevant to PMSCs. But some form of regulation does exist in three home states and within the industry itself, although host state regulation is lacking. Africa has thus made use of PMCs and PSCs to compensate for their security shortfall as a cost- effective alternative to international intervention. Angola and Sierra Leone serve as examples of this. These issues will be discussed in the third chapter. This study then will conclude with addressing who benefits from the privatisation/outsourcing of security and highlighting future areas of research (Ndlovu- Gatsheni and Dzinesa, 2008: 91).

1.3 Purposes and Significance of the Study

This study comes at a time when the United Nations, through the Ballesteros Report stated that although PMCs are not illegal, the UN does not see any use for them either in peacemaking and peacekeeping or peace enforcement. The role of PMCs would pertain to the latter, but in a privatised or outsourced form and contracted commercially to do so. The renewed debate on the role of private security in Africa thus comes as a result of the role played by mercenaries during many African independence wars and the persistent role played by private security actors all over Africa (Smith, 2005: 22-24). The heightened interest in PMSCs means that this study has multiple purposes owing to the wide ranging problems faced with it as well as factors and opinions regarding legal private security.

The first purpose is then to describe the definitional issues surrounding the concepts of mercenaries, PMCs and PSCs, especially in Africa. This will be done in acknowledgement of the need for clarity on this issue, “erroneous” lumping together of these groups and how the lack of defining lucidity creates problems for Private Military and Security Companies (Gumedze, 2008: 22). Singer’s six criteria for the distinctions between PMCs and mercenaries will be utilised to provide clarity in this regard (2003: 40-50). Secondly, this study seeks to assess the arguments in favour of PMCs as well as the arguments against the use of PMCs in the African context. Critics include Arnold (1999), Ero (2000) and Aning (2000). Proponents include Brooks (2000), Howe (2000), Messner (2007, 2008), Cullen (2000), Singer (2001, 2003, 2004) and Harris (2004). Issues concerned will include PMC clientele, accountability, profitability, affordability, efficiency, post- conflict stability and other options for regulation.

While legislation is required both by home and host states, this type of legislation is thin with only three states having home state legislation. Ironically the three states that have laws concerning private security are the states that supply the most prominent PMSCs. This situation highlights the need for relevant legislation in host countries in Africa, and the Middle East. Moreover many of these African states have failed to ratify international and regional legislation on the matter (Gumedze, 2008: 5, Ndlovu- Gatsheni and Dzinesa, 2008:92). South Africa is an example of an African state that recognises international law, but has not ratified the African Convention of 1977. Instead, its own legislation dates since 1998 and 2006 respectively.

Thirdly, the final purpose is to ask “who benefits?” and what lessons can be learned from the use of PMCs in the military industry, especially in Africa. Recognising the challenges toward this, this study offers reasons as to why this is necessary and how it could enhance the peace process by looking at how the involvement of PMSCs could impact on the ending of wars.

This kind of study is significant because developed states tend not to see themselves as the guardians of weaker states in the international arena anymore (Small, 2006:5). It is also significant because Private Military and especially Security Companies have grown in significance and size also in stable democracies where they are contracted by municipalities, companies and property owners for security reasons.

In Africa security is often sometimes lacking, and if states can outsource welfare functions, why not security? Underdeveloped by Western standards, Africa struggles to compete economically and politically in an arena which contributes to her continued position as the hopeless case of the international community. The decision to turn to the private security/military sector by African states could thus be their best hope of restoring order in their states.

This study then would add to the existing body of literature that offers Private Military and Security Companies as one of Africa’s best solutions to its many security problems. As Gumedze puts it there is a “need for [a] radical [reassessment] of the private sector in Africa” (Gumedze, 2007: 5)

1.4 Research Methodology

As this study is descriptive and analytical, it relies very little on theory. Statistical evidence will not be presented. Data was not contracted through questionnaires and surveys. This research study will instead be in the form of a desktop study that looks at the existing literature in the field. This study then will focus on research of a secondary nature and will add to this body of knowledge in the field of study.

1.5 Concepts:

1.5.1. Mercenaries

Many Private Military and Security Companies operating in Africa are deemed mercenaries by international actors, both scholarly and publicly. In general the United Nations view of

private security companies is negative. This is owed to the lack of clear definitions that would distinguish between the activities and definitions of mercenaries, Private Military Companies and Private Security Companies. While Private Military and Security Companies (herein after referred to as PMSC's) are a relatively new phenomenon, mercenaries are as old as states themselves. Mercenaries date back to the organisation and professionalization of state armies. While state armies are praised for their patriotic service, mercenaries have throughout history been viewed as selfish shape-shifters in it for personal gain and as such unreliable and undependable (Arnold, 1999: ix).

On a purely theoretical and moral level mercenaries are seen to be disloyal to the party for which they are fighting. In the past they often fought for foreign interests and for personal gain. They are believed to have no justified claim to partaking in war; no attachment to the cause of the war, thus their killing and brutality is unjustified. While those against the use of private security in Africa do acknowledge that some state soldiers are motivated by private gain and that some mercenaries might have an attachment to the cause for which the war is being fought – they believe that the mercenary's motivation of financial gain is distasteful and less honourable than fighting for ones country (Percy, 2007: 15).

It is also argued that mercenaries have more to gain from the continuation of war than its ending because of what they stand to gain from it. Their actions therefore would encourage conflict rather than end it (Arnold, 1999: 124). This belief is so widespread that international laws are based on this particular understanding of what constitutes a mercenary. Mercenaries are defined by the United Nations as an individual “specially recruited locally or abroad in order to fight in armed conflict” (Faoleng, 2008: 47-48). Their motivation is “essentially [the] desire for private gain, substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party” (Singer, 2004: 527-528; Cleaver, 2000: 132). What defines a mercenary are thus the motivations that drive his action and the level of engagement (Gumedze, 2008:26). The negative attitudes attached to mercenaries may come as the result of criminal actions of individuals such as “Mad” Mike Hoare who also plotted a coup in the old Belgian Congo, before it became Zaire, long before the Democratic Republic of Congo came into being (Arnold, 1999: 124). This incident raised concerns regarding the ‘neo-colonial’ nature of the influence of mercenaries. This perspective, that mercenaries are Europeans looking for a foothold in Africa, is essentially incorrect because it ignores the participation of mercenaries from the African continent itself (Faoleng, 2008: 45).

Singer argues that “mercenaries are not citizens of the states in which they fight”, nor are they part of any national army or bound by contractual ties to a permanent employee. Mercenaries according to Singer (2003: 40-50 in Gumedze: 2008:32-33) fight for “short-term economic reward’ and are employed by means of roundabout ways to “avoid legal prosecution”. Moreover mercenaries function in “temporary and ad hoc groups” and focus “only on combat service for a single client”. In addition to the intention with which mercenaries operate, a growing argument against mercenaries pertains to how they hinder the ‘enjoyment of human rights of those on whom their presence is inflicted” (Ballesteros, 2004: para. 10), and the violation of the sovereignty of the states in which they operate. For these and other reasons mercenarism is outlawed or prohibited by two international laws (in 1977 and 1989) and one African Convention (of 1977).

1.5.2. International law banning mercenarism

The greatest distinction between mercenaries, PMCs and PSCs is that while PMCs and PSCs are regulated by international law, mercenaries are prohibited. These international laws include the 1970 Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States” which prohibited the use of mercenaries against national liberation movements (Faoleng, 2008:43). This however narrowly defined mercenarism and warranted the need for more thorough legislation. In 1977 the Additional Protocols to the Geneva Convention, Article 47 of Protocol 1 defined more in-depth what constituted mercenarism. This broad definition is vague and meant that few if any private security actors could not be deemed mercenaries (Gumedze, 2008: 32-33). As the private security industry grew in their reach and relevance so too did the antagonism toward it and the call for more international law to restrict or prohibit ‘mercenary’ acts.

The relevance of private security activity in Africa is evident in the regional law passed at this time. In 1977 the Organisation of African Unity (OAU) instituted the Convention for the Elimination of Mercenarism in Africa (CEMA). Today only 28 of 53 African states have ratified it (South Africa has not) (Gumedze, 2008: 5). The first article herein defines mercenaries according to their function, much in the same way as do international laws, which leaves much room for interpretation and excludes employment of mercenaries for purposes other than to overthrow elected governments. International laws then in 1989, through the Convention against Recruitment, Use, Financing and Training of Mercenaries, defined the actions and purposes of mercenaries more closely but still left out the hiring of

private companies (not as individuals) (Singer, 2004: 527, Faoleng, 2008: 50-51). This was at the time of the end of the Cold War when security in Africa changed and international laws remained as they were in the past. Additionally this era favoured liberal economic practices such as privatization for the sake of effective and efficient governmental service delivery. This is captured by the notion of New Public Management which will be discussed later in further detail. This left much room for the establishment and hiring of Private Military and Security Companies (Singer, 2004:532). The South African legislation of 1998 and 2006 bans mercenarism, but regulates PMCs through licensing and PSCs through registration under the Private Security Industry Act (PSIRA) of 2001.

1.5.3 Private Security Companies

Private Security Companies (PSCs) and Private Military Companies (PMCs) are distinctly different from mercenaries and are the result of many factors that contribute to the ‘security vacuum’ found in the world but acutely experienced in Africa. The loss of interest in Africa as a whole by many key international powers at the end of the Cold War fostered an environment where Africa states had to find solutions to the many problems that hindered her successful functioning (Malan, 1999: 37). One such challenge is when states are challenged by their own rebels in civil wars, nowadays often fought over the economic gains of scarce resources (oil and diamonds in the case of Angola and diamonds in the case of Sierra Leone).

Based on a lack of trust, governments in war-torn African states have looked to private external actors as a solution to issues of insurgency and insecurity in their states. In an attempt to stop the increasing violence, governments have contracted private companies to act as law enforcement agents (Gumedze; 2007: 5), and even outsourcing war to PMCs. Governments have outsourced their security needs to PSCs because international consensus favours the New Public Management (NPM) model in which state functions are outsourced in the name of efficiency and effectiveness. These companies can either be in the form of PSCs or PMCs, but this is determined by the functions for which they were hired (registered or licensed).

Private Security Companies perform functions of logistics, training, and provision of equipment, intelligence, transportation, protection and general security short of combat (Shulz, 2008: 134). These companies are thus hired as non- combat companies by legitimate state governments desperate to bring an end to the hostility of civil war (Percy, 2007: 13). Companies like DynCorp and Lifeguard have been contracted to provide services in many

African states (McIntyre, 2004). This is one condition of their continued favourable corporate image namely, that they only accept contracts from legitimate state governments. Other PSCs provide cash-in –transit services, neighbourhood watches and services to home owners. As such they could be contracted to either the state departments or private companies and citizens.

Companies like the American outfit MPRI, the French Foreign Legion and the British Ghurkhas have been contracted by their home state governments to function on their behalves abroad. The advantages of their use have in this way been acknowledged by key international powers as their services continue to play a major role in American and British missions to Afghanistan and Iraq (McIntyre, 2004). While there are many reasons for their use, their continued prevalence in conflicts is owed to the ‘gap in the market’ created by the insecurity that characterises the international setting and the favouritism of neo- liberal economic practices. Michelle Small (2006: 5) argues that the establishment of Private Security Companies (including Military Companies) is therefore the direct result of market forces and these forces will continue to demand their existence and use in the future. Although Private Security Companies bear stark contrasts to mercenaries, it is the function of combat that draws concerns in the international community regarding the use of Private Military Companies (O’Brien, 2002:2).

1.5.4. Private Military Companies

Private Military Companies perform all the functions offered by PSCs but offer the added service of combat. The typical PMC thus will offer military training, military intelligence and surveillance to legitimate governments as opposed to mercenaries that operated illegally and oftentimes fought for rebels. They are also hired for combat. However, for the most part they are contracted as PSCs and have only been contracted as PMCs in three states in Africa namely Angola, Sierra Leone and Equatorial Guinea (O’Brien, 2002: 5-6). Despite this however, antagonists toward their use continue to call for their abolition on the basis of the similarities that exist between PMCs and mercenaries. Furthermore they disregard the argument regarding the clear distinctions between PMCs and PSCs arguing that it cannot be determined whether or not the use of violence by PSCs is for self- defense and when they overstep their jurisdiction (Percy, 2007: 13). PMSCs then denotes the entire industry of private security professionals; but their defining feature is that of corporatism. In the USA

and the UK, PMSCs function just as other big businesses as many are listed on stock exchanges (Singer, 2004: 524).

PMSCs therefore sign contracts only after surveying the situation thoroughly so that they may be sure of success in the completion of their tasks (Singer, 2001:191). Naturally then they only enter into contracts with states or companies who are able to afford their services (Ndlovu- Gatsheni and Dzinesa, 2008: 91). Many times this coincides with states rich in natural resources and as such PMSCs have met with bad publicity arguing that their function is not to end violence but rather to be in a better position of exploit the profitable minerals of these states.

Many PMSCs are also linked to mineral extraction companies, a relationship which raises concerns in the international community regarding the exploitation of weak African states (O'Brien, 2002: 2). Ironically it is within this very international community that strong states only choose to help those countries rich in natural resources, or those of strategic importance leaving the rest to fend for themselves. What is not taken into account by these antagonists is that while mercenaries act as individuals risking their lives in highly dangerous missions for sometimes excessive once-off remuneration, PMSCs are more concerned with their corporate interest that keeps their shareholders satisfied with profits and conduct that ensures future contracts.

In this way PMSCs are contractually regulated and restricted in their activities and look to avoid negative publicity that would hinder potential contracts. They are professional corporations who, like any other company have taken advantage of market opportunities, and are bound by humanitarian and trade laws as is the case with other international corporations (Williamson, 2008: 179-180, 184-185).

This has earned them the title of 'Corporate Warriors', attesting to their business professionalism and the diverse services they offer (Singer, 2001: 186). Gumedze (2008: 33) using Singer (2003) puts that PMCs are "corporate structures, driven by business profit"; they are "legal, public entities in the open market" and who offer a wide range of services. In addition their "recruitment is public and specialized and they are linked to corporate holdings and financial markets". The lack of transparency however surrounding the funding of these private operations is an area of contention in the international community. This raises concerns regarding the motives of the Private Security industry (Brooks and Solomon, 2000: 2). Issues of human rights violations- such as the Blackwater affair- have added to the

argument against the use of PMSCs in African conflicts- but this was in Iraq not Africa (Gumedze, 2008; 8). This will also be explored in Chapter 2 hereunder.

Chapter 2: PMCs as Scourge: The Damaging Effects of PMSCs

2.1 Introduction

Private Security Companies and especially Private Military Companies (PMSCs) are sometimes viewed as mercenaries, masked in modern form. This perception has resulted in the incorrect categorisation of these distinct groups as being similar. Private Security Companies are however not the major concern of the international community. PMCs who offer the combat service are more controversial (van Jaarsveld, 2007: 62). The connotations and negative perceptions attributed to mercenaries are then attributed to all private security, but especially military companies (Brooks and Solomon, 2000: 1-2). Gumedze (2008:21) rightfully says this is because there is no universally accepted definition of the exact differences between mercenaries and PMCs. Authors such as Singer, Gumedze (2008), Howe and Brooks and Solomon attempted to clarify these issues. A Swiss document, the Montreux Document (2008), deals explicitly with these issues.

P. W. Singer (2003) offers six criteria for distinguishing PMCs from mercenaries. Singer in Gumedze (2008: 33) notes that PMCs cannot be painted with the same brush as mercenaries because they are motivated by business profits and not individual profits; they are organised in a corporate structures that are legal bodies that function within an open market. In addition Singer states that the services offered by PMCs are wide- ranging including combat, and their clients are diverse. In true corporate fashion employment and recruitment are open but require specialized skills because as professional corporations they are accountable to their shareholders within their corporate holding companies and financial markets.

As discussed in the first chapter, Singer argues that mercenaries are “not citizens of the states in which they fight” and they are not part of a national army and therefore are not bound by contractual ties with the state. They are motivated by “short- term economic reward” and employed by oblique ways in order to avoid legal prosecution as temporary or ad hoc groups who offer only the service of combat to a single client (Singer in Gumedze, 2008: 32). PMCs, on the other hand, differ in that not only do they offer a wide range of services (one of which is combat) but they are corporate entities that form part of a multibillion dollar international industry, filling the security vacuum left at the end of the Cold War (Gumedze, 2008: 24-

25,33). PSCs are more limited ranging from crime prevention to logistics and training and are visible and identifiable in their activities (Taljaard, 2008:78-79).

Mercenarism unlike Private Military Security is outlawed. Thus while international legislation attempts to combat the negative consequences of mercenarism, the privatisation of security presents the international community with renewed concern surrounding the threat to the Westphalian and Weberian state system, as well as human rights, more specifically International Humanitarian Law and International Human Rights Law. Private Military and Security Companies however are regulated under international law and covered by national legislation in three states, namely the USA, the UK and South Africa. So while some believe that PMCs should be allowed to operate freely as long as they are contracted to legal governments, others differ in opinion because PMC's also offer combat services to state clients. In such cases they are corporate warriors, hence a special kind of "modern legal mercenary" (Gumedze, 2009: 4).

Mercenaries are defined differently by the Geneva Convention of 1977. Under the Geneva Convention of 1977 in Article 47 of Protocol 1, mercenaries are defined as an individual who-

- :is specifically recruited locally or abroad in order to fight in an armed conflict
- :does in fact, take a direct part in the hostilities
- :is motivated to take part in the hostilities essentially by the desire for private gain, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party
- :is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the Conflict
- :is not a member of the Armed forces of a Party to the conflict; and
- :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.

In terms of the 1989 United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries, mercenaries are similarly defined with the addition that they

- :[are] specifically recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: overthrowing a Government or otherwise undermining the constitutional order of a state; or undermining the territorial integrity of a state;
- :are motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise of payment of material compensation;
- :are neither a national nor a resident of the State against which such an act is directed;
- :have not been sent by a State on official duty; and
- :are not a member of the armed forces of the State on whose territory the act is undertaken

Mercenarism by its very nature is thus morally distasteful as is any activity that contributes to violence, especially if this is in return for some sort of remuneration for “private gain” (Mandel, 2002:133). The idea that individuals can be contracted to perform such services (mercenarism) is prohibited by international law as set out above, yet often PMSCs are bundled into the same category because of the similarities they hold with mercenaries. The crucial “services” in this context are combat and perhaps the profiting from violence, usually in weak states with scarce and valuable resources: hence the argument about greed and plunder (Cilliers and Mason, 1999). There are however many other reasons why authors like Guy Arnold (1999) believe mercenaries (including Private Military and Security Companies) are the “scourge of the third world”. These reasons will be discussed in this chapter to highlight the activities of PMSCs that lend to the perception that they are but mercenaries in a new corporate outfit, a case of “pouring old wine into new bottles” (Gumedze, 2008).

2.2 Mercenary Similarity

Mercenaries of old were acknowledged for the expertise they brought to state armies and the convenience they presented as an alternative to the constraints of state armies (Arnold, 1999: x). These mercenaries are not really those to which Private Military Companies are incorrectly compared to. Instead today's Private Military Companies are compared to the European mercenaries that emerged in African liberation struggles since the 1960s, who as ex- soldiers, hired themselves out to the highest bidder with little or no attachment to the cause (Brooks and Solomon, 2000: 1). In the wake of the post- World War Two era that promoted independence and self- governance, weak states with weak militaries often spawned the emergence of reactionary forces that used new soldiers of fortune hired as foreign soldiers in exchange for a profit. The conflicts in the old Belgian Congo come to mind. Guy Arnold (1999: xii) describes the post- World War Two mercenary as a 'professional killer' that "cares nothing for his victims". Thus PMCs, because of the service of combat that they offer, have been accused of being mercenaries in a renewed form despite the fact that this is but one of the many services they offer which is more "security" than "military". This is despite the fact that PMCs have only played a combat role in Angola and Sierra Leone, yet have trained government troops in Rwanda, Liberia and Guinea.

Mercenaries in Africa during the 1960s and 1970s, after becoming involved in both state and counterinsurgent forces during liberation struggles and destabilization missions, are thus seen largely as a racist form of neo- colonialism because these individuals were mostly European individuals from countries that formerly held colonies on the African continent-Belgian, British and French come to mind as mentioned above. This led to the prohibition of mercenaries and their activities through the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989 that enforced world opposition to mercenary activity (Arnold, 1999: 21). In Africa, an anti- mercenary Convention was adopted earlier in 1977, using the same definitions as stipulated in Article 47 of the Geneva Convention also of 1977. Thus while mercenary activity is banned under international law, Private Military and Security Companies are not, yet suffer much of the same opposition that mercenaries encountered since 1977. For PMSCs the issue is not legality, but appropriate regulation in host states and in home states.

The most notable argument used by antagonists regarding the similarities between mercenaries and PMSCs is the motivation with which they get involved in foreign conflicts. This perspective contends that Private Security and especially Military Companies- like mercenaries, fight without any ideological attachment to the cause for which they fight for and are instead motivated solely by material gain. This is highlighted by international law wherein mercenaries are primarily defined as soldiers for hire fighting for material gain (Percy, 2007: 15). But, PMSCs, unlike mercenaries, take on contracts for profit maximisation that would benefit corporations with shareholders who compete openly in global markets (Gumedze, 2008:33).

Conflicts and the effects thereof on human lives produce a delicate setting in which the loss of human lives cannot be justified by the accumulation of profit for moral reasons. Thus PMSCs are seen to ignore this moral objection as did the mercenaries that emerged at the end of the Second World War (Percy, 2007: 14-15). In this regard, Guy Arnold (1999: xi) questions their loyalty to the cause as selling their services to the highest bidder, but there is a difference between personal gain and commercial profit maximisation. It then follows that Private Military and Security Companies only get involved in conflicts in countries rich in natural resources such as diamonds as in Angola and Sierra Leone. Thus they only offer their services to those countries where it is profitable to do so and by doing so exasperate the conflicts in which they are involved (Ndlovu- Gatsheni and Dzinesa, 2008: 90). This means that similar to mercenaries PMSCs are apparently not interested in getting involved in conflicts for moral- say human rights reasons, but instead to profit from the economy of war, making them no better than non- state actors (e.g. warlords) prolonging conflicts in order to benefit from them. But, PSC's can hardly be accused of the same misdemeanor as PMCs, if their services are supposed to exclude combat.

Only Private Military Companies, unlike Private Security Companies, offer the service of combat. This is perhaps the service that garners the most suspicion and opposition, due to the fact that these companies are contracted to fight in conflicts to which they are believed to have no ideological connection. PMCs who offer the service of combat are thus seen as new corporate forms of mercenaries, because of the apparent similarities in motive (private gain and the maximisation of profit).

Important consequences of the involvement of PMCs in foreign conflicts are the effects they have on the state. The primary function of the state is to provide its citizens with security, and

while this term has in recent years grown to include many forms, states are expected to provide security for its citizens. Although this will be discussed hereunder, it needs to be noted that similarly to mercenaries, PMCs allow states- often weak states that are fighting rebels who are stronger than the official army, to outsource their responsibilities in favour of private armies.

Private Military Companies are however not only opposed because of their similarities to mercenaries, but also as a result of their own actions, which may include the breaching of international conventions, or undermining the states where they are contracted to fight

2.3 Breaching of International Conventions by PMCs

While mercenary activity was not a new phenomenon in the international arena, weak African states born from liberation struggles after independence spurred a renewed mercenary interest in Africa (Abraham, 1999: 81-82). In addition, Mary Kaldor (2006: 84) suggests that at the end of the Cold War, conflicts became intrastate instead of interstate and were fought on the basis of identity politics and not geo-politics. In some cases where rebels challenged the state, mercenaries could partner with either side. This therefore led to the growth of international concern regarding the influence of mercenaries in Africa. As such International Conventions have been established to subdue this threat to international and continental security (Roberts, 2007: 16). This international legislation however lacks clear definition according to Brooks and Solomon (2000) and Gumedze (2008) and is hindered by the lack of steadfast interest on the part of states to eliminate mercenarism (Brooks and Solomon, 2000: 17).

Article 47 of Protocol 1 of the Geneva Convention of 1977 outlawed mercenaries. This was based on the Geneva Convention of 1949. The 1976 trial of several mercenaries in Africa who fought on the side of the Union for the Total Liberation of Angola (UNITA) sparked the drafting of *Luanda Convention on the Prevention and Suppression of Mercenaries* in the same year which was added to Article 47 of Additional Protocol 1 of the 1949 Geneva Convention which dealt with humanitarian law in armed conflicts (Roberts, 2007: 21- 22; Arnold, 1999: 162). This resulted in an *ad hoc* committee being established by the General Assembly in 1980 to draft the document that would eventually become the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* of 1989 (Arnold, 1999: 163). The events of 1976 sparked the Convention for the Elimination of

Mercenarism in Africa (CEMA) of 1977, which sought to formulate a regulatory framework for the Private Security Industry in Africa, wherein mercenaries were seen as undermining the security and peace efforts in Africa (CEMA, 2008: 5; Van Jaarsveld, 2007: 25). This was also a consequence of the mercenary activity in the Congo during the 1960's, Benin, the Seychelles and the Comoros at the time (Faoleng, 2008:45).

CEMA provided a more African orientation of a mercenary definition, but still did not cover PMCs. It faced challenges similar to that of other international law, wherein the responsibility of bringing to task mercenaries or PMCs who violate international law still lied with host states (Roberts, 2007: 27; Van Jaarsveld, 2007: 33). To date only three states, namely the US, the UK and South African have formulated domestic legislation to overcome this challenge (Roberts, 2007: 28). Even implementation of these domestic laws lack success due to the foreign nature of operations of PMCs as well as the poor monitoring mechanisms that govern the private security industry (Van Jaarsveld, 2007: 30-31). Furthermore, international regulation of the private security industry is fragmented between noble international ambitions, weak host states and unwilling home states. This uncoordinated effort challenges the completion and successful implementation of international law in this regard (Van Jaarsveld, 2007: 31).

The end of Cold War (in 1989) saw the intensification of mercenarism during the 1990's. The United Nations failed to prevent mercenary activities from occurring in Africa due to the lack of international interest in ratifying the aforementioned convention (Arnold, 1999:165; Roberts, 2007: 24). The nature of private security also changed as the sector grew through the mushrooming of several Private Military and Security Companies which as firms had candid relations with their home state governments as in the case of the open use by the American government of private military and security companies in the war in Iraq (Rosemann, 2005: 78). These companies were seen as the new form of mercenaries. This may be due to the lack of clear definitions. Also, although PMCs did not breach international conventions, they were painted with the same brush as the mercenaries they were seen to resemble. All the time, PMCs were not covered by international law (Roberts, 2007: 36).

Some private military companies allegedly, hid behind the clandestine nature of the private security industry. These companies avoided prosecution under international law by arguing that individuals could be recruited by the companies and did not necessarily "fight in an armed conflict" as the International Conventions insisted.

Other international conventions such as United Nations sanctioned arms embargoes and more importantly United Nations humanitarian law are not as easily circumvented and as such many PMCs have breached such conventions leading to the negative perception attributed to PMCs. The most notable example is that of the “Arms to Africa” affair wherein Sandline International- a British PMCs, delivered weaponry to the Sierra Leone government in contravention of the 1997 ECOWAS and UN imposed sanctions on the delivery of weapons and other military equipment, petrol and petroleum products to Sierra Leone (Kinsey, 2007: 74; Isima, 2007: 7). In October 1997 an agreement called the Conakry Accord between the Junta and ECOWAS arranged that exiled President Tejan Kabbah be restored to power by the 22nd of April 1998 and that the Junta would disarm. The lack of international resources for the enforcing of this mandate led to Kabbah contracting the services of Sandline International to ensure that this accord would be upheld (Kinsey, 2007: 74-75). Sandline International’s Tim Spicer resigned himself to the belief that civilian rule in Sierra Leone could only be restored by means of military enforcement.

In this instance a PMC was seen to have breached an International Convention. In its defense, Sandline International argued that it had assumed that they were acting within the law because their intent was to restore the internationally recognised government to power (Kinsey, 2006: 76-77). This particular example highlights the ambiguity with which international conventions are interpreted and how this affects the perception of the private military industry. This coupled with the lack of clear distinctions between mercenaries and PMCs presents greater issues of ambiguity with regard to private security in Africa.

Similarly Life Guard Management, an *ad hoc* subsidiary of formerly South African- based PMC, Executive Outcomes, in Sierra Leone allegedly imported arms during the same period in defence of the diamond fields which they had been contracted by the weak government to guard (Isima, 2007: 7). These instances suggest that PMCs have become creative in circumventing International Law, especially in terms of arms embargoes. Apart from the Conventions outlawing mercenaries, the UN remained concerned with human rights, especially with regard to PMCs (Ndlovu- Gatsheni, 2008: 87; Lumina, 2008: 101). The breaching of humanitarian law thus is considered a more serious offence in the light of the broadening of the human security concept in recent years.

The broadening of the definition of security has left states with the added responsibility of not only ensuring that it not only protects its citizens from active or real threats but that it also

ensures that each citizen is given the opportunity to exercise their human rights in full (Ndlovu- Gatsheni, 2008: 87). Thus it is the duty of the Weberian state to ensure that it maintains the legitimate monopoly over violence within its borders so as to ensure that the human rights of its citizens are upheld. Yet weak African states lack the capacity to do so, lacking the necessary capacity to monitor the activities of private security actors in their states (Roberts, 2007: 39).

In such instances in Africa, where weak states have employed the services of Private Military or Security Companies to bolster the activities of the armed forces, states are still responsible for upholding International Humanitarian Law (IHL) as well as International Criminal Law. At the same time however PMSCs as non-state actors are also subject to IHL and International Criminal Law and can be tried as individuals should IHL be breached. Lack of transparency in the industry and poor regulating and monitoring mechanisms for PMCs mean that cases such as these are however rare. When this is done at the time of an armed conflict it is referred to as war crime and states are obliged to report such violations to the United Nations if they occur within the territory of the state (Lumina, 2008: 111-112). To date, warlords have been charged criminally, not members of PMCs, except in the Blackwater case in Iraq.

General weakness prevails internationally and within individual states in the regulation of both mercenaries and PMCs. The growing nature of the legal private security industry and their embedded nature in international security means that any harsh regulation will encourage covert operations, because as corporate structures they are still answerable to shareholders who demand profits (Van Jaarsveld, 2007: 64-67). A more clear definition of legal Private Military Companies and a recognition of their legality however will go far to foster transparency within the industry, making possible their potentially beneficial role in ending civil wars in Africa more quickly.

2.4 The Weak State

The legitimizing characteristic of the state is the monopoly over the legitimate use of power. In this Weberian scenario the state controls the use of force within its borders and ensures that the human rights of the individuals of the state are upheld (Isima, 2007: 2). The end of

the Cold War however saw the transformation of this characteristic to include private security providers, who apart from being contracted by states, also undermine aspects of statehood.

In the post Cold War era in which neo-liberalism is favoured, states have increasingly outsourced some non-core functions in the name of effectiveness and efficiency (Isima, 2007: 2-3). Even security has become a commodity for sale. Under such circumstances security is no longer a public good provided for by the state, but instead a private good outsourced by those fortunate enough to afford it. In situations of armed conflict this is especially contentious because regular state functions come to a head as the state no longer meets its responsibility to its citizenry (Harris, 2004: 33-34). This vacuum in statecraft can be filled by either mercenaries or PMSCs.

2.4.1 How PMCs undermine state sovereignty

While state legitimacy is embedded in its ability to hold the monopoly over the use of violence within its borders, the modernisation of private security and the increasing ineffectiveness of state institutions to provide security, created openings for private providers be they legal, or not. For the past three hundred years- since 1648 the Westphalian and the Weberian form of the state have prevailed as the accepted starting point for the organisation of international relations.

State legitimacy is gained through the ability of the state to provide security to its citizens from both external and internal threats. The organisational makeup of the state is its administrative capacity to control the devices and means of force and violence within its borders. Michelle Small (2006: 11-12) states that in return for the service of security, citizens of the state pay taxes. This then is essentially the welfare and economic basis of the contract entered into by citizens and state (Kaldor, 2006:97). The accepted model of New Public Management that favours the outsourcing of state functions is said to be used by weak states in order to bypass their responsibilities. In many ways then the contracting out of the essential responsibilities of the state erodes and undermines this contract that provides the state with the reason for its existence, thus making both mercenaries and perhaps PMCs responsible for the undermining of state sovereignty. As mentioned earlier, nowadays PMC's are contracted legally by the governments of states, neutralizing the undermining of sovereignty.

Although private security is not a new phenomenon, the modernisation of this trend has shown that private security is to become (if it has not already) a permanent feature of state

policies worldwide (Taljaard, 2008: 76-77). The post– Cold War era that favours neo-liberal principles has witnessed (and led to) states outsourcing/militarising some responsibilities to private actors in the name of efficiency (Harris, 2004: 33). As argued, this development has led to even essential responsibilities of the state being outsourced, security being one of them. PSCs are thus a feature of almost all states worldwide, used by citizens, local governments and multinational corporations (Taljaard, 2008: 72-73). While mercenaries threaten the state by their disloyalty to their paymasters, PMSCs are said to possibly erode the legitimate states they are contracted to by taking on state responsibility as private actors, but without due accountability to public institutions.

When governments hire PMSCs to provide security to their citizens they alter the contract between them and their citizens, because they could be seen to abdicate the responsibility to protect their citizens from violence while still exacting taxes from citizens who fail to benefit from the hiring of PMCs (Small, 2006: 12, 17). States, by doing so (and therefore their “core function”) transfer their sovereignty and authority to private actors. The Washington consensus deems this desirable as a form of privatisation, but the United Nations sees their involvement as contrary to self- determination and state sovereignty (Small, 2006: 17-18). These private actors (unlike the state) provide security in return for a profit, transforming security from a public good to a private good (Harris, 2004: 33-34). It is argued that states then transfer their legitimacy, some of their core functions and therefore some of their reasons for existence to all kinds of non- state actors. (Small, 2006: 12; Harris, 2004: 33-34)

Within Africa this trend is of even greater concern to the international community as already weak states can be seen as to diminish their administrative and institutional capacity by hiring private security actors to provide security to the country. But if foreign firms render valuable services within the law of the land then this is not sinister. This may however erode the already fragile relationship between weak African states and their citizens, who have yet to consolidate the relationship between state and society.

2.4.2 PMCs: unaccountable to the citizens of the states they are meant to protect

The dual phenomenon that has seen the commercialization and the privatisation of security can be seen as the neo- liberal market forces that govern commercial exchange and the greater need for security in an increasingly unstable world (Aning, 2000: 31). The New Public Management model favours the application of these practices by states. Security has thus been privatised in many states in the name of efficiency, offered most appropriately by

market based services. Geoff Harris (2004: 34) notes that when security is privatised it becomes yet another private good that may serve to benefit those fortunate enough to afford it. By extension then in weak African states where states have transferred their security responsibilities and therefore their legitimate use of force to PMSCs, only certain citizens benefit from this service; most notably those supporting the government. Ideally this is in contrast to the purpose for which the state was created.

While citizens continue to pay for the provision of security by means of taxes, citizens (who pay for this service and give the state its legitimacy) cannot hold these PMSCs accountable except to change service providers. But as PMSCs that operate internationally are contracted by the state, the government can terminate such contracts as happened to EO in both Angola and Sierra Leone (Aning, 2000: 31; Van Jaarsveld, 2007: 43; 48-49). This is unlike the mercenaries referred to by Arnold. Unlike national armies PMSCs are accountable to their contractors- legal governments of the day, albeit weak ones.

2.4.3. Violating human rights: The Blackwater case

The incident of 16 September 2007 in which it was alleged that 17 Iraqi civilians were killed by Blackwater employees- Blackwater is an American PMC, highlights the serious concern regarding threats from PMSCs (Gumedze, 2008: 8). While Blackwater- one of the biggest PMC's anywhere in the world, itself offers that this shooting was done in self-defence, many eyewitnesses have put forward conflicting accounts.

Many scholars have suggested that Blackwater have risen above international, host state and home state law (Mungi, 2009:15). This alleged lack of accountability is a serious concern for the international community as PMSCs have become a permanent structure in US and UK relations with Iraq. While Blackwater is an American PMC contracted by Washington, the allegations of human rights violations levelled against them highlights the universal problem of the lack of monitoring and regulation of the actions of PMCs in civil wars (Gumedze, 2008: 36). In the end, however, this is a regulatory problem for the US governments in general and for the US army in particular. Evidence suggests this is precisely what happened.

Many other rumoured cases of human rights violations by PMSCs while employed in foreign states have contributed to the notions that of the actions of PMSCs employees, while under contract, are questionable and secretive (Mungie,2009: 6). Often cited as a means of oversight are international laws governing the maintenance of human rights. While protagonists of PMSCs offer that they too fall under this jurisdiction, sufficient mechanisms of monitoring PMSC activity during periods of conflict is often lacking, but then their services can be terminated. This means when PMSCs commit human rights violations in the name of fulfilling contracts in places such as Iraq or Afghanistan, sanctions may follow. However, the actions of PMCs that could possibly violate the human rights of the citizens of the state in which they operate, are poorly monitored internationally. Sufficient monitoring and regulation would thus go far in settling fears surrounding this industry.

2.5. PMSCs Don't Solve Conflicts: Not Equipped to Deal with Root Causes

Many protagonists of PMSCs argue that while international peacekeeping missions and national armies are ill equipped to deal with conflicts in war- torn African states, hindered by bureaucracy and political process, PMSCs- especially PMCs in their corporate form, are able to quickly and cost-effectively bring to an end the hostilities in conflict states (Brooks, 33-34). While this may be the case, Sierra Leone serves as an example of the fact that while PMCs may be able to bring an end to hostilities they are by no means equipped to deal with the root causes of conflicts in these states (Mandel, 2002: 144; Gumedze, 2009: 3). But neither do PMCS ever make such claims. Nor are national armies anywhere in the world, supposed to solve conflicts by dealing with root causes, after the war is over.

This is not to say that PMCs are completely ineffective in creating conditions for negotiations or elections evident in the fact that when Sandline International became involved, a peace agreement was signed, creating conditions for elections in Sierra Leone (Hough: 2007: 15). A similar case in Angola highlighted how despite PMCs' ability to alleviate the symptoms of civil war, their involvement mostly results in a continuous cycle wherein their services are constantly needed by weak African states (O'Brien, 2000: 51; Leander, 2005: 615, Ero, 2000: 25).

As businesses that enter into contracts with states to provide security on behalf or alongside the state, PMSCs like any private firm are concerned with fulfilling their contracts efficiently and effectively. The purpose is to maximise profits not to resolve root causes (Gumedze,

2009: 3). This is done in order to secure future contracts. They leave this responsibility instead to the rest of home governments or the international community, or whatever the case may be.

2.6 Contracted to Weak States with Money or Mineral Wealth: the Lack of Transparency about Funding

A major point of contention regarding the role that PMSCs play in weak African states is the issue of who pays for their services. While weak African states are in themselves a great concern threatening the stability of international relations, the added threat of mercenary involvement in these African states further exasperates the concern (De Goede, 2008: 39-40).

Mercenaries may act clandestinely, not PMCs who are contracted legally. As such private security personnel are seen as individuals seeking to profit from the instability in weak African states. Thus weak African states rich in mineral resources not only face the threat of internal instability but also have to contend with the threat of resource exploitation – often by its own rebels or smugglers, at the expense of the citizenry (De Goede, 2008: 41-42). Weak African states have adopted the New Public Management model to justify the outsourcing of their security needs to PMSCs.

Ndlovu- Gatsheni (2007: 17) notes that the risk of PMSCs lies in the fact that they do not fully fall under legal jurisdiction because of the lack of clear definition surrounding PMCs and PSCs and mercenaries. This is what the Montreux Document (2008) wants to correct. The nature of the private security industry allows PMSCs to choose contracts based on the highest bidder and as such are only contracted to states that can afford them. But who pays them? The taxpayer, through international loans or foreign buyers of these products- be that oil or diamonds?

The nature of the private security is such that the industry itself lacks transparency in its relations. Within weak African states this transparency is highlighted by the fact that the states in which PMCs, operate often lack the capacity to efficiently make use of their natural resources in order to benefit the population of that state. Weak African resource- rich states- unable to pay for private security services, are often bailed out by mining companies active in their states. These mining companies form part of global conglomerates, paying for private

security for the state in exchange for mining concessions in African states- rich in mineral resources (Snow and Barouski, 2006: 38-40).

African states that outsourced security functions to PMSCs under such conditions paid for them with their mining wealth. These states, unlike many others, are able to leverage their mineral wealth as payment to PMCs that offer protection of these regimes (Kaldor, 2006:108). This phenomena encourages the growth of the private security industry. At the same time, mercenaries used to be highly secretive whereas PMCs are businesses that operate in open markets. Their sources of income are thus supposed to be declared to shareholders.

Politics during the Cold War facilitated a setting in which the international community overlooked weak regimes supportive of either dominant ideology. They provided weaponry to those regimes in order to ensure the militaristic suppression of opposition that would possibly not support either superpower. This phenomenon facilitated the continuation of civil wars in many African states, civil wars that continued after the end of the Cold War. With no strategic reason left to support military regimes in African states, both superpowers ceased to provide these regimes with arms as easily (Roberts, 2007: 43).

African military regimes desperate to hold on to power in the face of the resources- seeking insurgencies in their countries still however needed the supply of arms (Kaldor, 2006: 102). With drained coffers these governments resorted to using the mineral wealth of their countries as leverage and payment for arms. In other cases governments have allowed PMCs to conduct criminal activities to exact remittance for their services in cases where states have been unable to pay for their protection (Kaldor, 2006: 108). This meant that since independence in many African states, mineral wealth became the property of the regime in power and not that of the state or its taxpayers. The procurement of weapons and the enlarging of the military were thus often paid for by mineral wealth (Ndlovu- Gatsheni, 2007: 21). This exploitative relationship is however fervently denied by the parties involved.

At the end of the Cold War then this trend of leaders of weak African states controlling the mineral resources of the state as their personal assets- as in Angola, Sudan and elsewhere, was entrenched (Foaleng, 2007: 41). Political power was directly linked to economic power and as such areas most affected by unrest were those rich in mineral resources as both government and insurgency groups needed to privately acquire weaponry. It became cases of greed and grievance. The highest bidder could also contract mercenaries of PMCs for their respective causes.

Rumoured reports of private companies and foreign states selling arms to illegitimate governments and rebel groups were strongly opposed due to the lucrative nature of these relations (Snow and Barouski, 2006: 38-39). Private security intervention thus also ensued to compensate for the lack of state competence as PMSCs offered security services that the state could not create through own capacities. In this way then weak African states created the market in which PMSCs operate and sustain the market in which they operate, while maintaining the secrecy of their industry.

The commercial nature of the private security industry coupled with the fact that their services are much sought after in a very unstable international arena mean that PMSCs are able to price their services highly. Thus only states and Multinational Corporations (MNCs) that are able to afford their services contract PMSCs to meet their security needs (Foaleng, 2007: 40-41). MNCs are eager to use private security providers to ensure the security of their operations in conflict areas (Snow and Barouski, 2006: 38-39). The irony lies in the fact that these weak African states lack the resources and capacity to provide their citizens with much needed services that remain the states responsibility, yet they are able to (and choose to use their scarce resources) to enlist the services of expensive PMSCs through the signing of obscure contracts.

Mercenaries, PMCs and PSCs all enter into such agreements in order to benefit from poor international governance of the security sector and the major returns they stand to gain from exploiting African natural wealth. Kevin O'Brien (2002: 64) highlights this secretive and lucrative relationship that existed between the Branch Heritage Group, Executive Outcomes (later Sandline International) and the Angolan and Sierra Leone governments wherein minerals and oil were used to secure regime 'stability' and the exploration of natural resources (Van Jaarsveld, 2007: 46). Warlords in both countries also flourished for the same reason.

In the case of Angola it is believed that the Branch Heritage Group fronted the Angolan government the necessary capital to recruit the services of a PMC in exchange for mining rights and oil exploration in Angola (O'Brien, 2002: 64-65; Percy, 2007: 16; Howe, 2000: 24; Van Jaarsveld, 2007: 44-45). For the most part connections between MNCs, state governments and PMSCs remain unknown, due largely to the profitable nature of their interactions. Much of their interactions remain rumoured as a result adding to the negative image of the involvement of private security in weak African states (Snow and Barouski,

2006: 40). The involvement of PMCs therefore contributes to the militarisation of societies of weak African states because of the perpetual cycle of force it encourages (Faoleng, 2007: 46).

2.7 Moral Objections

There are many moral objections against the involvement of mercenaries in Africa. The case against PMC's is not exactly the same. They range from the militarisation of unstable societies to the recruiting of personnel to fight in foreign wars. This section will focus on three such areas of contention, namely militarisation, possible hiring of the same PMC by governments and rebels alike, and the notion that PMCs essentially are very close to their mercenary predecessors yet have figured out a way of circumventing international and national laws regulating their behaviour, thus becoming "modern legal mercenaries" (Gumedze, 2009: 4).

2.7.1 Militarisation

Militarisation can be defined as a state environment in which the military controls or greatly influences governmental decisions and practices; military rule is an obvious example. In this setting, military coups, security and governance become the responsibility of the military. And the use of force or the threat of the use of force is the most likely response to unrest because soldiers have seized the state (Harris, 2004: 3; Cock, 2005: 791).

Geoff Harris (2004: 4-5) offers reasons why Sub-Saharan African societies need to be demilitarized in an era after the Cold War during which militarisation was encouraged by superpowers in order to sustain the proxy wars fought on African soil. While the rest of the international community at the end of the Cold War cut military expenditure significantly and downsized their armies, Africa remained in a state of perpetual unrest as regime leaders in undemocratic African states met with fierce rebel resistance. While African governments cut their military expenditure (albeit insignificantly), they found alternative means of ensuring the continuation of their regimes (Harris, 2004: 4-5).

In Africa, where civilian-based security apparatus is often lacking and governments fail to maintain the monopoly over violence, law and order have ceased to exist and civilians often are victims of the use of force. In situations such as these, governments of weak and undemocratic African states, desperate to hold on to political and economic power, became

the source of indiscriminate violence toward any opposition, potential or perceived. The police as the extension of the state administer this violence as the state becomes the source of the violence affecting the citizens they are meant to protect (Ero, 2000: 26).

Comfort Ero (2000:26) also argues that borne from this are the militant insurgent groups, generated for the protection of communities against the states use of force. Militarisation of African states is evident in and conducive to the rise of warlords, child soldiers and arms smuggling (Kaldor, 2006: 98-99). These militant groups threaten the position of governments in weak and undemocratic African states, yet only three states have resorted to hiring PMCs to suppress this resistance, namely Angola, Sierra Leone and Equatorial Guinea. Therefore, despite the huge opportunities for the militarisation of states by PMCs (Ero, 2000: 29), this has seldom happened except in those three cases cited above.

2.7.2 Opposing sides: Same PMCs

There is a danger that opposing sides in a civil war, would hire opposing or even the same PMCs to fight their wars. This possibility is highlighted by rumoured reports of Executive Outcomes (the now defunct South African PMC operation) hiring out their vast array of services to both the MPLA Angolan government and UNITA rebels (Van Jaarsveld, 2007: 43-44). Cleary (1999: 149) refers to the situation in Angola in 1992 wherein UNITA rebels found it necessary to contract private security forces to strengthen their fight. Then after the civil war, EO fought for the MPLA. According to Human Rights Watch Africa employees of Executive Outcomes therefore found themselves involved in operations in opposition to each other, assisting first UNITA and then the Angolan governments (Cleary, 1999: 149-150), but there is as yet not evidence that EO actually fought against itself.

2.7.3 New Modalities of Mercenarism

Private Military and Security Companies since the 1990s have adopted a new corporate identities with which they sought to rid themselves of the negative perceptions surrounding mercenary activity. Many scholars however argue that they are but ‘new mercenary companies’, or “old [emperors] in new [suits]” (Pech, 1999: 81). While they are different to mercenaries that involved themselves in Africa’s liberation struggles in the 1960s and 1970s, many authors (eg. Guy Arnold, 1999) claims they have but merely arranged themselves as

business forms of old mercenaries, or as Gumedze (2008) puts it: pouring new wine into old bottles.

Arnold (1999:123) argues that the post Cold War era that promised international peace, did not produce the same results for Africa. Mercenaries involved in Africa during the 1960s and 1970s were individuals with little or no organisation who conducted fairly simple operations in return for private gain. Nowadays PMCs differ in that they are legally organised corporations that offer a range of services including combat, but wanting to maximise company profits.

Arnold argues this is but a “vener of respectability” that is facilitated by Western attitudes toward these companies (McIntyre, 2004). Despite these differences between PMCs and mercenaries of old however they tend to provide the same or similar services as those offered by mercenaries and encourage the use of force or the threat of the use of force as a solution to conflict situations in Africa. PMCs have the same impact on the state as mercenaries and they may threaten human rights in the same way (Arnold, 1999: 124-125), but they are legal and corporate and function in an open market. At worst, they are “modern legal mercenaries” and shall for many remain a “scourge”.

3. Assessment

This chapter has highlighted the arguments against the use of PMCs as legitimate alternatives to state or international security mechanisms. These negative perceptions and the arguments against the use of PMCs have resulted in calls for the regulation or banning of PMCs and their services. Most of the discussed arguments against the use of PMCs in African conflict resolution however are based on the misunderstanding of how PMCs are not mercenaries, owing to the lack of clear universal definition in this regard. The fine line between PMCs and their mercenary predecessors and the definitional issues surrounding their legitimacy are in effect the reasons for this response to PMCs activities. Detractors disregard the fact that PMCs are in fact legal entities that operate in an open market who provide a wide range of services. In addition the consequences resulting from private security intervention are almost identical to that of mercenaries and as such PMCs have difficulty shaking mercenary-like perceptions about their existence.

Chapter 3: PMCs as Alternative ‘Peacemakers’ in Africa

3.1 Introduction

In the post-Cold War era, shifts in security trends have shown that developed nations – once eager to assist in Africa’s development – turned their attention away from this continent. National security and later international security became of utmost importance as developed nations sought to create a stable international system based on economic development and democratisation. Major strife continued as weak governments were no longer able to exact assistance from superpowers. Unable to meet the security needs of their civilians, some developing states turned to sources of private security to mitigate this challenge. International circumstances therefore created a market for private security providers (Brooks & Solomon, 2000:1). As Brooks mentions, “professional soldiers can easily bring peace to Africa”, and all it takes to end Africa’s enduring wars is a “small, but willing chequebook” (Brooks, 2000:33).

As discussed in the previous chapter, the hiring of private security personnel (“corporate soldiers”) in Africa is a contentious issue condemned by many in the international arena. This may be because the differences between Private Military Companies, Private Security Companies and Mercenaries are not always understood. Mercenaries are defined by international conventions, whereas PMCs are not. The Montreux Document defines PMSCs as “all private military or security service providers”. Clearly, this definition is too broad (Gumedze, 2009:2). This study deals with what Singer (2001) calls “corporate warriors”, and what we define as PMCs. Since the 1990s, PMCs in Africa have only been contracted three times and by two legitimate governments, namely Angola, Sierra Leone and once by Equatorial Guinea and their services have ended wars. This means that they offer a possible solution to African conflicts.

As mentioned above, the Montreux Document’s definition is probably too broad. Furthermore, if international conventions do not define PMCs, what are they then? According to Singer (2003), there are six criteria for defining PMCs: they have corporate structures; they operate for business profit; they are legal and public, and function in open markets; they offer a wide range of services, including combat; their recruitment is public and they search for

specialised skills; and they are corporate holdings and are subject to financial markets. Their services are therefore broad, as stated in the Montreux Document, but do not necessarily include combat only. The services could also include military training and military intelligence. Nowadays, PMCs tend to call themselves “private security contractors” to avoid being labelled as mercenaries.

The issue garnered such attention within the UN that special rapporteurs were appointed (the Ballesteros reports) to investigate the possible use of PMCs in international interventions. The UN concluded that although PMCs (as opposed to mercenaries) were not illegal, the UN saw no use for them. While the overall argument of these reports was that PMCs are of no use to the UN, the very investigation into the use of PMCs and the studies of other scholars have led to the understanding that with appropriate regulation, PMCs could possibly enhance peacekeeping and peace-enforcement roles in Africa. This is evident in the quote from Brahimi that there can be “no peace unless there is peace to keep”, which suggests that PMCs can facilitate the creation of peace (or an end to violence) so that peace building and peacekeeping can be managed by regional organisations such as the African Union or sub-regional groupings.

This chapter highlights the shortcomings of UN interventions through the discussion of the chapters in the UN Charter dealing with peacemaking, peacekeeping, peace-enforcement and eventually peace-building. In recognition of the poor regulations governing the private security industry, this chapter also evaluates the existing international conventions in this regard and the national legislation existing in the USA and South Africa in particular that provides for the licensing of PMCs.

3.2. Shortcomings of UN interventions

Intervention in African conflicts by the UN dates back to 1956, when the UN sent troops to the Suez Canal region. This was during an era when the UN started to recognise the right of African people to self-government and sovereignty. It was followed in Africa by several regional (observer) missions and highlighted a trend still noticeable today: that the UN and OAU (AU) have been among the main actors in African peace processes (Breytenbach, 2008:249). These were all multilateral and state-based.

The outbreak of new conflicts in which non-state actors played roles upset this norm, but highlights a significant trend in African security: the recognition that these regional and

international bodies and their conventions have been insufficient in dealing with new intrastate conflicts in Africa. The international nature of the private security industry implies that international regulation might be necessary for the PMSC industry in order to be considered accountable and legitimate, but this will be dealt with later in the final chapter.

This section deals specifically with the lack of efficacy of the UN rules, which include UN Charter chapters, as well as the Brahimi Report, which since 2000 has changed the way the UN intervenes in African conflicts. This section also highlights the reluctance of the West to intervene in African conflicts, especially the Somalia debacle of the early 1990s.

3.2.1. Chapter VI, 'VI½' and VII

Within the UN there are three main functions that are put forward as mechanisms for dealing with conflict. These are peacemaking, peacekeeping and peace- enforcement. This section deals with Chapter VI (peacemaking) and Chapter VII (peace- enforcement) as well as the development of "Chapter VI½", not captured in the UN Charter, but based on impartiality, consent and the non-use of force.

Chapter VI deals with the function of peacemaking. This is the process by which conflicts are settled peacefully based on notions of "diplomacy, negotiations and facilitation" (Pillai, 2009:16; Scanlon & Murithi, 2006:22). This process is successful when the UN forces remain impartial in conflicts. This option does not include the use of force. However, direct threat to the safety and security of UN forces have compromised this principle and subsequently led to the emergence of Chapter "VI½" in which provision is made for more robust peacemaking, namely peacekeeping, but still stops short of enforcement or the use of violence. Until 1988, by the end of the Cold War, the UN principles applying to Chapter VI½ remained, as mentioned above, impartiality, consent and the non-use of force (Breytenbach, 2008:250).

In terms of Article 43 of the UN Charter, only the UN Security Council can mandate UN peace enforcement. However, Article 27 gives every permanent member of the UN Security Council a veto right (Breytenbach, 2008:250). This is one reason for the slow, even reluctant deployment of UN troops with a robust mandate (i.e. unless the USA and the USSR agreed, there was no consensus, hence no UN intervention).

Peacemaking missions succeeded at the end of the Cold War (e.g. in Namibia and Mozambique) in an environment that favoured international intervention in African conflicts according to Chapter VI½ principles. The continuation of such intrastate conflict has however

become problematic. Enforcement remained an issue, such as in Sudan and Somalia. Ongoing conflicts in Africa therefore highlight the need for a multifaceted approach to peacekeeping in Africa because of the diverse issues plaguing countries in civil conflict (Scanlon & Murithi, 2006:22).

Peacemaking and peace-enforcement efforts were not only undermined by UN veto rights but also by the lack of willingness of the West to resolve conflict in Africa unless this benefited them directly. Moreover, UN peacemakers were bound by the commitment to use diplomacy as a means to bring about peace in conflict situations (Scanlon & Murithi, 2006:22; Breytenbach, 2008:251). However, more robust situations necessitated greater discretionary powers for the Secretary General of the UN. Under the then Secretary General of the United Nations, Dag Hammarskjöld, less emphasis was placed on consent. This led to the emergence of ‘Chapter VI½’, as referred to above, under which Namibia and Mozambique became independent. At that stage, the UN had not yet applied Chapter VII (peace-enforcement) in Africa (Breytenbach, 2008:250–251). This possibility only opened since the Brahimi Report recommended that robust peacekeeping shall only be contemplated once there is “peace to keep”, i.e. the making of prior peace agreements. The AU stepped into such roles in Burundi, Sudan and Cote d’Ivoire.

Peace-enforcement (Chapter VII) therefore concerns the use of force in maintaining peace, as resolved by the UNSC (Breytenbach, 2008:250). In this regard, UN peacekeepers, upon witnessing brutality towards citizens, could act to stop it. This should be done in accordance with the principles governing the operations of the UN (Pillai, 2009:18). UN peace-enforcement troops are therefore required to continue to uphold principles of sovereignty and impartiality – principles very dear to their African counterparts. However, this hinders the activities of the mission in that their actions are always up for debate, especially when the state is an actor in the conflict or when peace-enforcement is at stake (Malan, 1999:38).

While PMCs have no role to play in peacemaking and only a possible small role in peacekeeping missions of the UN, their services could be enlisted into peace-enforcement missions because of the specialised service of combat they offer. However, for this to take place, the UN Charter has to be amended, which has not happened since 1945. Even so, the Ballesteros report rendered PMCs of no worth to the UN’s peacekeeping missions (although not illegal). The only remaining option is by invitation, by some superpower – as in

Afghanistan and Iraq – or by the host nation, as in Angola, Sierra Leone and Equatorial Guinea.

It is in this climate that the governments of some African states have turned to private security providers. PMCs are therefore contracted to fill the gaps left by international security interventions and conventions, especially in a climate where peacekeeping allows for the enforcement of peace agreements and/or when the host state is so weak that it cannot fight its own rebels.

3.2.2 “No peace unless there is peace to keep”

UN principles and functions of ensuring peace have changed since the acceptance of the Brahimi Report in August 2000, which saw more responsibility being placed on Africa itself and on regional organisations. In a climate where several intrastate wars demand the attention of UN peace processes, the demand for human and material resources has meant that the UN was unable to effectively attend to every conflict. It therefore became necessary for regional bodies and states themselves to create a situation of peace conducive to successful UN operations. Only then would Chapter VII be mandated. This was highlighted by the phrase “no peace unless there is peace to keep”, which meant that African organisations were meant to create a situation favourable for the deployment of UN peacekeepers, usually taking over from AU troops after peace agreements were signed, as happened in the Democratic Republic of Congo (DRC), Burundi, Sierra Leone and Sudan.

An example is Burundi in 2003: Only after the Arusha Peace Agreement of 2000 was the UN willing to implement Chapter VII. Here Africans had the responsibility of creating peace so that international intervention in the form of the UN can be used in a peacekeeping capacity. By 2004, UN peacekeepers replaced African troops offering relief to the South African troops in Burundi as part of the African Mission in Burundi (AMIB), which ended their duty period in September of 2009 (Pillai, 2009:18–19). The AMIB then became part of the United Nations Mission in Burundi (UNMIB) after the passing of Resolution 1545, which was a Chapter VII deployment (Breytenbach, 2008:259).

This new take on conflicts in Africa has led to the slowing down of peace missions to Africa, as peace is a prerequisite. It is fuelled and supported by the reluctance of the West to intervene in Africa’s conflicts.

3.2.3. Western reluctance to intervene

While norms and practices of the international community stem from the primary ideologies of the West, their political will to intervene in African conflicts is shocking at best. Reluctant to directly intervene in African conflicts, either through financial or human resource contribution, the West, after the Cold War, continued to enjoy dominance in the international sphere as rule maker. This reluctance occurs in a setting where national interest trumps involvement in African conflicts that have no bearing on Western national security and offers no benefit when such a conflict is ended (Howe, 2001:112), making room for actors other than UN forces to become involved in African conflicts (Malan, 1999:37).

The UN has had to cope with a plethora of religious and ethnic conflicts, most of which have occurred on the African continent. After Somalia and Rwanda, the West was reluctant to intervene. Each of these conflicts has been deep-rooted and complex, requiring ongoing attention from the UN. UN operations in these countries are therefore challenged and sometimes slowed down by the right to sovereignty and the need for states to request UN intervention in their conflicts (Malan, 1999:39–40). Intrastate conflicts also tend to be characterised by attacks on civilians and UN protocols that require all members of the UN Security Council to agree to intervention (Breytenbach, 2008:250).

The USA in particular (as the contemporary superpower), as a result of its negative experience in Somalia, is adamantly against direct involvement in African conflicts (Mandelbaum, 1994:3–4). Somalia became important to the USA when humanitarian organisations and the UN were unable to effectively alleviate social concerns in Somalia. The USA was therefore acting on behalf of the UN as part of the United Nations Operations in Somalia (UNOSOM) (Crocker, 1995:3; Malan, 1999:42). Discouraged by accusations of “neo-colonialism” and “imperialism”, the USA’s attempts at peacemaking in Somalia were diluted so that Somalia casualties were kept to a minimum (Mandelbaum, 1994:11). This disabling factor meant that US attempts at peace in Somalia failed, with the USA losing face internationally as a superpower and becoming unable to secure peace in a low-tech African civil war. The result of the “Black Hawk Down” incident, for example, which saw 18 US rangers shot down in Mogadishu, was that Western countries were thereafter reluctant to intervene in serious conflicts such as that in Rwanda (Crocker, 1995:5–6). Some scholars argue that this emphasised the necessity of regional and domestic backing of the various peace processes in order for them to be successful (Brooks, 2000:34; Malan, 1999:40–45).

Although the West remained reluctant to intervene, the same cannot be said about the PMCs contracted by some African governments according to their own will. Despite this, PMCs have only been contracted for combat services by three governments in Africa, namely Angola, Sierra Leone and Equatorial Guinea, although they have been used elsewhere to provide services of military training and intelligence (Smith, 2005:22). PMCs here have been chosen as cost-effective alternatives to UN peace missions, and as alternatives to weak African armies.

3.2.4. PMCs more cost-effective than UN peacekeepers?

Several trends since the end of the Cold War have brought the need for effective, efficient and economical approaches to private and public operations. Capturing this ideal is an approach written about by Ortiz (2008). “New Public Management (NPM)” advocates the use of market disciplines in privatising state functions. Here the use of business principles such as outsourcing to ensure economical efficiency and effectiveness are suggested as a means of streamlining the operations of government to “minimise cost and maximise outcome’ (Ortiz, 2008:3). The idea rests on the basis that “any government service can be provided by contract”. This then includes the service of security provision. This trend, however, accompanies another: the market for private military and security services, at a time when intrastate wars became much more prominent than interstate wars in Africa. With the Cold War over, there was a sudden surplus of former soldiers in the world (Lock, 1999:13–14).

The surplus of military and security personnel and the growing number of civil conflicts have therefore created a market for the use of PMCs (Brooks & Solomon, 2000:1). Weak African states that lack the state capacity to effectively carry out their responsibilities have found a middle ground that suited their current situations. Governments threatened by the insurgence of rebels have turned to PMCs to bolster their state security as a means of outsourcing to ensure effectiveness and efficiency – principles advocated by the NPM approach (Lock, 1999:18–19; Ortiz, 2008:4).

This adaptation of the NPM approach by weak African states in terms of outsourcing security functions of the state was met with considerable distaste. African states however continue to take this route because of the evident results of this approach. The use of PMCs in Angola and Sierra Leone, where they were contracted by the government for combat services, proved

not only effective and efficient in their mandate, but also economical when compared to the cost of international peace operations in these and other civil wars in these two and in other African countries (Ortiz, 2008:4–5).

Hough gives reasons for the relative success of the operations of Executive Outcomes, a PMC employed in Sierra Leone, compared to that of the peace processes of the UN – a cost-effective alternative that is result-orientated (Hough, 2007:9; Cilliers, 2005:120). Other state-based operations such as that of ECOMOG and UNAMSIL (see later in this chapter) were seen as less effective than the interventions of Executive Outcomes and other private security providers (Hough, 2007:9).

As will be shown later toward the end of this chapter, Executive Outcomes' operations in Sierra Leone started in January of 1996, when they were contracted to the Sierra Leone government to restore to the government strategic areas that RUF rebels had taken control of – the capital city and diamond fields. They were to work alongside with and train the Sierra Leone army and fulfilled the terms of their contract within 10 months (Howe, 1998:315–316). In November of the same year, Executive Outcomes' operations had brought an end to violence, a situation in which peace talks could take place. The contract was then ended.

This is contrasted by the diverse and grand forces of the UN, which are made up of soldiers from various national armies, with different protocols, languages and mindsets. As part of multilateral armies, these soldiers are not a cohesive unit and are paid the same as unprofessional soldiers, regardless of performance (Hough, 2007:19). Furthermore, reluctance on the part of developed nations with professional armies means that developing nations continue to contribute to peace missions regardless of performance or skill (Hough, 2007:20). This therefore created a situation in which effectiveness has ensured by the hiring of PMCs, because they were motivated to carry out operations efficiently. Because they are motivated by business profit and reputation, they are cheaper to use than UN peace missions (Brooks & Solomon, 2000:2).

3.3 Imperfect Regulation is Better than Nothing

Unlike mercenaries, PMCs and PSCs do not fall under international law and are therefore in no way prohibited or illegal. PMCs are in theory regulated by international humanitarian law as well as criminal and civil laws of the states from which they come (home states) as well as the states in which they operate (host states). Neither the UN nor the AU has any regulations

in this regard. Bosch (2007:35–44) writes that under international law, PMCs can neither be defined as combatants as part of armed forces, nor are they non-combatants; they are neither civilians if they engage in conflict offensively, nor are they mercenaries. They are also not soldiers. Although they might be defined as “persons accompanying the armed forces”, this would not pertain to PMCs engaged in combat services. International law therefore neither defines nor regulates PMCs (Bosch, 2007:47–48), only in some home states.

While only the USA and South Africa have legislation pertaining to PMCs, no host state has legislation that directly pertains to PMCs. This is important, because both home states and host states hire the services of PMCs. For example, the USA has hired PMCs from their country to assist in the conflict in Iraq and Afghanistan, and the governments of both Angola and Sierra Leone have hired PMCs to assist in fighting rebels in their own countries. In this regard, South Africa has the Regulation of Foreign Military Assistance Act of 1998 as well as the Prohibition of Certain Activities in Country of Armed Conflict Act of 2006, which regulate foreign military and security assistance both from and inside South Africa (Taljaard, 2008:74; Neple, 2008:25). Transnational corporations and non-governmental organisations (NGOs) often hire PMCs to regulate their activities with their own codes of conduct. PMCs are therefore no different from other international businesses in that they are governed by market forces and the legislation of the countries in which they operate.

3.3.1 Self-regulation: Voluntary regulation and market regulation

One major criticism used by antagonists is that PMCs lack sufficient regulation under international and national law. Even protagonists of the involvement of PMCs in African conflicts note that it would be safer for the industry if this involvement is regulated (Leander, 2005:607). While it is true that PMCs do not fall under international laws against mercenaries (Lilly, 2002:8), they are, as mentioned, still subject to humanitarian law. As private companies they are also regulated by the market, as are any other private enterprises. They are seen to alter the existing order of how security issues are dealt with internationally (Dickinson, 2007:271). While protocols in this regard will be dealt with later, this section deals with the regulation of the private security industry by the market itself.

In an era that promotes privatisation, PMCs have emerged to fill the security gaps left by weak states not capable of providing their own security when civil wars occur. Singer’s criteria offer a clear understanding of the corporate character of what he also calls “corporate soldiers”. PMCs are organised units that are formed prior to being offered a contract. They

are therefore driven by corporate profit, just like any legal, public entity operating in the global market. They offer a wide range of services for a diverse clientele. Operating in this professional sense, their employees are recruited publicly, but offer a specialised service in order to maintain their corporate image, satisfy their shareholders and succeed as corporate structures in the global financial market (Gumedze, 2008:33). Operating on a contractual basis not only regulates their activity (for fear of breach or termination of their contracts), but also serves as a testament for future prospective contracts. Self-regulation therefore occurs through the market, but also through voluntary codes of conduct drafted by the industry itself. Shareholders may have a share in this creation of codes of conduct.

For this reason, the UK has opted for self-regulation of the industry by voluntary means as the preferred option for regulation, because not only would costs for regulation fall squarely on the Private Security Industry, but PMCs would have to devise their own code of conduct as well as a regulatory body in this regard, such as the British Association of Private Security Companies (House of Commons, 2002:46; BAPSC, 2009).

In South Africa, in agreement with the Private Security Industry Act (PSIRA) of 2001, an independent regulatory body was created. Under this act, training and operations are expected to occur according to the code of conduct, which includes regulations on employment conditions and even the retaining of documentation (Taljaard, 2008:84). It can be assumed that this association of independent PSCs in the South African industry has some input in the governing of this association. The purpose of this act is to regulate the operations of private security providers in South Africa and it is said to be in the “interest of the industry itself” (Taljaard, 2008:84).

PMCs are regulated by the market in that if they were to prolong an African conflict, or work for both warring sides or for rogue governments, they would hurt their international reputation and hinder their chances of acquiring future contracts. As companies responsible to their shareholders, PMCs need to adhere to normal laws that regulate their activity and ensure their legality. Their actions are therefore regulated by the prospect of being labelled mercenary firms for non-compliance with international principles of state sovereignty (Cullen, 2000:38–39).

Evidence hereof can be seen in Executive Outcomes’ response to negative allegations of violations of human rights in Angola, in which it consciously considered its human rights record in Sierra Leone (Cullen, 2000:39). The British PMC Sandline International has made

gestures calling for an international regulatory body that would legitimise its existence and activity (Cullen, 2000:39). The market is therefore insufficient as a means of regulation on its own, but there is nonetheless a mechanism of regulation – as is voluntary self-regulation (Holmqvist, 2005:42). PMCs therefore appear eager that regulation that would serve to legitimise their continued existence and activity in African conflicts be adopted (Brooks, 2000:33).

3.3.2 International conventions of 1977 and 1989

International conventions stem from the need for mercenary regulation during African struggles, but they are limited in their reach concerning PMCs. They are specifically relevant to mercenaries and as such do not take into account the new phenomenon of legal private security options. International laws are also bound by their time of inception and they speak to the needs of the granting of independence in Africa, the Cold War, and its ending.

Article 47, Protocol 1, of the Geneva Convention (1977) and the Convention Against the Recruitment, Use, Financing and Training of Mercenaries (1989) deal with mercenaries and not with PMCs. While international conventions may offer some basis for the regulation of PMC activity (so as not to become mercenary activity), it does not directly concern PMCs. Therefore, the conventions of the UN have failed to sufficiently prevent the privatisation of security in Africa. As mentioned, they ban the use and activities of mercenaries (as dealt with in Chapter 2) but are not relevant to legal PMCs. They are also subject to a lack of political will among individual states that have failed to ratify these conventions. While states like South Africa and the USA have home state legislation, neither of them have ratified these conventions, and nor has the UK (Neple, 2008:46–47).

In recognition of the concentration of mercenary activity in Africa during struggles of independence, a continental approach to mercenarism necessary resulted in the Convention on the Elimination of Mercenarism in Africa (CEMA).

3.3.3 Africa's convention: CEMA, 1977

Struggles for independence in Africa during the 1960s – an era that praised sovereignty – created a market for soldiers out of work in their European countries after World War II. These trained soldiers sought out profitable military missions in Africa, fighting during insurgencies, mainly on the side of colonialists. They were typical mercenaries. Mercenaries therefore developed a negative connotation, as governments and therefore state sovereignty

were challenged by their involvement in civil and liberation wars and, consequently, negative international attitudes towards private armies were strengthened (Singer, 2001:191).

The first mention of mercenaries in international law was in the Geneva Convention of 1949 under the “Treatment of Prisoners of War”, according to which mercenaries were entitled to prisoner of war status if they were part of the armed forces of a state (Roberts, 2007:21). As a result of the concentration of mercenary activity during African struggles for independence, such as in the Congo between 1960 and 1965 and the Nigerian Civil War (Arnold, 1999:1–19), the Assembly of Heads of the OAU in 1976 affirmed its dislike of mercenaries in challenging “independence, sovereignty, territorial integrity and the harmonious development of Member States of the OAU” (Roberts, 2007:25). The OAU was therefore the first to respond to mercenary activity with the 1977 CEMA. The process of the adoption of this convention was however a lengthy process (Gulam, 2005:11–12; Roberts, 2005:26). This ratification was slow and limited.

The establishment of CEMA in 1977 due to pressure from the OAU, as well as the trial of 13 Angola mercenaries in 1976, forced the hand of the UN to consider serious, workable legislation dealing with mercenaries. The result was the addition to Article 47 of the Geneva Convention, namely Additional Protocol 1, which more thoroughly and cumulatively defined what constituted a mercenary (Gulam, 2005:9–10; Roberts, 2007:21–22). By this definition, PMCs are not mercenaries and therefore are legal. Under this legislation, mercenaries can be brought to trial by the state in which they operate, but the employees of PMCs are contracted to the company and not for a particular conflict. Several factors, including a vague definition of ‘mercenary’ and the reluctance of the West (the USA) to ratify this convention, weakened its possibility of enforcement (Roberts, 2007:23). This CEMA therefore provided a form of regulation of the global private security industry, albeit a weak one.

According to Herbst (1999:114), this convention was drafted to protect the rights of states against the intervention of neo-colonial forces, since it was drafted at a time when African sovereignty trumped intervention. This was reflected in CEMA. Despite its shortcomings, this legislation was the first real attempt at enforceable legislation, but it did not address the phenomenon of professional private security or PMCs. CEMA prohibited the intervention of private security providers in conflicts challenging the liberated African state. PMCs by this token were openly acknowledged as legal corporate structures (Herbst, 1999:115; Howe, 2001:228; Roberts, 2007:27). This is slightly different to international conventions in this

regard, in that while language and rhetoric in international legislation denote a negative attitude towards the use of private security providers, African conventions accept private security contractors as legal. The lack of real political will within Africa to stop the use and activity of mercenaries can be seen in the poor record of ratification of CEMA (Brooks & Solomon, 2000:1). This is evident in the fact that of the 53 African states, only 28 ratified this convention, and South Africa was not one of them (Gumedze, 2008:5).

While international and regional legislation is necessary for thorough regulation of PMC activity, national legislation is far more enforceable and presents a true reflection of the international political will to prohibit mercenary activity and regulate PMC activity (Holmqvist, 2005:50; Schulz, 2008:133).

3.3.4 National legislation: The US and South African acts

National legislation in both the home and host state is necessary for the thorough regulation of the private security industry, because while the UN does not see a need for private security companies, states continue to enlist their services. Moreover, states are still the primary actors in international relations and therefore need to take responsibility for exporting and importing this private military service (Holmqvist, 2005:50). It is in this vein that some countries most responsible for the export of private military functions have drafted legislation as a mechanism for regulation. In this regard, the USA and South Africa come to mind.

The USA is one country that, as a home state, has adopted legislation that could serve as models for legislation in other nations. The main aim of the International Traffic in Arms Regulation (ITAR) regards the export of arms and their connection to PMCs (Gulam, 2005:21). ITAR is however inadequate on its own to serve as regulatory tool, because it only applies to certain contractors and can therefore easily be avoided. Moreover, issues of inadequate accountability and oversight plague the success of this US legislation (Neple, 2008:24; Messner, 2008:146). However, it serves as a model for other countries that wish to draft their own regulatory legislation (Holmqvist, 2005:51).

Similarly, South Africa, as a primary producer of private military and security personnel in Africa, took on the responsibility of adopting its own legislation. This was in reaction to the bad publicity it received in the wake of Executive Outcomes' involvement in African conflicts in the mid 1990s. May 1998 therefore saw the passing of legislation in this regard.

The Regulation of Foreign Military Assistance Act (RFMA) sought to prohibit “mercenary activity” as well as define “direct participation in armed conflict for private gain” in order to regulate the activities of military and security personnel abroad (House of Commons, 2002:39–40; Holmqvist, 2005:52; Neple, 2008:25).

This broad act required companies looking to provide military or security assistance abroad to attain permission from the National Conventional Arms Control Committee (NCACC). In providing a broad piece of legislation, South Africa acknowledged the lack of clear definition between companies offering combat and non-combat functions, and the act therefore served as a strict regulatory mechanism for PMCs (Gulam, 2005:19–20). This piece of legislation was, however, inadequate to convict Mark Thatcher as aid to an attempted coup in Equatorial Guinea in 2002. This led to the Prohibition of Certain Activities in Country of Armed Conflict Act in 2006 in order for the South African government to tighten legislation on the export of private military and security assistance (Neple, 2008:24; Taljaard, 2007:84–85; Messner, 2008:152). As in the USA, PMCs are licensed.

National legislation, especially that adopted by the USA, alludes to possibilities of the option of licensing for PMCs. Attention will now be turned to this.

3.3.5 Licensing for PMCs: The USA and South Africa

The US legislation regulating PMC activity is the closest model that suggests the effectiveness of licensing PMCs to operate abroad. Under the ITAR, PMCs are required to obtain licences from the government in order to operate in a security and military capacity abroad. These licences serve as a regulatory mechanism for PMCs wishing to take arms out of the country or who intend to provide military or security assistance or to trade in military goods. A mechanism of licensing is used to regulate foreign military or security assistance. The main piece of legislation in this regard is the ITAR (Gulam, 2005:21). This law makes it necessary for foreign security or military assistants to apply for a licence in order to provide their services abroad. These licences are registered with the Department of State’s Office of Defence Trade Controls. Within this legislation, companies need only apply for one licence per contract, but when contracts exceed \$50 million, Congress is notified of their application. Companies often subcontract in order to avoid this accountability. Once licensed, American PMCs were contracted by the US government for security services in Afghanistan and Iraq.

The UK Green Paper, *Private Military Companies: Options for Regulation (2002)*, proposes this kind of regulation. The UK has however opted for a more loose form of regulation, namely self-regulation of the industry. Self-regulation places the onus squarely on the private security industry (House of Commons, 2002:46).

South African legislation on foreign security activity was, as mentioned, first promulgated under the RFMA of 1998 as a result of the end of Apartheid and the consequent demilitarisation of the South African society, which created the potential for the surplus of military assistants to be recruited to PMCs and mercenary outfits (Neple, 2008:25). This legislation aimed at banning mercenary activity and regulating the activity of South African foreign military assistants working outside of the South African border. Under this legislation, PMCs had to be authorised by the NCACC as well as the Minister of Defence (Neple, 2008:26). This act, however, failed to deter South African military assistants from operating internationally and furthermore decreased the control of the South African government over external activities (Neple, 2008:30). More relevant legislation was therefore required. The catalyst for this new legislation was the role of Executive Outcomes in Angola.

In South Africa, PMSCs are today required to register their security business as such under the Private Security Industry Regulation Act of 2001. In South Africa it was estimated that in 2008, the private security industry was valued at R14 billion, employing over 300 000 security personnel. PMCs under the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict of 2006 also need to obtain licences to export their military and security functions to foreign countries. While information on PMCs is thin, this licensing mechanism serves as an option for the regulation of PMCs (Taljaard, 2008:71–73).

Although licensing is a step in the right direction, the question is whether it guarantees accountability and oversight?

3.4 Accountability and Oversight

According to Mills and Stremlau (1999:1), the global private security industry requires global oversight because of its international nature. This kind of legislation does not exist, as the existing framework pertains to mercenaries, not to PMCs. The consequences of their existence, i.e. the changing nature of international security, in which private security providers share the responsibility of providing security in conflict zones, means that PMCs

may be accountable to international standards. How? One way is by applying the same standards to all private security providers (Holmqvist, 2005:44). The other way is oversight. However, there is currently no monitoring mechanism for PMCs.

3.4.1 Home state accountability

States that provide private security actors often do so because of a surplus of military and security workers within their state (Singer, 2001:194). In the UK, the intention is also to prevent any illegal arms trade in and out of Britain. Other home states may also produce security personnel because of the promise of profit in this lucrative industry. Whatever the reasons, there is a normative onus placed on the home state of a PMC to make legislation that seek to make PMCs accountable to the government of that state. Registration and licensing are two options (Cullen, 2000:37) already dealt with above and applied to only the USA and South Africa. But does it make them accountable?

International critics argue that these pieces of legislation are too weak to hold PMCs suitably accountable extraterritorially. This could apply to South Africa as well. The second form of home state regulation that Cullen proposes is that of a legal system whereby accountability is enforced. A model for this is illustrated by the close, albeit informal, relationship between PMCs and the US government. While difficulties with regard to oversight are apparent, the implicit trust that stems from this relationship means that the level of accountability is higher, as it is in the public domain. The strained relationship between PMCs and the South African government is testament to the weak prospects that this form of home state accountability offers (Cullen, 2000:38). In addition, PMCs as transnational companies do- as a rule- not operate within the borders or legislative territory of their home states. Host state regulatory mechanisms are therefore necessary for efficient accountability extraterritorially.

3.4.2. Host state accountability

While PMCs are often regarded negatively by the international community, critics overlook the responsibility of the host state. These are states such as Iraq, Afghanistan, Angola and Sierra Leone. It is indeed states lacking the necessary security capacity who become hosts of PMCs. PMCs are however not only hired by weak states; their services are also enlisted by NGOs, multinational corporations and Western governments (Taljaard, 2008:92) where outsourcing applies. Antagonists argue that even with state capacity (strong or weak) and the lack of political will to enforce legislation regulating PMC, host states are among the few signatories of the OAU convention have themselves since hired mercenaries (Cullen,

2000:37). In order to remain within legal constraints, host states often incorporate PMCs into their state armies, as in the case of Sandline International's operations in Papua New Guinea. Within this context, Sandline International's personnel were subject to the same 'laws of engagement' as those that applied to the national army. This serves as a measure of oversight, making the individual members of the PMC accountable to the hiring state. What happened here was an exception, however. As far as we know this is not practiced in Africa.

This option of accountability and oversight is mitigated by the fact that the states that are most likely to hire PMCs are weak states that lack the capacity to hold PMCs accountable for their actions (Cullen, 2000:38). However, states still hold contractual power in that as the hiring parties, they can terminate the contract of PMCs should they not comply with the terms of the contract. This trump card holds much value, because PMCs as private companies are accountable to their contractors and thereby deliver profits to their shareholders – implying that their success is based on the positive reported experiences of previous clients and shareholders. Host state accountability is therefore important as a mechanism of oversight, because PMCs strive to continue their good performance for the purpose of future contracts. This could further be ensured by the monitoring of PMC activity by foreign observers, mutually agreed upon.

3.4.3 PMCs do not reject foreign observers

Another form of oversight is independent monitoring. Although there is no international monitoring of PMCs or mercenaries, this industry had never objected to monitoring by foreign observers. So far, no international monitoring has taken place, except perhaps Global Witness (a non- governmental organization) in the case of Sierra Leone, whose report, incidentally, formed the basis of the script for the Hollywood movie Blood Diamond. Brooks (2000:35) proposes that observers could serve a monitoring function and therefore would not get involved if private military personnel broke international conventions. Moreover, PMCs have brought at least two African wars to an end – in Angola and Sierra Leone.

3.5 Lessons from Angola and Sierra Leone: Any peace dividends?

Despite international concern, evidence of successful fulfillments of PMC contracts proves that PMCs in fact do offer peace dividends. This section discusses case studies of Angola and

Sierra Leone, in which PMCs successfully brought about peace. In both these countries, PMCs performed better than UN peacekeepers.

3.5.1 Angola

Similar to many African countries, Angola was ill-prepared for self-government by its colonial masters. Years of struggle between the Portuguese, the MPLA, UNITA and the FNLA resulted in the termination of colonial rule in 1975, when Angola gained independence. The rule of the MPLA continued to be challenged by UNITA to the point of civil war (Barlow, 2007:94). Drawing international attention during the Cold War, the MPLA was supported by the Soviet Union and Cuba, while UNITA's support came from the USA and South Africa (Barlow, 2005:94; Roberts, 2007:52). During that civil war UNITA was also supported by Executive Outcomes.

The Brazzaville Accords, signed at the end of 1988, meant that South Africa had to withdraw its forces in Namibia and the Soviet Union and Cuba had to withdraw their forces from Angola (Barlow, 2007:97–98). However, this accord did not stop the Angolan civil war and neither did the Bicesse Peace Accords signed in 1991 (Arnold, 1999:43; Howe, 2001:198; Roberts, 2007:52). The Bicesse Peace Accords were an Angolan solution to the civil war, which was mandated by the UN. The UN failed to maintain peace as the weakened MPLA government lost significant diamond-rich areas to UNITA. UNITA's control of these areas meant that its ongoing insurgency was funded illicitly and as a result of its strengthened position it refused to withdraw from the region before a UN peacekeeping force arrived (Cleary, 1999:156; Roberts, 2007:53).

In March 1993, when UNITA captured oil fixtures in the Soyo region belonging jointly to Sonangol (an Angolan state-owned company) and Executive Outcomes, a company founded to work with legitimate governments was introduced to the Angolan government, having prior knowledge of the terrain (as part of SANDF forces) (Barlow, 2007:92–94, 99, 118–119). This is recognised by Smith (2005:24) as a turning point for PMCs: when Executive Outcomes for the first time became involved in an African civil conflict as a PMC offering combat services to the Angolan government, after it had worked with rebels. It was hired to recapture the Soyo region, which was of strategic and economic importance to the Angolan government. During this time, Executive Outcomes sought to adopt corporate characteristics and registered in London in September of 1993 (Pech, 1999:86). A small force of Executive Outcomes employees recaptured the area, and in September of the same year, Executive

Outcomes' contract was extended to a year (and later until 1996) at the cost of \$40 million as its personnel grew from 28 to 500 employees (Pech, 1999:86; Cilliers, 2005:121). It was to serve as a combat force providing specialised skills involving training and equipment alongside Angola's 16th Brigade (Cleary, 1999:152; Cilliers, 2005:121; Smith, 2005:24; Roberts, 2007:55).

In November 1994, as a result of Executive Outcomes' success, UNITA agreed to sign the Lusaka Protocol on the provision that Executive Outcomes leave Angola (Barlow, 2007:295). Executive Outcomes subsequently left Angola in January 1996, also as a result of pressure on the Angolan government by the US president. It is known that its services were paid for by the resources it managed to bring under Angolan government control (Cleary, 1999:163; Roberts, 2007:56). However, Barlow notes that the expense of the mission meant that a great profit was in fact not made by the private security contractors (2007:123). Regardless of this, Executive Outcomes managed to fulfill its contract effectively and efficiently. But, poor management and execution of the peace process on the part of the international community meant that resurgence of conflict occurred until 2002 (Pech, 1999:102; Barlow, 2007:301), when Jonas Savimbi was assassinated. Thereafter, Angola became more stable.

Sierra Leone presents a similar situation, in which a PMC managed to bring peace to a country plunged into civil war.

3.5.2 Sierra Leone

Executive Outcomes became the recommended PMC to assist the Sierra Leone government to secure regions of strategic importance captured by rebel RUF forces after successful operations in Angola (Barlow, 2007:295). Executive Outcomes was hired in 1995 to assist an ailing Sierra Leone army that was depleted after four years of unrelenting struggle with RUF rebels (Barlow, 2007:324). RUF rebels had gained ground too close to the capital, Freetown, as well as control of the diamond-rich Kono region. Unable to benefit from the trade of diamonds in a weakened capacity, the Sierra Leone government sought to outsource their security requirements to Executive Outcomes (Howe, 1998:313) after the West African peacekeeping forces of ECOMOG had failed amid allegations of human rights abuses and fraudulence (Barlow, 2007:316).

Although these support systems to some extent assisted the Sierra Leone army, they failed in putting an end to the brutality, as the Sierra Leone army remained weak in number and had poor training and equipment (Hough, 2007:9). In 1995, the government therefore turned to the option of outsourcing its security needs to Executive Outcomes based on its success in Angola. The Sierra Leone conflict differed from the conflict in Angola, as while in Angola, Executive Outcomes was the only operational PMC, in Sierra Leone other PMCs were also present that served as security providers for private transnational companies (Roberts, 2007:58). Executive Outcomes was, however, the only PMC hired by the Sierra Leone government (Roberts, 2007:60) at that time. Later it also hired the Gurkhas and Sandline International.

Within 10 months of Executive Outcomes operating in Sierra Leone, it was able to secure an environment in which elections could take place – at a fee of \$15 million, which was later extended to \$35 million (known to have been paid in mining concessions linked to the company Branch Energy) (Howe, 1998:313; Roberts, 2007:60–61; Hough, 2007:11). February 1996 saw elections scheduled for March that year and by November, the new governments under President Kabbah was able to sign a peace agreement with RUF rebels as a result of Executive Outcomes's operations (Barlow, 2007:373–374). Executive Outcomes left the country at the end of their contract in January 1997 (Howe, 1998:314–315). At that point, other PMCs also assisted (Barlow, 2007:389). A PMC was therefore able to secure peace in a region that had for years been in civil conflict (Roberts, 2007:62; Hough, 2007:10–11).

The UN's failure to consolidate this peace through its 13 000-strong peacekeeping mission saw the resurgence of conflict in May of 1997 (Cilliers, 2005:120), after which the UN mandate changed to a Chapter VII mandate. Exiled President Kabbah then hired Sandline International to restore him to power as the legitimately recognised president of Sierra Leone with the informal backing of the international community. Sandline International was however hired as PSC to protect the mining and construction interests of the government. In March of 1998, President Kabbah was restored as the president in Freetown, and 90% of Sierra Leone territory was under government control by April of the same year (Roberts, 2007:64).

Although similar to the situation in Angola, the successes of Executive Outcomes and Sandline International in Sierra Leone were marred by their rumoured methods of payment.

However, Brooks (2000:33) points out that the alternative is a death sentence to the civilians of these nations, waiting on slow and ineffective UN peacekeeping operations. The UN did get involved in Sierra Leone, but only after peace had been secured, and then with a belated Chapter VII mandated mission. The robust work was done by the ‘corporate warriors’. Regardless of negative attitudes towards Executive Outcomes’ involvement in Sierra Leone, it successfully brought peace to Sierra Leone more quickly and more cheaply than international intervention (Hough, 2007:8).

Variables assessed by Hough (2007:8) include, among other things, the mandate of the groups, the size and make-up thereof, the timing of the interventions and the incentive structure of the different groups. She advocates that PMCs such as Executive Outcomes have an advantage in their operations, because the small size of their firms means that their employees are paid well, based on experience, reputation and the successful completion of contracts. This not only serves as motivation to fulfil contracts quickly and effectively, but also as a means of building a reputation in the industry so as to acquire future contracts (Hough, 2007:19). Barlow states that while international stigma attached to private security contractors are frowned upon the involvement of Executive Outcomes in Angola and Sierra Leone, was fast, cheap and effective (Barlow, 2007:325).

3.6 Conclusion

While the second chapter sought to describe the arguments against the use of PMCs in African civil conflicts, this one discussed the reasons why PMCs can be considered a viable solution to the constraints that hinder the security interventions of regional and international organisations. PMCs such as Executive Outcomes and Sandline International have only been contracted twice for combat services in Africa – in Angola and in Sierra Leone. In both cases, they fulfilled their contracts and also provided training and intelligence services to many states throughout Africa, notably Equatorial Guinea, Ivory Coast and the DRC. Interestingly, they are not active in the oil-rich Sudan, Somalia or Zimbabwe, which may serve to illustrate that they are not always involved in all of Africa’s brutal conflicts, or only in resource-rich countries.

Although current regulations of the global private security industry are vague and lack efficacy, this is not as a result of the activities of PMCs. Western reluctance, normative ideals and financial limitations hinder international and regional peace processes, yet disclaim the

need for PMCs to supplement these ailing processes. While it can be understood that the global private security industry first has to be regulated in order to attain certain normative standards as well as international legality before it is used as Africa's solution to its security issues, international and regional organisations also have to develop a working definition of PMCs and PSCs – the very companies they seek to judge. When this is done, international definitions can be formulated so that proper processes of drafts of regulatory legislation can be drawn up and adopted. This would serve to build a closer relationship between PMCs, states and regional and international organisations. For this, the UN Charter need not be amended. Their prospective contribution to UN and African peace enforcement would be advantageous with the right mechanisms that would ensure accountability and oversight. As the rules now stand, PMCs cannot be deployed in any of these missions unless, of course, they are contracted by states that wish to bypass their militaries.

Chapter 4: Conclusion

4.1 Overview

Weak state capacity in many African states coupled with the surplus of military professionals after the Cold War sparked a renewed debate regarding the outsourcing of security functions. These and other trends have led to the emergence of “corporate warriors” (Singer, 2001). Private security in itself is not new, but the post- Cold War insecurity in the international arena created a market for new corporate types of private security and military companies, quite distinct from mercenaries.

These companies are called Private Military Companies or Private Security Companies. As mentioned, they are distinct from mercenaries, yet lack of clear definition distinguishing the three groups (mercenaries, PMCs and PSCs) in the international community means that they are viewed with much antagonism. Although they are frowned upon in the international arena- they are legal companies, but are not covered by international law. PMCs and PSCs are said to challenge the legitimacy of the state, and have been condemned as mercenaries because of the similarity of combat functions they perform. Nevertheless, they have facilitated the ending of wars in Africa; and for this reason they could be used as cost-effective alternative “peacemakers” in Africa.

This thesis has focused on the ‘where’, ‘what’, ‘why’ of private security. The focus was Africa. Highlighting definitional issues, the reasons for their existence and continued use, we also focused on the role and impact of private security in African civil conflicts. Although the presence of PMCs was noted in the Middle East, Africa was focused on because much the ‘why’ toward the use of PMCs stems from their engagement with weak African states. These arguments against the use of PMCs were highlighted in the second chapter.

As acknowledged by chapter three however, Angola and Sierra Leone serve as examples of cases where PMCs assisted in bringing about peace in countries plagued by civil war.

Acknowledging that there exists no clear definition of what constitutes a PMC or a PSC, this thesis used P.W. Singer's (2003) criteria in Gumedze (2008: 33) juxtaposed with the controversial definition of mercenaries. Taking into account the negative attitudes surrounding PMCs as well as the existing international law of private security, this thesis

examined the possible use of PMCs in peace processes in Africa by reviewing the roles they played in Angola and Sierra Leone.

This conclusion will thus firstly look at the outcomes of the arguments made in the second and third chapters in light of the research questions proposed in the first chapter. Next, the conclusion will look at issues of further research that came up in the preceding chapters. Finally, a final assessment will be done to consider who benefits from the involvement of PMCs in African conflicts by looking at the arguments presented in the second and third chapters.

The many and varied trends that have seen the increase of Private Military and Security Companies have led to much research in the area focusing on the various aspects- causes and consequences- of the introduction of these companies to international security. This thesis has looked not only at what PMCs and PSCs are and how they are different from mercenaries, but also how these companies came about. The definitional issues highlighted in the first chapter highlighted the fact that these legal companies are marred by their assumed similarity to mercenaries. The fact that there exists no single clear definition of what constitutes a mercenary, a Private Military Company or a Private Security Company means that assumptions are confusing which leads to a variety of sentiments regarding their legality, their influence and options for their regulation.

The emergence of PMCs and PSCs was spurred on by what Michelle Small (2006: 5) refers to as 'market forces'. Multiple phenomena of weak African states unable to meet the security needs of their nations, the surplus of military professionals at the end of the Cold War and the reluctance of the West to intervene in African civil wars in an era that favours privatization are contributing factors. This led to establishment of legal military and security companies. These companies are willing to fill the gaps left by weak militaries in weak, but resource-rich states where greed and grievance fuelled internal wars. This thesis thus is acknowledging the ongoing existence of PMCs and PSCs and has looked at their possible use in the peace process in Africa.

Chapter two explored the arguments against the influence and use of PMCs in African conflicts. It highlighted the assumed similarity that PMCs have to mercenaries and resolved on the fact that PMCs are not mercenaries in another form, but instead are legal entities that function legitimately. Chapter two also concluded that although international law pertains to mercenarism, it does not cover PMCs and that the objections waged against PMCs and their

functioning is based on the lack of clear definition of what constitutes PMCs and mercenaries. Because PMCs don't claim to solve the root causes of complex African civil wars, they- as corporate entities- fulfill contracts with legitimate governments to defeat rebels (and not develop these countries) in return for remuneration.

Chapter two also presented the argument that PMCs only operate in weak countries rich in natural resources. The conclusion drawn however was that while this has been the case in Angola and Sierra Leone, not only did their missions cost less than international intervention, but as corporate businesses, PMCs are entitled to be contracted by a legitimate government willing to pay for their services. Additionally as discussed in the third chapter, PMCs are not only contracted to weak states, but have been used by strong states like the US to assist in foreign conflicts that are of national interest. Regardless of this the UN still sees no use for PMCs as highlighted in the Ballesteros Report. The ways in which PMCs could possibly assist in ending civil wars in Africa was discussed in Chapter 3.

Chapter 3 explored the shortcomings of international interventions such as the UN and AU in dealing with PMCs as well as the Western reluctance to intervene in Africa. Africa as for the most part failed to move past the challenges of debt, poverty and disease that continue to plague the continent. The insecurity in Africa has thus demanded the need for security; security that cannot be provided by some African states alone. International interventions in African civil wars have been many, placing human resource and material demands on the UN. In this context, this thesis has focussed on Africa and her need to outsource her security needs.

Within the global context which favours liberal capitalism and the privatisation that accompanies it in the name of efficiency and effectiveness, Africa has chosen to supplement her security needs in order to meet the demand for security in war-torn states. Security, like many other traditional state functions, has become a commodity for sale. Private Military and Security Companies thus function as legal companies selling their services to those who can afford it. The past two decades have shown that both weak and strong states have made use of their varied services.

Acknowledging the need for regulation, the third chapter pointed out the ways that the market and voluntary regulation restricted the activities of PMCs. The chapter also discussed existing home state regulation in the USA and South Africa. The need for host state as well as home state regulation highlighting many areas for further research in this regard. This highlighted

the fact that PMCs are not only hired by weak governments, but also by strong governments- such as in the USA and UK- to assist in foreign conflicts. This will be addressed later in this chapter. Although the need for regulation was acknowledged, Angola and Sierra Leone were discussed as the two cases where legitimate governments- unable to curtail the rebel attack on the state- outsourced their security needs to PMCs. These cases were discussed as examples and testaments to the possible positive enforcement role PMCs could play in African conflicts. This in light of the shortcomings of the UN, Western reluctance and the relative cost- effectiveness of private security as opposed to international intervention.

This chapter also highlighted possible ways in which PMCs could assist international interventions. The chapter resolved that the only possible role that PMCS could play in international interventions is within a Chapter VII mandate, but not as part of UN forces- this would require an amendment of the UN Charter. While international conventions cannot and will not be amended to include private security providers, PMCs could play a role if invited to assist by the host state possibly with the blessing of the UN. This is however unlikely in light of negative international sentiments toward private security.

These three chapters thus highlighted a few areas in which further research could take place in order to assess how PMCs could be useful in African conflicts and the options of the regulation of the industry. These will be discussed hereunder.

4.2 Issues for Further Research

The scope of this study is limited to the arguments surrounding the possible use of PMCs in the resolution of African conflicts. Discussions surrounding the definition issues of PMCs and mercenaries and the arguments in favour of and against PMCs have highlighted areas of further research.

This includes the definitional issues referred to above that would go to distinguishing between mercenaries, PMCs and PSCs. Additionally Chapter two raised concerns about who benefits from the use of private security. See hereunder. This is in line with Harris' (2004: 34) argument that the privatisation of state goods leads to the uneven distribution of these goods. But this is the reason for the antagonism toward the use of private state sponsored security, because the citizens who pay tax (legitimising the government) fail to benefit from what should be a public good. Private security stretches the boundaries of the state and the

authority of the state. But states themselves need to be held accountable in responding to the needs of their citizens.

Chapter two similarly highlighted the fact that PMCs do not carry out post- conflict operations that deal with the root causes of African civil wars. Although the chapter concluded that PMCs don't claim to deal with these issues (and are not hired for this service), they could assist in keeping the stability in areas where UN peace processes are occurring. This would ensure a stable environment in which peace processes could occur. But as pointed out earlier, PMCs could never be included in UN peacekeeping missions because they are not state- based; they would have to be invited on an ad hoc basis to assist. This then is an issue which could be further researched.

Chapter three similarly highlighted other issues for further research. Acknowledging the permanence of PMCs in the international arena and their involvement in African civil wars, chapter three looked at options of regulation. Several types of regulation were studied.

While voluntary regulation on behalf of the industry and market regulation is insufficient to regulate the activities of PMCs they are steps in the right direction. Existing international conventions in this regard do not cover PMCs or PSCs. The international nature of the industry requires international regulatory mechanisms because while home and host state regulation is necessary, international regulation would go far to standardise international response to private security. International regulation also would cement international sentiments about private security. The British debate could be analysed further.

Cullen (2000:33) argues that international acceptance of the private security industry is essential for the legitimacy and successful functioning of the industry. The private security industry would continue to function without the international recognition of their legitimacy because of the market forces discussed above. International recognition of the private security industry would thus promote a positive attitude toward the industry. The acceptance of the industry would create a situation in which more openness about their activities could be fostered. What was required was monitoring. This area should be explored to test the viability of this option.

Another issue raised for further research in the third chapter is the fact that although there is home state regulation in three states, there is no legislation regarding the use of PMCs in host states. While- as previously mentioned- home state regulation is necessary, PMCs often

operate in foreign states where their home state regulation is deficient. Options for home state legislation on the issue of the hiring of and activities of PMCs thus presents a new area for further research. This is the complex issue of extraterritoriality. Additionally a mechanism of corporate governance is also necessary as a means of showing the international community that the private security industry itself seeks international acceptance.

Home state and host state mechanisms of accountability are therefore necessary but need to accompany a tool stemming from the industry itself that would ensure that best practices are rewarded while “rogue” behaviour is castigated (Holmqvist, 2005: 46). Corporate governance- in a similar vein to other transnational companies- would ensure that PMCs act with transparency and accountability to the stakeholders of the company, especially the shareholders. This is what happens daily in South African town and cities especially for a neighbourhood watches and home security are concerned.

This form of accountability would include setting policies of conduct and standards to which companies would adhere. Corporate governance would result in prospective clients making educated choices based on other clients’ experience of conduct, efficacy and efficiency.

As a measure of accountability corporate governance gives PMCs the scope to be involved directly with the mechanisms by which they are governed. This according to Holmqvist (2005:47) would encourage “peer pressure” to maintain high standards of accountability so as to ensure legitimacy and further legal contracts. She suggests a code similar to that of the International Peace Operations Association (IPOA) that with its current 56 strong PSCs membership has adopted a code of conduct that ensures best practices in terms of human rights, accountability, satisfactory clientele, transparency, safety, arms control, rules of engagement and quality and health of employees (Holmqvist, 2005: 47 and IPOAworld, 2010).

Although Holmqvist’s commentary on this code of conduct mentions the broad and vague nature of this document, she concedes that this document and initiative served as a means to promote industry transparency and thus accountability in the global private security industry. Corporate governance as a form of self- regulation means that companies and their employees are rewarded for good behaviour, though few have drafted internal codes of conduct similar to that of the IPOA (Holmqvist, 2005: 47). The option of corporate governance as a regulatory mechanism therefore requires further research.

These research areas would add to the existing body of knowledge regarding the use of PMCs and PSCs in civil conflicts. The third and final purpose of this thesis however, was to assess who benefits from the use or involvement of PMCs. PMCs are becoming a permanent fixture in the way international security issues are handled. Current regulatory mechanisms are insufficient to monitor and oversee the activities of PMCs. The current issues plaguing Africa and the way in which international intervention into civil conflicts is hindered means that governments and non- state actors will continue to make use of PMCs to meet their security needs. But who benefits from the involvement of PMCs in African civil conflicts? Home state governments, safer citizens, PMSC shareholders, or international oil and diamond markets?

4.3 Final Assessment: Who Benefits?

This thesis has looked at what PMCs are, the reasons for their existence and the issues that surround their involvement in African civil wars. The issues highlighted in the first chapter and discussed in the second and third all seek to answer the question of who benefits. Are the beneficiary's state governments, safer citizens, the diamond or oil companies or the company shareholders of the Private Military or Security Firms?

The dual effects of the favouritism of New Public Management and the availability and willingness of PMCs, have seen the increased use of PMCs by state governments. Both home and host states employ the services of PMCs but as private companies the overall advantage of their use is questioned. The reasons for this were discussed in the second chapter and highlight the possible contradiction between a state service and its benefit to all citizens and the private profit of private companies to which these responsibilities are outsourced. Thus the ultimate concern regarding the use of PMCs is who benefits from their services and in what way they benefit. The groups mentioned above are the stakeholders who benefit from the use of PMCs.

PMCs are legal entities, registered in home states that recognize the legitimacy of the industry and its practices. While the governments of these homes states such as South Africa and the UK don't employ the services of PMCs themselves, they benefit from the existence and success of the companies operating from within their borders through tax income. These

home states not only recognize the legitimacy of the industry, but also the advantages of their continued existence.

Other home states like the USA have gone further by contracting PMSCs to assist in foreign countries as private companies. The USA benefits by employing PMCs to assist in the conflict in Iraq because the individuals employed by the PMCs partake in the conflict do so as employees of the company and not of the state government. The US government thus is not liable for the deaths, do not have to pay for state funerals and do not have to answer to the voting families of slain soldiers. Home states that make use of PMCs in foreign conflicts bypass protocols concerning the rules of war to which soldiers have to adhere. Home states of PMCs that make use of the services of PMCs thus benefit in two ways. Not only because they receive taxes from these companies, but also as contractors of their companies. PMCs however are more frequently contracted by host states that choose to outsource their military and security needs.

Weak African states plagued by rebels who challenge the authority of the state sometimes outsource their security needs to PMSCs. This is done in line with the New Public Management model. While governments have the responsibility to protect the citizens of the state, they are sometimes unable to do so- hence the contracting of PSCs and in extreme cases PMCs. The nature of civil wars in Africa is such that insurgency forces are often rebels who have no regard for the rules of war. Attacks are thus indiscriminate and civilians are not only the victims of the civil war but often the targets themselves. In an attempt to fulfill their responsibilities some African states employ the professional services of PMSCs. The services of PMSCs thus serve to benefit the citizens of the states in which they are employed. State governments who acknowledge their responsibility to protect the citizens of their states contract the services of professional companies that are able to protect the citizens of states in civil wars.

In Sierra Leone similarly Executive Outcomes was hired by the Sierra Leone government to assist the Sierra Leone army in recapturing the capital city of Freetown. They too had to restore control of the diamond rich Kono region to the government of Sierra Leone. Their mandate here was thus also specific and EO similarly managed to secure an end to war by creating a situation where in peace processes could occur. Thus Sierra Leone is another example of how although PMCs are contracted to the political elite or government, their

services are of such a nature that the results of their influence is beneficial to the greater citizenry.

Safer citizens are thus the result of host states contracting PMSCs because PMSCs accomplish what some governments cannot- by protecting the lives of citizens threatened by civil war. This point is argued by Brooks (2000: 33) who offers a moral argument to counter those of antagonists. Brooks argues that while private security challenges the international conventions regarding the handling of security issues, they ensure a quick and effective response to conflict. By doing so they ensure that fewer lives are lost through the continuation of violence. While the moral argument for the use of PMCs is recognized it is often tarnished by the profiteering of company shareholders, who also benefit from the use of PMCs.

As private corporate entities PMSCs are accountable to shareholders. Their activities and practices are thus regulated by their motivation for ongoing profit. As argued in this thesis- this is a character trait that sets PMSCs apart from ad mercenary groupings that seek out once off profit. PMSCs in contrast seek to profit for the benefit of the company, not necessarily as individuals, but rather as professionals of corporation, funded by shareholders. Shareholders thus also benefit from the services of PMCs. PMSCs as however not only contracted by home and host states, but also by private diamond and oil mining companies operating in conflict zones.

Angola serves as an example of an instance where a PMC was contracted to the host state that was unable to pay for their services. Diamond and oil companies operating in Angola offered to pay for the services of PMCs on behalf of the state, allegedly in exchange for mining concessions. They did so because they too benefit from the use of PMCs because the result of the use of PMCs is a safer business environment. Additionally diamond and oil companies benefit from the alleged mining concessions they receive.

Diamond and oil companies that hire PMCs do so to protect their assets and personnel in conflict zones where their mining often occurs. PMSCs benefit these companies by ensuring that their profits are not decreased by the threat of rebels looking to cease natural resources. PMCS thus benefit diamond and oil companies as their contractors and indirectly when contracted by state governments. This allows for mining to continue as per usual, causing the state in turn to benefit from tax income.

The services of PMSCs are thus beneficial to a great number of groups. Their practices are not akin to the selfish motivations of mercenaries. Instead, as discussed, the benefits and beneficiaries of the use of PMCs far outweigh the reasons why they should not be used. As private companies PMCs don't profit adventure seeking individuals who have little regard for the conflict. The benefits of the use of PMCs are widespread.

4.4 Final Assessment

This thesis has argued for a clear and accepted definition of Private Military Companies and Private Security Companies so that a proper assessment can be conducted. Furthermore it has discussed negative attitudes toward the existence and influence of PMSCs, especially in weak African states. PMCs were then discussed in terms of their positive influence in African civil wars- Angola and Sierra Leone were given as examples of this.

Returning to the research question of whether or not civil wars in Africa would end more quickly if PMCs were involved, PMCs were suggested as possible peacemakers in African civil wars. This was done within the confines of international law- which does not essentially cover PMCs.

Upon the definition of Singer in Gumedze (2008: 33) it was argued that as corporate entities with shareholders to satisfy, PMCs are not only legal but becoming a permanent fixture in the way conflict is dealt with internationally. With the correct- and necessary- regulation of the industry they could become the possible future peacemakers in Africa- ending African civil wars.

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