

The United Nations and Private Security Companies: Responsibility in Conflict

Steven Martin¹

Abstract

The international community is undergoing a transformation in the way that security is managed. The growth of the private security industry in this regard has not been equally matched with adequate national or international responses. This lack of action has left a gap in which many critical issues emerge such as human rights concerns, corporate social responsibility and accountability. The United Nations stands in a critical position to take a leadership role in addressing not only specific issues that have emerged and require due attention, but on a wider scale to understand the very transformation of humanitarian and post-conflict environments. This paper addresses emerging trends and evaluates responses and inherent limitations concerning the proliferation of private security within the international community, and in particular within the United Nations itself.

Introduction

The end of the Cold War brought about shift in the very nature of conflict and in conjunction, the way security is managed. In this regard, the role and use of private security is becoming

more prevalent in many of today's humanitarian and post-conflict settings, even to the extent that the establishment of the global private security industry is already a *fait accompli*.² The industry, arguably stemming from what were once known as mercenaries, are now more commonly referred to as private military or security companies. The astonishing proliferation of these security providers in all corners of the world in recent years has left policy-makers, academics, and the mass public largely unprepared and scrambling to comprehend the novel emergence of an industry already undertaking essential and fundamental tasks in the provision of global security. Such developments, drawn from wider trends in globalisation and privatisation, have raised concern amongst many who see private security operations as unchecked, unregulated and having long-term implications not yet fully understood. In particular, the United Nations (UN) system will soon be forced to engage with private security providers in the near future, as interaction between the two entities will only increase.³

Analysing this emerging phenomenon thus far has been limited. Increasingly though, there is concern and emphasis on exploring the nature and scope of private security companies with a view to ensuring the appropriate application of international human rights standards and international humanitarian law.⁴

¹ Graduate of the European Master's Degree in Human Rights and Democratisation

University of Deusto, Bilbao, Spain. shmartin77@gmail.com

² Holmqvist, C. (2005) *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper, No. 9, January, p. 52.

³ Hellinger, D. (2004) Humanitarian Action, NGOs and the Privatization of the Military, *Refugee Survey Quarterly*, Vol. 23, No. 4, pp. 192-195.

⁴ UN Commission on Human Rights (2006) *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination on the resumed first session – Addendum*, E/CN.4/2006/11/Add.1, 3 March, para. 18.

Thus far, the weak response by the international community has allowed these companies to operate largely unregulated. This paper tracks and evaluates a number of distinguishing features underpinning the private security industry: i) Private military and security companies, which began low profile operations in the mid-20th Century, have since become integrated into the contemporary corporate structure, characterised by present trends of privatisation and globalisation; ii) New UN doctrine concerning humanitarian and post-conflict intervention emerged in the 1990s and private security providers have found a niche in this readjustment, and are being gradually introduced into UN humanitarian and peace operations; and iii) There exists neither clear policy nor guidelines in the UN system concerning these companies, nor adequate international norms specifying what activities companies can and cannot undertake. Existing instruments and monitoring mechanisms are ill equipped.

Even though security providers attempt to legitimise their industry, there remains limited available information from the supplier and user perspectives. While security providers are more willing to speak publicly than their clients, this openness only emanates from select industry representatives.⁵ Despite this limited openness, the very nature of the security business remains characterised by secrecy and confidentiality. Governments, UN agencies and other organisations also remain very sensitive about the issue of private security providers due to possible reputational costs of engaging with these companies.

Prior to further examining the development of the private security industry, its impact, and its future, it is critical to have an understanding of the makeup of the industry itself. From

the outset, many claim that there is no standard definition of what actually constitutes the private military or security industry.⁶ Such claims are accurate. These private operators are known by many names—mercenary firms, hired guns, private armies, private military corporations, private security firms or companies, private military contractors, corporate military providers, and so on. The following breakdown serves as an introduction to the complexities that form the industry. In reality, clear-cut distinctions within the industry lack delineation with the panoply of these services defying any classification.⁷ As a basic starting point, the following unpacks some of the basic elements and characteristics within the industry through summarising three terms: mercenaries, private military companies, and private security companies.

In the classical sense, the definition of mercenary applies to individual combatants fighting for financial gain in a foreign armed conflict. The majority of recent instances stem from the struggle of Africa in the post-colonial liberation period in the 1950s and 1960s.⁸ These individuals were seen to operate with little or no regard for ideological, national or political considerations, and have commonly been referred to as the «dogs of war».⁹ Mercenaries were first defined within Article 47 of Protocol I of the Geneva Convention and included six specific criteria, of which all had to be met to qualify under the article.¹⁰ Subsequent international conventions, the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa (OAU Mercenary Convention)¹¹ and the UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries (UN Mercenary Convention)¹² incorporated the definition within Art. 47 and criminalised mercenary activities. Existing international

⁵ Much from the industry comes from Doug Brooks, president of the International Peace Operations Association (IPEO), a trade association pushing for legitimacy within the military and security sectors; Tim Spicer, the chief executive officer of Aegis Defence Services, and former employee of Sandline International; and Christopher Beese, chief administrative officer of ArmorGroup International.

⁶ Wheeler, V. and A. Harmer (eds.) (2006), *Resetting the Rules of Engagement: Trends and Issues in Military–Humanitarian Relations*, HPG Report 21, March, p. 68.

⁷ Zarate, J. (1998) «The Emergence of a New Dog of War: Private International Security Companies, International Law and the New World Disorder». *Stanford Journal of International Law*, Vol. 34, No. 1, 1998, p. 91.

⁸ Schreier F. and M. Caparini (2005) *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva

Centre for the Democratic Control of Armed Forces, No. 6, March 2005, pp. 15-17.

⁹ For more on the history of mercenaries see: Millard, T. (2003) Overcoming post-colonial myopia: A call to recognize and regulate private military companies. *Military Law Review*, Vol. 176, June 2003.

¹⁰ Protocol Additional to the Geneva Convention of 12 August 1949, and Related to the Protection of Victims of International Armed Conflicts, 8 June 1977, Art. 47.

¹¹ OAU Convention for the Elimination of Mercenaries in Africa, entered into force in 1985 (CM/817 (XXIX), Annex II, Rev. 1, 1977).

¹² International Convention against the Recruitment, Use, Financing and Training of Mercenaries, A/RES/44/34, 1989.

law in effect is designed to regulate only one type of mercenary, the unaffiliated individual acting counter to the interests of post-colonial African states and not modern applications.

Discussion surrounding such security issues moved beyond strictly mercenaries in the 1990s and broadened the discussion to include private military companies (PMCs). PMCs do not actually exist within any current international legislation or convention, and have been at times labelled «new mercenaries».¹³ These corporate entities offer a wide range of for-profit services in conflict settings that were in most instances previously undertaken by national military forces. Their purpose is to enhance the capability of a client's military forces to function better in war, or to deter conflict as much as possible. Clients are predominantly governments, although in a growing number of instances such services are contracted by multi-national corporations (MNCs) or non-governmental organisations (NGOs). More common PMC services include consulting, training, logistical support, intelligence and reconnaissance, and demining.¹⁴ Industry heavyweights have included Military Professional Resources, Incorporated (MPRI), DynCorp International, Defence Systems Limited (DSL) (a part of ArmorGroup), Sandline International (ceased operations in 2004), and the infamous Executive Outcomes (ceased operations in 1998).¹⁵

The private security company (PSC) industry has a history preceding PMC operations. As with PMCs though, references to PSCs do not exist within any existent international convention. PSCs are similar to PMCs in that they are profit-driven organisations offering professional services. However, many classify PSCs as more focused on providing security and protection to individuals and infrastructure. PSCs provide varying degrees of security for multinational corporations in the extractive sector, governments, UN insti-

tutions, other international organisations in conflict and unstable regions.¹⁶ Activities vary considerable from company to company, but include consulting, training, infrastructure protection, escorting, and personal security. Well known PSCs include Control Risks Group, Kroll Inc., Aegis Defence Services, Global Strategies Group and also include companies categorised as PMCs such as ArmorGroup, DynCorp, LifeGuard and Group 4 Securicor.

Despite the categorisation above, one of the most difficult aspects of writing about this industry is the fact that there are no universally accepted definitions of even the most widely used terms.¹⁷ Even a seemingly simple list including all companies working within the private security sectors does not exist.¹⁸ Media, human rights organisations, academics, security companies and even governments all have their own opinions and ideas as to what activities and actors constitute the industry. Numerous companies offer services that could be placed both military and security categories. Despite not legally qualifying under international law, many see companies such as Executive Outcomes as eroding the distinction between legitimate modern private companies and traditional mercenaries.¹⁹ Companies now «corporatise» operations with some even publicly traded and supported by elaborate websites detailing the range of available services, employment opportunities, and previous partnerships.²⁰ The globalised nature of today's economy is also evident from the structure of PSCs with the extent of corporate links, cross shareholdings or directorships, not always clear. Some conclude that the traditional utilisation of mercenaries has undergone a metamorphosis with old and new forms of mercenarism presently intermixed.²¹

¹³ Isenberg, D. (1998) «The New Mercenaries». *Christian Science Monitor*, 13 October.

¹⁴ Schreier and Caparini, *Privatising Security*, cit., pp. 17-26.

¹⁵ For more information on Executive Outcomes, see Singer, *Corporate Warriors*, cit., pp. 101-118, and Goddard, S. (2001) *The Private Military Company: A Legitimate International Entity within Modern Conflict. Master's Thesis, Master of Military Art and Science*, Fort Leavenworth, Kansas.

¹⁶ Schreier and Caparini, *Privatising Security*, cit., pp. 29-33.

¹⁷ Brooks, D. and H. Solomon (2000) From the Editor's Desk. *Conflict Trends*, No. 6, June 2000, pp. 1-2.

¹⁸ The IPOA undertook its own industry survey with results not yet released. In addition, a partial list of companies related to US contractors is

available through the International Consortium of Investigative Journalists, [<http://www.publicintegrity.org/wow/>], (Accessed 20 May 2006).

¹⁹ UN Commission on Human Rights (2004) Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, E/CN.4/2005/14, 8 December.

²⁰ Schreier and Caparini, *Privatising Security*, cit., p. 8.

²¹ Gómez del Prado, J.(2006) Some Emergent Trend Arising from the Activities of a New Non-State Actor: The Private Military/Security Companies, paper presented to *The Human Rights Council: An Expert Meeting on Challenges Ahead*, Casa de América, Madrid, 6-7 April 2006

Peter Singer²² argues that the only thing that all of these private military and security companies have in common are that available services fall within the military domain.²³ Singer classifies these companies as business providers of professional services intricately linked to warfare and thus as an evolution from previous mercenary practice and defines them in three broad sectors depending on how closely they are linked to front-line operations.²⁴ Not everyone though shares Singer's classification. Caroline Holmqvist deems it unnecessary to distinguish between specific actors and actions within the industry, preferring instead to group military and security together under one umbrella using the term private security company.²⁵ This paper follows Holmqvist and avoids the distinction between military and security categories. The term private security company (PSC) is used within this paper to encompass the entire industry including both military and security companies.

The Private Security Industry

Once clear and distinct responsibilities within humanitarian and post-conflict settings have become blurred and ambiguous as PSCs move into these environments. The client list of private security companies is ever lengthening, as is the number of companies themselves.²⁶ The wide scope of industry operation, in over 50 countries, including Afghanistan, Angola, Croatia, Ethiopia-Eritria and Sierra Leone, parallels the equally impressive array of services. Available estimates place between 15,000 and 30,000 security contractors in Iraq alone.²⁷ In 2001, the size of the global market for private military and security companies was estimated at around \$100 billion and continued to expand largely

boosted by the conflicts in Afghanistan and Iraq.²⁸ However, the perception that such relationships are confined to governments and private entities are misleading and rapidly changing.

The World Wildlife Fund solicited bids from the South African security firm Saracen to train and protect its guards when faced with the possible extinction of the northern white rhino in a park in the Democratic Republic of Congo (DRC).²⁹ Both Worldvision and the International Committee of the Red Cross (ICRC) hired LifeGuard Security for staff and site protection.³⁰ In Afghanistan, private security companies assisted the UN in logistics and security activities related to recent presidential and parliamentary elections. In Iraq, private security services are increasingly utilised by organisations including the UN. These are just a few of the many examples highlighting the varied and expanding role of private security companies into areas once more limited to governments, NGOs, and the UN.

In tracing the surplus of security professionals, it appears that it was largely created from the downsizing of militaries after the Cold War. Many armed men and servicewomen, and others in the intelligence sector seeking alternative employment came from Western states, the former USSR, some Eastern European countries, and South Africa following the end of apartheid.³¹ Suddenly a wealth of military experience and expertise was no longer on the public payroll. The nature of government restructuring was not solely limited to defence sectors, but moreover reflected a broader global trend toward the privatisation of public assets. Recent decades were more broadly marked by neo-liberalist tendencies where greater outsourcing of government services such as education, health and defence sectors, once characterised as representing the pillars of the state, were being relin-

²² Peter W. Singer, Senior Fellow, and Foreign Policy Studies Director with the Brookings Institution, is one of the leading experts on the private military/security industry. See Singer, P.W. (2003) *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithica, New York, Cornell University Press.

²³ Singer, *Corporate Warriors*, cit., pp. 88-100.

²⁴ Ibidem.

²⁵ Holmqvist, *Private Security Companies*, cit., pp. 5-7.

²⁶ Singer, *Corporate Warriors*, cit., pp. 3-18.

²⁷ Cockayne, J. (2006) *Commercial Security in Humanitarian and Post-Conflict Settings: An Exploratory Study*. International Peace Academy, New York, March 2006, pp. 1-2.

²⁸ ICRC (2004), The ICRC to expand contacts with private military and security companies, 4 August, [<http://www.icrc.org/web/eng/siteeng0.nsf/html/63he58?opendocument>], (Accessed 20 May 2006).

²⁹ Saracen is considered a subsidiary of Executive Outcomes, while Lifeguard Security also has close links; See Avant, D. (2004) *The Privatization of Security and Change in the Control of Force. International Studies Perspectives*, Vol. 5, p. 153.

³⁰ Singer, *Corporate Warriors*, cit., p. 11.

³¹ Between 1986 and 1997, the number of individuals in the armed forces fell by approximately six million. See: Spearin, C. (2001) *Private Security Companies and Humanitarians. International Peacekeeping*, Vol. 8, No. 1, Spring, pp. 27-29.

quished by governments.³² Thus the privatised military industry drew its precedent and justification from the wider «privatisation revolution».³³

The UN system has not escaped this trend of privatisation and the last 20 years have also seen exponential growth in UN reliance on the private sector and NGOs for a number of activities including relief services, election monitoring, development assistance, environmental action, human rights, gender issues, and health services.³⁴ The proliferation of the private sector has been swift to capture the gap that emerged in many sectors after the contraction of public institutions. Concurrently, while privatising key institutional functions continues, the demand upon states to intervene in situations of instability and human rights abuses has not abated. Consequently, the international community's incomplete toolbox for adequate nation-building and stabilisation activities necessitates that private security sector undertake and fulfil outstanding activities.³⁵

Furthermore, the changing nature of warfare over the last several decades has profoundly influenced the environment and manner in which humanitarian and post-conflict organisations operate. Towards the end of the Cold War and moving into the 1990s, many newly emergent states faced a crisis of capacity and legitimacy, which is reflected in the rise of internal conflict as the dominant form of warfare. Traditional warfare between states using national military forces is increasingly being usurped by low-intensity intra-state conflicts where governments affected by such insurrections have not sufficiently maintained internal order. New non-state actors with different attributes are emerging and posing an ever-increasing threat to organisations working in humanitarian and post-conflict environments. While the ac-

tual number of intra-states conflicts has actually decreased since 1993, this period shows a marked increase in combatants directly targeting civilians and relief workers, including UN staff, with seeming impunity.³⁶ One of the first large-scale attacks directly against the UN occurred on 19 August 2003, when insurgents in Iraq detonated a massive truck bomb outside UN in Baghdad, killing 22 people and wounding more than 150.³⁷ The majority of actors point much of the recent breakdown in overall security to Iraq and Afghanistan and link it to the broader «war on terror».³⁸ Such developments have forced many organisations to heighten needs and led to revaluations of security measures ensuring protection of operations and personnel. Thus, there is no doubt that the very environments in which humanitarian and post-conflict activities takes places is under metamorphosis.

The United Nations And Private Security Companies

In 2003, the International Peace Operations Association (IPOA) proposed to supplement the «inadequate and weak» UN Mission in the Democratic Republic of Congo (MONUC) with everything from aerial surveillance to armed rapid deployment police, and in doing so would «provide more transparency and accountability for their operation than any UN peacekeeping deployment – ever».³⁹ Despite determined attempts, the proposal was not adopted. Recently asked whether the UN's official position on using private security contractors had changed, UN spokesman Farhan Haq replied, «'The one-word answer is no».⁴⁰ This might have been the situation in the DRC at that time; however, such a blanket dismissal of any relationship concerning the UN and PSCs, either then or now, is misleading. The existing relationship

³² De Feyter, K. and F. Gómez Isa (eds.)(2005) *Privatisation and Human Rights in the Age of Globalisation*. Antwerp, Intersentia, 2005, pp. 13-14.

³³ Worden, L. (2004) Downsizing and outsourcing, we've sprung Pandora's Box. *The Signal*, [http://www.scvhistory.com/scvhistory/signal/iraq/sq062704.htm], (Accessed 20 June 2006).

³⁴ Weiss, T. and E. Smith (1997) UN task-sharing: towards or away from global governance?. *Third World Quarterly*, Vol. 18, No. 3, 1997, p. 613.

³⁵ UK Foreign and Commonwealth Office (2002) *Ninth report of the Foreign Affairs Committee, Session 2001-2002: Private Military Companies Response of the Secretary of State for Foreign and Commonwealth Affairs*, Stationery Office, para 9.

Anuario de Acción Humanitaria y Derechos Humanos
Yearbook on Humanitarian Action and Human Rights
© Universidad de Deusto. ISSN: 1885 - 298X, Núm. 4/2007, Bilbao, 89-108
http://revista-derechoshumanos.deusto.es

³⁶ UN News Service (2006), *More than two dozen UN personnel were killed in 2005 – Staff Union*, [http://www.un.org/News] (Accessed 10 June 2006).

³⁷ Human Rights Watch, (2005) *A Face and a Name: Civilian Victims of Insurgent Groups in Iraq*, Vol. 17, No. 9 (E), Part VIII, pp. 73-80.

³⁸ Ibidem.

³⁹ IPOA, (2003) *Supporting the MONUC Mandate with Private Services in the Democratic Republic of Congo*, Presentation, [http://www.ipoaonline.org/publications/reports], (Accessed 20 June 2006).

⁴⁰ Ulam, R. (2006) Peace Corp. *The Boston Globe*, [http://www.boston.com/news/globe/ideas/articles/2006/04/23/peace_corp], (Accessed 5 May 2006).

between PSCs and some UN departments, funds, programmes and organisations in the system has been noted, whereby the nature and scope of utilizing the services of private security companies necessitates further investigation.⁴¹ As the UN relies on the private sector to supplement its activities, such partnerships will undoubtedly continue. Farhan Haq stated that the UN's position concerning PSCs has not changed. The following demonstrates otherwise.

Peace Support Operations - Most private functions within the UN thus far have kept PSCs in the background performing logistical support. Some suggest that the very need of the UN and other organisations to contract PSCs has revealed many of the shortcomings in responding to a growing number of crises. During the mid-1990s, the debated successes of Executive Outcomes in Angola and in Sierra Leone were key in altering the course of conflicts both in countries. Ongoing crises such as the fighting in the Darfur region of Sudan, leaving 180,000 dead and nearly two million refugees, is but one recent conflict where PSCs claim to be able to assist the international community succeed in bringing much needed stability to a troubled region.⁴² PSCs though carry plenty of limitations, such as heavy political baggage and possess certain characteristics that will likely limit their chances of use by the UN to assume more aggressive and offensive activities that what currently exists.⁴³ Even so, proponents of private security playing a more central role within peace operations do not only come from the industry itself, but also include senior UN officials such as former Under-Secretary-General for Special Political Affairs, Brian Urquhart.⁴⁴ He advocates using private companies to supplement UN peacekeeping forces in front line operations, where, «in a perfect world we don't need them or want them. But the world isn't perfect».⁴⁵

Logistics and Support Services – Recent manifestations of governments and regional organisation turning over certain functions are evident as the US government relies on private contractors in Iraq, and less so with Economic Community of West African States.⁴⁶ So too has the UN followed this trend, albeit not to the same extent, and in some cases not by its own accord. A UK memorandum of understanding with the UN reserved the UK the right to use private companies to provide some logistical functions as deemed necessary and appropriate.⁴⁷

Specifically, the UN has collaborated with Aegis on at least several different occasions (the company is a registered and active UN contractor, while concurrently acting as a major security provider to the US government in Iraq). In Iraq, in October 2005, amidst high security concerns, the UN Office for Project Support (UNOPS) contracted Aegis to support the UN Electoral Assistance Division and the local election commission in the upcoming constitutional referendum and general elections. Aegis requirements included the provision of a mixed expatriate and Iraqi mobile security component to support electoral infrastructure inspection, liaison with electoral officers, and provide security teams to electoral sites throughout Iraq.⁴⁸ Additionally, Aegis assisted with the actual collection of ballot papers in the referendum to ensure no tampering or manipulation occurred.⁴⁹

In another example, in Afghanistan, leading up to the presidential elections in October 2004, Global Strategies provided operational and logistic support for the UN in the voter registration and voting process.⁵⁰ The Global mandate was quite broad beyond «traditional» security and logistical activities as it was also

⁴¹ UN Commission on Human Rights, Report of the Working Group, E/CN.4/2006/11/Add.1, cit., para. 26.

⁴² IPOA, (2004) *Darfur Crisis*, Concept Paper, [http://www.ipoaonline.org/publications/reports], (Accessed 2 June 2006).

⁴³ Dangerfield, et al. (2002), *Private Military Companies: Options for Regulation: A Response to the UK Government Green Paper*, Master's Degree, Cranfield University, Royal Military College of Science.

⁴⁴ See: Urquhart, B. (1993) For a UN Volunteer Military Force. *New York Review of Books*, Vol. 40, No. 11, pp. 3-4.

⁴⁵ Singer, P.W. (2003) Peacekeepers Inc. *Policy Review Online*, [http://www.policyreview.org/jun03/singer.html], (Accessed 10 May 2006).

⁴⁶ Isenberg, D. (2004) *A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq*, BASIC Research Report.

⁴⁷ Lilly, D. (2000) *The Privatization of Peacekeeping: Prospects and Realities, in Disarmament Forum*, UN Institute for Disarmament Research, No. 3, pp. 53-62.

⁴⁸ Cockayne, Commercial Security, cit., p. 9; and see the Aegis website, [http://www.aegisworld.com/case_studies.html], (Accessed 7 July 2006).

⁴⁹ Rayment, S. (2005) Trophy video exposes private security contractors shooting up Iraqi drivers, *The Telegraph*, 27 November.

⁵⁰ Asia Foundation, TAF-Global Voter Registration & Elections Process in Afghanistan, Factsheet [http://www.asiafoundation.org/pdf/Afghan_globalfactsheet.pdf], (Accessed 7 May 2006).

responsible for facilitating electoral activity conducted by affiliated organisations; liaising with local communities and authorities, and international organisations and military authorities; and even distributed civic education information and job applications. The company believes that its role was critical to the success of the voter registration programme, and paved the way for successful elections.⁵¹

Under examination, there are distressing aspects of distinction that emerge with such relationships. One of the key reasons, and publicly cited, why private companies were used relates them not being considered UN «official» employees, and as such not subject to restrictions under the UN minimum operating security standards (MOSS).⁵² Not being under the UN security umbrella affords increased mobility and freedom to operate in environments deemed too insecure for UN staff. This issue in itself raises questions in that an environment being considered too dangerous and off-limits for the UN, yet still suitable for contractors acting on its behalf.⁵³ However, when one notes that PSC offices and staff working on behalf of the UN in Afghanistan were attacked, including the killing of two Global employees by the Taliban, then the distinction or lack thereof between actors in the wider community may be criticised and may jeopardise UN security - the very reason why MOSS was developed.⁵⁴

Intelligence Services - The technology savvy nature of PSCs also places these actors in a good position for intelligence gathering and surveillance. Better known partnership include the US and its relationship in Iraq with CACI International, or the Colombian government and DynCorp, but also includes the UN and more unlikely users such as the International Monetary Fund.⁵⁵ In this sector, Kroll was hired by the UN for intelligence gathering on several known occasions. In April 2001, a Security Council committee hired Kroll to trace cash used by Angola's rebels, under

arms, oil and diamond trade sanctions for conducting a protracted civil war. The action was an unusual departure for the UN, as it usually relied on information from governments. Additionally, Kroll was contracted on behalf of the UN to document Iraqi industrial and weapons sites. While some critics expressed reservation about outsourcing such activities, then committee chairman, Hans Blix cited «no particular inhibitions about going to the private sector if we can get good and effective instruments».⁵⁶

Staff Protection - The UN has utilised the services of such companies as Control Risks Group and Aegis in Iraq to protect senior UN officials while operating within the country.⁵⁷ It is not uncommon for operators to require some sort of protection in present-day Iraq. However, for the UN to use the services of a PSC is somewhat of a departure. While it appears that this protection was financed by a Member State rather than directly by a UN agency, the services were nonetheless used.⁵⁸ Other companies have sought to profit from potentially lucrative UN security contacts in Iraq and by doing so demonstrate that securing as many contracts as possible makes good business sense. Global Strategies, (the largest PSC operating in Iraq) assisted the Coalition Provisional Authority (CPA) and the Iraqi administration to draft new regulations on security provisions, supplied the security and much of the logistics for the Iraqi currency exchange, while concurrently providing protection for UN offices and senior UN officials and numerous oilfields.⁵⁹

Humanitarian Operations - PSCs have already provided security and support to international and intergovernmental organisations such as UN Refugee Agency (UNHCR), UN Children's Fund (UNICEF), UN Development Programme (UNDP), and the World Food Programme (WFP) in humanitarian and post-conflict settings.⁶⁰ While some experts believe that this relationship between humanitarian actors and private security is growing, others are

⁵¹ Global Strategies Website, [<http://www.globalgroup.com/development/past-performance.php?id=1>], (Accessed 2 May 2006).

⁵² MOSS is a fundamental policy document for all UN field operations. The purpose of MOSS is to establish standard field based criteria for minimum security arrangements to enhance staff security and reduce risk to enable UN field operations. See: [<http://www.uniraq.org/documents/Guidelines%20-%20New%20MOSS%20Instruction%20Paper%20-%2012%20Nov%202002.doc>], (Accessed 20 June 2006).

⁵³ UN Security in Iraq Accountability Panel (2004) *UN Secretariat Summary of Main Findings and Conclusions*, 3 March, para. 116.

⁵⁴ See: MacAskill, E. (2004) Pentagon forced to withdraw leaflet linking aid to information on Taliban. *The Guardian*, 6 May.

⁵⁵ Holmqvist, Private Security Companies, cit., pp. 37-38.

⁵⁶ Lynch, C. (2001) Private Firms Aid UN on Sanctions: Wider Intelligence Capability Sought. *The Washington Post*, 21 April.

⁵⁷ Cockayne, Commercial Security, cit., p. 9.

⁵⁸ Ibidem.

⁵⁹ Isenberg, *A Fistful of Contractors*, cit., p. 35.

⁶⁰ Spearin, *Private Security Companies*, cit., p. 28.

not convinced.⁶¹ Martin Barber, former Chief of Policy Development and Advocacy for the UN Office for the Coordination of Humanitarian Affairs (OCHA), stated that while WFP used contractors to supply food in humanitarian operations, it does not use private contractors for security purposes for a number of reasons, of which include cost, loyalty and that they are potentially politically destructive.⁶² Oppositely, WFP security consultant Anne Paludan endorsed use of professional security companies, and indeed indicated at minimum discussion concerning a pragmatic rapprochement with private security firms.⁶³ WFP was specifically mentioned as procuring PSC service where in some cases it was the only way to operate in a lawless situation among warring factions.⁶⁴ As with Haq and her misinterpretation or narrow understanding of actual UN undertakings, perhaps field information is either not always passed along, or simply not recognized.

Civilian Police-Private companies have also recently adopted international policing functions. While there lacks a clear acceptance of private companies activity of a military nature, participation in international civilian policing appears more tolerable.⁶⁵ Contracting PSCs for policing though is an indirect arrangement. The US for example, does not have an international civilian police force of its own to deploy. Throughout the 1990s and continuing today, the US contracts PSCs to recruit and deploy international civilian police on its behalf. As such, the US contributions for international civilian police assignments deployed to Bosnia, Haiti, Kosovo, and East Timor were all private DynCorp employees.⁶⁶ Another major private contribution was ArmorGroups's contract in 1992, in the former Yugoslavia to provided 425 of the UN Protection Force's (UNPROFOR) 2,000 civilian support staff. Here too,

the UN welcomed supporting contractors within the greater UN family afforded them UN ID cards and full legal coverage.⁶⁷

Demining - This entails more than simply extracting explosives from the ground. Activities include teaching people how to protect themselves in mine-affected environments and advocating for a mine-free world. It is also about business opportunities. With demining operations contracted out in nearly every UN operation the global market has reached \$400 million annually.⁶⁸ Led by the UN Mine Action Service, 14 UN departments, agencies, programmes and funds play a role in mine-action programs in over 30 countries.⁶⁹ Much of the actual work is carried out by NGOs, with commercial contractors not far behind in offering humanitarian mine-action services. On numerous occasions, the UN has contracted companies such as DSL to handle its demining operations worldwide.⁷⁰ Selected other companies involved in UN demining activities include; British companies EOD Solutions Limited and MineTech International; and the US based Ronco Corporation, which has a contentious history including arms shipments contravening a UN arms embargo.⁷¹

The above represents a snapshot of the type of activities that PSCs undertaken on behalf of the UN, and in no way demonstrates the full or possible extent of the partnership. Following the bombing of the UN in Iraq, reports surfaced suggesting that the UN intended to hire «a top tier security firm», to provide all security-related services for UN global operations following a highly critical report that blamed «dysfunctional» UN security for unnecessary casualties in that bombing.⁷² While the UN subsequently withdrew the request, the instance nevertheless exemplifies that private security is more than sporadically used within the UN system.⁷³

⁶¹ Wheeler, V. and A. Harmer (eds.), *Resetting the Rules of Engagement*, cit., p. 69.

⁶² International Alert, (1999) *The Privatization of Security: Framing a Conflict Prevention and Peacebuilding Policy Agenda*, Report of the Wilton Park Conference, 19-21 November 1999, p. 35.

⁶³ Hellinger, *Humanitarian Action*, cit., p. 212.

⁶⁴ Vaux, T. et al. (2001) *Humanitarian Action and Private Security Companies: Opening the Debate*, International Alert, p. 15-18.

⁶⁵ Lilly, *The Privatization of Peacekeeping*, cit., p. 55.

⁶⁶ Avant, *The Privatization of Security and Change in the Control of Force*, cit., p. 155.

⁶⁷ Princeton Project on National Security, *Privatization of American National Security*, Middlebury College, Conference Transcripts, 9 October 2004, p. 8.

⁶⁸ Singer, *Corporate Warriors*, cit., p. 82.

⁶⁹ Electronic Mine Network, [<http://www.mineaction.org/index.asp>], (Accessed 13 May 2006).

⁷⁰ Spearin, C. (2001) *Ends and Means: Assessing the Humanitarian Impact of Commercialized Security on the Ottawa Convention Banning Anti-Personnel Mines*, Occasional Paper No. 69 (York University Centre for International and Security Studies, York University, Toronto).

⁷¹ Allegations surfaced against Ronco that it acted as an arms supplier and during its humanitarian demining in Rwanda in 1995, Ronco reportedly imported explosives in contravention of a UN arms embargo. See: Silverstein, K. (2000) *Private Warriors*, New York, Verso, p. 168.

⁷² Lederer, E. (2004) *UN Intends to Hire Security Firm*, *Newsday*, 4 March, [http://www.sandline.com/hotlinks/Assoc_press-UN_security.html] (Accessed 29 June 2006).

⁷³ Isenberg, *A Fistful of Contractors*, cit., p. 32.

Responses to the Private Security Phenomenon

With private security companies firmly ensconced in the international security sector, as evidenced within the UN, the need for an overarching response is necessary. Thus far, approaches by both the UN and its Member States have been uncoordinated and somewhat ineffective in addressing the overall private security phenomenon. Some individuals have advocated a total ban on PSC operations with the desire to renationalise such activities.⁷⁴ Given the global context of operations, this position is unrealistic, in many circles undesirable, and could ultimately reverse progress thus far by pushing the industry underground away from public scrutiny. Oppositely, some have pressed that companies only require self-regulation, where free market principles will ultimately ensure informal punishment of «bad» private security behaviour and for this reason additional legislation is unnecessary.⁷⁵ This too seems unrealistic and unfavourable by many. Somewhere in the middle of these two extremes lies a compromise. Pinpointing such a position though remains elusive.

Bringing together all industry actors and affected parties to openly discuss how best to address the changing nature of security is critical. Dialogue and information sharing must include all perspectives, private companies, civil society and all users, which has not yet occurred. Even efforts to convene a high-level policy round table with state participation, under UN auspices was deemed not possible owing to UN budgetary restrictions.⁷⁶ A contemporary approach is needed to address this contemporary phenomenon, which, as explored, is presently lacking.

Currently, the UN Mercenary Convention is the only international instrument remotely applicable to the activities of the private security industry.⁷⁷ It is within this context that the UN Commis-

sion on Human Rights mandated a Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, to report on mercenary activities.⁷⁸ The Special Rapporteur emphasised the proliferation of mercenary activity in specific contexts and drew attention to the gaps and ambiguities in international instruments, while concurrently advocating for states to ratify the UN Mercenary Convention. The Special Rapporteur's mandate and the scope of the UN Mercenary Convention both suffer from narrow focusing on traditional mercenary issues or those pertaining to the right of peoples to self-determination.⁷⁹ International Alert, an NGO with special consultative status within the UN, noted that «while the Special Rapporteur's reports have done much to draw attention to the gravity of the situation surrounding mercenary activities and the actions of private security companies there has yet to be any recommendation made for a response».⁸⁰ Additionally, a lack of monitoring mechanisms under the Convention adds vagueness to the almost impossible to prove provision that all requirements must be satisfied prior to an individual being termed a mercenary. Thus, the proliferation of international PSCs has outstripped the effectiveness of the existing legal framework and enforcement mechanisms.⁸¹ The other limitation is the symbolic nature of state support. While offering information to support the Special Rapporteur's efforts, consider that it took until September 2001, (12 years later) for the required 22 state ratifications to bring the UN Mercenary Convention into force. Of the current 28 States parties that have ratified, and the additional nine states having only signed the Convention, only a minority represent Western countries, and those hosting the majority of today's PSC are conspicuously absent.⁸² The list of signatories thus acts almost as a form of *jus cogens* that runs counter to the treaty, in a sense, an «anti-customary law», and weakens any legal impact the treaty might have.⁸³

⁷⁴ Homqvist, *Private Security Companies*, cit., p. 41.

⁷⁵ Homqvist, *Private Security Companies*, cit., p. 42.

⁷⁶ UN Commission on Human Rights, Working Group Report, E/CN.4/2006/11/Add.1, cit., para. 21.

⁷⁷ Singer, P.W. (2003) *War, Profits and the Vacuum of Law: Privatised Military Firms and International Law*. *Columbia Journal of International Law*, Vol. 42, pp. 531-532.

⁷⁸ The Special Rapporteur on the Use of Mercenaries existed since 1987 and was serviced by Enrique Bernalles Ballesteros from 1987 to 2004, and Shaista Shameem from 2004 to 2005.

⁷⁹ UN Commission on Human Rights (1997) Report on the question of the use of mercenaries as a means of violating human rights and impeding

the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur, E/CN.4/1997/24, 20 February.

⁸⁰ International Alert, (2001) *The Mercenary Issue at the UN Commission on Human Rights*, p. 18.

⁸¹ UN Commission on Human Rights, Report on the question of the use of mercenaries, E/CN.4/2005/14, cit., para. 46.

⁸² States currently bound to the International Convention include: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus, Georgia, Guinea, Italy, Liberia, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Moldova, New Zealand, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.

⁸³ Singer, *War, Profits and the Vacuum of Law*, cit., p. 531.

In 2005, in its sixty-first session, the UN Commission on Human Rights ended the mandate of the Special Rapporteur.⁸⁴ A Working Group received a three-year mandate to carry on the work of the Special Rapporteur, although remained hampered by a restricted mandate, in so far as addressing the wider PSC phenomenon. The Working Group agreed to concentrate on the role of the state as the primary holder of the monopoly of the use of force and existing governmental agreements that provide private companies and their employees with immunity for human rights violations.⁸⁵ The Working Group expanded from previous activities noting the range of reported human rights violations in the course of PSC operations and turned towards the business responsibility through emphasizing the relevance and applicability of the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* to the private security industry.⁸⁶ Having only completed one session thus far, the effectiveness of the Working Group remains unknown.

The UN would prefer legislation binding PSC activities on an international treaty basis, both being applicable to states and its own undertakings. Analysts agree though that states are primarily responsible to regulate PSCs operating globally from within their territory as a more realistic and effective option to regulate and control PSCs activities.⁸⁷ In whatever approach, states must ensure that despite ambiguity, relevant mechanisms are necessary to ensure that no acts by PSCs are *ultra vires* or outside the scope of authorised activity.⁸⁸ Remember that any PSC hired by the UN is located within territory of a Member State and should be subject to its legislation. However, only a hand-

ful states have adequate legislation in place reinforcing the UN Mercenary Convention and even fewer with relevant legislation regulating security companies operating out of their territory. As with international mechanisms, current national approaches are rather sporadic and weak, as they have limited effectiveness or even application to the wider PSC debate. There are scattered developments of national legislation addressing a variety of aspects, from mercenaries to regulating private security companies. Those states with noteworthy efforts include Belgium⁸⁹, New Zealand⁹⁰, South Africa⁹¹, the United States, and the United Kingdom⁹².

Thus far, industry efforts have focused on voluntary non-legally binding agreements focused on either individual companies or a wider consortium of industry actors. Eager to develop respect for and legitimise their industry, a number of proposals have emanated from PSCs themselves.⁹³ Many companies have their respective codes of conduct or ethics policies. Some these subscribe to international standards such as the ICRC Code of Conduct or to various UN Conventions. Others though lack any mentioning of such commitments altogether. The industry's most successful attempt to date is the IPOA Code of Conduct.⁹⁴ The IPOA serves to provide leadership within the industry in hopes of raising the level of awareness and standards by which companies must follow. Inherent limitations on vagueness concerning clientele, operations and enforcement leave many issues unaddressed. Furthermore, failure to adhere to the provisions set forth in the code may involve dismissal from the IPOA, with no other specified consequences.

Additionally, recent self-regulation efforts have emerged not only emanating from industry suppliers, but also from clients

⁸⁴ UN Commission on Human Rights (2005) Human Rights Resolution 2005/2, E/CN.4/RES/2005/2, 7 April.

⁸⁵ UN Commission on Human Rights (2005) Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination, E/CN.4/2006/11, 23 December, para. 5.

⁸⁶ UN Commission on Human Rights, Working Group Report, E/CN.4/2006/11/Add.1, cit., para. 32.

⁸⁷ Beyani, C. and D. Lilly (2001) *Regulating Private Military Companies: Options for the UK Government*, International Alert, p. 2.

⁸⁸ *Ibidem*. p. 37.

⁸⁹ UN Commission for Human Rights (2002) The Right of Peoples to Self-Determination and Its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation, Note by the United Nations High Com-

missioner for Human Rights (Report of the Second Meeting of Experts), E/CN.4/2003/4, June, para. 27.

⁹⁰ New Zealand Government, (2003) Mercenary Activities (Prohibition) Act (83-2), 15 April.

⁹¹ *Ibidem*.

⁹² UK Foreign and Commonwealth Office (2002) *Ninth report of the Foreign Affairs Committee, Session 2001-2002: Private Military Companies Response of the Secretary of State for Foreign and Commonwealth Affairs*, Stationery Office

⁹³ Sandline International, (1998) *Private Military Companies -Independent or Regulated?*, White Paper, [http://www.sandline.com/white/regulation.doc], (Accessed 4 July 2006).

⁹⁴ IPOA, (2006) *IPOA Code of Conduct*, [http://www.ipoaonline.org], (Accessed 3 July 2006).

requiring services. This approach so far has been limited, but noticed. Amnesty International and other human rights organisations promote guidelines contained in the 2000 Voluntary Principles for Security and Human Rights.⁹⁵ In particular the Principles ensure that the private security sector observes the policies of the contracting company regarding ethical conduct and promote the observance of international humanitarian law and the practice under these policies should be capable of being monitored by companies or, where appropriate, by independent third parties. The Principles focus on private security within the extractive industry and target companies procuring necessary services. Here too, the initiative suffers from weak language defining circumstances for PSC use and although stated, lacks monitoring and enforcement mechanisms - a shortcoming characterising most initiatives.

Challenges and Issues with Private Security Companies

Within the UN system, efficiency and expediency are sometimes critically lacking and represent key outsourcing criteria.⁹⁶ Here business offers a tempting alternative. There may very well be benefits to choosing PSCs, although financial savings remains debateable, as there lacks any comprehensive cost-benefits analysis across the industry.⁹⁷ In some cases, employing a private company may appear as the only choice, where no other actors exists or offer such services. Industry advocates argue that in some situations business solutions can better address some of the human security problems that plague the international community and that in some cases long-term sustainable peace is dependant on skilled private companies and organisations specializing in peace operations.⁹⁸

While examples of public improprieties may be a rare occurrence while PSCs are under contract within the UN system, agencies cannot wait until they are directly implicated with legal, financial or reputational consequences. One distressing example occurred in Bosnia in 2001. The firm DynCorp was linked to a sex scandal when a number of company employees serving as police trainers composing the 2,100-member US government contribution to the UN international police force were reportedly paying for prostitutes and participating in the sex trafficking of young girls. Many of the accused DynCorp employees were pressured to resign under suspicion of illegal activity, although not one was ever prosecuted.⁹⁹ DynCorp's response to avoiding a repetition of such unlawful actions consisted of requiring employees sign a written statement whereby they understood that human trafficking and prostitution were considered immoral, unethical, and strictly prohibited.¹⁰⁰ This blatant lack of accountability even had industry representatives calling for greater recourse than what occurred.¹⁰¹ While the UN managed to emerge from this incident relatively unscathed, it serves as a strong reminder of the potential damage from affiliations with private contractors.

Policies and Guidelines —In the 1990s, every multilateral peace operation conducted by the UN incorporated private military or security companies.¹⁰² While this relationship between the UN and private companies has indeed grown, its development has been without official institutional guidance. One UN official within the UN Department of Peace Keeping Operations (DPKO) believes that its relationship with PSCs is quite superficial, and mostly limited to leasing of aviation assets and indirect logistics support.¹⁰³ Although they were uncertain, the official claim that it did not appear that DPKO had any specific guidelines regarding PSCs in place at all - and if there were such guidelines or policies

⁹⁵ Voluntary Principles on Security and Human Rights, (2000), [http://www.voluntaryprinciples.org], (Accessed 20 June 2006).

⁹⁶ UN Joint Inspection Unit, (1997) *The Challenge of Outsourcing for the United Nations System*, Geneva.

⁹⁷ Gates, S. and A. Robert (1998) *Comparing the Cost of DoD Military and Civilian Service Personnel*, RAND Monograph Report, MR-980.

⁹⁸ Brooks, D. (2000) Write a Cheque, End a War: Using Private Military Companies to End African Conflicts, *Conflict Trends*, No. 6, July.

⁹⁹ Barnett, A. and S. Hughes, (2001) British Firm Accused in UN «Sex Scandal»: International Police in Bosnia Face Prostitution Claims. *The Observer*, 29 July.

¹⁰⁰ Avant, D. (2004) Mercenaries. *Foreign Policy*, July/August, p. 25.

¹⁰¹ Brooks, D. (2003) Comments on Pete Singers «Peacekeepers, Inc.». *Policy Review*, June 2003, [http://www.hoosier84.com/0306commentsonpkoinc.doc], (Accessed 10 July 2006).

¹⁰² Avant, *The Privatization of Security and Change in the Control of Force*, cit., p. 153.

¹⁰³ Confidential email with UN Official, 12 June 2006.

in place, they were unknown. In fact, the official states that there were not even firm DPKO policies in place concerning disarmament, demobilisation and reintegration (DDR), a core department activity.¹⁰⁴ The same lack of central policies concerning PSCs is also the case for a host of other UN agencies including WFP, UN-HCR and UNICEF.¹⁰⁵ Instead, institutional memory from individual experience appears the primary source of sector knowledge. Employee perceptions on PSCs range from: «in principle we don't use them, although an exception can be made if there is a compelling case»; to «in certain places, like Nairobi, they are almost unavoidable and seem to be generally accepted».¹⁰⁶ Thus when it comes to guidance and policies on how to contract, manage and deal with PSCs, UN agencies have received little support in better understanding the way forward. One of the few examples of regulated UN activity with PSCs is in UN administered Kosovo. The UN Mission in Kosovo (UNMIK) introduced regulations enshrined within the *UNMIK Police Policy and Guidelines on the operation of Security Service Providers (SSPs) in Kosovo*, which govern individual security companies and their employees. Such unique policies appear well ahead of other lucrative PSC markets such as Afghanistan, where firms working with the UN are largely operating in the country without any type of regulation and control.¹⁰⁷ The Afghan Ministry of Interior indicated its intention to register private security companies, but has not yet done so. At this point, little information in the country is centralised, with only sporadic tracking managed by the Afghan Investment Support Agency.¹⁰⁸ This contradicts basic UN criteria for PSC use requiring that companies used are registered by the government of the country in which they are operating and that the government has authorised their use for a specific contract.¹⁰⁹ Alternatively, the ICRC has handled the situation differently and recently addressed such emerging issues in several different ways. The ICRC publicly and fully acknowledges that a more systematic approach is required with the changing nature of security in the 21st

Century.¹¹⁰ In comparison, the UN falls well short of ICRC efforts to public acknowledge and systematically address the issue.

Staffing - In the private sphere, using free market principles would enable clients to openly award a contract to the best company at the best price through considering all relevant factors such as past behaviour and performance. The private security market does not follow all of these principles and may not be exhibit such transparency.¹¹¹ While PSCs themselves have records of employees, clients wishing to procure PSC services have no such resource. It would seem that thus far the only screening mechanism available to hire PSCs is by «word of mouth».¹¹² With no single place within either the international or UN system where information on connections and contracts related to PSC is gathered or processed, coupled with a lack of institutionalised policies, this leaves UN agencies and other organizations at a disadvantage from the very beginning.¹¹³ The recent gold rush resulting from the insecurity in Iraq and Afghanistan has led PSCs scrambling to assemble enough bodies to fill vacant contracts. Some private firms are long-established companies with demonstrated operational experience. However, not all firms possess such notable characteristics. Others appear to be little more than loose groups of adventurers, with plenty of variance in military or security backgrounds.¹¹⁴ The strong potential thus exists for employees to received poor or no training in human rights and international law. This is attributed to the very composition of the companies, where typically they have few permanent staff with most employees hired on short-term contracts. Rapid deployment capacity and the pressure for profitability are not conducive to the solid integration of international humanitarian law into company business practices.¹¹⁵ Concern over industry recruitment has not been limited to outside critics, but also from within the industry itself. The president of the private security contractor Blackwater, Gary Jackson admits that the explosion in recent demand has

¹⁰⁴ Ibidem.

¹⁰⁵ Confidential conversation with UN Consultant, 10 May 2006.

¹⁰⁶ Van Brabant, K. (2001) *Mainstreaming the Organisational Management of Safety and Security*: HPG Report, No 9. London, ODI, p. 56.

¹⁰⁷ Fariba Nawa, F. (2006) *Afghanistan Inc, CorpWatch Investigative Report*. Corpwatch, 2006 [http://www.corpwatch.org/downloads/CorpWatch%20Afghan%20report.pdf], (Accessed 2 July 2006).

¹⁰⁸ Ibidem.

¹⁰⁹ International Alert, *The Privatization of Security*, cit., p. 35.

¹¹⁰ ICRC, The ICRC to expand contacts with private military and security companies, cit.

¹¹¹ Isenberg, A *Fistful of Contractors*, p. 69.

¹¹² Wheeler, V. and A. Harmer (eds.), *Resetting the Rules of Engagement*, cit., p. 75.

¹¹³ Ibidem.

¹¹⁴ Voillat, C. (2005) *Private Military Companies: A Word of Caution*, Humanitarian Exchange, Vol. 28.

¹¹⁵ Ibidem.

resulted in a slackening of recruitment procedures.¹¹⁶ It seems as though the inexhaustible databases of stand-by employees is no longer endless. The company confirmed that to meet staffing numbers in Iraq, employees have been recruited, for example, from former forces loyal to former Chilean President Augusto Pinochet.¹¹⁷ Blackwater though is not alone in its broadened employee search, as other companies have employed veterans of anti-insurgency conflicts in Algeria and former soldiers who fought in the Russian government's war in Chechnya.¹¹⁸

Human Rights - Only while a company is under contract does the client exert real any pressure on the company —not before and not after. In a world moving towards short-term contracts and lump-sum payments, the market for services is quickly becoming pay as you go. A PSC, usually part of a larger holding, another subsidiary, or perhaps trading under a different name may be involved in objectionable activities that go against many UN principles. This could include landmine production, weapons sales and exports, and the training of private militias for exploitative international corporations.¹¹⁹ Similarly, the same PSC may be hired on another contract to provide close protection services to a government official who may be implicated in violent repressive actions against their own citizens, or who is rumoured to be involved in illegal trading.¹²⁰ As PSCs often belong to larger conglomerates, they may also have substantial economic or other interests in countries where security services are indispensable; work several sides of the industry itself; and may be linked or reported to have past instances of human rights violations. To put the industry into perspective, one industry representative asserted that PSCs are not humanitarian or aid agencies and ultimately work for money, not idealism and no one denies that.¹²¹

The UN system though must concern itself both with the issues of perceived and real associations of PSCs and possible

ramifications thereof. The work by UN agencies is built upon its successful implementation of programmes. Alongside this and as important is reputation. The primary purpose of UNHCR is to safeguard the rights and well-being of refugees. UNICEF pledges to assist the most vulnerable through rights protections and promotion. UNOPS respects UN Charter values in their service provision and apply the principles within the UN Global Compact. In one way or another all of these have contracted PSCs. Wider issues such as company associations and past activities should be key considerations on the part of the contracting organisations. Owing to a lack of institutional guidance and information, this is not always possible.

PSCs frequently have had their human rights records called into question. Some legal experts assert that PSCs have little incentive to commit wanton human rights violations.¹²² This is because they are outsiders to the conflict and tend to be apolitical and less involved than those with personal interest. Instead, companies maintain a «hearts and minds policy, which makes their work in the field easier.¹²³ Other PSCs defenders point out a lack of evidence of humanitarian atrocities, and illuminate the alternative: the militaries that they may supplement or replace usually have much worse human rights records.¹²⁴ This however, should not condone or excuse such actions as the lesser of two evils. Assertions by PSCs themselves that they are more accountable and responsible than their predecessors have yet to convince everyone. Systemic and company-wide allegations have also spawned much discussion and debate. One UN report noted the composition of these private security companies left little room for doubt as to their affiliation and makeup with mercenaries.¹²⁵ Being highly concerned with such developments, International Alert recommended to the UN Human Rights Commission to review as a matter of urgency the

¹¹⁶ Holmqvist, *Private Security Companies*, cit., p.29.

¹¹⁷ Franklin, J. (2004) *US Contractor Recruits Guards for Iraq in Chile*. *The Guardian*, 5 March.

¹¹⁸ Thompson, H. (2004) *Washington fields mercenary army in Iraq*, World Socialist Website, 6 May, [http://www.wsws.org/articles/2004/may2004/merc-m05.shtml], (Accessed 29 May 2006).

¹¹⁹ Van Brabant, K. (2000) *Operational Security Management in Violent Environments. A field manual for aid agencies*, ODI, Humanitarian Practice Network, Good Practice Review, No. 8, pp. 345-349.

¹²⁰ *Ibidem*.

¹²¹ Brooks and Solomon, *From the Editor's Desk*, cit., p. 2.

¹²² Zarate, *The Emergence of a New Dog of War*, cit., p. 144.

¹²³ *Ibidem*.

¹²⁴ Brooks and Solomon, *From the Editor's Desk*, cit., p. 2.

¹²⁵ UN Commission on Human Rights (1998) *Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, submitted by the, Special Rapporteur, E/CN.4/1998/31, 27 January, paras. 67-76.

relationship between the private security industry and the protection of human rights.¹²⁶

Training - There is also little exploration concerning the consequences of private contractors supplying training and expertise. The provision of PSC services, may professionalise a national military, however it may also have the reverse effect. PSCs contend that screening procedures carried out by reputable companies reduces the likelihood that employees commit human rights abuses. It leaves uncertainty as to the extent that the company itself would take responsibility for more indirect violations that cause distress and prove problematic within the international community. UN-approved DSL was active in Colombia for a number of years in the 1990s, providing security training to protect British Petroleum's (BP) oil interests from rebel attacks. With BP approval, through DSL, a subsidiary company Defence Systems Colombia (DSC) was contracted to train Colombian police in a number of counter-insurgency techniques. These police were later reported to have kidnapped, tortured and murdered opponents of BP operations.¹²⁷ Throughout the government led follow-up inquiry, accusations rose that DSC officials refused to cooperate with investigators. While not directly involved in the attacks, Human Rights Watch cited the conduct of DSC in Colombia as highly problematic.¹²⁸ Thus far, while general concern has been given to DSL's association in Colombia to human rights abuses, concern that the UN is using this company has been publicly absent.

While not directly implicating PSCs, such developments are alarming given that the seriousness of violations, no matter how closely involved. The definition of the UN Global Compact not

only covers the commission of human rights violations, where there is direct involvement, but also the complicity in human rights violations.¹²⁹ This indirect association should resound with PSCs when undertaking any contract and those who employ them.

Problems of Association - While companies appear to undertake legitimate activities in promoting humanitarian activities, the full extent of company operations and the employees within may be also of interest. Take the example of Tim Spicer, founder and current CEO of Aegis Defence Services, and former spokesman for the UNPROFOR peacekeeping operation in Bosnia. Spicer has a noteworthy history in the PSC industry beginning with Sandline International, where, in the late 1990s, the company was involved in several international scandals.¹³⁰ Similar to activities of Executive Outcomes, the government of Papua New Guinea hired Sandline in 1997 to assist in quelling a rebellion and securing one of the world's largest copper mines.¹³¹ The contract was subsequently cancelled after local military leaders learned of the \$36 million contract. Spicer and Sandline later appeared in Sierra Leone in 1998, as part of a \$10 million contract to restore the ousted government. By importing weapons into the country, Spicer was accused of violating UN and UK arms embargos¹³² (known as the «Arms-to-Africa Affair»¹³³ and was once again linked to securing contracts to recapture highly valuable mining interests. In 2004, Spicer's Aegis was awarded a \$293 million security contract in Iraq by the US government.¹³⁴ Some US officials expressed serious concern over the contract and believed that Aegis's history and the dubious human rights position of Spicer make the company unsuitable to receive such a contract.¹³⁵

¹²⁶ UN Commission on Human Rights (2001) The Right of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation: Written Statement Submitted by International Alert, E/CN.4/2001/NGO/174, 12 March.

¹²⁷ Vallette, J. and P. Chatterjee, (2003) *Guarding the Oil Underworld in Iraq*, CorpWatch, 5 September, [http://www.corpwatch.org/print_article.php?id=8328], (Accessed 23 May 2006).

¹²⁸ Human Rights Watch (1999) *World Report*.

¹²⁹ Gómez del Prado, Some Emergent Trend Arising from the Activities of a New Non-State Actor, cit., p. 2.

¹³⁰ Spicer remains a controversial figure in Northern Ireland because of his defending the actions of men under his command who fatally shot unarmed 18-year old Peter McBride in 1992. See human rights group the Pat Finucane Centre: [http://www.patfinucanecentre.org/pmcbride/mc-bindex.html]

¹³¹ BBC News, (1999) *Asia-Pacific PNG pays up to mercenaries*, 1 May [http://news.bbc.co.uk/2/hi/asia-pacific/333234.stm], (Accessed 12 June 2006).

¹³² UN Security Council (1997) *Resolution 1132, S/RES/1132*, 8 October, para.6.

¹³³ BBC News (1998) *Officials set-up over arms-to-Africa*, 10 November, [http://news.bbc.co.uk/2/hi/special_report/1998/05/98/arms_to_africa_row/211704.stm], (Accessed 12 June 2006).

¹³⁴ Chatterjee, P. (2004) *Controversial Commando Wins Iraq Contract*, CorpWatch, 9 June, [http://www.corpwatch.org/article.php?id=11350], (Accessed 20 May 2006).

¹³⁵ Robertson, N. (2006) *Criticism, Danger for Contractors*, CNN, 13 June, [http://www.cnn.com/video/partners/clickability/index.html?url=video/world/2006/06/13/robertson.iraq.contractors.part2.affl], (Accessed 14 June 2006).

Additional concerns of association include the UN in Afghanistan and its contracting of the firm US Protection and Investigations (USPI).¹³⁶ The company's appeal was that it could underbid its competitors, largely because it spent so little on hiring qualified guards. USPI sparked further controversy over its tactics and close relationships with local warlords. Both the NGO community and the UN have been openly critical of USPI practises, which have been accused of undermining UN efforts within the country.¹³⁷

Accountability - Another serious problem, with potentially profound implications concerns PSCs and their ambiguous legal status within existing international law. While there is the need for co-shared responsibility among industry actors there should be concern when considering or already using PSCs as in reality, they are largely found to be working in a «legal vacuum».¹³⁸ Holding PSCs accountable for their actions is problematic, due to the complex nature of PSC activities and their movement between different legal systems. Militaries have well established legal structures where soldiers are directly accountable for their actions. Soldiers committing crimes can be prosecuted in national courts and additionally may find themselves before the International Criminal Court. The same applies with UN peacekeepers who are accountable to their own national laws - including both military and domestic criminal law.¹³⁹ However, while PSCs might carry out similar military or security functions, as they are not actually a part of any military structure and thus are not bound by such rules and procedures. Furthermore, as PSC employees do not qualify under the narrow and largely outdated international mercenary legislation, their status is even more uncertain.

States are the primary actors within the international system and underpin the framework of international law. However,

there exists a gap between «what should occur», and the reality of «what actually does occur». While general rules of civil and criminal responsibility offer some guidance, human rights law is quite weak in terms of enforceability. This is coupled with that in most cases the very need for PSC services demonstrates a weak or failed state, which thus cannot be relied upon for the provision of a certain type of security service let alone effectively administer its own legal and judicial systems.¹⁴⁰ States have an entrusted duty to ensure respect for existing law and exercise «due diligence» by doing what is required to prevent and punish violations committed by individuals or entities operating on or from their territory.¹⁴¹ While states may have an obligation to investigate nationals who are alleged to have committed crimes abroad, enforcement from this perspective has been largely hypothetical.¹⁴² Some also see that the state in which a company that uses or provides security services has its headquarters, would not appear to bear direct responsibility for such violations, unless directly involved.¹⁴³ Additionally, the legal status of PSCs may also vary considerably depending on the specific context. One case in point is in Iraq, where the former CPA in Iraq stipulated that international private contractors were not subject to local Iraqi laws, but instead those of their home country.¹⁴⁴ In such an instance, the responsibility would revert to home states, which depending on national legislation, could vary significantly.

Some even contend that UN agencies and other organisations that contract private security companies could, beyond a moral responsibility, where the state has limited capacity, be held legally accountable for the conduct of and held responsible for internationally wrongful acts committed by PSCs and their employees.¹⁴⁵ The International Law Commission (ILC) outlined the responsibility of international organisations, whereby:

¹³⁶ Nawa, Afghanistan Inc., cit., p. 15.

¹³⁷ International Crisis Group (2005) *Afghanistan: Getting Disarmament Back on Track*, Briefing, No. 35, 23 February, p. 8.

¹³⁸ Singer, P.W., (2003) *War, Profits and the Vacuum of Law: Privatised Military Firms and International Law*. *Columbia Journal of International Law*; Vol. 42, pp. 521-549.

¹³⁹ UN DPKO, (2006) *Legal Framework for United Nations Peacekeeping Operations*, Standard Generic Training Module, [http://www.un.org/depts/dpko/training/tes_publications/publi.htm], (Accessed 3 July 2006).

¹⁴⁰ Singer, *War, Profits and the Vacuum of Law*, cit., p. 535.

¹⁴¹ ICRC (2004) *The ICRC to expand contacts with private military and security companies*, 8 August, [<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwplList57121414DE8FCAF2645C1256EE50038A631>], (Accessed 30 June 2006).

¹⁴² Cilliers, J. and P. Mason (eds.) (1999) *Peace, Profit or Plunder?: The Privatization of Security in War-Torn African Societies*, Pretoria, Institute for Security Studies, pp. 211-213.

¹⁴³ Cilliers, and Mason (eds.) *Peace, Profit or Plunder?*, cit. p. 214.

¹⁴⁴ Coalition Provisional Authority Order Number 17 (Revised), (2004) *Status of the CPA, MNFI, Certain Missions and Personnel in Iraq w/Annex*, 27 June, [http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf] (Accessed 2 May 2006).

¹⁴⁵ University Centre for International Humanitarian Law (2005), *Expert Meeting on Private Military Contractors: Status and State Responsibility for their Actions*, Report, Geneva, 29-30 August, pp. 31-35.)

The conduct of an organ or agent of an international organisation in performance of functions of that organ or agent shall be considered as an act of the international organisation under international law whatever position the organ or agent holds in respect of the organisation.¹⁴⁶

In such cases, it has been asserted that PSCs hired by an international organisation constitute an organ or agent of that organisation for purposes of attribution.¹⁴⁷ Thus contracting the services of private companies to perform certain activities would not necessarily absolve the contractor of its responsibilities by delegating specific services to private actors.¹⁴⁸

Select legal experts further assert that intergovernmental organisations, including those operating within the UN system, are indeed subject to the reach of general rules of international law, and thus could be responsible for actions by private companies who are under contract.¹⁴⁹ Although the establishment of the existence of both customary rules and general principles of law relies on state practice and state legislation, it is generally accepted that their scope is not only limited to states. If this is the case, then agencies and organisations within the UN may have more than just their reputation at stake, and may have a legal obligation that cannot necessarily be relinquished through contracting a private security company. As an intergovernmental organisation, the UN is under a clear obligation not to violate or to become complicit in the violation of general rules of human rights law by actions or omissions attributable to them.¹⁵⁰

There have also been developments concerning the responsibility of companies themselves. Some suggest that in situations PSCs operating in countries with civil disorder should ultimately

assume *more* responsibility.¹⁵¹ While customary law should be binding on non-state actors, including PSCs and their employees, some argue that this is not the reality.¹⁵² Recent developments to further corporate responsibility include the draft *UN Norms on the Responsibilities of Transnational Corporations*.¹⁵³ Currently when it comes to obligations, international law explicitly imposes rules on states and thus such movements to hold private entities directly accountable requires additional development and investigation. There has even been discussion of widening the scope where corporate entities may be prosecuted within international courts-thus far, this has not yet occurred.¹⁵⁴

It may not simply be an issue of altruism, but beneficial for companies in the long run to be corporately responsible. IPOA President, Doug Brooks supports this and reiterates that the reality of private security, where everyone is worried is probably only five to ten percent of whole industry at most and that we are talking about the smaller end of the industry.¹⁵⁵ Small percentage indeed. In 2004, the CPA reported approximately 60 PSCs with an aggregate total of 20,000 personnel were operating in Iraq.¹⁵⁶ Having to worry about five to ten percent of this figure alone is in itself cause for concern.

The Way Forward

In one example, security expert Christopher Spearin believes that likelihood of the Canadian government regulating PSCs is highly limited until the government itself is directly implicated through public embarrassment by private soldiers.¹⁵⁷ An incident directly implicating another government, or the UN related to

¹⁴⁶ Commentaries to the draft articles on Responsibility of States for internationally wrongful acts, adopted by the ILC at its fifty-third session, Report of the ILC on the work of its Fifty-third session (2001), Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, A/56/10, (Chap.IV.E.2), p. 44.

¹⁴⁷ University Centre for Humanitarian Law, *Expert Meeting*, cit., p. 34.

¹⁴⁸ De Feyter and Gómez Isa, *Privatisation and Human Rights in the Age of Globalisation*, cit., p. 8.

¹⁴⁹ De Feyter, K. (2004) *The International Financial Institutions and Human Rights Law and Practice Human Rights Review*, New Jersey, Vol. 6, No. 1, 56-90

¹⁵⁰ *Ibidem*. (Also see: Andrew Clapham, A. (2006) *Human rights obligations of non-state actors*, Oxford: New York: Oxford University Press.

¹⁵¹ Sandoz, *Private Security and International Law*, cit., p. 211.

¹⁵² Gómez del Prado, *Some Emergent Trend Arising from the Activities of a New Non-State Actor*, cit., p. 2.

¹⁵³ UN Commission on Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*, UN Doc. (E/CN.4/Sub.2/2003/12/Rev.2), 2003.

¹⁵⁴ Kamminga, M.T. and S. Zia-Zarifi (eds.) (2000) *Liability of Multinational Corporations under International Law*, Kluwer Law International, The Hague.

¹⁵⁵ Princeton Project, *Privatization of American National Security*, cit., p. 26.

¹⁵⁶ Isenberg, D. (2006) *The Good, the Bad, and the Unknown: PMCs in Iraq*, Presentation at the Cost Action 25 Working Group 3 Bonn, Germany, 9-10 February, p. 8.

¹⁵⁷ Pugliese, D. (2005) *Soldier of Fortune*, 12 November, [http://www.canada.com], (Accessed 2 July 2006).

human rights abuses, arms trading or a *coup d'état* would prove more than embarrassing, and possibly devastating on many fronts. However, there presently lacks consensus on a way forward. Several obstacles block international progress: an inability to consensually define the industry; the lack of overall clarity about how to address emerging issues; and the demonstrated lack of interest and political will to properly control PSC activities. Together these obstacles have slowed or in some cases stopped policymaking frustrating both supporters and opponents of the private security industry. Given that the UN will engage with commercial security providers with unrelenting and increasing frequency, mostly likely prior to the enactment of effective legislation or outside regulation, it should begin to systematically examine its own internal policies on using PSCs and determine a proper course of action.¹⁵⁸

There currently lacks sufficient systematic first-hand information on the nature and extent of PSCs use within the UN. To commence understanding its present situation, the commissioning of a UN survey would be an important first step. It could take the form of internal comprehensive questionnaires and should include interviews with numerous senior officials. From the outset, existing issues of denial and embarrassment would have to be waived in order to gauge the true extent of PSC permeation within the UN. Using the data gathered from such a UN survey, a report should be published outlining the challenges of using PSCs within the UN system.¹⁵⁹ The report could incorporate survey information and solicit contributions from a variety of UN agencies, offices and departments. Its aim would be to explore issues and challenges currently facing the UN in using such companies (such as ensuring the application of international human rights standards and international humanitarian law) and possibly addressing wider issues that may not have been fully considered (impact on state-building, security sector reform and any legal liability that may stem from PSC actions).

As noted, the UN lacks policies governing the use of private security firms and consolidated information and experience to guide agencies in formulating such a policy. If the UN is going to

continue its use of PSCs then it cannot morally or perhaps legally afford to wait for state action. It is not a matter of usurping the state, but responsibly addressing its own usage could serve as a model for transparency and accountability. This would represent much needed coordination among the diverse activities undertaken in different parts of the UN system attempting to tackle different aspects of this problem. Whether incorporated into a report or a set of recommendations, all branches of the UN system should come together to provide clarity on the true nature of the issues and obstacles facing the UN. Clearly articulated and coordinated policies would not only benefit the UN system, but would be useful to other users, such as the NGO community, which in some cases either base their own policies on UN guidance or employ UN policies altogether. Policy implementation may come through individual agencies, such as UNHCR or departments with broader reach such as DPKO, within its expanded coordination role through the development of integrated missions. Other broader approaches could include inter-agency initiatives such as OCHA, where such guidelines could follow the same approach as with existing OCHA civil-military coordination, or incorporation into existing doctrine. For its own suppliers the UN initiated the UN Supplier Code of Conduct, developed in recognition of the importance of the UN Global Compact.¹⁶⁰ Now in place, the UN must enforce the terms of the Code and demonstrate that the initiative has merit and is enforceable. It remains to what extent such inspections will take place, especially given the context in which many contracts are fulfilled and the lack specific mentioning of monitoring and compliance.

Such actions though are only a partial response to the wider issue. While this may further policy development and give a better understanding as to the use of PSCs, this still leaves many issues unaddressed – further legislation and regulation are issues that must be largely sanctioned by state support or through states directly. A deeper understanding and tracking of the industry in conjunction with better-developed aspects of accountability cannot be accomplished alone through the internal mechanisms of the UN system. Surveys, reports, and policies are only a partial solution to understanding the wider industry and analysing the

¹⁵⁸ Cockayne, *Commercial Security*, cit., p. 21.

¹⁵⁹ The report could follow a similar framework as in: United Nations (1997) *The Challenge of Outsourcing for the United Nations System*, JIU/REP/97/5, Geneva.

¹⁶⁰ UN Supplier Code of Conduct (2006) [http://www.un.org/Depts/ptd/pdf/supplier_code.pdf], (Accessed 4 July 2006).

very need for such services. The nature of the industry necessitates a multitude of efforts. Even if the UN were to establish its own database containing PSC information or establish a group of experts that could source and monitor PSCs operating within the UN, such efforts would still require a certain level of participation and information from states themselves. The UN is only as strong as its members with UN efforts mirroring efforts of the international community bound to many of the same constraints and challenges. Whatever form action takes there ultimately requires a range of measures at international and national levels to address the many gaps in existing responses.¹⁶¹

Within the international community, several avenues pertaining to PSCs should be pursued. These would include, formally expanding the current mandate of the Working Group to fully encompass the private security industry, and press Member States to sign and ratify the UN Mercenary Convention, noting its imperfections and weaknesses, and incorporate it into national legislation. This would demonstrate at least initial a commitment to international mercenary prohibition with additional actions related to PSCs to follow. More complex and longer-term actions by the international community have been suggested, which include: updating the definition of mercenaries within UN Mercenary Convention through additional protocols to bring greater definitional clarity; creating a permanent international body to monitor and track industry activities with an available database¹⁶²; and endorsing the UN Norms on the responsibilities of transnational corporations.

Despite a desire for an international framework Robert Mandel pessimistically, but pragmatically sums up the situation facing the international community and the need for state action:

*The depressing reality is that no international regime regulating private security providers could occur without mounds of paperwork, several years of international consultations, annual conferences in the Hague, dozens of contractor studies, several cycles of international legal reviews that may prove controversial and inconclusive, fights inside and between governments on funding and control, and major debates over its charter, terms of reference, scope of authority, location, staffing, coordination and relationship to the United Nations.*¹⁶³

Thus, according to Mandel, alternative solutions must be sought elsewhere. With the inherent limitations placed upon an international framework, responses of a more localised nature, whether regional, national or through the private sector, are required.

If international measures are viewed as limited, national options also too present their own restrictions. Companies themselves often have small infrastructures, giving them the ability to either transform themselves within one country, or change locations to evade legislation and possible prosecution. Additional limitations of national legislation expose the difficulty in extraterritorial enforcement, although early developments are commendable. The tendency though would be for violations to occur in the theatre of operation, thereby placing home countries at a disadvantage to properly monitor and enforcement activities.

All states should consider model national legislation from other countries when drafting its own legislation to control mercenary or private security activities. Currently there exists a disconnect between those states supporting international efforts and those having developed their own legislation. The two perspectives should converge to form a better supporting framework. Led by the UN Commission on Human Rights, these «best practices» may provide important lessons and direction, such as a prohibition on direct participation in conflict and definitions of military services that should be regulated and the need for transparency.¹⁶⁴ Other aspects include stepping up obligations under international law. Ratifying the UN Mercenary Convention is important, but states should also promote adherence for other states lacking convention ratification. Whilst some believe such regulation will simply drive the disreputable individuals underground or offshore, many hope that an efficient system of regulation would make PSCs more accountable and transparent, and create a greater air of political acceptability and respectability around PSCs. It is only this regulated type of organisation with which the UN family, or others, should consider doing business.¹⁶⁵

¹⁶¹ Lilly, *The Privatization of Security and Peacebuilding*, cit., p. 32.

¹⁶² Such a body could be modeled on the UN Registry on Conventional Arms, with operational standards based on meeting certain principles and standards of human rights and humanitarian law. See Lilly, *The Privatization of Security and Peacebuilding*, cit., p. 27.

¹⁶³ Mandel, R. (2002) *Armies without States: The Privatisation of Security*, Boulder Co. Lynne Rienner, pp. 1-5.

¹⁶⁴ UN Commission on Human Rights, Report of the Working Group, E/CN.4/2006/11, cit.

¹⁶⁵ Dangerfield, et al., *Private Military Companies*, cit., chap.3.

Users and providers of commercial security should also consider further efforts directed towards the business community for starting points in developing frameworks for these assessments. This could include international initiatives already suggested such as the 2000 Voluntary Principles or the UN Norms on the Responsibilities of Transnational Corporations. Increasingly, the IPOA is also working to promote the ability of the private sector to improve peace and stability aspirations of societies affected by conflict. Accompanying this are the inherent responsibilities of engaging in such action. Codes of conduct and self-regulation work to further this aim, but in themselves are not satisfactory mechanisms to adequately ensure proper action and sanctions for improper behaviour. Motivation to participate in the initiative appears driven by industry peer pressure. Pressure would be more effective though if the IPOA was a part of a larger level of industry actors such as endorsement by an independent body or official links with wider voluntary initiatives such as the Global Compact.¹⁶⁶ Other more comprehensive approaches extending beyond declarations with follow-up and legally binding mechanisms are worth consideration. Examples such as the OECD Guidelines for Multinational Enterprises, applicable to all corporate actors are voluntary, but binding at the state level. One industry specific example such as the Kimberley Certification Process (dealing with the diamond trade) consists of voluntary compliance to national legislation.¹⁶⁷

Conclusion

«The United Nations once dealt only with governments. By now, we know that peace and prosperity cannot be achieved without partnerships involving governments, international organizations, the business community and civil society. In today's world, we depend on each other.»¹⁶⁸ This statement by Kofi Annan at the World Economic Forum served to indirectly acknowledge the existing, or perhaps forecast the future relationship be-

tween the UN and the private security industry. The proliferation of the private security industry has been an important facet of this change. Annan was correct in foreseeing that partnerships are required to solve the challenges facing the international community.

Private security is already a multi-billion dollar industry, with a healthy long-term prognosis where global industry annual revenues were reported at \$55.6 billion in 1990 and are projected to increase to \$202 billion by 2010.¹⁶⁹ Moral and legal issues and responsibility surrounding the international private security industry are not as clear-cut as one might expect.¹⁷⁰ The maximum results of the action plans coming out of the current political environment still fall short of the minimum that is really needed to address the issue, which hopefully will not develop into a crisis situation. A clear UN stance on the issue of PSCs and their conduct would carry important normative weight within the international community, even if such actions would not be legally binding.¹⁷¹ As the most recognised international authority, the UN role as a promoter of norms cannot be overstated.

If states and other clients including the UN contract out activities to the private security sector, then budgeting of such activities must include more than monetary resources for contracts, but allocations for proper support systems. It should not alleviate inherent responsibility, both in a narrow perspective, but also in the wider issue of taking the decision to use private security.¹⁷² A host of states combined with a plethora of other users find PSCs useful for implementing activities mitigating their own direct action and thus have largely opposed efforts to restrict, let alone prohibit them. The move towards using PSCs has been a conscious decision. So must the move to ensure that they operate in a proper manner. Political will by all parties is required and should not be the rationale or the justification for limited action. Collective efforts from a variety of partners inside and outside of state and UN apparatuses are imperative to setting up an effective framework.

¹⁶⁶ Pacific Architects & Engineers (PAE) is the only IPOA member who is also member of the UN Global Compact.

¹⁶⁷ Holmqvist, *Private Security Companies*, cit., pp. 47-48. (Also see: <http://www.kimberleyprocess.com>).

¹⁶⁸ UN Secretary-General (1998), *Markets for a Better World*, World Economic Forum Address, Davos, Switzerland, SG/SM/6448, 30 January.

¹⁶⁹ Avant, D. (2002) *Privatising Military Training. Foreign Policy in Focus*, Vol. 7, No. 6, May, p. 2.

¹⁷⁰ Brooks and Solomon, *From the Editor's Desk*, cit.

¹⁷¹ Holmqvist, *Private Security Companies*, cit., p. 45.

¹⁷² De Feyter and Gómez Isa, *Privatisation and Human Rights in the Age of Globalisation*, cit., p. 3.

In *The Prince*, Machiavelli wrote, «Mercenaries and auxiliaries are useless and dangerous; and if one holds his state based on these arms, he will stand neither firm nor safe.»¹⁷³ While focused on states, which should be wary of falling prey to such classification, the UN should equally ensure that its responsible relationship with PSCs does not cause the organisation to be branded along the same lines. The issue of the private security companies or «new mercenaries» facing the international community, and in particular but not limited to the UN, should be addressed by placing it in the flawed context of international relations as it stands today by accepting this reality and moving forward. This should be at the root of the debate and lie at the heart of further action.

¹⁷³ Machiavelli, N. (1515) *The Prince*, translated by WK Marriott, p. 65.

Derechos de autor (Copyright)

Los derechos de autor de esta publicación pertenecen a la editorial Universidad de Deusto. El acceso al contenido digital de cualquier número del Anuario de Acción Humanitaria y Derechos Humanos (en adelante Anuario) es gratuito inmediatamente después de su publicación. Los trabajos podrán descargarse, copiar y difundir, sin fines comerciales y según lo previsto por la ley. Así mismo, los trabajos editados en el Anuario pueden ser publicados con posterioridad en otros medios o revistas, siempre que el autor indique con claridad y en la primera nota a pie de página que el trabajo se publicó por primera vez en el Anuario, con indicación del número, año, páginas y DOI (si procede). La revista se vende impresa Bajo Demanda.