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What future for privatized peacekeeping?

Prospects and Realities in the UN debate

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Sammanfattning

Privata företag som erbjuder militära tjänster till högst bjudande blir allt vanligare. Deras tjänster, vilka inkluderar allt ifrån minröjning, övervakning och logistik till militär utbildning och närstrid, har sålts till stater, företag och organisationer: däribland till FN. De har även erbjudit sig axla rollen som fredsfrämjande soldater in FN insatser. FN har hittills varit mycket tveksam till att ta till sig detta erbjudande, till stor del p.g.a. jämförande med traditionella legosoldatsband och en motvilja att 'privatisera fred'. Som resultat har en seriös utvärdering inom FN av detta förslag uteblivit. Denna rapport undersöker möjligheten att privatisera fredsfrämjande operationer från ett FN perspektiv. Den framhåller att FN har motsatt sig ett sådant initiativ av tre anledningar: en oro att privatisering skulle öka kostnaden för fredsfrämjande insatser, osäkerhet angående dessa företags legala status och ansvarsskyldigheter, samt en farhåga att privatisering skulle kunna försvaga statens våldsmonopol och minska staters ansvarskännande för att bibehålla internationell fred och säkerhet. Dessa är allvarliga och viktiga frågor. Att privatisera fredsfrämjande operationer utan att ta itu med dem är därför inte att rekommendera. Denna rapport hävdar dock att om problemen kunde lösas så har FN mycket att vinna på att privatisera valda delar av sina insatser. En privatisering måste vara villkorlig men dessa villkor är varken ouppnåeliga eller oönskade. FN borde därför stötta och förespråka genomförandet av dessa villkor istället för att motsätta sig en sådan diskussion.

Nyckelord: Privata säkerhetsföretag, privata militära företag, FN, fredsfrämjande operationer, legosoldater, statens våldsmonopol, internationell lag.

Summary

Private companies selling military services are increasingly common on the international arena. Their services, ranging from mine-clearance, surveillance and logistics to training and direct combat, have been sold to states and corporations, and even used by the United Nations for logistics and security. The companies have also offered to bear the blue beret. So far there has been a great reluctance at the UN to take this suggestion seriously because of these companies' resemblance to mercenary forces and an unwillingness to 'privatize peace'. This report explores the future of privatized peacekeeping from a UN perspective. It argues that there are three major reasons that the UN has been more than reluctant to support such an initiative: a worry that privatization would increase the cost of peacekeeping; unease about the legal status and accountability of private contractors; and a concern that privatization would weaken the state monopoly on violence and decrease state responsibility for international peace and security. These issues are genuinely concerning and would have to be addressed before any privatization of peacekeeping could occur. Yet, this report argues, if these issues were attended to, peacekeeping could stand to gain great benefits from partial privatization. Privatization would have to be conditional, but these conditions are neither unattainable nor undesirable. The UN should therefore support and advocate the enforcement of such conditions rather than turn a blind eye to the potential of privatized peacekeeping.

Key Words: Private Security Companies, Private Military Companies, peacekeeping, UN, mercenaries, state monopoly on violence, international law.

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Foreword

This report, originally submitted by the author in fulfilment of a Masters Degree at the University of Queensland, Australia is being published by FOI within the context of Project Africa - Studies in African Security. Private military and security companies are now major actors on the international arena. Africa is no exception. In fact, their presence is particularly frequent on the African continent. A particular historical and socio-economic African context has created both a need for privatized security and an environment in which such companies can flourish. This particular report investigates the privatization of peacekeeping. The great majority of peacekeeping missions take place on the African continent. Plagued by protracted conflicts and complex intrastate wars, Africa is in great need of peacekeepers. Unfortunately UN peacekeeping is over-stretched. Fewer UN member states are willing to commit peacekeeping troops and the states that have been willing have often provided less than ideal peacekeepers from underequipped, ill-prepared developing country armies. Kofi Annan has stated that he, in the aftermath of the Rwandan genocide, seriously considered calling on private companies to keep the peace in a Rwandan refugee camp, where no other troops were available. The privatization of peacekeeping embodies the potential of filling these capability shortfalls. As both a host and recipient to private contractors the debate regarding the future for privatization of peacekeeping directly involves Africa. This report is the first in a security studies series exploring the role of private security on the African continent.

The author would like to thank Professor Alex Bellamy, the University of Queensland, for valuable comments.

Abbreviations and Definitions

DDR	Disarmament, Demobilization and Reintegration – a common peace-building strategy which seeks to disarm and reintegrate former combatants.
DPKO	(UN) Department of Peacekeeping Operations
GPSP	Global Peace and Security Partnership – a proposal for a non-profit PMC.
EO	Executive Outcomes – a former South African PMC closed down in 1999.
MNC	Multinational Corporation
NGO	Non-Governmental organization
PSC	Private Security Company – a company providing largely unarmed non-lethal services, including passive security guards, logistics, mine clearance, risk assessment and intelligence services.
PMC	Private Military Company – a company providing active and potentially lethal services with direct impact on local conflicts, including direct combat, strategic advice and military surveillance, and training of military staff.
PNG	Papua New Guinea
R2P	The ‘Responsibility to Protect’ – a doctrine issued by the International Commission on Intervention and State Sovereignty.
RUF	Revolutionary United Front – a rebel group in Sierra Leone
UNEPS	United Nations Emergency Services – a proposal for the formation of a standing voluntary UN peacekeeping force.
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
WFP	World Food Programme

Statement of purpose and topic

The rise of private military companies has created a number of difficult questions for the international community. Yet, the UN has been unwilling to encourage greater debate over the future of these companies. For better or for worse, PMCs have opened up several options for how to conduct peace operations. The purpose of this thesis is to explore the reluctance of the UN to discuss and evaluate the potentials and problems of relying on private companies rather than state armies for peacekeeping purposes. These questions are asked:

- Why has the United Nations been reluctant to discuss the potential use of PMCs?
- Should it be considering this option?
- What would have to be done to bring this issue to the table?

These questions have been chosen to carefully examine how the United Nations perceives PMCs and move the debate forwards from much of the literature on these companies, which tend to focus on the past – describing and explaining what these companies are, what services they provide and where they have been active – towards analysing their future.

Synopsis

This report begins with a short introduction of the role that PMCs could play in peacekeeping, as well as the role they currently play on the international scene. I outline the potentials of privatized peacekeeping and then move on to explore the UNs reluctance to employ these companies. In the third section I state that the UNs arguments against PMCs fall into three larger categories: economic concerns that the UN would be unable to afford privatized peacekeeping; legal confusion over the status of private contractors and apprehensiveness due to their lack of accountability; and a fear that allowing non-state actors to take responsibility for peacekeeping might threaten the state monopoly on violence, as well as decreasing state responsibility for international peace and security.

After closer examination of these arguments I argue that whilst the use of PMC's might be of benefit to the UN, any such use should be dependent on certain conditions being met. The conditions include various forms of regulation, such as increased transparency and above all judicial accountability. If these conditions cannot be met, the UN should avoid employing these companies. Furthermore, I also argue that the lack of regulation is of great general concern when dealing with PMCs and should not just be a condition for using these companies in peace operations, but a condition for these companies' broader existence. Overall the problems with PMCs could be overcome relatively easily by stricter international legislation and control of these private companies. Yet, I show, the UN has been unwilling to push for any such international regulation because it feels that doing so would legitimize the broader trend of states outsourcing their responsibilities towards international peace and security to the 'dogs-of-war'.

I continue to argue that the fear that the privatization of peacekeeping will diminish states' commitments to peacekeeping is real and valid, without any easy or straightforward solution. For the UN to make any extensive use of these companies in peacekeeping, the issue of regulation and the maintenance of state responsibility for peace would have to be dealt with. The UN should bring these issues to the forefront of discussion to attempt to find solutions to these problems. For the UN to do so it would have to give up its understanding of private military contractors as solely 'evil mercenaries' and evaluate them according to the purpose they could serve as private peacekeepers.

My overall argument is that there are great benefits that could be made by partially privatizing peacekeeping if these conditions can be met, and they are not impossible to overcome. Yet, at present, private contractors are inappropriate as peacekeepers and until these issues have been addressed peacekeeping should not be privatized.

1 Introducing the Private Peacekeeper

Even in situations where the Security Council has called on rapid deployment of peacekeepers to crisis areas, the DPKO has often lacked the capacity to – in a timely and effective manner – implement its decision (Mandel 2002, 17). UN peacekeeping relies on member states' willingness to put their own troops in harm's way. Regrettably the nations with the best equipped and skilled armies have been reluctant to do so. Unwilling to face the costs of humanitarian intervention, particularly the political damage of having body-bags return home, developed states have been disinclined to lend their armed forces to peacekeeping. As a consequence peacekeeping operations have often been performed by under-equipped and ill-prepared developing country militaries (Singer 2003 art). For complex and risky operations the UN has sometimes found it difficult to generate the troops and equipment needed at all. Sadly this means that the more desperate a situation is in need of peacekeepers, the longer it is likely to wait for them (Cook 2002).

Instead of relying on the soldiers that member-states are willing to donate, it has been suggested that the UN should turn to private companies and contract military personnel and equipment (Rochester 2007, 9). The deployment of a peacekeeping mission would then no longer be dependent on timely availability of military capabilities and political will of member states (Bellamy, Williams and Griffin 2004, 51). The UN has nonetheless been less than eager to acknowledge the possibility of hiring PMCs for peace operations. Singer argues that the UN, instead of exploring what it would do when faced with this choice, has treated the issue as too implausible to even consider (Singer 2003a). It judges it obscene to pay professionals to fight wars and finds it embarrassing to even consider the option (Mandel 2002, 135). As a consequence, in cases where member states are unwilling to supply troops, there will be no peacekeeping. The moral argument against mercenary-like contractors, Masterton holds, might suffice if there were other options but, he argues, it "is deeply undermined by States not being willing to act themselves" (Masterton 2004, 5). Standing by to watch genocide as happened in Rwanda, and is possibly happening in Darfur, might be far more obscene than paying professionals to put an end to it (Mandel 2002, 132).

Private Military and Private Security Companies (PSCs) have been used extensively by many individual countries: in Angola, Sierra Leone, Afghanistan and Iraq, for example (Gaviria and Smith 2005; Jefferies 2000; Rubin 1997). The US Government has, since 1994 until very recently, outsourced all its big overseas civilian policing jobs to the American PSC DynCorp, including to fulfil American obligations to international peace operations (Higgins 2004; Witter

2006). On occasion this has led commentators to criticize the US government for not taking its responsibilities seriously enough and deeming the operations not worth jeopardizing its own troops or taking political risk (Lilly 2000a, 6-7). This was particularly the case after the company became involved in a sex-scandal and child prostitution ring whilst working in the Balkans (Bourge 2003; Singer 2004, 17). Similar sentiments have also been expressed after the 'trigger-happy' Blackwater, a PSC operating on behalf of the American government in Iraq, killed 17 and injured 24 Iraqis after it, seemingly unprovoked, opened fire on civilians in September this year (Rubin and Zielbauer 2007).

The UN itself has also directly recruited private companies. The UNHCR, UNICEF, UNDP and WFP, for example, have declared to have used private firms, such as Armourgroup, in security roles to provide protection and enable humanitarian actions to be carried out (Leander 2003, 4; Singer 2003b, 184). The UN has also made limited use of PSCs in its peacekeeping operations for logistical and medical support, including the movement of troops and supplies. In 2006 all 18 UN missions had their air transport and cargo operations managed by private companies, such as DHL (Witter 2006; DHL 2007). Several UN missions have also had private security guards protecting their facilities for reasons of cost saving and efficiency (United Nations 2004, Annex). The Under-Secretary General for the DPKO, Jean-Marie Guehenno, has stated that whilst the UN makes extensive use of private contractors for logistics, placing them 'at the trigger of gun' is a different matter (Mascolo 2007). The new role suggested for private companies would be doing just that: placing them at the front lines of the peacekeeping operation, what Singer calls at 'the tip of the spear' (Singer 2003b, 91-93). Private peacekeepers could be used as rapid reaction forces within traditional peacekeeping operations, going where the peacekeeping core (the traditional national contingent) could or would not want to go to deal with spoilers and outbreaks of violence (Gantz 2003). Alternatively a private military company could form the total military capability of a peace operation where no other troops could be found (Singer 2003a). Blackwater has for example expressed interest in deploying troops and equipment to undertake a UN mission in Darfur (Witter 2006).

Not only might PMCs be the only option in some situations, but it is often argued that PMCs "might be able to do peacekeeping faster, better, and cheaper" than traditional peacekeepers (Singer 2003a). Whilst there clearly are great potentials in privatizing peacekeeping there are also good reasons for rejecting this potential, some of which have already been touched on. The next chapter outlines these reasons focusing on the three most important arguments expressed within the United Nations for rejecting the idea of privatized peacekeeping.

2 Three Reasons for Rejection

When exposed to the idea of private military companies for the first time the reaction is often one of discomfort and rejection. For those with an understanding of the concept of mercenaries, even the thought of the United Nations relying on private contractors for peacekeeping purposes might seem contradictory and inappropriate because of the rogue nature associated with the ‘dogs-of-war’ (Tullberg 2005a, 5). It has been said of the South African PMC Executive Outcomes’ operation in Sierra Leone that “wherever they went civilians stopped dying. The trouble was they only went where the pay-offs were high” (Brayton 2002, 323). This statement summarizes the unease with which many people find themselves thinking about for-profit-only-soldiers conducting humanitarian tasks.

Other than the moral and historical dilemma of associating PMCs with mercenaries, there are three particular reasons why the UN has opposed privatized peacekeeping:

Firstly, there is the argument that the UN simply cannot afford to employ private companies to conduct peacekeeping operations. At present peacekeeping troops are offered to the UN by member states who are economically reimbursed at a flat rate. If peacekeeping was conducted by profit-seeking companies it would become financially dependent on market forces. The cost of recruiting private peacekeepers would be an equation of supply and demand, not of need. Privatized peacekeeping could therefore become more expensive than it already is and the UNs budget would not be able to cover this expense (Mascolo 2007).

Secondly, the legal status of PMCs is unclear. There are different opinions as to whether private contractors fall under the same legal categories as mercenaries (United Nations 2007, 20). Depending on how PMCs are categorized, their use might even be criminal. The legal issue is also important for regulatory reasons. With little definition of what these companies actually are, there is even less certainty of who controls them. If private contractors commit war crimes or break international regulations in other ways, who are they, as non-state actors, accountable to? There are currently no easy answers to these questions and the UN has therefore decided to keep these companies at arms length.

Thirdly, it is argued that relying on privatized (non-state) peacekeeping will challenge the functions of the state (Leander 2001, 9). This is problematic for several reasons. Firstly, member states are unwilling to allow the UN access to this non-state power as they fear it will diminish their own power within UN decision making (Adams 1999; Brayton 2002, 304). Secondly, legitimizing non-

state actors with military capabilities will also challenge the state monopoly on violence. Doing so is likely to lead to rebellion, coups, arms-races and general disorder, which will ultimately threaten peace, not help keep it. Privatizing peacekeeping might thus have an opposite effect than that intended on the recipient country. Thirdly, reliance on private peacekeepers might result in greater 'outsourcing' of peace, eroding states' responsibility for international security.

The purpose of this thesis is to examine the main reasons why the UN has been unwilling to explore the potentials of privatized peacekeeping. Whilst the moral argument against paying soldiers to conduct humanitarian work is an important matter it is my belief that it is not the ultimate 'make-or-break' issue for the future of 'Peacekeepers Inc'. One reason for this is that it can hardly be argued that peacekeeping today is conducted solely for utilitarian reasons. Financial benefits and the political interests of troop-supplying states and wage-earning soldiers are as important an incentive for forming a peacekeeping contingent as the 'global good'. The second reason is that in most minds, particularly in humanitarian matters, the end justifies the mean. If solutions were found to the economic, legal and political problems concerning PMCs the moral issues would not be sufficient reason to reject privatized peacekeeping. The moral issue is intertwined with each of the other three big problems, as are they with each other, but unlike the moral argument the economic, legal and political problems are, on their own, concerning enough to keep the question of privatized peacekeeping at a stalemate.

The following chapters will outline these three major issues in turn and investigate them in greater depth, as well as evaluate counter-arguments and explore options and solutions. They will also evaluate whether these are sufficient arguments not to approach the privatization question.

3 Cost and Effectiveness

3.1 Cost Comparison

Peacekeeping operations are costly, and cost-reductions without reducing the efficiency of the missions would be greatly welcomed. Unlike the view expressed inside UN HQ (Mascolo 2007) it has often been argued that privatized peacekeeping could be more cost-effective than traditional peacekeeping (Lilly 2000a, 3). The U.S. government has expressed this view in an appropriation bill:

The Committee is aware that, in some cases, private companies can carry out effective peacekeeping missions for a fraction of the funding the United Nations requires to carry out the same missions. At a minimum, such companies should be utilized to supplement the number of blue berets and blue helmets which, in these turbulent times, the United Nations is having a difficult time recruiting. (Brooks and Laroia 2005)

Those who argue that privatized peacekeeping would be much cheaper than traditional UN peacekeeping usually compare the UN missions and Executive Outcomes' interventions in Sierra Leone and Angola, where the costs of the UN missions were much larger than those of the private military company (Lawyer 2005, 102-103).¹ A direct cost comparison between UN peacekeeping and PMC interventions cannot be made. The cost of UN peace operations does not just include the cost of soldiers, as does that of the PMC, but also the cost of humanitarian aid and non-military peace-building staff and projects. The cost of UN peacekeeping is seemingly large in comparison to that of the PMC, but so is the actual mission. UN peace operations encompass a far broader range of tasks than PMC interventions, which have merely offered a military solution and do not supply the full range of peacekeeping provided by the UN. The durability of a peace is not solely the consequence of the military solution but also of follow-up measures. To this end UN missions tend to last much longer than any intervention by a private company has. They also employ a substantially larger number of personnel (Lawyer 2005, 102-103).

¹ Executive Outcomes (EO) spent 22 months in Sierra Leone by invitation of the government. At a cost of US\$ 35 million EO worked with local militias and managed to defeat the notorious rebel group RUF, keeping it from capturing Freetown, the Sierra Leonean capital (Brayton 2002, 312). In contrast UNOMSIL spent half that time in Sierra Leone to observe the peace agreement signed in 1998 at the reported cost of US\$ 47 million (Brayton 2002, 313). Neither mission ultimately managed to end the war, after EO was required to leave, the RUF captured much of the country, including Freetown and the diamond mines. ECOMOG eventually expelled the RUF from Freetown but the rebels managed to recapture the capital under UNOMSILs watch and the UN observers were evacuated from the country (United Nations 2000)

Private soldiers are usually better paid than national militaries. Whilst UN operations cost more than private missions, and use larger numbers of personnel, the cost per peacekeeper over time is therefore less than that of the private mission (Lawyer 2005, 102). It is often claimed that PMCs are cheaper than national militaries because unlike soldiers of national armies private peacekeepers do not have to be paid while they are not in operation (Bearpark 2006; Brooks and Laroia 2005). This is of little relevance to UN peacekeeping missions as the UN only pays for operational soldiers anyway.² Privatized UN peacekeeping missions would therefore not necessarily be cheaper if they required the same amount of troops and had the same large scope as traditional peacekeeping operations. This is the argument fronted by the UN. Guehenno has for example argued that the large number of peacekeepers needed to bring about peace in regions such as Darfur could not be supplied by private companies because the UN budget would never be able to fund the hiring of so many private troops (Mascolo 2007). Nonetheless, PMCs can complement traditional peacekeeping by undertaking certain military tasks that they can do better, and cheaper than traditional peacekeepers (Brayton 2002, 322-323). It is often argued that privatized peacekeepers are more capable and skilled peace-enforcers than many states official militaries because of their “comprehensive training, experience and overall skill in the battlefield” (Singer 2003b, 94). The cost-effectiveness in regards to PMCs is thus not that they are cheaper per se, but that private peacekeepers are more efficient so that fewer troops might be needed to fulfil the mandate, subsequently decreasing the cost of the mission (Singer 2003a; Brayton 2002, 309).

Executive Outcomes argued in 1994 that it could have intervened in Rwanda to end the genocide. It claimed that it could have fully deployed 1,500 personnel and equipment in six weeks and estimated that a six month operation aimed at creating ‘safe-havens’ around Rwanda would have cost US\$600,000 per day (US\$ 150 million in total) (Brooks and Laroia 2005). Such an intervention could have deployed earlier and thus saved more lives than the French Operation Turquoise, and the very belated UN reinforcement mission (UNAMIR II), which in comparison took four months to deploy to Rwanda and ended up costing over US \$3 million per day, more than five times more (Bures 2005, 539). UNAMIR II deployed to Rwanda for a period of 1.5 years, but even had EO been required to stay as long, the operation would not have been more costly (Singer 2003b, 186). Had EO been contracted early enough it could possibly have managed to halt the genocide at a sooner date and saved many lives. Had this been the case,

² This issue could however come into question when discussing the benefits of UN standing army, something this paper does not attempt to do.

perhaps then the UN might not even have been required to stay in the country for so long. Early action can make a huge difference to a conflict. Dough Brooks argues that PMCs almost always operate on a two-to-six week deployment. In contrast UN missions rarely deploy effectively in less than six months (Brooks and Laroia 2005). If used as a timely rapid reaction force, the EO intervention might have been sufficient to halt the genocide.³ Quelling violence rapidly would save the UN money in terms of having to fully rehabilitate a country that has been totally destroyed by war. In the case of Rwanda, instead of dealing with country-wide genocide, the UN would ‘merely’ have been facing localized civil-war and rebellion. Other than reducing costs, timely intervention would also have spared life and reduced pain and suffering.

There is no clear evidence that outsourcing peacekeeping would make it cheaper, or that it would be more expensive. The potential of privatized peacekeeping rather lays in greater flexibility, greater capacity and its rapid reaction potential; in short a more efficient or better service (Schooner 2005).

3.2 Market Forces

Executive Outcomes was able to defeat the RUF in a span of weeks. Its victory brought enough stability to allow Sierra Leone to hold its first election in over a decade. After its contract termination, however, the war restarted. In 1999 the U.N. was sent in. Despite having a budget and personnel size nearly 20 times that of the private firm, the U.N. force took several years of operations, and a rescue by the British military, to come close to the same results. (Singer 2003a)

Where coercion and enforcement is needed PMCs might be able to do a better job than traditional peacekeepers, nonetheless, peacekeeping missions relying on PMCs must be able to do whatever else traditional peacekeeping missions and peace operations do. UN peacekeeping is more than just a reliance on military force to ‘manage’ conflict. The function of a military peacekeeping body is to create an environment in which the fundamental causes of conflict, such as political and socio-economic grievances, can be addressed (House of Commons 2002, 18). It also includes responsibility for certain peace supporting tasks essential for long-term stability. Brayton argues that many peace supporting measures, such as DDR programmes for example, are “expensive and time and

³ EO, however, suggested sending only 1,500 personnel (Bures 2005: 539) whilst UNAMIR II was mandated to comprise 5,500 troops. There is an ongoing debate regarding whether 1,500 troops would have been enough to stop the genocide (See Kuperman 2001). Kuperman also argues that, whilst lives could have been saved by intervening against the genocide at any stage, almost all of the damage and killing occurred within the first five weeks of the genocide.

labour-intensive activities [...] that eat up resources and profit” and therefore might be unsuitable for private companies (Brayton 2002, 322-323). If privatized peacekeeping suddenly became unprofitable (which Bures (2005, 540) argues is likely due to the humanitarian nature of peacekeeping) the commercial entities supplying the peacekeeping troops would be forced to pull out of the mission, possibly abandoning the UN when it needs them the most. Singer argues that such hasty withdrawal by the company itself could be regulated by contract and would likely also be so by market forces: companies with a reputation of early withdrawal might find it difficult to recruit new clients. Unfortunately, he states, this is not the case with the employees of the PMC. If operations become too risky, too long-drawn or unprofitable the contracted soldier can simply decide to leave the mission. Because private contractors are not bound by military law and can not be forced to stay and fight or penalized for resigning, such a decision would be relatively easy to make (Singer 2003a). PMCs might be able to find new personnel but if the operational environment is high-risk and the pay-off too small it might find difficulties in convincing new recruits to join the mission and could no longer rely on free-choice amongst a range of high-quality soldiers.

The private sector might be able to handle political costs, such as taking casualties, and will often continue to function in high risk situations where state armies might choose to pull out (Brooks and Laroia 2005). Its profit-making nature does, however, make it less reliable when faced with economic costs, which are likely to increase in high-risk situations. It can be argued that the competitive nature of private companies will drive costs down according to the classical template of supply and demand. The problem with this argument is that whilst the demand is evident, the supply factor may not be as much so. If the United Nations’ hiring of PMCs would be highly regulated, as is desirable, the presence of competition could not be ensured. There are no guarantees that several companies would be willing to undertake a mission in a high-risk environment whilst also living up to UN standards. Where such competition is not present it is not certain that outsourcing would be economically beneficial (Spearin 2001, 32). If the UN increasingly relies on private contractors instead of member states’ contributions, it is also likely to shift perceived responsibility for peacekeeping away from member states and onto the private sector. This would make it even less likely for members to supply national contingents where private companies cannot do so cost-effectively, further driving up peacekeeping costs as the demand would outweigh the supply. This is an issue of importance that would have to be dealt with should the UN increase its reliance on PMCs. Whilst using PMCs for peacekeeping could be cost-effective the company might find time consuming and labour intensive activities less lucrative. One condition

for employing PMCs is thus a legal commitment not to withdraw if the operation becomes unprofitable.

3.3 Summary & Evaluation

Singer states that the key to any privatization is that something should only be privatized if it then can be made cheaper or better (Singer 2005). Peacekeeping is expensive and could benefit from privatization if privatization could reduce costs whilst still doing the job effectively. It is difficult to make cost comparisons between PMCs and traditional peacekeeping. In terms of individual peacekeepers the cost is usually higher for employing private contractors. Nonetheless, it can be argued that private contractors are more cost effective: you get more peacekeeping per peacekeeper, or “better bang for the buck” (Singer 2003a). Potential professionalism, better training and greater flexibility amongst PMCs could mean quicker deployment and more rapid and effective reaction forces that can offer timely and effective peacekeeping. For longer term peace support measures, where the emphasis is not on the efficiency of the individual peacekeeper but on time-consuming tasks, privatized peacekeeping may not be as cost-effective, although it is not certain that it should necessarily be more expensive either. Unexpected changes in cost during a mission, as well as sudden pull-out, could be managed and prevented through contractual regulation ensuring that missions could not be abandoned even in unprofitable environments.

The best way forward would be to combine the use of private troops with the employment of traditional peacekeepers using the private companies for tasks and missions for which they are cost-effective. The condition for such cost-effective peacekeeping would be an insurance that increased reliance on PMCs would not reduce member states’ continuous contributions to UN peacekeeping. A forced and constant reliance on PMCs could create an unfavourable situation where the UN would always be forced to employ peacekeepers at market cost. The financial argument is genuinely concerning, but not a sufficient argument for not approaching the matter since if certain conditions were met, partly privatized peacekeeping could be gainful. For certain tasks it is likely to be cheaper to rely on private contractors and for others it may be cheaper not to. In terms of cost-savings and cost-effectiveness in situations where traditional peacekeeping is unavailable or belated, using PMCs is likely to be more cost-effective and humanitarian than inaction.

4 Legal Definitions and Regulation

David Wimhurst, spokesman for Guehenno at the DPKO, has argued that the UN relying on PMCs would be equal to throwing a “gang of mercenaries” into a peacekeeping situation because of lack of control, regulation and accountability of these private entities. Asking “who do they report to? Who controls them?” he describes the potential use of privatized peacekeepers as a ‘nonstarter’, an argument reportedly typical within the UN (quoted in Hukill 2004).

There are some greatly concerning issues regarding the legal definitions of PMCs, as well as their liability. Three particular legal objections against employing PMCs for peacekeeping are frequently made: the legal resemblance of PMCs to mercenaries and lack of straightforward legal definitions separating the two; the lack of regulation and accountability for eventual crimes and human rights abuses by PMCs and their employees; and the lack of monitoring of PMCs behaviour and compliance with existing regulation and international law.

4.1 The Mercenary Connection- Legal Definitions

PMC employees are often accused of being mercenaries, commonly defined as someone who involves him- or herself in a foreign conflict on the basis of financial gain. There is clearly a link between mercenaries, mercenary-related activities and the activities of private military and security companies. However, there is no clearly defined or commonly accepted definition of the exact relationship between private security contractors and mercenaries. The international legal basis for the identification of mercenaries, the Geneva Convention, uses six narrowly defined criteria for establishing who can be considered a mercenary (United Nations 1979 see Appendix 1). For private contractors to be labelled mercenaries they would have to satisfy all six conditions. Particularly, they would have to take direct part in hostilities, be foreign to the conflict and motivated by financial gain.⁴ According to the Geneva Convention, PSC employees who do not take direct part in hostilities would therefore be excluded from the definition of a mercenary. As would private contractors who are recruited locally, either employed by a PMC or trained by one, and not paid more than combatants of similar ranks and functions in the national army (Beyani and Lilly

⁴ Unlike the Geneva Convention the UNs ‘International Convention against the Recruitment, Use, Financing and Training of Mercenaries’ does not specify that a mercenary needs to take direct part in hostilities. It does however specifically address situations where the goal is to violently overthrow and undermine the constitutional order or territorial integrity of a state (UN 1989).

2001, 19). If the private contractors were foreign but officially incorporated into the armed forces of the state concerned they would also escape mercenary status. This was the case with the British PMC Sandline's intended intervention in Papua New Guinea where Sandline personnel were termed 'special constables' in the contract signed with the PNG government (Lilly 2000b, 12).

It has been argued that the Geneva Convention's definition is so narrow that it becomes almost meaningless. Shearer (1998, 18) argues that "any mercenary who cannot exclude himself from this definition deserves to be shot—and his lawyer with him". The narrow definition was designed to ensure it could not be misused to deny combatant and prisoner-of-war status to legitimate combatants (Beyani and Lilly 2001, 15; Leander 2003, 7-8). The Geneva Convention does not criminalize mercenary activities but denies mercenaries such status (United Nations 1979).⁵ This means that a captured mercenary is protected only by the common and most basic human rights (Beyani and Lilly 2001, 16). Despite common association of PMCs with mercenary forces it has been argued, even by the UN, that PMCs "cannot be strictly considered as coming within the legal scope of mercenary status" (Lilly 2000a, 10; United Nations 2007, 20). Nonetheless there is little consensus on how to define PMCs: what status they do encompass and what their legal restrictions in conflict situations should be (Cameron 2006, 575).

The primary issue, Cameron argues, is to decide whether private contractors are civilians or combatants. This is to determine whether they can legally be targeted in military attacks and lawfully participate in hostilities or whether they can be prosecuted for doing so (Cameron 2006, 582). Even contractors who do not fulfil hostile roles are not quite civilian since they perform critical military roles: carrying and using weapons, interrogating prisoners and loading bombs, for example (Singer 2005). Neither can they always be described as combatants since combatant status is tied to membership of an army, militia or volunteer force that belongs to a party of the conflict and encompass certain other criteria (Cameron 2006, 582, 584). The distinction between civilians and combatants is not easy to make. Yet, international law defines anyone who is not a combatant as a civilian. If contractors are civilians they have no legal right to participate in hostilities and can therefore be punished in a criminal justice system if they do.

⁵ A person defined as a mercenary under the Geneva Convention may only be prosecuted for being a mercenary if the state in which the offense was committed has separate legislation designating mercenarism a crime. Unlike the Geneva Convention, the UN Convention on Mercenaries establishes that persons who fulfil the definition of a mercenary may also be prosecuted for the distinct crime of being a mercenary. (Beyani and Lilly 2001, 24; House of commons 2002, 22)

This does not legally define the private contractors as mercenaries, but the consequences are identical (Cameron 2006, 587, 592).

This lack of clarity means that when contractors are captured, their adversaries get to define their status. The results of this uncertainty can be dire – as they have been for three American employees of California Microwave Systems whose plane crashed in rebel-held territory in Colombia in 2003. The three have been held prisoner ever since, afforded none of the protections of the Geneva Conventions. (Singer 2005)

Other than the problem of how to protect private contractors, such blurred distinctions between civilians and combatants have important implications for the safety of civilians at time of war. Bellamy and Williams argue that a confusion of the meaning of direct participation in hostilities “risks further eroding the distinction between combatants and non-combatants that is crucial to the limits of war” (Bellamy and Williams 2004, 191). Such erosion has become increasingly common; civilians are no longer the random victims of war but are increasingly “the principal targets of armed conflict with a growing number of casualties being civilian” (Makki 2001, 1).

The current international definition of mercenarism is demonstrably unhelpful for regulating these companies. Many of the definitions of mercenaries are non-applicable to PMCs and the confusion surrounding the status of private contractors is a threat to both themselves and the civilians around them. For private contractors to be employed as peacekeepers, new laws clearly defining their status are essential. This is particularly important in relation to their judicial accountability, as will be further argued in the following section.

4.2 Accountability

Enrique Ballesteros, former UN Special-Rapporteur on the use of mercenaries, has argued that private contractors are more likely to commit human rights abuses and disobey the rules of international law because complying with such laws is not as cost-effective as breaking them and could potentially decrease the comparative advantage and profit-making of a PMC (United Nations 1999, 28).

Lilly states that the assumption that private military contractors should be more prone to commit human rights abuses than the traditional soldier is an unverified supposition. He admits that the popular notion of a for-profit-soldier is of a rogue person with little respect for human life and the ‘rules of war’. Nonetheless, there is no scientific evidence that there is a connection between fighting for financial gain and committing human rights abuses: “It is by no means certain, though, that an individual that fights for financial gain should necessarily be more likely

to commit human rights abuses than someone whose motivation is ethnic or national” (Lilly 2000b, 24). In fact, some have suggested that their professional nature might make private contractors more disciplined and respectful of human rights than national armies, particularly the state militaries of failed states and developing country peacekeeping forces, who often may be equally motivated by profit (Bures 2005, 542; Brayton 2002, 319).

The issue with privatization of military force is not solely whether private contractors are naturally more prone to criminal activities. The issue is the fear that privatization will lead to a lessening of accountability when crimes are in fact committed. The recent record has been one of impunity. Some DynCorp employees, for example, allegedly involved themselves in the running of a child prostitution ring whilst working in the Balkans. After having fired the whistleblower DynCorp brought the men back to the United States, out of the hands of local authorities. The men have never been prosecuted (Bourge 2003). Such impunity is a huge problem when dealing with private contractors and obviously a great concern for the United Nations. For the past three years roughly 100,000 American contractors have lived in Iraq. Despite numbering the population of a smallish city there has not been even one single prosecution for an incident of violence (Rubin and Zielbauer 2007). The lack of prosecutions is not due to remarkably good behaviour of the contractors: several complaints of improper violent behaviour have been made, with at least 20 cases referred to the US Justice Department and then “disappeared into a black hole” (Herszenhorn 2007). In an ordinary town such a situation would have been disgraceful. The problem is that no one really knows what to do with them, and what laws should apply.

Who is responsible for the human rights violations committed? The company will say it is the mercenaries acting individually or abusing their powers. The State will say that responsibility lies with the company and not with its own officials or forces. (United Nations 1999, 23)

In traditional peacekeeping, whilst the UN is responsible for the overall mission, individual troops and contingents are held accountable to their own national governments. Because the private contractor would not be tied to a particular government there is an absence of proper provisions for accountability should they commit any wrongdoings (Lilly 2000a, 11). When human rights abuses are committed by PMC employees, regulation needs to exist to ensure that someone will be held accountable (Lilly 2000a, 11). Such regulation is currently non-existent.

Impunity in a peacekeeping operation could delegitimize the mission. For PMCs to be contracted as peacekeepers there would have to be some provisions for accountability if crimes, such as those described above, were committed. One solution to this is to hold private contractors legally accountable through contractual regulation. Just as with any PMC operation, private contractors in a peacekeeping mission would be bound by a contract. In the absence of general regulation the UN could issue contracts with accountability clauses. Instead of being prosecuted by their national governments, private contractors suspected of having committed international law violations could be taken directly to the International Criminal Court. A clear stance on what is expected of private contractors, as well as clear directions of what will happen if these standards are not lived up to is essential, not only for the UNs relationship with private military contractors, but also with the security companies that the UN is already frequently employing.

4.3 Monitoring and Regulation

Despite frequent use of PSCs by the UN and associated organizations, the UN has been reluctant to push for international regulation of these companies, rather arguing that individual states should make legislation that will prohibit or regulate the use of PSCs and PMCs (Benavides 2006). The reason for this is the fear within the UN that discussing their regulation is to accept their presence and could falsely legitimize something that should really just be abolished.

Even if it is true, as often stated, that the mercenary business is here to stay this is no good reason to accept it, let alone encourage it. We do our best to limit a number of other activities which have also been around for long and are likely to stay with us, such as slavery, organised crime, trade in humans or discrimination against women". (Leander 2001, 16)

"Must the Commission on Human Rights accept such a situation? Is it not obvious to the international community that the trend is to replace traditional peacekeeping forces, which, under international law, are the responsibility of the United Nations and regional organizations, by operations carried out by these companies? [...] The Commission should pay priority attention to the fact that a kind of privatization of war is being promoted through unilateral positions implemented by these private companies, with unforeseeable implications for the exercise of human rights. (United Nations 1999, 23)

Between this view and the counter argument that PMCs might be able to provide a useful role under the condition of their regulation, Mandel argues, the debate has been brought to a standstill (Mandel 2002, 132).

The UN has taken a hard-line stance against private military firms and abdicated any role it could have played in promoting regulations to control the activities of PMCs. The only international regulation promoted by the UN to deal with PMCs has been the creation of the 'International Convention against the Recruitment, Use, Financing and Training of Mercenaries'. The International Convention on Mercenaries was adopted in 1989 but only came into force in 2001 after 22 member states finally had signed and ratified it (Beyani and Lilly 2001, 24; House of Commons 2002, 22). It has been argued that the Convention on Mercenaries is the only international instrument applicable to the activities of private security companies (Lilly 2000b, 26; Beyani and Lilly 2001, 24). This is because Article 2 of the convention specifies that "any person who recruits, uses, finances or trains mercenaries[...] commits an offence for the purposes of the Convention" (United Nations 1989). Cameron states that it must, however, be noted that none of the states that has a significant number of PMCs operating from, or on, their territory are parties to the convention (Cameron 2006, 581). The UK has for example argued that it is not a party to the convention because it is doubtful of its enforceability (House of Commons 2002, 22). With the promotion of this convention the UN has essentially hoped to ban the use of PMCs. Unfortunately, for this to work there would have to be a clear and non-ambiguous association between PMC employees and mercenaries. As I argued earlier, the definition of Mercenarism is demonstrably unhelpful for regulating these companies because it is not clear whether they fall into this category or not. Furthermore the lack of support for the Convention shows that most states are not readily willing to give up their right of employing these companies.

What is needed is international legislation that distinguishes between traditional mercenaries and PMCs, and regulates PMCs on their own term. Other than laws prohibiting mercenarism in general, there are few legal safeguards to prevent private firms from working with non-state actors and illegitimate governments (Lilly 2000b, 14). This is particularly concerning because these private companies are very active worldwide. Another important issue is the monitoring of human rights abuses by private contractors. This is a difficult task. There is little verifiable information on these companies' human rights record, particularly because situations that require the employment of PMCs are by standard areas where there is inadequate monitoring of human rights (Lilly 2000b, 24). Since no international regulatory scheme exists PMCs are only regulated by the domestic laws of their state of origin, or the state in which they conduct their operation. These types of regulation are problematic. Just as other transnational corporations PMCs can easily relocate to states with more relaxed legislation if the laws of its home state are difficult to comply with. Leaving the legal monitoring up to the recipient state is also likely to be unsuccessful: peacekeeping and

other military operations which may be conducted by PMCs are most likely to take place in failed states, in which legal regulation is usually dysfunctional or absent (Bures 2005, 541; Gantz 2003). Furthermore, it is increasingly common for PMCs to be hired by non-state entities such as NGOs, corporations and international organizations, which make it even more difficult to determine who they should be legally accountable to (Gaultier et al. 2001, 13).

A non-profit trade association entitled "International Peace Operations Association" (IPOA) has made it its objective to promote the use of PMCs and PSCs, which it refers to as 'peace and stability operations organizations', in peace operations and by humanitarian organizations. IPOA argues to be increasing the accountability of PMCs and has created a code of conduct to which adherence is compulsory for all members (IPOA 2006b; Spearin 2003, 240). IPOA enforces this adherence through its Standards Committee which lodges, registers and reviews any complaints against a member received by the organizations. IPOA is unable to take legal action against the member subject to a complaint but if it accepts the merit of the complaint it can sanction the member through probation, expulsion or other disciplinary actions (IPOA 2006a). In addition to this code of conduct Dough Brooks, the head of IPOA, has declared that IPOAs members would welcome impartial observers to monitor the behaviour of its employees (quoted in Hukill 2004). Such observers might be a useful tool for monitoring human rights and general conduct of private contractors; possibly they could even be granted power to veto certain actions by the PMC (Singer 2003a).

Even if the UN would decide not to employ PMCs for peacekeeping operations it needs to develop standards for the PSCs that it already contracts. Since contracting by the UN will automatically lead to greater international legitimacy, something desired by PSCs, public scrutiny might lead to improved standards amongst these companies (Holmqvist 2005, 45-46). IPOA has suggested observation of private security and military employees' behaviour and closer scrutiny of backgrounds, including criminal records, when employing private contractors (Hukill 2004). The vetting of private contractors might not be a panacea to preventing human rights abuses since, as Singer notes "prospective employees' resumes do not have an 'atrocities committed' section" (Singer 2003b, 222). Nonetheless, if monitoring of PSCs was conducted by an international organization, a database of private contractor's credentials could be created. Singer notes that individual companies might be reluctant to report abuses by its staff to legal authorities for fear of gaining a bad reputation (Singer 2003b, 222). However, reports of impunity are likely to be equally damaging. Ideally in a peacekeeping mission there would be independent observers to make such reports. It has been argued that international standards for contracting processes and monitoring of private security companies needs to be created. Suggestions have been made that

the UN, or another international organization under auspice of the UN, could monitor PSCs and PMCs and register those companies it saw adhered to the regulation in a database. It could amongst other things provide outside vetting of personnel, create independent observer teams and ensure that private contractors fall under the jurisdiction of the international court of justice (Singer 2003a, 2004, 17; Lilly 2000a, 11; Lilly 2000b, 27; Shearer 1998, 77, 79). Specifically the UN could formulate criteria and standards that PMCs would have to fill to qualify for contracts with the organization (Holmqvist 2005, 45).

4.4 Summary & Evaluation

It is unclear whether the legal definition of a mercenary applies to private contractors. Where they are foreign to a conflict, motivated by financial gain and participate directly in hostilities they could legally be considered mercenaries. Yet this label does not apply to all private contractors and can be overcome relatively easily. The legal concern is rather whether the private contractor is a civilian or a combatant. Private security employees may not actively participate in hostilities, but can still perform critical military roles. Because there is no category of quasi-combatants in international law this causes problems for protecting ordinary civilians as well as defining the status of the private contractor, including whether his or her legal responsibilities should fall under civilian or military law. Current international law, including the definition of mercenaries, is insufficient to deal with the concept of PMCs. Further legal control and regulation is needed for deciding what responsibilities private contractors and their employers have, particularly in terms of accountability for war crimes and other offenses. International law needs to define whether they are accountable as civilians or combatants and whether the individual contractor, the private company employing him, the host state, or the home-state of the company is primarily responsible for the behaviour of the contractors, as well as the overall company. This would be particularly important should the UN utilize these companies for peacekeeping. It would reflect poorly on the UN itself if these companies bad behaviour was not held to scrutiny. Whilst there is no evidence that private contractors are more prone to commit human rights abuses or other crimes than traditional soldiers, occasions when they have engaged in such activities have been characterized by impunity. This is not acceptable, and whilst such impunity is the norm these companies should be banned in total, little yet be allowed to conduct peacekeeping operations.

Overall these problems are not impossible to overcome. Issues of accountability and transparency could be overcome relatively easily by contractual regulation and/or licensing schemes. The matter of legal definitions and the mercenary

connection is more complicated since it would require specific changes to international law. The international community, of which the UN is the forefront, would have to play a big role in pushing for such regulation. As the situation is now it would be inappropriate to use these unregulated and ill-defined companies for peacekeeping. It is therefore somewhat understandable that the UN has given the more military inclined companies the cold shoulder. The fact is, nonetheless, that many of these companies – albeit the more security oriented – are used by the UN, and both PSCs and PMCs are frequently used by many individual states. The lack of regulation of these is concerning and the UN might be doing itself a disservice by not seeking to bring these companies closer to the UN system, since that would have to entail greater transparency and accountability of the companies.

5 State Responsibility and Monopoly on Violence

Thomas Hobbes argued that the state should have the monopoly on violence so that the world would not succumb to “a war of all against all” (in Steetjens 2004). Max Weber, in his turn described the monopoly on the legitimate use of force as a cornerstone of the modern nation-state (in Steetjens 2004). One great concern regarding the use of private military and security companies is the effect that their use might have on the state monopoly on force and violence.

Ballesteros, the UN rapporteur on mercenaries, has condemned the use of private military companies on the ground that they, just like traditional mercenaries, jeopardize the independence and sovereignty of states and challenge the state’s very existence by interfering with its responsibilities. By doing so, he argues, PMCs violate people’s self determination and threaten human rights (United Nations 1999, 23). It is feared that the presence of private military companies will result in the weakening of state structures, as the monopoly on violence is increasingly lost. There is also the related concern that the amplified supply of military services will push the demand for the same services: as armed irregular forces appear more frequently they will destabilize secure environments and create a need for increased security, often to be provided by employing even more non-state forces (Leander 2001, 9).

5.1 The Ultimate Monopoly

In the Weberian view the state is sovereign in creating the legal order and in enforcing compliance with its rules. It does so through the use of physical coercion by means of its military and police forces (Maogoto 2006, 1; Jose 2006, 2). Force is regarded as a form of political authority that is accepted as legitimate only when coming from the state. The state monopoly on violence exists to preserve minimal order within and between states and guarantee that certain rights are not overhauled by illegitimate actors (Leander 2002, 5). If state structures, such as the military and police, are weakened to the point that the monopoly on violence is broken, the state can no longer guarantee obedience to and respect for the rule of law (Jose 2006, 7). Andersson argues that “a shift in a society’s control of force has the ability to severely change the political scene of any state” (Andersson 2005, 5). Such shifts might lead to coups and civil wars as state authority is challenged. In the worst case scenario, the state could cease to exist.

Wulf argues that the monopoly on force assumes the disarmament of the citizens and an understanding that conflict is to be solved peacefully, through legal measures for example. Only the state has the right to use violence – whether against its citizens or other states; not the citizens against each other, against the state or by individual will against another nation. In a war situation this monopoly is likely to have been eroded and a main task of a peace-building effort is to re-establish the control of force (Wulf 2006, 33). Reliance on private actors can counter-balance the peace effort by undermining the state's role as the only entity with a legitimate right to use force. Furthermore, the national military's prestige and social standing may be threatened by employment of a PMC which could upset relations between the army and the state, as well as the army and the citizenry (Andersson 2005, 10; Hemberg and Karlsson 2007, 6).

Some observers argue that the weakening of state structures in the post-colonial era has itself led to the rise of PMCs. In weak states where the state monopoly on violence has been challenged a desire to recruit private companies to help restore state control has arisen (Leander 2001, 3; Lawyer 2005, 100). There is a contradiction in states relying on private entities to restore the state monopoly on violence. Doing so, it is argued, has further eroded this monopoly and encouraged an overall privatization of security where citizens themselves have employed non-state actors to substitute the state monopoly (Møller 2002, 11-12).

Bellamy and Williams argue that the privatization of military force is a great concern because private companies tend to disperse their expertise and equipment indiscriminately: arming warlords and other non-state actors, which is often a cause of war and violence. They state that the process of states losing their monopoly on military force is part of a global military restructuring that is having negative consequences, including propping up the conception of military means as a solution to political problems. An increased presence of PSCs on the international arena will only create more actors with the capability to use force. The proliferation of non-state actors, they therefore argue, “risks contributing to the causes of the very conflicts the UN is supposed to be resolving” (Bellamy and Williams 2004, 192-193).

5.2 Eroding state responsibility and monopoly.

If the PMCs in question were directly contracted by the United Nations the threat to state sovereignty would not be as immanent. Private security forces with legitimate mandates from the UN would not in themselves necessarily pose a threat to the state monopoly on violence. The United Nations is an organization of states; such an authorization would be an authorization of states to allow the private contractors to act on their behalf. Neither would it create an increased

reliance on physical force to solve conflicts compared to customary UN peacekeeping missions. The demand for peacekeeping only arises after the national security forces have already lost control of the use of force. This does not change just because the peacekeeping has been privatized. Privatized peacekeeping would be governed by the same mandates and Security Council resolutions as traditional peacekeeping. There would not suddenly be an increase in the use of peacekeeping to solve conflicts just because PMCs are available. Rather, privatizing peacekeeping would merely ensure that peacekeeping troops could be swiftly and efficiently deployed as soon as possible after a peace operation has been authorized. In fact, introducing a peacekeeping mission, whether traditional or private, might even help re-establish control over the legitimate use of force by bringing order and legitimacy (House of Commons 2002, 20).

As long as the PMCs are sufficiently regulated, privatized peacekeeping is as likely to contribute towards security and the public good as traditional peacekeeping (Wulf 2006:66-67), if not even more so since traditional peacekeeping troops often lack the equipment, training and professionalism that PMCs could contribute (Withworth 2004, 34; Mandel 2002, 135; Bellamy, Williams and Griffin 2004, 52). There are, however, two main problems with privatized peacekeeping and they are both related to the impact that privatization of force has on the responsibilities of states within and beyond their own borders.

Firstly, privatizing peacekeeping also risks promoting the use of PMCs in non-peacekeeping situations. As stated above, the use of privatized peacekeepers by the UN would be an unlikely threat to the state monopoly in itself but that does not mean that the same kind of forces operating outside of UN control could not create trouble. Unfortunately, privatizing peacekeeping could lead to greater legitimization of these private actors and the broader trend of non-state violence; including in less meritorious situations and by more belligerent actors.

An answer to this problem could lie in strict regulation of who should be allowed to employ these companies (Singer 2003 art). Some have argued that only internationally recognized governments should be allowed to contract PMCs. Others argue that only recognized governments with a proven commitment to international human rights standards and the Geneva Conventions should be allowed to do so (Møller 2001, 14). In these cases force would still be under the control of the state, although carried out by non-state actors. Another suggestion is that the right to use PMCs is placed under the authority of the UN or another organization, who can decide on a case-by-case basis when and how these companies should be allowed to be recruited, so as to not be a threat to peace and stability (Lilly 2000a, 11; Lilly 2000b, 27).

Secondly, it has been suggested that reliance on PMCs for peacekeeping “implies an abrogation of the responsibilities of states to maintain international peace and security” (Bellamy and Williams 2004, 193). For Guehenno, the Under-Secretary General for the DPKO, relying on private actors to conduct peacekeeping would only send the signal that member states did not take enough interest in the conflict to risk the lives of its own people (Mascolo 2007). The situation in Iraq, where the US government is heavily reliant on the use of private contractors and increasing this recruitment as the calls for withdrawal of American troops is growing stronger, might be an example of this. In Iraq, one out of every ten soldiers is a private contractor. The private security companies even make up the second largest contingent in the country, after the American, tempting observers to rename the alliance the ‘coalition of the billing’ (Steejtens 2004; Spearin 2003, 243; Singer 2005). With the US still wanting to play a role in Iraq, but not willing to bear the political discontents associated with the deaths of American soldiers the reliance on PMCs in Iraq might verify Guehenno’s statement that privatization only signals “this is important, but not important enough to risk our own people” (Mascolo 2007). The problem with Guehenno’s statement is that it is too true. Privatization may signal that something is not important enough to risk one’s own troops but just merely enough to foot the bill, but what does arriving late (as in Rwanda) or not arriving at all (as in Darfur) signal? When the Security Council has authorized a mission, surely not having any troops show up at all is far worse than outsourcing the mission to private actors. Inaction in these situations not only signals that we are not willing to suffer injury for your cause, it also signals that we are not fundamentally bothered by your suffering.

The prospect of relying on privatized peacekeeping in a situation of emergency where no other troops are available raises the question of whether any existing company could deploy enough personnel as might be required (Lilly 2000a). Spearin argues that one problem with privatized peacekeeping is that PMCs simply would not have enough staff to carry out larger missions. He notes that both EO and Sandline conducted their operations in Africa with fewer than 500 personnel contracted for any given operation (Spearin 2002). In contrast peacekeeping missions are likely to require several thousand troops. Most PMCs have only limited permanent staff and rely on databases of available soldiers to recruit for particular missions. The possibility of staffing large missions would depend on the size of these databases. The Global Peace and Security Partnership (GPSP) was an initiative which advocated for the formation of a non-profit PMC established solely to conduct peace operations. The GPSP advocates did, for example, argue that they could have 5,000-10,000 peacekeepers in a database that could be called on when needed and approximately 200 of these ready for deployment within short notice at any time (Bures 2005, 535). This is not nearly

the some 20,000 military personnel required for the UNAMID operation in Darfur for example. Whilst more personnel could perhaps be located and made available to the UN relatively easily, the deployment time would likely be proportional to the number of personnel required. Screening and recruiting 5,000 soldiers would take much longer than 500, and for 20,000 troops we are surely no longer talking about the 3-6 week full deployment from the word 'go' that Brooks argues most PMCs operate by (Brooks and Laroia 2005). Nonetheless, where no member state is willing to supply troops, a PMC whose deployment time leans towards the average six month deployment of traditional UN missions is still preferable to non-action.

Guehenno has further argued that peace "is not just a technical issue, it's a political issue". He argues that states not being willing to supply peacekeeping troops is a greater problem that should be fixed in itself, not just by allowing states to dump their responsibilities on the private sector (Langfitt 2006). This is true, but it is clear that such willingness amongst member states is not currently present and arguing that it ought to be is not sufficient enough to ensure that peacekeeping troops will be available when needed. Whilst it would be preferable that member states always supplied troops when they were needed to ensure hasty implementation of Security Council mandates, this is not the case. The availability of troops is dependent on each individual state's political interest in the country and conflict concerned. States have a responsibility towards its citizens not to risk their lives on just any whim. Obviously a situation where the Security Council has authorized intervention is a situation where risking lives is humanitarianly sound. Gvosdev, however, argues that a democratic state can only 'demand' that citizens risk their lives for the 'vital interests' of the nation. He further states that when faced with 'optional' wars – those which reflect preferences rather than necessity for those who intervene – it might therefore be better to rely on private volunteers (Gvosdev 2005, 22).

Moralpolitik is important. Many of us would justify intervention on the basis of preference by reason of common humanity, not just because, as some observers argue, crises on the other side of the globe are likely to eventually affect our own national interest in this interconnected world, although this is a valid point as well. One example of such moralpolitik is the idea of the 'Responsibility to Protect' (International Commission on Intervention and State Sovereignty 2001) whose recent formulation has put pressure on the relativism that each state can define which use of violence is legitimate within its borders, and which is not (Leander 2002, 2; Cooper and Voinov Kohler 2006, 2, 5). The Responsibility to Protect (R2P) has also challenged the traditional Westphalian thinking that the protection of the civilian population is solely the duty of the state to which the civilian is bound by terms of citizenship. Rather it has argued that where a state

is unwilling or unable to provide such protection against supreme emergencies the international community has a duty to intervene (International Commission on Intervention and State Sovereignty 2001, 6). Unfortunately the R2P has not been fully operationalised even in such urgent situations. Despite the Security Council having recognized the need to deploy troops to Darfur, such action has yet to be taken (Breau 2007, 430; Williams and Bellamy 2005, 31). Amongst states that have officially subscribed to the R2P there still seems to have been widespread unwillingness to enforce it, most likely because of the reluctance of states to place own forces in harm's way for the protection of civilians of another state on solely humanitarian grounds. Whilst the R2P is considered important, it does not override the security of ones own military. States will only intervene on humanitarian grounds as long as they can be ensured that the mission will be cost free. The kind of operation that is required to perform civilian protection cannot guarantee such certainty.

PMCs can make cosmopolitan moralpolitik possible. It could for example provide the tools to enforce the Responsibility to Protect where independent states are not willing to supply these means. Guehenno might argue that reliance on PMCs shows lack of responsibility; there is however an essence to the RTP that in its most fundamental corresponds to the use of PMCs. Using private (non-state) contractors, not related to a particular state, could in the long run promote the creation of broader cosmopolitan values of humanitarian intervention, as intervention is not the duty of a state but of humanity as a whole. A privatization of peacekeeping that at the same time would bring the peacekeeping forces closer to the UN rather than the multinational corporations could reinforce the concept of moralpolitik. Nonetheless, as Gvosdev (2005, 22) argues, it has often been those advocates of foreign policy grounded in idealism that have most strongly opposed the use of PMCs. This is because the profit-making nature of PMCs sits poorly with idealism. There is a fear that as peacekeeping becomes 'big business' it will lose touch with its humanitarian ideal, cutting corners and promoting a 'race to the bottom' just as the privatization of other sectors have often been accused (Korten 1995). I agree with the argument that governments should take the lead in humanitarian operations. We cannot allow the responsibility for peacekeeping to lie in the hands of the corporate. Just as with many other essential social sectors, peacekeeping is not to be guided by blind neo-liberalism. Yet there is a potential in relocating the practical elements of peacekeeping away from state interest and into the hands of the broader international community. The decision to conduct peacekeeping would still be in the hands of states, but the enforcement of this decision would not be dependent on whether individual states deemed it to be in their relative interest to supply troops. Where states are

unwilling to commit troops to peacekeeping it is therefore better to rely on private companies or voluntary units.

There are measures that could ensure the quality of private (non-state) peacekeeping. Kofi Annan has argued that the protection of civilians also entails action to compel non-state actors, as well as states, to uphold international law and behave responsibly in times of war (Annan 2001, 2). Tullberg states that the international community is founded on contracts between states; we refer to these as international law. If the sovereign state with a full monopoly on violence is partly being deconstructed, he argues, it is still important to ensure that international law is not. Such a scenario is very unlikely to respect human rights and people's self determination. To prevent this, international law needs to be expanded to include these new actors and keep them accountable to the international community. Tullberg further argues that in practice this means allowing MNCs, and particularly PMCs, to join the international conventions and agreements, just as states previously have. Stating that national legislation for restricting PMCs is insufficient he quotes Singer arguing that "a globalized industry demands a global response" (Tullberg 2005b, 21-22). At present the UN and NGOs are already using PSCs. If PMCs were strictly regulated their use could possibly be expanded to peacekeeping operations. Tullberg argues that the idea might seem controversial but in the light of the recess of the sovereign nation state and the rapid advancements of the private military industry this option needs to be examined and carefully evaluated (Tullberg 2005b, 22).

5.3 Summary & Evaluation

The state monopoly on legitimate violence is one of the cornerstones of the modern state. It is feared that the disruption of this monopoly would lead to general disorder and instability. Without the state monopoly many non-state actors could claim the right to use violence and force to further its interests, whatever they may be. This would be a serious threat to democracy and rule of law. As violence becomes increasingly uncontrolled and people become more insecure it is also likely to lead to a further militarization of society and enhanced reliance on private actors for protection.

Reliance on private contractors for UN peacekeeping might not be a threat to the state monopoly on violence in itself but could indirectly be so by setting a broader trend of relying on private security. The erosion of the state monopoly on force and responsibility for order is the most compelling argument that can be made against PMCs. The rise of PMCs might itself be a consequence of the weakening of state structures, including – but not limited to – the monopoly on violence. The increased presence of PMCs sits within a larger trend of reduced

state influence and privatization. Outsourcing in general is becoming more common, and MNCs, whatever their business, exist everywhere. This is not to argue that the overall trend is not problematic, it is: there is a general lack of accountability, transparency and regulation that can make these companies dangerous in many different ways. Great risks are encompassed in relinquishing the responsibilities and monopolies of the state. However, merely attempting to preserve the status-quo is not sufficient to deal with the threats posed by non-state actors. It also fails to capitalize on their existence; if the problems can be managed there are great gains to be made from 'controlled' privatization. The possibility to intervene in situations of need where a peace operation has been mandated but no state is willing to supply troops is one of those benefits. One should not assume that Adam Smith's 'invisible hand' will guide an ethical and correct use of PMCs. Rather the goal, as Tullberg argues, should be to bring all these actors in to a system that holds them, as well as states, accountable to the human population.

It is not predestined that using these companies would lead to a dispersal of the control of violence but whether they do so is dependent on their regulation. Strict management of who gets to employ these companies and in what situations, along with a commitment by the companies themselves to international law could reduce the threat these companies pose. This would, however, have to be the case for all PMCs, not just the ones employed as peacekeepers. Such regulation is not impossible, but would require a great and intentional effort. Just as argued in the last chapter the UN would have to play a large role in pursuing such regulation, and for the same reasons as expressed then it is not willing to do so: to establish rules of who gets to employ PMCs is the definite statement that it is all right to employ them. The UN is not yet convinced that this is actually the case. At present the UN is correct in its assumption. Unregulated, these companies are a threat to peace and stability: yet using this as an excuse not to regulate them results in little more than allowing them to keep operating uncontrolled. Therefore, opposing regulation is merely a confusion of priorities and the UN's refusals to promote such regulation will only further the global ungovernance of violence it is trying to prevent.

6 The Way Forward

Having looked at these three larger categories stating why the United Nations has been more than reluctant to approach the topic of privatized peacekeeping, it is clear that the reluctance is justified. Private military and security companies should be approached with care, more care than shown by many of the states and other actors which are currently employing them. Yet it is clear that many of the problems associated with utilizing these companies could be surmounted by closer scrutiny and wider international regulation of the companies themselves as well as those who employ them:

The concern that profit-driven companies might abandon a mission half way through, or that the cost of the mission would suddenly sky-rocket as a situation grows perilous could be prevented or managed through contractual regulation. The severe lack of accountability for any misconduct by private security and military contractors – which is currently rightly regarded by the UN as a reason to keep these companies as far from combat roles as possible – could be addressed and the impunity reversed by adding to international law and introducing a range of regulatory schemes. International law could also be made to clarify the definition of these companies and categorize them to protect both the contractors themselves and civilians around them. Similarly, action could be taken to control who should be allowed to employ them and in what situations, to ensure that PMCs promote peace instead of impeding it. For example, in 2006 the Inter-Parliamentary Assembly of the Commonwealth of Independent States suggested an expansion of the definition of mercenaries to encompass all private military and security employees, thus clearly banning their use. However, it also argued for an omission: requesting the explicit exclusion of peacekeeping from the definition of a mercenary (United Nations 2007, 14-15).

The only response from the UN on how to address these issues, in addition to the formulation of the International Convention against Mercenaries, has been that states should develop their own legislation to prohibit the use of PMCs. As late as December 2006 a resolution adopted by the General Assembly requested that all states approach PMCs and PSCs with most caution and exercise vigilance against any kind of training, hiring or financing of mercenaries. The resolution also asked states to adopt specific bans on private companies intervening in situations of armed conflict or take any actions to destabilize recognized governments (United Nations 2007, 4). This is an insufficient approach for the reasons argued in the previous chapter: a global dilemma needs global response. Furthermore, few states have been willing to adopt such regulation. Whilst they have looked with fear at other states recruiting private contractors they have not

been willing to relinquish their own right to use PMCs (Leander 2001, 14; Adams 1999).

The lack of control and regulation is the overall primary reason for why these private companies should not be utilized, whether in or outside of UN operations. Whilst the UN has recognized the problems entailed in leaving these companies unregulated it is clearly reluctant to move beyond urging states to develop domestic regulation. This is for fear that pushing for greater regulation risks legitimizing something that really should just be abolished. Regulating them is viewed as the 'go ahead' to use them and the UN is not essentially convinced that they should be used. The lack of regulation in itself is not a sufficient reason to oppose regulation. In other words, if the UN does not want to push for international regulation because they fear that doing so would legitimize these 'mercenary forces' – who commit human rights abuses without accountability and promotes corruption by conducting their missions without transparency – they are clearly on the wrong track. The only way of dealing with the lack of accountability and transparency is to through regulation and establishing greater control over these companies. Likewise, challenges posed by PMCs, such as the threat to the state monopoly on violence, could be overcome by creating a system to control PMCs operating both inside and outside of the UN system. An overall governance of the private security sector is needed. Any privatization of peacekeeping could only be qualified if these conditions were first met: if the companies cannot be controlled it would be wrong for the UN to legitimize them through their use in peace operations. Nonetheless, Holmqvist states, contracting PMCs to peace operations could be a step towards such governance and control of these companies, which have so far been uninhibited, by establishing criteria and conditions for legitimacy (Holmqvist 2005, 45-46). By not pushing for regulation the UN is not only dismissing the potentials of PMCs but even reinforcing some of the problems associated with these companies. Engaging with PMCs and considering them for peacekeeping operations could result in better regulation; dismissing them as illegitimate will only allow military companies to continue to go unchecked. Therefore leaving them unregulated would be far more threatening to international stability than having these companies operate under the auspice and control of the UN system. The lack of regulation is an argument for prohibiting these companies in general, but because of the potential benefits that could be made from employing private peacekeepers the UN should instead seek to enforce strict regulation of these companies rather than to impose a total ban on them. Not only would a total ban prevent us from capitalizing on these companies, but it also has little support among most states and is therefore unlikely to succeed. The result would only be that these

companies continue their uncontrolled operations, perhaps without even trying to seem legitimate and respectable.

Even if the regulatory issues can be worked out there is yet some ground for the argument that privatized peacekeeping should be avoided: such action could lead to the greater adoption of the overall trend of outsourcing peace. The UN fears that beginning to employ private peacekeepers will decrease each member states willingness to supply peacekeeping troops when needed, conceding their responsibility for peace and security to these private companies. An acceptance that it is all right for the UN to recruit its peacekeepers from private companies when individual member states are not wanting to supply troops could easily lead to a situation where member states expect outsourcing to these companies and give up any desire or capability to directly participate in peace operations. Whilst occasional reliance on PMCs in a situation of emergency could be good for the UN, solely relying on outsourcing peacekeeping is not a good idea. Unlike Kofi Annan's statement that the world 'might not be ready to privatize peace' this argument has not so much an ideological but a practical foundation. As argued in chapter four the best way forward would be to combine the use of private and traditional peacekeepers where possible, and allow each to perform tasks for which it is better skilled and cost-effective. A sole reliance on private peacekeepers is likely to be very expensive. Not only do private contractors tend to require higher payment than traditional soldiers but the profit-making nature of the company that employs them ensures that peacekeeping could not be conducted in unprofitable high-risk environments. The other option would be for the UN to rely on such voluntary forces as advocated by GPSP and UNEPS supporters. Unfortunately, this is not without problems either. Whilst smaller non-profit voluntary units of 10,000-20,000 troops could easily be established, any larger number of troops, which would be required for the many operations the UN conducts each year, would be far more difficult to gather. Recruiting that many troops on an ad hoc basis would be an expensive and slow venture. Keeping a large voluntary standing force is not an option either within the financial means available to the UN. Furthermore, when recruiting so many private peacekeepers the benefits of 'expertise' and 'professionalism' often associated with private contractors would unlikely be no more existent than in a traditional peacekeeping effort. Any rapid reaction capability would also be lost.

PMCs provide an unprecedented opportunity for the UN to react timely and efficiently to crises and threats to international stability. However, only if certain conditions can be met should their use be advocated. Particularly there are two very important things to take into consideration when discussing the way forwards for PMCs:

Firstly, there is a strong need for regulation. This point cannot be overemphasized. These companies are very active worldwide and they are evidently here to stay. Yet, to clearly distinguish them from the “unaccountable soldiers of fortune” they are often described as (Broder 2007), we need to make changes to how they operate: both PMCs and PSCs, whether they operate under the UN or not, need to be held accountable to the human population.

Secondly, we need to make sure that the traditional peacekeeper does not disappear from peace operations. There is clearly a need to supplement member state contributions with private contractors; as showed earlier the UN is already heavily reliant on PSCs for support of its many operations. There is also a need to draw on individual member states own forces. It is very important that states do not forfeit or surrender their peacekeeping responsibilities. In the past the US government has recruited private companies to fill parts of its peacekeeping obligations. One possibility for retaining the traditional state-led structures of peacekeeping and at the same time capitalize on the private sector is to allow such second-hand contracting. The member states themselves could then be the judge of the cost-effectiveness of supplying private contractors or its own national army. If such a scenario was to become more frequent it is vital that the needs described above are properly addressed first. A repeated situation such as that of DynCorp’s misconduct in the Balkans is far from desirable.

Instead of associating them with the mercenaries of the 60s and 70s who carried the motives and purposes for which the legal definitions of mercenaries are reflected, post-Cold War private contractors should be judged according to the purposes they serve and the environments in which they operate (Lilly 2000b, 13). Private contractors operating under governance of the UN flag should certainly be regarded as something vastly different than the old ‘dog-of-war’. Only such a realization can lead to an honest assessment of the possibility of using private military companies (Hukill 2004). There are signs that things might be changing, albeit slowly, inside the UN. For example, the UNs Working Group on Mercenaries 2007 report has shown slightly more willingness to discuss the use of PSCs in peacekeeping missions. It suggested that regional roundtables discussing mercenary issues could also raise the topic of whether international organizations, such as the UN, should formalize an arrangement with PSCs to provide security in situations of need rather than relying on ad hoc recruiting. The Working group even suggested discussing the use of PMCs in pre-peacekeeping and peace-building initiatives in situations of genocide or severe human rights violations (United Nations 2007, 20). What is needed now is a serious evaluation of the positive and negative consequences of privatizing peacekeeping and strategies for dealing with the negative. This also needs to be done *before* the UN is faced with a crisis that it simply cannot watch from a distance. Forced to

put together an ad-hoc response using the more military inclined contractors of the companies it is already employing, or to allow more troop contributing countries to outsource their peacekeeping responsibilities, without having put in place any of the restrictions needed to control PMCs, the UN would risk making all its fears expressed in this report come true. Peacekeeping could be privatized unconditionally. Alternatively, other organizations or individual states might decide to take matters into their own hands where the UN stands unable to prevent perhaps genocide. This is not a desirable future for the privatization of peace. The rise of the private military companies has brought choice to the international community as to how it deals with peacekeeping needs. Their existence is not uncontroversial or without problems, but if their operations were bound by certain conditions their existence forms an unprecedented potential for future conduct of UN peacekeeping.

7 Conclusion

This thesis has outlined the reasons as to why the United Nations has been reluctant to approach the subject of hiring private military contractors to conduct peacekeeping operations. It has argued that whilst all concerns expressed are justified, most of them regard problems and issues that could be overcome by greater regulation of the activities performed by PMCs and PSCs. This includes establishing international standards of accountability and transparency, as well as a licensing scheme to control who employs these companies. Recruiting private peacekeepers could help address some of the great problems inherent in UN peacekeeping, including failure to deploy timely and effectively in situations where high-risk or low national interest keeps member states from offering its own national troops. Whilst there obviously is a great potential to private peacekeeping the UN has not been convinced that the benefits outweigh the risks. At the present stage that is a correct assumption; privatized peacekeeping should only be enforced if certain conditions are met. However, overall these conditions are not insurmountable. I have argued that the risks to private peacekeeping can be managed. The biggest issue of concern is the erosion of state responsibility for peacekeeping. This is an issue that would have to be closely explored and thoroughly discussed. Yet, states have shown a lack of such responsibility when faced with serious situations without the UN being able to rely on PMCs. A limited use of private peacekeepers could assist the DPKO in preventing and containing the scourge of war in situations of supreme emergency. Such capabilities should be welcomed by all but a framework for using these companies whilst at the same time retaining the involvement of states in peacekeeping is essential. For there to be a serious debate about this potential the UN needs to step out of the rhetoric of associating private contractors with mercenaries, which obstructs an honest assessment of how these companies could influence its peacekeeping capacity. It needs to realize that these modern companies serve a different purpose, making a comparison with mercenaries difficult. Instead of rejecting the offers made by private companies it should seek to address the issues that make the use of these companies controversial. Instead of being horrified by the idea that PMCs could conduct peacekeeping it should assist in establishing the kind of regulation and reaching the conditions that could enable these companies to conduct peacekeeping, responsibly and well.

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Appendix

Article 47 to Protocol 1 of the Geneva Convention defined six conditions that all needs to be filled to define someone as a mercenary. It defined a mercenary as any person who:

- a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- b) Does, in fact, take a direct part in the hostilities;
- c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- e) Is not a member of the armed forces of a Party to the conflict; and
- f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

(United Nations. 1979. 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1).' New York: Office of the United Nations High Commissioner for Human Rights).

The 'International Convention against the Recruitment, Use, Financing and Training of Mercenaries' states that:

Article 1

1. A mercenary is any person who:

- a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

- d) Is not a member of the armed forces of a party to the conflict; and
- e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

2. A mercenary is also any person who, in any other situation:

- a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at :
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
 - (ii) Undermining the territorial integrity of a State;
- b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- c) Is neither a national nor a resident of the State against which such an act is directed;
- d) Has not been sent by a State on official duty; and
- e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

Article 2

Any person who recruits, uses finances or trains mercenaries, as defined in article 1 of the present Convention, commits an offence for the purposes of the Convention.

Article 3

1. A mercenary, as defined in article 1 of the present Convention, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of the Convention.

(United Nations. 1989. 'International Convention against the Recruitment, Use, Financing and Training of Mercenaries.' New York: Office of the United Nations High Commissioner for Human Rights).