

## FHSMUN XXIX

### AD HOC WORKING GROUP ON THE ACTIVITIES AND IMPACTS OF MERCENARIES AND PRIVATE SECURITY COMPANIES

“The Security Council expresses its profound concern at the impact of...mercenary activities, on peace and security in West Africa. These contribute to serious violations of human rights and international humanitarian law, which the Council condemns.”<sup>1</sup>

“Mission: To support national and international security policies that protect those who are defenseless and provide a free voice for all with a dedication to providing ethical, efficient, and effective turnkey solutions that positively impact the lives of those still caught in desperate times.”<sup>2</sup>

“...if one holds his state on the basis of mercenary arms, he will never be firm or secure; because they are disunited, ambitious, without discipline, unfaithful; gallant among friends, vile among enemies; no fear of God, no faith with men; and one defers ruin insofar as one defers the attack; and in peace you are despoiled by them, in war by the enemy.”<sup>3</sup>

#### Introduction

Within the United Nations System, the ability to effectively mobilize and monopolize the use of coercive violence is often considered to be at the heart of state sovereignty. As politicians and diplomats exalt state sovereignty, they also frequently heap praise on the most visible symbols of state sovereignty: the armed forces of their respective states. Paradoxically, however, as governments confront sustained challenges to their sovereignty because of globalization and the global war on terrorism, states are increasingly turning to the historically relatively less reliable and frequently controversial alternative of mercenaries.

Mercenaries, or private military companies (PMC's) as they prefer to be called today, have been extremely controversial for centuries because of well-founded concerns about the costs and loyalties of soldiers for hire. In the Hundred Years' War between France and Great Britain (1337-1453) as well as the constant Italian wars of the fourteenth and fifteenth centuries, Captain John Hawkwood and his men, as well as other so-called “free companies”, became very infamous for their financial demands, their unstable loyalties, and their brutal treatment of civilian populations. In recent years, private military companies (PMC's) and private military/security contractors have achieved considerable notoriety for their involvement in horrible civil wars in Sierra Leone, Liberia, and Angola, as well as in international wars, including the NATO-led war in Afghanistan and the US-led war in Iraq. As private military companies (PMC's) and

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<sup>1</sup> Security Council Resolution 1467 S/RES/1467 March 18, 2003.

<sup>2</sup> Mission statement of Blackwater USA. Found at: <http://www.blackwaterusa.com>

<sup>3</sup> Niccolo Machiavelli, *The Prince*.

security contractors have become more deeply embedded within the overall war efforts and war plans of various UN member states, their roles have come under greater scrutiny while at the same time gaining key allies. In the 2006 Pentagon Quadrennial Review, then US Secretary of Defense Donald Rumsfeld included contractors in the Defense Department's "Total Force."<sup>4</sup>

Contractors and PMC's have been accused of committing flagrant human rights abuses in a number of conflicts, especially in Iraq, but they rarely face effective prosecution for even substantiated human rights violations. At least one PMC has been accused of seeking to overthrow a government and many of its leaders and employees have been jailed as a result.<sup>5</sup> Additionally, PMC's have recently moved into new areas such as providing force protection for humanitarian aid workers, including for UN employees and related non-governmental organizations (NGO's). P.W. Singer, one of the leading authors on the subject of PMC's, notes that even former UN Under Secretary Sir Brian Urquhart has suggested that PMC's might be part of the solution for providing security for UN humanitarian workers, in large part because he and others have become "disheartened at the sorry state of operations in places like Bosnia and the DRC [Democratic Republic of Congo]."<sup>6</sup>

The AD Hoc Working Group on the Activities and Impacts of Mercenaries and Private Military Companies (PMC's) must analyze the rationales and roles of these private security contractors and firms and then articulate appropriate guidelines for ensuring that their continued existence and use do not unnecessarily prolong wars and armed conflicts and inflict greater suffering on affected civilian populations.

### **Scale of the Phenomenon**

Private military companies (PMC's), especially American-based companies, are generating significant media headlines in Iraq but the overall global scale of this industry is far less widely reported. While it is impossible to pinpoint exactly how many PMC's actually exist and how many soldiers, logistics specialists, security guards, and managers they employ, it is abundantly clear that the industry has become far more visible and lucrative over the past 10 years. Its reach is truly global; American companies such as Blackwater employ Chileans and Colombians in Iraq while British companies fly in Nepalese Gurkhas to provide force protection and security details in Iraq. South Africa's Parliament recently passed a key law banning former South African Defense Forces (SADF) soldiers from being deployed abroad after the bad press garnered by the now-renamed Executive Outcomes (EO). The Colombian government has issued arrest warrants for three Israeli men accused of training the infamous and recently demobilized

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<sup>4</sup> Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* Nation Books New York 2007 p. xviii.

<sup>5</sup> *BBC News*, "Coup plotters jailed in Equatorial Guinea" November 26, 2004.

<sup>6</sup> P.W. Singer, "Should humanitarians use private military services?" *Humanitarian Affairs Review* Summer 2004 p. 16.

AUC, a right-wing paramilitary army that has been linked to the Colombian military leadership and wealthy rural landowners.<sup>7</sup>

The former Soviet Union has also become a fertile ground for PMC's. One of the leading analysts on the subject of PMC's, P.W. Singer, noted in 2003 that there were "nearly 150,000 employees of private security firms that operate inside Russia."<sup>8</sup> In Iraq alone, there are an estimated 180,000+ security contractors and employees of PMC's working in the country, often under very limited legal supervision.<sup>9</sup> At least 30,000 of these contractors are armed. These contractors are also increasingly becoming the targets of various Iraqi militias and the highly lucrative contracts that many of these men are seeking must consequently be compared to the rising danger of the work. John M. Broder and James Risen reported in *The New York Times* in May 2007 that the total number of contractors killed in Iraq is "at least 917, along with more than 12,000 wounded in battle or injured on the job."<sup>10</sup> Risen followed up that story in July by discussing the pervasiveness of mental health problems and trauma that contractors are experiencing. "Contract workers who are wounded or disabled in the war zone are treated in military hospitals in Iraq and Germany, but once home, they are not eligible for care in the military or V.A. [Veterans' Administration]. And unlike troops, they are not routinely evaluated for mental or stress disorders after their tours."<sup>11</sup>

### **Why Hire Contractors?**

As the controversies surrounding PMC's and security contractors have escalated, governments, corporations, and even UN officials have had to explain why they are considering hiring PMC's. The rise of the privatized military industry coincides with the end of the Cold War and the global drive to outsource and privatize government functions and services in the 1990's. In the aftermath of the 1991 Gulf War, then US Secretary of Defense Dick Cheney commissioned a study by the well-known military services supplier Brown & Root, now known as Kellogg, Brown & Root (KBR), to determine how effectively the US government could privatize and outsource military functions and support services to private companies. Not surprisingly, Brown & Root asserted that private military companies (PMC's) could fulfill many essential functions and enthusiastically endorsed this concept. Throughout the 1990's, the United States and other countries, including Angola, Croatia, and Sierra Leone, outsourced and privatized many vital military functions such as base construction, feeding and housing soldiers, base security, and training national military units. Chalmers Johnson discusses the construction of Camp Bondsteel in Kosovo in 1999 by KBR, noting that "under one of the costliest contracts in Pentagon history, Brown & Root, as it was originally known, maintains the barracks, cooks the food, mops the floors, transports all supplies, and

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<sup>7</sup> *BBC News*, "Colombia seeks Israelis' arrests" April 4, 2007.

<sup>8</sup> P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* Cornell University Press Ithaca, New York 2003 p. 12.

<sup>9</sup> T. Christian Miller, "Private contractors outnumber US troops in Iraq" *Los Angeles Times* July 4, 2007.

<sup>10</sup> John M. Broder, James Risen, "The Struggle for Iraq: Death Toll for Contractors Reaches New High in Iraq" *The New York Times* May 19, 2007.

<sup>11</sup> James Risen, "Contractors Back from Iraq Suffer Trauma from Battle" *The New York Times* July 5, 2007.

operates the water and sewage systems. Employing about a thousand former US military personnel and another 7,000 local Albanians, the company delivers 600,000 gallons of water daily, supplies enough electricity for a city of 25,000, washes 1,200 bags of laundry, and cooks and serves 18,000 meals per day.”<sup>12</sup> Johnson’s reference to the costly nature of this particular contract is crucial and its relevance will be discussed further below, in part because the proponents of contracting with PMC’s invariably argue that PMC’s are more efficient and cost less than standard military procurement procedures.

Private military companies (PMC’s) and security contractors, while rarely the least expensive option for their customers, sometimes produce the desired results. In 1995, the Croatian military was trained by MPRI, a military consultancy and training firm based in Virginia, and then quickly unleashed a devastating campaign that pushed Bosnian Serbs eastward and ultimately compelled the Bosnian Serbs to consider negotiations. In Angola and Sierra Leone, established governments were able to stay in power and to resume control over valuable resources because of the training and direct combat roles provided by PMC’s. PMC’s and security contractors are also taking on increasingly important functions in terms of gathering intelligence. In Iraq, British-based Aegis Defence Services Ltd. conducts a morning briefing for contractors about the levels and incidences of violence in Iraq.<sup>13</sup>

Private military companies (PMC’s) have also benefited immensely from the greatly increased demand for their services after September 11, 2001. In an ironic bit of timing, then US Secretary of Defense Donald Rumsfeld declared the “Pentagon bureaucracy” to be “a serious threat to the security of the United States of America” on September 10, 2001.<sup>14</sup> Rumsfeld’s suggested remedy was to expand the Pentagon’s relationships with and use of PMC’s. After the deadly attacks on New York and Washington, including the Pentagon, the next day, Rumsfeld would begin overseeing an “unprecedented scale of outsourcing and privatization”<sup>15</sup> of the US military. PMC’s such as Dyncorp and Blackwater have also secured highly lucrative contracts for protecting US government facilities, including embassies and even nuclear facilities.<sup>16</sup>

Private military companies (PMC’s) have been employed to both save and destabilize governments, to protect and to plunder valuable resources, act as force multipliers in the field, and to reduce governments’ dependence on unreliable national militaries. Contractors often provide essential support services and also train national militaries and private militias but they can also be hired to reduce or eliminate direct accountability on the part of the government. In describing this attempt by governments

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<sup>12</sup> Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* Henry Holt & Company New York 2004 p. 143.

<sup>13</sup> Steve Fainaru and Alec Klein, “In Iraq, a Private Realm of Intelligence-Gathering” *Washington Post* July 1, 2007.

<sup>14</sup> Donald H. Rumsfeld, “Remarks as Delivered by Defense Secretary Donald H. Rumsfeld” The Pentagon September 10, 2001. Found at: <http://www.defenselink.mil/speeches/speech.aspx?speechid=430>

<sup>15</sup> Jeremy Scahill, “Bush’s Shadow Army” *The Nation* April 2, 2007 p. 11.

<sup>16</sup> Ron Nixon and Scott Shane, “Panel to Discuss Concerns on Contractors” *The New York Times* July 18, 2007.

to evade direct liability, former CIA operative and security contractor Billy Waugh bluntly asserts that “we don’t pull the trigger but we sure as hell give them a gun, bullets, show them the target, and teach them to pull that trigger.”<sup>17</sup> Waugh’s comments are also revealing in another way; governments and other actors who hire PMC’s typically assert that PMC’s will not engage in actual armed combat. The actions of PMC’s in Iraq, however, have proven those assertions to be false. As will be discussed below, South African-based PMC’s and American-based PMC’s have engaged in armed combat in Angola and Sierra Leone and Iraq, respectively.

Private military companies (PMC’s) can also be deployed internally. The North Carolina-based Blackwater stirred considerable interest when “in 2005 after Hurricane Katrina its forces deployed in New Orleans, where it billed the federal government \$950 per man, per day-at one point raking in more than \$240,000 a day.”<sup>18</sup> Concerns about the deployment of armed contractors on US soil, combined with the international notoriety that Blackwater and other PMC’s have acquired in recent years, have prompted several members of the US Congress, as well as some elements of the media and civil society, including non-governmental organizations (NGO’s), to demand more transparency and accountability from PMC’s. Notwithstanding these concerns, Blackwater would augment these initial contracts by receiving additional contracts to guard Federal Emergency Management Agency (FEMA) facilities and even a temporary morgue. Jeremy Scahill notes that “in just three months, the government had Blackwater at least \$33.3 million for its Katrina work for DHS [Department of Homeland Security].”<sup>19</sup>

The training and deployment of private military contractors has also become a controversial political issue in a number of countries worldwide. While South Africa is the most high-profile country for mercenary training and deployment, the hiring of Chilean commandoes by Blackwater generated considerable debate within Chile itself. As many of the Chilean commandoes were veterans of the Pinochet era, revelations of their training to work in Iraq as military and security contractors generated swift condemnation by many sectors of Chilean society. In Central America, Honduras would eventually fine a company \$25,000 for training private military and security contractors on former *Contra* bases from the 1980’s.

Corporations have long contracted with private firms to provide security and in a number of instances to break strikes and to harass labor organizers. In the late 19<sup>th</sup> century, large American corporations and several states hired the infamous Pinkerton security company to attack striking workers. A little over one hundred years later, Occidental Petroleum and other American-based companies, including Chiquita bananas, doing business in Colombia have come under increasing scrutiny and are facing criminal prosecution for contracting with Colombian paramilitaries, including the notorious United Self Defense Forces of Colombia (AUC), to provide security and to ensure that Colombia remains a “business-friendly” environment. Occidental and other companies

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<sup>17</sup> Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* Crown Publishers New York 2006 p. 20.

<sup>18</sup> Scahill, “Bush’s Shadow Army” p. 13.

<sup>19</sup> Jeremy Scahill, *Blackwater* p. 326.

have argued that hiring private security firms and paramilitaries is crucial to doing business in Colombia; in 2001, left-wing Colombian rebels kidnapped nearly 100 employees and held at least 27 Occidental employees for ransom.<sup>20</sup> Chiquita is now being sued in Colombian courts by the relatives of people killed by the AUC as well as the main rebel group, the Revolutionary Armed Forces of Colombia (FARC). Chiquita subsequently agreed to pay the US Justice Department \$25 million to end a 3-year long investigation into Chiquita's relationship with the AUC.<sup>21</sup>

### **Criticisms of Private Military Companies (PMC's)**

Concerns and criticisms of PMC's typically focus on several key areas: 1)the costs of employing these contractors and soldiers who are not directly under the jurisdiction or command of national militaries; 2)the associated lack of transparency and accountability of these PMC's to the citizens of the countries employing them; 3)the traditionally negative impressions that many people have of so-called "soldiers for hire,"; 4)the damage done to the reputations of countries and their national militaries when PMC's commit flagrant human rights abuses and violations, and; 5) their immunity from prosecution for human rights violations. A newer concern that is closely related to the problems mentioned above is that PMC's may begin cutting corners in order to maximize their profits. With the 180,000+ private contractors already in Iraq, companies may decide to lower their standards and hire less qualified candidates who are more likely to react very negatively in adverse circumstances.

Governments and other customers of PMC's must remain ever vigilant regarding fraud and overbilling by PMC's. The Pentagon and the US Government Accountability Office (GAO) have both audited KBR during this latest Iraq War and have determined that KBR has overbilled the government for food, fuel, and other essential services, some of which were never delivered to the soldiers in the field.<sup>22</sup> Deborah Avant notes that the argument that contractors are cheaper than regular soldiers has yet to be proved; there is, however, considerable evidence to disprove that assertion. She points out that "cost-effectiveness is not of the three reasons for outsourcing listed in a 2003 GAO report on military contracting."<sup>23</sup> Given the no-bid and cost-plus contracts that several major PMC's have received in the Iraq War, cost-effectiveness is clearly not the predominant concern of key customers of PMC's.

The recent entry into the field by many new firms in pursuit of highly lucrative contracts portends serious consequences for the clients of these PMC's, the civilian populations affected by the PMC's, and the employees of the PMC's themselves. In one of the more comic episodes in the current Iraq War, two enterprising former US military personnel created a company called Custer Battles LLC and won bids from the US government to provide security for Baghdad International Airport (BIAP) as well as to provide other forms of protection. Custer Battles LLC would eventually be cited by the

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<sup>20</sup> *BBC News*, "Rebels hold 27 hostages in Colombia" April 17, 2001.

<sup>21</sup> *BBC News*, "Chiquita sued over Colombia role" June 7, 2007.

<sup>22</sup> *BBC News*, "US army ends Halliburton oil deal" December 31, 2003.

<sup>23</sup> Deborah Avant, "Think Again: Mercenaries" *Foreign Policy* July/August 2004.

Defense Department for evidence of “seriously improper conduct” and would be barred from receiving further Defense Department contracts.<sup>24</sup> The proprietors of Custer Battles LLC would eventually leave Iraq, settling in Florida, and ultimately retaining approximately \$10 million from their time in Iraq, but only after a judge overturned a jury’s verdict because the victimized party was the Coalition Provisional Authority (CPA) in Iraq and not the US government.<sup>25</sup> Even though contractors and PMC’s can present governments and others who procure their services with public relations nightmares, Robert Young Pelton notes that “outsourcing blame also keeps the military of government firewalled from prosecution, since contracts provide legal protection and provide a plausible deniability that the government had officially authorized any incident of abuse.”<sup>26</sup>

The conduct of many security contractors in Iraq has been widely condemned not only by Iraqi civilians and government officials but even by government, intelligence, and military personnel from the Coalition. Contractors routinely point their weapons at any vehicles that approach their convoys or personnel and contractors also frequently fire warning shots if they feel that the other vehicles come too close. The contractors will respond, legitimately in many instances, that they regularly face sniper fire as well as the terror and lethality contained in the signature weapon of the Iraq war: improvised explosive devices (IED’s). Even though contractors can legitimately cite serious threats, their own actions often reflect little empathy for the Iraqis that they encounter on a daily basis. No security contractors have thus far been successfully prosecuted by the US or UK governments for alleged human rights abuses or even the deaths of Iraqi civilians.

Contractors in both Iraq and Afghanistan have also been criticized for abusing detainees and prisoners. In the infamous 2004 Abu Ghraib prison scandal in Iraq, some of the interrogation of the detainees and prisoners was conducted by CACI International and Titan Corporation, two US-based PMC’s. In the final report released by the US Army, neither of the companies was cited for the most egregious abuses but the Pentagon issued new rules for contractors engaged in the guarding and interrogation of prisoners. The Fay Report, named for its primary author, concluded that “lack of oversight...contributed to situations in which contract employees were improperly placed in positions of authority over soldiers”<sup>27</sup> and prompted the military to require much stricter supervision over contract employees in the interrogation and supervision of prisoners.

Private military companies (PMC’s) have also been criticized for violating the terms of their own contracts as well. In the famous case of the 4 Blackwater contractors killed in Fallujah, Iraq on March 31, 2004, Blackwater and the associated companies on the original contract specified that each mission required a minimum of 2 armored vehicles and 3 contractors in each vehicle. The requirement for “armored vehicles” would

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<sup>24</sup> Rajiv Chandrasekaran, *Imperial Life in the Emerald City: Inside Iraq’s Green Zone* Alfred A. Knopf New York 2007 p. 142.

<sup>25</sup> Todd Ruger, “War contractors settle in Lakewood Ranch” *The Sarasota Herald-Tribune* April 1, 2007.

<sup>26</sup> Pelton, *Licensed to Kill* p. 108.

<sup>27</sup> Ellen McCarthy, “Changes Behind the Barbed Wire” *Washington Post* December 13, 2004.

be revised a few days later, saving Blackwater an estimated \$1.5 million USD.<sup>28</sup> The requirement for 3 contractors per vehicle, however, was not changed but Blackwater officials still only sent 2 contractors per vehicle on that ill-fated mission. The families of the 4 killed contractors have filed suit in North Carolina but Blackwater is seeking to have the suit dismissed because Blackwater, according to its lawyers, enjoys immunity from prosecution as a recognized part of the US “Total Force.”

**“This is a business matter.”<sup>29</sup>**

Regulation of the privatized military industry may be the most complex and vexing problem that the international community must wrestle with when dealing with PMC’s. Voluntary self-regulation by companies or industry associations has not produced the desired results and many governments find it difficult to hold contractors accountable. In Iraq, the situation has been heavily complicated by former CPA Administrator L. Paul Bremer’s Order 17 which barred the Iraqi government from prosecuting contractors for criminal activities and human rights abuses. Even contracting governments lack some of the most vital tools for effectively regulating PMC’s; to wit, the US government asserts that the employees of PMC’s are not under the jurisdiction of the Universal Code of Military Justice (UCMJ) and thus cannot be court-martialed. In Iraq, they are not under Iraqi law, either, and even in instances where a contractor faces criminal prosecution by a host country, many of the PMC’s can assist the contractor in leaving the country. In September 2003, a security contractor involved in a firefight used nonstandard ammunition, killing one of the men who had been involved in the ambush. “When military commanders heard about the bullets used in the shooting, they issued a memo to security firms warning against the use of nonstandard ammunition. But there was no effective way to enforce the rule-or any of the other regulations the military wanted to impose on security contractors. They were above the laws of war.”<sup>30</sup> Instead of being court-martialed, the contractor merely gave away all of his remaining nonstandard ammunition to other security contractors in Iraq. P.W. Singer discusses a particularly “dark example” involving one of the largest PMC’s, Dyncorp, which was “hired by the US and the UN to provide international police in Haiti and the Balkans. Several of its employees became involved in the sex and arms trade, including its Bosnia site supervisor who videotaped himself raping two young women. None of the employees were ever criminally prosecuted and the whistleblowers were fired. The firm now has a similar contract in Iraq.”<sup>31</sup> One key component of the Ad Hoc Working Group’s deliberations will be the crucial topic of effective regulation, whether national or international, of PMC’s.

In 2001, leading PMC’s created the International Peace Operations Association (IPOA) to “promote high operational and ethical standards of firms active in the Peace

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<sup>28</sup> Jeremy Scahill, *Blackwater* p. 227.

<sup>29</sup> Lawrence Peters, quoted on *Frontline: Private Warriors* Marcela Gaviria & Martin Smith, producers, PBS June 21, 2005.

<sup>30</sup> Rajiv Chandrasekaran, *Imperial Life in the Emerald City* p. 146.

<sup>31</sup> P.W. Singer, “Should humanitarians use private military services?” *Humanitarian Affairs Review* Summer 2004 p. 17.

and Stability Industry; to engage in a constructive dialogue with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development and human security; and to inform the concerned public about the activities and role of the industry.”<sup>32</sup> The constantly growing membership list of the IPOA includes heavyweights such as ArmorGroup, Blackwater, Dyncorp, Erinys, Hart Security, and MPRI, as well as a host of smaller companies. In December 2006, the IPOA adopted its revised Code of Conduct pledging signatories to “operate with integrity, honesty and fairness” and “to work only for legitimate, recognized governments, international organizations, non-governmental organizations and lawful private companies.”<sup>33</sup> The IPOA has set up its own Standards Committee to enforce the Code of Conduct but according to its own rules, “corrective measures may not be punitive in nature,” and the worst consequence that a PMC would face for violating the Code of Conduct is expulsion from the IPOA. The IPOA also publishes the *Journal of International Peace Operations* (JIOP) and has recently published its first *State of the Peace and Stability Industry Survey*. While the issuance of the updated and revised Code of Conduct is a welcome development, self-regulation of the privatized security industry is unlikely to curb the most abusive practices and grievous human rights violations.

## UN Actions

As military and security matters lie at the heart of the UN’s mission, it is imperative that the UN respond to emerging military and security trends as quickly and effectively as possible. Questions relating to the conduct of mercenaries and private military companies (PMC’s) are no exceptions. In 1980, the General Assembly (UNGA) created a Working Group to draft an international covenant on the training and use of mercenaries and in December 1989 the General Assembly delegates forwarded the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries on to their respective countries for signature and/or ratification. After the 22<sup>nd</sup> ratification in late 2001, the Convention entered into force and has been ratified by a total of 30 countries with an additional 10 signatories. While the entry into force of the Convention was a welcome development in international law, the most effective enforcement of the Convention will only occur once it has been ratified by all UN member states.<sup>34</sup> While the Convention is the most important international agreement addressing these issues, it has been noted that “one of the Convention’s limitations is that PMSC’s [Private Military Security Companies] and their employees fall into a grey area which the Convention does not specifically cover. This demonstrates the need for appropriate national regulation, control and monitoring of these security companies to guarantee State responsibility for the effective protection of human rights.”<sup>35</sup>

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<sup>32</sup> [http://ipoaonline.org/php/index.php?option=com\\_content&task=view&id=14&Itemid=31](http://ipoaonline.org/php/index.php?option=com_content&task=view&id=14&Itemid=31)

<sup>33</sup> [http://ipoaonline.org/php/index.php?option=com\\_content&task=view&id=100&Itemid=109](http://ipoaonline.org/php/index.php?option=com_content&task=view&id=100&Itemid=109)

<sup>34</sup> Delegates may access the Convention at: <http://www.un.org/documents/ga/res/44/a44r034.htm>

<sup>35</sup> A/HRC/4/42 Add. 1 “Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: Mission to Honduras” February 20, 2007 p. 6.

The UN maintained for 20 years the position of Special Rapporteur on the Use of Mercenaries but this position was replaced in 2005 by the UN Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, under the supervision of the Commission on Human Rights (UNCHR).<sup>36</sup> The Working Group issues annual reports on the activities of mercenaries and private military companies (PMC's) as well as conducts visits to countries to determine if the activities of mercenaries constitute human rights violations in those respective countries.<sup>37</sup> During July 2007, the Working Group conducted its latest country visit, traveling to Chile. The Working Group, led by Chairperson-Rapporteur Jose Luis Gomez del Prado of Spain, noted Chile's appropriate referral of cases to its court system but also remarked on the need to continue confronting these issues. In February 2007, the Working Group released their recently completed report on their country visit to Honduras. The Working Group noted, with alacrity, that "there seems to be no authority with any control over these companies' actions, which pose a serious threat to the general public and to law and order."<sup>38</sup>

### **Unleashing the "dogs of war": PMC's in Africa**

While the activities and motivations of PMC's and military contractors are quite controversial throughout the world, their recent history in Africa is truly notorious. In July 1975, Comoros declared its independence from France and the very next month the president, Ahmed Abdallah, was overthrown by French mercenary leader Bob Denard and his own group of soldiers. Denard would restore Abdallah to power 3 years later by overthrowing the Socialist leader, Prince Said Mohammed Jaffar, that Denard had installed in 1975. Denard would lead at least 2 other *coup* attempts in Comoros in 1989 and 1995, respectively, and he is currently appealing a 5-year suspended sentence in France for the 1995 *coup* attempt.<sup>39</sup> Denard, who was active in the Congo wars of the 1960's, trained Yemeni security forces, and attempted to overthrow the government of Benin in 1977, maintains that he was frequently acting on behalf of the French government and the suspension of several jail sentences has only strengthened the suspicions of many African leaders and political analysts worldwide.

Denard's adventures have been widely condemned but unfortunately the questionable, if not disgraceful, actions of mercenaries and PMC's continue in Africa. In the 1990's, new PMC's such as Executive Outcomes (EO) and Sandline would emerge and would play decisive roles in brutal civil wars in Angola and Sierra Leone. Executive Outcomes (EO) was founded in 1989 by former members of the infamous 32 Buffalo Battalion of the South African Defense Forces (SADF). The 32 Buffalo Battalion had

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<sup>36</sup> Commission on Human Rights resolution 2005/2.

<sup>37</sup> <http://www.ohchr.org/English/issues/mercenaries/index.htm>

<sup>38</sup> A/HRC/4/42 Add. 1 "Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: Mission to Honduras" February 20, 2007 p. 15.

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/109/69/PDF/G0710969.pdf?OpenElement>

<sup>39</sup> *BBC News*, "French mercenary absent at appeal" June 6, 2007.

been used extensively as a counterinsurgent and intelligence group during the latter stages of the apartheid regime in South Africa and they had fought in Angola against the Communist government of Angola. After the South African government began dismantling the apartheid apparatus, many of the soldiers in units like the 32 Buffalo Battalion found themselves out of work. When Executive Outcomes (EO) was contacted by the Angolan government to provide training and support for the Angolan army against Jonas Savimbi and his UNITA rebels, EO eagerly agreed in return for a \$10 million payment. EO would quickly drive UNITA out of the oil-rich Soyo province but would wind up returning to Angola within a few months because the Angolan army proved so ineffective in the field. On its return, EO would negotiate an exponentially more lucrative contract worth \$100 million annually for up to 3 years. In each of these instances, EO operatives engaged in direct combat operations against UNITA with several EO soldiers being killed and dozens wounded. Their successes helped forced UNITA back to the negotiating table and ended the war for a short while but UNITA insisted that EO immediately leave the country as a condition of the peace agreement. Robert Young Pelton notes that “the opportunity for Executive Outcomes to fight for [Angolan President Eduardo] dos Santos against UNITA provides proof that mercenaries value money above morals, since [EO founder Eeben] Barlow and his former 32 Battalion soldiers, who had spent their careers fighting with UNITA against dos Santos and his Movimento Popular de Libertacao, or Popular Movement for the Liberation of Angola (MPLA), would now be fighting for their former left-wing enemy against their formerly US-backed ally.”<sup>40</sup>

After their successes in Angola, EO would further expand its operations in Africa as it would send its forces into the diamond-rich country of Sierra Leone. EO would again use its superior firepower, technology, and training to overpower and dislodge a despised rebel group, in this case the late Foday Sankoh’s Revolutionary United Front (RUF). In Sierra Leone, EO would play a vital role in assisting the government in pushing the RUF out of the diamond mines of the Kono region and EO would ultimately earn tens of millions of dollars from their control over the Kono region. As Executive Outcomes generated increasing press and corresponding scrutiny, the founders of EO sought to provide some legal distinctions between the various functions that EO performed by joining forces with the British-based PMC Sandline. As Sandline’s role in Sierra Leone became more prominent, its leaders, including Tim Spicer, became the targets of various investigations, including Sandline’s ferrying of weapons to the government of Sierra Leone in violation of a UN Security Council-imposed arms embargo.<sup>41</sup> Spicer and Sandline insisted that their actions were undertaken with the encouragement and complicity of the British Foreign Office and subsequent events would serve to reinforce those suspicions. After damaging pictures surfaced of British military personnel servicing Sandline’s attack helicopter in Sierra Leone, “Tim Spicer and Sandline would be proven right and Peter Penfold, the British high commissioner, would apologize for not having realized that the arms embargo extended to cover weapons shipments to the supporters of [Ahmed Tejan] Kabbah’s democratically elected

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<sup>40</sup> Pelton, *Licensed to Kill* p. 256.

<sup>41</sup> (S/RES/1132).

government-in-exile.”<sup>42</sup> Sandline’s controversial exploits in Sierra Leone would comprise only one of a series of incidents that would make Tim Spicer the most notorious of the current crop of privatized soldiers – his roles in Papua New Guinea and Iraq will be analyzed further below.

The tiny country of Equatorial Guinea rarely generates much global press coverage but it serves as the backdrop for an extremely controversial chapter in the rise of privatized military companies (PMC’s). One of Tim Spicer’s friends from the prestigious British military academy Sandhurst, Simon Mann, would become involved with the son of former British Prime Minister Margaret Thatcher in an alleged plot to overthrow the regime of President Teodoro Obiang Nguema, the leader of Equatorial Guinea. In early March 2004, Mann and several others were arrested at the Harare airport in Zimbabwe in a joint intelligence operation utilizing cooperation between Angola, Equatorial Guinea, South Africa, and Zimbabwe.<sup>43</sup> Mann had also been one of the founders of Executive Outcomes and he had recruited at least 64 soldiers from the ranks of EO/Sandline for the *coup* in Equatorial Guinea. His arrest, however, would have much farther reaching consequences than anyone might have expected; it prompted the government of South Africa to enact strict laws to prevent future *coup* attempts led by former South African soldiers. The effects of the legislation, though, are now being felt even outside of Africa as there are over 1,000 South Africans working as private military contractors in Iraq. According to Jonathan Charles of the BBC, the new law “not only seeks to prevent people from working as mercenaries but also from undertaking any activity in conflict zones, unless the government grants special permission.”<sup>44</sup> While South African military contractors are concerned about the domestic legal status of their work, it is clear that this new legislation will be examined by other countries that are becoming increasingly concerned about the growth and activities of the privatized military industry.

### **Ending a Rebellion or Leading a *Coup*? The Case of Sandline in Papua New Guinea**

The tiny Pacific country of Papua New Guinea rarely attracts much outside interest, apart from Australia’s long-standing quest for both resources and stability in neighboring countries. Heavily dependent on copper mines on the island of Bougainville, some 800 miles from the capital, Port Moresby, the government of Papua New Guinea (PNG) has been in a precarious state ever since the secessionist Bougainville Revolutionary Army (BRA) emerged in the 1980’s and took control over the copper mines. In January 1997, then Prime Minister Julius Chan hired Sandline to train the Papua New Guinea Defense Force (PNGDF) but it was evident from the terms of the contract that Sandline was expected to do much more than just train the PNGDF for a new assault on Bougainville. Prime Minister Chan deputized Sandline’s personnel, most of whom were actually contractors from Executive Outcomes (EO), “special constables,” meaning that had “the legal authority to carry weapons, arrest local citizens, and act

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<sup>42</sup> Pelton, *Licensed to Kill* p. 271.

<sup>43</sup> *BBC News*, “Mark Thatcher and the Dogs of war” November 18, 2004.

<sup>44</sup> Jonathan Charles, “S Africa gets tough on ‘mercenaries’” *BBC News* April 5, 2006.

forcibly in 'self defense' (to be interpreted by the firm itself)."<sup>45</sup> The highly lucrative contract, worth at least \$36 million USD with purported mining concessions as an additional incentive for Sandline, quickly became public knowledge, forcing Chan's resignation and the hasty departure from the country by the Sandline/EO contractors. Sandline's commander, Tim Spicer, would be detained on a minor charge to ensure his testimony. British intervention on Spicer's behalf would allow him to quickly exit the country.

### **The ultimate cash cow: Iraq and PMC's**

Private military companies (PMC's) have generated major revenue streams in different conflict zones around the world but no conflict has proved to be as lucrative as the current war in Iraq. Describing the American-led takeover of the infamous "Green Zone" in Baghdad in 2003, Rajiv Chandrasekaran writes that "whatever could be outsourced was. The job of setting up town and city councils was performed by a North Carolina firm for \$236 million. The job of guarding the viceroy [L. Paul Bremer, III] was assigned to private guards, each of whom made more than \$1,000 a day. For running the palace-cooking the food, changing the light bulbs, doing the laundry, watering the plants-Halliburton had been handed hundreds of millions of dollars."<sup>46</sup> The war in Iraq is so lucrative for PMC's that they even subcontract work to each other. Robert Young Pelton provides a particularly apt analogy for the digital age: "Iraq has been to the private security industry what the development of the first user-friendly Web browser was to the dot-com boom."<sup>47</sup> Amidst this pursuit of lucre, however, security contractors must be aware that they are often targets of various Sunni and Shia militias as well as al-Qaeda in Iraq. The ambush and slaughter of four Blackwater USA contractors in Fallujah at the end of March 2004 served to focus attention on the use of contractors in the war in Iraq.

In August 2003, Blackwater USA was awarded a contract worth nearly \$28 million to provide the personal security detail (PSD) for L. Paul Bremer, III, the top American administrator in Iraq. As Bremer traveled around the country, Blackwater's heavily-armed guards became increasingly visible. As the reported price on Bremer's head soared into the tens of millions of dollars, the more success that Blackwater had in protecting him only increased its own prestige and market value. Jeremy Scahill asserts that "the Bremer contract had officially elevated Blackwater to a status as a sort of Praetorian Guard in the war on terror-a designation that would open many doors in the world of private military contracting."<sup>48</sup> Blackwater's extensive contracts providing embassy security worldwide for the US government can definitely ensure a healthy bottom line for the company.

At the beginning of the Iraq War, the Pentagon contracted with Science Applications International Corporation (SAIC) to create an independent television network in Iraq to counter al-Jazeera and other Arab language outlets. The station, Iraqi

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<sup>45</sup> P.W. Singer, *Corporate Warriors* p. 194.

<sup>46</sup> Rajiv Chandrasekaran, *Imperial Life in the Emerald City* p. 13.

<sup>47</sup> Pelton, *Licensed to Kill* p. 97.

<sup>48</sup> Jeremy Scahill, *Blackwater* pp. 70-71.

Media Network (IMN), was hamstrung by an inadequate budget and never captured much of the Iraqi television audience. When the contract came up for renewal in January 2004, the Pentagon chose Harris Corporation, a manufacturer of telecommunications equipment, to run the station even though Harris Corp. had never before attempted to run a television station in the midst of a war zone.<sup>49</sup>

While the situation in Iraq remains extremely volatile and contractors face considerable danger, the enormous sums of money being paid for security contracting services continue to lure more PMC's to recruit soldiers, drivers, and attendant personnel from all over the world. Clare Murphy of the BBC noted an additional side effect of the boom in security contracting in Iraq. "Many Iraqis considering a career as a security officer are shunning the meager wages of their country's own police force in favor of the greater salaries on offer from one of the private foreign armies."<sup>50</sup> With no immediate end to either the War in Iraq or the Global War on Terror in sight, PMC's and security contractors expect demand for their services to remain very strong.

### **"There's not a whole lot of jobs out there for people trained to kill"<sup>51</sup>**

No analysis of private military companies (PMC's), security contractors, and modern mercenaries would be complete without some examination of the human beings who choose this line of work. Security contractors are primarily drawn from the pools of experienced former military personnel found throughout the world, many of whom have served in their respective home countries' special forces or elite combat units. There are also large numbers of former police officers. These ex-soldiers and police officers often find that they cannot adequately support themselves and/or their families on their relatively low wages as private security guards. Having already acquired valuable skills and experience, with those costs overwhelmingly borne by their respective home countries' governments, these well-trained individuals may seek far more rewarding, challenging, and dangerous work as employees of PMC's. When American, British, and South African security contractors working for Aegis, Blackwater, or Dyncorp can earn upwards of \$1,000 USD per day, compared to less than \$30,000 USD annually as private security guards in their respective home countries, the financial incentives to work for PMC's are made readily apparent. These extremely lucrative contracts do not always extend to contractors brought in from other countries, such as the former Colombian and Chilean commandoes hired by Blackwater to work in Iraq. Many of these commandoes, known as Third Country Nationals or TCN's, who hail from such diverse countries as Chile, Fiji, and Nepal, earn only fractions of what their American, British, and South African counterparts receive. *The Economist* reported in 2004 that "Iraqis get \$150 a month, 'third-country nationals' 10-20 times as much, and 'internationals' 100 times as much."<sup>52</sup> Given the dangerous nature of the work and the fact that many of the TCN contractors have been injured or killed, this massive differential in pay has led to resentment and tensions. The families of contractors who are American citizens and are

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<sup>49</sup> Rajiv Chandrasekaran, *Imperial Life in the Emerald City* pp. 131-136.

<sup>50</sup> Clare Murphy, "Iraq's mercenaries: Riches for risks" *BBC News* April 4, 2004.

<sup>51</sup> Katy Helvenston, mother of Scott Helvenston, *Frontline: Private Warriors* June 21, 2005.

<sup>52</sup> *The Economist*, "The Baghdad boom" March 25, 2004.

killed in Iraq may apply for death benefits from the Defense Base Act (DBA) and may be eligible for death benefits from the PMC's if the companies choose to offer and honor such benefits.

### **“No justification”**

In September 2007, Blackwater contractors again generated considerable controversy for their actions in Iraq. On September 16, 2007, Blackwater contractors shot and killed at least 11 Iraqis and wounded at least 12 others. The United States government and Blackwater initially argued that Blackwater had been ambushed and fired back in self-defense but the Iraqi Interior Ministry “concluded that Blackwater fired without provocation into cars about noon”<sup>53</sup> and that Blackwater employees were “100 percent guilty”<sup>54</sup> for their actions on Sunday September 16, 2007. The Iraqi government then issued directives that banned Blackwater from operating within Iraq; these restrictions were relaxed slightly to allow Blackwater employees to undertake “essential missions,” including providing private security details (PSD's) for US ambassador Ryan Crocker and related US government personnel. Recent statements by the Iraqi government indicate that this latest incident as well as serious future violent incidents involving PMC's will be referred to the Iraqi courts.<sup>55</sup> While Blackwater and other PMC's still cannot be prosecuted under Iraqi law because of Bremer's Order 17, the likelihood that the Iraqi government will draft new legislation in regards to PMC's increases with every new controversy.

### **Mercenaries for Darfur?**

Private military companies (PMC's) are increasingly integrated into all aspects of military and security issues and policies and UN operations are no exception. P.W. Singer, writing in 2003, noted that “current UN operations increasingly make use of support sector firms for logistics, air transport, demining and security consultation.”<sup>56</sup> This trend has only accelerated over the past 4 years as the privatized security industry has grown exponentially and PMC's have sought out an increasing array of business opportunities. Max Boot, a member of the Council on Foreign Relations, argues that PMC's such as ArmorGroup, Blackwater, and DynCorp can legitimately point to their more substantial logistical and military capabilities than many UN member states, even some of the countries who routinely contribute soldiers and police to UN peacekeeping operations. “Hired guns could be ... effective in stopping the campaign of rape, murder and ethnic cleansing carried out by the Sudanese government and the Janjaweed militia.”<sup>57</sup> Singer illuminates the central issue at the heart of this debate. “The critical question, however, is that even if the firms might be more efficient than UN operations,

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<sup>53</sup> Sudarsan Raghavan and Steve Fainaru, “US Repeatedly Rebuffed Iraq on Blackwater Complaints” *Washington Post* September 23, 2007.

<sup>54</sup> John F. Burns, “The Deadly Game of Private Security” *The New York Times* September 23, 2007.

<sup>55</sup> James Glanz and Sabrina Tavernise, “Security Company Faces Criminal Charges” *The New York Times* September 23, 2007.

<sup>56</sup> P.W. Singer, *Corporate Warriors* p. 183.

<sup>57</sup> Max Boot, “A Mercenary Force for Darfur” *Wall Street Journal* October 25, 2006.

do they provide a long-term solution to conflict resolution?”<sup>58</sup> Private military companies that depend on conflict and insecurity for their revenues might have a more tangible interest in sustaining that conflict than in resolving it.

### **A Way Forward?**

Given that private military companies and security contractors will continue to comprise a crucial and dynamic element of global security issues for years to come, it is imperative that the rules governing the contracts and conduct of PMC's and security contractors are made clearer. While individual businesses and their industry representatives frequently resist national and international regulation, PMC's wishing to substantiate their claims that they act responsibly might find their claims of respectability bolstered by adhering to stricter regulation. Additionally, “if regulation encouraged the development of a reputable private military sector this could be of benefit to international organizations, NGO's [non-governmental organizations], and on occasion, sovereign governments.”<sup>59</sup> Effective resolution of the potentially conflictual relationships between private military companies (PMC's), their customers, and the civilian populations in the countries affected will improve the global security situation for all.

### **Guiding Questions:**

What is the best way to obtain a far greater number of ratifications to the UN Convention Against the Recruitment, Training, Use and Financing of Mercenaries? How might the Convention be modified or amended to address the growing phenomenon of private military companies (PMC's)?

What national and regional efforts at regulation of mercenaries, PMC's, and security contractors have your government undertaken?

Does your country send or train mercenaries overseas? What codes of conduct and/or rules of engagement must they follow when deployed internally? Overseas? What are the legal consequences if these codes of conduct and/or rules of engagement are not followed? Has your country successfully prosecuted any mercenaries or employees of PMC's in recent years?

What recourse should customers of PMC's and security contractors have in the event that PMC's and contractors perform poorly or violate the terms of their contracts? How can accountability and transparency be enhanced and improved? How can customers of PMC's, including the UN, improve the cost-effective nature of contracts?

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<sup>58</sup> P.W. Singer, *Corporate Warriors* pp. 186-87.

<sup>59</sup> UK House of Commons, “Private Military Companies: Options for Regulation” February 12, 2002 p. 21.