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EDITORIAL
Private military/security companies and human security in Africa

Deane-Peter Baker and Sabelo Gumedze

Mercenaries and private military/security companies (PMSCs)\(^1\) are different entities both in form and in substance. While PMSCs have over the years arguably proved to be useful in the restoration of peace and security, mercenaries are the antithesis of what Wright and Brooke call the ‘peace and stability operations industry’ in their contribution to this issue of the *African Security Review*. There is no doubt that mercenary activities continue to destabilise the African continent while at the same time PMSCs are increasingly seeking to establish themselves as legitimate service providers.

Mercenarism has not only compromised the peace and security of African states in general but has also undermined human security on the continent. In complex African conflicts,

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which involve private actors that include both PMSCs and mercenaries, freedom from fear and want seem to be rare despite so-called ‘strategic security sector reform’ efforts. Peace and security, at least in the African context, is a human right recognised and guaranteed in the African Charter on Human and Peoples’ Rights. The Charter (par. 8 of the preamble) states that the OAU/AU member states’ conviction is to ‘henceforth … pay particular attention to the right to development and [to ensure] that civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights’. These rights cannot be realised without a proper understanding of the impact, both potential and actual, of PMSCs and mercenaries on human security in Africa. The aim with the theme of this issue of African Security Review is to make a contribution to an important but often misunderstood subject.

**Defining and regulating PMSCs**

Just what is a PMSC? Spear (2006:7) defines PMSCs as ‘corporate entities that provide military expertise and other professional services essential to combat and warfare’. Those ‘other professional services’ are extremely open-ended, and in some cases come uncomfortably close to mercenary activities. Singer (2001:2) defines PMSCs as ‘corporate bodies that specialize in the provision of military skills – including tactical combat operations, strategic planning, intelligence gathering and analysis, operational support, troop training, and technical assistance’. The activities of PMSCs are diverse and the list that Singer provides is obviously not exhaustive because, as corporate entities, it makes business sense for PMSCs to diversify their expertise in order to maximise their profits.

Broadly speaking a PMSC is an entity that offers services aimed at addressing security concerns through a variety of security engagements. The word ‘security’ in this context is used in the most general sense. Though both PMSCs and mercenaries can be considered to be ‘security workers’, there is a significant difference in the work they do. According to a report by the Geneva Centre for the Democratic Control of Armed Forces (DCAF 2003:71) PMSCs ‘do not fit into the narrowly-drawn definition of mercenary forces as they normally consist of retired military personnel, who are no longer active in security forces [and who] offer a wide range of services from combat and operational support, or advice and training, to arms procurement, intelligence gathering, or hostage rescue, etc.’. From a legal perspective a PMSC is a corporate entity, while a mercenary group is not.

Singer (2003:91) attempts to categorise the PMSCs into ‘three broad types of units linked to their location in the battle space: those that operate within the general theatre, those in the theatre of war, and those in the actual area of operation, that is, the tactical battlefield’. He uses the metaphor of a spear to identify three types of PMSCs, namely military provider firms, which represent the ‘tip’ of the spear and provide implementation and command...
services; military consultancy firms, which are situated in the middle of the spear and which provide advisory and training services; and military support firms, which provide non-lethal aid and assistance and which are the PMSCs that are furthest removed from the tip. Given such diverse categories both in terms of operation and function, it is clearly inappropriate to attempt to lump together all PMSCs under a single ‘mercenary’ banner.

The challenge comes at the tip of the spear where PMSCs sometimes find themselves using armed force in the service of their employees. Walker and Whyte (2005:652) argue convincingly that the difference between mercenary, private security company, and private military company, are often blurred, with the latter term being the most recent mercenary ‘version’ and without legal definition in domestic or international law. Shannon Bosch notes in her contribution to this issue of African Security Review that this legal murkiness is but one of a number of challenges that international humanitarian lawyers have had to deal with in recent years. Bosch shows that this murkiness can be penetrated with careful and thorough analysis. She offers a far more fine-grained and detailed picture of the position(s) of PMSCs under international law than most critics of the industry seem willing to accept is even possible.

Sabelo Gumede points out that the legal challenge is a particularly relevant one in Africa, which has unquestionably suffered the most at the hands of mercenaries in modern times. If there is any place on our planet where the private provision of armed force needs to be carefully regulated, that place is Africa. But, as Gumede makes clear, the only legal instrument currently available in Africa that aims to do this is the 1977 OAU/AU Convention on the Elimination of Mercenarism in Africa, which is hopelessly inadequate and in need of radical revision.

PMSCs and their impact on Africa

While many analysts are increasingly concerned about the impact of PMSCs on security and stability in Africa, most people think immediately of Iraq when the phrase ‘private security contractor’ is heard. There is in fact an important connection between Africa and Iraq in this regard. A significant number of the non-United States and non-Iraqi security contractors in Iraq are South Africans, mostly white members of the apartheid-era security forces. The prevailing political climate in South Africa is such that there is little incentive for those heading for Iraq to make their planned destination known, and so it is impossible to determine whether the recent growth in the numbers of private security contractors in Iraq has included a large number of South Africans. What is known, however, is that South Africans were already there in significant numbers prior to the ‘surge’.

The big question, from a South African point of view, is what happens to those South African private security contractors once the ‘surge’ is over and the inevitable drawdown of US military forces in Iraq begins? One possibility is that the Iraqi government, desperate
to fill the security void, will use some of its oil revenue to contract with the private sector to replace at least some of the military capability that they will lose as a result of the US withdrawal. Certainly there are hints from within the international private security industry that there are companies that might be prepared to offer such services. As long ago as March 2006 the US vice-president of Blackwater, Chris Taylor, was quoted as saying that, if invited by the Iraqi government, Blackwater could assemble a force capable of quelling insurgent attacks in one of that country’s troubled regions or cities. Though Blackwater is arguably the most aggressive, and is certainly the best known, of the large private security contracting firms, it is by no means the largest. ArmorGroup, for example, which has strong connections with South Africa, has about 25 per cent more boots on the ground in Iraq than Blackwater (around 1200 contractors) and has a far larger global presence. Erinys, which also has strong links with South Africa, controls a force of about 14000 security guards in Iraq (though most of them are local Iraqis). If companies like these respond to a call for support from the embattled Iraqi government, many if not most of the South Africans currently in Iraq may well continue to ply their trade in that conflict.

Another, possibly more likely scenario, is that just as the US military ‘surge’ was accompanied by a parallel increase in private security contractors in Iraq, the US pullout will in turn be mirrored by a drawdown of private security involvement. Few private firms have, or indeed wish to have, the fighting capability that Blackwater’s Chris Taylor speaks of, and without the US military there to back them up many of these firms may well consider the security environment to be simply too hostile for continued involvement. If that happens South Africa could well experience an influx of returning combat-hardened security personnel, most of them white males with connections to the apartheid-era security forces.

Many believe that it is precisely the fear of the possible impact of such people on the stability of South African society that led the South African government to take what is unquestionably one of the most hard-line ‘anti-mercenary’ stances in the international sphere. Unfortunately this stance comes at a cost. As Deborah Avant pointed out in her book on this topic, *The market for force*, by criminalising the ‘private security for export’ industry, the South African government has in effect relinquished its ability to shape the norms and ethos of the sector. The wisdom of this move is questionable, particularly in view of the very limited capability of the South African government to enforce the legislation it has passed to crack down on the private supply of military and security capabilities to foreign conflict zones. While it is too early to know what will happen to the market for force in Iraq, the South African government should perhaps consider constructive engagement with citizens who have gone ‘over there’, before the ‘surge’ home begins.

One approach would be to find ways to integrate returnees into South Africa’s domestic security market. With crime showing no sign of abating and the 2010 Soccer World Cup looming on the horizon, the South African government may find it prudent to follow the example of General Petraeus and arrange a ‘surge’ of its own. And there is certainly
scope for making use of this expertise beyond South Africa’s borders. Particularly as the South African National Defence Force is currently overextended, the South African government could follow the US example of employing private security contractors on a large scale as force multipliers.

The argument regarding the South African situation also applies to the rest of the continent. But in these arguments one should bear in mind the difference between what governments ‘could’ do and whether they ‘should’ legitimise such private purveyors of force. Rachel Zedeck’s warnings, in her contribution to this issue of African Security Review, must be taken very seriously. This should be balanced by a principled pragmatism which suggests that it would be foolhardy to ignore the potential, which Wright and Brooke point out is inherent in the private sector, to address a security vacuum that states very often cannot or will not fill.

We close with the point with which we began: branding all PMSCs with a ‘mercenary’ label obscures the real challenges, and potential, that this industry presents for human security in Africa. This is a subject that requires careful and thorough analysis, as does the broader issue of human security in Africa. We are grateful to the contributors to this volume, for their contributions highlight the issues surrounding this important matter.

Notes

1 The use of the acronym PMSC is deliberate and seeks to classify private security companies (PSCs) and private military companies (PMCs) into a single group. Some PMCs call themselves PSCs despite the clear presence of a ‘military’ component in their operations.

2 Parts of this section are based on the article, Looking beyond the ‘surge’ – What future for SA security contractors in Iraq?, by Deane-Peter Baker (2007).

References


PRIVATE MILITARY/SECURITY COMPANIES AND HUMAN SECURITY IN AFRICA

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A study of peacekeeping, peace-enforcement and private military companies in Sierra Leone

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The four military interventions into the conflict in Sierra Leone between 1995 and 2000 met with varying degrees of success. One of the more effective ones was launched by a private military company (PMC) early in the conflict. In the following paper a comparison is made between different aspects of the PMC intervention and the interventions by national military and by multilateral forces from regional and international organisations. The findings are that the interventions of the PMC and national forces were more successful due to their clear peace-enforcing mandate, unitary structure, elite counterinsurgency training, intelligence-gathering capabilities, relationship with the public, incentive to win as efficiently as possible and role as a force multiplier for local forces. The failure of multilateral peacekeeping forces in peace-enforcing roles suggests that small contingents of elite special forces, whether donated unilaterally by governments or hired in a competitive PMC market, are not only likely to be more effective in bringing violent conflict to a halt, but could at the same time be helpful in building the capacity, loyalty and professionalism of local militaries.

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Introduction

Four years into the civil war in Sierra Leone, which began in March 1991, the Revolutionary United Front (RUF) rebel faction continued to gain military ground against the government’s small, disorganised and ineffective Republic of Sierra Leone Military Forces (RSLMF). Fearing that the RUF were close to seizing the capital of Freetown, the government of Sierra Leone hired Executive Outcomes (EO), a South Africa-based PMC specialising in the provision of peacekeeping services. In less than two years EO managed to secure the capital, oust the RUF from the peripheral districts of Freetown, stabilise the area around the diamond mines, and destroy the RUF headquarters.

EO’s success forced the RUF into a weakened military position, compelling them to negotiate and sign a peace agreement with the government in November 1996, thereby creating the stability necessary for the country to hold democratic elections. The RUF insisted that the elimination of all foreign military presence, implicitly EO, be written into the agreement. Four months after the termination of EO’s contract in January 1997, a coup toppled the democratically elected government, the 1996 peace agreement failed and Sierra Leone fell back into a state of increasingly savage civil war. Subsequent interventions were undertaken by the Economic Community of West African States Monitoring Group (ECOMOG), the United Nations Mission in Sierra Leone (UNAMSIL) and the United Kingdom, with varying degrees of success in a war that dragged on until 2002.

In this paper EO’s intervention into the conflict in Sierra Leone is examined. A comparison is made between EO’s overwhelmingly successful and efficient intervention with the relatively less effective peacekeeping operations of ECOMOG and UNAMSIL and the successful intervention of the UK forces that eventually ended the war. Using the case of Sierra Leone as a laboratory for the examination of military intervention as a science, an attempt is made to determine which factors were responsible for EO’s success and whether they were unique to this case or could be reapplied by other international actors to future interventions.

With military success as the dependent variable, the paper assesses the relative impact of five independent variables, namely mandate; role, size and quality of forces; timing; intelligence and hearts and minds; and equipment and tactics. Having isolated the most important variables responsible for EO’s success the author then determines whether they were specific to EO as a PMC, in which case the UN or regional organisations may want to (re)consider the outsourcing of peacekeeping missions to PMCs, or if the UN and regional organisations could implement specific changes to their own peacekeeping operations that would make their future interventions as effective as EO had been in Sierra Leone.
History of the country and conflict

Formed as a colony for freed British slaves in 1787, Sierra Leone’s natural mineral and diamond wealth, high rates of education, and European-modelled Fourah Bay College made it the envy of the West African colonies. However, after gaining independence from British rule in 1961, the country fell prey to the increasingly corrupt one-party system perpetuated by Siaka Stevens and his hand-picked successor General Joseph Momoh (Bergner 2004). For nearly 30 years all government institutions, including the military, degenerated irreparably and with them the rule of law and the country’s economy. As a result, large numbers of unemployed young men began gathering in town centres known as *potes* where they smoked marijuana and discussed politics (Abdullah & Muana 1999).

In the late 1980s a former army colonel turned photographer by the name of Foday Sankoh began to organise these groups of disenfranchised men against the Momoh government into what would become the RUF. Professing a loose ideology of democracy, but motivated primarily by financial gain, Sankoh used his ties with Liberian leader Charles Taylor to arm his followers and provide them with training in guerrilla warfare in Libya (Abdullah & Muana 1999).

In March 1991 the RUF crossed the eastern border into Sierra Leone from Liberia, terrorising civilians and taking over towns in the diamond-rich area of Kono. When the small under-trained forces of the government’s RSLMF were unable to repel the RUF, Momoh undertook an intensive recruitment campaign, increasing his forces from 3,000 to 14,000 in the space of a few months. Without training or military experience the augmented RSLMF proved even more incompetent than the original force, and many of its soldiers joined the rebels in the looting of civilian homes for personal profit. These ‘sobels’ – soldiers by day, rebels by night – often collaborated with the rebels, thereby undermining any hope of the RSLMF regaining military control of the country on behalf of the government (ICG 2001).

Having ousted Momoh from power in a military coup in 1992, 26-year old Valentine Strasser attempted to negotiate a ceasefire with the RUF. This attempt failed despite UN involvement and an offer of amnesty. The RUF continued to gain significant ground throughout Sierra Leone, advancing within 20 km of Freetown in 1995 (Howe 2001:170).

The interventions

Executive Outcomes: March 1995 to January 1996

Capitalising on the flood of cheap and sophisticated weaponry pouring out of the former Soviet Union after the end of the Cold War, and the pool of talented soldiers
made available by the fall of the apartheid regime in South Africa, Eben Barlow created Executive Outcomes, a private military company specialising in ‘the provision of sound military advice, training and logistical support’ (EO homepage). Drawing on his own experience as a counterintelligence specialist in the South African Defence Force (SADF), Barlow assembled a database of his former colleagues and marketed EO to those governments in Africa who found themselves incapable of fending off rebel aggression after the US and Russia had lost their Cold War strategic interest in supporting their regimes.

Having read in *Newsweek* about the success that EO had been able to achieve for the government of Angola, Strasser negotiated an initial US$15 million contract with EO to assist in re-establishing government control over the economically significant parts of the country, namely an unstable Freetown and the diamond mines in the east. With most of its troops still in Angola, EO was able to deploy that same month and in just over a week on the ground they managed to expel the RUF from Freetown, pushing them 126 km back into the jungle. EO soldiers are reported to have called fighting the RUF ‘child’s play’ after defeating a stronger guerrilla force in Angola. Supplementary contracts followed bringing the total costs to $35 million over the course of 21 months (Singer 2003:112–113).

When the government capped the number of RSLMF soldiers EO was permitted to train at 150, perhaps fearing the possibility of another military coup, EO began organising and training the Kamajors, local hunters who had formed groups to defend their villages when the government proved incapable of doing so. Renaming them the Civil Defence Forces (CDF), EO served as a force multiplier for the Kamajors and leveraged their knowledge of the local jungle, which surpassed that of the more urban RUF, as well as the intelligence they were able to gather from the local population. Using counterinsurgency tactics they had employed under the SADF, EO efficiently secured Freetown, regained control of the diamond mines, destroyed the RUF headquarters and cleared areas of RUF occupation in a series of five major offensives from May 1995 to October 1996.

EO’s intervention weakened the RUF’s military position, compelling Sankoh to negotiate and sign a peace agreement with the government in November 1996. It further created the stability necessary for the country to hold democratic elections at which Joseph Kabbah was elected. However, facing political pressure from the international community and at Sankoh’s request, a clause was written into the peace agreement dictating that all foreign militaries had to leave the country. Within 100 days of EO’s leaving, as their own intelligence had predicted, a military junta known as the Armed Forces Revolutionary Council (AFRC) staged a coup and allied itself with the RUF, who then proceeded to oust Kabbah and retake all of the territory that it had lost to the EO-reinforced CDF.
While RUF aggression against civilians had always been gratuitous and deplorable, it rose to unprecedented levels of abuse and butchery after EO’s departure. In response to Kabbah’s campaign slogan ‘the future is in your hands’, the RUF began their signature campaign of hacking off the limbs of men, women and children, initially dumping them in bags at the doorstep of government buildings. Accounts such as that of one man running through his village waving the bloody stumps of his newly severed arms, screaming for the rebels to just kill him, and their alternative response of breaking both sides of his jaw with a hammer to silence him, serve as examples of the RUF’s gratuitous cruelty against civilians that included terror, degradation, maiming, murder, cannibalism and wide-scale sexual abuse (Bergner 2004).

Despite these atrocities, the conflict garnered little attention in the Western media because of its competition for airtime with the ongoing situation in the Balkans. Already heavily invested in its peacekeeping operations in the Balkans, and without a member of the Security Council lobbying on Sierra Leone’s behalf, the UN remained unresponsive to the ousted Kabbah regime’s cries for help. It was at this point that the leadership of the Economic Community of West African States (ECOWAS) took matters into its own hands.

ECOWAS had formed a regional peacekeeping force known as the Economic Community of West African States Monitoring Group (ECOMOG) to respond to the conflict in Liberia in 1990, and redeployed its ECOMOG troops from Liberia to Sierra Leone in June 1997 with the goal of liberating Freetown from the RUF and restoring the Kabbah government to power. With its initial shelling of Freetown ECOMOG managed to cause more harm to civilians than to the RUF, and for the next six months failed to force any change in the status quo. In early 1998 Kabbah signed a contract with Sandline International, a PMC loosely affiliated with EO, to tactically assist and advise the ECOMOG forces (Singer 2003:115). Going on the offensive, ECOMOG was able to quickly oust the AFRC/RUF from their stronghold in Freetown, and Kabbah was led back into the capital at the side of Nigerian President Abacha (Howe 2001:166). Subsequent operations in the mining districts proved less successful and resulted in a stalemate between the RUF and ECOMOG.

In January 1999 the RUF launched an assault on Freetown known as ‘Operation no living thing’ in which civilians were massacred and houses burned throughout the capital. In response ECOMOG launched an attack of its own but, finding it hard to distinguish AFRC/RUF soldiers and supporters from ordinary civilians, the undisciplined Nigerian soldiers ‘tortured, raped and summarily executed [anyone] remotely suspected of being involved with the AFRC/RUF’ (Campbell 2002:89). This went on for several weeks and resulted in the eventual victory of ECOMOG but also in the death of 3 000 to 6 000
people (many of them civilians), the displacement of some 150,000 residents of Freetown, and the reported abduction of over 2,000 children who were forced into military service by the RUF (UN 1999b:6).

With a newly elected administration in Nigeria unwilling to shoulder the rising costs of the intervention, and with the signing of a new peace agreement negotiated in Lomé, Togo in July 1999, ECOMOG timed and coordinated its departure over the course of the next nine months with the transition of the UN’s heretofore small observer mission to a full-scale peacekeeping operation, to be known as the United Nations Mission in Sierra Leone (UNAMSIL).

**UNAMSIL: October 1999 to December 2005**

In addition to granting blanket amnesty to the RUF soldiers and ceding the position of vice president of Sierra Leone to their leader, Foday Sankoh (this despite the unconscionable terror for which they were responsible), the Lomé Agreement called for the UN to deploy a neutral peacekeeping force of 6,000 to oversee the disarmament, demobilisation and reintegration (DDR) of an estimated 33,000 to 40,000 combatants (UN 1999a:3).

The UN deployed its forces in October 1999 and managed to keep a tense and volatile peace. However, rather than making progress in the disarmament of combatants, there were several incidents in which UN troops were targeted and forcibly disarmed themselves by both the RUF and former RSLMF (UN 2000a:4). In February 2000 the decision was made to increase the UN forces to 11,000 to compensate for the gradual withdrawal of ECOMOG. When the last of the ECOMOG troops left the country in early May 2000, additional pressure was put on the RUF to actually disarm, and the UN attempted to open its first DDR centre in the diamond district of Koidu. In response, the RUF killed seven peacekeepers and took 500 more peacekeepers hostage, stealing their weapons and vehicles and effectively ending the Lomé Agreement.

**United Kingdom: May 2000 to present**

While the UN reports that British paratroopers were deployed to Sierra Leone in May in order to evacuate UK nationals from Freetown, thereby coincidentally bolstering the UNAMSIL mission, the British are widely perceived as intervening in the conflict to bail out the hapless UN mission (UN 2000b:10, Campbell 2002). Operationally separate from UNAMSIL, these 650 special forces soldiers aided the new Sierra Leone Army (SLA) in defending Freetown from the RUF and established a training programme for SLA soldiers. They used significantly greater force against antigovernment forces, launching attacks against the West Side Boys (a splinter faction of the AFRC). As UN contingents from India and Jordan began pulling out their troops due to political in-
fighting at UN headquarters in New York and because of the heightened danger of the mission, the UK intervention became the key factor in altering the military balance in favour of the government and encouraging the RUF to sign a ceasefire agreement in Abuja in November 2000 (ICG 2001).

A few days after the agreement was signed, the British staged military exercises throughout Freetown in order to, as one officer noted, ‘remind the leadership of the RUF of the need to honour that agreement’ (Reno 2001:224). According to Findlay (2003:309) ‘the continued British military presence acted as a deterrent, a confidence building measure and a source of moral and actual support to UNAMSIL and government forces’.

The British commitment to maintaining its presence and training programme in Sierra Leone in conjunction with UNAMSIL is thought to have directly contributed to the gradual decline in violence and the relative peace and stability that have held since 2002.

Assessing the independent variables

Mandate

First of all, it is important to distinguish between the mandates of peacekeeping and peace-enforcement in assessing the success and failure of each intervention. In theory, peace-enforcement is the creation of peace through the military support of one side of a conflict in order to force a victory or a stalemate that makes it rational for the opposing side to cease fighting militarily and to begin negotiating diplomatically. Successful peace-enforcement creates the conditions for peacekeeping. Peacekeepers, on the other hand, are a neutral force sent in to maintain a peace that has already been established, tentative though it may be, so that the theatre of conflict between warring parties can switch from the battlefield to the boardroom. Successful peacekeeping holds the balance of power on the ground constant so that a negotiated political solution can be reached and institutionalised, based on that balance.

EO entered the conflict in Sierra Leone with a peace-enforcing mandate. They came in clearly on the side of the government with the objectives of securing Freetown; regaining control of the diamond mines in the Koidu district; destroying the RUF’s headquarters; and clearing any remaining areas of RUF occupation (Shearer 1998:54). Their mandate was to act as force multipliers, devising and leading operations while using the local Kamajors as soldiers to carry them out. In this way EO served as the brain of the operations and the Kamajors as the main military body. They did not deviate from their enforcement mandate and successfully forced the RUF into a weakened military position. At the point when Sankoh lost control of the diamond mines, the primary source of wealth fuelling his rebellion, he stood to gain more from negotiating than
fighting. He signed a peace agreement based on the position he was forced into by the RUF's military strength relative to that of the EO-enforced Kamajors.

When EO left, however, this position changed and with it Sankoh's incentive to keep a peace based on an outdated balance of power. The RUF was once again militarily strong enough relative to the pro-government forces to retake the diamond mines, and that is exactly what they did. For the peace to have held, EO would have had to have stayed, or troops with equal military strength intervening on the side of the government would have had to replace them so quickly that the RUF would not have been able to capitalise on the power vacuum created by the transition. A peacekeeping force such as ECOMOG could have intervened in addition to EO. However, ECOMOG as a neutral peacekeeping force could not have replaced EO, whose biased role as peace-enforcers was propping up the pro-government forces and in turn constraining the RUF’s action.

The blurring of the theoretical distinction on the ground between peacekeeping and peace-enforcement may have contributed to the failure of the ECOMOG and UNAMSIL interventions. Originally entering with a mandate to keep the peace established by EO, Nigeria unilaterally changed ECOMOG’s mandate to peace-enforcement after the AFRC ousted Kabbah and aligned themselves with the RUF (Howe 2001:168). With the change in mandate ECOMOG troop levels were increased from 4 000 to 11 000, based on the rationale that more troops translate to more effective peace-enforcement. However, it was not until Sandline International entered, with a clear mandate of peace-enforcement and to serve as force multipliers for ECOMOG, that the mission successfully achieved its goal of driving the AFRC/RUF forces from Freetown and restoring Kabbah (Singer 2003:115). Due to political considerations, Sandline International was forced to leave Sierra Leone. The primarily Nigerian ECOMOG forces then returned to their peacekeeping mandate, but were naturally perceived as enemy rather than neutral forces by the RUF.

The RUF's perception of Nigerian troops as a hostile force became increasingly important as they were integrated into the UNAMSIL peacekeeping mission which was mandated to keep the peace dictated by the Lomé Agreement and assist in a DDR plan. This perception of bias extended to all UNAMSIL troops, making the RUF reluctant to disarm and at times provoking them to attack. Furthermore, while the UNAMSIL peacekeeping mandate fell under Chapter VII peace-enforcement in order to ‘ensure the security and freedom of movement of its personnel’, it did not foresee combat of this sort and as a result troops were ‘not equipped or given logistical support to engage in sustained combat’ (Reno 2001:224). This confusion of peacekeeping and peace-enforcing mandates, sometimes referred to as ‘robust peacekeeping’, seems to have directly contributed to widespread confusion on the interpretation of the rules of engagement among the different troop-contributing countries, and contributed to the abject failure of the mission (Findlay 2003:303).
Role, size and quality of forces

The minimum of 80 and maximum of 350 soldiers working for EO in Sierra Leone were recruited from a pool of 2,000 soldiers who had formerly worked for elite units in the SADF, including the 32nd battalion, which had been one of the most elite strike forces in South Africa’s bush wars with the highest kill ratio of any SADF unit, the Civil Cooperation Bureau, a covert assassination and espionage unit, and Koevoet, a police counterinsurgency unit (Singer 2003:103). They had the advantage of extensive training and experience in counterinsurgency at an elite level, as well as having worked together before and all speaking the same native language. This uniformity to their background and elite skills aided in their ability to anticipate each other and display a degree of flexibility in their operations that was helpful in keeping the RUF off balance (Singer 2003:116).

In contrast, UNAMSIL’s total complement of 15,000 soldiers were drawn from 24 different nations (mostly Ghana, India, Jordan, Kenya, Nigeria and other areas of the developing world), with different working styles, work ethics and native tongues and little training and experience (Findlay 2003:297). The most elite troops were a battalion of 500 lightly armed Kenyans who, when outnumbered, surrendered their weapons to the RUF (Ashby 2002:109). Similarly, although 90 per cent of the ECOMOG forces were Nigerian, there were still communication problems as well as significant divergence in state interests between the anglophone and francophone soldiers, particularly at the higher levels in the chain of command, which hampered efficient and unified defensive responses to the RUF (Umaru 2003). Moreover, the ECOMOG forces had no counterinsurgency training, and because of equipment shortages they were not inclined to risk their helicopters or planes in the ground-air operations that had proven so successful for EO (Howe 2001:198).

More comparable to the EO forces in size and training, the UK contingent consisted of a small number of elite forces including the 1st parachute group and ‘an Amphibious Readiness Group comprising 42 Commando Royal Marines, a combat air group of 13 Harrier jump-jets, two frigate gunships with a logistics support group of three Royal Fleet Auxiliaries, and support helicopters’ (Findlay 2003:301). Thus, in the EO-supported Kamajor/CDF, Sandline International-supported ECOMOG and the UK-supported UNAMSIL operations, small units with superior skills acting as force multipliers were the most effective agents for carrying out the task of peace-enforcement.

Timing

At the time of the EO intervention the RUF is thought to have been composed of only a few thousand rebels, mostly ‘situational opportunists’ and only an estimated 350 ‘hard-core’ fighters (Howe 2001:200). After EO’s departure the RUF regained control over the diamond mines, which were crucial for funding and fortifying their military enterprise,
and their numbers increased to upwards of 35,000 soldiers, including an estimated 4,500 child soldiers, as of 2001 (Campbell 2002:55). So it is fair to conclude that EO had an advantage in intervening early into the conflict, since RUF forces increased and gained experience over time.

Moreover, the fracturing of the RSLMF and the rise of the CDF created additional anti-government forces so that forces who intervened later faced not only a larger, more experienced RUF but also the splintered RSLMF faction of the AFRC/West Side Boys, who staged the coup in 1998, and the Kamajors/CDF, who acted as an independent force after EO left. According to Aning (2001) such factions have no rights under the law and no sovereign territory to which they can retreat, and face both physical and political extinction as a consequence of defeat. As a result such groups fight to the end and must either be eliminated or subsumed into the government forces, which complicated the task of outside forces after EO’s departure. Furthermore, as Reno (2001:225) aptly notes, the defeat of the multiple factions would have entailed ‘attacks on the families and homes of fighters and the use of force at levels prohibited by the conventions of warfare and international agreements’.

The conclusion is therefore that as time went on and the war progressed, the RUF grew increasingly stronger, the government grew weaker, and new factions emerged with unclear and shifting alliances to complicate intervention. Because it entered the conflict closer to its inception, EO had an unquestionable advantage over the ECOMOG, UNAMSIL and UK forces that entered later.

However, the success of the UK intervention, while not as dramatically efficient as that of EO, could be considered equally good given the military circumstances. The increased number of combatants and multiplicity of factions, in addition to the restrictions put on the British government by international law and norms, required that the UK make a ‘lengthy commitment’ to the conflict (Reno 2001:225). As a result, the British peace-enforcement troops have been able to work in conjunction with the UNAMSIL peacekeeping troops and the Sierra Leone Army to see the conflict through to its end in a way that EO, ECOMOG and the Kamajors/CDF were not able to coordinate as similarly positioned forces.

**Intelligence and hearts and minds**

The RUF, with their lack of coherent ideology and brutal terror tactics against the populace, had no support from the civilians of Sierra Leone. EO was able to leverage this against their adversary by winning the hearts and minds of the local population, which resulted in the support of the Kamajors and access to intelligence on the ground. Not only did the Kamajors serve as scouts, but EO also used locals to conduct counter-intelligence operations at the same time that EO was effectively employing aerial reconnaissance and radio intercepts. In this way EO ‘built a profile of enemy operations, which were then broken
down through targeted air strikes and helicopter assaults’ (Singer 2003:116). Conversely, all EO soldiers communicated in Afrikaans which prevented the RUF from understanding any communications they were able to intercept (Howe 2001:195). The UK forces, too, benefited from the warm welcome they received from the general population of Sierra Leone through the information they were able to garner with this support. Further benefit was gained from the ‘invaluable intelligence information on rebel troop movements collected by Harriers situated on an aircraft carrier positioned off the coast’ (Findlay 2003:301).

In contrast, UN Secretary-General Kofi Annan said, ‘We were completely sleeping on the issue of intelligence’ with reference to the surprise attack in which the RUF took more than 500 UNAMSIL peacekeepers hostage (Findlay 2003). UNAMSIL headquarters were unable to obtain information on the status or whereabouts of the soldiers during the whole period of their detention, highlighting their lack of access to information (Findlay 2003:302). Apart from deficiencies as fundamental as the lack of basic topographic maps and encrypted radio channels, ECOMOG also suffered from a lack of intelligence that hurt their tactical capabilities and defence. This was further exacerbated by ECOMOG’s lack of local military allies and mixed reputation among the civilian population (due to their frequent violation of human rights) (Howe 2001).

**Equipment and tactics**

EO’s significant advantage over other interveners seems to have been its relentlessly offensive strategy against the RUF and its ability to innovate and employ offensive tactics that kept the RUF off balance, so they seldom had to react or act defensively. According to Singer (2003:113), ‘EO strategy mandated the constant pursuit and punishment of the rebel force. It also made use of air and artillery assets and sought to engage the RUF in stand-up battles’. EO had no real weapons advantage over the RUF, as all of its equipment was purchased on the open market, mainly from the same ex-Soviet sources (Shearer 1998:53). Most essential to the EO campaign was the use of ‘close air support of ground units’ in which ex-Soviet Mi-8, Mi-17 and Mi-24 helicopters were deployed (Howe 2001:197). Moreover, EO introduced new technology into the battles, such as night-vision equipment, napalm, fuel air explosives and cluster bombs. They also used tactics not found in books in a way that showed their mastery of counterinsurgency tactics and an ability to think on the ground (Singer 2003).

In contrast, ‘ECOMOG’s ill-equipped peacekeepers lacked not only helicopters and gunships, but also sufficient trucks, tanks, ambulances, communication equipment, spare parts, uniforms, medical supplies and office equipment’ (Adebajo 2002:90). The imprecision of the UNAMSIL mandate resulted in it being inadequately armed for the task. The fact that ‘more than half the troops arrived without the required weapons, communications equipment or logistical support’ contributed to the lack of UNAMSIL
capabilities. However, when combined with the logistical, planning and ground support of the British forces, UNAMSIL was able to partially redeem itself with the successful launching of the operation that freed its captive soldiers (Findlay 2003).

**Incentive structure**

In a PMC like EO, soldiers are paid well. For the intervention in Sierra Leone, salaries ranged from US$2 000 to US$13 000 per month depending on experience and expertise. EO also provided full medical and life insurance for its employees. As in any contract-based work, firms want to build their reputations in order to gain contracts, and soldiers seek to build their resumes so that they will continue to be hired. Thus, as long as there is adequate competition in the industry, with both firms and individual soldiers competing amongst themselves for contracts, the successful completion of the intervention rather than prolonging the war is the goal. The small community of private soldiers ensures monitoring and feedback on performance, and the soldier risks his life to win in battle because by not doing so he risks his livelihood and jeopardises his source of income.

This is in stark contrast to the case of the soldier fighting on behalf of a multilateral organisation in which the incentive to risk his life is dependent on what Howe (2001) refers to as the ‘professionalism’ of his own national military. A soldier in a professional military organisation has such an entrenched mindset, discipline and chain of command that he is no longer a rational actor maximising economic profit but is psychologically impelled to do his best. His incentive to die for his country, if necessary, is a result of the training that has forced him to internalise a collective ethic. In an unprofessional military in which soldiers still act as individual profit-maximisers, they have no incentive to put themselves at risk on behalf of the collective security. In the account of his experience in UNAMSIL, UK soldier Phil Ashby (2002:111) confirms this, stating of UNAMSIL troops: ‘They were not prepared to stick their necks out in any way or risk doing anything to disrupt their daily routine of sleeping and watching TV. They were happy just to sit back and collect their $100 UN pay every day.’ According to the ICG (2001), many UNAMSIL soldiers considered themselves under no obligation to rescue other contingents’ soldiers.

Notably, soldiers from unprofessional militaries are paid the same high UN wage whether the mission succeeds or fails and whether they personally contribute or not. Moreover, at the political level, developing countries often repeatedly donate contingents to UN missions in order to gain equipment that their soldiers bring home. Because of the lack of political will by developed countries to contribute troops, the same developing countries are asked back time and again regardless of performance. In this sense troops sent from unprofessional militaries could be viewed as the real ‘mercenaries’ in present-day military interventions, while an open and competitive market for PMCs in which soldiers compete for contracts are likely to be far more reliable, skilled and effective.
Summary and conclusions

In summary, the advantages EO had over ECOMOG and UNAMSIL in intervening in the conflict in Sierra Leone were its clear peace-enforcing mandate, its unitary structure, the elite training and experience of its forces in counterinsurgency techniques, its intelligence gathering capabilities and positive relationship with the public, its role as a force multiplier and user of local forces, as well as the financial and professional incentives for its soldiers and headquarters to win against the RUF as quickly and efficiently as possible. ECOMOG and UNAMSIL in particular suffered from unclear and at times inappropriate mandates, inefficient multilateral structures that led to communications problems and conflict of interests within the headquarters, insufficiently trained and inexperienced troops as well as a lack of incentive for their soldiers to perform.

In contrasting the small elite force of the PMC with the large forces of regional and international organisations, what is clear are first the definite advantages of sending a small unitary elite force into a conflict in a peace-enforcement role; second the obvious inadequacies of large multilateral forces in peace-enforcement roles; third the potential for failure of large multilateral forces in peacekeeping roles under complicated political circumstances and without the retention of the peace-enforcer; and last the potential inherent in the deployment of a small, elite force in a peacekeeping role and the utilisation of the local population as peacekeepers under it. From the evidence the tentative conclusion is that in a Chapter VII mission, and potentially in a Chapter VI mission as well, a small unitary elite force that trains and directs local forces at the mass level may be most effective and efficient in carrying out its mandate. Therefore, it is possible that in the case of intervention less is more and that the traditional peacekeeping concept of large multilateral deployments should be reconsidered altogether.

Local citizens fighting to protect the security of their own villages, cities and states from domestic and foreign threats is the model on which the strong states of Western Europe were founded. Thus, in view of the problems of a lack of military professionalism, widespread unemployment, violent conflict and weak states currently plaguing much of Africa, it makes sense to research ways of redistributing the sizeable labour force into the business of state building through national defence. It makes much less sense to deploy tens of thousands of foreign soldiers under the rubric of regional and international organisations to do the jobs that would otherwise contribute to the promotion of local allegiance to, investment in, and ownership of the currently precarious states in Africa. Rather than paying exorbitant UN salaries to foreign troops, peacekeeping funds could be diverted to the payment of fair wages to local African soldiers, incentivising their participation in the state security system. Ideally, the training of local forces in a Chapter VII mission could produce a professional military, while a Chapter VI mission could in turn contribute to the construction of a professional police force for the state in question.
Finally, in comparing the successful EO and UK interventions, it was clear that EO’s success was not specific to its role as a PMC and could be duplicated by a national army. The key difference between these two types of forces lay in the incentive structure of the soldiers to fight and the military organisations to complete their mission. Thus, as long as the market for PMCs remains open and competitive, a single elite force from a PMC and from a national contingent is likely to differ only in the political and financial viability of sending either one to undertake and complete the mission. In their present role as ‘mercenaries’, PMCs are viewed by the international community as an unattractive option. However, if nations with professional militaries are unwilling to commit elite units to interventions, the bolstering and training of local militaries by PMCs may be the best available alternative.

References


Towards the revision of the 1977 OAU/AU Convention on the Elimination of Mercenarism in Africa

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The revision of the 1977 Organisation of African Unity’s Convention on the Elimination of Mercenarism in Africa (Mercenary Convention) is now long overdue. The existence of the Mercenary Convention has over the years failed to eliminate mercenarism in Africa, among others as a result of the manner in which it defines a ‘mercenary’. The problem is exacerbated by the rapid growth of the private security sector in the form of the private military/security company (PMSC), which to a large extent arguably represents a new form of ‘mercenary’ outfit that is technically not covered by the Mercenary Convention. Because the Mercenary Convention was adopted during a different epoch in African history there is now a need to take stock of its successes and failures and determine how it can best be revised to address the new security challenges in Africa. In this contribution the need for the revision of the Mercenary Convention is discussed. Given the difficulties and challenges presented by the Mercenary Convention, the contribution advocates the drafting of two conventions, one focusing on the regulation of PMSCs and the other focusing on the elimination of mercenarism in Africa.

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Introduction

In May 2004 the African Union convened a meeting of experts to review Organisation of African Unity/African Union conventions and protocols, including the 1977 OAU Convention on the Elimination of Mercenarism in Africa (Mercenary Convention). The recommendations of the meeting were approved by the executive council of the AU in June 2004. The meeting mandated the chairperson of the AU commission to undertake preliminary studies to determine the best way to implement the recommendations, and authorised him to convene meetings of experts to examine the recommendations and to develop the necessary legal instruments. To date nothing concrete has happened, at least in the public domain, regarding the revision of the Mercenary Convention. Nevertheless, the fact that the AU realised the need to review the Mercenary Convention is most welcome as it is aimed at addressing contemporary African challenges.

In this contribution the need for the revision of the Mercenary Convention is discussed against the background of the challenges presented by the definition of a ‘mercenary’ as set out in article 1. First the requirements that have to be met for a person to be defined as a ‘mercenary’ in terms of the Mercenary Convention are explored. Second, the question of whether a natural or artificial person could be defined as a ‘mercenary’ is discussed. Third, the way forward in view of the challenges presented by the present is explored, as is the question of private military/security companies (PMSCs) whose emergence has given rise to debates and policy challenges regarding their control and supervision. This is followed by a conclusion on the matter.

The Mercenary Convention in essence

That the Mercenary Convention is outdated is beyond question. According to article 1 of the Mercenary Convention, a mercenary is any person who:

- Is specially recruited locally or abroad in order to fight in an armed conflict
- Does in fact take a direct part in the hostilities
- Is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation
- Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict
- Is not a member of the armed forces of a party to the conflict
Is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state

This definition is not without flaws. For instance, the fact that the conditions are cumulative makes it difficult to apply and it offers little help in addressing PMSCs. In the following sections each of the requirements is analysed.

**Requirement 1: A person specially recruited locally or abroad to fight in an armed conflict**

The Mercenary Convention labels a person as a mercenary if and only if he fights in an armed conflict. The person must in addition be specially recruited locally or abroad.

An immediate problem arises from the fact that the Mercenary Convention does not define an armed conflict. Furthermore, the Mercenary Convention does not make a distinction between an international and non-international armed conflict, while this is one of the distinctions made under international humanitarian law. The reason why such a distinction is important is because the definition of a mercenary given under international humanitarian law is provided in Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts, of June 1977, and this is an instrument that deals with ‘international armed conflicts’ as opposed to non-international armed conflicts. The presupposition is therefore that mercenaries are only capable of featuring in international armed conflicts since they are governed by an instrument focusing on international armed conflicts.

According to the International Committee of the Red Cross (ICRC 2002:4), ‘international armed conflicts’ refer to fighting between the armed forces of at least two states as well as wars of national liberation, while a non-international armed conflict is defined as fighting on the territory of a state between the regular armed forces and identifiable armed group(s), or between armed groups fighting one another. In order to be considered a non-international armed conflict, the ICRC states that the fighting must reach a certain level of intensity and extend over a certain period of time.

It is doubtful that the drafters of the Mercenary Convention intended mercenaries featuring only in armed conflicts, whether defined as international or otherwise, to be covered by the convention. Mercenaries operating where no armed conflict, in the technically defined sense, is taking place – for example, mercenaries recruited to overthrow a state which is not currently engaged in an armed conflict – are as a result arbitrarily absolved from being labelled mercenaries under the Mercenary Convention.
Requirement 2: A person must in fact take a direct part in the hostilities

This requirement consists of two conditions, namely take a direct part and hostilities, both of which present problems.

The first problem is that the Mercenary Convention unfortunately does not define what ‘taking a direct part’ means. The absence prompts one again to seek answers in international humanitarian law. While the basic documents of international humanitarian law do not provide answers, the Commentary on Additional Protocol I to the Geneva Conventions does. It defines direct participation as ‘acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of enemy forces’ (Pilloud & Pictet 1987:619). One problem with this meaning is the use of the word ‘war’, which the Mercenary Convention avoids, instead referring to ‘armed conflict’. It must be noted that African wars are not necessarily wars in the true sense of the word and ‘the nature of the actors in Africa’s wars rarely conforms to the conventional conception of organized, hierarchical and disciplined professional armies who fight in identifiable military uniform’ (Jackson 2006:19). This is clearly a challenge, for it is only if the word ‘war’ is taken to also mean armed conflict that this definition of direct participation could be invoked in distilling the meaning of a mercenary in the Mercenary Convention.

The Commentary adds that a distinction should be made between direct participation and participation in the war effort (1945). It cites as an example a worker in a munitions factory who is certainly assisting the war effort and building the capacity of the armed forces to defeat the enemy. For the purposes of international humanitarian law, however, such a worker is not considered to be a direct participant in hostilities. In line with this principle, for a person to be defined as a mercenary he or she must be physically present in the theatre of armed conflict and must in essence cause (or be likely to cause) actual harm to the personnel and equipment of the adversary. However, this must occur within the context of ‘hostilities’ and not during peacetime and therefore persons acting outside such a context cannot be considered to be mercenaries, either.

Direct participation must also be informed by the preamble to the Mercenary Convention, which relates direct participation to the objective of undermining the independence, sovereignty, territorial integrity and harmonious development of member states of the AU. It must furthermore pose a threat to the legitimate exercise of the right of African people under colonial and racist domination to their independence and freedom (parr. 2 and 3 of the preamble to the Mercenary Convention).

No definition of hostilities is provided in the Mercenary Convention. Neither is international humanitarian law helpful in this regard, although it is a term that
appears in numerous articles of its basic documents.¹ The introduction of the word hostilities in the second requirement seems to indicate that it is interchangeable with armed conflict, as used in the first requirement. On the assumption that the word hostility could also mean aggression, the AU Non-Aggression and Common Defence Pact² may shed some light on the matter. In terms of article 1(c) of the Pact, aggression means the:

... use, intentionally and knowingly, of armed force or any other hostile act by a State, a group of States, an organization of States or non-State actor(s) or by any foreign or external entity, against the sovereignty, political independence, territorial integrity and human security of the population of a State Party to this Pact which is incompatible with the Charter of the United Nations or the Constitutive Act of the African Union.

The Pact (art 1(n)) refers to the Mercenary Convention’s definition (art 1(c)(vii)) of a mercenary. According to the Pact an act of aggression, regardless of a declaration of war by a state, group of states, organisation of states, non-state actor(s) or any foreign entity includes among others the sending by, or on behalf of a member state or the provision of any support, to mercenaries. A mercenary, therefore, must intentionally and knowingly use armed force or perform any other hostile act against the sovereignty, political independence, territorial integrity and human security of the population of a state that is party to the Pact. Aggression is also a crime within the jurisdiction of the International Criminal Court (ICC) (art 5(1)(d) of the Rome Statute of the ICC). The Hague Regulations (annexed to the Hague Convention IV respecting the laws and customs of war on land (1907)) also provide an extensive list of what constitutes hostilities in section II, entitled Hostilities.

According to Verri (1992:57), hostilities may be defined as follows:

Acts of violence by a belligerent against an enemy in order to put an end to his resistance and impose obedience. Positive international law does not define hostilities but often uses the word in, for example, the phrases: ‘Opening of hostilities, conduct of hostilities, acts of hostility, persons taking or not taking part in hostilities, effects of hostilities, end of hostilities.’

Once again, the hostilities in which a person must take direct part must be understood in context, and the preamble (parr. 2 & 3) of the Mercenary Convention is pertinent in this regard. The hostilities must be those which first, undermine the independence, sovereignty, territorial integrity and harmonious development of African states (that is, member states of the AU), and second, pose threats to the legitimate exercise of the
right of African people under colonial and racist domination to their independence and freedom.

**Requirement 3:** A person must be 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

Having laid down the requirements of being specially recruited in order to fight in an armed conflict and in fact taking direct part in the hostilities, the third requirement goes on to deal with the motives for engaging in such an enterprise, namely the desire for private gain in the form of material compensation. The Mercenary Convention does not specify the forms of material compensation, which means that any form, be it in cash or in kind, would be included. The second part of the requirement is that the material compensation must be promised by or on behalf of a party to the conflict.

This requirement is not without shortcomings. First, should such a ‘desire’ be present during the special recruitment exercise or during the direct participation? The Mercenary Convention does not state when a person should entertain such a desire in order to fall within the ambit of the provision. Second, what if such a desire is absent but suddenly emerges during the direct participation? Consider the case of a person who is not necessarily ‘specially recruited’ but is coerced to fight in an armed conflict (as in the case of child soldiers), initially without any desire for private gain whatsoever. What if, in the middle of the operation, such a desire emerges? Could such a person be said to be a mercenary? Third, is it even possible to prove such motivation? A motivation in this context is a form of an intention. Under criminal law intention can take many forms, a discussion of which is beyond the scope of this paper. Suffice it to say that such an intention might be very difficult to prove.

Assuming such a ‘desire’ is present when the recruitment exercise is undertaken and suddenly ceases to exist in the middle of the hostilities, could this person be said to be a mercenary? Put differently, must such a desire be present throughout the direct participation in the hostilities or will it suffice if it is present at any point in time, to render the person a mercenary?

The second part of the provision is that the promise (for material compensation) should be made by or on behalf of a party to the conflict. If the party making such a promise is not a party or does not promise on behalf of a party to the conflict, then the person so recruited is not a mercenary. In terms of the Mercenary Convention parties who are not taking part in the conflict or acting on behalf of such parties may recruit persons, who then will not fulfil the requirements for a mercenary, and accordingly cannot be defined as a mercenary in terms of the Mercenary Convention.
Requirement 4: A person must neither be a national of a party to the conflict nor a resident of territory controlled by a party to the conflict

While the recruitment may take place locally or abroad, the recruited person must neither be a national nor a resident of a controlled territory. The words ‘national of a party’ suggests that such a party is a state because a person can only be a national of a state and nothing else. The problem with this requirement is the fact that each state determines under its own laws who qualifies as nationals. The Mercenary Convention does not give a definition of a national in this context. Of course, there are certain recognised grounds for the conferment of nationality which are followed by most states, generally birth (jus soli), descent (jus sanguinis) and naturalisation following upon a period of residence (Dugard 2005:283).

Second, the person must also not be a resident of the territory controlled by a party to the conflict. If the person who is not a national in terms of the law of the state taking part in the conflict takes up residency in a territory controlled by a party to the armed conflict, the mercenary tag in terms of the Mercenary Convention automatically falls away. The residency issue is further complicated by the term ‘control’. It is not clear why a party to the conflict should necessarily control the territory in which the person must not be a resident. In the event that a party to the armed conflict is not in control of the territory in which the person is resident, and that person is recruited, he or she cannot be treated as a mercenary in terms of the Mercenary Convention.

Requirement 5: A person must not be a member of the armed forces of a party to the conflict

This requirement means that as soon as a person who is not a national of a party to the armed conflict nor a resident of the territory controlled by a party to the conflict becomes ‘a member of the armed forces of a party to the conflict’, they would not qualify as a mercenary, for they would no longer fulfil this requirement. Thus, a person alleged to be a mercenary would only have to prove membership of armed forces of a party to the conflict for the mercenary tag not to be applicable.

The armed forces could be either those of a state or rebel group, and membership, too, may take various forms depending on the procedures, because the Mercenary Convention does not define ‘armed forces of a party to the conflict’. However, Additional Protocol I to the Geneva Convention (art 43(1)) states that the

… armed forces of a party to a conflict consists of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall
be subject to an internal disciplinary system which, *inter alia*, shall enforce
compliance with the rules of international law applicable in armed conflict.

In terms of this article of Additional Protocol I it is only members of the armed forces
of a party to the conflict, with the exception of medical personnel and chaplains (see art
33 of the Geneva Convention (III)), that are combatants and have a right to participate
directly in hostilities. Therefore only persons who are not part of the armed forces of
a party to the conflict as defined in and elaborated on in Additional Protocol I can be
alleged to be mercenaries.

**Requirement 6: A person must not be sent by a state other than
a party to the conflict on official mission as a member of the armed forces of the said state**

This last requirement suggests that only a party to the conflict may send a person on
official mission as a member of the armed forces of the said state. By official mission the
requirement means a mission authorised by the relevant state. It would appear that the ‘party
to the conflict’ in this requirement means a state, so while a state may make use of such a
person, a non-state actor apparently may not. Thus, if a non-state actor uses a person in such
a capacity, it would imply that that person is a mercenary. In support of this point, Singer has
also argued that the Mercenary Convention seeks to allow African governments to continue
to hire non-nationals, as long as they are used to defend the governments from ‘dissident
groups within their own borders’, while disallowing their use against any other rebel group
that the OAU supported, such as the African National Congress (Singer 2003:529).

From this requirement it is clear that if African states recruit a person who satisfies
requirements 1 to 5, discussed above, such a person cannot be said to be a mercenary
if requirement 6 is not met. This requirement introduces double standards in the sense
that while it disallows the use of mercenaries against African states, they are allowed to
use them within the confines of an ‘official mission’. With the emergence of PMSCs it
could be argued that while their use by African governments against elements which
seek to undermine their independence, sovereignty, territorial integrity and harmonious
development is allowed, their use by those elements is also not prohibited outright.

**The mercenary:
The natural person or the artificial person?**

Article 1(1) of the of the Mercenary Convention refers to ‘any person’ who is capable of being
recruited, who can fight, who desires private gain, who is not a national or resident, and who
is not a member of the armed forces. From this definition a mercenary is clearly a natural
person and is defined as such by article 1(1) in terms of his or her status as a natural person.
The assertion is supported by article 3, which states that mercenaries cannot ‘enjoy the status of combatants’ and are not ‘entitled to the prisoner of war status’. Again, any juridical persons are excluded. But the Mercenary Convention does not stop there, for article 1(2) and article 1(3) do include juridical persons.

Article 1(2) states that the crime of mercenarism is committed by the individual, group or association, representative of a state and the state itself, who, with the aim of opposing by armed violence a process of self-determination, stability or territorial integrity of another state, undertakes certain acts. In the absence of such an aim there is no crime of mercenarism. However, the absence of a definition a ‘process of self-determination’ is unfortunate, because whether it refers to external self-determination, relating to the right to secede and form a new state, or to internal self-determination, relating to the right to choose one’s own political status, to freely pursue a particular economic, social and cultural policy and to choose and participate in the government of a state, is open to interpretation (Gumedze 2007:14). What is clear, however, is that in terms of this article, an act of mercenarism can be committed by a state – thus by a juridical person. The proscribed acts listed under article 1(2) of the Mercenary Convention are first, sheltering, organising, financing, assisting, equipping, training, promoting, supporting, or in any manner employing bands of mercenaries; second enlisting, enrolling or trying to enrol in the said bands; and third allowing the sheltering, organising, financing, assisting, equipping, training, promoting, supporting, or in any manner employing bands of mercenaries, in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above-mentioned forces.

There is a further recognition of a mercenary as a juridical person who commits a crime of mercenarism in terms of the definition in article 1(3) of the Mercenary Convention. Arguably through the latter, PMSCs who fulfil the conditions laid down under article 1(1) of the Mercenary Convention may be deemed to be mercenaries as their juridical nature is recognised under article 1(3). This may be ascribed to the fact that the drafters of the Mercenary Convention did not at the time envisage the emergence of PMSCs, which have now become major players in the field of security. As was noted elsewhere, only PMSCs with the sole aim of ‘opposing by armed violence a process of self-determination, stability or the territorial integrity of another state’ would be deemed to be mercenaries (Gumedze 2007:13).

The crime of mercenarism is considered to be a crime against peace and security in Africa. It is a crime that violates the human (or peoples’) right to peace and security. The Mercenary Convention is the only instrument in Africa which gives expression to this view. It is however not clear why the definition of a mercenary is confined to a natural person as provided for under article 1(1), and its commission extends from the
individual and groups to state representatives and states themselves under article 1(2) and to natural and juridical persons under article 1(3) of the Mercenary Convention. The crime of mercenarism is considered to be neither a ‘war crime’ nor a grave crime in terms of the Rome Statute of the ICC (art 8), although it threatens not only the peace and security of Africa but also the well-being of the world.

Article 6(a) of the Mercenary Convention sheds some light on whether a mercenary is a natural or artificial person. The wording of the provision, namely that a state is obliged to ‘prevent its nationals or foreigners on its territory from engaging in any acts mentioned in article 1 of this Convention’, suggests that a mercenary is a natural person as opposed to an artificial one. Both ‘nationals and foreigners’ are in fact natural persons. Article 7 of the Convention requires each state party to ensure that the crime of mercenarism is ‘punishable by severest penalties under its laws, including capital punishment’ which reinforces the interpretation of natural persons. However, the wording of the provisions of the Mercenary Convention as a whole point to the contrary, and implies that both natural and artificial persons are capable of being mercenaries. What is very clear is that the matter needs to be resolved.

**The way forward**

In view of the confusion around PMSCs and mercenaries, some commentators have suggested their own definitions for mercenaries. One of these is the following suggestion for ‘an accountability-based definition’ by Scoville (2006:564–567):

A mercenary is any person who, in any situation,

- Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at, or having the reasonable effect of
  - Overthrowing a government or otherwise undermining the constitutional order of a state;
  - Undermining the territorial integrity of a state; or
  - Causing or aiding and abetting any acts otherwise criminal under international law

- Has not been sent by a state on official duty

- Is not a member of the armed forces of the state on whose territory the acts are undertaken

- With regard to the said concerted acts of violence, is not otherwise legally accountable to his or her own government by means of a contract or licence whose parties are the person and that government
Obviously, this accountability-based definition is not legal and therefore not binding. The intention with the reference to this definition is not to suggest that this should be the final revised version of the definition of a mercenary, but it and other suggestions should certainly be weighed and taken into consideration. (What is likely is that there will never be a universally acceptable definition.) The important aspect of this definition is the fact that it proscribes the special recruitment of any person for the purpose of participating in a concerted act of violence that is aimed at, or has the reasonable effect of a specific number of aims or objectives.

With respect to the objective of overthrowing a government or otherwise undermining the constitutional order of a state, the Constitutive Act of the AU frowns upon governments which come to power through unconstitutional means, and they are not allowed to participate in the activities of the AU in terms of article 30. Therefore the use of mercenaries to assist in this enterprise is clearly undesirable under international law. With respect to the aim of undermining the territorial integrity of a state, one of the AU’s objectives is to defend the sovereignty, territorial integrity and independence of its member states (art. 3(b) of the Constitutive Act). Persons who undermine this objective by engaging in mercenary activities are therefore undesirable. With respect to the aim of causing or aiding and abetting acts considered to be criminal under international law, the definition recognises the role played by mercenaries in the commission of international law crimes and ensures that such conduct is proscribed. International criminal law has become increasingly important in the present-day world and serious crimes of concern to the international community as a whole, such as genocide, crimes against humanity and war crimes, are all listed and defined in the Rome Statute (see arts 5–8).

Other requirements which Scoville takes into consideration in his definition are that the person should not have been sent by a state on official duty, that such persons may not be members of the armed forces of the state on whose territory the acts are undertaken and that such persons are not legally accountable to their own governments by means of a contract or licence whose parties are the person and that government. Again the aspect that states should not be allowed to make use of mercenaries for official duties is regulated. The definition ensures that in perpetrating the acts of violence, only the actions of persons legally accountable to their own governments are sanctioned by states.

**Conclusion**

In order to control and regulate the generally unregulated industry of PMSCs, and to effectively prohibit mercenarism in Africa, it is suggested that it would be prudent to draft two conventions, one which focuses on the regulation of PMSCs in Africa and the other on the elimination of mercenarism in Africa. This would address the confusion that results from grouping PMSCs and mercenaries together. What would be imprudent
would be to regulate PMSCs and prohibit mercenaries in one instrument. Both such conventions would have to address the need for workable legal definitions of both PMSCs and mercenaries. This will bridge the gap between the Mercenary Convention and the present-day reality. It will not be possible to achieve this without the input of African civil society and of course the PMSCs themselves. The challenges presented by the definition of a mercenary in the Mercenary Convention speak to the need for a complete overhaul of its now outdated provisions.

**Notes**

1 See for instance common article 3 (to the Geneva Conventions); article 17 of the Geneva Convention I, articles 67, 118 and 119 of Geneva Convention III; articles 44, 49, 130, 133, 134 and 135 of Geneva Convention IV; articles 33, 34, 45, 47, 59 and 60 of Additional Protocol I; articles 1–3 of the Hague Convention (III); articles 22–41 of the Regulations annexed to the Hague Convention (IV); and the title of the Hague Convention (VI).

2 Adopted at the 4th ordinary session of the Assembly, held in Abuja, Nigeria, on 31 January 2005.

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Private security contractors and international humanitarian law – a skirmish for recognition in international armed conflicts

Shannon Bosch*

In recent international armed conflicts private security contractors (PSCs) have played an ever increasing role and military advisors and tribunals are facing the dilemma of assessing the primary and secondary status of PSCs under international humanitarian law. In this article the misconception that PSCs are necessarily mercenaries will be dispelled. The possibility that PSCs might be categorised as combatants or civilians will then be explored. The conclusion is that where they are incorporated into the armed forces of a state, PSCs might attain combatant status. However, given that states are reluctant to formally incorporate PSCs into their armed forces, they will most likely remain essentially civilian. Their degree of participation in hostilities will determine whether they retain their immunity under international humanitarian law from attack and prosecution (as civilians) or whether they are rendered unlawful belligerents.

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Introduction

Recent international armed conflicts have witnessed the unprecedented outsourcing of military and security functions to private security contractors (PSCs). States are not alone in this trend towards greater use of PSCs – private corporations, international and regional inter-governmental organisations, as well as non-governmental organisations are also employing PSCs, particularly when they find themselves operating in conditions of armed conflict. This boom in the private security industry has had a mixed reception. Some brand PSCs as ‘mercenaries’, while others tout them as the world’s future peacekeepers. In response to the two international treaties on the eradication of mercenaries, proposed by the United Nations and the African Union, some states have introduced measures to ban or regulate the activities of PSCs.

International humanitarian law treaties, although binding on PSCs operating in situations of armed conflict, currently make no specific reference to PSCs by this appellation, save to say that where there is doubt as to whether an individual qualifies for protected status (as a prisoner of war) under the conventions they are ‘presumed to have protected status until such time as their status is determined by a competent tribunal’ (GC III:5; AP I:45(l)). With PSCs fast outnumbering traditional armed forces on the ground in international armed conflicts, there is an urgent need for international humanitarian law to address the question of their specific primary and secondary status. Beyond the prospect of tribunals being flooded with such cases lie other motivations for this analysis: first, opposition forces need clarity on whether PSCs may be legitimately targeted in the theatre of armed conflict; second, PSCs need to know whether they are permitted to participate directly in hostilities; and finally, PSCs must appreciate the consequences which might follow from their actions if they do participate directly in hostilities.

PSCs do however share similarities with a variety of persons to whom recognised status has been granted. By conducting a comparative exercise, the author hopes to explore possible analogies for PSCs in the light of current humanitarian law operational in international armed conflicts. The intention is to be of some assistance to military advisors and tribunals in assessing the primary and secondary status of PSCs.

Determining the primary status of private security contractors: Are they status-less under international humanitarian law?

At the heart of international humanitarian law is the notion that every individual in the theatre of war possesses a recognised primary status as either a combatant or a civilian (Ipsen 1995:65). By and large the members of a state’s armed forces are combatants (unless wounded, in which case they are termed ‘hors de combat’) and the civilian
population are non-combatants. There is no intermediate ‘quasi-combatant’ category under international humanitarian law (Rothwell 2004, par 7). The determination of primary status informs not only the protections that the individual is afforded in the theatre of war, but also the legal consequences which flow from their actions, and the international legal obligations imposed upon their captors (Ipsen 1995:65). Those who enjoy primary combatant status are afforded secondary status as prisoners of war in the event of capture, and cannot be prosecuted for their lawful participation in hostilities (HR IV:3(2); GC III:4A(1-3) and (6); AP I:43 and 44(1); Ipsen 1995:93). Those who are granted primary civilian status may not participate directly in hostilities and, consequently, cannot be targeted and are to be respected and protected (GC IV:3).

Unfortunately the civilian/combatant distinction is somewhat complicated by the reality that, as with any rule, there are often exceptions. Despite being members of the armed forces, service personnel are denied authorisation (by national legislation) to ‘use a weapon or a weapons system’ (AP I:43(2)) and are consequently called non-combatants (HR IV:3). Another unusual category which challenges the stark combatant/civilian distinction is the group labelled ‘persons accompanying the armed forces’. Like service personnel, these persons are also not authorised to participate directly in hostilities and as a consequence of their non-combative role enjoy primary civilian status (GC III:4(a)(4); AP I:50(1); Ipsen 1995:65).

Beyond the ranks of the armed forces are two categories of persons who actively participate in hostilities despite not being legally authorised to do so. The first is the ‘levée en masse’ (GC III:4(6); AP I:43(1)) and the second are called ‘unlawful belligerents’ (Ipsen, 1995:68). Through special recognition under international humanitarian law, the civilian ‘levée en masse’ acquire the secondary protections afforded combatants when they take up arms spontaneously in the face of occupation. The ‘unlawful belligerent’ is not in so fortunate a position. The nature of their unauthorised actions precludes them from enjoying the prisoner of war protections and exposes them to criminal prosecution (AP I:45). Civilians make up the balance of those found in the theatre of war who do not fit within any of the categories set out above.

Clearly international humanitarian law is accustomed to a somewhat muddled response to the ambiguous scenarios which are encountered in the theatre of war. In the grey area surrounding the unusual cases in international armed conflict there are very few clear-cut answers and almost as many exceptions as there are rules. PSCs are accordingly just one of many recent challenges with which international humanitarian lawyers have had to deal.

**Combatants**

Primary combatant status is afforded to members of the ‘armed forces’ of those states that are party to a conflict (GC III:4A(1)). The term ‘armed forces’ is understood to
Features

‘consist of all organised armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates … and subject to an internal disciplinary system’ (AP I:43; Ipsen 1995:71). Combatant status is also extended to militia or volunteer forces\textsuperscript{15} provided they fulfil the following conditions set out in article 4A(2) of Geneva Convention III:

- That of being commanded by a person responsible for his/her subordinates
- That of having a fixed distinctive sign recognisable at a distance
- That of carrying arms openly
- That of conducting operations in accordance with the laws and customs of war\textsuperscript{16}

As a result of their ‘combatant privilege’ (HR IV:3; AP I:43(2))\textsuperscript{17} members of the armed forces enjoy immunity from prosecution for their actions provided they observe the laws of war which regulate the methods and means of warfare.\textsuperscript{18} With the privilege of engaging in combat comes the liability of being considered a legitimate military target. Because of the targeting implications which follow from their primary status, combatants are duty bound to distinguish themselves from the civilian population (AP I:44(3)). The most common way in which combatants assert their primary status, as distinct from the civilian population, is by their practice of wearing uniforms. Even when not in uniform\textsuperscript{19} combatants are still required to wear a permanent distinctive sign visible from a distance and to carry their arms openly (GC III:4A(2); AP I:44(3) and (7)). Any failure to observe the fundamental principle of distinction will render them unlawful combatants, guilty of perfidy and unable to claim prisoner of war status upon capture (AP I:44(3) and (4)).

What then of PSCs? Can they be considered combatants in accordance with these provisions in international humanitarian law? Admittedly they are not members of the armed forces as traditionally understood. However, some might suggest that the facts support the argument that PSCs have been incorporated into the armed forces by contractual agreement, particularly when they are contracted to work for a state alongside the state’s armed forces. Gillard (2006:533) suggests that the following factors might indicate affiliation to the armed forces of a state:

- Whether they have complied with national procedures for enlistment or conscription, where they exist
- Whether they are employees of the department of defence
- Whether they are subject to military discipline and justice
Whether they form part of and are subject to the military chain of command and control

Whether they form part of the military hierarchy

Whether they have been issued with the identity cards envisaged by the third Geneva Convention or other forms of identification similar to those of ‘ordinary’ members of the armed forces

Whether they wear uniforms

International law does not stipulate how states should go about incorporating individuals into their armed forces; this is a matter purely for a state’s internal laws (Cameron 2007:3). Once a state’s internal laws have endorsed the incorporation of individuals into the armed forces, all that international humanitarian law requires is that the state should ensure that individuals distinguish themselves from civilians, are subject to command responsibility and internal disciplinary systems, and that the opposition forces are notified of their incorporation (GC III:4A(2); AP I:43(3)). In theory then there is no legal bar to states’ incorporating PSCs into their traditional armed forces (Gillard 2006:534). Once a company employing PSCs can show the requisite incorporation into the armed forces of a state party to an international conflict, the PSCs (as a group) would then need to satisfy the four requirements set out in article 4A(2) of the third Geneva Convention in order to enjoy full ‘combatant privilege’.

Having said that, it is noteworthy that the majority of states making use of PSCs are at pains to emphasise that they are merely civilian contractors, authorised to accompany the armed forces (US Department of Defence instruction 2005:6.1.1). In fact, PSCs are often hired from states that are not party to the conflict, precisely to circumvent the belligerent state’s ‘national laws that would prevent them from sending their own armed forces’ (Cameron 2007:5). State practice suggests that commercial contracts, on their own, are not considered by states to be sufficient to incorporate PSCs into the armed forces, despite the fact that state responsibility may be invoked as a result of the contract alone (Ipsen 1995:69; Cameron 2006:584; Gillard 2006:533).

If a state were to take the necessary steps to formally incorporate PSCs into their armed forces, and notify the opposition of this position, would PSCs fulfil the criteria for belligerency set out in article 4A(2) of the third Geneva Convention? The first requirement of command responsibility does not necessitate ‘command by a military officer’ (Sandoz et al 1989:59), and might be satisfied by PSCs, particularly those coming from the more established companies where there is a ‘supervisory structure’ (Schmitt 2005:529). PSCs may fall foul of the requirement of a fixed distinctive emblem, sufficient to distinguish them from the civilian population, as they have
been known to dress in anything from full army fatigues to bermuda shorts and jeans (Gomez 2000; Schmitt 2005:527). PSCs on the whole would satisfy the requirement of carrying their arms openly and do (for the most part) observe the rules of war despite the occasional incidents of gross human rights violations (which violations are also – sadly – perpetrated at times by official combatants). In the final analysis, however, even if some PSCs could fulfil the four criteria for combatant status and did emanate from states party to the conflict, the deliberate refusal by states to officially incorporate them into their armed forces and their insistence that these are civilian contractors, scuttle any hopes of their being granted primary combatant status under international humanitarian law.

**Non-combatants**

Service personnel are an exception to the general rule that members of the armed forces are authorised to participate directly in hostilities. These personnel are prohibited from using ‘a weapon or a weapons system’ (AP I:43(2)) and are consequently dubbed non-combatants (HR IV:3). Within the category of non-combatants are quartermasters, members of the legal services and other non-fighting personnel, who enjoy special protection as a result of their limited combat competence (Ipsen 1995:82; GC I:24,26 and 27). Their status as members of the armed forces, albeit non-combatant members, guarantees their secondary status as prisoners of war upon capture. Although they are not authorised to participate directly in hostilities, save for defending themselves (GC I:22(1); GC II:35(1) and AP I:13(2)(a)), they are nevertheless not classified as civilians. As members of the armed forces, non-combatants are not protected by a prohibition against attack (as is the case with civilians) as they remain fundamentally a ‘military objective’ (AP I:51(1); Ipsen 1995:84). Article 52(2) of AP I defines military objectives as ‘those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage’.

With the exception of religious and medical personnel (who enjoy special protections under international humanitarian law) all other non-combatants contribute to the achievement of a military advantage, and are susceptible to attack without special considerations or collateral damage calculations (Ipsen 1995:85).

It seems as if many PSCs are contracted to perform the training and support services which are often carried out by non-combatants. There is however one fundamental barrier to concluding that PSCs might be categorised with non-combatants, which is their failure to be incorporated officially into the armed forces. As was discussed above, states hiring PSCs are at pains to emphasise that they are not incorporated as members of the armed forces.
‘Persons accompanying the armed forces’

As was stated earlier, international humanitarian law is fraught with exceptions to the rule that there is a stark distinction between civilians and combatants, and nowhere is this more evident than in the case of ‘persons accompanying the armed forces’ (GC III:4A(4)). These individuals are not members of the armed forces, do not wear a uniform, are not armed and are not permitted to engage in hostilities in any direct way (Ipsen 1995:95), but they often provide the necessary specialised expertise which the armed forces might lack. From the list of envisaged tasks that might be performed by those accompanying the armed forces it can be deduced that the drafters did not intend to include in this group ‘persons carrying out activities that amount to direct participation in hostilities’ (Gillard 2006:537). The assistance that they render to the armed forces exposes them to collateral injury while they are in the business of providing support for weapons and infrastructure (Ipsen 1995:95). These essentially civilian contractors still retain their inherently civilian status, despite the fact that their activities are aimed at maintaining the effectiveness of a piece of hardware which might be used to win a military advantage over the opposition (Parrish 2007:10). Despite their civilian status, persons who accompany the armed forces and provide for the welfare of the armed forces are afforded prisoner of war status if detained for security reasons (Ipsen 1995:95; GC III:4A(4)). This special privilege is recorded on an identity card which confirms their function (GC III, annex IV A).

A case could be made for concluding that PSCs should be grouped with these civilian contractors when they provide similar services to those who traditionally accompany the armed forces, notwithstanding the fact that they do not carry the recognised identification reflecting this status. This argument would rest upon the factual finding that such PSCs did not participate actively in hostilities, and might permit PSCs to claim prisoner of war status, provided they can overcome the treaty requirement that they carry identification as persons accompanying the armed forces (Cameron 2007:6). It is accepted that when the drafters of the Geneva Convention included the provision regarding the identity card it was agreed that ‘possession of one was a supplementary safeguard for the person concerned, but not an indispensable prerequisite for being granted prisoner of war status’ (Gillard 2006:537). There might then be room to argue that where states have contracted PSCs to assist the armed forces it is sufficient to infer protected status as civilian contractors, even if the contract itself is insufficient to actively incorporate them into the armed forces. Having said that, it is clear that this argument cannot be made where PSCs participate directly in hostilities, or where they are hired by non-state actors without any affiliation to the armed forces (Cameron 2007:593).

Mercenaries under international humanitarian law

The earliest customary law references to mercenaries in international humanitarian law were codified in the Hague Convention of 1907 (Hague V). Historically concerns over
the activities of mercenaries arose out of concerns that their actions would compromise the right of post-colonial states to self-determination (Fallah 2006:599). In short, the provisions in Hague V prevent the recruitment or organising of combatants in neutral territories (art 4), while permitting individuals to cross the border and offer their services to the belligerent party without negating their state’s neutral status (art 6). At most neutral states were to refrain from assisting mercenaries, but mercenarism per se was not criminalised under international humanitarian law.

Today mercenarism alone is still not a prosecutable offence under international humanitarian law, neither is it a crime under the Rome Statute of the International Criminal Court (Fallah 2006:610). At worst an individual might be prosecuted under the domestic laws of a detaining state which is party to either of the two anti-mercenary treaties. The focus here however is limited to exploring the possibility that PSCs might be mercenaries as the term is understood by international humanitarian law. Once individuals are identified as mercenaries they no longer have the right to claim combatant and prisoner of war status (AP I:47). Consequently they may not be immune from prosecution for participating in hostilities (as is the case with any civilian found participating directly in hostilities), and at best they can claim the minimum fundamental guarantees enshrined in article 75 of AP I (Fallah 2006:606).

Until 2004, when Shaista Shameem replaced Enrique Bernales-Ballesteros as the special rapporteur on mercenarism, the official position of the special rapporteur’s office was that PSCs were mercenaries (UN 1997), a finding that the majority of the international community chose to reject (Cameron 2006:575). Instead, the lax implementation by states of the two anti-mercenary conventions, coupled with the fact that PSCs operate in over 50 states, often on government contracts, suggest that under customary international law PSCs are not considered mercenaries for wont of state practice (Singer 2004:533). Furthermore, endeavours by the International Committee for the Red Cross (ICRC) to engage in dialogue with those in the private security industry in order to promote compliance with the international humanitarian law, lends credibility to the position that PSCs are not as a general rule mercenaries (Gillard 2006:527).

The term mercenary is defined in AP I (art 47(2)) as any person who (in the context of an international armed conflict):

- Is specially recruited locally or abroad in order to fight in an armed conflict
- Does in fact take a direct part in the hostilities
- Is motivated to take part in the hostilities essentially by the desire for private gain and is promised, by or on behalf of a party to the conflict, material compensation
substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party

Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict

Is not a member of the armed forces of a party to the conflict

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

Given that all six criteria have to be fulfilled simultaneously, the threshold is difficult to attain and the result is that the term mercenary is rarely used in its legally accurate sense and the definition is widely regarded as being unworkable (Cameron 2007:6 and 2006:578; UK 2002, par 6).

In many ways PSCs do not fulfil the six criteria required by the international humanitarian definition of a mercenary. Even a cursory analysis reveals that many PSCs are not recruited to fight, but are contracted to provide advice, training, logistical support or to act as bodyguards. According to the ICRC commentary on AP I, military advice, training, and technical maintenance of weapons are not mercenary activities and do not in and of themselves amount to direct participation in hostilities (Major 1992:103). Consequently PSCs providing advice or support services cannot be said to be participating directly in hostilities (Sandoz 1999:209). Only those specifically recruited to participate actively and directly in hostilities will satisfy the first two criteria. The others would retain their civilian status (Pictet 1987:57). The third criterion that PSCs be motivated purely by excessive material compensation would from a legal point of view be extremely difficult to prove (Committee of privy counsellors 1976, par 7; Fallah 2006:605). Paradoxically any PSCs emanating from states party to the conflict would automatically be exempt from mercenary status under the fourth criterion, while fellow employees of the same PSC might satisfy this requirement due to their citizenship or residential status. The last criterion dictates that any individual sent by another state (even one that is not party to the conflict) on official duty is exempt from the status of mercenary. Some have argued that where the state has contracted PSCs the contract of employment is sufficient to conclude that they are contractors of their employing state (Maogoto 2006:20).

In conclusion it seems that in theory it is possible for a PSC (in the context of an international armed conflict) to fulfil all the requirements of the legal definition of a mercenary in terms of international humanitarian law, although it would be a rare occurrence (O’Brien 2006:3). However, from the above it is clear that in the majority of cases the term mercenary is not useful in determining the status of PSCs under international humanitarian law.


**Civilians**

If PSCs are not incorporated into the armed forces (and consequently are not able to access combatant and non-combatant status), and they are unlikely to fulfil the definitional requirements of mercenaries under international humanitarian law, all that is left is civilian status. According to the ICRC commentary ‘nobody in enemy hands can be outside of the law’ (Pictet 1952:51): they are either combatants (or authorised to accompany the armed forces) or they are civilians. If they are not combatants they are necessarily civilians, whether or not their actions are such that they forfeit the special protections afforded civilians. Consequently international humanitarian law defines a civilian as any person who is not a combatant (AP I:50(1)).

Unlike combatants, civilians are not obliged to identify themselves as civilians (Gasser 1995:210) because of a presumption that where there is ‘doubt a person shall be considered to be a civilian’ (AP I:50(1)). With the exception of the levée en masse, civilians are not authorised to participate directly in hostilities, and it is this limitation which precludes the targeting of the civilian population as a military objective (Gasser 1995:210; GC IV:27(1)). Provided they do not take part in the hostilities, they are to be respected (GC I:27(1)), shielded from attack and may not be taken prisoner without sufficient reason (AP I:51(2); AP II:13(2)). This obligation demands not only that armed forces refrain from acts which would cause harm to civilians, but also that they are required to take steps to ensure the safety of civilians (Gasser 1995:212). Consequently any attacks on military objects must first be assessed to establish that the loss caused to civilian life is not excessive in relation to the concrete and direct military advantage anticipated (AP I:51(b)). Incidental harm caused to civilians and civilian objects are only lawful when it is an unavoidable and proportionate side effect of lawful attacks on military objectives (Gasser 1995:214). In every attack precautions must be taken to ensure that civilian losses are kept to a minimum, civilians are warned of imminent attacks, and where feasible removed from the vicinity of the military objective (AP I:57 and 58(a)).

The special protections afforded civilians are respected because the laws of war dictate that persons who take a direct part in hostilities are not entitled to claim the protections afforded civilians under international humanitarian law (AP I:51(3)). Civilians who participate actively in hostilities lay themselves open to attack from the opposition acting in self-defence during and while as they continue with their active participation (AP I:51(8)). Exactly when the actions of a civilian can be said to amount to direct participation in hostilities has been the source of some academic debate. The ICRC in their commentary to AP I summarises the controversy as follows: ‘undoubtedly there is room here for some margin of judgment: to restrict this concept to combat and to active military operations would be too narrow, while extending it to the entire war effort would be too broad, as in modern warfare the whole population participates in the war effort to some extent, albeit indirectly’ (Sandos 1957:516).
The International Criminal Tribunal for the Former Yugoslavia, when faced with this issue in the Tadic case, commented that ‘it is unnecessary to define exactly the line dividing those taking an active part in hostilities and those who are not so involved. It is sufficient to examine the relevant facts of each victim and to ascertain whether, in each individual’s circumstances, that person was actively involved in hostilities at the relevant time’ (Prosecutor v Dusko Tadic 1997, par 616).

Hans-Peter Gasser (1995:232; see also ICRC commentary to AP I, 1977:1679), proposes that direct participation involves not only ‘direct personal involvement but also preparation for a military operation, and intention to take part therein [provided the activities] represent a direct threat to the enemy’. Consequently direct participation does not extend to every act which might eventually result in a threat to the enemy.30 Civilians employed in industries which support the war effort (like persons working in an armaments factory) are not considered to be engaging in a military activity (Gasser 1995:211 and 233) although the munitions factory itself would still constitute a military objective. According to the ICRC (2003–2005:1) it would seem that any ‘acts aimed at protecting personnel, infrastructure or materiel, where that behaviour constitutes a direct and immediate military threat to the adversary constitutes a direct participation in hostilities’. Technological developments which would allow individuals located far from the front lines to direct a weapon to strike a target remotely by computer must be taken into account and would amount to direct participation in hostilities (Cameron 2007:9). On the other hand, support and logistical activities carried out by civilians, such as catering, construction and maintenance of bases, do not constitute direct participation in hostilities, provided these civilians do no more than act in self-defence (Cameron 2006:588–589).

Schmitt argues that once a determination is made that a civilian is directly participating in hostilities he or she may be legally targeted without further need to justify any resultant injury or death by considerations of proportionality31 or by taking special precautions in the attack.32 The author of this article is of the opinion, however, that Schmitt puts the case too strongly. The fundamental focus of the body of international humanitarian law is to protect those involved in armed conflicts; consequently it is ‘rare for the conventions to sideline particular categories of actors’ (Fallah 2006:603). Schmitt centres his argument on the fact that allowing protected status in grey areas will jeopardise the absolute protected status afforded civilians and not discourage participation by civilians. He maintains that the growing trend towards using civilians for military functions because of military downsizing, costs and expertise, increases the temptation for states to outsource armed conflicts (Schmitt 2004:505, 513). If civilian status is still afforded these civilian armed forces, the concepts of distinction and direct participation are going to come under fire. This author prefers the more nuanced conclusion that while there is still doubt as to exactly what actions constitute ‘direct participation’ on the part of civilians, the proportionality and special precautions tests are easier to satisfy when
civilians are playing a more involved role in hostilities. In other words, there is still an obligation to assess the proportionate result of the impending attack and to take special precautions during the attack (Gasser 1995:211). It is easier to reach the threshold for justifying these actions when civilians are actively participating in hostilities.

What then is the position regarding PSCs? Are they civilians who are participating directly in hostilities without authorisation? First, it must be clearly understood that international humanitarian law does not prohibit the use of civilian contractors in a civil police role in occupied territory, in which case they might be authorised to use force when absolutely necessary to defend persons or property (Elsea et al 2004). It is also uncontroversial that PSCs located at purely civilian sites or otherwise protected sites like schools, churches and hospitals could never constitute a direct immediate military threat to the belligerent party. This is endorsed by articles 51(1) and (2) of AP I. The conclusion is that PSCs at civilian sites will never constitute a legitimate military target and will retain their essentially civilian status because they do not participate directly in hostilities. Likewise PSCs employed as guards for reconstruction companies would be entitled to use force in self-defence and to protect the facilities they are guarding as long as they did so in a defensive manner and employed no more force than was strictly necessary (Dworkin 2004). However, in actual fact privatised security measures provided for private corporations in the context of an armed conflict are problematic because the environment in which they carry out their guarding duties is unstable and it may be difficult to distinguish criminal activities from military activities.

The same will not be true of PSCs who position themselves at purely military objectives like an armoury or command centre belonging to the opposition forces. Some would take the uncompromising position that ‘PSCs who, through their presence at a legitimate military target, aid the war effort and can be said to be participate directly in hostilities … effectively revoke their civilian protected status and exempt military commanders from considering their welfare further when calculating the collateral damage likely to result from an attack’ (Parrish 2007:13). Other authors maintain that even when PSCs are located at purely military objectives, commanding officers still bear an obligation to factor their presence into their calculations of collateral damage. The latter view is reminiscent of the approach taken towards workers in munitions factories. While the workers may not personally be targeted (because they retain their civilian immunity from attack) the military objectives in which they work remain open to attack, ‘subject to the attacking party’s obligations under international humanitarian law to assess the potential harm to civilians against the direct and concrete military advantage of any given attack, and to refrain from attack if civilian harm would appear excessive’ (Human Rights Watch 2003:1).

Perhaps it is more useful to ask what a tribunal might have to say about PSCs. It is intuitively right that a tribunal investigating an alleged war crime for an attack on a military objective
guarded by PSCs should demand less by way of justification of commanding officers than would ordinarily be expected when civilians are involved. PSCs are inherently a different category of civilian than those envisaged in the conventions. They are clearly not wholly innocent civilians going about their daily routine, caught in the crossfire. They have after all deliberately chosen to place themselves in the line of fire in an attempt to influence the outcome of hostilities. As is the case with workers in munitions factories, they do not become quasi-combatants (personally subject to attack) by their presence at a military objective, but the installation remains a permissible military objective (Oeter 1995:163). Even a large group of PSCs would not change the status of a single-use military objective. However, the point that is worth stressing is that a commander is expected to be aware of the principle of proportionality in his justification for an attack at all times and should thus exercise greater caution if a site is inhabited predominantly by PSCs.

Probably the area of greatest concern lies at neither end of the spectrum (civilian sites and purely military objectives), but rather concerns instances where PSCs carry out guarding duties at dual-use installations such as communications networks, power sources, oil refineries and transportation infrastructure (ports and airports) which serve both the civilian population and the armed forces. It seems intuitively right that PSCs located at dual-use sites be afforded greater protection than those located at single-use military installations. Article 52 of AP I states, ‘in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house, or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used’. There is a clear presumption in favour of protected status for sites which may be used for military gain. However, there is no distinction in international humanitarian law between defensive and offensive guarding. AP I (49(1)) is clear that an ‘attack means any act of violence … whether in offence of defence’. The question remains about the status of a PSC that is guarding (defensively) a dual use site. This author argues that the presumption of protected status (in respect of the site) would transfer to PSCs guarding the site, granting them civilian status until such time as the status of the installation can be deemed to be definitely military in nature. Once this determination has been made, the act of defending these sites would constitute direct participation in hostilities (Gillard 2006:540). However, despite this determination PSCs would still be justified in guarding the site against individuals acting with general criminal intent (Cameron 2006:589). In conclusion it would appear that the location plays a role in determining the status of PSCs. Those in civilian locations retain their civilian status and cannot be said to participate directly in hostilities, while those at single-use military sites might be said to be participating directly in hostilities. Like workers in munitions factories, PSCs would not be legitimate military targets but their presence at a legitimate military target makes them vulnerable to attack with lesser consideration of collateral damage than if they were purely civilians. In light of the presumption in favour of protected status for dual-use sites, PSCs guarding such sites should be afforded civilian status until such time as the status of the installation can be found to be predominantly military in nature.
If PSCs do participate directly in hostilities (more than just acting in self-defence or in defence of the subjects or objects they are guarding) they do not, as a result of their hostile actions, acquire combatant status. They may be grouped with civilians unlawfully participating in hostilities or unlawful belligerents. As such they may become legitimate targets for the opposition (Dworkin 2004:2, 3). Once they are hors de combat they once again regain their primary civilian status (unless they are found to satisfy the definitional criteria of mercenary) (Gasser 1995:233). Should they fall into enemy hands after such resistance they will still be treated humanely as civilians, held to account for their unauthorised actions and afforded the ‘regular and fair judicial guarantees’ extended to civilians (GC IV:5(3); AP I:75; Gasser 1995:211; ICRC 2006).

**Conclusion**

From the above it seems that PSCs will rarely satisfy the cumulative criteria which define a mercenary under international humanitarian law. Therefore the focus must be on their primary status as combatants or civilians. PSCs who are officially incorporated into the armed forces will automatically enjoy primary combatant privileges and secondary prisoner of war status. However, the vast majority of PSCs will not enjoy this privilege because states purposefully refrain from incorporating PSCs into their armed forces. Consequently under international humanitarian law they will necessarily be categorised as civilians. Civilians, on the other hand, are not authorised to participate directly in hostilities. If they do so they can be targeted, and also prosecuted on capture for these unlawful actions.

Some civilians are ‘licensed’ to accompany the armed forces and perform non-combative functions. PSCs who are engaged in non-lethal services mirror these individuals most closely. The difficulty is that PSCs do not carry the required authorisation and identification from the armed forces confirming their accompanying status. PSCs who engage in defensive activities should thus retain their civilian status until it can be concluded that they are directly participating in hostilities. This finding is subject to much speculation: academics like Schmitt argue that any participation in hostilities (offensive or defensive) strips PSCs of their essentially civilian status and renders them unlawful belligerents. The author of this article has argued that a more nuanced analysis might allow for PSCs to retain their civilian status provided they limit their participation to the defence of purely civilian targets. PSCs who engage in offensive activities on the other hand, are clearly unlawful combatants, may be targeted and could face prosecution for their unlawful behaviour.

The final conclusion is that PSCs would, depending on their particular actions, most likely be categorised as civilians (sometimes ‘accompanying the armed forces’). Their degree of participation in hostilities will determine whether they retain their civilian status or are considered to be unlawful belligerents.
Notes

1 The focus of this paper has been limited to the status of private security contractors (PSCs) in international armed conflicts.

2 In 1991 the ratio of military personnel to contractors was 50:1; by 2003 the ratio exceeded 10:1 (Singer 2003). Today, contractors working for the US government and military outnumber US troops in Iraq (Amnesty International 2006).

3 According to the International Committee for the Red Cross (ICRC 2006b:1) these functions include ‘logistical support, military operations, maintenance of weapons systems, protection of premises, close protection of persons, training of military and police forces at home or abroad, intelligence gathering, custody and interrogation of prisoners and, on some occasions, participation in combat’. Some PSCs limit their involvement to consultancy work, others are hired to provide on-site security for large mining corporations, and only very few engage in active combat (Blain 2007).

4 Some texts discriminate between private military contractors/companies, private security contractors/companies and non-lethal service providers. According to Brooks (2002:2–3): ‘Private security companies are companies that provide defensive armed protection for premises or people, capable of defending against guerrilla forces, or serving as personal bodyguards. While private military companies include both active private military contractors willing to carry weapons into combat, and passive contractors that focus on training and organizational issues. By contrast, non-lethal services providers (NSPs) provide logistical support such as de-mining, laundry and food services.’ For the purposes of this article the generic term of private security contractors (PSCs) is used, with the caveat that within this group there will be those whose activities might range from active combat or passive defence, through to non-lethal support.

5 The UN Mercenaries Convention entered into force on 20 October 2001, and by 2006 only 16 states had signed the treaty and 28 had become party to the convention (Fallah 2006:603).

6 The US and South Africa are amongst the biggest producers of PSCs, ‘so it is perhaps not surprising that they have come the farthest in regulating the industry’ (Holmqvist 2005:50). To this end South Africa has passed the Foreign Military Assistance Act, 1998 (Act 15 of 1998).

7 International humanitarian law is unusual in that it applies ‘to all individuals who find themselves in a territory in which there is an armed conflict (international or non-international), whether they are state or non-state actors’ (Cameron 2007:2).

8 While this article has been limited to an analysis based entirely on international humanitarian law, it is worth noting that the actions of PSCs may have human rights implications and raise questions of state responsibility.

9 It is worth mentioning at this juncture that in an armed conflict only a recognised subject of international law can clothe their armed forces with authorised combatant status. Combatant status is not given to the individual but is granted as a result of his or her affiliation to a party to the conflict, which is a subject of international law (Ipsen 1995:66–67).

10 Civilians who participate directly in hostilities might face criminal prosecution for their unauthorised actions, while combatants are not prosecuted for participating in hostilities provided they observe the rules of war.

11 However, if they breach the laws of war they may be subjected to disciplinary proceedings or military prosecutions (AP I:85-86; GC III:82–88). Nevertheless, a breach of the laws of war does not result in the forfeiture of their secondary prisoner of war status, unless they also breach the fundamental obligation of distinction (AP I:44 (4); Ipsen 1995:81).

12 This essentially civilian group is afforded primary combatant status if ‘they have spontaneously taken up arms against invading troops; without having had time to form themselves into armed units; and they carry their arms openly and respect the laws and customs of war in their military operations’ (GC II: 4(6)). The primary combatant status ensures that if captured, these individuals will be afforded secondary prisoner of war status.

13 The term ‘unlawful belligerent’ is afforded to those who intend to harm the enemy, but who do so in a manner which disregards the laws of war in order to attain a special military advantage (Parrish 2007:8). Such actions are regarded as perfidious and can result in the forfeiture of combatant and prisoner of war status (AP I:37(1)(f); HR IV: 29-31; Ex parte Quirin).
Voluntary human shields and non-state actors are just two of the categories which do not fall squarely within current international humanitarian law.

GC III article 4 includes in this category organised resistance movements, provided they fulfil the four criteria set out in article 4A(2)(a–d). Also mentioned are civilians who are accompanying the armed forces and crews of the merchant marine or civil aircraft.

AP I article 44(3) further states: ‘Combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognising, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.’

It must be noted that these privileges may be forfeited as a result of the actions of the particular individuals, for example engaging in spying (Ipsen 1995:65–66).

It is worth noting that failure to observe the laws of war will not render the combatant an unlawful combatant. It will however expose him or her to military prosecution provided he or she meets the other requirements for combatant status (GC III:82ff; Ipsen 1995:68). There have already been cases of PSCs attempting to claim immunity, by virtue of combatant status, from civil claims brought against them for unlawful actions (see Ibrahim v Titan; Saleh v Titan).

Although militia groups, volunteer corps and organised resistance movements are exempt from wearing uniforms they are still required to distinguish themselves from the civilian population (Ipsen 1995:76–77).

Since there are a number of civilians who are in fact officially incorporated into the armed forces as reservists it is not impossible for this act of incorporation to take place, provided the opposition is informed (AP I:43(3)). However, it is estimated that 80 per cent of PSCs are not contracted by states, which automatically exclude them from being incorporated or assimilated into the state’s armed forces (Gillard 2006:532).

Often this is done by way of national legislation.

AP I article 50(1) precludes this by its restrictive definition of a civilian (Ipsen 1995:84).

GC I articles 24–27 afford protected status to medical and auxiliary personnel who collect and care for the wounded and administer medical units. During armed conflict they are to be respected and protected and can never form part of the military objective as do other non-combatants. Any attack upon these specially protected personnel is unlawful. While they may not participate directly in hostilities, medical personnel in particular are nevertheless entitled to use small arms to defend themselves and the injured in their care (AP I:13(2)(a)). Upon capture they are granted the same legal protections afforded to prisoners of war (although they are not deemed to be prisoners of war), and they can only be detained in so far as it is necessary for assisting prisoners of war (GC I:28 and 30; GC II:36 and 37; GC III:33; Ipsen 1995:85–92).

These might include civilian members of military aircraft crews; war correspondents; supply contractors; reconstruction contractors; members of labour units; and those providing services for the welfare of the armed forces (Parrish 2007:8).

The focus of this section will be limited to mercenarism as it is understood under humanitarian law. While the few states party to the UN mercenaries convention and the OAU mercenaries convention might be obliged to criminalise a broader range of related activities, these obligations are necessarily limited to those states. Thus the focus is rather on the customary law provisions enshrined in international humanitarian law and is further limited to mercenaries as they occur in international armed conflicts, as this is where they run the risk of losing their prisoner of war status. Mercenaries active in non-international armed conflicts would not forfeit prisoner of war status because of the internal nature of the conflict (Sandoz 1999:208).

Having said that, it must be noted that under the two mercenaries’ conventions the recruitment, use, financing and training of mercenaries can result in offenders being prosecuted in domestic courts of states party to the treaties, provided the individuals fulfil all the stated definitional criteria of a ‘mercenary’ (Cameron 2007:7; Fallah 2006:608).

Only a small number of states have taken steps to enact legislation specifically aimed at regulating the PSC industry within their territory. Many of these instances of regulation have come about after PSCs have been accused of mercenary type activities, coup attempts and human rights abuses (Gillard 2006:528).
It is interesting to note that under the UN mercenaries’ convention this first definitional criterion excludes the requirement that the individual in fact does take part in hostilities (Fallah 2006:609).

AP I article 51(3) states that civilians are protected from attack ‘unless and for such time as they take a direct part in hostilities’.

Gasser (1995:232) suggests the following activities as examples of direct participation in hostilities: ‘carrying out a hostile act against the adversary; killing or taking prisoners; destroying military equipment; gathering information in the area of operation; operating or supervising the operation of a weapons system; servicing weapons systems; transmitting information regarding targets and engaging in activities around the logistics of military operations’.

The principle of proportionality prohibits attacks ‘which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’ (AP I:51(5)(b); Schmitt 2004:541).

There is a further imperative on commanding officers, once they have determined that an attack is proportional, to select a military objective ‘which may be expected to cause the least danger to civilian lives and to civilian objects’ (AP I:57(3); Schmitt 2004:519).

AP I article 52(1) states that ‘civilian objects are all objects which are not military objectives as defined in paragraph 2’. Paragraph 2 then goes on to define military objectives as ‘objects which make a contribution to military action’.

Article 1: ‘The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.’

Article 2: ‘The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.’

What analysts have learnt from the conflict in Iraq is that a situation can change from passive defence to active offence very quickly in an unstable environment, and that the distinction between combat and non-combat operations is often artificial (UK 2002, par 10). PSCs will need to be assessed on a case by case basis to determine their primary status with accuracy (Jennings 2006:15; Sandoz 1999:211).

Oeter argues that the presence of civilian workers in a munitions factory does not change the status of the factory as a legitimate military target, ‘even if there are hundreds or thousands of them’ (1995:63).

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Western Sahara:
What can we expect from the Manhasset talks?
Issaka K Souaré

Darfur and the impact of protest fever
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Trends and markers:
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Western Sahara: What can we expect from the Manhasset talks?

Issaka K Souaré*

Background to the crisis

The crisis over Western Sahara started in the early 1970s, when Spain was forced to announce plans to withdraw from the territory it had effectively occupied since 1934. But when Spain abandoned the territory in February 1976, the Kingdom of Morocco, which lies to the north, and Mauritania, located to the east and south of the country, sent troops to occupy parts of what was then called ‘Spanish Sahara’, with the lion’s share going to Morocco.

Both Morocco and Mauritania lodged claims to those parts of the territory they had occupied, considering them to have been part of their countries well before the Spanish

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occupation, though some argue that Mauritania’s occupation of parts of the ‘Spanish Sahara’ was a strategic move to shield itself from Moroccan claims to parts of its own national territory.

Along with the territory, the two claimants also inherited a local resistance movement, formed in 1973 to fight Spanish colonialism, the Frente Popular para la liberación de Saguía el-Hamra y Río de Oro (the Popular Front for the Liberation of the Saguía el-Hamra and Rio de Oro, more commonly known as the Polisario Front). The Polisario Front now turned its guerrilla war against Morocco and Mauritania, and also escorted a significant number of the Sahrawi population into exile in Algeria, whose government provided it with open support. In 1979 Mauritania withdrew from its sections of the territory after heavy losses in the guerrilla war with the Polisario Front. Morocco, however, has held on to the territory to the present day, and the government of the Sahrawi Arab Democratic Republic (SADR), which was unilaterally proclaimed by the Polisario Front a few days after the Moroccan occupation in February 1976, lives in exile in Sahrawi refugee camps in the Tindouf areas of Western Algeria and in a tiny area inside Western Sahara itself.

**Peace proposals**

There have been numerous attempts to resolve the crisis, which now seems virtually intractable. Both the Organisation of African Unity – before Morocco’s withdrawal from it in 1984 in protest at its decision to admit the SADR as a member state – and the United Nations have tried to mediate between the parties and have proposed various peace plans. In recent years both Morocco and the Polisario Front have put forward their own peace proposals.

The OAU’s efforts to find a solution to the Western Sahara crisis culminated in the adoption of a peace plan at the 19th assembly of heads of state and government held at Addis Ababa in June 1983, when Morocco and the Polisario Front were urged to ‘undertake direct negotiations with a view to bringing about a cease-fire to create necessary conditions for a peaceful and fair referendum for self-determination of the people of Western Sahara’. Although the plan failed to achieve either of its two stated goals (reaching an effective cease-fire and organising a referendum), it formed the basis for a joint OAU/UN settlement plan proposed to the two parties in 1988, which also urged the two to engage in direct negotiations and envisaged an internationally supervised cease-fire followed by a transitional period. This phase was to lead eventually to a referendum offering the Sahrawis a choice between independence and integration with Morocco.

As part of this plan the UN established its Mission for the Referendum in Western Sahara (MINURSO), consisting of civilian, military and police components, to prepare for the
referendum. A special representative of the Secretary-General was also appointed with sole and exclusive authority over all matters relating to the organisation of the referendum.

Both Morocco and the Polisario Front accepted these proposals and agreed to a ceasefire, which took effect on 6 September 1991 and, apart from occasional minor violations, holds to this day. MINURSO was deployed simultaneously with the responsibility, inter alia, of monitoring the ceasefire, verifying the reduction of Moroccan troops in the territory, identifying and registering qualified voters, organising and ensuring a free and fair referendum, and proclaiming the results. Although both parties at times heeded some of the numerous calls by the UN to cooperate with the identification commission, both found reasons and strategies to interrupt and delay the process. Thus, by late 1996, the UN realised the need to revive the peace process by means of a different strategy and approach.

This coincided with the election of Kofi Annan to the post of UN Secretary-General in January 1997. After consultations, he appointed former United States Secretary of State, James Baker, as his personal envoy and chief negotiator, in the hope that someone of his stature would be able to make a breakthrough. Following several futile attempts to secure the parties’ agreement to a mutually acceptable solution, however, Baker finally resigned in June 2004.

**Proposals from the two parties**

Even before Baker’s resignation almost all the resolutions passed by the Security Council on Western Sahara included repeated calls to the conflicting parties to end ‘the current impasse’ and work towards ‘a political solution’. In response to these appeals both parties drafted proposals to present to the international community to demonstrate their willingness to find a solution. Morocco was first to make a peace proposal of its own, which was formulated in a letter to the Secretary-General in April 2004 and attached to the latter’s report of the same month. A final and enhanced version of this proposal was sent to the Secretary-General on 11 April 2007.

The Moroccan initiative envisaged an ‘autonomy-based political solution’. This initiative, which Rabat considered to be a compromise solution, proposes autonomous status for Western Sahara within the framework of Moroccan sovereignty. In a major shift from all previous proposals, Morocco suggested that the autonomy status be final, thereby ruling out any possibility of ‘self-determination’ for the Sahrawi people. From Morocco’s standpoint, the autonomous status would enhance the territorial stability of the states of the region. The possibility of a referendum was not ruled out, but would be limited to voting on only one question, namely to agree with or reject the option of autonomy as a final solution to the conflict.
Only a day before Morocco sent its final proposal, the Polisario Front submitted its proposal for a mutually acceptable political solution. The Front maintained that the solution to the conflict would be to hold a referendum on self-determination. Thus, in parallel to the Moroccan proposal, the Polisario Front reiterated its attachment to the idea of a referendum, but one that would provide the voters with three choices: independence, integration with Morocco, or self-governance or autonomy.

The Manhasset negotiations

Given the divergent views contained in these proposals, especially with regard to a number of fundamental issues, the Security Council refrained from endorsing either. Instead, in UN Security Council Resolution 1754 of 30 April 2007, it reiterated its call upon the parties to enter into negotiations ‘without preconditions’, with a view to achieving a just, lasting and mutually acceptable political solution. The negotiations were to be take place under the auspices of the UN, and the Council requested the Secretary-General to report to it on the status and progress of those negotiations, now called the Manhasset negotiations.

The first round of talks between the two parties took place at the Greentree Estate in Manhasset, New York, on 18 and 19 June 2007. Representatives of Algeria and Mauritania were also present at the opening and closing sessions and were consulted separately. At the end of the talks both parties agreed to resume talks in the second week of August. The second round ended with no breakthroughs but the parties again agreed to meet for another round at a date yet to be announced.

It seems that the difficulty with the peace process lies in the divergent views the two parties have on the most important aspects of the conflict. Morocco does not consider the issue of Western Sahara to be a question of decolonisation but rather to be an identical situation to those of its territories formerly occupied by France and Spain and which have been returned or are to be ‘recovered’ (Ceuta and Mellila) from their present occupiers.

In holding to this position, Morocco is virtually assured of the support of at least two permanent members of the UN Security Council, namely France and the US, and this is a big advantage. Moreover, on 26 July 2006 the European Union signed a fisheries agreement with the government of Morocco in terms of which fishing vessels from EU countries would gain access to the territorial waters off Morocco. The agreement did not exclude the waters off Western Sahara. In a letter addressed to the UN Secretary-General on 23 May 2006, the Secretary-General of the Polisario Front deplored the exploitation by Morocco of the natural resources of the territory, stating that certain clauses of the agreement constituted a breach of international law and also that the agreement might complicate the situation in Western Sahara.
The Polisario Front remains determined to assert control over what it considers ancestral land, and believes that all relevant international instruments have vindicated this claim. While controlling the resources of the territory is crucial to the viability of any future independent Sahrawi state, political sovereignty over the territory seems to be the real motive for the perseverance of the Polisario Front and the Sahrawi people loyal to it.

**The way forward**

After considering the history of the crisis and the positions taken by both parties over the years, one may argue that concessions are possible by both sides. One must be mindful, however, that any concessions one or both parties claim they are prepared to make have been motivated by their particular circumstances. Realities on the ground, which pertain to the political aspect of the dispute, play an important role in shaping the positions both parties hold.

What is now required is for both sides to strive to make an objective and critical analysis of the situation and the realities on the ground, and in that light seek a way forward from the current situation. One may suggest that in order for any mediation to have a realistic chance of success, it should be conducted in utmost confidentiality (as in the case of the Oslo peace negotiations in which the Norwegians mediated between the Israelis and Palestinians in 1993). A further suggestion would be to de-internationalise the mediation process. But now the most crucial question is who could step in to play the vital role of mediator between the parties?
Darfur and the impact of protest fever

Mariam Bibi Jooma*

‘We want to organise a protest outside the embassy to make people aware of what’s going on in Darfur,’ stated a request to the Institute for Security Studies from a local university society keen on raising levels of awareness and activism on relevant issues affecting the African continent. Certainly this was an encouraging sign from what has often unfairly been characterised as a politically apathetic South African ‘born free generation’. But in response to the question on how they view the Darfur conflict and what the aims of a protest campaign would be, the students admitted that they were aware of their lack of understanding of the politics but added that something needed to be done in the face of ongoing genocide in Darfur.

While the intention of creating awareness is to be commended, the request highlights the extent to which media representation of the conflict has informed responses at both civil and state level.

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Let us be clear, the violence and ongoing conflict in Darfur are serious matters and the human rights abuses as documented by various non-government organisations and observers have highlighted the impact of a military-security approach in response to civil dissent. However, the characterisation of the conflict as simply the fanatical violence of Arabs against their African neighbours, or the reflection of a religious divide (despite the fact that Darfurians are fairly homogenous in their adherence to Islam) does a disservice to the national character of public debate on the nature of the Sudanese state. Indeed, Northern Sudan, often described as the Arab-Muslim north, is far from homogenous in identity and political aspiration, with much of the marginalised west, east and extreme northern Sudan finding common cause with the former rebel movement, the Sudan People’s Liberation Movement. The promise of overall transformation of Sudan through the comprehensive peace agreement gave hope to many of these constituents, who regarded the late John Garang de Mabior as a possible leader of an inclusive Sudanese state.

The Darfur crisis is the most recent example of a long history of post-independence discontent with elitist rule in Sudan, and is a manifestation of the breakdown of governance at the centre of Sudan. At the same time it is a reflection of the desire for regime security rather than a substantial devolution of power to the regions. The crisis is complicated by tensions between communities, which stem from a tangible and ongoing scarcity of resources that has been exacerbated by the emasculation of local traditional authority in the 1970s under the Jaffer Nimeiri regime. (In the past, traditional authorities were able to mediate between various tribes regarding access to water and pasturage and other matters of ‘governance’ critical to the vast and arid region.) Added to this unstable mix are the global geopolitical imperatives of a United States keen to achieve some success in its ‘war on terror’ campaign. Against such a messy background it is not surprising that Darfur has become a ‘Wild West’ for activists, politicians and journalists alike.

Journalists play a particularly important role in popular awareness of ‘what’s going on in Sudan’. On 8 August this year the Advertising Standards Authority (ASA) of the United Kingdom upheld a complaint against the Save Darfur Coalition, the biggest US coalition of campaigners and celebrities largely responsible for putting Darfur on the civil society and media map in the US. The complainant was the European Sudanese Public Affairs Council (ESPAC), an organisation perceived to be closely affiliated to the regime in Khartoum. The ESPAC lodged a complaint with the ASA regarding a Save Darfur Coalition advert that read ‘Slaughter is happening in Darfur … 400 000 innocent men, women and children have been killed’. They argued that the figure of 400 000 was based on speculation and was false. The ASA reviewed the evidence put forward by both parties concerning the methodology of estimating fatalities and eventually agreed with the ESPAC that the figures are more likely to be around 200 000. (It is noteworthy that this number is significantly higher than the 9 000 claimed by the Sudanese government.)
The question is why this complaint is important. Surely, we should be concerned regardless of whether the number of deaths is 40, 400 or 400,000 and regardless of where they died? However, the irony is that use of inflated statistics has created a threshold for concern, and alarm bells sound only when ‘mass atrocity’ can be claimed. Rather than helping to address the complex underlying causes of conflict in countries such as Sudan, international activism may indeed drive the use of force and the protraction of conflict as belligerents draw their strength from their projection of power rather than their actual constituency on the ground. Observers to the Abuja talks which resulted in the moribund Darfur Peace Agreement argue that this was one of the main reasons for the fracturing of the rebel movements, which sought to maximise their power by remaining outside the peace process.

Recent clashes in Southern Darfur in the areas around the Kalma Internally Displaced Persons camp between Minni Minnawi’s Sudan Liberation Army and the Sudanese armed forces have demonstrated how cycles of violence can be defined by the competition for relevance between various factions. The latest emphasis on the importance of Abdel Wahid Nur, the original leader of the Sudan Liberation Movement, to the Arusha talks is more than likely to have motivated new activity from the Minnawi faction whose power has been dramatically diffused since taking up position in Khartoum.

Importantly, the call for more international action on Darfur, based as it is on a narrow understanding of the deep-seated structural and tribal tensions present in the country, removes the concept of agency over the conflict-peace process. Indeed, in his discussion of Darfur and peacekeeping, Philip Cunliffe (2007) makes a powerful argument about the decentralisation of institutional accountability as a result of increasing reliance on the United Nations and international bodies to manage global crises. He writes: ‘under the auspices of the UN, wars are no longer treated as political affairs, with peace founded on Africans’ own efforts, but as “conflict management” activities to be administered by bureaucrats and jet-setting international diplomats … This moralised multilateralism lends itself to passing the buck: states blame the UN, the UN blames states, and both blame Africans for their corruption and backwardness.’

It should be clear that ‘saving Darfur’ is not the mandate of a UN peacekeeping mission: it is a long and uncomfortable process through which Sudanese civil society should give meaning to their own aspirations for an inclusive Sudan, supported but not defined by international lobby groups.

Note

1 For more on the methodology used by the Save Darfur Coalition and the ESPAC, see Alex de Waal’s posting to the Social Science Research Council website http://www.ssrc.org/blog.
References


**Trends and markers: African leaders in order of periods in office**

<table>
<thead>
<tr>
<th>Date of accession to power and period in office</th>
<th>Country</th>
<th>Name</th>
<th>Date of birth and age at September 2007 (in years)</th>
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<tr>
<td>1967: 40 years</td>
<td>Gabon</td>
<td>El Hadj Omar Bongo Ondimba</td>
<td>1935: 72</td>
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<tr>
<td>1969: 38 years</td>
<td>Libya</td>
<td>Muammar Abu Minyar al-Gaddafi</td>
<td>1942: 65</td>
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<td>1979: 28 years</td>
<td>Angola</td>
<td>José Eduardo dos Santos</td>
<td>1942: 65</td>
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<td></td>
<td>Equatorial Guinea</td>
<td>Teodoro Obiang Nguema Mbasogo</td>
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<tr>
<td>1981: 26 years</td>
<td>Egypt</td>
<td>Muhammad Hosni Said Mubarak</td>
<td>1928: 79</td>
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<td>1982: 25 years</td>
<td>Cameroon</td>
<td>Paul Biya</td>
<td>1933: 74</td>
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<td>1984: 23 years</td>
<td>Guinea</td>
<td>Lansana Conté</td>
<td>1934: 73</td>
</tr>
<tr>
<td>Date of accession to power and period in office</td>
<td>Country</td>
<td>Name</td>
<td>Date of birth and age at September 2007 (in years)</td>
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<tr>
<td>-----------------------------------------------</td>
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<tr>
<td>1986: 21 years</td>
<td>Swaziland</td>
<td>King Mswati III</td>
<td>1968: 39</td>
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<td></td>
<td>Uganda</td>
<td>Yoweri Kaguta Museveni</td>
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<td>1987: 20 years</td>
<td>Burkina Faso</td>
<td>Blaise Compaoré</td>
<td>1951: 56</td>
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<td></td>
<td>Tunisia</td>
<td>Zine El Abidine Ben Ali</td>
<td>1936: 71</td>
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<td></td>
<td>Zimbabwe</td>
<td>Robert Gabriel Mugabe</td>
<td>1924: 83</td>
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<td>Sudan</td>
<td>Omar Hasan Ahmad al-Bashir</td>
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<td>Chad</td>
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<td></td>
<td>Cape Verde</td>
<td>Pedro Verona Rodrigues Pires</td>
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<td></td>
<td>Democratic Republic of Congo</td>
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<td>Kenya</td>
<td>Mwai Kibaki</td>
<td>1931: 76</td>
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<td>Zambia</td>
<td>Levy Patrick Mwanawasa</td>
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<td>2003: 4 years</td>
<td>Central African Republic</td>
<td>François Bozizé Yangouvonda</td>
<td>1946: 61</td>
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<td>2004: 3 years</td>
<td>Somalia</td>
<td>Abdullahi Yusuf Ahmed</td>
<td>1934: 73</td>
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<td>2005: 2 years</td>
<td>Burundi</td>
<td>Pierre Nkurunziza</td>
<td>1963: 44</td>
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<td></td>
<td>Togo</td>
<td>Faure Essozimma Gnassingbé</td>
<td>1966: 41</td>
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<td></td>
<td>Guinea-Bissau</td>
<td>Joao Bernardo Vieira</td>
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<tr>
<td></td>
<td>Tanzania</td>
<td>Jakaya Mrisho Kikwete</td>
<td>1950: 57</td>
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<td>2006: 1 year</td>
<td>Comoros</td>
<td>Ahmed Abdallah Mohamed Sambi</td>
<td>1958: 49</td>
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<td></td>
<td>Benin</td>
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<td>2007: 0 years</td>
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<td>Ernest Bai Koroma</td>
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The United Nations-African Union Mission in Darfur: Implications and prospects for success
Sarah E. Kreps

A plan for military intervention in Darfur
Costantino Pischedda
The United Nations-African Union Mission in Darfur: Implications and prospects for success

Sarah E. Kreps*

With the security situation in Darfur remaining grim, the international community passed United Nations Security Resolution 1769 that authorised a more robust peacekeeping force. This article addresses the security concerns motivating the United Nations-African Union Mission in Darfur (UNAMID), highlights the mandate and implications of the force, and compares the potential command and control issues to the experiences of the Somalia intervention in the 1990s. It closes by analysing the prospects for success of the intervention and offering some limited recommendations on ways to mitigate the risks associated with the peacekeeping effort.

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Introduction

Since the start of internal conflict in Darfur in 2003, the international community has haggled back and forth over the appropriate collective response to the violence in western Sudan. Of the permanent five members of the United Nations Security Council, the positions and votes have generally been divided between the United States, United Kingdom and France, which favour harsh action against the government in Khartoum, and China and Russia, which tend to favour the status quo. On a proposed resolution on the use of force on 31 July 2006, China and Russia both abstained but the vote passed. However, because the language of the resolution ‘invited the consent’ of the Sudanese government rather than requiring that the international community intervene on behalf of a state that had shown itself unable to provide security for its citizens, the status quo continued.

Having addressed some of the reservations of China, Russia and Sudan, Resolution 1769 was passed unanimously almost a year later. It proposed a 26,000 person hybrid UN-AU force, one that would be ‘African in character’ and which would take over authority from the AU forces on 31 December 2007. What are the implications of this new resolution? What will be the responsibilities of the new hybrid force? Is it likely to be more effective than the AU force? These are the questions that are addressed in this article.

The chronology of the peacekeeping effort in Darfur from AMIS to AMIS II is traced first, then the limitations of the current peacekeeping effort in Darfur and the reasons that have motivated the creation of a more robust peacekeeping force are discussed. This is followed by an outline of the proposed UN-AU hybrid force, to be known as the UN-AU Mission in Darfur (UNAMID), and both the provisions contained within the Resolution and those that are absent are addressed. Next, the peacekeeping intervention in Somalia as a case study of another UN-authorised hybrid force is examined in order to evaluate the potential command and control challenges that can arise from an intervention that is authorised by a multilateral body and executed by a different entity. The article concludes with an analysis of the prospects for UNAMID’s success in fulfilling the provisions of Resolution 1769.

The Africa Union Mission in Sudan

The narrative of multinational involvement in Darfur’s internal conflict is a long and troublesome one. It starts with the humanitarian crisis in 2003, the negotiation of ceasefire talks between the Sudan Liberation Movement / Army (SLM/A) and the Justice and Equality Movement (JEM), and the recognition within the AU that regional personnel should monitor, verify, investigate and report transgressions of the humanitarian ceasefire agreement of 2004 (Appiah-Mensah 2005).
Initially, the AU and European Union sent nominal personnel to support this effort, but it soon escalated as the AU first authorised 150 Rwandan troops to protect the monitors, followed by 150 Nigerian troops, and then an additional 600 troops, all as part of the AU Mission in Sudan I (AMIS I). The AU then authorised a larger, follow-on force of 3 000 (AMIS II) and later 7 000 to monitor deteriorating security conditions (see AMIS 2007). Adding credibility to the AU efforts, and incentives for the Sudanese government to cooperate, the UN Security Council passed Resolution 1564 which would enable it to consider sanctions if the government in Khartoum did not accept the expanded AU peacekeeping force. Algeria, China, Pakistan and the Russian Federation abstained, arguing that the Sudanese government was honouring its commitments to resolve the conflict (UN 2004). The UN followed this by adopting Resolution 1590, which authorised a Chapter VII mission (UNMIS) to support the comprehensive peace agreement between the Sudanese government and the SLM, AMIS, UN personnel, as well as humanitarian assistance efforts in Darfur (UN 2005).

During its deployment to Darfur, the AU force was often the only line of defence between the Janjaweed militia and Darfur civilians, but its efforts to provide effective security were hampered in a variety of ways. The main problem was the extent of resources available to the AU peacekeeping force. AMIS has been consistently underfunded. As of May 2007, many of the AU peacekeepers had been unpaid for months: In the words of AU Chairman Alpha Oumar Konare: ‘Today, we have soldiers who have been waiting three or four months to be paid.’ The result is that the AU has been forced to conduct fewer patrols, which has led to a diminished ability to protect civilians and peacekeepers. In one instance, a Ghanaian peacekeeper was carjacked 300 meters from the mission’s headquarters but nearby Gambian troops did not come to his aid (Lynch 2007:A17). The death of seven AU peacekeepers in the spring of 2007 brought the total number of AMIS fatalities to 17.

Another problem is the relatively low number of peacekeepers in relation to the size of the area. For a region roughly the size of France, a force of between 5 000 and 7 000 soldiers is woefully inadequate for providing meaningful security. The International Crisis Group (ICG) estimated that at least 12 000 to 15 000 soldiers were needed on the ground in Darfur to protect internally displaced persons (IDPs) and villages against attack, provide security for humanitarian operations, and act as a counter-force to the Janjaweed militia (ICG 2005). The relative scarcity of troops for this size limits the ground that the AU can cover on its patrols, leaving Darfurians largely unprotected and vulnerable to attack.

Moreover, shortfalls in funding – US$173 million in 2005 and continued deficits since then – have gone hand in hand with inadequate equipment for logistics, intelligence, communications, mobility and the like (IRIN 2005). AMIS lacked strategic lift capability and has had to rely on Greek C-130s and US C-17s for
airlift as and when they are available. In addition AMIS lacks armoured forces or high mobility infantry units. Fuel needed for operations and maintenance is limited because only seven trucks have been available to bring fuel to Darfur in spite of the increase in peacekeeping troops in the region. Troops lack a data management system, including good intelligence on the Janjaweed as well as an advanced command and control system for distributing information (O’Neill & Cassis 2005). Early warning or advanced information on potential attacks or ambushes is therefore limited, as is any ability to distribute available information to those who may need it for defence of themselves or others.

More specifically, the civilian police function has encountered significant challenges. While the challenges result in part from the militia’s numerical superiority, several additional factors play a role. The first is that the AU has never before employed a police component and therefore lacked any precedent on recruiting criteria, training, operational plans and logistics. Second, the police have limited mobility: they have four vehicles for 250 police, a significant barrier to their effectiveness. Third, the number of countries from which the police come, creates language difficulties that make unity of effort close to impossible. Fourth, the police tend to be inadequately trained. They all received a four day series of briefings on strategic objectives, their responsibilities and safety, but are not versed in the local laws and human rights issues (O’Neill & Cassis 2005).

Though the AU force seeks to run patrols effectively and mediate conflict, their efforts have fallen short when it comes to combating the violence of the region, which continues relatively unabated. Shortfalls in resources have contributed to the AU’s difficulty in stemming the attacks on IDPs, humanitarian personnel (such as the ambush on the UN World Food Programme convoy that was attacked in 2005) and AMIS personnel themselves.1 International interest in assembling a more robust peacekeeping force that might be better equipped and therefore better able to stem the killing has gained momentum as a reaction to the continued violence in Darfur.

UN resolutions 1706 and 1769

Noting the AMIS resource deficiencies, the deteriorating security conditions in Darfur, and the threats of some AMIS member states to withdraw participation (Africa Action 2007), the international community began to unite more firmly around the idea of collective intervention in 2006. Prompted by threats to international peace and security, Argentina, Denmark, France, Ghana, Greece, Slovakia, the UK, Tanzania and the US co-sponsored a resolution on a UN peacekeeping force that would send 17 300 military and 3 300 civilian police personnel to Darfur as a Chapter VII mission. The aim of the resolution was to reinforce the AMIS effort and reduce the large-scale violence in
Darfur (UN 2006). Two main factors doomed it to failure. First, several states – China, Russia and Qatar – abstained, arguing that the 22 000-strong UN force would be a violation of Sudanese sovereignty. The abstention of these states, in particular China which has strong economic ties with Sudan, reduced international pressure on Sudan to comply with the resolution. Second, the resolution used language that allowed Sudan to opt out of compliance, as it stated that it would ‘invite the consent’ of the host government, a consent that President Omar al-Bashir ultimately withheld, likening any UN force to ‘Western colonisation’ (Bloomfield 2006). The move towards intervention therefore failed.

Since the abstentions in August 2006, international response has been aimed at addressing the reservations that China, Russia and Sudan had about the potential peacekeeping response. The outcome was Resolution 1769, which unanimously passed on 31 July 2007 and calls for the creation of an AU-UN hybrid force that will replace the AMIS force with UNAMID. The Resolution authorises a force with the following characteristics and responsibilities:

- UNAMID will be a 26 000 strong joint UN-AU force, with 19 555 military personnel, including 360 military observers and liaison officers, 3 772 international police officers and 29 special police units with 2 660 officers
- UNAMID will take command of the region from AMIS by 31 December 2007
- UNAMID is charged with implementing the Darfur Peace Agreement and protecting personnel and civilians

Further, according to the Resolution, details on the force’s mandate were drawn from the 5 June 2007 meeting between the Secretary-General and the AU Commission (AU 2007) and the resulting report. The following other tasks can be deduced from paragraphs 54 and 55 of the Resolution:

- Help restore security conditions for economic development, provide humanitarian assistance and return IDPs
- Protect civilian populations under imminent threat of violence and prevent attacks against civilians
- Monitor and observe compliance with the Darfur Peace Agreement
- Assist with the political process
- Promote respect for and protection of human rights and the rule of law in Darfur
Monitor and report on the security situation in Chad and the Central African Republic

Monitor, verify and report on efforts to disarm the Janjaweed

Taking into account Khartoum’s concern about Western imperialism, the resolution asserts that the force will be ‘African in character’ and comprised predominantly, if not entirely, of African forces.

The peacekeeping force is tasked with supporting the implementation of the Darfur Peace Agreement, an ambitious agreement that calls for the disarming and demobilisation of the Janjaweed militia by the Sudanese Government of National Unity; the integration of former combatants into the Sudanese armed forces; upholding of the right of the people of Darfur to elect their leaders and determine their regional status; and the establishment of protective buffer zones around IDP camps (Darfur Peace Agreement 2006). The resolution calls for unity of command and control and for the UN to be responsible for command and control structures. The hybrid force is expected to protect personnel, facilities and installations, and to facilitate the deployment of light and heavy support packages, which include signals and communications units, logistics support, helicopters and tactical military staff (IRIN 2007). Ambitious in its goals, the resolution appears to represent genuine interest in improving human security in Darfur.

Acting on that interest, however, will likely be limited to African states because of the structural provisions within the resolution. Unlike Resolution 1706, which called for an unfettered UN force, 1769 requires that the intervention force as far as possible be sourced from African countries. Countries such as Burkina Faso, Djibouti, Ethiopia, Egypt, Nigeria, Rwanda, Senegal, Tanzania and Uganda gave early indications of their interest in contributing troops (Sudan Tribune 2007b). In general, however, the AU has had difficulty in finding forces for large operations, such as for example the planned 8 000 soldier Somalia intervention (BBC News 2007). Indeed, the Sudanese government may have banked on African forces being insufficient to constitute a 26 000-strong soldier force, and may have insisted on a primarily African force to ensure the continuation of Sudanese balance of force dominance over the peacekeeping forces (Sudan Tribune 2007a).

Though the contributions will come largely from African countries, the resolution asserts the need for ‘unity of command and control which, in accordance with basic principles of peacekeeping, means a single chain of command’, and makes provision for UN ‘command and control structures and backstopping’. In other words, while the commander on the ground is likely to be Nigerian General Martin Luther Agwai, the control structures as well as decision making at strategic level would reside in the UN’s Department of Peacekeeping Operations, which is located in New York. The command and control language is written ambiguously and, as will become clear from the discussion below, introduces the possibility of severe coordination problems.
To the extent that the international community has authorised a peacekeeping force, Resolution 1769 may be considered an important step forward towards that end. But as French foreign minister Bernard Kouchner (2007), who helped negotiate the agreement, has conceded, the international community asked for a UN force for Darfur for two and a half years before the UN unanimously approved one. Moreover, the resolution that passed is the product of compromise, and reflects the lowest common denominator along the putative action-status quo spectrum.

In general, Resolution 1769 is far less severe or expansive than that of 1706. The threat of sanctions against Sudan if it does not accept the force has been dropped. The UK and France had proposed that it should refer to ‘further measures’ if the Sudanese government failed to comply with the resolution but these terms were removed, which diminishes incentives for Khartoum to cooperate with the peacekeeping initiative. Nor does the resolution include terms condemning or seeking to punish Khartoum for its non-compliant behaviour, whether in obstructing or harassing humanitarian relief efforts, violating the arms ban or contributing militarily to the violence with its aerial assaults. Such terms were removed to accommodate the protests of Sudan’s UN ambassador, Abdalmahmood Abdalhaleem Mohamad, who called it ‘ugly and awful’ (Sudan Tribune 2007c). This further eroded the censuring elements of the resolution and by implication tolerates the Sudanese government’s complicity with the Janjaweed’s actions. The fact that peacekeeping troops will not be allowed to confiscate illegal weapons – excluded from the resolution in order to produce a unanimously passed resolution in the Security Council (Times Online 2007) – may well limit their ability to control the Janjaweed militia.2

**Lessons learned in Somalia?**

The explicit UN-AU hybrid structure may be unprecedented for UN peacekeeping operations, but there are analogies with other interventions that may serve as a guide for the potential hazards of convoluted command structures. Bosnia’s ‘dual key’ approach in which both NATO and the UN were required to sign off on strategic and tactical level decisions demonstrated some of the difficulties of conducting an intervention by means of two multilateral security organisations.

It is especially the intervention in Somalia in the early 1990s, particularly the UN Operation in Somalia II (UNOSOM II) from March 1999 to March 1995, that offers insight into the difficulties of multinational operations with ambiguous command structures. While the US maintained its own national chain of command, it was nonetheless subsumed under the UN structure. The commander, Lieutenant-General Çevik Bir, was from Turkey, and US army Major-General Thomas M. Montgomery was his deputy. But Montgomery was also the commander of US Forces in Somalia
Twenty-nine nations and almost 30,000 soldiers participated in the intervention, making it a difficult exercise to coordinate, much like the proposed hybrid force for intervening in Darfur. Language differences and differences in tactics, techniques, procedures and training all contributed to those coordination challenges. Though not excessively problematic for a standard peacekeeping mission, the differences and their consequences are magnified with the increased operational tempo of the intervention attaching to a peacemaking mission. For example, though the Somalia intervention culminated in dramatic fatalities to the peacekeeping personnel, its early phases were conducted in an atmosphere of relative (if uneasy) calm. During these phases, any problems resulting from language and capability differences within the multinational operation were minimal. After an ambush in June 1993 in which 24 Pakistani troops were killed, however, the security situation deteriorated quickly, making closer coordination imperative but also more challenging. The account of the situation in which the US Army sought to assemble a relief column with Malaysian and Pakistani forces illustrates the additional time required to explain the procedure because of language differences and the challenges in incorporating different equipment into the US infantry elements. The outcome was that a Malaysian armoured personnel carrier went off track and was ambushed by Somali militiamen (Stewart 2002).

The tactical level challenges of multinational coordination were consistent with the difficulties of a complex command and control structure. The UN generally made strategic level decisions about the overall goals of the intervention, as provided for in Resolutions 814 and 837 that expanded the mission in Somalia, urged disarmament, and authorised ‘all necessary means against all those responsible for the armed attacks’. US commanders made operational and tactical decisions about how to achieve these goals. US assets (organised around Task Force Ranger) remained under American command and control and not that of the UNOSOM II commander. Perhaps neat by design, the execution was less so. In an early misstep, Task Force Ranger hit a UN compound, the consequence of a poorly coordinated operation between the US forces and UN personnel. Furthermore, the US commanders and their UN counterparts met for the first time when they arrived in the field, a meeting at which only 30% of the UN personnel had arrived and were present, and US personnel had been convened hastily from army units worldwide (Allard 2002). The haste led to insufficient planning and coordination, and contributed to the disastrous outcomes.

More problematic command and control issues arose when the UN Secretary-General asked President Clinton to task his troops to capture General Muhammed Farah Aideed, leader of the Somalia National Alliance, a shift that changed the nature of the mission.
from a peacekeeping to an offensive operation. In addition, a UN force commander
issued Fragmentary Order 39, which stated: ‘Organized armed militias, technicals, and
other crew served weapons are considered a threat to UNOSOM Forces and may be
engaged without provocation’ (Fowler 1999:14). This guidance, which clearly escalated
coalition involvement to include combat operations, differed from the original strategic
guidance on the operation. Such strategic level changes prompted accusations that the
UN was guilty of ‘mission creep’ on US forces.3 Moreover, the UN approach differed
significantly from the preferences of American commanders and civilians, creating
disparities between the expectations and priorities in the UN and those of the operational
level commanders in which national interests were not heeded by UN officials (\textit{New
York Times} 1993). These divergences ultimately led to the withdrawal of US troops, the
largest contingent, and the fracturing of UNOSOM II.

Even if UNAMID’s coordination of multinational and multilateral deployments can be
arranged so as to avoid those that plagued UNOSOM II, the issue of how an intervening
force will be received remains an issue. The Janjaweed’s adversarial treatment of the
AU force in Darfur is a harbinger of the unwelcome treatment that a hybrid force is
likely to receive. In this regard the experience of Somalia is also reason for concern. The
Somali militia’s disrespect for the UN peacekeeping mission was evident throughout the
course of the intervention. On 5 June 1993 the Somalia National Alliance ambushed and
killed 24 Pakistani soldiers working as part of UNOSOM II. The UN Security Council
reacted by adopting Resolution 837, which established a more aggressive military
stance and requested more troops and equipment from member states. However, the
intervention continued to deteriorate and reached an all-time low during an ambush on
3 and 4 October 1993 in which 18 Americans and two Malaysians were killed and 60
members of the coalition forces were wounded (Stewart 2002).

In sum, experiences of UNOSOM II show that a multinational operation with a
complex command structure – one that is created to satisfy member states, or, in the case
of Darfur, the host nation – introduces several potential operational challenges. One
key issue is coordination within the coalition, which involves several different countries
that are likely to speak different languages and have different training and capabilities.
A second challenge is the command and control issue associated with a structure in
which the UN headquarters drive strategic decisions, but national command determines
operational and tactical decisions. This carries the seeds for disunity of command and
effort that could undermine the overall objectives. This is particularly problematic
when the intervention is open-ended, as was the case with the Somalia intervention,
and is likely to be the case with the Darfur intervention. Such open-endedness creates
the possibility of mission creep in which the objectives or nature of the operation shift
midway through the operation. The third issue is that the intervening force may not be
welcomed by the host nation, whether by the government itself or militia groups within
the country. This increases the likelihood that peacekeeping forces will be overwhelmed
or ambushed or that the nature of the mission will become more offensive than was originally intended.

Prospects for UNAMID success

While past is not necessarily prologue, the record of peacekeeping missions similar to that proposed under Resolution 1769 is not promising. The Somalia intervention, though it did stem the starvation and was reported to have saved at least 100,000 Somali lives (Clarke & Herbst 1996), suffered critical command and control failures that made the operation’s outcome doubtful. The Bosnia intervention in which in one instance Serbs massacred Bosnian Muslims as 400 armed Dutch peacekeepers stood by, is another dubious experience of peacekeeping. The UN Mission in the Democratic Republic of Congo has been tainted by internal scandals about drug trafficking and sexual exploitation (Human Rights Watch 2007), so is not a model of success either. Can the intervention in Darfur improve on this dubious record of achievement, and if so, how could this be achieved?

That the international community has come together and passed a peacekeeping resolution is encouraging. The force level is also heartening: While there is some debate over the appropriate military force level for an area of responsibility, it is clear that the 7,000-person AU force was inadequate to patrol an area the size of France. A force of 26,000 is a good start, assuming that the AU and international community can recruit, train, equip and deploy this number of troops. An additional positive sign is that, with the passing of Resolution 1769, the international community appears committed to funding the intervention at adequate levels, which should take care of the pay and equipment issues that undermined the effectiveness of AMIS.

Despite these encouraging steps, previous interventions and the nature of humanitarian intervention in general offer several points to make success more likely. First, the command and control experiences in Somalia suggest that establishing clear structures is paramount to successful execution of any peacekeeping mission. Just as Somalia was the first intervention in which US forces had been committed to a UN-led peace operation (which contributed to the haphazard and confusing way that UNOSOM II was brought about and executed (Allard 2002)) the command structure of UNAMID is relatively novel and likely to present similar potential for command and control confusion. With the bulk of the force being drawn from the AU, the UN element being primarily from Southeast Asia and the Middle East, and the operation under Nigerian command, the potential for coordination challenges and confusion about the chain of command is high (Couglin 2007). Rather than allow the command structures to remain ambiguous, the UN and AU should coordinate them in advance, and ideally so that direction comes from commanders in the field rather than observers from afar.
One prominent critic of the enduring nature of the Darfur conflict has charged that Resolution 1769 has a 'dilatory time-frame' for the deployment, as it is not expected to be in place until the end of 2007 or some time in 2008 (Reeves 2007). The examples of hasty, ad hoc procedures in Somalia and other parts of the world illustrate that the consequences can be catastrophic in themselves. Therefore, if the time is used to resolve the issues, particularly with regard to command and control, this would be expeditious enough. Indeed, it would be wise to defer deployment until these command structures, organisation and objectives have been clarified.

On a more positive note, some of the deficiencies AMIS has suffered from were the result of insufficient resources and may not be repeated if UNAMID receives adequate funding. Soldiers must be paid, equipment acquired and maintained and patrols undertaken for an intervention to be successful, and all these require funding. Other deficiencies could result from inadequate recruiting procedures and insufficient training and education, particularly among the police force. In the case of AMIS such deficiencies were largely because it was the AU’s second ever peacekeeping mission. Similar problems could be addressed through learning the lessons from this previous mission.

While the hybrid nature of the force does introduce complications, it also has the advantage of involving the UN, which has conducted numerous such interventions and does have the skills, experience and assets to help obviate some of the challenges facing the intervention. In fact, the Protocol Relating to the Establishment of the Peace and Security Council of the AU states, ‘where necessary, recourse will be made to the UN to provide the necessary financial, logistical and military support for the African Union’s activities in the promotion and maintenance of peace, security and stability in Africa’. Whether the AU will accept such assistance, with anecdotal evidence pointing to the contrary (O’Neill & Cassis 2005:32), remains to be seen. It is essential that AU forces and leadership be willing to take advantage of UN lessons learned and apply some of these to its own policing and peacekeeping efforts.

AMIS faced a trained, cohesive, well-equipped, well-supported and motivated killing force that operated in a large and dispersed area in which the attacks were diffuse rather than concentrated, and in conditions in which it was difficult to move troops and supplies quickly (Bernath & Gompert 2003:19, cited by O’Neill & Cassis 2005:17). Some of these issues, including the distribution of fighting across a large area, should be addressed by the larger force. However, the adversary and terrain will have not changed appreciably and will in all likelihood provide a huge challenge even for a larger peacekeeping force.

Moreover, it is not yet clear that the new force will have the capabilities that two key military experts have argued are needed for protecting at risk civilians, namely an adequate warning system for imminent attacks; comprehensive and timely intelligence; an ability to distinguish between combatants and allies; an ability to command and control
distributed forces (network ability); small and agile forces; and quick reinforcement capabilities (O’Neill & Cassis 2005:22). Few peacekeeping forces can meet these requirements. The NATO reaction force is potentially mobile enough to act in a rapid and sustainable manner, but is not permitted to operate in Darfur because Resolution 1769 proscribes a predominantly Western force. Even the UN would have difficulty in meeting the requirements for mobility, and an AU force will certainly be deficient in these areas and thus have a limited ability to protect civilians unless reinforced by organisations or states that do have these capabilities.

Lastly, the peacekeeping effort should not take place independent of political negotiations. Resolution 1769 urges the Sudanese government and rebel groups to negotiate a permanent political settlement. Though there is little additional weight in the Resolution to enforce such a settlement, it is important to bear in mind that the purpose of peacekeeping is to facilitate this political process and the implementation of the peace agreement. Peacekeeping cannot replace the political and diplomatic processes needed to reach agreement and reconciliation in the longer term. Therefore the international community should continue to exert diplomatic and economic pressure on Khartoum and contribute to the conditions that might lead to peace in that region of Africa. In the words of a US army document, ‘the best soldiers in the world can only lay the foundation for peace; they cannot create peace itself’ (Stewart 2002:26).

**Conclusions**

Though AMIS serves as an important interim measure while the international community negotiates a more robust and better equipped peacekeeping operation, the lack of resources, training and coordination meant that AMIS has continued to be overwhelmed by a well-supported and motivated adversary. Resolution 1769, which authorises a large multinational peacekeeping force, is therefore a necessary next step in the protection of Darfur. That said, the multidimensional mission – with its mandate to protect civilians, facilitate humanitarian access, return refugees and IDPs, and facilitate the implementation of the Darfur Peace Agreement – will be a highly ambitious undertaking. It may also be fraught with operational challenges if command and control issues are not addressed prior to deployment.

The command and control challenge includes working out the dual reporting line from the operational level (the field mission) to the strategic level, whether in New York or Addis Ababa, in a way that will minimise confusion (Malan 2007). To this end the lessons learnt from Somalia may be a guide as to what to avoid and what should be addressed. Added to this are the lessons to be learnt from AMIS and the outcomes associated with an inadequately funded and under-resourced peacekeeping operation. While the UNAMID force is to be predominantly African in character, the consequences
of inadequate resources and insufficient compliance in Khartoum are the responsibility of the international community writ large. Unless these actors play their part, a well-intentioned operation may nonetheless fall well short of its goals.

Notes

1 For a 2006 account of the security situation in Darfur, see the report from the Peace and Security Council’s 45th meeting (AU 2006).
2 Excluding this last provision is not extraordinary and indeed is analogous to the limitations of the UN force responsible for peacekeeping in Lebanon (UNIFIL).
3 For a good analysis of the challenges between strategic level guidance and operational and tactical planning and execution, see Beech (1996).
4 For a discussion on appropriate levels for humanitarian and peacekeeping missions, see O’Hanlon and Singer (2004:77–100).
5 See the description of the NATO reaction force’s capabilities in NATO briefing (2004).

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A plan for military intervention in Darfur
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This article contains a plan on how the African Union/United Nations hybrid force authorised by the UN Security Council in July 2007 could realistically and effectively use military power to save civilian lives in Darfur. It is envisaged that the international force, given its limited size, would mainly focus on protecting and policing refugee and internally displaced persons camps, rather than trying to stop all violence in the region. This intervention is unlikely to provoke a violent military reaction from the Sudanese government. In fact, a careful analysis of the conflict suggests that Khartoum has been engaged in a scorched-earth counterinsurgency rather than in an attempt to exterminate Darfur’s ‘black’ population as an end in itself, and thus would stand to benefit from interveners’ efforts to keep the camps demilitarised.

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**Introduction**

The conflict in Darfur, Sudan’s westernmost region, has caused one of the worst man-made humanitarian disasters of the post-Cold War era. More than two million people have been displaced and at least 250,000 have died as a consequence of direct violence or because of malnutrition and diseases exacerbated by the conflict. Notwithstanding the oft-repeated rhetoric of ‘never again’, the international community did not take decisive steps to stop the killing of civilians for over four years. Only in July 2007 did the United Nations Security Council finally authorise the deployment of a robust UN and African Union force to protect civilians and facilitate humanitarian access (UN 2007b). In September 2007, the Security Council also approved a joint European Union/UN force to be deployed in Chad’s and Central African Republic’s border areas with Darfur (UN 2007a).

Although many observers and non-government organisations have advanced plans for military intervention, these proposals generally fail to clarify what the specific tasks of the interveners would be, and often do not take into account the dynamics that led to the conflict as a relevant factor in deciding on the right response. In this paper a plan is presented on how the AU/UN force, together with the EU/UN contingent, could realistically and effectively use military power to save civilian lives in Darfur. The intervention plan is based on an analysis of the conflict and its causes, as an indispensable step in trying to anticipate the likely outcomes of the intervention and the reactions of local actors. The main conclusion is that the interveners, if they concentrate their energies on protecting and policing refugee and internally displaced persons (IDP) camps rather than trying to stop all the violence in the region, could save thousands of civilian lives, with low risk of provoking a violent military reaction from the government in Khartoum.

In the next section a case-study analysis of the conflict is provided, focusing on the possible causal mechanisms that led to the escalation of violence and on the strategies of local actors. The second section sets out the plan for military intervention, its main objectives and its likely outcomes in detail. This is followed by a conclusion in the third section.

**Analysis of the conflict**

Darfur comprises more than 30 ethnic groups, almost exclusively Muslim, who increasingly identify themselves either as ‘Arab’ or ‘African’. This distinction is not based on physical traits (it is rarely possible to identify an individual’s ethnicity on the basis of skin colour), but rather has a cultural dimension, based on identification or non-identification with the Arab world and claims of Arab or African descent. The three
largest African groups are the Fur, the Zaghawa, and the Masaaleit. They are mainly sedentary farmers, although the Zaghawa are also nomadic herders during part of the year. The Arabs, instead, tend to be nomadic, herding camels in North Darfur and cattle in the South. In the past the relationship between Africans and Arabs was characterised by a mix of interdependence and economic competition over natural resources. The nomadic tribes traditionally had customary rights to migrate and pasture their herds in the farmers’ areas, in return for which the animals fertilised the land and transported the harvests to the markets. Disputes were resolved by tribal chiefs through customary rules (De Waal 2004).

In the 1980s, however, as a consequence of regional drought and increasing desertification, the competition for land intensified. African farmers started to resent the Arab ‘incursions’ into their farmland, while the Arabs grew hostile to the seasonal presence of Zaghawa in Arab grazing areas. Khartoum played an important role in the escalation of tensions in Darfur, by weakening tribal institutions and the traditional dispute settlement system in favour of state institutions imposed from above. The lack of widely recognised mechanisms to defuse tensions pushed both Africans and Arabs to arm themselves. Between 1987 and 1989, Arab-African violence caused thousands of casualties among Fur farmers and Arab herders and low-level fighting between Arab and African communities has been endemic since then. According to O’Fahey (2004) the ethnicisation of the conflict has grown more rapidly since the military coup in 1989 that brought to power the regime of al-Bashir, which is not only Islamist but also Arab-centric. This has injected an ideological and racist dimension into the conflict, with the sides defining themselves as ‘Arab’ or ‘Zurq’ (black). During the 1990s, the African Darfurians grew frustrated by political marginalisation and government support for the Arabs. The ‘blacks’ complained about the central government’s lack of interest in building and repairing roads and financing local schools and hospitals. Moreover, the Africans lamented that Arabs were awarded most top local administration posts.

Two specific developments are often cited as catalysing factors for the African rebellion that provoked the current conflict: the split in the ruling Sudanese Congress Party and the rapid progress in the negotiations between Khartoum and the Sudanese People’s Liberation Movement/Army (SPLM/A) to end the North-South civil war.

From 1989 to 1999 Hassan al-Turabi played a significant role in the government led by President al-Bashir. Al-Turabi was the architect of an Islamist programme that reached beyond the Arab elites to include Muslim African peoples in Darfur and elsewhere. When al-Bashir ousted al-Turabi in 1999, many African Darfurians sided with the latter and left the government. In May 2000, they produced the so-called ‘Black Book’, a collection of grievances about the region’s systematic marginalisation by the government since independence. Darfur’s ethnic polarisation intensified, eventually leading to the alliance between the two African rebel groups, the secular Sudan Liberation Movement/Army
(SLM/A) and the Islamist Justice and Equality Movement (JEM). Al-Bashir, aware that most Darfurians would support al-Turabi, substituted local administrators with officers loyal to the regime. This caused an increasing intervention of local authorities in favour of Arabs against African groups (De Waal 2005b).

The second important development was the rapid progress in the peace negotiations between Khartoum and the SPLM/A. The failure of the African efforts to include the region in the peace process may have convinced them that the only way to obtain their goals was to take up arms, as the South had done 20 years before. The first major rebel attack, executed by the SLM/A, took place in February 2003, one week after the first round of government-SPLM/A peace talks in Naivasha, Kenya. A series of successful rebel offensives followed.

The government responded with a counterinsurgency campaign using Sudanese government forces and Darfur’s Arab militias – the ‘Janjaweed’. Khartoum’s reaction was consistent with its previous practice of using Arab militias against the SPLM/A.4 Khartoum has employed the Janjaweed as ground forces, together with its regular military, for attacks against African villages. The conflict has caused the displacement of approximately 2.3 million Darfurians, of which 200,000 are in neighbouring Chad and the rest in camps within Darfur. The death toll has reached the level of 250,000 as a consequence of direct violence, malnutrition and diseases exacerbated by the conflict.5

In 2004, Khartoum and the rebels signed a short-lived ceasefire agreement. In 2004, the AU sent to the region a ceasefire monitoring mission, which gradually evolved into a complex peacekeeping operation, but its size (currently 7,000 personnel) and limited mandate have not allowed it to have a substantial impact on the conflict. In 2005, Darfur’s rebel groups began to splinter and fight among themselves, thus further complicating the picture.6 In May 2006 Khartoum and the main SLM/A faction concluded a peace agreement, but the security in the region has not improved. In July 2007 the Security Council authorised the deployment in Darfur of a 26,000-strong AU/UN force, after more than a year of international pressure convinced Khartoum to acquiesce. In September 2007 the Security Council also authorised the deployment of a 3,300-strong EU/UN contingent in Eastern Chad and the north-eastern Central African Republic to protect civilians (in particular refugees and IDPs displaced by violence spilling over from Darfur) and facilitate the delivery of humanitarian aid.7 Violence in the region has mainly taken four different forms: clashes between government forces/militias and rebels; attacks on African villages by government forces and militias; violence on IDPs mainly by the Janjaweed, but sometimes also by government forces; and targeting of humanitarian workers and their vehicles, mostly by rebels and bandits.8

The dynamic that led to the escalation of violence in 2003 is consistent with the empirical finding that genocidal violence is usually a state retaliatory response to a
violent challenge to its authority posed by ethnic groups. Before the rebel offensive during the spring of 2003 there had been endemic low-level violence between Darfur’s farmers and herders for almost two decades and a few attacks by government-sponsored Arab militias on African villages, but no large-scale government-militias campaign (see for example Flint & De Waal 2006:59-64). The Africans rightly accused Khartoum of siding with the Arabs in their disputes, but before 2003 government forces were on the whole not directly involved in the fighting. The government, arguably, was interested in keeping control over Darfur and did not consider the mass killing of ‘blacks’ a necessary or efficient means to achieve that objective.

The government offensive could be interpreted, using Benjamin Valentino’s typology (2004:81), as a form of ‘coercive mass killing in counter-guerrilla warfare’, and thus a ‘calculated military response to the unique challenges posed by guerrilla warfare’ rather than simply the consequence of racist hatred, frustration or military indiscipline. Guerrilla forces depend heavily on the local population for food, shelter, supplies, hiding places and intelligence. The civilian support networks of insurgents are relatively easy and defenceless targets, so that governments often decide to attack the popular base of support rather the guerrillas themselves. In this light, the attacks on villages have been attempts to destroy rebel bases and at the same time reduce the pool of resources for the insurgents, killing and terrorising potential supporters and recruits. The resettlement of ‘blacks’ in camps controlled by government forces represents a typical tool of counterinsurgency, too. The annihilation of the African population as such does not seem to have been the goal of Khartoum. If the objective were simply annihilation, the killing probably would have taken place at a much faster pace during the first stages of the conflict, and we would have witnessed a more systematic targeting of IDPs.

The Arab militias may be engaged in ‘dispossession mass killing’, again using Valentino’s typology, aimed at ethnically cleansing Darfur of their economic rivals, but this does not explain why Khartoum’s direct involvement in the violence started in 2003, after the rebel attacks, and not before. The argument that the government was waiting for an excuse to start executing a plan it had previously made is not convincing if one looks at the pattern of displacement. If there had been a government plan to get rid of the African population in Darfur, one would have expected many more refugees in Chad and fewer IDPs in Sudan. Thus, Khartoum seems to have adopted a counterinsurgency strategy using the Arab militias as a proxy army. However, notwithstanding the overwhelming evidence of close military coordination between Janjaweed and government forces, the militias are, at least in part, fighting their own war against their historical rivals, taking advantage of increased government support. Khartoum’s control over the militias seems to have eroded over time (De Waal & Flint 2007).

The factors that pushed the ‘blacks’ to rebel are more difficult to understand than those behind the government response. One interpretation focuses on the perception of the
marginalisation of the region and the ‘blacks’ in it, which has intensified since the 1999 split in the Sudanese ruling party. This interpretation could explain why the ‘blacks’ wanted to rebel and why those reasons were particularly strong in 2003, but not why they initiated a military campaign that they had a very low probability of winning on the battlefield and that would very likely have provoked a genocidal retaliation. In fact, the enormous disparity of military resources between the two sides would lead one to rule out the possibility that the rebels miscalculated their chances of defeating the government forces without external intervention. Similarly, it seems unlikely that the rebels did not consider the near certainty of a military response from Khartoum and that they were not aware of the fact that such a response would not show significant restraint in its scale and indiscriminate nature, given the record of the North-South civil war. To be sure, as the US predicament in Iraq illustrates, the outcome of a counterinsurgency campaign is not predetermined by the sheer imbalance of military resources on the field; however, counterinsurgency is much easier when government forces do not face significant constraints on the violence that they can use against the civilian population. It also seems unlikely that the rebels believed that the government would attack the ‘black’ population without being provoked, because before the rebel offensives Khartoum was not engaged in genocidal violence.

If there was no miscalculation on the part of the rebels about their chance of military victory, nor a failure to understand the likely consequences of their actions, the rebel attacks can be explained either as irrational or as a consequence of ‘the moral hazard of humanitarian intervention’ (Kuperman 2005). A possible explanation based on irrationality would be that the ‘blacks’ reached such levels of frustration as a consequence of marginalisation that they decided to rebel, without considering the likely costs associated with that course of action. According to moral hazard theory, the rebel groups take offensive actions against the state to provoke violent retaliation on the civilian population in order to attract international attention and eventually intervention of some sort in their support. This moral hazard mechanism played a decisive role in the decisions of the Bosnian Muslims and the Kosovo Liberation Army to rebel against the Serbs (Kuperman 2005). Whether or not a similar dynamic is at play in Darfur is unclear. In order to find a reliable answer, it will ultimately be necessary to determine what the rebels’ intentions were when they started their attacks, either by directly interviewing their leaders or analysing some sort of rebel ‘memoirs’. Obtaining such information is, for obvious reasons, more likely to be possible once the conflict ends.

What can be done at this stage is to try to infer the strategy of the rebels from their actions. If moral hazard is playing a role, we could expect to see a repeated pattern of provocations and violation of ceasefires by the rebels, in a similar way as it happened in Bosnia and Kosovo (Kuperman 2005). An analysis of UN Integrated Regional Information Network (IRIN) reports for the eight-month period following the 8 April 2004 ceasefire agreement between Khartoum and the rebels reveals an ambiguous
Before October 2004 the violations were mainly committed by Arab militias attacking African villages and IDPs, while no major rebel violation of the ceasefire was reported. In October there was a significant increase in the reported number of ceasefire breaches and rebel attacks on government positions, together with government aerial bombardment (IRIN 2004c). Interestingly, the then UN Secretary-General’s special representative for Sudan, Jan Pronk, said at the end of October that SLM/A and JEM were responsible for much of the recent violence in Darfur (IRIN 2004b). In November several rebel attacks against government installations and police officers were reported (IRIN 2004a). A March 2005 report by the ICG (2005) shows the same trend of increasing rebel ceasefire violations at the end of 2004 and at the beginning of 2005, together with violations by government forces and Janjaweed. This evidence is in part consistent with the hypothesis of moral hazard, but more information is necessary to explain why the rebels did not try to provoke the government in the first months after the ceasefire agreement. Moreover, it will be necessary to test the validity of the alternative hypothesis, namely that the increased number of rebel attacks since October 2004 was due to the fact that the rebel groups at that time started experiencing some form of breakdown of their chain of command and becoming less unitary actors (ICG 2005:9–12).

Another way to investigate the rebels’ strategy is to observe their behaviour in the negotiations with Khartoum. In fact, it has been claimed that the rebels’ refusal to accept AU humanitarian and security proposals in September 2004 – which were instead accepted by Khartoum – is evidence of moral hazard (Kuperman 2004). In particular, the adoption of the security proposal, including the cantonment of the rebels in certain areas protected by AU forces, would have significantly reduced the rebels’ ability to provoke government retaliations, thus limiting their leverage on the international community. However, the rebels explained their refusal to sign the security protocol with the risk of becoming ‘sitting ducks’ for government air attacks in the ‘protected areas’. Observers at the Abuja talks between Khartoum and the rebels reported that the rebels hardened their positions and made unrealistic demands anticipating that the Security Council would condemn the Sudanese government in an imminent resolution (ICG 2005). This suggests that the rebels are highly aware of the role that the international community could play in the conflict and are trying to attract international support for their cause. However, further empirical evidence is necessary to definitely establish whether moral hazard is playing any important role in Darfur.

The intervention

The aim of the military intervention proposed here is to save civilian lives by focusing on protecting IDP and refugee camps from violent attacks; policing the camps to avoid their militarisation; and protecting the delivery of humanitarian aid. The rules of engagement
would permit the use of deadly force for the achievement of these three objectives and for self-defence. The intervening force would total about 29,300 personnel and would mainly be comprised of infantry troops and police, and a rapid reaction force (composed of attack helicopters and air assault infantry), reinforced by armoured vehicles, ground transportation assets and support personnel.²²

The objective is not to stop the fighting between rebels and government forces or, more generally, the violence outside the camps. In order to achieve these more ambitious goals it would be necessary to execute a full-scale peace-enforcement intervention, which has historically required a force ratio of 20 per 1,000 of population in situations of great unrest (Quinlivan 1995).²³ In order to reach such a ratio in Darfur, it would be necessary to deploy about 120,000 troops.²⁴ Even if the level of unrest is assessed as lower – requiring, for example, a force ratio of ten per 1,000 of the population – a significant number of military resources (60,000 troops) would still be necessary to succeed. An intervention of this size is unlikely to be undertaken in cases in which the national interests of the intervening state(s) are not at stake.

An alternative strategy would be to mount air attacks on Sudanese industrial (in particular oil-related) assets, to compel Khartoum to stop the violence against the ‘black’ population and rein in the militias. This strategy presents several problems. First of all it would be based on the assumption that Khartoum is able but unwilling to put an end to the violence, while it is likely that the Janjaweed enjoy a high degree of independence from the government. Moreover, the bombing could exacerbate the conflict, emboldening the rebels to escalate their attacks on government positions, causing in turn more government genocidal retaliations. Finally, there is a risk that such an intervention would be perceived as an act of aggression, in particular if conducted by the US, and also could cause a sharp increase in oil prices. Furthermore, a US campaign of coercive air bombing could make Khartoum loath to cooperate in the US-led war on terror. Air power could also be used for battlefield interdiction, targeting government forces and Janjaweed.²⁵ But this strategy is problematic too, because of the difficulty of finding suitable targets given the intermixing of civilians and militias and the fact that the Janjaweed attack in relatively small units mainly on horseback and thus leave a very small ‘signature’.

The military tasks associated with the first objective of the proposed intervention – the protection of the camps – would essentially be the same as for the protection of ‘safe havens’. A safe haven is a ‘sheltered refuge within an area of conflict where the displaced can go’, but which does not require that large areas of a country be cordoned off (Posen 1996:98).²⁶ There is no well-established methodology for calculating troop requirements for protection of safe havens; the necessary size and type of protection force would depend mainly on the number, capability and determination of the assailants, and on the level of protection desired.
An important historical precedent is the NATO-UN safe haven policy in six towns and cities during the war in Bosnia. This strategy was successful in deterring the Bosnian Serbs from overrunning the safe areas for two years. However, the Serbs executed several limited attacks on the areas to test NATO-UN resolve. NATO’s very limited use of air strikes in response to these episodes – mainly a consequence of the vulnerability of UN troops to Serb retaliation – led to a gradual erosion of the credibility of its deterrent, culminating in the unopposed Serb takeover of two safe areas in 1995. This case illustrates the need for the intervener to display its willingness to take risks in order to preserve the credibility of its threats and to accompany deterrence with actual defensive plans.

The siege of Khe Sanh during the Vietnam War illustrates a worst-case scenario precedent for the defence of a safe haven. In 1968, for a period of three months, 6,500 US marines and South Vietnamese troops were surrounded by 22,000 North Vietnamese soldiers and Viet Cong irregulars armed with heavy guns, mortars and rocket launchers. Although Khe Sanh was not taken by the assailants – in large part thanks to the support of US air power and artillery fire – the defenders suffered heavy casualties (Prados & Stubbe 1991). One way to determine the number of troops required to protect the camps in Darfur would be to use a similar defender-assailant ratio as in the Khe Sanh siege, approximately 1 to 3.5. Making the conservative assumption that the Janjaweed number about 40,000, this would mean that 11,500 troops would have to be deployed to protect the camps. The rapid reaction force, comprising 3,000 of the 11,500 troops devoted to the protection of the camps, would play a crucial role in the protection of the camps. This force would likely be sufficient to deter militia attacks and repel them if deterrence fails. Not all the violence on the displaced population would be prevented, but it would probably be reduced significantly. High casualties among the defenders seem less likely than in the case of the Khe Sanh siege, given that the Janjaweed are considerably less well armed than the North Vietnamese were, and the current unsystematic pattern of militia attacks on camps suggests a lower level of determination.

The second objective of the intervention is the separation of militants from refugees and the preservation of the civilian character of the camps. Darfur’s displaced population lives in more than 300 camps. The interveners, in coordination with the UN High Commissioner for Refugees (UNHCR), would set up new, bigger camps, where logistically possible, to exploit ‘economies of scale’ in the protection of the safe areas and, more importantly, screen the displaced population at the moment of entry into the camps, so as to separate militants from civilians. Once established, the camps would be policed to prevent their transformation into bases for the rebels.

The importance of preventing the militarisation of the camps is related to the fact that displacement crises have historically proven to be important causes of continuation and exacerbation of conflict. Humanitarian aid often feeds conflict by providing militants...
with the resources (such as food, medicine, vehicles and communication equipment) necessary to continue fighting (Lischer 2005). There is a risk that refugee camps could become rear bases for rebels, whose attacks across the border would invite retaliation against the camps and spread the conflict to a wider region. The potential for this type of escalation clearly exists in Darfur. IDP camps are not likely to provoke international war but the dynamics through which humanitarian aid affects conflict apply to them as well: they risk becoming military bases for the rebels, from where they can attack while taking advantage of the protection provided by the intervening force and of humanitarian aid. The militarisation of the camps in Darfur would defeat the whole purpose of their protection, because it could provoke Khartoum into attacking their inhabitants.

About 15,000 troops are to police the camps. Although no generally accepted methodology exists to establish whether this number is sufficient, a combination of deductive reasoning and historical analogies permits a rough assessment. Perhaps the most important precedent in which some form of policing of refugee camps was attempted is Congo (then Zaire) in 1995 and 1996. The UN Secretary-General had two alternative plans for policing the camps inhabited by about 1.2 million Rwandan Hutu refugees. One required the deployment of 5,000 troops to gradually establish security in the camps, while the other entailed the deployment of up to 12,000 troops to achieve the additional goal of isolating Hutu political leaders and militants in separate camps from the rest of the refugees (UN 1994). After the international community failed to act, the UNHCR hired 1,500 Zairian elite soldiers to provide security in the camps. The first contingent, deployed from February 1995 to January 1996 and composed of well-trained and disciplined soldiers, improved security conditions in the camps, which were policed with a force ratio of about one per 1,000 of displaced population. The intervening force in Darfur is more likely to achieve the full objective of preserving the civilian character of the camps for several reasons. The force ratio in Darfur would be higher – about six per 1,000 of the population in the camps, given about 2.5 million displaced persons. Moreover, policing activities would be much easier if an initial screening process is followed to separate armed elements from civilians, which was not done in Congo.

If it is true, as seems likely, that Khartoum wants the ‘blacks’ to ‘behave’ rather than to exterminate them, the government would not be interested in attacking camps inhabited by unarmed elements. The intervention may actually be seen in a positive light by Khartoum, as it would reduce the negative publicity associated with the violence on IDPs, while depriving the rebels of important resources. More generally, the fact that Khartoum has refrained from directly attacking AU troops, and its reluctant acceptance of the AU/UN hybrid force, strongly suggest that the Sudanese government would not militarily challenge the interveners. Efforts to clearly communicate the limited objectives of the intervention to the government would be crucial for reducing the risk of Sudanese misperceptions. The Janjaweed, on the other hand, might still want to attack the camps and Khartoum might not be able or willing to restrain them. Here the
military superiority of the interveners should be sufficient to deter such attacks and to repel the lightly armed aggressors if deterrence fails.

The rebels are likely to oppose the interveners’ efforts to maintain the civilian character of the camps, but the international force should be robust enough to deal with this problem, as discussed above. In addition, a systematic use of hit-and-run tactics to push the interveners to leave would not be consistent with the rebels’ interest in attracting international support: the withdrawal of the international force, in fact, would amount to a green light for Khartoum to launch an all-out campaign to exterminate the rebels and their supporters. On the other hand the rebels, moved by a logic of plunder and warlordism, could react to the reduced possibility of extracting resources from the camps by stepping up attacks on the flow of humanitarian aid and on villages.

Outside the camps, Sudanese army and militias may still fight against the rebels and attack villages, thus causing more displacements. In the worst-case scenario, the displaced population could reach four million people if all the ‘blacks’ were to leave their villages as a consequence of continued attacks. While the protection requirements would not be significantly affected by an increase in the displaced population (given that they are calculated on the basis of the number and capability of the assailants), the ability of the interveners to police the safe havens would be reduced – but the force ratio would still be more than three times as big as in Zaire. In this scenario it would be necessary to reassess whether the troops available could still effectively perform their tasks or whether reinforcements would be necessary.

The third objective of the intervention is the protection of the flow of humanitarian aid. Such protection is potentially costly in terms of military resources and casualties, as relatively simple and inexpensive weapons systems – land mines, improvised explosive devices (IEDs), light-weight shoulder-fired surface-to-air missiles (SAMs) and light anti-tank weapons – could be used by assailants to stop aerial and overland humanitarian aid and attack their military escorts. The small-scale attacks on humanitarian workers in Darfur, however, do not reveal a strong determination to systematically stop humanitarian assistance, but are probably better understood as a form of plunder. Mounted infantry and escort helicopters could protect overland convoys, while the rapid reaction force used for the protection of the camps would intervene in cases where a convoy comes under fire. For the same reasons discussed above, it is unlikely that Khartoum would feel threatened by military escorts of humanitarian convoys and that it would systematically attack humanitarian supplies.

The intervention does not aim to bring about the end of the conflict, but simply to alleviate in the short term the suffering of the civilian population and buy time for international diplomacy. The presence on the ground of an international force would be necessary until a level of security sufficient to permit the voluntary return of the
displaced to their homes has been established. An analysis of the challenges associated with finding a long-term solution to the conflict is beyond the scope of this paper, but it should be noted that the military intervention will probably have an important impact on negotiations. The creation of protected areas would decrease the pool of resources for the rebels, while at the same time attenuating one of the main causes of the international condemnation of Khartoum. As a consequence, the rebels may become more willing to make concessions, while the Sudanese government may become emboldened and more reluctant to compromise. Extra international pressure on Khartoum may therefore be necessary to convince it to make necessary concessions regarding the sharing of power and wealth.

**Conclusion**

The military intervention plan for Darfur outlined here highlights the fact that the protection of a displaced population is not necessarily a neutral form of involvement in a conflict, but it can have important effects on the balance of forces on the battlefield. Simply providing support and protection to the population from which the rebels – the weaker side – are drawn, can prolong and exacerbate the conflict and at the same time generate incentives for the government – the stronger side – to target the international force. Thus, the potential interveners in a conflict like Darfur would face an alternative between a ‘total’ intervention against the stronger side and a ‘limited’ intervention to prevent the weaker side from exploiting international protection and humanitarian aid, which can therefore be considered biased in favour of the stronger side. The first option would often be unattractive, because of the high costs that its implementation would entail and the risk of generating incentives for other minorities to rebel. The second option is more promising in many respects. Although it does not lead to a final settlement of the conflict through a decisive victory, it does have the advantage of making the achievement of the humanitarian goal of saving civilian lives, at a sustainable cost, possible.

This is not to say that there will be no risks associated with this type of limited intervention. The proposed plan of intervention in Darfur is based on the assumption that Khartoum would not oppose militarily the intervening force, but such a reaction could take place. Political and military planners have to decide what form the intervention should take and try to anticipate its likely outcomes, while bearing in mind that the ‘fog of war’, even when military power is employed for humanitarian purposes, cannot be eliminated.

A final consideration on the role of international mediation is warranted. Although it is still unclear whether or not the ‘black’ rebellion can be explained in terms of moral hazard, the case of Darfur underlines that international pressure should be brought to
bear with great care and after having analysed the dynamics that led to the conflict. If the objective of the international community is to save lives, its policies must be based on an understanding of the interests of the actors involved so as to find the most effective ways to change their behaviour in the desired direction. In the years of negotiations and resolutions over Darfur, the international community should have applied pressure more resolutely and systematically on the rebels to stop their attacks and start serious negotiations with Khartoum. This could have significantly reduced the violence, because the Sudanese government would have had far less incentive to continue its counterinsurgency measures. A more balanced international response in situations similar to Darfur could reduce the risk of emboldening the weak side and generating dynamics that prolong the conflict. Obviously sending the right message to both sides at the same time is not a simple undertaking, in particular because the message to one side can undermine the credibility of the one sent to the other. However, serious efforts in this direction are necessary if the international community wants to prevent the escalation of violent conflict rather than intervening with military force when mass killing has already occurred.

**Acknowledgment**

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**Notes**

1. However, it will probably take several months before the international force reaches full strength and operational capability.
2. As a consequence of a long history of intermarriage, internal migration and ‘mobility’ between African and Arab groups, almost everyone in Darfur has dark skin and African features (De Waal 2004 and 2005a).
3. The civil war in neighbouring Chad made small arms easily available in Darfur.
4. During the 1980s and 1990s, Khartoum had deployed Arab militias from Darfur and neighbouring Kordofan against communities in SPLM/A-controlled areas of Bahr-el-Ghazal (the province to the south of Darfur). Similarly, in 1991 to 1992, the government had used Darfur’s Arab militias against SPLM/A infiltrations in Darfur supported by local sympathisers. The success of the repression of the SPLM/A-Darfur rebel movement cemented the alliance between Khartoum and the Arab militias (Ryle 2004). Khartoum may have considered it especially important to resort to the Janjaweed in 2003, given that a very high percentage of the regular Sudanese military is composed of African Darfurians who would not have taken up arms against their ‘brothers’ (Igiri & Lyman 2004).
5. There is no general agreement on the total number of deaths resulting from the conflict. The figure of 250 000 should be considered a conservative estimate (see Hagan & Palloni 2006 and Reeves 2006).
6. Some SLM/A factions and JEM subsequently formed a limited military coalition, the National Redemption Front (NRF).
7. The Security Council’s resolution does not explicitly define the overall size of the force, limiting itself to setting at 300 the maximum number of UN police to be deployed. The EU component of the force is
expected to consist of 3,000 to 4,000 troops – primarily French (IRIN 2007). The following analysis is based on the assumption that the overall size of the EU/UN force will be 3,300.

8 Over time the conflict has also taken the form of a proxy war between Sudan and Chad, which host and support each other’s rebel groups. Recently, fighting has occurred between Arab tribes that support the government and some that have remained uninvolved or sided with the rebels (ICG 2007).

9 For a discussion of the literature finding that during the Cold War period victim groups often violently provoked their own demise, see Kuperman (2005). The author also compiled a database of post-Cold War genocidal violence, showing that four cases out of six in the database (one of them is the Darfur conflict) fit the pattern of retaliatory genocidal violence.

10 Forced population resettlements were used, for example, by UK and US forces in Malaya and Vietnam, respectively, albeit accompanied by much less brutality.

11 The actual pattern of displacement is instead consistent with counterinsurgency logic, because the government can more easily prevent rebel activities in IDP camps within Darfur than in refugee camps across the border.

12 According to a number of sources, attacks on villages are coordinated between the Janjaweed and the Sudanese military and the militias are supplied with weapons, uniforms and communication devices – in particular satellite telephones – by the government. Moreover, Khartoum has been integrating a number of militias with its official security apparatus. Human Rights Watch (2004b) has obtained a series of Sudanese government documents that prove Khartoum’s policy of support for the militias.

13 This explanation is consistent with the literature on rebellion that focuses on ‘relative deprivation’ as the main explanatory variable (see Gurr 2002).

14 Moreover, as discussed above, the Africans’ desire to rebel might have been reinforced by their fear of being excluded from the North-South peace process. However, the rebels may also have interpreted the SPLM/A-government negotiations as an important political opportunity for Darfur, because they would ultimately lead to the participation in the government of the SPLM/A, which is sympathetic with the African Darfurians.

15 For data on the military resources at Khartoum’s disposal, see International Institute for Strategic Studies (2003). There is no precise information on the size of the rebel forces, but the ICG (2003) estimated that the SLM/A had about 6,000 members. Eric Reeves – a Sudan researcher – estimated a total size of about 30,000 for all the rebel groups in Darfur (e-mail correspondence, 29 April 2005).

16 This point is illustrated by the relative ease with which Saddam Hussein repressed Shia and Kurdish rebellions by resorting to mass killing.

17 The reports that were analysed cover the period between 8 April 2004 and 10 January 2005. The choice of 10 January as the final date of the search is arbitrary, with the underlying rationale being that a period of eight months after the conclusion of the cease-fire agreement should be long enough to reveal the patterns of compliance with or violations of the agreement. The reports are available in the ‘archive’ section of the IRIN website, at www.irinnews.org [accessed 15 June 2005].

18 Compare this with the article posted on Sudan Watch 2004.

19 See IRIN (2004d), for a summary of the points of disagreement between the rebels and Khartoum in the AU-sponsored September 2004 negotiations.

20 This is not necessarily direct evidence of moral hazard, but it suggests an attention to the position of the international community that is consistent with that theory.

21 This awareness has likely been influenced by the experience of the North-South conflict, during which international pressure played a key role in convincing Khartoum to make concessions to the rebels.

22 The following analysis is based on the assumption that the AU/UN force will be able to reach full operational strength and will be comprised of well equipped and well trained troops. This is not going to be easy given Sudan’s insistence on a ‘predominantly’ African intervening force.

23 The number of troops required for this type of intervention can be a function of the population of the area, the size and capability of the enemy forces, the size and type of terrain and the capability of the intervening force.

24 Darfur has a population of about six million.

25 For a military intervention plan centred on the use of air strikes against Sudanese military assets to stop the genocide, see Rice (2007).
26 In Darfur such an intervention would prove a better solution than the creation of a single large ‘safe area’ of the type established by ‘Operation Provide Comfort’ in Northern Iraq, because ethnic groups are intermixed. The creation of a safe area in Darfur would require the engagement of the interveners in activities that look essentially like ethnic cleansing. In addition, the creation of a safe area could imply de facto secession of Darfur – or part of it – from the rest of Sudan, which would be politically unpalatable and likely be violently opposed by Khartoum.

27 The UN Protection Force’s (UNPROFOR) mandate was to deter Serb attacks, not to actually defend the safe areas in case the deterrent failed (Seybolt 2007).

28 It is difficult to estimate the size of the Arab militias active in Darfur, because many Janjaweed have been ‘absorbed’ into the regular Sudanese security apparatus. Human Rights Watch (2004a) estimated the number of Arab militias at about 20 000.

29 The Janjaweed use horses and camels or pick-up trucks. Their main weapons are rifles and grenade-launchers.

30 The advantage of bigger camps, which are easier to protect, must be balanced against the need to avoid overcrowding, which could cause health problems and psychological distress among the displaced. Humanitarian organisations have developed criteria for camp construction, concerning for example the minimum distance between tents, the number and location of latrines and the required amount of water per person (see Sphere Project 2004).

31 ‘Militant’ (or ‘combatant’) and ‘armed element’ are not synonymous terms. A militant that has not permanently given up the idea of fighting remains a combatant even if he/she does not carry weapons. Maintaining the civilian character of the camps would require excluding the militants at the entry points. While this could prove to be very difficult during in the initial screening phase, the camps would at least become weapon-free zones.

32 This type of dynamic is at the root of the regional conflict that started in eastern Congo in 1996 and caused about three million deaths, mainly as a consequence of malnutrition and disease. The conflict could have been prevented if the rebels had been disarmed and the camps policed.

33 Darfur’s violence is spilling over not only into Chad, but also into the Central African Republic, to which 2 600 people from Darfur have escaped.

34 An important factor in explaining the determination of the Bosnian Serbs to attack the safe havens is that they were not demilitarised (see for example Gordon 2001).

35 The next contingents, coming from regular units of Zaire’s armed forces, were much less disciplined and contributed to insecurity in the camps (Boutroue 1998; UNHCR 1997).

36 The figure includes the 2,3 million Darfurians displaced in Darfur and in eastern Chad, as well as almost 200 000 IDPs in eastern Chad. In practice the force ratio would be higher, because some of the troops allocated to protection of camps from external attacks would participate in policing activities when there are no outside threats.

37 The force to population ratio proposed here is in the middle range of the Secretary-General’s proposed number of four and ten troops per 1 000 displaced. Of course a higher ratio would be a ‘safer bet’, but it cannot be accommodated within the 29 300 troop ‘ceiling’ for the international mission. In any case, the more aggressive plan of intervention in Zaire entailed the separation of Hutu leaders and militants from the rest of the refugees, a more ambitious goal than the demilitarisation proposed for Darfur.

38 This figure derives from Eric Reeves’ estimate that the Africans represent 60 to 65 per cent of Darfur’s population and the Arabs 40 to 35 per cent (e-mail correspondence, 12 June 2005).

39 The protection of the flow of people to the camps is not proposed as a necessary part of the intervention, because the available evidence suggests that attacks on people moving from their villages to the camps is not a widespread phenomenon.

40 For a discussion of the military tasks associated to the protection of humanitarian aid operations, see Seybolt (2007, ch 5).

41 2 800 troops would be devoted to convoy protection. This figure is dictated by the need to allocate sufficient resources to the other two tasks while respecting the overall ceiling of 29 300. A bigger force could allocate more resources to the task of protecting humanitarian convoys and therefore guarantee a higher level of protection.
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Private military/security companies, human security, and state building in Africa

Rachel Zedeck*

Introduction

Before discussing the potential impact of private military and security companies (PMSCs) on human security in Africa, it is important to provide a framework for the discussion. ‘Human security’ refers to the ‘complex of interrelated threats associated with civil war, genocide and the displacement of populations’ (HSRP 2005, section VIII). It is primarily concerned with the protection, particularly from violence and the fear of violence, of a civilian population. However, human security may also relate to threats associated with poverty, lack of state capacity and various forms of socio-economic and political inequity (HSRP 2005).

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A discussion of human security in the context of commercial security (military) operations should not only focus on observance of the Geneva Conventions and other relevant aspects of international law, but also on the immediate needs and stabilisation of local populations living within the areas where these conflicts take place. The crux of evaluating the impact on human security is to reflect an analysis of the root causes of a conflict or crisis and to engender goodwill on the part of the local population through *hearts and minds* strategies (Oxford Research Group 2007, parr 17, 39). There are obvious implications on the human security of local populations stemming from the operations of PMSCs in Iraq, but it is easy to forget the indelible impression already stamped on Africa by such commercial entities. As conflicts within mineral-rich African states (Burundi, Sudan and the Democratic Republic of Congo (DRC)) escalate, motivated by the commercial development of the mineral wealth of these countries, there will be increased participation of PMSCs in these regions. The question is whether the operations of these commercial organisations will be advantageous to stabilising the human security of local populations, or will they reflect the impression left by their operations in Iraq – exploitive and destructive?

**How do PMSCs affect the human security of local populations?**

The operations of PMSCs in conflict regions have historically been problematic. Lack of transparency, democratic oversight and accountability inevitably lead to a decreased perception of legitimacy on the part of these actors in the eyes of local governments and civilian populations. Increasingly, civilian populations perceive PMSCs as showing disdain for human rights, operating outside the framework of the rule of law and without accountability to the state in which they operate or regulation by the state in which the company originates (predominately the United Kingdom and United States). This culture of impunity leads to resentment of PMSCs who profit from war in these regions.

The feeling of resentment is exacerbated by the fact that many employees of PMSCs receive neither proper screening nor training in understanding or asserting human rights within the frame of established, international legal standards. This fundamental set of rights was defined in the Universal Declaration of Human Rights of the United Nations in 1948. According to Laura Dickinson (2003:403, 405), a professor at the University of Connecticut School of Law, of the 60 publicly available Iraq contracts she examined, ‘None contains specific provisions requiring contractors to obey human rights, anti-corruption, or transparency norms,’ nor do they appear to require training concerning the appropriate ‘use of force’. Dickinson cites an army inspector-general report on the conditions leading to the Abu Ghraib scandal which concluded that ‘35% of US contractor CACI’s Iraqi interrogators had no formal training in military interrogation policies and techniques, let alone training in international legal norms’.
In its 2006 annual report, Amnesty International USA noted that civilians working for private military contractors in Iraq and Afghanistan are alleged to have committed serious incidents of abuse, including assault, torture and sexual abuse. While there have been hundreds of incidents of civilian contractors shooting at Iraqi civilians according to press reports, indictments and convictions of PMSC employees for violations of human rights are rare.\(^1\) Similar events have occurred in Africa. In 2006, employees of three private security contractors in Angola – Alfa-5, Teleservice and K&P Mineira – employed by five diamond companies (headquartered in Angola, Brazil, Israel and the US) to guard their operations against illegal miners, were accused of killings, beatings, sexual abuse and torture, as well as using forced labour as a form of punishment (BHRRC 2006). Angolan journalist Rafael Marques (2006:5) reported that in some cases victims were beaten with shovels, clubs and machetes, and even forced to carry out homosexual acts.

The operation of certain PMSCs in the resource-rich countries of Angola, Sierra Leone and the DRC (then Zaire) over the last 30 years (Schreier & Caparini 2005:76) has damaged their reputations and they are perceived to have had no positive impact in these regions. Allegedly, many of these companies operating in African countries were (and presumably still are) paid with mining concessions and extraction rights. Peck noted in 2000, ‘Corporate concessions for mercenary protections are now “business as usual” throughout the continent’. Enrique Ballesteros, former special rapporteur for the Commission on Human Rights, reported in 2002 that there was a link between mercenaries and the illegal trafficking in diamonds and other gems in Africa (Ballesteros 2002).

At the same time, some of these PMSCs form subsidiaries and develop into corporations controlling multiple-service companies. Isenberg (1997) notes that, ‘groups entangled in a firm’s corporate web find quick deals among industry, mercenaries and arms dealers manoeuvring massive amounts of money, power and weapons’. The non-transparent nature of such corporate structures enables these firms to operate away from public scrutiny and to avoid accountability. While the use of ancillary companies may not seem problematic, ‘establishing associates in a diamond or oil region often gives the overseeing company a strong, perhaps dominant, foothold in the economy of that country’ (Isenberg 1997). As a result, PMSCs are often perceived by local populations as ‘neo-colonial exploiters’, hired by rich Western mining corporations with little interest in the well-being of the countries in which they are operating (Schreier & Caparini 2005:74).

Questions that need to be answered are: What message is conveyed to local populations? How do local populations perceive the operations of PMSCs? How do PMSCs affect human security?

\(\text{\textbullet}\) The lack of accountability, demonstrated by the immunity from prosecution granted to PMSC employees, is viewed as proof the Western (colonial) world uses double
standards when preaching ideals of freedom and democracy in support of Western values. Respect for human rights seems to apply only when it is convenient for Western states but can easily be ignored if political and economic interests so demand. Human rights violations and a lack of accountability lead to a ‘sense of exclusion and worthlessness among affected populations’ (Jennings 2006:43) and a feeling that their lives do not really matter but their oil and mineral wealth are the primary objective.

The privatisation of the military industry signals a blurring of the lines between public and private interests. It is often uncertain whether a state acts out of principle or simply out of the desire to make a profit. As one commentator notes, ‘when private and public lines are perceived to blur it also becomes difficult for states to claim their policy follows a general and justifiable interest beyond that of the specific contract or firm’ (Leander 2006:125–126). This perception impacts on the legitimacy with which a security operation is viewed and leaves affected populations with feelings of injustice and resentment.

As PMSCs develop into independent players in the market for force – and engage in extensive lobbying efforts – their interests are increasingly a decisive factor when determining the proper course of action in areas of conflict and crisis. As a result, policies focus on immediate security operations and military style solutions, in isolation from the social context and root causes of isolated or expanded conflict (Leander 2006:133-134). Social, economic and/or environmental issues are excluded from the analysis, providing additional justification for local populations to feel that the ‘West’ is less concerned about the human security and human rights of civilians and more about securing access to resources.

Western states that hire PMSCs signal to the local population they are not willing to risk and commit their own troops to help stabilise these conflict regions. This instigates resentment in the local population who could consider it as an expression of an unwillingness to engage or even a lack of respect (Leander 2006:123).

In the light of the above it should come as no surprise that anti-American feelings among Muslims have reached unprecedented levels, according to a survey conducted in ten predominantly Muslim countries (Gledhill 2007; Esposito & Mogahed 2007:27). These opinions are not mirrored in most African countries, with Sub-Saharan Africa being 71.1 per cent positive about Americans (Pew Research Center for People and the Press 2002). This may be ascribed to the fact that only a small minority of Africans has access to satellite TV, in contrast with the Middle East, Europe and parts of Asia. As Moehler (2007) puts it: ‘In essence, “the CNN effect” is more limited in Africa and “the Al Jazeera Effect” is non-existent. As a result, Africans probably have less access to information about American foreign policies, especially those policies which might detract from the US’s positive image abroad.’ Furthermore, many African countries are
desperate to achieve stabilisation and so may warmly welcome a ‘Western’ security force. The question is what the subsequent effect of PMSC commercial operations will have on African opinions when they realise that security contractors may not necessarily be mandated to stabilise their regional conflicts?

**Critical analysis: Impact on state building – human security and human rights**

The impact of PMSCs on human security should be carefully considered by states who wish to outsource military operations. The implications of the privatisation of warfare for state-building efforts cannot be underestimated. The potential loss of human life and suffering caused by PMSCs can breed bitterness and resentment eventually directed against the states employing them. The local populations in rural Africa where conflict is most prevalent cannot be expected to distinguish between a contractor and a soldier.

The role of public opinion and public support is critical in achieving success in state-building efforts. Such efforts will likely fail if public support is not guaranteed. Of course, many factors will determine whether public support can be assured. In this respect the perception of legitimacy attaching to commercial (military) intervention can play an important role, but it can have a negative impact on the implementation of effective models of human security.

PMSCs are often perceived as pursuing private interests only, and operating outside the rule of law and accountability. This is exacerbated when locals learn of the excessive salaries of security contractors while many Africans live on less than US$1 per day. The ensuing resentment among local populations who feel their human rights are being disregarded and trampled by well-paid mercenaries does not bode well for any state’s stabilisation efforts, particularly when they continue to struggle economically.

In Iraq, resentment towards PMSCs has helped institutionalise an insurgency, leading to a culture of violent instability in the country and preventing economic stabilisation. This directly affects the human security of the local population who are unable to support themselves within the local, economic framework. Doug Brooks, president of the International Peace Operations Association, a commercial organisation that supports the PMSC community, has recently advocated the use of PMSCs to stabilise the situation in Darfur. He focused on a technical evaluation of how PMSCs could be effectively deployed to stabilise the region. The lack of any regulation of the PMSC industry should not be supported by an expansion of their missions into Africa’s most dire conflicts, particularly when less than transparent political regimes are not motivated to ensure or maintain the expense of these long-term operations (nor should it be for the budgets of the UN or AU).
The international community at large must be willing to commit to funding the stabilisation of regions not just through military intervention but through coordinated efforts to internalise democratic processes, state building and enhanced civil society initiatives. If PMSCs are allowed to dominate the stabilisation efforts in Africa among populations in the midst of perpetual conflict and crisis, state-building efforts are doomed to fail, with detrimental effects on the hope of ever establishing basic human security and human rights on the continent.

Note

1 ‘While reports of alleged incidents of abuse by civilians have been forwarded to the US Attorney’s Office in Eastern Virginia, there have been no convictions and only one indictment, though at least 20 cases were forwarded by the Department of Defense and the CIA to the Department of Justice since the beginning of the conflict in Afghanistan’ (Amnesty International 2006).

References


Filling the void: Contractors as peacemakers in Africa

Derek Wright and Jennifer C Brooke*

The international community has witnessed a growing trend over the past ten to 15 years of for-profit firms playing an increasingly important role as partners supporting peace, stability and reconstruction operations in conflict, post-conflict and post-disaster environments around the world. Nowhere else has the need for, and use of, contractors become more apparent than on the African continent. Hired as expert field operators by clients that include national governments, the United Nations, the African Union, non-government organisations (NGOs) and multi-national corporations, these companies have proven themselves to be indispensable and cost-effective contributors to the restoration of peace and stability to populations suffering the consequences of armed conflict, civil war and natural disaster.

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Collectively, these companies can be described as comprising the Peace and Stability Operations Industry (PSOI). The PSOI is an industry that emerged, in large part, at the end of the Cold War to fill the operational gaps in international peace and stability operations. The gaps were created by the decision of governments throughout the world to restructure and reduce the size of their military forces, mainly by focusing on combat capabilities over non-combat or service support functions such as logistics, laundry and cooking. Today companies in the PSOI provide services and support in three main sub-categories, namely logistics and support, security sector reform and development, and private security.

**Logistics and support**

Logistics and support companies represent the overwhelming majority of operators in the PSOI, employing nearly 90 per cent of field workers and earning approximately 90 per cent of the revenue. The reasons for this size are manifold. First, the vast majority of militaries engaged in contemporary peace and stability operations do not have sufficient personnel or the support structure required for long-term, sustained theatre logistics. In the case of the US military forces this is principally because of a decision not to maintain large reserves of specialised personnel and expensive equipment during peacetime, whereas militaries hailing from less developed countries never had this capability in the first place. Second, the infrastructure in most conflict, post-conflict and post-natural disaster environments is usually severely damaged or completely destroyed, making it incapable of supporting large-scale peace and stability operations. These environments must therefore be reconstructed before any effective and lasting security, development, relief, governance or commerce programmes can be initiated.

The disproportionately large size of the logistics and support category is also due to the wide variety of functions it encompasses. Firms specialising in these functions cover the gamut of operations, ranging from construction to heavy lift and aviation, mine action, medical services, communications, warehousing and armoured vehicle servicing to unexploded ordinance disposal. In an era of military downsizing and globalisation, most sovereign governments have come to recognise that outsourcing these non-combat service support functions gives them access to valuable experience, saves money, and allows their militaries to commit their limited budgets and resources to their core functions of fighting wars and enforcing peacekeeping mandates.

The international community has consistently shown its need for and use of logistics and support firms. Increasingly, national policies have created frameworks – usually in the form of Civil Augmentation Programmes (CAPs) – that encourage bridging between private firms and military forces, such as the United States’ Logistics Civil Augmentation Program (LOGCAP), AFRICAP (being used by the AU for their peacekeeping missions), and the Canadian CANCAP. The increasing utilisation of these
large-scale, comprehensive support contracts by national governments and international organisations clearly show that they regard the PSOI’s provision of logistics and support capabilities in peace and stability operations as a long-term practical role.

Logistics and support firms are currently providing vital services in a number of African states, such as Liberia and Sudan, and were previously used in Angola, Sierra Leone and Ethiopia-Eritrea. These firms play key roles on the African continent, as the majority of African conflicts are often both internal and intractable.

Currently working in one of the world’s most dangerous and prolonged conflicts, the AYR Group is a logistics and support company that provides aviation support to the AU in Darfur. The following comments by Stefan Jocks (AYR website 2007), the director of operations of the AYR Group and a helicopter pilot with more than ten years’ experience in Africa, provides excellent insight into the issues encountered and solutions provided by a logistics and support firm in Darfur: ‘… operating a fleet of aircraft in the Darfur region in Sudan has been one of the most challenging tasks in my career. Countless bureaucratic hurdles have to be dealt with on a daily basis. Maintaining a sufficient flow of personnel, spare parts and consumables proved to be extremely difficult. Civil unrest has erupted spontaneously on many occasions, requiring aircraft to be recalled or rerouted in-flight.’ Despite these difficulties, the AYR Group has over 10 000 hours of accident-free flight time to its name, and has transported some 23 000 passengers, 14 000 tons of cargo and one million gallons of jet fuel to the AU peacekeepers with no significant unscheduled downtime of its aircraft. This is the type of combination of skill and capacity that is enormously helpful to peace operations organisers, as it allows them to plan their missions with the knowledge that the support they need will be there on time and at the right levels.

Security sector reform and development

Security Sector Reform and Development (SSRD) companies make up the second sub-category within the international PSOI. These companies provide expertise in training and development programmes aimed at assisting conflict-ridden countries to rebuild their governmental, security, economic, civil society and legal sectors. Diplomats, academics, historians and humanitarian NGOs often cite the immediate post-conflict period as the most tenuous and dangerous for fledgling governments. If reform and development programmes are not quickly and effectively initiated, there is a likelihood that there will be a return to violence. Like other nations that have experienced war, African nations that are reconstructing, suffer from critical capability losses in the areas of training, policing and human security. SSRD firms have proven their usefulness repeatedly by helping countries recover from this loss of institutional memory, human resources and education. SSRD companies have the capacity to bridge the gap between peace and stability by building political infrastructure, training locals, and ensuring that local security is improved.
SSRD companies are willing and able to deploy resources months earlier than their counterparts in governmental, international and regional organisations. Accordingly it is not surprising that private companies often implement the first reform and development initiatives and are responsible for conducting triage on the most vital, yet vulnerable, components of post-conflict societies. Such companies have become some of the most important and sought-after partners in post-conflict environments, helping to lay the groundwork for future peace in countries at risk of sliding back into conflict.

SSRD firms have consistently worked with African nations to prevent a return to violence and served as a means to end violence. There are a number of firms operating throughout the continent, many focusing on Liberia, Mozambique, Nigeria, and Sudan. One particular firm, PADCO-AECOM, is heavily engaged in peace initiatives in Northern Uganda and particularly the national reconciliation programme. PADCO-AECOM has engaged in dialogue with senior officials, assessed the situation in the north, and has built capacity for conflict resolution and public participation at national and local government levels. They have also provided training courses in leadership skills, gender awareness and regulatory dialogue, as well as direct mediation services to organisations at government and grassroots levels (PADCO website 2007). The wide-ranging abilities and resources of SSRD companies allow them to make positive changes on the ground, while creating long-lasting solutions for the future in failed, failing and fragile nations.

**Private security**

Private security companies (PSCs) comprise the third PSOI sub-category. Though their services have proven essential in Afghanistan, the Democratic Republic of Congo, Iraq, Southern Sudan and elsewhere, they are the most controversial actors in the industry. This is largely because they are often armed and undertake particularly high-risk operations. PSCs provide security for key personnel, critical infrastructure and property in conflict and post-conflict environments.

Security has been described as being 90 per cent of the problem but only 10 per cent of the solution for peace and stability operations. This maxim recognises that although the provision of security alone cannot turn an unstable country into an asset to the international community, virtually nothing can be accomplished in an unstable environment. Therefore the first step is the creation of a safe and secure space in which international NGOs, local citizens, elected officials and businesses can work. PSCs are able to provide the specialised and robust security functions that highly unstable environments require but which the national militaries and the UN are unable to provide.

Furthermore, PSCs can often undertake operations faster, more cost effectively and with fewer personnel than their counterparts in the UN and elsewhere. Most PSCs
have decades of field expertise and regional experience. Their key personnel are usually among the most highly trained, professional and capable actors in conflict and post-conflict environments. Their knowledge and skills have long been recognised by the private sector, but they are only now starting to be used for peace and stability operations by organisations such as the UN, humanitarian NGOs and governments. This has been accompanied by a complete turnaround in the way PSCs are perceived, and it now seems that while it is acceptable to use professional private security firms to protect mines, warehouses and factories, many critics regard the use of private security to protect families, towns and villages as unacceptable.

PSCs have helped improve stability in several states in Africa, including Kenya, Nigeria, Mozambique, Somalia, South Africa and Sudan. Moreover, these firms have helped train and employ thousands of people, protected the restoration of vital infrastructure such as electricity and road networks, protected staff, facilities and equipment in hostile areas, and reduced threats from terrorist and insurgent groups (RONCO website 2007). PSCs provide rapid reactions and solutions in areas where, for reasons of political risk or lack of capacity, Western governments are unwilling to send their troops. As Doug Brooks (2007:33–35) notes: ‘[W]ith the reality that the West is reluctant to commit its militaries, the only way Africa is going to acquire military capability to end its many conflicts is to contract the services from elsewhere. Fortunately, these private services are readily available at a remarkably affordable price.’

**Industry associations**

The PSOI brings rapid deployment surge capacities and specialised capabilities to international peace and stability operations. Their comparative advantage comes from their ability to make capable responses and quickly assemble experts and specialised material, not just from a single country, but from the entire world. They are also far less likely to be hampered by the bureaucratic and sometimes partisan political concerns that hinder the decision-making processes of governments, militaries and large international organisations.

The PSOI benefits from effective client oversight in the form of transparency and accountability. Client oversight is a function that allows for greater contract flexibility – a useful element of contracts in volatile environments which often lack effective legal structures – and enhances company credibility. Because industry associations represent a whole group, they can liaise and coordinate with national governments and international organisations on a level not available to an individual company. Industry associations are able to create and enforce professional standards and guidelines with the help and supervision of a broad array of international contributors, including partners in the developmental and humanitarian NGO community, national governments and the UN. Potential clients are increasingly becoming aware of the value of trade associations, and
recognise the necessity of ensuring that the companies they hire are willing and able to adhere to internally recognised industry codes of conduct.

Africa and the peace and stability operations industry

When it comes to international peace and stability operations, the private sector has become the ‘invisible elephant’ in the room. Although the international community has increased its use of the private PSOI, the untapped potential of these firms to assist with stabilisation and reconstruction in Africa is enormous. Peace and stability are the goals of all governments on the continent, and acting in partnership with the private sector on logistics, support, security, development and security sector reform services would enable African states and organisations to achieve their goals faster and more cost effectively than if they continue to rely on the UN and other international institutions alone.

Contracts with private companies have the added – and often overlooked – benefit of ensuring substantial employment and skilled training for local populations. The competitive nature of the industry dictates that contracting companies employ as many local persons as possible. Such persons not only earn a competitive wage while employed by the contractor, but also develop valuable skills that will remain in the country after the security company has left.

African decision makers are increasingly recognising the potential of the private sector to support African peace and stability operations, especially with regard to training and logistics. The establishment of the Africa Command (AFRICOM) by the US offers new opportunities to tap into US funding and advice on the use of private contractors. Although the PSOI is not capable of single-handedly reversing decades of economic and political instability that have plagued the African continent, it could make a huge contribution. While it is healthy to remain cautious about the use of the PSOI, the time has come for the debate to shift from ‘whether’ the private sector should be used to ‘how’ it can best benefit the people and governments of Africa.

References

Oh Big Brother, where art thou? On the Internet, of course ... The use of intrusive methods of investigation by state intelligence services

Lauren Hutton*

Citizens in a democracy place a premium on civil liberties and freedoms. The issue of the use of intrusive methods of surveillance by state intelligence services domestically against citizens of the state is, therefore, often viewed with concern. Many states struggle to balance human rights and democratic freedoms with the need to provide security and to be able to counter threats to the state.

Excesses of the state security apparatus have the potential to infringe upon civil liberties and freedoms. Nowhere is this more evident than in the domestic use of intrusive methods of investigation by state intelligence services against the citizens of the state. According to one civil rights project in the United Kingdom, the most crucial

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development that has taken place since the rise of democratic states over the last 200 to 300 years is that the focus of state surveillance has shifted from external threats to the monitoring of the state's own population (Mobbs 2002). Of course, one can understand that the intelligence services, being the masters of the covert and secret domains of security, at times need to utilise their skills domestically to counter threats emanating from within the state. The critical questions are who should authorise such surveillance and what controls should be in place?

A noticeable trend is that when state or regime security is under threat, the government of the day tends to utilise more fully the security apparatus of the state to ensure stability and continuity of power. As such it was no real surprise when in August 2007, President Robert Mugabe of Zimbabwe signed the controversial Interception of Communications Bill, by which a government communications surveillance agency was established and which authorised the government to intercept communications by telephone, the Internet, and other electronic communication devices. Opposition parties and civil society groups have criticised the Bill as part of the state crackdown on opposition, and argue that it further undermines the right to freedom of expression and information (IRIN 2006). However South Africa, the acclaimed democratic neighbour of Zimbabwe, has a similar piece of legislation, called the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002.

The concern is not that such legislation exists. The real concern is about who should have the right to authorise such surveillance. In order to avoid subversion to political interests, good democratic practice would require that the executive not exercise authorisation functions. In the case of the Zimbabwean Bill, however, the Minister of Transport and Communications or ‘any other Minister to whom the President may from time to time assign the administration of this Act’ is ‘authorised to issue an interception warrant to authorised persons where there are reasonable grounds … to believe (among other things) that a serious offence has been or is being or will probably be committed or that there is threat to safety or national security of the country’. Such a warrant is valid for up to three months.

According to some observers the Zimbabwean Bill was all but signed and sealed from the beginning, with electronic surveillance and censorship systems procured from China (home of the most advanced electronic communication surveillance systems, commonly referred to as the ‘Great Firewall’) undergoing tests while the Parliamentary Committee on Communication was holding public hearings on the Bill in August 2006 (IRIN 2006). Of further concern is that the legislation compels service providers to purchase surveillance equipment at an estimated cost of US$1 million per service provider (IRIN 2006). The implications of this, in a country short on foreign currency, is that service providers unable to comply with the legislation will be forced to close their doors, thereby further limiting freedom of expression and access to information.
Zimbabwe is a rather extreme present-day example of a security state where the much feared Central Intelligence Organisation is accused of far greater human rights abuses than merely contravening democratic principle in the use of intrusive methods of investigation. The issue has, however, also emerged in the United States this year with the passing of the Protect America Act of 2007 by President George W Bush. According to Marjorie Cohn (2007) of the Thomas Jefferson School of Law, this Act takes the power to authorise electronic surveillance out of the hands of a judge and places it in the hands of the attorney-general and the director of national intelligence. Although there is provision for judicial review of the procedures the attorney-general and director establish, there are doubts as to whether or not this is sufficient to prevent the violation of Fourth Amendment rights, through the removal of judicial oversight for domestic spying, which leaves the executive to monitor itself (Sung 2007). Of concern for those not living in the US is that an estimated 38 per cent of world’s total telecommunications traffic starts or finishes in the US and approximately 29 per cent of non-US voice traffic transits through a US hub (Computer Weekly 2007). This means that the US National Security Agency now has the legal right to monitor more half of international voice traffic without judicial authorisation.

In the case of the South African Act, although sound in the requirement for judicial authorisation for the interception of communications, there have been difficulties with its implementation. In the budget vote debate on intelligence in 2007, the Joint Standing Committee on Intelligence expressed concern that the Minister of Justice had been delaying the appointment of a judge to grant such warrants as required by the legislation. This issue was also highlighted when the Inspector-General for Intelligence investigated the legality of surveillance conducted by the National Intelligence Agency (NIA) of prominent politician turned businessman Saki Makozoma in 2005. In this instance the Director-General of the NIA did have the requisite authority to authorise physical surveillance, but not to intercept communications without judicial approval.

A further issue, which emerged from the Inspector-General’s investigation of the surveillance of Mr Macozoma and carried out as part of Project Avani, was that there was a distinct lack of evaluation and analysis by the NIA of the intercepted electronic communications in the form of e-mails. The authenticity of the e-mails, which pointed to a political conspiracy to oust certain elements of the ruling party, was never investigated. The core role of the intelligence analyst is to gather, correlate, evaluate and analyse information, but in our highly technological world there is a potential danger that human intelligence functions can be supplanted by an over-reliance on technologically produced information.

The expansion of the electronic network which has permeated most levels of urban living enables state security services to track and monitor any individual on any specific day. From Internet Protocol addresses, cellular telephones, credit cards, car
registration numbers and identification numbers, one’s everyday activities, networks and communications can be monitored. There is a good chance that you are being or have already been data profiled by market researchers or other private interest groups, who sell this information for corporate marketing purposes. Beyond data profiling, there are Internet based programmes, such as music exchange programmes, which transfer information between your computer and others. The risk is that with the technology in place it is just a matter of time before state and private intelligence services begin to utilise fully the potential of the digital world (with or without your knowledge).

The most frequent argument for the increasing use of ‘dataveillance’ and the interception of electronic communications is linked to the escalating use of the Internet and satellite based communications by terrorist and subversive groups. The World Wide Web is home to a host of civil and subversive movements and is used as a forum for networking and making contacts. In the UK, for example, increased data profiling is being used to monitor protest actions and mass demonstrations (Mobbs 2002). Reportedly, a special police unit has built up a collection of photographs and records through direct and indirect surveillance, via digital record monitoring and video and camera footage from protest actions (Mobbs 2002). There is nothing inherently illegal or unconstitutional in the compilation of such databases, but the risk is that such surveillance data are being collected simply because it might be useful some day. Compared with the conduct of physical surveillance or the interception of communications (which is usually regulated by law, generally involving obtaining authorisation by means of a warrant which details why the surveillance is required, the type of information to be targeted and the duration of the surveillance), there is on the whole very little control over the collection and database compilation of mass surveillance information.

In some states legislation on the interception of communications makes a distinction between the interception of communication and the monitoring of communication related data. Data monitoring differs from the interception of communication in that it is not the content of the communication that is intercepted, but rather the path of the communication – where it originated, how it was routed, the size of the data, etc. Such information could be used to determine the geographic location of contacts and gain some idea of the network of contacts. While data monitoring is generally considered to be less intrusive than the interception of communications, it is precisely through such communication related data that an individual could come under suspicion as a terrorist or criminal. In the age of pre-emptive action and Guantanamo Bay-style detention, such suspicion becomes a very real threat to individual security.

It is interesting to note that the Council of the European Union has adopted a cybercrime convention, which recognises the significant growth of the possibilities of electronic communications and the importance and value of data relating to the use of electronic communications in the prevention, investigation, detection and prosecution of crime and criminal offences. The convention, known as the Data Retention Directive, furthermore
motivates for the retention of communications traffic data by service providers. The implication of this is that it is permissible for communications data to be placed in a database, stored, and shared with signatory states and foreign security services, without much concern for judicial oversight and executive accountability.

A further interesting development in data mining trends is recent reports linking the social digital networking phenomenon, Facebook, to the Central Intelligence Agency (CIA). Facebook has more than 20 million users worldwide, all of whom have accepted the terms of use of the network which states that ‘by posting Member Content to any part of the Website, you automatically grant … to Facebook an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license to use, copy, perform, display, reformat, translate, excerpt and distribute such information and content’. The privacy policy of the website states that Facebook may collect information about you from other sources and that ‘by using Facebook, you are consenting to have your personal data transferred to and processed in the United States’. A CIA link that has emerged is that US$12.7 million of the venture capital which funded the development of Facebook came from Accel Partners, which is currently managed by James Breyer. He is a former chairperson of the National Venture Capital Association which has been linked to venture capital firms established by the CIA in the 1990s and to hi-tech research projects for the US Department of Defence (Greenop 2007).

Current international trends in the realm of the interception of communication and communication-related information, and the use of intrusive methods of investigation, seem more than just a little Orwellian. Returning to the issue of control and authorisation, whoever plays the part of Big Brother could have a devastating impact on the successes achieved in terms of human rights and democratic freedoms. It seems to become easier and easier to make an argument for increased vigilance of the state intelligence structures and the powers that are assigned to them. As much as they are watching us, we need to be watching them!

**Note**


**References**


The security–development nexus: Expressions of sovereignty and securitization in Southern Africa
Edited by Lars Buur, Steffen Jensen and Finn Stepputat
The security–development nexus: Expressions of sovereignty and securitization in Southern Africa*

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The events of 9/11 and the subsequent US-led war on terror have created a new level of awareness about security in the international arena. The invasion of Iraq and the attempts to reconstruct that state have also focused the world’s attention on the link between development and security. In this book, however, the authors argue that although the events of 9/11 and the war on terror have cast new light on the security-development nexus, this is really a rediscovery of an old debate rather than a new phenomenon.

In the book the nexus between security and development in Southern Africa through different lenses, ranging from peacekeeping to gender rights, is explored. In the introduction, the editors address the arguments that security is a prerequisite for

development, and that development is essential for sustainable security. They also refer to the debate on the relationship between state and human security.

In a chapter dealing with the involvement of the South African National Defence Force in the Congo and South Africa’s foreign policy strategy, Thomas Jorgensen argues that South Africa’s own domestic economic imperatives have dictated its commitment to peace and stability in the region. Apart from South Africa’s national interests, Pretoria was also determined to prove the country’s claims that it is a key player on the continent. Jorgensen provides interesting insights into some of the operational problems experienced during the mission, including malfunctioning equipment, poor discipline, alcohol abuse, and the military’s unsatisfactory state of readiness.

Steffen Jensen and Lars Buur discuss the consequences of South Africa’s political transition on immigrants from the rest of Southern Africa. They deal with this in terms of the reconfiguration of citizenship and the process of ‘South Africanisation’ after 1994, and show that it had adverse implications for migrants coming from outside the borders of the new South Africa, with significant effects on the development and economies of other countries in Southern Africa. They also discuss the violent consequences of internal labour migrations for workers from different South African regions.

In a chapter on Namibia, Lalli Metsola and Henning Melber look at the problems facing ex-combatants of the liberation war, and their transition from heroic status to that of social nuisance and threat. Lars Buur discusses the ways in which development challenges may stimulate violence in South Africa. He looks at the apartheid legacy as well as at the ANC reaction to protest action against its macro-economic policies in the townships and rural areas.

In chapter six the politics of policing in Mozambique are dealt with. The author analyses how the police have used crime prevention, security and development as a cover for the attainment of political goals and recapturing of Renamo-controlled areas (zones of confusion) for the Frelimo-controlled government. The use of development inputs such as the building of schools and roads to legitimise state intervention in the spheres of state administration and security also come under discussion.

In a very interesting analysis, Guy Lamb discusses the militarisation of politics and development in post-independence Namibia. He examines this by comparing the SADF’s increased military actions in Namibia with the ‘hearts-and-minds’ approach employed by the South African military in the country between 1960 and 1989, and also looks at the persistence of militaristic tendencies in Namibia’s ruling Swapo party.

In chapter 8 the very complex situation of evictions in the inner city of Johannesburg, and the difficulties experienced by local government in renewing and refurbishing the
dilapidated residential areas of the inner city, are analysed. Jacob Rasmussen, the author of this chapter, describes the different reasons why underdevelopment may be perceived as dangerous and destabilising but also how development might cause other forms of instability among the occupants of the inner city.

In a chapter on the relationship between vigilante violence, land ownership, land use and access to development in the Nkomazi communities in Mpumulanga, South Africa, Steffen Jensen examines the ways in which new approaches to policing can address the detrimental effect of crime on development.

Amanda Hammer provides a crisp analysis of the Zimbabwean government’s urban ‘clean-up’ campaign that started in May 2005. It dissects the way in which, over the years, the Zimbabwean government has used security and development as an excuse to destabilise the communities supporting its political opponents, and how these actions deepen the poverty and vulnerability of citizens in terms of food security and health.

In the final chapter of the book Tina Sideris looks at the security development nexus from a female perspective. She explores how the social development and empowerment of women in the new South Africa contributed to a ‘crisis of masculinity’ and male insecurity and explores links between this and violent behaviour. She also delves into the limitations of the human rights discourse in seeking a solution to problems of security and development.

The book contains a valuable collection of essays on the security/development nexus from a historical and an institutional perspective. It provides the reader with interesting case studies about current problems relating to security and development, while exploring new areas that contribute to the development security debate. This book is recommended to scholars with an interest not only in security and development but also in the history and current developments in Southern Africa. It provides a refreshing look at some of the problems experienced in the Southern African region.

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