

The New Peacekeepers?

Private Military Companies and the Future of Peacekeeping Operations

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The past few years have witnessed the emergence of Central and Eastern European states as partners in the collective security organs of Europe and the West. From Iraq to Afghanistan, NATO and the United States have turned to the countries of "New Europe" for support in peacekeeping (and war making) operations, and much has been made of their potential to augment Europe's peacekeeping capabilities. Alongside these new participants, however, a wholly different type of peacekeeper has, deservedly, captured the attention (and imagination) of policy makers and lawyers alike. Private military companies or "PMCs" have emerged as central actors in such areas as Iraq and Afghanistan and their contribution to Western and European security² – at a price – is of similar importance.

Today's private military companies are not yesterday's mercenaries. Assuming an array of responsibilities – from personal security to training, equipment maintenance, and troop transportation – PMCs have proven themselves capable, if problematic, substitutes for military personnel. The question I offer to examine is whether such companies would make effective peacekeepers. Before I do so, however, an overview of the private military industry is in order.

1. Private Military Companies: History and Definitions

PMCs are often characterized as a modern reincarnation of mercenaries: soldiers-for-hire dressed up as legitimate corporations managed by savvy former politicians and defense officials. The question of whether PMCs are mercenaries is of primary relevance to their potential use as peacekeepers. As this part of the paper demonstrates, PMCs do not fall neatly within traditional definitions of mercenarism and they function in a manner quite distinct from that of their mercenary cousins. That PMCs are morally and legally different from mercenaries makes it legally feasible for states to incorporate them into peacekeeping missions. Section 2 will look into whether this is a desirable option.

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² For example, MPRI's contract to improve the Croatian army and DynCorp's involvement in Kosovo in the 1990s.

A. A Historical Look at Mercenaries

States, empires and ethnic/national groups have looked to mercenaries to augment their armed forces from time immemorial. The Bible, surprisingly, is one of the most valuable sources of information on the use of mercenaries in ancient times.³ Not only the Hebrews, but almost all ancient civilizations had recourse to mercenaries to supplement their armies – including the Egyptians⁴, the Greeks, and the Persians. In particular, Xenophon (c. 427-355 BC), a soldier, mercenary, and admirer of Socrates, is known for having recorded the failed use of 10,000 mercenaries by the founder of the Persian Empire.⁵ Carthage and Rome, too, made use of private armies.⁶

By the Middle Ages, mercenarism had become a profession of sorts,⁷ with an increasing influence on the outcome of major historical battles, such as the conquest of the British Isles.⁸ In spite of the Magna Carta's attempt to put an end to the use of mercenaries in 1215, wealthy European cities and kingdoms continued to hire private armies. In the 15th century, mercenarism became more ruthless and structured with the establishment of organized mercenary forces such as the "free companies" and the "condotierri".⁹ Around that time, Irish mercenaries, known as the "Wild Geese", began to thrive throughout Europe, offering their services primarily to enemies of England. Later, in the 18th century, Great Britain hired German citizens, commonly referred to as the Hessians, to fight against American revolutionaries. The 19th century saw the creation of the Foreign Legion¹⁰ and the Gurkhas,¹¹ major corps of fighters at the disposal of the French and the British, respectively. More recently, private soldiers were hired by the United States to fight in Vietnam,¹² in the first Gulf War and in Iraq today.

³ In Judges, it is mentioned that Hebrew leaders in 1250 BC supplemented their armies with men hired for pieces of silver. When the Hebrews fought the Philistines, King Saul also had recourse to mercenaries (Samuel I, 15:52).

⁴ Ramses II in 1290 BC hired mercenaries to take part in the battle of Kadesh against the Hittites. See Michael Lee Lanning, *Mercenaries* (2005), pp. 5-6.

⁵ Juan Carlos Zarate, 'The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder', 34 *Stanford Journal of International Law* (1998) 75, at 82; Lanning, *supra* n. 4, p. 17.

⁶ C.M. Peter, 'Mercenaries and International Humanitarian Law', 24 *Indian Journal of International Law* 373 (1984), at 376.

⁷ Lanning, *supra* n. 4, p. 38.

⁸ In 1066, at the Battle of Hastings, the Normans, led by William The Conqueror, took control of the British Isles with a 7,000-man army composed mainly of mercenaries. Those mercenaries, attracted by the promise of English land, defeated the Saxon army of King Harold II, composed of English infantrymen. See, for example, Jonathan Hammel, *The Battle of Hastings* (2002).

⁹ The "free companies" were made up of former soldiers who had fought in the 100 Year's War between the French and the British (between 1337 and 1453). The "condotierri" were composed of British, French and German recruits, led by British commanders. See Marie-France Major, 'Mercenaries and International Law', 22 *Ga. J. Int'l & Comp. L.* (1992) 103, at 105.

¹⁰ Created by Louis Philippe in 1831, it has fought all over the world – most recently in Cote d'Ivoire in 2003.

¹¹ The UK, which incorporated Gurkhas in the 19th century, does not view them as mercenaries and pays them as other British soldiers of the same rank. See Janice Thomson, 'State Practices, International Norms, and the Decline of Mercenarism', 34 *Int'l Stud. Q.* (1990) 23, at 24, 26.

¹² During the Vietnam War, the United States hired Australian, New Zealand, South Korean, Filipino, Chinese and Thai soldiers to fight on behalf of South Vietnam.

Any historical account of mercenarism would not be complete without a mention of mercenary activity on the African continent in the second half of the 20th century.¹³ African mercenarism witnessed a rapid expansion with the activities of the likes of Mike Hoare¹⁴ and Bob Denard¹⁵ in the 1960s and the 1970s.¹⁶ Their trials for crimes committed in Africa marked the end of an era – that of "traditional mercenaries".¹⁷ In their place, private military companies began appearing, with well-known "corporate" names such as Blackwater or MPRI – organization whose range of activities is far broader than those normally expected from traditional mercenaries. Interestingly, the rise of such companies coincided, most likely not coincidentally, with the development of a more restrictive legal regime for mercenaries, in Africa and elsewhere.

B. Are PMCs Mercenaries?

Much of the literature on PMCs focuses on the question of whether PMCs are, or ought to be treated as, mercenaries. The prevailing view, while not necessarily refuting the historical links between mercenaries and PMCs, is simply that they are *legally* distinct entities, subject to distinct legal regimes.¹⁸ In fact, even a rapid overview of the legal regime governing mercenaries shows that such regime would be of limited application to PMCs, and would thus not constitute a significant obstacle to the use of PMCs as peacekeepers.

At the beginning of the 20th century, neutrality laws first addressed the recruitment of potential combatants on neutral territory.¹⁹ They created new expectations of state behavior and crystallized the exercise of state control over its citizens or subjects in

¹³ Thomson, *supra* n. 11, at 86; Thomas Adams, 'Mercenaries for the 21st century' in Rober Bunker, *Non-State Threats and Future Wars* 64 (2003), at 54; Peter, *supra* n. 6, at 382 (reporting mercenary activity in 15 African states between 1961 and 1981).

¹⁴ Mike Hoare launched a coup in the Congo in the early 60's and attempted another coup in the Seychelles in the early 80's. See Peter, *supra* n. 6, at 384.

¹⁵ In 1995, Bob Denard led a coup in the Comoros assisted by about 30 mercenaries and removed Said Mohammed Djohar, the President of the Comoros. See, Jean Louis Tremblais, *Le coup de grâce*, Le Figaro, February 18, 2006; and Thomson, *supra* n. 11, at 30. Denard had, however, led two prior successful coups in the Comoro Islands in 1975 and 1977. See Peter, *supra* n. 6, at 384.

¹⁶ See Janice Thomson, *Mercenaries, Pirates & Sovereigns* (1994), at pp. 93-4.

¹⁷ Mike Hoare was tried for his attempted coup in the Seychelles in 1982, but was eventually released and returned to South Africa. Later, in South Africa, Hoare was tried for having violated the Civil Aviation Offense Act and sentenced to ten years in prison; but he was released after less than three years. See *BBC*, 'Seychelles Coup Leader Guilty of Hijack', 27 July 1982. Bob Denard, tried in France in 2006 at the age of 77, was condemned to five years of prison and later paroled for his participation in a coup in the Comoros in 1995. Denard died a little more than a year later. See, *New York Times*, 'Dog of War' Draws Suspended Sentence', June 21, 2006; *Le Monde*, 'Bob Denard échappe à la prison ferme', June 20, 2006; *Nouvel Observateur*, 'Procès Denard: Dernière Audience', March 15, 2006; and *Economist*, 'Bob Denard, Mercenary and Coup Master, Died on October 13th, aged 78', October 20, 2007. On trials of mercenaries see, generally, Major, *supra* n. 9, pp. 134-141; Zarate, *supra* n. 5, p. 130, n. 335.

¹⁸ See *supra*, p. 3. See also *Third Expert Meeting on the Notion of Direct Participation in Hostilities*, Co-organized by the International Committee of the Red Cross and the TMC Asser Institute, Summary Report (2005), at p. 79.

¹⁹ The 1907 *Hague Convention V on the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, while not dealing explicitly with mercenarism, was the first international convention to stipulate that "[c]orps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents." It thereby created an obligation for States to prevent the formation of mercenary groups on their territory for the purpose of intervention in an armed conflict in which they choose to remain neutral. See also Thomson, *supra* n. 11, at 41 and *supra* n. 16, at 55; and Major, *supra* n. 9, at 106.

time of war. However, the neutrality laws dealt solely with state responsibility and did not address the responsibility of the individual engaged in the designated activity.²⁰

The adoption of the Geneva Conventions in 1949, although it established the status of prisoner of war, did not result in any significant changes with regard to mercenaries.²¹ It took a few decades before the question of the legality of mercenary activity would be dealt with first hand, and in unprecedented clear terms, in General Assembly and Security Council resolutions.²² The resolutions began the process leading up to the adoption of Additional Protocol I to the Geneva Conventions (hereinafter AP I) and its article 47 – a process was meant to turn mercenaries into outlaws.²³ Unlike prior instruments, AP I addresses individual mercenaries, makes clear that they are undesirable participants in hostilities, and that they cannot be either combatants or POWs.²⁴ The main weakness of the definition, however, is that the six cumulative conditions it sets forth make it virtually impossible for anyone to fall within its purview.²⁵ The same year, the Organization of African States adopted the *Convention for the Elimination of Mercenarism in Africa* (hereinafter OAU Convention).²⁶ The OAU Convention went further than AP I in that it criminalized mercenary activity and urged states to make such activity punishable under their own domestic laws.²⁷

²⁰ See F. J. Hampson, 'Mercenaries: Diagnosis Before Prescription', 22 *Netherlands Yearbook of International Law* 3 (1991), at 7.

²¹ Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, Article 82s.

²² See, GA Res. 2395 (XX), 29 November 1968; GA Res. 2465 (XX) 20 December 1968; GA Res. 2548 (XX) 11 December 1969; GA Res. 2708 (XX) 14 December 1970; and, later, GA Res. 3103 (XX) 12 December 1973 and GA Res. 34/140 (XX) 14 December 1979. The Security Council, too, was seized of the mercenary question on numerous occasions, beginning in 1961 with its call for the withdrawal and evacuation of the mercenaries from Congolese territory. See SC Res. 161 (21 February 1961); SC Res. 169 (24 November 1961); SC Res. 289 (23 November 1970); SC Res. 405 (14 April 1977); and – following the adoption of AP I – SC Res. 419 (24 November 1977); SC Res. 496 (15 December 1981); and SC Res. 507 (28 May 1982).

²³ The word was first used by the General Assembly in 1969 (GA Res. 2548, 11 December 1969).

²⁴ *Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts*, June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391 (hereinafter "AP I"). **Article 47** of AP I reads as follows (emphases added): *A mercenary shall not have the right to be a combatant or a prisoner of war. 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 substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; Is not a member of the armed forces of a Party to the conflict; and Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.* It should be noted that the Geneva Conventions, in particular *Geneva Convention IV Relative to the Treatment of Prisoners of War* (Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135) does mention, in its Article 4, that *members of militias or volunteer corps* are entitled to prisoner of war status provided that a number of conditions are met – but neither defines mercenary nor explicitly uses that term.

²⁵ Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (2004), at 51. The UK government also regards this definition as 'unworkable' (UK Green Paper, *Private Military Companies: Options for Regulations*, 2002, para. 6). The emphasis on a mercenary's financial motivation, the requirement that the mercenary be taking a direct part in hostilities, and the exclusion of those incorporated into a state's armed forces, are among the genuine weaknesses of the definition, as noted in Major, *supra* n. 9, at 112.

²⁶ *Convention of the O.A.U. for the Elimination of Mercenarism in Africa*, July 3, 1977, O.A.U. Doc. CM/433/Rev. L. Annex 1 (1972).

²⁷ OAU Convention, Articles 1, 6 and 8.

By the 1980s, the UN's failure to take concrete action against mercenarism was palpable. Finally, in 1989 and after nine years of debate, the UN adopted an international convention of its own: the *UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries* (hereinafter UN Convention).²⁸ Despite the best intentions of its sponsors, however, the UN Convention's soft language and its failure to garner substantial support from States²⁹ prevented it from having much impact on mercenaries – let alone, more than a decade later – on sophisticated entities like PMCs. The Special Rapporteur on Mercenarism (created in 1987 under the auspices of the Commission on Human Rights) himself has admitted that PMCs do not presently fall under the restrictive definition of mercenary existing under international law.³⁰

To summarize, the prohibition on the use of mercenaries does not extend to PMCs in a way that would bar their use as peacekeepers by states. Even the UN's opposition might be overcome, provided the companies succeed in enhancing their moral legitimacy and legal accountability.

Unlike mercenaries, PMCs have demonstrated a canny awareness of the importance of their public image, taking steps to “clean up the industry”, enhance transparency, and work within an industry framework to advance their collective moral legitimacy.³¹ Mindful, perhaps, of the negative stigma associated with mercenaries³² and challenged by such scandals as the mistreatment of prisoners by contractors at Abu Graib prison in Iraq, PMCs have expanded their public relations efforts and have moved to increase their own accountability. They have taken a number of steps to appear as legitimate actors, worthy of recognition and trust: detailed accounts of PMCs' activities now routinely appear on companies' websites; interviews are given to the press, and PMC executives have begun to participate in international conferences where they actively defend their records. The resources spent on lobbying, in particular, demonstrate the importance of public opinion in the eyes of the companies.³³ Following the beheading of four of its employees in Falluja in 2004, Blackwater hired the Alexander Strategy

²⁸ *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries*, Dec. 4, 1989, U.N. GAOR, 72d plen. mtg., U.N. Doc. A/Res/44/34 (1989).

²⁹ Article 19 of the UN Convention provided that it would enter into force once ratified by 22 countries, but it took until 2001 before the required number were collected. And still today, few Western countries are party to the Convention. Regarding the failure to garner wider support, see for instance, Major, *supra* n. 9, at 149.

³⁰ The Rapporteur's role is to report on the use of mercenaries by States and to promote the ratification of the UN Convention (See Human Rights Commission Resolution 1987/16, 9 March 1987 and ECOSOC Res. 1987/61, 29 May 1987).

³¹ Doug Brooks, 'Messiahs or Mercenaries? The Future of International Private Military Services', 7 *International Peacekeeping* (2000) 129, at 141 ("It is an industry where reputation means everything").

³² See, for example, Hampson, *supra* n. 20, at 11; Peter, *supra* n. 6, at 373 (writing that "Mercenaries are hated by millions" and referring to them as "brutal people", doing "frightful things"); Mike Hoover, 'The Laws of War and The Angolan Trial of Mercenaries: Death to the Dogs of War', 9 *Case W. Res. J. Int'l L.* 323 (1977), at 379 (the verdict provides insight into the moral stigma affecting mercenaries from time immemorial); and Lindsey Cameron, Lindsey Cameron, 'Private Military Companies and Their Status Under International Humanitarian Law', 88 *International Review of the Red Cross* 573 (2006), at 577 ("The word evokes a strong emotional reaction among many – be it romantic notions of loners exercising an age-old profession, or vigorous condemnation of immoral killers and profiteers of misery and war.")

³³ See, *Iraq for Sale*, directed by Robert Greenwald (Brave New Films, 2006); and Peterson Laura, 'Privatizing Combat, The New World Order', *The Center For Public Integrity*, October 28, 2002.

Group³⁴; it turned to the PR firm BKSH following the September 16, 2007 killing of civilians in Baghdad.³⁵ Overall it has been reported that Washington's top 20 contractors spent nearly \$300 million on lobbying since 2000.³⁶

The creation of industry associations is another example of the search for moral legitimacy undertaken by the industry. The International Peace Operations Association (IPOA)³⁷ and its president, Doug Brooks, have been particularly vocal about the possibility of the companies to provide peacekeeping services.³⁸

Nevertheless suspicion of PMCs remains high, explaining the fear to extend PMCs' mandates to peacekeeping missions. The movement of former army officials to and from the private sector draws public criticism and undermines confidence in the industry.³⁹ Also contributing to the general reluctance to entrust PMCs with peacekeeping roles are issues of contracting oversight, in particular the award of no-bid and cost-plus contracts – seemingly unfair to competitors, unduly costly to the taxpayer, and too profitable to the companies.⁴⁰ Such practices create conflicts of interests and appearances of impropriety that are damaging to the industry's image and ought to be curtailed if the companies are to take on peacekeeping responsibilities.

2. Peacekeeping: A Promising, Yet Problematic, Market

In addition to the suspicion traditionally surrounding individuals waging war for profit, a number of obstacles come in the way of the integration of PMCs in humanitarian and peacekeeping missions. Such integration can take place, according to Peter Singer, in three ways: (1) the provision of security services for humanitarian organizations; (2) the creation of a "rapid reaction force" within a peacekeeping operation; and (3) resort to PMCs when states are unwilling or unable to intervene.⁴¹ The third option, i.e. when PMCs conduct a peacekeeping mission with the UN or NATO's authorization but without their assistance, is the subject of this section.

³⁴ Jonathan E. Kaplan, 'Private Army Seeking Political Advice in D.C.', *The Hill*, April 14, 2004.

³⁵ Muriel Kane, 'Blackwater PR firm aided Chalabi; Works to Polish AT&T's Image', *The Raw Story*, October 23, 2007.

³⁶ Shane S. and Nixon R., In Washington, 'Contractors Take On Biggest Role Ever', *The New York Times*, February 4, 2007.

³⁷ The IPOA is an organization founded by Doug Brooks in 2001, designed to promote ethical standards of firms active in the peace and stability industry, to engage in a constructive dialogue with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development, and human security, and to inform the concerned public about the activities and role of the industry. For more information, see IPOA's website: www.ipoaonline.org. See also 'Corporate Mercenaries, The Threat of Private Military and Security Companies', *War on Want* (2006), p. 18.

³⁸ See, for example, 2 *Journal of International Peace Operations* 28 March/April 2007.

³⁹ This movement is commonly referred to as the "revolving door" phenomenon. See, for example, Robert Bauer, 'Iraq's Mercenary King', *Vanity Fair* (2007) (describing how former CIA counter-terrorism chief Steve Kappes used to hold high-level positions at Blackwater and Armor Group before going back to the CIA as deputy director); Ken Silverstein, *Private Warriors* (2000), at 190-1; and Bianco A. and Anderson Forest S., 'Outsourcing War', *BusinessWeek Online*, February 15, 2003.

⁴⁰ See *Iraq for Sale*, *supra* n. 46; *War on Want*, *supra* n. 37, p. 19; Stan Crock, *BusinessWeek*, 'Halliburton's Rising Cost for Bush', February 20, 2004; *Fortune*, 'The Truth About Halliburton', April 18, 2005; Charles Sennott, *The Boston Globe*, 'Security Firm's \$293 Million Contract Under Scrutiny', June 22, 2004.

⁴¹ Peter Singer, 'Peacekeepers, Inc.', 119 *Policy Review Online* (2003), at 5.

First, and as was already mentioned, whether PMCs are involved in peacekeeping operations or other type of military-support tasks, they are often viewed negatively as individuals motivated by financial gain rather than patriotism. In contrast, Blue Helmets generally embody the higher interests and the authority of the nations of the world as a whole. They are not typically viewed as siding with one of the belligerents. The situation may be different with private military companies, whose links (financial or otherwise) with various countries might make them appear more vulnerable to outside political influences and more driven by financial concerns.⁴² The implications of the credibility issue are significant and cannot be ignored – especially not in the context of peacekeeping operations, so deeply rooted in the ideas of peace building and reconciliation. The peacekeepers' mission of restoring confidence in the state's authority requires understanding of the conflict and its various ramifications. As a result, private companies may not be sufficiently equipped to carry out activities inherent to peacekeeping and peace building such as cease-fire monitoring, troop disarmament or election monitoring.⁴³

Beyond credibility and moral status, the use of PMCs as peacekeepers also raises important question of accountability. As previously discussed, the legal regime governing mercenaries is inapplicable to private security/military companies – begging the question of what legal rules and principles do apply to PMCs' conduct. The accountability issue not only arises from the flaws of the legal regime applicable to mercenaries but also from the inability or unwillingness of states to deal with PMCs. Perhaps by fear of legitimizing their use, governments have failed to adopt suitable legislation dealing with PMCs, leaving it to the companies to find a way to hold their employees accountable in case of abuses and to ensure their respect of basics norms of international law. As a result, no clear guidelines govern PMCs' conduct or status. Opinions vary over whether they are entitled to take part in hostilities, whether they are legitimate targets or whether they could be treated as POWs if captured. The absence of straightforward answers to these basic questions would significantly complicate the use of private contractors as peacekeepers.

Additional complications arise from the potential use of PMCs as peacekeepers. A fair and practical process through which a given company would be retained to undertake a peacekeeping mission would have to be worked out. What would, for example, be the criteria guiding the selection of a company for a peacekeeping mission?⁴⁴ Who would be entrusted with the authority to make the final decision? A tender process would have to be initiated for every mission unless only one company (or a few) is accredited to do the job on a long-term basis. While the former option – initiating a tender offer for each mission – may be the fairest, it might prove even more burdensome than the approval of a UN- or NATO-led force. One of the main advantages of using PMCs is that they are arguably available on a shorter notice than UN or NATO peacekeepers – but a lengthy hiring process might unduly prolong their deployment.⁴⁵

⁴² As noted by Peter Singer, hiring PMCs as peacekeepers also raises the question of whether these firms will act in the public good – "considerations of the private company are not always identical with the public good." Singer, *supra* n. 41, at 6.

⁴³ Singer, *supra* n. 41, at 7.

⁴⁴ See, for example, Fricchione Kristen, 'Casualties in Evolving Warfare: Impact of Private Military Firms' Proliferation on the International Community', 23 *Wis. Int'l L. J.* (2005) 731, at 775.

⁴⁵ Following the Security Council's approval of the creation of a peacekeeping mission, the Department of Peacekeeping Operations begins its planning: a team is selected, the specific mandate and scope of the mission are developed, the size of the mission is agreed upon, contributions from member states are

The use of private actors to perform functions involving the use of force on behalf of the United Nations, NATO or any regional organization raises the question of whether private contractors are entitled to use force under international law. This question is not specific to their potential use as peacekeepers; rather, it has to do with the more general query of whether these private entities are at all legitimate – a question outside the scope of this paper. Suffice it to say that the use of these entities in peacekeeping mission by the UN or NATO would, to some extent, legitimize their use by states. In addition, their use in peacekeeping missions, usually taking place on highly volatile environments, brings up the issue of the limits of their contractual engagement. When the situation becomes too dangerous or unpredictably complex, private contractors have been known to pull out of their contract – creating a significant setback for the international community.⁴⁶ Similar problems may arise in the context of peacekeeping missions, with potentially serious consequences.

Arguably the greatest obstacle to the use of PMCs as peacekeepers is the UN's official position – through its Special Rapporteur on Mercenarism in particular – that PMCs are illegitimate actors comparable to mercenaries.⁴⁷ In practice, however, private military firms already provide certain services to peacekeepers.⁴⁸ For example, companies have flown African soldiers around Darfur, and they have protected U.N. food convoys, warehouses and personnel in Congo and Liberia.⁴⁹ International Charters Inc. provided assault and transport helicopters to ECOWAS in the Liberian war in the 1990s and deployed it into combat.⁵⁰ And Kofi Annan admitted having considered the option of using a private military firm during a Rwandan refugee crisis.⁵¹ Even more recently, in

sought, and rules of engagement are elaborated. The process is slow and required the appointment of a Secretary General Representative, a Force Commander, and a Chief Administrative Officer.

⁴⁶ Steven Brayton, 'Outsourcing War: Mercenaries and the Privatization of Peacekeeping', 55 *Journal of International Affairs* (2002) 303, at 325.

⁴⁷ See, NPR, 'Private Military Firm Pitches Its Services in Darfur', May 26, 2006 (interview of Jean-Marie Guéhenno, Under-Secretary General for Peacekeeping at the United Nations); Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur, Commission Resolution 1998/6, E/CN.4/1999/11, 13 January 1999, at para. 75 ("[W]ithout undermining the principles on which its very existence is based, the international community cannot allow the free and globalized market to function as well for operations for the sale of military assistance and peacekeeping and peace-building operations that are the province of the international organizations."); and Thalif Deen, 'UN Rejects Private Peacekeepers', *Inter Press News*, August 27, 2004.

⁴⁸ Although this is obviously distinct from the use of PMCs as peacekeepers – the use of private security companies by the UN and the ICRC, for example, to protect staff and facilities in hostile environments is now common. See, for example, Peter W. Singer, 'Should Humanitarians Use Private Military Services?', *Humanitarian Affairs Review* (2004), 14-17, and 'Private Military Companies, Response to the Secretary of State for Foreign and Commonwealth Affairs', Ninth Report of UK Foreign Affairs Committee (2002) (generally referred to as "Green Paper", available at www.fco.gov.uk/Files/kfile/mercenaries,O.pdf), at para. 56 (noting that the UN and other international organizations "frequently employ PMCs or PSCs in an ancillary role for logistics or security", giving the examples of Pacific A&E providing logistical support in Sierra Leone and DSL providing security services to "a wide range of international organizations.")

⁴⁹ See NPR, *supra* n. 47, May 26, 2006.

⁵⁰ Singer, *supra* n. 41, at 3.

⁵¹ Annan said that the UN eventually disregarded the option of turning to private troops because, in his words, "the world may not ready to privatize peace". See Speech given by the UN Secretary General at Ditchley Park UK, 26 June 1998, UN Press Release SG/SM/6613; and Transcript of Press Conference by Secretary General Kofi Annan at UN Headquarters on June 12, 1997, SG/SM/6255.

2003, the UN announced the creation of a 16-member review panel to look into the possibility of hiring private security forces in UN-led peacekeeping missions.⁵² In other words, the UN's opposition to PMCs, already weakened by the UN's own recourse to the companies' services – might be overcome if the companies continue to work on their image.

So might the objection that private military companies are not adequate peacekeepers, let alone peace builders. Consider the typical background of PMC employees – former members of the special forces or other elite units of the British, American or other national army who may have been tempted by the financial incentives offered by the private sector. It raises legitimate questions as to a private contractor's ability to perform well as a peacekeeper: Would private contractors' background as combatants make them good peacekeepers and peace builders? Would PMC employees perform as well in an inherently non-profitable activity? A solution may be found in a commitment from the company to provide suitable training and early briefing regarding the objectives of the mission.

As has been demonstrated, the use of private contractors as peacekeepers is by no means trouble-free. It may nonetheless be worth working out issues of accountability, hiring, and preparedness to the job, given the advantages that such a solution offers.

First of all, PMCs do present certain advantages over their state-employed counterparts, particularly in terms of cost and efficiency.⁵³ The deployment of national troops as peacekeepers is the result of a lengthy and politically sensitive decision-making process through which both the budget and the number of troops must be approved. By contrast, PMCs are deployable on relatively short notice. Provided the hiring process is not unduly complicated, the men can be on site relatively quickly offering states an easy access to a broad range of professionals in different fields. Financially, peacekeeping operations would cost less if performed by private entities rather than the UN or NATO, potentially lightening states' contributions to these organizations.⁵⁴ For example, Executive Outcome's annual cost in Angola was a fraction of the UNAVEM which cost \$135 million in 1996-97.⁵⁵ PMCs provide states, international and regional organizations with the non-negligible possibility of performing peacekeeping "à la carte".

PMCs could as well be the answer to the shortage of peacekeepers worldwide. In the last decade, the international community has had difficulty coping with the increased

⁵² See Stephen Fidler, *Financial Times*, 'UN: Proposal for Private Soldiers Gathers Steam', November 5, 2003 (reporting that the proposal comes from a group called the Global Security Partnership Project, and that the group would establish a database of up to 5,000 former soldiers willing to work for UN daily rates).

⁵³ See Singer, *supra* n. 41; Brayton, *supra* n. 46, at 322 ("There is little question that [PMCs] are cheaper than UN operations."); Brooks, *supra* n. 31, at 131 ("PMCs can do military tasks for a fraction of the costs of typical UN operations."); Doug Brooks, 'Write a Check, End a War, Using Private Military Companies to End African Conflicts', *Conflict Trends* (2000) ("PMCs can assemble the small professional armies, trainers and equipment necessary to end the conflict in a remarkably short period of time, and then can do it at a very affordable price.")

⁵⁴ See, for example, Brayton, *supra* n. 46, at 311, 322 (arguing that MPRI's involvement in the Balkans in the 1990s was "less expensive and less politically risky" than a US-led military intervention); and the UK Green Paper, *supra* n. 48, at para. 59 (suggests setting up a tender process and a possible integration under UN command).

⁵⁵ See Brayton, *supra* n. 46, at 322.

demand for peacekeepers. In light of this situation, the United States set up a program designed to train 75,000 peacekeepers by 2010, mainly from Africa, "so they can conduct operations on that continent and elsewhere."⁵⁶ The cost of the Global Peace Operations Initiative, as the program is called, was \$81 million in 2007 for the United States.⁵⁷ A similar and older project, the African Crisis Response Initiative (ACRI), helps African nations respond to humanitarian crises and peacekeeping missions in their region. The objective of ACRI is to build a peacekeeping and humanitarian assistance capacity in Africa of about 12,000 trained military personnel to be deployed at the request of the UN, the OAU or regional organizations such as ECOWAS. These undertakings show the very acute need for peacekeepers – especially in Africa – and the far fetched efforts made to find alternate sources of humanitarian assistance.⁵⁸

The prospect of turning to PMCs appears particularly attractive when states or international/regional organizations are unwilling or unable to intervene in a conflict.⁵⁹ When using PMCs is the only option available, can we really discard it? The humanitarian argument is a powerful one – one brought up in the bluntest form possible by Doug Brooks in his article, *Write a check, End a War*. The article's title is self-explanatory: Brooks argues that private money could succeed where the nations of the world could not, and help bring an end to the humanitarian crisis on the African continent. According to Brooks, it is "a horrendous tragedy that we are NOT using this willing resource to bring peace, stability, and political freedom to the African continent."⁶⁰

The companies themselves have welcomed the opportunity to assume a greater role in peacekeeping missions. They argue that a type of private peacekeeping force alongside, or instead of, the UN or NATO, would bring "specialization, experience and flexibility" to peacekeeping operations.⁶¹ This view is shared by the UK, whose Green Paper views the potential use of PMCs as peacekeepers as a positive development in part because "[a] private company which had an interest in continuing business for the UN could be held to much higher standards – and these would include standards on behaviour and human rights as well as efficiency in carrying out agreed tasks."⁶² In addition, the Green Paper considers that:

⁵⁶ See Bush's Speech to the United Nations 59th General Assembly, September 21, 2004.

⁵⁷ Bradley Graham, Washington Post, *Bush Plans Aid to Build Foreign Peace Forces*, April 19, 2004; Beth DeGrasse, *Global Peace Operations Initiative: Future Prospects*, October 21, 2004 (reporting on the United States Institute of Peace' initiative to address "the disparity between the persistent demand for trained peacekeeping forces and their inadequate availability, especially for missions in Africa.")

⁵⁸ Regarding the demand for peacekeepers, see also CRS Report for Congress, *The Global Peace Operations Initiative: Background and Issues for Congress*, Updated June 11, 2007, at 3.

⁵⁹ See Kevin O'Brien, 'Military Advisory Groups and African Security: Privatized Peacekeeping', 5 *International Peacekeeping* 78 (1998), at 98 (noting that when the risk is too high, countries refuse to participate in peacekeeping missions); Christian Bourge, *United Press International*, 'Mercenary as Future Peacekeeper?', August 26, 2003; Brooks, *supra* n. 31, at 134 (noting that states are less willing to intervene after the UN interventions in Somalia in the 1990s – the genocide in Rwanda in 1994 showing the lack of interest in future military interventions); and Brayton, *supra* n. 46, at 304 and 319 ("[T]he international community is increasingly reluctant to provide peacekeeping forces for difficult, expensive and politically unrewarding operations. In response, private corporations are offering to fill in the void with commercially contracted military and security forces.")

⁶⁰ Brooks, *supra* n. 53, at 35 (emphasis in original).

⁶¹ Brooks, *supra* n. 31, at 138. See also O'Brien, *supra* n. 59, at 83; and Willis Witter, 'Private Firms Eye Darfur', *The Washington Times*, October 2, 2006.

⁶² UK Green Paper, *supra* n. 48, at para. 58. See also, *BBC News*, 'Peacekeeping 'role' for mercenaries', February 13, 2002.

Many of the problems that arise when a sovereign government employs a PMC would not apply if it were contracted to the UN or to another international or regional body. It would not for example be a threat to sovereignty or stability; and the question of exploitation of raw material resources would not arise. There would also be no difficulty in monitoring the performance and behaviour of a PMC employed by the UN.⁶³

Amnesty International, for its part, suggests that in cases where peacekeeping was contracted out to private groups, the UN must ensure supervision of human rights compliance among the troops involved.⁶⁴ The truth is that human rights norms are not always respected, even by UN staff. For example in Kosovo and East Timor, peacekeepers were involved in serious crimes from sexual harassment to rape, murder, and even genocide.⁶⁵

Whatever the controversy, we are likely to see more PMCs in the future – including as peacekeepers. Because of their low political and financial costs and their higher degree of efficiency, PMCs' appeal as the "new" peacekeepers is real and its implications ought to be carefully considered. In Doug Brooks' words, PMCs are able to provide assistance with "humanitarian efforts, military logistics, intelligence, supply and all forms of peacekeeping support." However, his hope that "within five years, PMCs may take prominent and active roles in peacekeeping and peace enforcement"⁶⁶ may be far fetched. With the strengthening of the accountability regime of PMCs, perhaps the privatization of peacekeeping may indeed "become the best option for a First World unwilling or unable to intervene in the increasing chaos of regional conflict."⁶⁷ Let us hope that through PMCs or other peacekeeping options, the world will learn to cope better with humanitarian crises around the globe.

⁶³ UK Green Paper, *supra* n. 48, at para. 60.

⁶⁴ *Jane's Defence Weekly*, 'Human Rights Must be UN's Aim Says Amnesty', September 24, 1997, cited in O'Brien, *supra* n. 59, at 101.

⁶⁵ Frederick Rawski, 'To Waive or Not To Waive: Immunity and Accountability in U.N. Peacekeeping Operations', 18 *Conn. J. Int'l L.* (2002) 103, at 118-121.

⁶⁶ Brooks, *supra* n. 53, at 140.

⁶⁷ O'Brien, *supra* n. 59, at 102.