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CANADIAN FORCES COLLEGE / COLLÈGE DES FORCES CANADIENNES  
CSC 31 / CCEM No 31

MDS RESEARCH PROJECT / PROJET DE RECHERCHE DE LA MED

**MILITARY FORCES FOR HIRE:  
IS THE WORLD READY TO PRIVATIZE PEACE?**

By /par

Lieutenant Colonel Daniel Lachance

29 April 2005

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## **ABSTRACT**

Mercenaries have been a part of warfare as long as written history has recorded their exploits. Private Military Corporations, in contrast, are a relatively new 20<sup>th</sup> Century phenomenon. These firms are very much distinct from mercenaries as they are legitimate entities. Many Private Military Corporations are being used in an ever-increasing variety of tasks, including roles that used to be the sole prerogative of a state military force.

In these days of violent civil wars and ethnic conflicts, the paper argues that the United Nations would be well served to hire a Private Military Corporation as its long-desired rapid reaction force. The paper contends that such a hired force would provide the United Nations with a robust, highly responsive and cost-effective peacemaking force to intervene forcefully in humanitarian crisis.

While the paper concedes that there are some limitations to a hired rapid reaction force, it argues that these barriers are, indeed, surmountable. Finally, the paper concludes by proposing ways to regulate such a force.

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## GLOSSARY

<b>ADC</b> .....	Aviation Development Corporation
<b>ASD</b> .....	Alternate Service Delivery
<b>BAH</b> .....	Booz Allen & Hamilton
<b>BRS</b> .....	Brown & Root Services
<b>CIA</b> .....	Central Intelligence Agency
<b>CPA</b> .....	Coalition Provisional Authority
<b>CSC</b> .....	Computer Science Corporation
<b>DROC</b> .....	Democratic Republic of the Congo
<b>DSL</b> .....	Defence Systems Limited
<b>ELCS</b> .....	Empower Loss Control Services
<b>EO</b> .....	Executive Outcomes
<b>GSG</b> .....	Gurkha Security Group
<b>ICC</b> .....	International Criminal Court
<b>IPOA</b> .....	The International Peace Operations Association
<b>KBR</b> .....	Kellogg Brown & Root
<b>KZNS</b> .....	KwaZulu-Natal Security
<b>LIC</b> .....	Low Intensity Conflict
<b>LOAC</b> .....	Laws of Armed Conflict
<b>MEJA</b> .....	Military Extraterritorial Jurisdiction Act
<b>MONUC</b> .....	United Nations mission in the Congo
<b>MOOTW</b> .....	Military Operations Other Than War
<b>MPRI</b> .....	Military Professional Resources Incorporated
<b>NATO</b> .....	North Atlantic Treaty Organization
<b>OAU</b> .....	Organisation of African Unity
<b>PAE</b> .....	Pacific Architects and Engineers
<b>PMC</b> .....	Private Military Company
<b>PoW</b> .....	Prisoner of War
<b>PNG</b> .....	Papua New Guinea
<b>RMA</b> .....	Revolution in Military Affairs
<b>ROE</b> .....	Rules of Engagement
<b>RRF</b> .....	Rapid Reaction Force
<b>RUF</b> .....	Revolutionary United Front
<b>SAIC</b> .....	Strategic Applications International Corporation
<b>SAS</b> .....	Special Air Service (UK)
<b>SOF</b> .....	Special Operation Forces
<b>UN</b> .....	United Nations
<b>UNITA</b> .....	National Union for the Total Independence of Angola

*When one looks to execute policy, it is presumed that it has to be done through a government agency. The rise of the private military industry, however, shows that this is no longer the case. Perhaps most important, they offer an often politically expedient policy privatization. This can be both good and a bad development.<sup>1</sup>*

## **1. INTRODUCTION**

So many things changed in November 1989 when the Berlin Wall fell. By the next year, the once mighty U.S.S.R. had vanished and only one superpower remained. The Cold War was finally over and one might have thought that the world had become a much better (and safer) place. Analysts even predicted that the so-called ‘Peace Dividend’ would bring new prosperity for all and that large military expenditures would no longer be required.<sup>2</sup> Eager to divert monies into other programs, civilian leaders called for leaner and less expensive military forces.<sup>3</sup> This eventually translated into millions of soldiers being laid off worldwide. In the meantime, while the superpowers were retreating from Europe and elsewhere, old simmering conflicts quickly reignited. Weak states that had lost the benefit of a strategic association with a patron were left powerless to stop seemingly interminable conflicts. Although it is true that the end of the Cold War produced a decrease in conventional warfare, there was also a significant

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<sup>1</sup> P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*, (Ithaca: Cornell University Press, 2003), 206.

<sup>2</sup> Although analysts predicted that the end of the Cold War would allow significant reductions in military arsenals, they also foresaw that the removal of the “security blanket” would result in increased confrontations around the world. See Dov S. Zakheim, “From Bush to Clinton: A Sea-change for the USA’s Defence Posture,” *Round Table*, Issue 327, (July 1993): 10-20 and Fred C. Bergsten, “The World Economy After the Cold War,” *Foreign Affairs*, Vol. 69, Issue 3, (Summer 1990): 97-113.

<sup>3</sup> In 1993, U.S. Defence Secretary Les Aspin was quoted saying that with the disappearance of the Soviet Union, it was possible to cut the defence budget by \$US 60 to \$US 80 billion. See Alan Tonelson, “Superpower without a Sword,” *Foreign Affairs*, Vol. 72, Issue 3, (Summer 1993): 8.

increase in Low Intensity Conflicts (LICs) and in Military Operations Other Than War (MOOTW), most of which occurred in weak peripheral states.<sup>4</sup>

Clearly, the relative stability of the bipolar world had come to an end. A proliferation of regional conflicts appeared far and wide from the Balkans to every corner of Africa. And so, it was discovered that with the disengagement of the superpowers, came new challenges. What was the world to do, for instance, when a weak state became unable to provide for the security of its people and slowly fell into chaos such as what was seen in Somalia? Who could intervene in places like Rwanda to stop an impending genocide or in Sudan to prevent mass murders, now that these states were no longer strategically important to the superpowers? Many turned towards the United Nations (UN) in the hope of finding a solution to such human tragedies, but it became obvious that with a very tight budget, limited resources and few troops at its disposal, the UN was almost completely powerless to act decisively.

With the recent debacles of Bosnia and Somalia, there was renewed call for the world body to improve its reaction time to such human catastrophes.<sup>5</sup> Ideally, some argued, the UN would have at its disposal troops on standby, ready to deploy anywhere in the world. Such a permanent UN Rapid Reaction Force (RRF) would guarantee that

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<sup>4</sup> Of the 25 major armed conflicts in 2000, only two were between states. See Steven Brayton, "Outsourcing War: Mercenaries and the Privatization of Peacekeeping," *Journal of International Affairs* 55, no.2, (Spring 2002): 305.

<sup>5</sup> The recent Brahimi Report, for instance, recognized the need and called on the Organization to enhance its capabilities for rapid and effective deployments. See Report of the Panel on United Nations Peace Operations, Executive Summary, [http://www.un.org/peace\\_operations/docs/summary.htm](http://www.un.org/peace_operations/docs/summary.htm); Internet; accessed 26 October 2004.

troops could be immediately available where needed.<sup>6</sup> Unfortunately, keeping such a force on standby has not proven to be a popular idea. Efforts to create a “UN Legion” or a RRF have been ongoing for years, but to date, there is little to show for.<sup>7</sup> Analysts have determined that a standing UN Force would be very expensive<sup>8</sup> and would never meet with the approval of certain member states that would refuse to relinquish part of their military power to the UN.<sup>9</sup> And so, we are back to square one: if a permanent UN RRF is not an option, then what?

Is the Secretary General condemned to plea with nations every time there is a need to get support for a worthy cause? Does it mean that the UN must continue to be at the mercy of member nations when troops are needed to intervene somewhere on the globe? This paper contends that the *status quo* is clearly unacceptable. Although member states have shown a willingness to support UN peacekeeping efforts by committing over 147,500 soldiers on paper (50,000 of which could be deployed rapidly), the sad truth is, when it is time to provide troops, the political will is not always there.<sup>10</sup> Case in point:

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<sup>6</sup> In January 2001, working outside of the UN umbrella, a group of like-minded nations (including Canada) established the Standby High Readiness Brigade for United Nations (SHIRBRIG) to be put at the disposal of the UN for use in case of an emergency. Although the idea is commendable, the political will of the 11 nations involved has not always been decisive.

<sup>7</sup> Many commentators have argued that it is much easier (and cheaper) to snuff a little fire than to extinguish a large, out of control blaze. For an in-depth analysis, see H. Peter Langille, “Conflict Prevention: Options for Rapid Deployment and UN Standing Forces,” Special Issue of *International Peacekeeping*, vol. 7. No. 1, Spring 2000: 219-253.

<sup>8</sup> It is estimated that a modest 5,000 to 10,000 UN soldiers force would cost \$US 500 million to stand up and cost approximately \$US 200 to \$US 500 million annually. See Christopher Spearin, “Private Security Companies and Humanitarians: A Corporate Solution to Securing Humanitarian Space?” *International Peacekeeping*, Vol. 8, No.1, (Spring 2001): 36.

<sup>9</sup> The U.S. has declared that it will stop paying their UN dues if the organization stands up a permanent force. See Spearin, “*Private Security Companies and Humanitarians...*”, 36 and Michael O’Hanlon and P.W. Singer, “The Humanitarian Transformation: Expanding Global Intervention Capacity,” *Survival*, Volume 46, Number 1, (Spring 2004): 80.

<sup>10</sup> Langille, “*Conflict Prevention: Options for Rapid Deployment...*”, 229-235.



the 1994 Rwanda genocide when member states refused to allocate adequate forces to the UN Assistance Mission in Rwanda (UNAMIR) which could have possibly prevented the tragedy.<sup>11</sup> Beside, even if troops are made available after a long delay, they are often poorly trained and under-equipped units that lack motivation and professionalism. Such peacekeepers can actually make the situation worse.<sup>12</sup> And then, there are also the interminable debates about UN peacekeepers forced to operate under unclear guidance and an often-flawed mandate.<sup>13</sup> With each passing Rwanda, Congo or Sudan, the UN loses more of its credibility and opportunities to stop vast human sufferings and senseless deaths. So if a permanent UN RRF and the *status quo* are not workable solutions, then what can be done to improve the situation?

One possible solution is to privatize peacemaking. Since the end of the Cold War, there have been many private firms that have moved into fill the void left by shrinking armed forces worldwide. The paper will show that these Private Military Corporations (PMCs)<sup>14</sup> have gathered, throughout the years, the necessary expertise to provide an affordable, responsive and robust RRF for the UN. Civilian contractors have long been involved in constructing bases and camps and in providing food, logistic support and

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<sup>11</sup> In 1994, despite 31,000 troops from 19 countries available 'on paper', the UN was unable to raise the 5,000 troops required for this mission. See David Shearer, "Privatising Protection," *World Today*, August/September 2001, <http://www.globalpolicy.org/security/peacekpg/reform/2001/private.htm>; Internet; accessed 7 February 2005.

<sup>12</sup> Shearer argues that the UN often gets militaries of woeful qualities because many poor states volunteer their militaries to peacekeeping duties just to get the UN pay of around \$US 1 million a month. *Ibid.*

<sup>13</sup> O'Hanlon and Singer, "*The Humanitarian Transformation...*", 79.

<sup>14</sup> Some authors have also used the terms "Private Military Firms" and "Private Military Industries" as well as "Military Service Providers." For the purpose of this paper, we will use the term "Private Military Corporations" (PMCs), as it is the preferred designation for the companies working in this business. See [www.ipoaonline.org](http://www.ipoaonline.org).

other services of the sort. During the Vietnam War, for example, there were over 30,000 civilians employed in delivering logistical support to American troops.<sup>15</sup> This is still the case today; PMCs are very involved in supporting armies but they have, throughout the years, expanded in many other sectors that were once the sole prerogative of a professional army. Nowadays, contractors are not just involved in support and logistic jobs; many are on the front line operating weapons and are even taking part in hostilities. PMCs are involved in practically all aspects of warfare in a global market worth an estimated \$US 200 billion per year.<sup>16</sup>

The paper will propose that a possible solution to an impending human catastrophe would be for the UN to contract a PMC to provide an emergency RRF.<sup>17</sup> Once in theatre, the hired RRF would quickly act to stabilize the situation. As stability is returned, UN Peacekeepers could then be deployed and take over from the PMC. While it is recognized that the employment of PMCs can create specific contractual problems and raise issues such as accountability, none of these barriers are insurmountable. It is true also that PMCs have often been tainted with the stigma of mercenarism and much

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<sup>15</sup> Mary H. Cooper, "Does the Pentagon rely too much on Private Contractors?" *CQ Researcher*, June 25, 2004, Volume 14, Number 24; <http://library2.cqpress.com/cqresearcher>; Internet; accessed 14 September 2004.

<sup>16</sup> Source Watch, "Private Military Corporations," <http://www.sourcewatch.org/wiki.phtml?title=PMC>; Internet; accessed 25 January 2005.

<sup>17</sup> Several commentators have argued that hired units constituting a rapid reaction force could provide the muscle that blue helmets have been unable or unwilling to provide. See P.W. Singer, "Peacekeepers, Inc.," *Policy Review*, No.119, <http://www.policyreview.org>; Internet; accessed 27 September 2004, Doug Brooks, "Messiahs or Mercenaries? The Future of International Private Military Services," *International Peacekeeping*, Issue 7/4, (Winter 2000): 129-144, Jonah Blank, "Want Peacekeeper with Spine? Hire the World's Fiercest Mercenaries," *U.S. News & World Report*, Vol. 121 Issue 26; 30 December 1996: 42 Paul Jackson, "'War is Too Serious a Thing to be Left to Military Men': Private Military Companies, Combat and Regulations," *Civil Wars*, Vol. 5, No.4 (Winter 2002), 52 and Kevin A. O'Brien, "PMCs, myths and mercenaries: The debate on private military companies," *Royal United Service Institute Journal*, February 2000, <http://www.kcl.ac.uk/orgs/icsa/Old/pmcs.html>; Internet; accessed 7 February 2005.

effort will be required to show that PMCs are legal business corporations, very much distinct from mercenaries. In sum, this paper will argue that employing a PMC as an emergency, RRF for humanitarian missions will provide the UN with a robust peacemaking force that can be cost effective and enhance the overall image and effectiveness of the UN itself.

The initial task of this paper will be to define key terms and concepts that will be used throughout this text. We will then launch into a review of the history of mercenaries and PMCs with the aim of finding useful correlations that could be applied to the present. The next chapter will examine the main factors that have led to the growth of PMCs. We will then study the advantages and limitations of employing a PMC as a contracted RRF for the UN and propose ways to regulate the process. Finally, the paper will submit that while states are ultimately responsible to provide basic security to their citizens, the world cannot stand idle when a state falls into turmoil and disorder and therefore, humanity as a whole has a moral obligation to act quickly, before the situation becomes total anarchy. It will be argued that a robust, affordable and rapidly deployable peacemaking force employed by the UN can prevent humanitarian crisis the magnitude of those witnessed recently. The paper will conclude that such a force could be provided by a reputable PMC.

Saudi Arabia has contracts with many American PMCs. This in turn serves the U.S. well as policy makers can protect American strategic interests in that region and ensure that the Kingdom's military organization and weaponry remain compatible with American-made systems. In 1992, the Vinnell Corporation received a large contract to modernize Saudi Arabia's national Guard. Strategic Applications International Corporation (SAIC) has also been involved in training the Saudi Navy and Booz-Allen and Hamilton (BAH) has a contract to train the Saudi Marine Corps and to maintain the Saudi Armed Forces Staff College.

These companies provide the U.S. with a secure and cost-effective way to maintain an American presence in the region and enhance the Saudi military capabilities to the benefit of U.S. policies. These companies essentially act as proxies for the U.S. government. They can also perform politically sensitive tasks that the government would not overtly do (as the case would be if actual American soldiers were in place).

The same applies to Military Professional Resources Incorporated (MPRI) that was contracted by the Croat government in 1994. MPRI was hired to help bring the Croat military to Western standards so that Croatia's application to the North Atlantic Treaty Organization (NATO) Partner for Peace Program could be looked upon favourably. Later, the company was also involved in training the Bosnian army in order to improve its effectiveness. MPRI is a large PMC that employs many retired American generals on its staff and undertakes work in area such as training, simulation and evaluation. The credentials of its employees – the founding members were 19 general officers with a combined total of over 700 years of military experience – have directly contributed to generate a positive image of credibility for the company. Furthermore, the firm is also very careful to only accept work that complements and never deviates from U.S. security aims and foreign policy. This has worked to the advantage of the firm, but it can also play against the U.S. at times. Bosnian Serbs, for example, angrily cited MPRI's activity as "official" American policy.

Sources: David Shearer, "Private Armies and Military Intervention," *International Institute for Strategic Studies*, Adelphi Paper 316, (New York: Oxford University Press, 1998): 34, 56-60 and Singer, *Corporate Warriors...*, 212.

### **Case Study 1 – PMCs as Proxies for Western Governments.**

## **2. DEFINITIONS OF KEY TERMS AND CONCEPTS**

One of the biggest roadblocks to surmount before the UN could be at the liberty to hire a PMC is the ingrained perception that a PMC is nothing but a company that employs mercenaries. In order to distinguish between fact and fiction, it will be necessary to thoroughly define mercenaries and PMCs, and examine how these actors are organized by

highlighting some of their key characteristics and functions. This will not be an easy task. Attempts to define mercenaries (especially in a legal sense) have been ongoing for many years and reaching a common consensus has been difficult. PMCs, for their part, are a fairly new phenomenon and understanding their true nature will also be a tricky issue as the firms are involved in a wide range of services and activities. Many experts in this field maintain that PMCs are simply the product of modern ideological, economic and military trends.<sup>18</sup> But it is also recognized that their implications as new actors in warfare is so significant that PMCs can no longer be ignored. In this chapter, we will briefly study the two actors involved in this article: mercenaries and PMCs, and attempt to isolate their key individual characteristics.

### **Defining Mercenaries**

In modern time the very word “Mercenary” has become derogatory, offensive and pejorative.<sup>19</sup> ‘Mercenaries’, ‘Dogs of Wars’ or ‘Soldiers of Fortune’ – all of these terms invoke the idea of a distasteful breed of men. Say ‘mercenary’ and it usually conjures up a picture of a gun-toting adventurer, unshaven and dirty, dressed in khaki fatigues, searching personal fortune in some forgotten conflict at the other end of the world. It has been said that a mercenary can be anybody from naïve idealists to assassins to psychopaths to neo-Nazis and even to romantic adventurers.<sup>20</sup>

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<sup>18</sup> Christopher Spearin, “The Emperor’s Leased Clothes: Military Contractors and their Implications in Combating International Terrorism,” *International Politics*, Vol. 41, No. 2 (2004): 244.

<sup>19</sup> Lynch and Walsh suggest that, perhaps, our profound disdain of mercenaries stems from this strong belief that mercenaries are simply “lucre-paths”, that is they act solely for monetary profit. See Tony Lynch and A.J. Walsh, “The Good Mercenary?” *The Journal of Political Philosophy*, Volume 8, Number 2, (2000): 136.

<sup>20</sup> Jean Paul Mari, «Les nouveaux mercenaires », *Le Nouvel Observateur*, numéro 1492, 10-16 juin 1993, 4.

But what exactly is a mercenary? There are numerous definitions to consider, each with its own subtleties. The Oxford Dictionary, for instance, defines a “mercenary” as “a hired soldier in foreign service.”<sup>21</sup> With only two characteristics (hired and foreign), this definition, unfortunately, is too large to be useful. If used literally, it would probably include many people engaged in legitimate organizations such as the British Gurkhas and the French Foreign Legion. These units (as will be discussed later) are not mercenary units, as they are legally constituted military elements within the British and French armies respectively. Another definition of a mercenary is found in the Geneva Convention and its Additional Protocols. Used in international law, this legal definition is not without flaws (see Annex A) and has been criticized as too specific.

A more useful definition is found in Peter Singer’s authoritative book, *Corporate Warriors*.<sup>22</sup> Singer’s definition is clear and simply incorporates the seven most important characteristics of a mercenary. According to Singer a mercenary is:

- A foreigner.
- Not integrated in any national force.
- Motivated by personal gain.
- Recruited in a covert manner in order to avoid legal prosecution.
- Often part of an ad-hoc grouping.
- Involved in combat services.

Steve Brayton provides an even narrower and conceivably more practicable working definition.<sup>23</sup> Brayton advances that mercenaries are often defined by three widely accepted and essential criteria. According to him, mercenaries:

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<sup>21</sup> R.E. Allen, ed., *The Concise Oxford Dictionary*, (Oxford: Clarendon Press, 1990), 742.

<sup>22</sup> Singer, *Corporate Warriors ...*, 43.

- Are foreign to the conflict.
- Participate directly in combat.
- Are motivated chiefly by financial gain.

Perhaps the most contentious point in both definitions is the assumption that a mercenary engages in warfare exclusively for personal gain without any political or ideological considerations. Although this might generally be the case, it has been shown that the exact motivation for these men and women is not always easily known and could also include reasons such as a longing to escape a mundane life, a desire to belong to a ‘brotherhood’ of elite fighters or even a wish to make a difference in a cause he/she finds just.<sup>24</sup> That said, for the purpose of this paper, the definitions provided by Singer and Brayton will suffice as our principal interest in mercenaries is to show that PMCs are not, indeed, mercenary organizations.<sup>25</sup>

So where is the connection between mercenaries and PMCs? The connection is the fact that PMCs and mercenaries often share the same physical space around the battlefield and can also be defined using some of the same criteria. Consequently, it is hard to comprehend why a group of mercenaries, for instance, would be an illegal entity but a PMC is not. Indeed, legitimate PMCs are constantly defending their status and doing their utmost to distance themselves from the mercenary stigma. It also does not help that many commentators have referred to PMCs as nothing more than a bunch of mercenaries in business suits. Consider these labels given by several analysts: “*The New Condottieri*,” “*Soldiers of Fortune 500*,” or even more bluntly: “*Mercenary*

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<sup>23</sup> Brayton, “*Outsourcing War: Mercenaries and the Privatization of Peacekeeping...*”, 306.

<sup>24</sup> This point is argued thoroughly by Lynch and Walsh in “*The Good Mercenary ...*”

<sup>25</sup> More information on the difficulty of defining a mercenary is found at Annex A.

*Companies.*”<sup>26</sup> That said, while PMCs are vigorously working at distancing themselves from the unpleasant label of mercenarism, the very fact that they are usually **foreign** to a conflict, at times **participate in hostilities** and **profit from their contracts** has rendered their task particularly difficult.

### **Defining PMCs**

It is certainly not easy to grasp the true nature of a PMC. The PMC is controversial because it is a privately owned company that offers services and functions that once were the exclusive domain of states’ armed forces. What most people find difficult to accept is that we now have private actors toiling in the direct provision of military service and while doing so (just like mercenaries) profit from it. It has been said that “private military forces cannot be defined in absolute terms: they occupy a grey area that challenges the liberal conscience.”<sup>27</sup> And thus, these questions remain: are we talking about a fancy new form of mercenarism or are we simply talking about the privatization of military functions?

It is clear that despite the ‘greyiness’, unique criteria exist in order to differentiate the PMC from the mercenary. Peter Singer describes PMCs as “corporate bodies that specialize in the provision of military skills, including combat operations, strategic

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<sup>26</sup> See Eugene B. Smith, “The New Condottieri and US Policy: The Privatization of Conflict and Its Implication,” *Parameters*, (Winter 2002-03), Sean Creehan, “Soldiers of Fortune 500, International Mercenaries,” *Harvard International Review*, Vol. XXIII, No. 4, (Winter 2002) and David Isenberg, “Soldiers of Fortune Ltd: A Profile of Today’s Private Sector Corporate military Firms,” *Center for Defense Information Monograph*, November 1997, <http://www.cdi.org/issues/mercenaries/merc1.html>; Internet; accessed 7 February 2005.

<sup>27</sup> Shearer, “*Private Armies and Military Intervention ...*”, 13.



planning, intelligence, risk assessment, operational support, training and technical skills.”<sup>28</sup> Singer submits that the following defining list of PMC characteristics demonstrates how those firms differ from ad hoc mercenary units.<sup>29</sup> According to Singer a PMC is:

- Organized like a corporation.
- Business profit-driven rather than individual profit-driven.
- Not covertly recruiting personnel.
- A legal, sometimes public entity.
- Offers a wide range of services to varied customers, including governments.
- Often tied to corporate holdings and financial markets.

The PMC is organized like a business corporation. It has clear contractual obligations to its clients and unlike mercenarism, conducts its business openly, in office suites. ‘Corporatisation’ also means that PMCs are ‘business profit’ oriented as opposed to an ‘individual profit’ driven endeavour.<sup>30</sup> Employees receive benefits and are paid as part of the payroll. The employees are accountable to the company and the company to its employer, usually through a legally binding contract. PMCs often have boards of directors and head offices, trade on the stock market, advertise intensively, maintain web pages and provide glossy brochures to any prospective client.

In this new post-Cold War environment, PMCs have progressively become an effective tool to deal with an expanding demand for security and various military services. Consider these numbers for instance: presently in Iraq, there is one contractor

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<sup>28</sup> Note that Singer actually uses the term “Privatized Military Firm” in his definition. See Singer, *Corporate Warriors...*, 8.

<sup>29</sup> Singer, *Corporate Warriors...*, 47.

<sup>30</sup> P. W. Singer, “Corporate Warriors, The Rise of the Privatized Military Industry and its Ramifications for International Security,” *International Security*, Vol. 26, No. 3 (Winter 2001/01): 192.

for every ten soldiers, a ten-fold increase over the first Gulf War.<sup>31</sup> In fact, with over 20,000 civilians in Iraq working for an estimated 60 firms, PMCs provide the second largest contingent after the U.S. military itself.<sup>32</sup> Furthermore, many firms have developed a close association with the government of the state in which it is based and in some cases, the firm may even work directly for that government.<sup>33</sup> It has also been said that when a PMC endorses the foreign policies or

## Types of PMCs

It is clear that today's PMCs are dynamic companies working in an ever-expanding market. PMCs are also involved in a great deal of activities, activities that essentially fall within the full spectrum of military operations. In order to differentiate amongst these new actors on the battlefield, authors writing about this subject have attempted to group them depending on the type of service that they provide. Although there are significant variations from one expert to the other, for the purpose of this paper, the following classifications will be used:<sup>35</sup>

- Type I: Firms that provide security, protection, combat units, force tasks. These firms are the most controversial and are often linked to (or most closely resemble) mercenaries. Example: Executive Outcome (EO), Sandline.
- Type II: Consultants that provide advice on training, equipping and the employment of armed forces. Example: MPRI, Vinnell.
- Type III: Companies that specialize in logistic function, the maintenance of camps and buildings as well as sophisticated weapon systems and equipment. Example: KBR, ATCO Frontec.
- Type IV: Firms that specialize in information operations and provide services such as signal interception, intelligence gathering, psychological operations, cyber-warfare attacks, technical surveillance, etc. Example: Air Scan, GlobalOptions.

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<sup>35</sup> These four classification were derived from Singer, *Corporate Warriors...*, Thomas K. Adams, "The New Mercenaries and the Privatization of Conflict," *Parameters*, (Summer 1999), Spearin, "The Emperor's Leased Clothes...", Shearer, "Private Armies and Military Intervention ...", and United Kingdom, The House of Commons, *Private Military Companies: Options for Regulation*, (London: The Stationery Office, February 12, 2002).

## Summary

In this chapter, we have studied the characteristics of both the mercenaries and the PMCs. Admittedly, it is a challenge to grasp the true nature of PMCs, but at this point, it should be clear that we are not talking about a company of mercenaries looking for fortune in some distasteful conflict.<sup>36</sup> PMCs are simply the result of market forces, “a segment of the increasing privatization of social and economic activity once performed by states.”<sup>37</sup> We will see in a later chapter how privatization, combined with other factors, has contributed to the rapid growth of these new actors.

In today’s world, mercenaries, in contrast to PMCs, have an arguably narrower impact at the strategic level due to their ad hoc organization and limited relative means.<sup>38</sup> PMCs, in contrast, have much broader implications in worldwide political affairs. They cannot, therefore, be ignored as a new actor in the provision of security as their importance and acceptance in world affairs have both grown significantly. In fact, this paper will show that PMCs are now well positioned to provide an effective RRF for the UN.

But first, we need to go back in time to examine history and determine if any useful patterns can be highlighted. We will see in the next chapter that, throughout the

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<sup>36</sup> There are many papers arguing this subject on both side of the argument but for the purpose of this paper, we will consider that Mercenarism is an unlawful activity and that PMCs are fully legal corporations that provide military service. In addition, it should be noted that in 1997, the UN *Special Rapporteur* on mercenaries recognized that PMCs do not meet the accepted definition of mercenaries. See Annex A and see also Smith, “*The New Condottieri and US Policy ...*”, 112.

<sup>37</sup> Spearin, “*Private Security Companies and Humanitarians...*”, 27.

<sup>38</sup> Singer, “*Corporate Warriors ... and its Ramifications for International Security...*”, 191.

ages, mercenaries have been the norm rather than the exception. The emergence and the prominence of professional, state administered armies and the corresponding decline of hired armies is a relatively new trend, one that is only a few hundred years old.

In the late 1980s, secessionist rebels on the island of Bougainville began an insurgency that the small Papua New Guinea Defence Force (PNGDF) was unable to control. At issue was a large copper mine that was also the country's largest source of revenue. After Australia turned down repeated requests for assistance, the PNG government felt it had no choice but to hire the British PMC Sandline to deal with the rebels.

In January 1997, Sandline was contracted to train the PNG special forces, gather intelligence on the rebels and lead offensive operations to retake the copper mine. To avoid possible legal prosecution as mercenaries, Sandline employees were deputized "special constabularies" of the PNGDF. Sandline deployed approximately 60 soldiers, two Mi-24 Hind gunship helicopters, two Mi-17 Hip transport helicopters and various small arms. At almost \$US 36 million, the cost of the contract was roughly 150% of the PNGDF yearly budget. Outraged by the value of that contract and the perceived lack of trust from its own government, the PNGDF mutinied and organized public rallies against the government. Eventually, the PNG government was brought down by the scandal.

Most of Sandline's heavy weapons and helicopters were abandoned as personnel were quickly evacuated except for the overall commander, Colonel Tim Spicer, who was detained a few weeks on minor weapon charges but eventually released. After suing the PNG government for breaking its contract, Sandline was paid most of the \$US 36 million.

Source: Singer, *Corporate Warriors...*, 191-196.

## **Case Study 2 – Sandline in Papua New Guinea**

### 3. MERCENARISM AND PMCs: A BRIEF HISTORY

If PMCs are a relatively new phenomenon, mercenaries certainly are not. Contracted foreign troops and mercenaries (in varying strength and influence) have been involved in conflict for as long as written history has recorded their exploits. In fact, being a mercenary has every so often been called the world's second oldest trade.<sup>39</sup> Sometimes, lone adventurers, skilled with a sword or a musket, would offer their services to the highest bidder. Other times, groups would form, such as the famous Condottieri of Renaissance Italy, and be hired to fight for a king or to defend a city.

This chapter will examine the early history of mercenaries and the Great Companies, and highlight their impact on the battlefields. We will see that the signing of the 1648 Treaty of Westphalia brought about three major changes over time. First, the prominence of the state as an organizational arrangement became the model of choice throughout Europe. Secondly, the responsibility to provide security to the citizens progressively shifted to the state itself. Lastly, hired armies were disgraced and eventually all replaced by citizen armies. The chapter will conclude by summarizing important observations, some of which can be relevant in describing today's PMCs.

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<sup>39</sup> Even the roots of words such as 'soldier', 'commission' and 'company' betray the early beginnings of the profession of arms. 'Soldier' comes from the French word '*solde*' for the pay the mercenary was given. 'Commission' (as in an officer's commission) comes from the money a captain was given for each mercenary he recruited in his company. 'Company' comes from the Italian '*Con pane*', for the bread soldiers were given in exchange for their services. See Philippe Champleau et François Misser, *Mercenaires S.A.*, (Paris: Desclée de Brouwer, 1998), 13 and Singer, *Corporate Warriors...*, 23.

## The Early Days

Foreign soldiers have been employed in the services of almost every empire. This includes the Hittites who dominated Mesopotamia from 1600 BC to 1200 BC as well as the Egyptian, Persian, Carthaginian, Chinese, Greek and even the Roman Empire. The earliest known accounts of mercenaries describe soldiers who were hired by King Shulgi of Ur in Mesopotamia around 2050 BC.<sup>40</sup> The first report of a major conflict involving mercenaries, the battle of Kadesh (1294 BC), relates the exploit of Numidian mercenaries hired by the Egyptian Pharaoh Ramses II to fight the Hittites. Perhaps even better known is the story of Xenophon who, in 401 BC, recorded his chronicles along with his famous band of mercenaries, the *Ten Thousand*, who were hired by Cyrus the Younger to seize Persia from his brother, Artaxerxes II. In his book, *The Anabasis* (The Expedition), Xenophon described the complex relations between mercenary chiefs and the princes who employed them, soldiers who followed them and local allies who did not trust them.<sup>41</sup>

Even Greece and Rome, that had raised powerful citizen armies, still had to rely on mercenaries to get the best soldiers in disciplines such as archery and cavalry, both of which demanded highly specialized skills.<sup>42</sup> There is also evidence that Alexander the Great,<sup>43</sup> Hannibal, Frederic the Great, William the Conqueror and even Richard Lion-Heart had armies composed, in a large proportion, of hired soldiers.

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<sup>40</sup> Singer, *Corporate Warriors...*, 20.

<sup>41</sup> Anthony Mockler, *Histoire des Mercenaires*, (Paris: Imprimerie Floch, 1969), 18.

<sup>42</sup> In fact, by the end of the third century A.D., Rome had more German soldiers than Romans in its army. See Cooper, “*Does the Pentagon rely too much on...*”

<sup>43</sup> At one point, Alexander the Great employed over 50,000 mercenaries in his armies and had in his service a contracted navy of over 200 Phoenician vessels. See Ken Silverstein, *Private Warriors*, (New York: Verso, 2000), 145 and Singer, *Corporate Warriors...*, 21 and 32.

Rodrigo Diaz de Vivar, better known as “*El Cid*,” is another famous mercenary who became a Spanish folk hero, celebrated in hundreds of poems and songs. The movie “*El Cid*” released in 1961 and starring Charlton Heston even commemorates the life of this famous mercenary. In the 11<sup>th</sup> Century, Diaz de Vivar was hired by King Alfonso VI of Castile to fight the Moors and then, in a complete reversal of fate, fought for the Moors against King Alfonso. He eventually conquered the Kingdom of Valencia for himself that he ruled until his death in 1099.<sup>44</sup>

### **The Great Companies and the Condottieri**

It is during the 13<sup>th</sup> Century that groups of mercenaries organized themselves into private armies, known as Free Companies or Great Companies, and rented out their services to the highest bidder. They were often highly skilled in “some particular weapon, such as the crossbow, which was considered not fit for gentlemen, but required too much skills and practice for peasant levees.”<sup>45</sup> Swiss units, known as “*Landsknechts*,” became one of the most successful groups of such mercenaries, earning a good reputation for their skills with their 18-foot pikes and the speed at which they could mobilize (compared to other mercenary groups of the time).<sup>46</sup> Great Companies blossomed during that period as kings and magistrates preferred hiring mercenaries to peasants on the basis that mercenaries were thought to be more efficient than an army of local men. But the principal reason was that kings greatly feared risks of rebellion and therefore, arming the serfs was not deemed very wise.

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<sup>44</sup> “Legends, Paladins and Princes,” <http://www.legends.dm.net/paladins/cid.html>; Internet; accessed 22 March 2005.

<sup>45</sup> Singer, *Corporate Warriors*..., 22.

<sup>46</sup> See Mockler, *Histoire des Mercenaires* ..., 85 and Singer, *Corporate Warriors*..., 26-27.



For the same reason, it was not uncommon for a ruler to hire foreign soldiers as his personal guard. Now known as “Presidential Guards,” this tradition is still in use today; one of the best instances being the famous Swiss Guard in the Vatican that was first hired by Pope Julius II in 1502.<sup>47</sup> Other well known examples throughout history include: the Norwegian guards in service of Byzantine Emperors, the Scottish Guards of Charles VII of France and of course, the Tartars and Mamelukes who protected Napoleon.

In Renaissance Italy, Great Companies were known as “Condottieri” (literally, “military contractors”) and were reputed for their ruthlessness. Hired for a set period to protect a city-state, the Condottieri would not hesitate to seize power from their employer to settle a dispute.<sup>48</sup> In any case, before long, Condottieri and Great Companies were employed in virtually all of Europe’s expanding conflicts and even in the Crusades to the Holy Land. But the most pervasive problem with the mercenaries remained that they could not be entirely trusted. Fearing the growing power of the Great Companies, kings often mounted military campaigns away from the homeland in order to keep those mercenaries occupied.<sup>49</sup> Consider also Machiavelli’s famous warning about mercenaries:

The mercenaries and auxiliaries are useless and dangerous, and if anyone supports his state by the arms of mercenaries, he will never stand firm or sure, as they are disunited, ambitious, without discipline, faithless, bold amongst friends, cowardly amongst enemies, they have no fear of God, and keep no faith in men.<sup>50</sup>

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<sup>47</sup> See Mockler, *Histoire des Mercenaires ...*, 17 and Singer, *Corporate Warriors...*, 27.

<sup>48</sup> Singer, *Corporate Warriors...*, 26.

<sup>49</sup> Cooper, “*Does the Pentagon rely too much on...*”

<sup>50</sup> Niccolo Machiavelli, *The Prince*, (London: Penguin Press, 1968): 77.

Machiavelli argued that since the sole motivation of mercenaries was their pay, these men would not be willing to take extraordinary risks and die for their employer. He was, in fact, partly right. Although, there are many instances of mercenaries fighting bloody battles, there were too many other instances where they would not go to battle or simply refuse to fight other mercenaries.<sup>51</sup> Condottieri also found it to their advantage to take prisoners and demand ransoms instead of killing their enemies.<sup>52</sup> This resulted in protracted conflicts but more importantly, it meant that the employer was not well served by hiring mercenaries who were fighting (when they did) with their own agenda.

To Machiavelli, the solution to the unreliability of the mercenaries was the creation of a conscript army, an army made up of citizens of that state and, consequently, an army loyal to the state. He thought that such a militia would fight willingly, perhaps even enthusiastically, if in turn the state treated these soldiers well.<sup>53</sup> Modeled on the Roman army, Machiavelli instituted several militias who unfortunately proved no match to the battle-hardened armies of Condottieri.<sup>54</sup> And so, mercenary units continued to prevail and followers of Machiavelli would have to wait several centuries before his ideas would become the norm for territorial states armies. In all fairness, it should also be pointed out that the Condottieri were not the curse of Italy as one could infer from reading Machiavelli. In many ways, the Condottieri assisted greatly in instituting a sense of pride

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<sup>51</sup> In the 1423 battle of Zagonara for instance, only one man was killed (when he was thrown from his horse). See Felix Gilbert, *Machiavelli: The Renaissance of the Art of War* in Peter Paret, ed., *Makers of Modern Strategy: from Machiavelli to the nuclear War*, (Princeton: Princeton University Press, 1986), 20-21.

<sup>52</sup> Singer, *Corporate Warriors...*, 25.

<sup>53</sup> Gilbert, *Machiavelli: The Renaissance of the Art of War...*, 20.

<sup>54</sup> *Ibid.*

and unity amongst Italians, especially after armies of united Condottieri successfully defeated invading Bretons in 1379.<sup>55</sup>

Meanwhile, in the rest of Europe, the Great Companies were involved in virtually constant fighting.<sup>56</sup> Waging interminable wars was expensive and rulers began to impose scutage fees (from “*scutagium*” meaning ‘shield money’) which was a feudal payment given in lieu of actual military service.<sup>57</sup> The money raised, in turn, was used to hire mercenaries and fund these wars. In France, King Charles VII levied a similar tax on the country’s middle class, but used the funds to *permanently* hire several military companies in his service. In doing so, he created Europe’s first standing army that he used to crush roaming mercenary units in a grand effort to free his kingdom from the scourge of mercenarism. By receiving ‘steady’ employment and wages, the mercenaries developed a (somewhat) higher sense of loyalty towards their employer.<sup>58</sup> This model proved successful and by the end of the 17<sup>th</sup> Century, European armies were virtually all highly paid, full-time mercenary units.<sup>59</sup>

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<sup>55</sup> Mockler, *Histoire des Mercenaires ...*, 70.

<sup>56</sup> War was essentially everywhere and for many, it had also become a way of life. During the late Middle Ages and Renaissance periods, it was common for noble men to search for conflicts and enlist in foreign wars in order to gain valuable experience in the art of warfare. It was also thought that learning military skills was an essential part of governing and that only an experienced soldier could lead his own armies with competence. See James R. Davis, *Fortune’s Warriors, Private Armies and the New World Order*, (Vancouver: Douglas & McIntyre Ltd, 2000), 36-37.

<sup>57</sup> Singer, *Corporate Warriors...*, 23.

<sup>58</sup> Cooper, “*Does the Pentagon rely too much on...*”

<sup>59</sup> Many profited from this arrangement. In fact, some of the wealthiest men at that time were brokers who recruited, financed and armed entire mercenary units that they then leased to any warring governments. See Cooper, “*Does the Pentagon rely too much on...*”

## The Rise of Citizen Armies

The mercenaries finally lost their monopoly on violence in 1648 when the Treaty of Westphalia was signed. The end of the Thirty Years War (1618-1648) did not only seal the fate of the Hapsburg family Empire, it also facilitated the emergence of citizenship, the concept of statehood and the state's inherent right to maintain standing forces.<sup>60</sup> Steven Metz explains what happened next:

The modern nation-state became the dominant political organization because it was effective at providing order, stability, and social identity. ... As nation-states consolidated and centralized internal authority, interstate warmaking became the 'core competency' of the sovereign nation-state.<sup>61</sup>

So in the next centuries, militias made up of citizens, as Machiavelli had once envisioned, slowly replaced Great Companies. Conscription armies progressively became the norm across the European continent. As states matured further and the concept of sovereignty continued to develop, the legitimacy of a state became to be defined by its ability to protect and control its citizens.<sup>62</sup> The power of a state became to be measured by its capacity to raise a vast army and wage successful wars. The advent of easy-to-use weapons also revolutionized the concept.<sup>63</sup> This resulted in vast citizens' armies being assembled in record time. Capitalizing on the *Levée en Masse*, Napoleon, for example, was able to raise massive armies that proved highly successful. In the end, there was a complete reversal in the perception of the profession of arms: hired armies

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<sup>60</sup> Singer, *Corporate Warriors...*, 28-29.

<sup>61</sup> Steven Metz, "Strategic Horizons: The Military Implications of Alternative Futures," *Strategic Studies Institute Monograph*, (7 March 1997): 9.

<sup>62</sup> Smith, "*The New Condottieri and US Policy ...*", 107.

<sup>63</sup> The modernisation of weaponry is an important reason why citizen armies could be raised more quickly than before. Whereas it took years of training to become proficient with a crossbow, a peasant could be trained as an effective musketeer in a much shorter time. See Singer, *Corporate Warriors...*, 30.

fell from grace while militias of patriotic citizens became to be regarded as being more efficient and reliable than an army of hired foreigners. In addition, “enlightenment notions of patriotism and citizenship made military service more appealing than during the era of serfdom”<sup>64</sup> and, therefore, a citizen soldier, who fought for patriotism, became to be viewed as virtuous and brave. Conversely, mercenaries who fought for profit were ostracized and fell in complete ignominy under this new conscript.<sup>65</sup>

### **The 18<sup>th</sup> Century, Privateers and Mercantile Companies**

Although the use of hired armies declined on the European continent, the mercenary trade did not, however, completely fade away. Wellington and Napoleon both employed a considerable number of foreign soldiers.<sup>66</sup> As late as the end of the 18<sup>th</sup> Century, the armies of Prussia, France and the United Kingdom were still, in great part, comprised of foreigners.<sup>67</sup> Considerer also these late 1800s examples: Baron Antoine Henri Jomini, a Swiss officer and famous military philosopher, sold his services to both the French and the Russians. Even the great Clausewitz, himself a Prussian officer, ended up a mercenary in the Russian army! Another famous example of the 18<sup>th</sup> Century includes the Hessians who were hired by the British to fight for the Crown during the American Revolution. This, in fact, played greatly against Britain as the Hessians acted

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<sup>64</sup> Cooper, “*Does the Pentagon rely too much on...*”

<sup>65</sup> Singer, *Corporate Warriors...*, 31.

<sup>66</sup> Over 50% of Napoleon’s 700,000 strong *Grande Armée* was made up of mercenaries. At the Battle of Waterloo in 1815, Wellington’s army of 60,000 included 40,000 hired foreigners. In fact, Davis argues that Field Marshal Blucher and his Prussians (who were hired by Wellington) might have been the decisive force that defeated the French at Waterloo. See Davis, *Fortune’s Warriors ...*, 38-41.

<sup>67</sup> David Shearer, “Outsourcing War,” *Foreign Policy*, Issue 112, Fall 1998, <http://web25.epnet.com>; Internet, accessed 20 April 2005.

with such barbarity that it actually helped galvanize undecided colonists against England.<sup>68</sup>

Other important players of the time included the privateers who were a sort of contractual pirate working for a state. Privateers were hired by many countries eager to bolster their navies or to expand their maritime power in time of conflict.<sup>69</sup> For example, during the American War of Independence, privateers used by the Americans were responsible for the capture or destruction of over 600 British ships. Without the privateers, it is doubtful that the fledgling country would have been able to confront the powerful Royal Navy.<sup>70</sup> The Americans, in fact, relied so much on privateers that they did not sign the 1856 Declaration of Paris that outlawed privateering as a weapon of war.<sup>71</sup> Eventually, the U.S., along with other countries, renounced to privateering at the signing of the Hague Conventions of 1899 and 1907.

Outside of the European continent, the mercantile companies, such as the Dutch East India Company, the English East India Company, the French East India Company and the Hudson Bay Company, all raised extraordinary powerful private military forces

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<sup>68</sup> King George III initially asked Catherine the Great for 20,000 Russian soldiers but she refused. The King also asked his Dutch allies who also balked at the request. In the end, he hired thirteen Hessian battalions, reputed to be highly disciplined, from the Landgrave of *Hessen Kassel*. See Silverstein, *Private Warriors ...*, 146 and Singer, *Corporate Warriors...*, 33.

<sup>69</sup> Francis Drake and Walter Raleigh are well-known privateers that, in addition to being paid handsomely, were also knighted for their exploit against Spanish vessels. See Smith, “*The New Condottieri and US Policy ...*”, 106.

<sup>70</sup> Smith, “*The New Condottieri and US Policy ...*”, 106.

<sup>71</sup> Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of the American Power*, (New York: Basic Books, 2002), 8.

and navies, and ruled over large expanses of territory.<sup>72</sup> These companies often fought each other over the control of lucrative resources. In 1815, for instance, the Hudson Bay Company fought the Montreal-based Northwest Company over a dispute involving control of the fur trade.<sup>73</sup> Another example is the violent battles by the three rival East India Companies during the War of Spanish Succession (1701-1713). There are also known cases of mercantile armies fighting government forces as when a Hudson Bay Company fort fired its cannons at a Royal Navy vessel or when the English East India Company army blockaded British troops over a territorial dispute in India.<sup>74</sup> Another serious problem was that these companies often had their own agendas that were clearly motivated by gain. At times, they even fought allies of their own states or traded with

king of France, the French Foreign Legion was initially established as a second-class infantry unit and was used to supplement the king's overstretched forces. The Legion was to be composed exclusively of foreigners. At the time, it was not even mandatory to have means of identification and consequently, the Legion attracted many volunteers who were somewhat 'anxious' to escape their pasts. After a five-year contract, the legionnaires would receive French citizenship and as such, could start a new life with their new earned identity.

International law does not consider the French Foreign Legion as a mercenary unit since it is fully integrated into the French Army. It has, nevertheless, inherited the traditions of hired troops who have served France since the Middle Ages. Today, the Legion is a small, self-contained force of around 8,500 men that trains for rapid action operations. One of the most widely recognized and highly respected military units in the world, the loyalty of the Legionnaires to their unit and their comrades is unshakable, their courage remarkable.<sup>76</sup>

England, meanwhile, constituted its well-known Brigade of Gurkhas in 1816 after the Anglo-Nepali War (1812-1815).<sup>77</sup> Made up exclusively of Nepalese citizens, the Brigade can be thought of as the English equivalent of the French Foreign Legion.

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British officers were so impressed by the fighting abilities of the Gurkha soldiers that after the Anglo-Nepali War, a large numbers of Gurkhas were permitted to volunteer for service in the East India Company's Army. During the Indian Mutiny of 1857-1858 the Gurkhas proved their loyalty to the Crown as they fought courageously even while suffering heavy casualties. Later, during both World Wars, the Gurkhas were employed on all major fronts, earning a total of twelve Victoria Crosses “as further testament to their courage and ferocity.”<sup>78</sup> Similarly to the French Foreign Legion, the Brigade of Gurkhas, as a fully constituted British unit to this day, does not fall under the recognized definition of mercenaries.

Another lesser-known foreign legion, but nevertheless worthy of mention, is “*La Tercio de Extranjeros*” (The Spanish Regiment of Foreigners). Also modeled on the French Foreign Legion, the *Tercio* was inaugurated in 1920. Renamed “*La Legion*” in 1937, the regiment saw action in several conflicts such as the 1920s Moroccan insurgencies and the 1936-1939 Spanish Civil War where *La Legion* suffered more than 37,000 dead, wounded or missing soldiers.<sup>79</sup> In the mid 1980s, Spain stopped recruiting foreigners and reorganized the regiment into a special operations battalion.

### **The Decolonisation Wars and the 20<sup>th</sup> Century**

With the decolonisation conflicts of the 1950s and 1960s, mercenaries found a market once again, especially in the weak states of Africa. Many groups of mercenaries

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<sup>78</sup> Rogers, *Someone Else's War ...*, 210.

<sup>79</sup> *Ibid.*, 219.

were hired by rebellion leaders to fight in those wars. Accused of racism and of acting as agents of European countries interested in perpetuating their colonial legacy, these mercenary bands gained particular notoriety.<sup>80</sup> One such gang was “*Les Affreux*” (The Ugly Ones<sup>81</sup>), also known as “5 Commando.” Under the leadership of such disreputable characters as the well-known Irishman “Mad” Mike Hoare and the infamous Frenchman Bob Denard, *Les Affreux* found a lucrative market on the black continent. Heavily supported by Belgian and British interests, the gang toiled in the Congo at the service of the secessionist regime of Moïse Tshombe who, in July 1960, had declared mineral-rich Katanga an independent province.<sup>82</sup> In January 1963, UN Forces (assisted by the CIA) defeated the Katanganese and *Les Affreux*, although most mercenaries escaped unscathed to neighbouring countries. In 1967, Denard and Hoare were back in the Congo (at that time renamed Zaire) to fight against President Mobutu alongside a new crop of rebels, this time headed by Laurent Kabila. The rebels and their allies succeeded in taking the city of Bukavu but once again, the effectiveness of their operation was short lived; the mercenaries were beaten back and most managed to escape to neighbouring Rwanda.<sup>83</sup>

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<sup>80</sup> Shearer, “*Private Armies and Military Intervention ...*”, 15.

<sup>81</sup> This name was given to Colonel Mike Hoare and his men by local Belgian miners as the soldiers would come back from operations in the Katanga jungle in such pitiful shape. They would be dirty, hairy, unshaven and eaten by mosquitoes and bloodsuckers. This is why the miners called them *Les Affreux*. The title *Les Affreux* stuck to the group although over time, it became used in a different connotation as to mean “The Horribles.” See Chapleau et Misser, *Mercenaires S.A. ...*, 29 as well as Guy Arnold, *Mercenaries, the Scourge of the Third World*, (New York: St. Martin’s Press, Inc., 1999), 6.

<sup>82</sup> Chapleau et Misser, *Mercenaires S.A. ...*, 29.

<sup>83</sup> In 1997, Laurent Kabila and his rebels took the capital Kinshasa while Mobutu was in Europe being treated for cancer. Sworn President in May 1997, Kabila changed the name of his country back to the “Democratic Republic of the Congo.” Laurent Kabila was himself assassinated in 2001 and his son, Joseph Kabila, was named as his successor. See Arnold, *Mercenaries, the Scourge of the Third World ...*, 34-39.

The Nigerian Civil War, also known as the Biafra War (1967-1970), provides another interesting example in which both sides in the conflict hired mercenaries. Ultimately, the foreigners proved to be, once again, of very little assistance. Charging huge fees, they avoided taking risks and in the end, fought very poorly. Of the 280 French mercenaries hired by Biafra under the command of Bob Denard, only a handful stayed past a few months; most ended up quitting (after taking their money with them). In his book *Mercenaries*, Guy Arnold writes that, as with the Congo wars, Western governments played a major covert role during the Biafra War by being directly involved in the hiring and recruiting of mercenaries. When it became a public embarrassment, France for one, was finally obliged to order all its citizens to leave Nigeria.<sup>84</sup>

Other conflicts in the late 1960s and early 1970s (for example a series of failed coups attempts in Angola, Benin, the Comoros Islands and the Seychelles) attracted the usual suspects, but overall, the mercenaries had little success and limited strategic impact. In the end, one thing can be said of the decolonisation wars of Africa: “mercenaries accomplished little of lasting effect and contributed much to the misery of the populations where they operated.”<sup>85</sup>

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<sup>84</sup> Interestingly, there is evidence that for most of his dubious career, Bob Denard had the quiet backing of the French government who wished to maintain its influence over its ex-colonies. See Arnold, *Mercenaries, the Scourge of the Third World ...*, 23. There is also evidence that the CIA hired many American mercenaries for the 1954 agency-sponsored coup in Guatemala. In 1975, the CIA even turned to Bob Denard (who came highly recommended by the French secret service) to send a team of twenty men to support UNITA in Angola. See Silverstein, *Private Warriors ...*, 148.

<sup>85</sup> James Larry Taulbee, “The Privatization of Security: Modern Conflict, Globalization and Weak States,” *Civil Wars*, Vol. 5, No.2 (Summer 2002), 6.

Bob Denard was finally arrested in 1995 when he attempted to launch a fourth coup in the Comoros Islands without Paris' implicit backing. The French government even sent an expeditionary force to counter the aging mercenary and his men. Denard was sentenced to five years in jail, but served only ten months before being set free. Similarly, in 1982, Mike Hoare was also arrested during another failed coup attempt in the Seychelles. Disguised as rugby players, Hoare and some 50 mercenaries were detected at the airport when an AK-47 assault rifle was discovered in their luggage. The invaders fought a brief gun-battle and escaped by hijacking an Air India aircraft. All were arrested upon landing at a South African airport. Hoare received a ten-year sentence for hijacking, but he served only three years before being set free. Seven mercenaries who had been left behind were arrested and put on trial by the Seychelles government. Four were sentenced to death but after diplomatic negotiations, all were eventually returned to South Africa in 1983.

And so, from this entire historical review, one cannot conclude that the mercenary trade is dead. *Le Nouvel Observateur* estimates that there are 10,000 to 20,000 mercenaries employed in the world today.<sup>86</sup> In addition to what has already been discussed, many recent civil wars have also attracted its fair share of mercenaries. There are reports that there were thousands of Arab “volunteers” in Afghanistan during the Soviet Occupation of that country (1979-1990) although evidence suggests that these men were actually trained, funded and armed by the CIA.<sup>87</sup> More recently there was the

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<sup>86</sup> Mari, « *Les nouveaux mercenaires ...* », 5.

<sup>87</sup> *Ibid.*, 9.

famous “White Legion” of the 1996-1997 Zairian conflict,<sup>88</sup> the 4,000 mercenaries who were reported to have taken part in the fighting during the wars for succession in Yugoslavia,<sup>89</sup> and, just last year, in August 2004, ex-apartheid-era soldiers and a few Armenian mercenaries were arrested in Zimbabwe for allegedly plotting to overthrow the government of Equatorial Guinea.<sup>90</sup>

### **The Emergence of the PMC**

In 1967, Colonel Sir David Stirling, also the founder of the British Special Air Service (SAS), started a company called WatchGuard International. Hiring mostly ex-SAS personnel, one of WatchGuard’s first contracts was to train soldiers of the Persian Gulf Sultanates.<sup>91</sup> From these humble beginnings, PMCs expanded at a formidable rate, venturing into virtually all sectors that used to be traditionally performed by a professional state military. Today, it is not uncommon to see PMCs maintaining, repairing and even operating highly complex weapon systems such as the B2 bombers, Patriot missiles, nuclear power battle ships, Global Hawk aircraft and their sensor arrays. In fact, many experts have argued that it would probably be impossible for the U.S. military to conduct a major operation without the support of their various contractors who

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<sup>88</sup> It is reported that Mobutu hired some 300 predominantly Europeans mercenaries to augment the Zairian army. The White Legion was apparently made up of former members of the British special service, and ex-soldiers from Belgium, France, Russia, Serbia and several African countries. See Megan Arney, “Zaire Rebels Advance, Imperialists Take Aim By,” <http://www.hartford-hwp.com/archives/35/113.html>; Internet; accessed 28 February 2004.

<sup>89</sup> There were apparently 3,000 Islamic ‘volunteers’ assisting the Muslim Bosnians. There were also 400 ex-Russians soldiers on the side of the Serbs and 300 mercenaries of various origins alongside the Croats. See Mari, « *Les nouveaux mercenaires ...* », 4.

<sup>90</sup> BBC News, “Coup plotters jailed in E Guinea,” <http://news.bbc.co.uk/2/hi/africa/4044305.stm>; Internet; accessed 26 February 2004.

<sup>91</sup> WatchGuard’s job was to provide training for the palace guards and the Special Forces units as well as providing support for operations against rebels and dissidents. See O’Brien, “*PMCs, myths and mercenaries ...*”

maintain approximately 28% of all weapons systems.<sup>92</sup> There are now several hundred PMCs in the world, with operations in over 100 countries.<sup>93</sup> As discussed earlier, powerful corporations and state governments back many of those firms. A few are even listed in Fortune 100 fastest growing U.S. companies.<sup>94</sup>

## Summary

Several important observations can be drawn from this historical overview. Although most relate to mercenaries, some of these observations can be applied to the employment of PMCs as will be discussed in the next chapters.

- The relationship between the employer and the mercenary is purely financial. Similarly, it can be said that the relationship between the employer and the PMC is simply a business transaction. There is a danger, however, that the actions of the PMC, motivated by profit, may not always be in the best interest of the employer.
- A mercenary is not a patriotic, loyal soldier to a king or a country; a mercenary works for personal profit. Because of this fact, mercenaries are often considered to be unreliable in battle because of their unwillingness to take personal risks.

Certain analysts have extended this line of reasoning to PMC employees and

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<sup>92</sup> See James Wither, "Expeditionary Forces for Post Modern Europe: Will European Military Weakness Provide an Opportunity for the New Condottieri?" *Conflict Studies Research Centre*, (January 2005): 5, Barry Yeoman, "Soldiers of Good Fortune," *Mother Jones Journal* (May/June 2003); [http://www.motherjones.com/news/feature/2003/05/ma\\_365\\_01.html](http://www.motherjones.com/news/feature/2003/05/ma_365_01.html); Internet; accessed 25 January 2005 and Spearin, "The Emperor's Leased Clothes...", 255.

<sup>93</sup> Singer, "Peacekeepers, Inc., ..."

<sup>94</sup> Armor Holdings, that acquired Defence Systems Limited (DSL) in 1997, is one such company. See Brooks, "Messiahs or Mercenaries?...", 130.

argued that this may result in large measure of inefficiencies. This will be discussed further in chapter 7.

- In the past, the employment of mercenaries was not limited to weak states: even powerful armies employed them. It should not be surprising, therefore, that the U.S. and the U.K. are currently to two largest employers of PMCs.<sup>95</sup>
- Arguably, a state army does not necessarily perform better than a mercenary unit. In the past, Machiavelli's militias proved inferior in combat against mercenary units. Recent examples of the U.S. military in Vietnam War and the Soviet Occupation of Afghanistan could be used to support this point.
- Market forces of supply and demand also play a role. In the past, as the Great Companies multiplied, competition became fierce and some Companies even engaged in combat amongst themselves (as witnessed by the Mercantile Companies fighting each others).<sup>96</sup> In addition, as insecurity grew (as in Renaissance Italy and today's Iraq), demand for private military forces increased and the price for hiring them grew substantially.
- In the past, hiring an army allowed rich citizens to go about their business while others (preferably foreigners) would be left to do the fighting and the dying. This also had the distinct advantage of not having to deal with widows and orphans left behind after a particularly bloody campaign.<sup>97</sup> More importantly, dead mercenaries were of little political consequence to the local government. We will see later how this principle still applies today to the hiring PMCs.

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<sup>95</sup> Singer, "*Peacekeepers, Inc., ...*"

<sup>96</sup> Mockler, *Histoire des Mercenaires ...*, 42-43.

<sup>97</sup> Shearer, "*Private Armies and Military Intervention ...*", 14.

- Hired armies can have a beneficial role when employed for a just cause (such as the Condottieri saving Italy from the Breton invasion of 1379). The difficulty is to decide which cause is just and which one is not.
- There was and continues to be a demand for highly skilled operators of military equipment. This was especially true when weapons systems became complex as in the case with the crossbow, siege engineering and the advent of artillery. Today, extremely sophisticated computer systems and advanced weapon systems demand particularly high technical expertise often only available through a civilian contractor.
- Demobilization in one zone often led to the formation of private armies and the start of new wars in a weaker zone. This was the case in medieval Europe and the case again at the end of the Cold War.<sup>98</sup>
- Weak governance or change in the existing order invariably attracted mercenaries. Again, these conditions existed during the decolonisation wars of Africa and at the end of the Cold War.
- Weak States that did not have the means to secure territory, property or engage in war often resorted to the practice of hiring mercenaries, Great Companies or privateers in order to achieve these strategic goals expediently and relatively cheaply. This has been the case during the American Revolution and more recently with both Sierra Leone and Angola (see Case Study 3 and 4).

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<sup>98</sup> *Ibid.*, 13.



- In a fashion reminiscent of the way privateers acted as proxies for states prepared to pay their fees, many PMCs have also displayed a willingness to act as proxies for Western governments (see Case Study 1).
- Lastly, the state's monopoly on force (as seen in the last 200 years or so) has been an historical anomaly; the exception rather than the rule.<sup>99</sup> With the advent of statehood, the provision of security became a defining function of a state. Over time, state soldiers became to be seen as honourable and mercenaries as distasteful. Nevertheless, with the advent of PMCs, it can be argued that this monopoly on force may no longer belong solely to the states.

This chapter showed that mercenaries have always been part of warfare and will most likely continue to do so, albeit at a relatively smaller scale. With the advent of PMCs, the free-lance mercenaries' relative importance as strategic actors has been considerably diminished. As we remember lessons of the past, we should not be surprised to witness the rise of PMCs as a new actor in global conflict.

PMCs are, at best, an elegant evolution of their distant mercenary cousins (distant cousins, perhaps, but different nature nevertheless!). As examined in chapter two, PMCs are better thought of as a product of market forces. There was a demand for security and the PMCs filled the void. The wars in Iraq and in Afghanistan, the post 9-11 era, as well as the global War on Terrorism, have certainly all contributed in creating a boom for the

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<sup>99</sup> Singer, *Corporate Warriors...*, 38-39.

PMCs. Many other factors, however, have played an important part in their meteorite ascension. These factors are the focus of the following chapter.

In the early 1990s, the government of Sierra Leone found itself under constant attack by a group of brutal rebels, the Revolutionary United Front (RUF), known for their sadistic actions. The RUF would decapitate their enemies and stick their heads on stakes. They would abduct children and force them to kill on their behalf. They looted at will and ran a wave of terror by amputating the limbs of villagers.

The 14,000-man Sierra Leone military proved grossly ineffective (the daily rations of rum and marijuana did not help). Sent out to deal with the rebels, much of the military force disintegrated and began looting the villagers they were supposed to protect.

By 1995, the rebels were near the capital. Embassies began to empty. The Sierra Leone government pleaded with the U.K., the U.S. and the UN for assistance but to no avail. Abandoned, the beleaguered government contracted the South African firm EO to remove the RUF from the capital region as well as several other key areas. The same month, EO deployed approximately 160 personnel supported with a flight of gunship helicopters, light artillery and a few armoured vehicles to the country. Within nine days, EO had not only stopped the rebels, but had managed to push them back deep into the jungle. In the next few weeks, using combined ground assault forces (with an additional 200 EO personnel) and air assaults attacks, strategic diamond fields were liberated and RUF strongholds systematically destroyed. Pushed back to the border, the RUF was effectively defeated. The rebels agreed for the first time to negotiate with the government. The relative stability achieved by EO allowed Sierra Leone to hold free elections for the first time since its independence. The total price for the 21 months contract was \$US 35 million.

Shortly after EO withdrew from the country, a rebel-regular military coalition toppled the government.

Source: Singer, *Corporate Warriors...*, 110-115.

### **Case Study 3 – Executive Outcome in Sierra Leone**

#### **4. FACTORS THAT CONTRIBUTED TO THE GROWTH OF PMCs**

Although, as mentioned, PMCs originated in the late 1960s, the market boom for their employment did not truly blossom until the end of the Cold War. In order to fully appreciate the nature of PMCs, this chapter will explore the factors that gave rise to PMCs. We will see how, as armed forces of the world were downsizing, a surge in Low Intensity Conflicts (LICs) in practically all regions of the world created a large demand for intervening forces and how this void was quickly filled by PMCs.

##### **The End of the Cold War**

First and foremost on the list of contributing factors are the end of the Cold War and the corresponding demise of the U.S.S.R. This profound change in the world order resulted in a number of cascading consequences. It was to be the end of the bipolar world as we had known it for over 40 years. In Europe, as Soviet forces retrenched from their satellite states, NATO responded with an almost equal cut in military strength. The equilibrium that had been held by the two superpowers was suddenly shattered. As for the developing world, both countries pulled their support away from states that no longer bore a strategic importance to them in this new world order. Weak states, unable to contain internal violence and without a patron to assist with much needed troops, crumbled into chaos. Simmering ethnic conflicts that had been kept in check by the big two erupted in several regions of the globe.

Civil wars and intra-state conflicts tend to be complex because they often involve several groups with different and overlapping agendas. In addition, the distinction between combatants and non-combatants may be completely non-existent, making the

Laws of Armed Conflict (LOAC) all but irrelevant. Fighting can often be brutal and desperate as warring groups may be struggling for their very survival. Yugoslavia is a good example of a state falling into a violent and complicated multi-ethnic civil war. The Balkan republic was certainly not an exception: in every year since 1990, there have been a reported 15 to 30 conflicts or rebellions worldwide, roughly double the amount it was during the Cold War years.<sup>100</sup>

At about the same time, many politicians and commentators wrongfully predicted that the end of the Cold War would be a precursor to a period of stability and wealth.<sup>101</sup> Governments, eager to cash in on this “peace dividend,” embarked on a period of massive defence budgets slashing and huge downsizing in military personnel. Consider these numbers: in 1987 (before the Berlin wall fell), there were approximately 28,300,000 soldiers worldwide. By 2004, there were roughly 7 million fewer soldiers.<sup>102</sup> Many out of work soldiers originated from the Soviet Union, but many others also came from South Africa since the end of the Apartheid regime occurred during that time frame. In addition, the U.S. military also reduced its ranks significantly from a high of 3 million soldiers in 1970 to less than 1.4 million by 2002.<sup>103</sup>

Two direct consequences came about from these massive cuts and concomitant increase in global conflicts. First, smaller military forces found themselves grossly

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<sup>100</sup> Arnold, *Mercenaries, the Scourge of the Third World ...*, 123.

<sup>101</sup> For more on this, see Francis Fukuyama, *The End of History and the Last Man*, (New York: Avon Press, 1993).

<sup>102</sup> Singer, *Corporate Warriors...*, 53.

<sup>103</sup> Cooper, “*Does the Pentagon rely too much on...*”

undermanned to cope with the massive amount of demand for their professional services. In fact, since 1990, European and American soldiers “have deployed on more operations than in all of the 40 years of the Cold War.”<sup>104</sup> Secondly, clever businessmen envisioned new opportunities and successfully raised companies to fill the void left by shrinking military forces worldwide. And thus, here was a perfect example of market forces in the making: a growing demand for military professionals and a shrinking supply worldwide provided the required impetus for entrepreneurs. What ensued was a boom for quality alternatives to state military services. PMCs providing Type II, III and IV services experienced meteoric rise and enormous profits. Finding adequate manpower was not a problem for the expanding PMCs market; highly trained, but out of work soldiers, found an abundance of lucrative job offers. PMCs, for their part, were all too happy to hire already skilled workers.

### **The Emergence of Privatization**

Meanwhile, the continued downsizing and an expanding demand for troops forced military leaders to find better ways to do more with less. And so the 1990s saw the emergence of re-engineering ideas, Alternate Service Delivery (ASD) and enormous efforts spent on striving for new efficiencies. The ultimate effect of this “neo-liberal economics and market-based thinking” led to an accelerated and large-scale privatization of military services.<sup>105</sup> It is reported that the U.S. Army was able to cut logistics costs by 20% by privatizing many of its functions to Type III PMCs.<sup>106</sup>

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<sup>104</sup> Wither, “*Expeditionary Forces for Post Modern Europe...*”, 5.

<sup>105</sup> This approach emphasizes the superiority of privatization because it is assumed (sometimes wrongfully) that the private sector is more efficient and cost competitive than the public sector. See

Privatization was seen as not only a way to make economies of scale but also as a way to concentrate the fewer remaining soldiers' jobs on actual 'hard core' military trade. This restructuring of armed forces has often been referred to as reorganizing in order to get more 'tooth' and less 'tail.' In other words, while war-fighting skills (tooth) were kept relatively intact, any non-combat, support or logistic jobs (tail) that could be contracted, were.<sup>107</sup> In the end, it was hoped that although the peace dividend dictated a leaner armed forces, most of the reduction could be achieved from those non-combat trades. Undoubtedly, privatization directly benefited the growing PMC industry. Consequently, many PMCs not only gained valuable experience on the field, they also built their reputations which led to more contracts, increased hiring of personnel, market expansion, etc.

### **The Revolution in Military Affairs**

In addition, the Revolution in Military Affairs (RMA) also had an impact on the overall tendency to privatise most modern armed forces. As weaponry and equipment became progressively more complex and highly technical, modern military forces became compelled to rely on civilian contractors to train technicians, maintain the systems or even operate them. The newly acquired unmanned Predator drone, for example, is flown and maintained by civilian specialists. Intricate computer systems and sensors onboard

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Christopher Spearin, "Accountable to Whom? An Assessment of International Private Security Companies in South America," *Civil Wars*, Vol.6, No.1 (Spring 2003): 5.

<sup>106</sup> Lt Col Lourdes A. Castillo, "Waging War with Civilians, Asking the Unanswered Questions," *Aerospace Power Journal*, Fall 2000, <http://www.airpower.maxwell.af.mil>; Internet; accessed 7 February 2005.

<sup>107</sup> Cooper, "Does the Pentagon rely too much on..."

the Command and Control intelligence gathering aircraft 'Rivet Joint' and 'JSTARS' are all operated by civilian contractors.<sup>108</sup> And thus, although fewer soldiers are deployed in a theatre, a massive 'tail' of contractors support and maintain the modern weaponry, while more contractors supply the logistics for all.

### **The CNN Effect**

Finally, there is also the so-called "CNN effect." Ever since the 1993 debacle in Somalia, where 18 American soldiers were killed, the U.S., for one, has been very cautious not to get entangled again in messy intra-states quagmires. It is reported that the CNN images of the soldiers' mutilated bodies being dragged through the streets of Mogadishu were the main reason that made President Clinton order his troops back home.<sup>109</sup> One commentator has suggested that the Somalia incident has effectively prompted the U.S. to return to the Weinberger Doctrine that dictates that America will not enter a war unless it directly serves the national interests and that the conflict can be won.<sup>110</sup>

Since this incident, other Western states have also beco

excessive.<sup>111</sup> Unsurprisingly, UN calls for assistance in Rwanda, Liberia and most recently, Sudan, have all but remained unanswered. The numbers speak for themselves: in 1993 there were 82,000 UN Peacekeepers deployed worldwide. Two years later, there were barely 8,000 and in 1999, a mere 1,000.<sup>112</sup> This is the tragedy of the CNN effect and of the global military downsizing discussed earlier: politicians are hesitant to commit fewer military personnel to complex political situations that are poorly understood or that have minimal support at home. In addition, conflicts that have the potential to drag on for a long time or particularly dangerous assignments are, for the most part, frowned upon by Western leaders who have become progressively more ‘casualty reluctant.’ Singer wrote that, unless a strong domestic resolve is present, Western states would no longer tolerate casualty figures beyond the single digit.<sup>113</sup> Many PMCs, in contrast, have shown fierce resilience in combat operations. Furthermore, civilian contractors’ casualties have generally been of little political consequence to governments. These last two points will be discussed further in the next chapter.

Unfortunately, this casualty reluctance on the part of Western governments leaves the UN in a lurch, as the demand for peacekeepers continues to grow. In a recent article, Michael O’Hanlon and Peter Singer estimated that the global need for peacekeepers today could be as high as 200,000.<sup>114</sup> Herein lies the dilemma for the UN: unable to attract modern, well-equipped military forces, the organization has been obliged to rely on

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<sup>111</sup> See Isenberg, “*Soldiers of Fortune Ltd ...*” and Shearer, “*Private Armies and Military Intervention ...*”, 9.

<sup>112</sup> Singer, *Corporate Warriors...*, 59.

<sup>113</sup> Singer, “*Corporate Warriors ... and its Ramifications for International Security...*”, 194.

<sup>114</sup> O’Hanlon and Singer, “*The Humanitarian Transformation...*”, 81.



poorly trained and undisciplined military forces that have often done more bad than good. In Sierra Leone, for example, the Nigerian deputy commander of the UN peacekeeping force “twice refused direct orders from his Indian mission commander to deploy his troops into combat.”<sup>115</sup>

## **Summary**

In sum, a global trend towards military downsizing brought upon by the end of the Cold War, privatization and the RMA, coupled with a noted increase in brutal intra-states conflicts as well as the reluctance of developed nations to intervene in peripheral states, have all contributed to the growth and demand of PMCs. The next chapters will show that the advantages of hiring PMCs far outweigh the potential disadvantages that they may bring about. In order to frame this analysis, it is appropriate to explain in greater detail the concept proposed by this paper; that is, how a PMC could be a viable alternative to the UN’s long-desired RRF.

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<sup>115</sup> Singer, *Corporate Warriors...*, 59.

## 5. A CASE FOR A HIRED UN RRF

We have already discussed how difficult it is for the UN to convince member states to volunteer troops for dangerous missions. Professional armies are overstretched as it is and with the steady increase of LICs and MOOTW around the globe, it is a certainty that not all conflicts will receive the attention that they deserve. The best armed forces of the world are already over-committed in Iraq and Afghanistan and have shown little interests to get involved again in peripheral states. In fact, President George W. Bush has even stated that ideally, all future peacekeeping missions will be privatized so that the U.S. military can be used for its primary purpose.<sup>116</sup> And for the UN this means that important missions will not be staffed properly or that less capable military forces will be sent in desperation.

Is the world prepared to sit through another Rwanda? Hutus armed with nothing more than machetes slaughtered an estimated one million Tutsis. At least one commentator maintains that a well-equipped PMC of only two hundred men and twenty helicopter gun-ships could have averted the situation in Rwanda.<sup>117</sup> The world may not want to see another Rwanda, but inaction and poorly trained peacekeepers continue to cost lives. In Sudan alone, an estimated 70,000 people have already been murdered and the situation continues to deteriorate.<sup>118</sup>

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<sup>116</sup> This fact has been reported by at least two commentators. See Taulbee, “The Privatization of Security...”, 5 and Jackson ““War is Too Serious a Thing to be Left to Military Men’...”, 32.

<sup>117</sup> Silverstein, *Private Warriors ...*, 160.

<sup>118</sup> BBC News UK Edition, “UN body probing Sudan ‘genocide,’” <http://news.bbc.co.uk/1/hi/world/africa/3991759.stm>; Internet; accessed 22 March 2005.

### **The Responsibility to Act resides with the UN**

It can be argued that if the international community cannot or will not intervene in the protection of a country's commerce or citizens for whatever reason, then it is conceivable that a desperate government may turn to a PMC for action. In fact, this eventuality has already happened. At the dismay of Western nations, several weak states under attack from within and that found themselves abandoned by their patrons and the UN, reverted to hiring Type I PMCs to solve their problems. In a fashion reminiscent of the way Italian city-states of the 15<sup>th</sup> Century employed Condottieri units to fight for them, Angola, Sierra Leone and Papua New Guinea hired combat units to effectively deal with their respective rebels (See Case Study 2, 3 and 4).<sup>119</sup>

The question facing us is this: is it better that the hiring of a PMC be sanctioned by the international community or be left to the embattled government? A desperate regime may be tempted to hire any firm promising a quick fix and offer huge payment that may indebt the state for generations to come. Furthermore, it would be difficult, perhaps even impossible, to have effective measures of control on the chosen PMC. For all these reasons, this paper strongly advocates that the hiring of a PMC be left to the UN since it is also the organization responsible to approve the deployment of peacemakers. The concept of operation would be simple: once the world body endorsed an operation, a hired RRF could be deployed to stabilize the situation on behalf of the UN.

### **PMCs Have the Expertise and the Will**

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<sup>119</sup> See also United Kingdom, "*Private Military Companies: Options for Regulation ...*", 13 and Shearer, "*Private Armies and Military Intervention ...*", 73.

This paper contends that reputable PMCs are ready for this challenge. We have seen how a shortage of professional soldiers coupled with a large demand for security has created perfect conditions for the emergence and rapid growth of the PMCs. As PMCs grew in prominence, they also acquired valuable field experience in many different missions. In fact, several PMCs have been and are still employed by UN agencies and other NGOs. For example, in the 1990s, Defense Systems Limited (DSL) provided security for the UN mission in the Democratic Republic of Congo (DROC) and Lifeguard protected World Vision's operations in Sierra Leone.<sup>120</sup> Later, in East Timor, DynCorp provided logistics for the UN while two Type IV PMCs, KwaZulu-Natal Security (KZNS) and Empower Loss Control Services (ELCS), provided local intelligence.<sup>121</sup> In addition, demining has been contracted out to PMCs in virtually all-recent UN operations. Firms such as Minetech and Saracen have become leaders in this \$US 400 million a year industry.<sup>122</sup> Recently, in Liberia, the U.S. hired Pacific Architects and Engineers (PAE) to provide logistics for the Nigerian security force.

Other firms have also shown remarkable capabilities. Consider, for example, Blackwater Inc., a Type I security and training PMC. In the spring of 2004, eight Commandos from Blackwater successfully defended the U.S. Government headquarters in Najaf, Iraq, against hundreds of insurgents. Blackwater helicopters even brought in

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<sup>120</sup> Spearin, "*Private Security Companies and Humanitarians...*", 28.

<sup>121</sup> Singer, *Corporate Warriors...*, 183.

<sup>122</sup> *Ibid.*, 82.

fresh ammunition to besieged U.S. soldiers and evacuated the wounded before U.S. military reinforcement arrived.<sup>123</sup>

PMCs are not only ready, they are also quite keen on getting directly involved in peacekeeping operations. Indeed, the irony in this situation is that while many states have shown little interest in taking on any new peacekeeping missions, many PMCs have been eagerly lobbying to participate. As Western powers ponder over whether they might intervene in the Civil War in Liberia, for instance, Northbridge Services offered to deploy 500 to 2,000 peacekeepers within three weeks and that, at a fraction of what it would cost the UN to send such a contingent.<sup>124</sup> Ultimately, Northbridge's proposal was not retained but it is difficult to understand how not doing anything is preferable to sending a highly capable PMC.

### **The International Peace Operations Association**

Reputable PMCs have understood that more must be done to promote their capabilities and to do so, have formed an industry trade association, the International Peace Operations Association (IPOA). IPOA represents a consortium of PMCs that have previous experiences in peace operations worldwide. IPOA's goals are to promote its members' capabilities and potential to policy makers. Some of these firms have excellent

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<sup>123</sup> Wither, "*Expeditionary Forces for Post Modern Europe...*", 7.

<sup>124</sup> Ultimately, Northbridge's proposal was not looked upon favourably principally due to the firm's past involvement in Ivory Coast which managed to displease both the U.S. State Department and the British Foreign Secretary. Nevertheless, this example is interesting because it shows what kind of capabilities exists in the market place. Northbridge maintains that it can deploy a combat brigade anywhere in the world, within three weeks. See Stephen Fidler and Thomas Catan, "Private Military Companies Pursue the Peace Dividend," *Financial Times*, 24 July 2003 and Wither, "*Expeditionary Forces for Post Modern Europe...*", 9.

credentials and have already been involved in operations such as mine clearance, logistics, security, training and emergency humanitarian services. IPOA works very hard to foster transparency of operations and the accountability of all its members. In fact, the organization has even instituted industry-wide standards and a code of conduct for PMCs involved in private peacekeeping services.<sup>125</sup>

IPOA recently submitted a proposal to the UN detailing how PMCs could help bolster the UN presence in the Democratic Republic of Congo (DROC) by providing professional services such as high-tech aerial surveillance, rapid police reaction, disarmament services, local gendarme training and humanitarian rescue capabilities.<sup>126</sup> IPOA suggests that the firms would be able to enforce and patrol a demilitarized zone as well as supervise the ultimate demobilization of all forces in eastern DROC. Once the security situation under control, other organizations could safely come in and assist in humanitarian activities and reconstruction. Finally, the professional training of the local police officers and gendarmes would be tailored towards long lasting peace and stability goals.

Currently, the UN mission in the Congo (MONUC) has over 4,000 observers deployed in the country. The UN has asked member states to volunteer an additional 5,000 in order to fulfill its mission of peacekeeping and humanitarian protection, but unsurprisingly, few countries have shown an interest in committing their troops and no

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<sup>125</sup> For more information, see [www.ipoaonline.org](http://www.ipoaonline.org).

<sup>126</sup> Doug Brooks, "Supporting the MONUC Mandate with Private Services in the Democratic Republic of Congo," *IPOA Operational Concept Paper*, January 2003, <http://www.ipoaonline.org>, Internet; accessed 18 March 2003.

Western power has volunteered to take on a lead role. And so, an estimated 2,000 people per day are killed or die of starvation.<sup>127</sup> Unless a more robust force is deployed, the prospects of resolution are grim.

### **Summary**

In sum, the UN needs experienced soldiers to fulfill an ever-growing demand for peacekeeping troops but is rarely able to get states to commit to urgent missions. As already mentioned, one possible solution is to hire a PMC as a UN RRF to stabilize the situation until professional peacekeepers can be deployed. The private military industry is ready and capable for such an assignment as witnessed by the wealth of experience that has been gathered by PMCs in support of UN missions. The next chapter will attempt to bring out the most salient advantages to a hired RRF.

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<sup>127</sup> *Ibid.*

In September 1993, under attack by the National Union for the Total Independence of Angola (UNITA) rebels, the government of Angola hired the South-African firm EO to supply arms, train its forces and conduct direct operations against the rebels. With UNITA controlling almost 80% of the country, approximately 500 EO personnel were deployed to Angola as part of the one-year, \$US 40 million contract.

Under EO's tactical assistance, UNITA targets were struck and raids were launched throughout the countryside, meeting with great success and forcing the rebels deep into the jungle. In the end, EO and the Angolan forces were able to secure the entire oil producing region and most of the diamond producing areas.

In November 1994, stunned by the operations and badly beaten back, the rebels agreed to a peace accord with the government for the first time since the start of the twenty year old civil war.

Once EO contract was terminated in December 1995, UN peacekeepers were deployed. Unfortunately, they were unable to secure the peace and fighting was promptly resumed.

In December 1998, EO disbanded as one of the most efficient private army in the world. One of the reasons cited for disbanding the company was the stringent new South African rule governing PMCs. It is suspected, however, that the firm broke up into smaller companies that moved to states that had fewer restrictions.

Source: Singer, *Corporate Warriors...*, 108-110, 181.

#### **Case Study 4 – Executive Outcomes in Angola**

## **6. ADVANTAGES OF A HIRED UN RRF**

Thus far, we have established that the UN has a definite need for rapidly deployable and professional troops, trained to function in the complex and challenging missions that characterize LICs and MOOTW. We have also just seen that due to a number of factors, states are not volunteering their soldiers to serve in these difficult missions. As stated before, this paper contends that it is time for the UN to contract experienced PMCs to fill this void. In this chapter, we will examine the possible advantages associated in hiring a PMC to fulfill the role of RRF for the UN.



## Cost Advantage

By far, the single most compelling advantage of hiring a PMC instead of deploying a UN force is cost savings. Consider these examples: the total cost for EO's operations in Sierra Leone (see Case Study 3) was \$US 35 million spread over 21 months. The UN force in place since 1999 has cost well over \$US 300 million a year and many commentators have debated its effectiveness.<sup>128</sup> Similarly, the eventual UN force that deployed to Rwanda (after the crisis was over) ended up costing \$US 3 million a day and since it arrived well after the killings were over, it did nothing to stop the genocide. In contrast, in a company exploratory paper, EO determined that it could have deployed, within 14 days, a well-equipped force of 1,500 soldiers to Rwanda. EO believes that it could have set up a 'safe area' to protect the refugees at an estimated cost of only \$US 600,000 a day.<sup>129</sup> Finally, the cost for the IPOA proposal to augment MONUC is estimated at \$US 100 to \$US 200 million per year depending on the hired services. Augmenting MONUC by an additional 5,000 UN soldiers, as currently contemplated, will cost the organization an additional \$US 400 million per year and it is doubtful that these additional troops will have much effect, as they would be lacking critical equipment.<sup>130</sup>

How is it that PMCs can offer these services at a cost so much cheaper than the UN – a non-profit organization – and in the process, make money? One reason is that the

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<sup>128</sup> At one point, embattled peacekeepers even had to be rescued by the British military. See Singer, "*Peacekeepers, Inc., ...*". Interestingly, the UK forces hired a firm called Express Air to fly Hind attack helicopters in support of this operations. See Wither, "*Expeditionary Forces for Post Modern Europe...*", 8.

<sup>129</sup> According to various reports, the plan was seriously considered by the Clinton administration. Singer, "*Peacekeepers, Inc., ...*"

<sup>130</sup> Brooks, "*Supporting the MONUC Mandate...*"

initial outlay of capital to start up PMCs is, relatively speaking, not that excessive. Firstly, PMCs rarely have a large payroll of fulltime employees. They tend to use “databases of qualified personnel and specialized sub-contractors” that are available to deploy on a moment’s notice.<sup>131</sup> Furthermore, PMCs do not have to train and house its personnel (which can cost millions of dollars). As discussed, many experienced ex-soldiers are readily available on the market. Consequently, PMCs can afford to hire top quality people and pay them a fairly high rate of pay (as compared to most states militaries).<sup>132</sup> Consider ex-combat pilots and ex-Special Operation Force (SOF) soldiers, for example. These highly trained soldiers (at great expense to a state) are in extremely high demand.<sup>133</sup> In Iraq, for instance, many ex-SOF soldiers from the U.S., U.K., Israel and South Africa are reported to earn up to \$US 1,500 a day in Baghdad.<sup>134</sup> The advantage to a prospective employer is many folds: hiring a reputable PMC for a job can bring in military professionals of a level that would far exceed almost any other armed forces in the world. MPRI, for example, can send twenty former U.S. colonels to train a

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<sup>131</sup> Singer, *Corporate Warriors...*, 75.

<sup>132</sup> Most military personnel can often get two to ten times as much as they were getting paid in their respective military forces. See Singer, *Corporate Warriors...*, 74. EO reportedly paid salaries of \$US 6,000 a month for soldiers. This was ten times more than what the average African soldier was paid (when he did get paid, that is). Combat pilots’ pay was much higher at \$US 15,000 a month. See Davis, *Fortune’s Warriors ...*, 164. Also of note, DynCorp pilots working in Colombia are paid \$US 90,000 a year, tax free. See Singer, *Corporate Warriors...*, 208.

<sup>133</sup> In fact, because of the extremely attractive rate of pay offered, the PMC industry now serves as a constant draw for many SOF soldiers. The U.S. Department of Defence reportedly approved a series of retention bonuses of up to \$US 150,000 for an additional six years of service. See Andrew Feickert, “U.S. Special Operations Forces (SOF): Background and Issues for Congress,” *CRS Report for Congress*, 9 February 2005; <http://www.fas.org/sgp/crs/natsec/RS21048.pdf>; Internet, accessed 18 April 2005.

<sup>134</sup> This salary may seem excessive but there is a saying in the industry: ‘if you pay peanuts, you’ll get monkeys.’

foreign army while the U.S. Army would have to strip more than an entire division to provide that much expertise on the field.<sup>135</sup>

Furthermore, a Type I PMC that provides security, protection, combat units or tasks force, can also find all the tools of the trade at bargain prices on international arms markets.<sup>136</sup> Tanks, jet fighters and attack helicopters as well as small arms, rocket launchers and even transport aircraft and amphibious vessels, can all be purchased or even leased with relative ease. In the end, PMCs have a definite advantage over state militaries, as their relative start-up cost to equip is considerably less. For the UN, forever a cash-strapped organization, this could translate into hundreds of millions of dollars saved.<sup>137</sup> Ultimately, along with substantial savings, the UN would be getting a highly professional and effective unit.

### **Rapidly deployable**

Another huge advantage tipping the balance towards PMCs is the rapidity at which they can deploy. A PMC is very quick to respond to an order to deploy because it is not hampered by the complexity of an artificial ad hoc multinational grouping. PMCs are generally small and flexible units made up of skilled veterans. Consequently, a PMC can field a cohesive unit of soldiers who worked together before, use a common language and operating procedures, and that, in a relatively short time. In 1992, KBR, for example,

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<sup>135</sup> Silverstein, *Private Warriors ...*, 167.

<sup>136</sup> Since the end of the Cold War, there has been an abundance of Soviet-era weapons available to anyone willing to pay with hard currencies. See Brayton, "*Outsourcing War: Mercenaries and the Privatization of Peacekeeping...*", 309.

<sup>137</sup> That said, the market demands for security services since 9-11 has been so intense that conceivably, costs might start rising. Given that many new firms have entered the market in response to the red-hot demand, it is reasonable, however, to expect that costs will remain competitive in the near future.

had labourers and vehicles in Mogadishu within 11 hours after being given notice.<sup>138</sup>

Similarly, using its own aircraft (it had purchased a used American Airlines Boeing 727), EO was able to deploy fully operational units in Angola and Sierra Leone within weeks of signing the contracts.

## **Resilience**

As discussed earlier, Western governments have become casualty reluctant and consequently, have been very disinclined to volunteer troops for risky and dangerous missions. PMCs, in contrast, have shown a higher tolerance towards casualties than most Western states have in the recent past. It is not that these firms do not care about their personnel; it is more a function of not being under the same scrutiny as a state military. For instance, while the Pentagon must justify its action to Congress, the same Congress has no authority on a PMC.<sup>139</sup> For the risk-adverse U.S. military, still reeling from Somalia, hiring PMCs for a dangerous mission has become a solution of choice. In 1998, DynCorp, for example, was contracted by the U.S. government to provide its monitoring force in the Kosovo. While other countries involved sent military officers, the decision was made because the Americans did not like the idea of sending their soldiers “into harms way, unarmed, as the monitors are.”<sup>140</sup>

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<sup>138</sup> Yeoman, “*Soldiers of Good Fortune...*” KRB, as dictated by the terms of its contract with the Pentagon, must provide combat support services to the U.S. Army anywhere in the world within 72 hours of being notified. See Spearin, “*The Emperor’s Leased Clothes...*”, 261.

<sup>139</sup> In fact, it is even doubtful that Congress knows about most ongoing contracts that the Pentagon has signed with PMCs since that, by U.S. law, only contracts valued at \$US 50 million or more (a very high threshold) need to be reported. See Spearin, “*Accountable to Whom? ...*”, 19.

<sup>140</sup> O’Brien, “*PMCs, myths and mercenaries ...*”

The impact of an American contractor dying during an operation overseas is not as politically profound as an American soldier dying during the same operation. In fact, it rarely gets the same media attention, unless it happens to be a particularly horrific incident such as the Fallujah murders in March 2004.<sup>141</sup> Whereas it is general knowledge that over 1,600 U.S. soldiers have been killed in Iraq to date, there has been little mention of the civilian contractors who have also died there. According to the Brookings Institution, 107 PMC employees (39 from Halliburton alone) have been killed in action and hundreds more wounded in Iraq since May 2003.<sup>142</sup> In South America, where the U.S. is involved in the War on Drugs, DynCorp has a contract with the Pentagon to assist Colombia's police with coca crops eradication. DynCorp personnel fly and maintain a fleet of aircraft equipped to do aerial defoliation. In 1992, when three DynCorp employees were assassinated after their helicopter was shot down by rebels, it "merited exactly 113 words in the New York Times."<sup>143</sup>

It is true, however, that this resilience is greatly dependent on the company involved. In 1995, the PMC Gurkhas Securities Group (GSG) – not to be confused with the British Army's Brigade of Gurkhas – was the initial firm hired by the Sierra Leone government (see Case Study 3). Within a few weeks of arriving in the country, the GSG leader, an American by the name of Bob McKenzie, was ambushed and killed. McKenzie's body was apparently emasculated and eaten by the rebels in order to

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<sup>141</sup> In March 2004, four PMC security guards from the firm Blackwater were ambushed and killed west of Baghdad in March 2004. Their burned and mutilated bodies were strung over a bridge, marking the beginnings of the insurgency in Fallujah.

<sup>142</sup> James Cox, "Contractors pay rising toll in Iraq," *USA Today*, 16 June 2004; <http://web33.epnet.com>; Internet, accessed 11 April 2005.

<sup>143</sup> Yeoman, "*Soldiers of Good Fortune...*"

intimidate the other soldiers. The barbaric tactic worked: the Gurkhas broke their contract and left the country, prompting the Sierra Leone regime to hire EO. That said, with all things considered, most PMCs have shown amazing resilience, even in the face of mounting casualties. The GSG incident, for one, stands out as an exception rather than the rule. In Fallujah, the public desecration of the burned bodies of the four Blackwater employees did not make any PMCs leave Iraq. In Angola (see Case Study 4), eleven EO personnel were killed in action and seven others are still missing and presumed dead. Six more EO soldiers died in the Sierra Leone operation (see Case Study 3) and yet the company did not leave prematurely and break either contract.<sup>144</sup> In 1998, UNITA rebels attacked a Canadian-run diamond mine in Angola. Protected by twenty guards employed by the small PMC Teleservices, these men defended the mine for some time before being overrun by the rebels. In the end, eight people died, twenty-four were wounded and ten were taken as hostage.<sup>145</sup>

## Summary

In this chapter, we have discussed how a rapidly deployed PMC could be a competitive alternative to a multinational UN force. In fact, it was shown that PMCs could provide the UN with a RRF at a fraction of what the organization spends on similar missions. For Western governments, hiring PMCs for dangerous missions that are poorly understood or receive little support at home, is often less politically risky than sending national soldiers and the media scrutiny that they may attract. PMCs, for their part, are generally immune to political constraints and consequently, may have better freedom of

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<sup>144</sup> Shearer, *Private Armies and Military Intervention ...*, 43.

<sup>145</sup> Davis, *Fortune's Warriors ...*, 158.

movements. A hired RRF would benefit from these constructs, as PMCs are an inherently more flexible force than a multinational UN force. PMCs have also shown remarkable resilience and determination, even in the face of serious danger. Operating under clear UN directives, a hired RRF could deploy rapidly and bring much needed stability and security to a weak state.

While this proposal has its merits, PMCs are not necessarily the panacea of all the UN peacekeeping ills. There are some challenges to their employment as a RRF as well as many unanswered questions with regard to regulating this new actor, but none of these are considered insurmountable. These topics will be discussed in the last chapter of this paper.

In the late 1990s, Aviation Development Corporation (ADC) was contracted by the Central Intelligence Agency (CIA) to fly intelligence-gathering mission as part of counter-narcotics operations in Peru.

In April 2001, ADC directed a Peruvian air force jet to attack a floatplane suspected as taking part in drug trafficking and smuggling. Unfortunately, instead of carrying drug runners, the plane was transporting a family of missionaries. The pilot was badly wounded and a mother and her seven-month-old daughter were killed. The interdiction program was suspended immediately.

A Congressional investigation was held in October 2001, but because of the covert nature of the CIA program, little was learned, although the CIA was cited for its lack of proper supervision. In the end, ADC lost the contract.

Unable to secure any other contracts, the firm went out of business in January 2002.

Source: Spearin, "*Accountable to Whom?...*", 10-12.

### **Case Study 5 – The Case of Aviation Development Corporation**

## 7. LIMITATIONS TO A HIRED RRF AND PROPOSED REGULATIONS

We have seen that for the UN, there would be many advantages to hire a PMC as its RRF. There are also several limitations that will be the topic of this chapter. These limitations can be grouped in two large categories: contractual issues and accountability issues. The matter of the contract is a delicate issue. As discussed, a PMC is a business corporation and as such must stay profitable in order to survive. Problems may arise when the firm's actions are motivated by its financial bottom line. In these occasions, the aim of the firm and those of the employer may not always correspond. Another challenge to surmount is the question of accountability that surrounds the employment of a PMC. Ultimately, the paper will argue that these limitations can indeed be easily overcome and it will propose ways to regulate the private military industry.

### **Contractual Issues**

Because, in the end, the deployment of a hired RRF would be a business transaction, it has been suggested that unsavoury practices may seep into the mixture and further cloud the fog of war. For instance, a PMC may find it in its advantage to 'prolong' its involvement in the conflict and thereby collect a larger payment.<sup>146</sup> Conversely, the PMC may find the financial arrangements less favourable than initially envisioned and diminish its services accordingly in order to keep its balance sheet in the black and protect its corporate assets.<sup>147</sup>

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<sup>146</sup> Shearer, *Private Armies and Military Intervention ...*, 70.

<sup>147</sup> Singer, *Corporate Warriors...*, 157.



Contractual disputes could also prove to be somewhat of a problem. Consider the July 2000 GTS Katie incident for example. The ship was carrying back Canadian Army equipment from the Balkans when the captain decided not to deliver the cargo while a financial dispute between sub-contractors was ongoing. Lasting almost two weeks, the matter was greatly embarrassing to the Canadian government. In the end, the ship was boarded and escorted back to the mainland. It is not inconceivable, therefore, that a hired RRF involved in a financial dispute with the UN could disrupt the operation in hope of settling its demand.

Although all these scenarios are technically possible, they are also highly improbable. Here is why: it is somewhat unlikely that a firm would try to prolong its contract, hold equipment ransom or cut corners in order to get larger payments since such an act would basically destroy the reputation of the firm and almost guarantee that it would never again receive a contract. Granted such actions may happen once, but that would be the extent of it. It is doubtful, for instance, that the Canadian Government (or any other government that took notice of the incident, for that matter) will ever hire the Third Ocean Marine Navigation Co., the American company that owns the Katie, for any more shipping of its military equipment. In addition, firms know that quality and efficiency will be rewarded by future contracts.<sup>148</sup> EO, for instance, received its Sierra Leone contract (Case Study 3) because of how well it accomplished its mission in Angola (Case Study 4). Undoubtedly, as it has been pointed out by Thomas Adams, PMCs,

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<sup>148</sup> Brooks, “*Messiahs or Mercenaries?...*”, 130.

because of their business nature, “must seek good public relations and control the actions of their employees in order to get new contracts.”<sup>149</sup>

Some commentators have advanced that the worst-case scenario involves the PMC judging that the risks are too great and deciding to pull out altogether. In this scenario, the situation deteriorates to such a degree that the PMC prefers breaking its contract instead of staying. Nevertheless, we have seen how PMCs have shown great resilience, even in the face of mounting casualties. In addition, as noted earlier, the GSG incident in Sierra Leone is very unusual and not at all indicative of most PMCs. Consider, for example, that currently in Iraq, there are over 60 different PMCs employing over 20,000 people. There have been hundreds of employees killed and wounded. Several were even beheaded but, to date, none of the PMCs have pulled out. In May 2003, Pentagon officials were quoted stating how pleased they were with the overall reliability of the PMCs and specifically while under fire.<sup>150</sup>

There is a much higher chance that, if anything, individual employees may find the risk too great and no longer worth their salary. Unlike states’ soldiers who can be prosecuted for desertion, there are no similar mechanisms for PMC employees. A civilian does not have “unlimited liability” and as a result, is under no obligation to stay in harm’s way.<sup>151</sup> Many will remember the famous 1976 incident in Korea. After tensions escalated to dangerous levels, large number of civilian contractors requested to

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<sup>149</sup> Adams, Thomas K. “Private military Companies: Mercenaries for the 21<sup>st</sup> Century,” *Small Wars & Insurgencies*, Vol.13, No.2, (Summer 2002), 64.

<sup>150</sup> Yeoman, “Soldiers of Good Fortune...”

<sup>151</sup> Spearin, “The Emperor’s Leased Clothes...”, 255.

be taken out of the no-man's land zone.<sup>152</sup> Another example is provided by ATCO Frontec that was contracted by Canada to provide logistical support for its troops in the Balkans. Unhappy with their working conditions, many employees demanded to be returned home.<sup>153</sup> In the end, the operation was not jeopardized but created unnecessary discomfort to the soldiers. A similar problem occurred in 2003 when U.S. troops deployed to Iraq. Soldiers had to make do with very poor living conditions when some of the civilian contractors hired by the Army to provide logistics failed to show up.<sup>154</sup>

Overall though, it has been found that PMCs are not only resilient, they are also reliable. Some employees may quit but generally speaking it has never happened to a level that has endangered the mission. Considering how dangerous Iraq has been for PMC employees, commanders, who had expected large scale defection by civilian employees once the fighting started, were surprised to note that only a few employees did, in fact, leave.

This brings us to the more common and serious contractual problem of fraud and overcharging. Dishonest dealings could lead a PMC to pad its personnel list with 'shadow employees' and fictitious sub-contractors. As Singer wrote, "you pay for a \$US 500 hammer once but you pay for superfluous employees every salary period."<sup>155</sup> Along with these irregularities comes the difficulty of measuring the quality of the service being delivered since the operation may be occurring on or near the front lines. Consider, for

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<sup>152</sup> Castillo, "*Waging War with Civilians...*"

<sup>153</sup> Singer, *Corporate Warriors...*, 162.

<sup>154</sup> Spearin, "*The Emperor's Leased Clothes...*", 248.

<sup>155</sup> Singer, *Corporate Warriors...*, 155.

example, the case of Brown & Root Services (BRS) in Kosovo. Contracted to provide the logistic support to the U.S. soldiers deployed as part of the NATO peacekeeping effort, the firm has been accused of overstaffing and overcharging the Army on over 224 projects.<sup>156</sup> With revenues of over \$US 16 billion a year and a payroll of more than 100,000 employees, Halliburton, who specializes in the delivery of logistic services, is the largest PMC in the world.<sup>157</sup> Even Halliburton is now under investigation for allegedly overcharging fuel charges by more than \$US 100 million while working in Iraq.<sup>158</sup>

Lastly, it has been found that there is a definite incentive for a PMC to low-ball the initial bid.<sup>159</sup> The idea is to get the contract at all costs since most PMC are aware that once deployed, costs increase and ‘unforeseen expenses,’ can always be billed to the unsuspecting client. What makes it worst is that the client is already so committed that very few alternatives may be possible.<sup>160</sup> Increased competition within the industry, however, may be changing the perception that once awarded, the contract becomes a virtual monopoly. In 1997, BRS lost its lucrative Kosovo contract to rival DynCorp although BRS was the one already in place and fully established.<sup>161</sup>

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<sup>156</sup> *Ibid.*, 141-142.

<sup>157</sup> Halliburton currently has 14 major contracts with Washington including a \$US 7 billion deal to restore the Iraqi oil industry. See Cooper, “*Does the Pentagon rely too much on...*”

<sup>158</sup> Tom Reagan, “Operation Kickback?” *Christian Science Monitor*, <http://www.csmonitor.com/2004/0423/dailyUpdate.html>; Internet; accessed 22 March 2005.

<sup>159</sup> Singer, *Corporate Warriors...*, 155-6.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*, 146-147.

## Accountability Issues

The serious question of accountability<sup>162</sup> also poses challenging hurdles to jump. When states' soldiers commit human-rights abuses (as some Belgian, Canadian and Italian soldiers did in Somalia), state forces are seemingly held accountable and the soldiers who committed the offence can be judged by a local court (if there is a functioning judicial system in place) or be court marshalled under the code of service discipline of their country of origin. If employees of a PMC commit a similar offence, the culprits are only subject to the domestic laws of the host country. Unfortunately, some failed states are basically lawless which means that most perpetrators may end up being fired by their employers but may never have to face criminal charges.<sup>163</sup>

Consider the case of the DynCorp employees in Kosovo who, in 1999, were involved in a sex-trafficking scandal. The implicated men were fired and returned to the U.S. where they will probably never see a court of law.<sup>164</sup> In 2000, the U.S. passed the Military Extraterritorial Jurisdiction Act (MEJA) in order to close loopholes and prevent further incident like the DynCorp scandal.<sup>165</sup> This Act (which obviously applies only to

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<sup>162</sup> Spearin argues that there is a need to improve the accountability of PMCs in light of several inconsistencies, limitations and irregularities. His analysis uses four often overlapping methods that include political, administrative, market and judicial instruments. See Spearin, "*Accountable to Whom? ...*".

<sup>163</sup> In some cases, such as for American citizens, the domestic laws of their country may also apply as discussed at note 164.

<sup>164</sup> Meanwhile, displeased that its reputation had been severely damaged, the company summarily fired the two employees who had exposed the scandal. Both of these employees are now suing DynCorp. See Spearin, "*The Emperor's Leased Clothes...*", 259.

<sup>165</sup> In June 2004, under the provisions laid out in MEJA, the U.S. Justice Department charged David Passaro, a former Army Ranger and a contractor working for the CIA as an interrogator, for beating to death an Afghan detainee while on duty in Afghanistan. At the time of writing this paper, his trial was still ongoing. See Cooper, "*Does the Pentagon rely too much on...*"

U.S. contractors) extends federal jurisdiction to crimes conducted outside of the U.S. by military members as well as civilians who were employed or accompanying the Armed Forces.<sup>166</sup>

The Abu Ghraib prison scandal provides another example to illustrate the complexity of proper accountability. In this case, seven military personnel have been charged and several have already been court-martialed for their treatment of Iraqi prisoners at the infamous prison. The sentences passed so far have ranged from dishonourable discharges to ten years in a military prison. There were also three civilian employees of the firms Titan Corporation and CACI International Inc. who were incriminated – one is even accused of raping a woman – but it is unclear, at this time, if the PMC employees will ever be convicted for their crimes. Under an edict issued by the U.S. Coalition Provisional Authority (CPA), civilian contractors were protected from prosecution in Iraq for actions committed as part of their official duties. In addition, local Iraqi officials could only prosecute crimes committed during the contractor's free time if coalition administrator Paul Bremer gave his written consent.<sup>167</sup> It is not clear why MEJA could not be enforced in this case but to date, no charges have been laid on these three men.<sup>168</sup> In October 2004, a group of five Iraqis (former prisoners and the wife of a deceased detainee) filed a lawsuit against Titan and CACI.

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<sup>166</sup> For an in-depth discussion on legality involved with civilians in the battlefield, see Guillory, "Civilianizing the force: is the U.S. crossing the Rubicon?...", 111-142.

<sup>167</sup> Joanne Mariner, "Private Contractors who Torture," *CNN International.com*, June 17, 2004, <http://edition.cnn.com/2004/LAW/06/17/mariner.contractors>; Internet; accessed 22 March 2005.

<sup>168</sup> One reason is that MEJA applies only to civilian contractors working for the U.S. Department of Defence on U.S. military facilities. It does not apply to civilians working for the CIA or other U.S. government agencies. See Peter W. Singer, "War, Profits, and the Vacuum of Law: Privatized Military

In contrast, one might be tempted to think that it is easier to keep track on the activities of regular army soldiers since public forces are often under parliamentary scrutiny and political control. But as Tony Lynch and A.J. Walsh have pointed out, states are also typically “reluctant to prosecute their own soldiers for war crimes.”<sup>169</sup> It would also be wrong to argue that professional soldiers may be less prone to commit crimes while on peacekeeping duties than PMC employees would be. There are, indeed, plenty of documented cases that incriminate military peacekeepers. In Somalia, in 1993, Canadian peacekeepers were charged for beating to death a local teenager. In 2001, peacekeepers in Bosnia were accused of corruption and scores of sex crimes.<sup>170</sup> There are reports that, in 2002, while on duty in Sierra Leone, Nigerian and Guinean peacekeepers raped local women, participated in sexual exploitation of many others and even murdered unarmed civilians.<sup>171</sup> And just recently, in February 2005, it was reported that over 50 UN peacekeepers and UN civilian officers are facing an estimated 150 charges of sexual exploitation and rape while on duty in the Congo.<sup>172</sup>

In the end, even if professional soldiers and PMC employees have an equal propensity to commit criminal activities, for the UN RRF concept to work, legal liability cannot be ignored. The paper will argue that these obstacles can be overcome. At the

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Firms and International Law,” *Columbia Journal of Transnational Law*, Volume 42, Number 2, (Spring 2004): 537.

<sup>169</sup> Lynch and Walsh, “*The Good Mercenary ...*”, 147-148.

<sup>170</sup> Michelle Malkin, “U.N. Scandal in the Congo,” *The Washington Times*, 18 February 2005; <http://washtimes.com/commentary/20050217-084152-2757r.htm>; Internet; accessed 19 April 2005.

<sup>171</sup> Human Rights Watch, *World Report 2002 – Sierra Leone*, <http://www.hrw.org/wr2k2/africa10.html>; Internet; accessed 1 April 2005.

<sup>172</sup> Malkin, “*U.N. Scandal in the Congo...*”

end of this chapter, the paper will propose robust and efficient mechanisms to regulate PMCs, but first, the relationship between PMC employees and the LOAC must also be discussed.

### **LOAC Implications**

The issue of the legal status of the PMC employee as a civilian on the battlefield is ill defined in the LOAC. Civilianisation of warfare basically goes against the principles of the LOAC that were drafted in part to protect the non-combatants, i.e., the civilian population. Basically, civilians were immune from being targeted as long as they did not take part in the hostilities. PMC employees are not soldiers; so technically, they fall within the larger classification of ‘civilians.’ The difficulty is that Type I PMC employees are ‘civilians’ that are actively involved in the prosecution of warfare. As such, these ‘civilians’ risk losing their immunity from being targeted. More importantly, they also risk to be considered unlawful combatants and in consequence, lose their entitlement to Prisoner of War (PoW) status.<sup>173</sup>

One way to circumvent this problem would be for the UN to devise a system similar to what the PNG government did with the Sandline employees and designate the RRF members as ‘Special Constabularies’ of the UN (see Case Study 2). This official sanction would certainly be enough to satisfy the requirements of the LOAC and confer to

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<sup>173</sup> Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada 2001), 160.



those PMC employees the title of lawful combatants with all the privileges that this status brings.<sup>174</sup>

### **Regulatory Mechanisms**

Many contractual and accountability issues were raised in this chapter. The last section of the paper will propose regulatory mechanisms designed to protect both the employer (the UN) and the employed (the PMCs).

As stated earlier, PMCs are business corporations and as such, they must protect their reputation if they want to remain profitable. Most PMCs realize that the maintenance of a good reputation as a respectable organization is the only way to instill confidence in customers, win contracts and ultimately, earn a profit. To illustrate this point, see the story of ADC, featured in Case Study 5. Disreputable, careless or unprofessional firms will not last long. Eventually, the word will spread around and those PMCs will be unable to secure any more contracts. In a way, the preservation of the firm's reputation can, by itself, act as a powerful self-regulating mechanism.

There is no denying, however, that contractual irregularities are far too common. Frauds, cost over-runs and ineligible expenses have eaten away at the benefits presumably gained through privatization and outsourcing.<sup>175</sup> This has the potential to discourage a prospective employer and ultimately, threaten and destabilize the entire industry. All of these matters are serious but none are insurmountable. At the end of the

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<sup>174</sup> For an in-depth analysis of the legal status of civilian contractors involved in warfare see Major Lisa L. Turner and Major Lynn G. Norton, "Civilians at the tip of the spear – Department of Defense total force team," *Air Force Law Review*, Spring 2001, <http://www.findarticles.com>; Internet; accessed 29 October 2004.

<sup>175</sup> Spearin, "*The Emperor's Leased Clothes...*", 256.

day, a well-written, flexible contract would ensure de-facto accountability.<sup>176</sup> This is extremely crucial, as the hired PMC would act as an official agent of the UN. As illustrated in Case Study 1, a PMC that is hired by a government (in our case the UN) becomes, in effect, a proxy for that organization. In other words, once contracted, a PMC would essentially become an extension of UN policy and, once deployed, its employees would become UN diplomats on the field.<sup>177</sup> For all these reasons, the contract would have to be carefully crafted and incorporate payment provisions as well as safeguards (such as escape clause and penalties) and have performance incentives to encourage the PMC to complete the task in due time.

No less vital is the necessity for a comprehensive system of performance monitoring, including clear and verifiable standards.<sup>178</sup> Opponents would say that once you factor in the ‘fog of war,’ monitoring would be almost impossible. Therefore, one proposed solution would be to dispatch neutral and independent observers to the mission to ensure that the firm meets its contractual obligations.

There is an understanding amongst PMCs that by conducting business dealings openly, firms gain legitimacy and trust. In fact, Sandline was one of the first in the industry to advocate the idea of transparency for PMCs, the overriding principle being that honest dealings do not need to be hidden. Furthermore, it is also reasonable to believe that this would advantage the PMCs who are constantly trying to distance

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<sup>176</sup> Shearer, “*Private Armies and Military Intervention ...*”, 69.

<sup>177</sup> Singer, *Corporate Warriors...*, 236.

<sup>178</sup> Singer, *Corporate Warriors...*, 152-168 and Davis, *Fortune’s Warriors ...*, 183-196.

themselves from the stigma of mercenarism and prove that they are legitimate business enterprises.

In addition, a licensing system similar to the one already in place in the U.S. should become mandated industry-wide. For the PMCs themselves, the benefit of licensing would amount to “a badge of quality,” that would improve its marketability and respectability, hence enhancing its employability.<sup>179</sup> Licensing would not need to be a complex procedure. Kevin O’Brien proposed a three steps process for licensing PMCs:<sup>180</sup>

- Step One: Licensing of the company: All PMCs would need to register in their home states.
- Step two: Licensing the service capabilities: The PMCs would need a license for each of the different type of services provided.
- Step three: Licensing the individual contract: The PMCs would need a license before undertaking any contractual work.

Essentially, all PMCs would need a license from their home state before being allowed to work abroad, in the same ways that is required of arms exporting companies.<sup>181</sup> To receive a license, the firm would need accredited by a government official, in a process similar to the way an airline company or a college must pass certain criteria in order to be licensed. Licenses would then be awarded for the different category of services provided by PMCs (Type I to IV). Finally, each contract would need to be approved by the PMCs’ home state as well. This would allow governments a measure of

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<sup>179</sup> Jackson ““War is Too Serious a Thing to be Left to Military Men’...”, 39-43.

<sup>180</sup> *Ibid.*, 44.

<sup>181</sup> U.S. companies, for example, must obtain a license from the State Department under the International Transfer of Arms Regulations (ITAR) before being allowed to sell arms overseas. See United Kingdom, “*Private Military Companies: Options for Regulation ...*”, 24.

control on the activities of the PMCs as well as a certain assurance that the firm is not acting in conflict to the foreign policy objectives of the state as the English East India Company did in the 18<sup>th</sup> Century. From this list of accredited and licensed firms, the UN could, as it has been suggested, “establish a database of fully vetted and transparent firms that are clear for hire.”<sup>182</sup>

The last facet to examine with regard to regularising the activities of PMCs is the question of legality. As we have seen, local courts are more often than not inadequate and MEJA only applies in certain cases. Should we believe, then, as Singer suggested, that PMCs are only subject to the laws of the market?<sup>183</sup> Clearly, this would not be acceptable. There is a definite need to have fail-safe mechanisms in place that permits the prosecution of individual employees or the even the firm itself should a war crime occurs or any of the LOAC are violated. This paper suggests that such an instrument could be an ad hoc tribunal or preferably, the newly established International Criminal Court (ICC) that became functional 1 July 2002.<sup>184</sup> The ICC would certainly have the power to investigate any suspicious activities committed by members of a UN RRF and probably constitute the best way to prosecute criminal activities.<sup>185</sup>

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<sup>182</sup> O’Hanlon and Singer, “*The Humanitarian Transformation...*”, 96. See also Singer, “*War, Profits, and the Vacuum of Law ...*”, 545.

<sup>183</sup> Singer, *Corporate Warriors...*, 220.

<sup>184</sup> The ICC is “the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.” See “The International Criminal Court,” <http://www.icc-cpi.int/about.html>; Internet; accessed 30 March 2005.

<sup>185</sup> It should be noted that the U.S. is seeking Article 98 of the Rome Statute exemptions from the jurisdiction of the ICC for all Americans. See Spearin, “*The Emperor’s Leased Clothes...*”, 254-255.

In order to provide yet another layer of control and to ensure the proper behaviour of a hired RRF, the International Red Cross Committee or an independent military observer could also be charged to report on the combatants' adherence (or lack of) to the LOAC.<sup>186</sup> Finally, employees, as part of their contract, would have to agree to observe the LOAC and furthermore, agree to waive their opposition to extradition to third party states that have universal jurisdiction laws should they be indicted for war crimes.

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<sup>186</sup> Both Singer and Shearer suggested that this monitoring function could be done adequately by the International Committee of the Red Cross. See Singer, "*War, Profits, and the Vacuum of Law ...*", 546 and Shearer, "*Outsourcing War...*"

## 8 – CONCLUSIONS

At the beginning of this paper, we set out on a discussion that started with mercenaries and their impact in history. It was shown that from the Condottieri to *Les Affreux*, mercenaries have had an enduring effect throughout the Ages. We also saw that on the battlefield, mercenaries have fought with varying degree of success. At times they helped bring about great successes and other times they were responsible for loathsome acts of brutality and racism. It was also pointed out that mercenarism, as the sole provider of warriors and skilled military strategists, lost its monopoly on warfare and violence with the advent of statehood. Citizen armies, as we know them today, gradually turned out to be the norm. In time, the ability to provide security to its citizens became one of the most defining characteristics of a state. Today, we concluded, mercenarism is an ad hoc underground operation of illegal activities and one of little strategic importance. PMCs have, in contrast to mercenaries, become an extremely important actor in the prosecution of war.

It was then made quite clear that PMCs are not mercenary companies. It was stressed that PMCs are the result of market forces and the direct consequences of the privatization of the state's social and economic activities. Worldwide military forces downsizing, the end of the Cold War, an increased in intra-states conflicts as well as Western governments being unwilling (not wanting to get tangled up in complicated quagmires) or unable (over-committed military forces) to get involve, are the principal reasons for the high demand for security. Not surprisingly, PMCs, which specialize in services centered on the provision of security, found an amazingly rich market for their services. The time has come for the UN to shake the idea that PMCs are mercenary units

and benefit from their expertise and cost savings. A reputable PMC could provide the UN with its long-desired RRF composed of highly trained, professional and well equipped troops.

The UN needs experienced troops to restore peace quickly before the situation becomes overly chaotic but is not always able to get states to commit troops for unstrategically or unimportant places. In this era of LICs and brutal ethnic conflicts, poorly equipped and ill-trained peacekeepers from third rate militaries cannot accomplish these highly complex missions and may, in fact, even make matter worse. The paper proposed that the best solution to an impending human catastrophe would be to contract a PMC to provide an emergency RRF that could quickly act to stabilize a situation. Once the situation would be under control, professional peacekeepers could be deployed and take over from the PMC. Today's PMCs have the expertise for such a challenge. Many have had extremely valuable field experience already, not only with the UN, but with other organizations as well.

The paper also demonstrated that hiring a PMC far outweighs the potential disadvantages that they may bring about. A PMC can deploy more rapidly and for a lower cost (both in real terms and in political terms) than a conventional UN peacekeeping force. The paper also showed that private actors are generally immune to political constraints and are inherently more flexible than a multinational UN force. PMCs are not controlled by casualty adverse governments. In addition, PMCs have also shown extreme resilience and determination, even in the face of serious danger. Operating under clear UN directives and Rules of Engagement (ROE), a hired RRF could

deploy rapidly and bring much needed stability and security to a weak state needing assistance.

The paper explored some of the past contractual irregularities and showed that albeit serious, there are ways to regulate these matters. It was proposed that only carefully vetted and licensed firms should be allowed to be hired to represent the UN as its RRF. Furthermore, it was suggested that a comprehensive system of performance monitoring accomplished by an independent observer should provide enough oversight to satisfy all contractual demands.

The paper also proposed solutions to the issue of the legitimacy aspect of a hired RRF. It was suggested that the RRF personnel receive the title of ‘Special Constabularies’ of the UN. It was also suggested that International Red Cross personnel be invited to observe the RRF’s activities at any given time the force is deployed. While so employed by the UN, the PMC and its employees would be under obligation to adhere to the LOAC. Finally, any deviations or criminal activity committed by any members of the RRF would be liable to be prosecuted by the ICC.

PMCs are a relatively new and evolving phenomena. While this paper explored many facets surrounding this new actor, several areas remain to be investigated. Stemming from the findings of this paper are issues that will need further study. The exact mechanisms and legality with regard to hiring and employing a PMC as a RRF will need to be worked out in greater detail. How will possible missions be approved? Who



will pay for the PMC and the UN Observers? Those questions and many others, no doubt, have been raised by this paper and will certainly require further research.

It is reported that, at the height of the Rwanda crisis, Kofi Annan became so desperate for troops that he even considered hiring DSL to stop the genocide. “The world may not be ready to privatize peace” were his words at that time.<sup>187</sup> In today’s violent and unstable world, demand for security is bound to continue to grow. Maybe now, more than ten years after Rwanda, the world is ‘readier’ to privatize peace.

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<sup>187</sup> See Fidler and Catan, “*Private Military Companies Pursue the Peace Dividend ...*” and Spearin, “*Private Security Companies and Humanitarians...*”, 37.

## ANNEX A: THE DIFFICULTY IN DEFINING MERCENARIES

Defining a mercenary today is a difficult proposition. David Isenberg writes how states have been struggling for years to find an acceptable definition to mercenaries.<sup>188</sup>

Of note is the effort made by African states that have long called for the complete banishment of mercenarism. In 1972, a concise definition of mercenary was adopted by the Organization of African Unity (OAU) Convention (now the African Union) for the Elimination of Mercenarism in Africa. The Convention defined a mercenary “as anyone

who is not a national of the state against which his actions are directed, is employed, enrolls or links himself willingly to a person, group or organization whose aim is:

- (a) to overthrow by force of arms or by any other means, the government of that Member State of the Organization of African Unity;
- (b) to undermine the independence, territorial integrity or normal working institutions of the said State;
- (c) to block by any means the activities of any liberation movement recognized by the Organization of African Unity.”<sup>189</sup>

This definition was useful to the OAU but was never recognized internationally. At least one commentator has also pointed out that the document fell short of the mark because, for one thing, there was no mention of pay, a hallmark of a mercenary.<sup>190</sup>

Nowadays, the most widely accepted legal definition of a mercenary is found in Article 47 of the 1977 Protocol I addition to the 1949 Geneva Conventions. The Article 47 definition states that a “mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a dire

- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party<sup>191</sup>;
- (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) is not a member of the armed forces of a Party to the conflict<sup>192</sup>; and
- (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.”<sup>193</sup>

This definition is not, nevertheless, without problems. Critics have argued that the definition is too specific to be useful.<sup>194</sup> To be labelled as a mercenary, all six conditions would have to apply. Also note that both France and the U.S. are not signatories to the Convention, which further weakens it.

Of note, the 1977 Protocol also stipulated that mercenaries would no longer be entitled to PoW status. This is an important consideration as it is essentially making mercenarism an illegal activity. Therefore, any captured mercenary risks getting summarily executed or killed with impunity by other warring factions.

In 1989, the General Assembly produced the *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries*. The document was not widely accepted and very few states became signatories to the convention. To look into

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<sup>191</sup> The paper discussed how establishing a ‘desire for private gain’ is often difficult to prove. See Chapter 2.

<sup>192</sup> Mercenaries found an easy way to work around this criterion. Sandline personnel were designated as ‘Special Constables’ by the PNG government. See Case Study 2.

<sup>193</sup> Department of National Defence, “*Collection of Documents on the Law of Armed Conflict ...*”, 160.

<sup>194</sup> See Singer, *Corporate Warriors ...*, 40-44, Davis, *Fortune’s Warriors ...*, 47-49 and Shearer, “*Private Armies and Military Intervention ...*”, 17-18.

this issue, the UN appointed Mr. Enrique Bernales Ballesteros as a *Special Rapporteur* on the subject of mercenaries. The convention is now in force as it was finally ratified by the minimum amount of signatories in October 2001. At that time, Costa Rica became the 22nd state to ratify the convention.<sup>195</sup>

In his 1997 report, Mr. Ballesteros did not attempt to define mercenaries as such. He simply used Article 47 of the 1977 Protocol, a definition that he, himself, declared as completely insufficient.<sup>196</sup> Of note, the *Special Rapporteur* also stated in his report that PMCs “cannot be strictly considered as coming within the legal scope of mercenary status.”<sup>197</sup> This point is also made by Singer who wrote that the status of PMCs continues to be somewhat ambiguous under international law as there are no instruments that define them in exact terms.<sup>198</sup>

And so, at the time of writing this paper, the only enduring definition of a mercenary remains the one provided by the Geneva Convention and its Additional Protocols.

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<sup>195</sup> Ironically, three of these signatories (Angola, the former Yugoslavia and the former Zaire) have gone on to employ mercenaries. See Shearer, “*Outsourcing War...*”

<sup>196</sup> Davis, *Fortune's Warriors ...*, 61.

<sup>197</sup> Office of the UN High Commissioner for Human Rights, *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination (E/CN.4/1997/24)*, 20 February 1997, <http://www.hri.ca/forthrecord1997/documentation/commission>; Internet; accessed 7 March 2005.

<sup>198</sup> Singer, “*War, Profits, and the Vacuum of Law ...*”, 534.

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