PRIVATISATION OF CONFLICT,
SECURITY AND WAR

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Abstract

The paper assesses the general trend towards privatisation, in the developed as well as the developing world, where even “high politics” is increasingly performed by, or outsourced to, non-state actors. This is both the case for foreign and security politics, including war, where the use by states (as principals) of agents such as guerrilla movements, militias and private military companies (PMCs) is becoming more frequent. The special case of PMCs is analysed at length, coming out in favour of a combined legalisation and regulation, which is found to open up opportunities for military missions such as humanitarian interventions, not least in Africa, which would otherwise not be undertaken.
I. The Privatisation Trend

1.1 THE NAME OF THE GAME

Privatisations seems to be “the name of the game” in the first decade of the 21st Century, just as it was in the last one of the 20th—and this goes both for the global North and South and for relations between the two.

- In the global North, most of the productive capital has all along been privately owned. More recently, a growing number of those order, infrastructure and welfare functions which were previously believed to be the natural prerogative (or obligation) of the state have been outsourced to private contractors—usually in the name of improving efficiency. Moreover, as only profitable ventures lend themselves to outsourcing and privatisation, the state tends to be left with only such functions as cannot be made profitable, thus supporting the view of the state as, by its very nature, inefficient, thereby promoting further privatisation.

- In the global South, i.e. the developing countries of the Third World, where formerly the economic role of the state was paramount and where huge parastatal companies used to figure prominently in the economy, privatisation has made considerable headway, e.g. in countries such as Ethiopia and Mozambique. It is being promoted (e.g. under the label “austerity”) by organisations (or initiatives) such as NEPAD, and most countries (even some ostensibly Marxist ones) have pledged support to the ideology of privatisation, even if they have yet to implement it in practice.

- In the realm of North-South relations we find is, first of all, the pressure exerted by donor countries, IFIs and international organisations such as the Bretton Woods organisations (e.g. via structural adjustment programmes) on Third World governments to liberalise and privatise their economic systems in conformity with the neo-liberal “Washington consensus”. Secondly, seeking to further participatory democracy the North also promotes civil society organisations, thereby weakening the role of the state. Thirdly, both development aid and emergency relief from North to South is increasingly being channelled via NGOs and/or private companies (vide infra).

For good or bad, this general trend of privatisation seems to be an incontestable fact, and likely to continue. What makes much more sense than ideologically-based condemnations is therefore to approach the matter constructively, seeking ways to make the best of privatisation.
We shall thus trace the privatisation trend from external relations in general, and conflict management efforts in particular, to the domain of security. The latter is subdivided into domestic and external security, but the main focus is placed on the latter, more precisely on the progressive commodification and privatisation of war. Special emphasis is placed on the relatively new phenomenon of private military companies (PMCs), where the pros and cons of banning or regulating are analysed.

1.2 PRIVATISATION OF EXTERNAL RELATIONS

Privatisation even seems to extend into what was previously the exclusive domain of the state namely public goods such as internal and external security, i.e. the provision of domestic law and order, the maintenance of external relations and the defence of the state (and, by implication, its citizens) against aggression from abroad.

External relations in general seem to be increasingly privatised. Figures 1 and 2 illustrate, from the vantage point of the individual state, the difference between what might be called the “classical” and “modern” paradigms of foreign policy. Under the former, the state, personified by the sovereign ruler or his agents, simply entered into relations with its counterparts in other countries, forging alliances, signing treaties or issuing declarations of war. There were neither any actual involvement of other (private) actors, nor any expectations thereof, and there was a very clear demarcation line between the “inside” (where the state was sovereign) and the “outside” where the state interacted with other sovereign states.10

The picture is somewhat more complex in modern foreign policy, where additional actors have made their appearance. “Inside”, the state has to interact with private actors such as businesses and civil society and it has to take the views of private individuals (i.e. public opinion) into

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Fig. 1: Classical Foreign policy

State A

<table>
<thead>
<tr>
<th>Inside</th>
<th>Outside</th>
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</thead>
<tbody>
<tr>
<td>State A</td>
<td>State B</td>
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<tr>
<td>State C</td>
<td>State D</td>
</tr>
</tbody>
</table>

Fig 2: Modern Foreign Policy

Civil society

<table>
<thead>
<tr>
<th>Inside</th>
<th>Outside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public opinion</td>
<td>Internat. Organ.</td>
</tr>
<tr>
<td>Business</td>
<td>States</td>
</tr>
<tr>
<td>Business</td>
<td></td>
</tr>
</tbody>
</table>

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account, if only because the incumbent rulers depend on the consent of the citizens, e.g. in their capacity as voters.11 “Outside”, actors such as private international business interests (e.g. transnational corporations) have assumed a major role as have international organisations such as the League of Nations and its successor, the United Nations and a wide range of functional and/or regional organisations.12 The demarcation line between inside and outside has become perforated, as the state no longer enjoys a complete monopoly on external relations, even though it remains the most important link between the inside and the outside. Just think of the role played by private firms, missionary societies and the international anti-slavery movement in the colonisation of Africa in the late 19th Century.13

Figure 3 illustrates the much more complex picture of what we may, for lack of a better term, label “post-modern foreign policy”.14 Under the impact society of what is usually referred to as “globalisation”,15 the demarcation line between the inside and outside has become very blurred indeed, as the world is approaching the status of a single space, thus arguably even making the term “foreign policy” something of a misnomer. A number of new actors have made their appearance, but the most significant change is that they no longer interact with the rest of the world via their respective states, but partly establish their own external relations, both with their counterparts in other countries and with other types of actors16 The resultant international system is tantamount to a partial privatisation of external relations and has aptly been described as a “cobweb”.17

Such a post-modern system features both symmetrical and asymmetrical relations. Among the former, where “like interacts with like”, are the following:
• States, of course, continue to interact with other, but each state is increasingly being influenced by other domestic actors such as the media, public opinion and private business, an influence which it also seeks to counteract, e.g. by influencing public opinion through a media policy.

• Civil society\(^{18}\) exists both within each state and at an international level, inter alia in the form of international NGOs\(^{19}\) (INGOs). Even the national NGOs in different countries, however, are able to interact directly with each other,\(^{20}\) thus forming a network which might be conceived of as an emergent “international civil society”\(^{21}\).

• Business, likewise, exist both in individual countries, interacting (e.g. in the form of trade) with private firms in other countries, and as transnational corporations, capable of transferring resources and profits across borders within the corporation.\(^{22}\)

• The media also increasingly collaborate across border, e.g. via the large multinational news corporations and TV stations such as CNN.\(^{23}\)

• Finally, if only by virtue of the growth of the tourist industry, individuals interact with each other across borders to an increasing extent, which is further facilitated by such innovations in information technology as the internet and the cellular phone, allowing just about anybody to be in contact with anyone else in “real time” and at an affordable price.

Among the asymmetrical relations one might mention the fact that states, international organisations, NGOs and private firms are increasingly forced to interact with each other, e.g. because business is concerned about the possible impact of NGO activities via the media on their sales (see below on the Kimberley process); because states as well as international organisations and even NGOs to a growing extent outsource parts of their activities; and because actors depend on some degree on public acceptance and goodwill from the general public, both nationally and internationally, hence have to collaborate with NGOs and the media.\(^{24}\) One manifestation of this emerging “states-IGO-NGO-media-business complex” is the establishment, under the auspices of the UN, of a “Global Compact”.\(^{25}\) All of the above may amount to a real “retreat of the state”,\(^{26}\) as argued by Richard Falk:

All states, no matter how militarily potent and economically formidable, have become to a significant degree “quasi-states” while real states, if these persist at all, are a hopelessly endangered species of political animal whose reality is subject to various forms of doubt.\(^{27}\)

However, it may also be the case that the total amount of required governance has simply grown, inter alia as a consequence of the increasing density of interaction and the growth of “complex interdependence”,\(^{28}\) and the resultant need for the provision of global public goods.\(^{29}\) Other
(categories of) actors may simply have relieved the states of some of this growing governance burden by taking over their shares. Even though it has primarily been used about the EU, the term “multilevel governance”\textsuperscript{30} may thus be applicable to global governance as well.

1.3 PRIVATISATION OF DIPLOMACY AND CONFLICT MANAGEMENT

Not only have non-state, i.e. private actors thus intruded into what was formerly the exclusive domain of the state, i.e. diplomacy in general,\textsuperscript{31} but they have also ventured into what used to be considered the “hard” and “high-politics” segments thereof, i.e. issues of peace and security. This was already the case of the peace movements during the Cold War,\textsuperscript{32} but they tended to collide with the states, rather than interacting with them in any meaningful sense of the term—thus perhaps inadvertently strengthening rather than weakening the state’s role in this domain. For the last decade or so, however, forms of actual collaboration have developed.

Part of the explanation, at least as far as the North is concerned, is that these issues have ceased being high-politics, simply because of the disappearance of serious threats to the security of these countries with the end of the Cold War. Most uses of military force by western countries thus have to do with “saving strangers” through so-called humanitarian intervention,\textsuperscript{33} with peacekeeping, or with training activities—e.g. under the auspices of NATO’s PfP programme\textsuperscript{34}—none of which have any real impact on national security. Other activities only involve armed forces in subordinate and auxiliary roles, where the main activity is “conflict management”, including prevention and mitigation. This is where we have seen the most substantial involvement of private actors, in several capacities.\textsuperscript{35} NGOs have thus been engaged, usually with the (explicit or tacit) consent of the states involved, in the following types of activities.\textsuperscript{36}

- Some such as Human Rights Watch, Amnesty International, International Alert, the International Crisis Group and Global Witness are involved in observing and reporting from crisis spots, either about security or human rights issues, mainly addressing their policy recommendations to states and international organisations.\textsuperscript{37}
- Organisations such as Red Cross, Oxfam, the International Rescue Committee and \textit{Médecins sans Frontières} (MSF) are involved in the provision and distribution of humanitarian aid in numerous crisis spots around the world, even though they also seek to raise awareness of crisis situations. For instance, MSF also intends to “acts a witness and will speak out, either in private or in public about the plight of populations in danger”. According to critics, however, the aid provided by these organisations may sometimes exacerbate problems, e.g. by prolonging conflicts, but the same would probably have been the case, if states had provided such aid directly.\textsuperscript{38}
• Others such as International Alert, Search for Common Ground and the Community of Sant’Egidio have been directly involved in conflict resolution activities such as mediation and reconciliation, both at the national and local levels, sometimes interacting closely with national and local NGOs—but occasionally also unwittingly causing harm, e.g. by bestowing legitimacy on groups which really do not deserve it.39

In some cases, NGOs have teamed up with international organisations such as the UN and other actors, including states. This was, for instance, the case of the international campaign to ban antipersonnel landmines.40 More recently, business has also become involved, not only as a target of criticism but also as a (possibly reluctant but nevertheless basically loyal) partner, as in the global campaign against “blood diamonds”, out of which sprang the so-called “Kimberley Process” for a certification of diamonds in order to sever the supply chains of the RUF in Sierra Leone and UNITA in Angola.41 Even though states were involved, there is no doubt that the initiative was private.

2. Privatisation of Domestic Security

Internal security is increasingly being privatised as private security companies (PSCs) and other non-state agents supplant state agencies as providers of individual security. This phenomenon has been visible in both first and third world countries, albeit perhaps for slightly different reasons.

In the first world both companies and private citizens make extensive use of private security guards as well as a wide range of technical means of self-protection provided by private companies, and the more so the richer they are.42

In the third world life is all too often just as “solitary, poor, nasty, brutish, and short …”,43 as described by Hobbes in his account of society in the state of nature, representing a perpetual bellum omnium contra omnes. This permanent “state of war”, according to Hobbes, stemmed from the basic equality of man in terms of abilities as well as of needs, which made every man the natural contender of his fellow human beings for the scarce available resources—hence: homo homini lupus. The only escape from the resultant dilemma between “anticipation” (i.e. attack) and extinction was the establishment of the state (the “Leviathan”),44 endowed with a monopoly, or at least an overwhelming preponderance of power. However, if the Leviathan’s administrative capacities degenerate, including its ability to ensure personal safety of its citizens, it may well find itself on the path towards a “privatisation of security” as has happened to several states, not least in Africa.45 If the police and other security services are unreliable, citizens and companies tend to resort to self-help, e.g. by soliciting the services of private security companies or by arming
themselves for protection (as we have seen in a country such as South Africa), but thereby only hastening the decline of the State’s “monopoly on the legitimate use of force”. This tends to gradually produce a vicious circle where violence spurs a proliferation of small arms, in its turn producing more violence, and sometimes forcing citizens to accept the protection provided by organised crime, i.e. joining a protection racket.

However, personal insecurity does not only stem from state weakness or collapse, but occasionally also from an excess of state power. Even though the state was presumably “created” for the sake of its citizens’ security, it can also constitute a threat to their security, as was the case of the apartheid state of South Africa and of the Rwandan state during the 1994 genocide.

3. Commercialisation of War: Rebels, States and Warlords

Not only are the twin distinctions between, on the one hand, state and private agencies and, on the other hand, internal and international breaking down, but the picture is further blurred by what might be called the “commercialisation of state activities”, as when state agents perform what are “naturally” private functions intended to promote private goods. Just as private actors have thus taken over “natural” state functions, the state has also in some cases diverged from its role as the provider of public goods such as order and national defence and ventured into the realm of private actors, thus further blurring the distinctions. This is not merely the case when state posts are abused for private gains by the incumbent holders of these posts. It also pertains to states or state agents such as the armed forces behaving just like private actors, pursuing private rather than public, and economic rather than security, interests.

Some armies function partly as corporate business actors, even beyond the military sphere, with the PLA of China as the most prominent example. Other armies function as warlords, running what might best be labelled “protection rackets” as a means of extracting resources from the local population—or from donors and relief organisations. Finally, some states appear to finance the upkeep of their armies by putting them at the service of other (state or non-state actors). This may, for instance, be the case of some third world countries’ contributions to UN peacekeeping operations. Certain third world countries are thus surprisingly active in terms of UN missions and have contributed very large troop contingents to various UN peacekeeping missions, which are totally incommensurate with their overall military capabilities (see Table 1). Even though neither the cosmopolitan spirit of the listed third world countries nor the quality of
their troops are automatically dubious, there is a lingering suspicion that at least some of these
troop contributions may also be economically motivated, i.e. that the governments of these states
are almost selling the services of their armed forces to the international community.

Table 1: Country Contributions to UN Operations, April 2004

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>Troops Contributed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pakistan</td>
<td>7,680</td>
</tr>
<tr>
<td>2</td>
<td>Bangladesh</td>
<td>6,362</td>
</tr>
<tr>
<td>3</td>
<td>Nigeria</td>
<td>3,398</td>
</tr>
<tr>
<td>4</td>
<td>India</td>
<td>2,930</td>
</tr>
<tr>
<td>5</td>
<td>Ghana</td>
<td>2,790</td>
</tr>
<tr>
<td>6</td>
<td>Nepal</td>
<td>2,290</td>
</tr>
<tr>
<td>7</td>
<td>Uruguay</td>
<td>1,883</td>
</tr>
<tr>
<td>8</td>
<td>Kenya</td>
<td>1,826</td>
</tr>
<tr>
<td>9</td>
<td>Ethiopia</td>
<td>1,822</td>
</tr>
<tr>
<td>10</td>
<td>Jordan</td>
<td>1,804</td>
</tr>
<tr>
<td>11</td>
<td>South Africa</td>
<td>1,460</td>
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<tr>
<td>12</td>
<td>Ukraine</td>
<td>1,342</td>
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<td>13</td>
<td>Senegal</td>
<td>1,037</td>
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<td>14</td>
<td>Zambia</td>
<td>933</td>
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<tr>
<td>15</td>
<td>China</td>
<td>877</td>
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<td>16</td>
<td>Namibia</td>
<td>868</td>
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<tr>
<td>17</td>
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<td>18</td>
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<td>19</td>
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<td>20</td>
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<td>21</td>
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<td>22</td>
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<td>23</td>
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<td>25</td>
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<td>26</td>
<td>France</td>
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<td>27</td>
<td>Slovakia</td>
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<td>28</td>
<td>Ireland</td>
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<td>30</td>
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<td>31</td>
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<td>33</td>
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<td>35</td>
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<td>36</td>
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<tr>
<td>50</td>
<td>Egypt</td>
<td>1,342</td>
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</tbody>
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In many cases wars are also fought for economic reasons, representing a blend of private an
public interests, perhaps even with a preponderance of the former over the latter. This has
historically been the case of many international wars, and some authors have argued that such
“resource wars” are reappearing. The phenomenon may, however, be even more pronounced in
intra-state and to some extent “transnational wars” (i.e. internationalised internal conflicts), where
private gains loom larger, as highlighted in several recent studies on “the political economy of
civil wars”.

Even though violent conflicts within countries are usually ostensibly fought for other ends, closer
analysis has often uncovered a quest for enrichment (“greed”) at the heart of them. This has, for
instance, been the case of the civil wars in Angola, Liberia and Sierra Leone, which seem to have
been fought mainly for the control of resources such as timber and diamonds. Whereas only the
rebels in these cases have fought for these resources as private goods, the claims by the respective
states to be fighting for them as public goods should be taken cum grano salis, simply because the
rampant corruption in these states entailing a de facto privatisation of, e.g., the oil wealth of
Angola. In other cases, e.g. in the Congo, military commanders have achieved a degree of
autonomy and exploited this for private gain to such an extent that the label “warlords” appears
appropriate.

Even as far as the leaders and strongmen making the big decisions about war or peace are
concerned, a useful distinction can be made between two different sets of economic motives for
war. The simplest manifestation of the greed imputed to them is, of course, their quest for the
control of pieces of territory containing oil fields, diamond mines or other extractable resources. In such cases the use of armed force is merely an indirect means to the end of achieving (partial or complete) victory, the spoils of which is control of resources. In other cases, however, the very act of violence becomes almost an end in itself as it provides a favourable climate for all sorts of clandestine economic activities such as smuggling, drug trafficking, etc.—just as it makes the “protection” which armed forces can provide worth paying for, even though the very same armed forces may the ones causing the violence in the first place. As argued by David Keen,

Conflict can create war economies (...). Under these circumstances, ending civil wars becomes difficult. Winning may not be desirable: the point of war may be precisely the legitimacy which it confers on actions that in peacetime would be punishable as crimes.  

The two causal paths from greed to profits via the use of armed force are illustrated in Figure 4. Needless to say, they are not mutually exclusive, as it is entirely possible that leaders strive for victory as in path A whilst at the same time trying to reap profits from the war economy via path B.

**Fig. 4: Economic Motives for Violence**

Whereas the label “greed” seems suitable for state officials and warlords, the situation for the rank-and-file may be different. For them the struggle is often a matter of sheer survival as they have learned to “live by the gun” for lack of other opportunities, thus engaging in small-scale looting. Many of Africa’s combatants, both those who are on the payrolls of governments and those who have been recruited by the various rebel movements, have few prospects of finding a livelihood in civilian life, as they have no other vocational skills than those of soldiering and usually have been uprooted from their (village or other) communities.

Hence their propensity to “live off the land” by plundering the civilian population, and their unfortunate tendency to seek other armed professions, such as those as security guards, mercenaries or criminals, upon their demobilisation following the signing of a peace—or to
simply go on fighting, say by joining a splinter movement refusing to demobilise, thus perpetuating the war. Hence also the need, now increasingly acknowledged by the international community, of providing assistance for DDR, i.e. disarmament, demobilisation and reintegration.62

4. Privatisation of War

We now come to what is usually labelled privatisation, i.e. the fighting of wars by non-state, i.e. private, actors or agents, where we shall focus especially on PMCs. It does, however, seem appropriate to begin by placing this phenomenon in its proper context.

4.1 TAXONOMY: PRIVATE PRINCIPALS AND AGENTS

First of all, it must be acknowledged that intra-state wars almost by definition feature a certain privatisation as, at most, one of the opposing sides can be a state, whereas rebel movements are in-variably private actors. A useful distinction may here be made between principals and agents, both of which may be private or public.

As shown in Table 2 it cannot be taken for granted that the state will always appear in the role as principal, outsourcing parts of its functions to private entrepreneurs. Sometimes the relationship

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**Table 2: Public and Private Principals and Agents: Examples**

<table>
<thead>
<tr>
<th>Principal</th>
<th>Public</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>States using public security forces for law and order</td>
<td>Firms paying public security forces for protection</td>
</tr>
<tr>
<td>Private</td>
<td>States using militias or PMCs</td>
<td>Rebel movements using guerrillas</td>
</tr>
</tbody>
</table>

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**Legend**

- square boxes: state/public entities
- rounded boxes: private entities
- principal using agent
- principal using agent (unofficially)

---

**Fig. 5: Principals and Agents**

- Firms
- States
- Int. Org.
- NGO
- Rebels
- PMCs/PSCs
- Security forces
- Militias
- Guerrillas

---
is inverted, private companies paying for state services, in addition to which there is of course the private/private corner of the matrix featuring non-state actors enlisting the services of private agents—as also illustrated in Fig. 5.

4.2 REBELS, GUERRILLAS AND MILITIAS

In the case of rebel movements and guerrillas, the distinction between principal and agent is usually very blurred. Even though some have been unitary (i.e. the rebel movement is the guerrilla force) most have had both a political and a military arm, as with the SPLA/SPLM in South Sudan, the RPF/RPA in Rwanda, the EPLF/EPLA in Eritrea, and the ANC/MK (Umkhonto we Sizwe) in South Africa. In many cases, however, the military wing have dominated over the political one, at least for the duration of the armed struggle.

There have even been instances of rebel movements acting as principals, soliciting the services of other private actors such as old-fashioned mercenaries and even modern PMCs—as when secessionist polities such as Katanga in the early 1960s and Biafra in the late 1960s both made extensive use of mercenaries, and when UNITA in Angola seems to have done the same—according to some accounts even of the South African PMC Executive Outcomes, which may thus for a short while have been fighting “on both sides of the fence”, as its services were also used by the government.

Even though rebel movements are private, it may nevertheless make sense to distinguish between them according to the degree of their resemblance to states. At one end of the spectrum we have two phenomena which, for all their differences, might both be labelled “would-be states”. First, we have the “armed opposition”, which merely seeks to reform the state or depose the incumbent rulers in order to take over the state, as was the case of the EPRDF in Ethiopia until the fall of the Derg. Secondly, we have the secessionist rebel movement enjoying such control over a piece of territory that it behaves almost as a de facto state, as did the EPLF in Eritrea until the attainment of de facto and de jure independence in 1991 and 1993, respectively. At the opposite end of the spectrum we have rebels which mainly seek to weaken the state without really wanting to take over state power, i.e. those benefiting from the aforementioned “war economy”—as has been the case with the various armed factions in Liberia, the RUF in Sierra Leone, the Lord’s Resistance Army in Uganda, and the warlord armies in Somalia, and to some extent UNITA in Angola and the several armed groups in the DRC.

We also find guerrillas in the role as agents for states. In most cases, their state principals are other states seeking to undermine the state where the guerrilla movement is operating, thus
exploiting the rebels or insurgents as “proxies”, as was, for instance, the case of the apartheid regime’s support for UNITA in Angola and Renamo in Mozambique and of Uganda’s support for the SPLA in Sudan and the corresponding (retaliatory) Sudanese support for the LRA in northern Uganda—not to mention the US support for the Mujahedeen in Afghanistan and the Contras in Nicaragua.

However, there are also a few instances of governments providing clandestine support for rebels ostensibly fighting against the states themselves, as has been the case of Khartoum’s occasional support for the so-called “SPLA-United” of Riek Machar against the “SPLA-mainstream” under the leadership of John Garang as a means to weaken the latter, even though the former was, by virtue of its demand for secession, ostensibly more radical than the latter which fought merely for autonomy and democracy. More common is the utilisation by governments of militias with ethnic, religious or ideological affinities to the states themselves for tasks which would otherwise have been those of government forces—but having the advantages of (usually) being cheaper than regular troops. As such forces are not formally under government command their use also offers convenient opportunities for activities with “plausible deniability”, say if the forces were to be guilty (as they very often are) of severe human rights violations, ethnic cleansing or even genocide. This was the case of the infamous Interahamwe and Impuzamugambi militias in Rwanda and of the Kamajos in Sierra Leone. The government of Sudan has also on several occasions made use of such Arab militias, e.g. in the Bahr-el-Gazahl province, where Baggara tribal militias have raided Dinka villages on behalf of the government, but also taking advantage of the situation for private slave raids—and most recently in Darfur, where Janjaweed militias have conducted a massive “ethnic cleansing”, causing huge refugee flows into Chad.

4.3 “CORPORATE MERCS”: PRIVATE MILITARY COMPANIES

Mercenaries have been around for centuries and even millennia. One of their sternest critics was Niccolo Machiavelli (1469-1527), an ardent proponent of a people’s militias, who described the mercenary armies of his time in the following terms:

Mercenaries are disunited, thirsty for power, undisciplined and disloyal; they are brave among their friends and cowards before the enemy; they have no fear of God, they do not keep faith with their fellow men; they avoid defeat just so long as they avoid battle; in peacetime they are despoiled by them, and in wartime by the enemy (The Prince, 1999: 39-40)
Surely no one can be called a good man who, in order to support himself, takes up a profession that obliges him at all times to be rapacious, fraudulent, and cruel, as of course must be all of those—no matter what their rank—who make a trade of war.77

Most of the African troops recruited by the European states in their “scramble for Africa” by the end of the 19th Century were really mercenaries.78 The colonial powers (both as such and as representatives of the League of Nations in their “mandate territories”), likewise, made occasional use of mercenaries to fight against African liberation movements,79 just as the CIA allegedly did in their struggle against the liberation movements in Mozambique and (even more so) Angola in the sixties and seventies.80

African government have also made use of mercenaries, both from Africa and elsewhere. During the Congo crisis in the early sixties, the Katanga secessionists thus used mercenaries, as did president Mobuto on several subsequent occasions, including the final struggle against the rebel movements of Laurent Kabila and others.81 The secessionist Nigerian province Biafra did the same in 1967 (allegedly on French initiative),82 and the apartheid regime of South Africa used them both for the suppression of the local black population, for the struggle against the SWAPO guerrilla of Namibia and for its intervention in Angola in support of UNITA.83 In the 1990s, the use of mercs has even seemed to increase.84

4.3.1 From Mercs to PMCs

As many of the mercenaries who have historically been involved in African conflicts have definitely lived “up” to their bad reputation it may seem surprising that the international interest seems to be growing, both academically and politically, for a constructive use of modern-type (“corporate”) mercenaries, i.e. PMCs, not least as far as Africa is concerned, and even for such venerable missions as UN peacekeeping operations.85 What modern PMCs have in common with traditional mercenaries is the fact that they are private actors or agents involved in war, and the fact that they do their fighting for money (as do, incidentally, all professional soldiers such as those of the United States and a growing number of European countries).86

What distinguishes PMCs from their predecessors is primarily their corporate nature as well as their more diversified activities. First of all, most have the same form as other private businesses with shareholders, holding companies and subsidiaries, executives, etc. Secondly, most of them do not merely engage in combat, but also in a wide range of other military activities such as training and logistics—and many form part of corporations with subsidiaries in non-military sectors. A good example of this structure was the aforementioned (now closed) South Africa-based PMC Executive Outcomes (EO).87 It was founded in 1989, initially as part of a larger
corporation, SRC (Strategic Resources Corporation, which was later dismantled), and it remained in existence until the end of 1998 when it was closed down after the passing of a more stringent law in South Africa (vide infra). Its South Africa-based assets included both firms owned a hundred percent and shares in other companies across a wide spectrum of branches, including video production (Gemini Video Productions), tourism (Livingstone Tourists and The Explorer) and air transport (Ibis Air). In the UK, EO was intimately connected to another PMC, Sandline International, as well as (both directly and via Sandline) to companies in the oil and diamond businesses. Among the customers of EO were both governments and multinational oil companies, whereas EO claims to have refused contracts with rebel movements in Algeria and Sudan.

In Angola EO first became involved in 1992 through a contract with the multinational oil companies Gulf Chevron and Sonangol, who solicited the services of EO to protect their assets—even though other versions of the story have it that EO was hired to re-conquer the installations which had already fallen into the hands of UNITA. The EO further trained Angolan government troops and pilots and, since around 1994, took a direct part in the struggle against UNITA. The size of the deployment is unclear, as the EO has denied that its presence ever exceeded 500 employees. Nevertheless, it is sometimes assessed as having made a significant contribution to forcing UNITA to the negotiation table which produced the Lusaka Protocol in November 1994. The deployment was brought to an end with the government’s termination of the contract with EO in January 1996, allegedly responding to US pressure.

In Sierra Leone the Strasser government in March 1995 hired EO to fight the rebel movement RUF (Revolutionary United Front). The initial assignment of the EO troops was to reconquer titanium and bauxite mines which had fallen into the hands of the RUF, and the revenues from which amounted to more than half the export earnings of Sierra Leone. EO was initially merely supposed to provide training and technical support for the government forces, but after the RUF’s seizure of important diamond mines its troops also became directly involved in combat. According to EO, the total contingent of EO troops never exceeded 250 personnel. The results are generally assessed as a modest success, as the situation after ten months was sufficiently peaceful to allow for the holding of presidential elections in March 1996. The activities of the EO are also generally seen in a positive light, as EO personnel collaborated satisfactorily with both the government and international emergency relief organisations. A contributory cause to their acceptance among the local population may have been that most of the deployed troops were black. The peace did not last, and in 1996 attempts were uncovered to deploy other (in this case white) mercenaries, apparently on the payroll of the RUF, to seize control of a diamond mine.
being guarded by EO, presumably against payment in the form of diamond concessions which were subsequently sold to BE.  

Another major PMC is Sandline International, which is owned by a holding company, Adson Holdings, in turn owned by a group of former military officers headed by Michael Grunberg, and quite closely linked to, e.g., Heritage Oil & Gas and Diamondworks. It places (at least officially) great emphasis on having merely legitimate governments and international organisations among its customers. Its main activities to date have been in Papua New Guinea, but it has also been involved in Sierra Leone. Other major PMCs include AirScan, DynCorp, Genric, Global Risk Strategies (GLOBAL), International Charter Incorporated of Oregon (ICI), International Security & Defence Systems (ISDS), ISEC Corporate Security, Olive Security, Pacific Architects & Engineers (PAE), Rapid Expert and Assistance Cooperation Teams (REACT), Meyer & Associates Special Operations Group, Northbridge Services Group and Vinnell.

A special case is Military Professional Resources (MPRI) which is headquartered in the United States and closely linked to the US administration. It was founded in 1987 by retired military officers and its staff includes, most prominently, former chief of staff of the US Army, Gen. Carl E. Vuono. MPRI has more than 350 employees and has stand-by arrangements with more than 2,000 former officers. Its main activities have been in the former Yugoslavia where it has, inter alia, been involved in the training of the Croat and Bosnian (i.e. Croat-Muslim) armies on behalf of the US government. Under the auspices of ACRI (African Crisis Response Initiative), MPRI has also been involved in the training of African armies.

### 4.3.2 Problems and Opportunities

There thus seem to be both a demand for and a supply of the services which PMCs offer, but there is still considerably controversy over how to evaluate this phenomenon.

The use of PMCs is certainly not unproblematic. On the “macro level” the main problem with PMCs is probably that they operate in conformity with the principles of the market economy, just as all other private companies. Hence, they will only go into action when solvent customers hire them to do so and presupposing that agreement can be reached on the appropriate price, either in cash or occasionally in the form of concessions for natural resources. As a consequence, PMCs will never undertake tasks which nobody is prepared to pay for having undertaken.

However, there may be a wide range of reasons why customers may be willing to pay. In the case of private companies, the motive will undoubtedly be economic gain which may also be the case of states—especially as far as resource-rich “target countries” are concerned. In the case of
resource-poor countries such as Rwanda, Somalia or Mozambique there are hardly any strictly economic reasons why external actors should be willing to pay for a contract with a PMC. Even in such cases, however, there may be other reasons to do so, including humanitarian motives. The entire “global community” was truly embarrassed by the Rwandan genocide in 1994, so it is at least conceivable that they might want to contribute to preventing a repetition (in Rwanda or elsewhere), and the more so the less this would require them to place their own troops “in harm’s way”.

On the “micro level” there are also problems connected with the use of PMCs. Most of these seem to be related to the legal “grey zone” in which PMCs operate. As long as their very use violates international conventions it is obviously difficult to regulate such use. Hence the mercenaries operate in a “legal no-man’s land” with neither rights nor obligations. This may go some way towards explaining the occurrence of rapes, atrocities and the like—even though such things have also been known to happen in connection with the deployment of regular, state-controlled, forces. It must also be acknowledged that the job as a mercenary, to an even larger extent than that of a regular professional soldier, undoubtedly appeals to particular mentalities, which are not ideally suited to all kinds of deployments. A job which promises rather high remuneration and excitement in return for quite high risks, low job security and considerably problems for any family life will probably appeal to persons such as those against whom Macciavelli warned in the quote above.

On the other hand, the use of PMCs may also offer significant opportunities. First of all, there may be tasks which simply will not be performed unless they are privatised, e.g. military missions which are so unattractive and/or dangerous that politicians will be reluctant to use their own citizens for them, especially if they are without any significance for national security. There has obviously been no enthusiasm in the West for sending troops to neither the DRC, Angola or Liberia. It is one thing to have national armies, manned exclusively with citizens performing their duty to defend the nation in exchange for political rights in the same nation, but quite something else to dispatch such forces to missions which have little or nothing at all to do with defending the nation, as is the case with any deployment of European or American forces to Africa. Just as a country like France has for a long time mainly used foreigners for such tasks (in the framework of the Foreign Legion) other states might reach the conclusion that their military deployments have so little to do with national security that they might just as well make their contribution by means of non-citizens. According to the same logic it is far from obvious why such troops should necessarily be those of a state if it is possible to outsource the tasks to private entrepreneurs.
The countries of the North might thus meet their obligations as UN members without sacrificing anything but money which would be used to “dial an army”. One could also imagine the UN itself making use of PMCs, either \textit{ad hoc} or on a more permanent basis. This might be one means to provide the organisation with the permanent (or at least “on call”) military capacity that it was originally envisaged to have at its disposal.\textsuperscript{98}

Secondly, the use of PMCs may be more cost-effective than the upkeep of national armies, mainly for peacekeeping and similar non-essential military missions, simply because several countries (and other customers) can draw on the same pool of personnel and only do so when they really require the services provided. Indeed, this might even make the use of PMCs an option worth considering for the countries of the North themselves, who are facing no immediate threats to their national security and who are officially acknowledging that such threats can only appear with a ten years’ respite. If they were to rely on “dial an army” schemes, they could thus safely dispose of their huge standing armies—in conformity with the admonitions of Hamilton and Kant.\textsuperscript{99}

As far as Africa is concerned the use of PMCs might help address the problems of undermilitarisation. In general, African armies are quite small and weak, certainly in comparison with their European counterparts, and especially in view of the large territories and long borders they are supposed to defend against neighbours who are often far from confidence-inspiring (see Table 3).
Table 3: African Force Densities

<table>
<thead>
<tr>
<th>Country</th>
<th>Armed Forces (000)</th>
<th>Territory 1000 Km²</th>
<th>Land border Km</th>
<th>Km2/Troops Regular</th>
<th>Total Troops</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>108 ... 10</td>
<td>118</td>
<td>1,247</td>
<td>5,198</td>
<td>11.6</td>
</tr>
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<td>Benin</td>
<td>5 ... 3</td>
<td>7</td>
<td>113</td>
<td>1,989</td>
<td>23.5</td>
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<td>Botswana</td>
<td>9 ... 1</td>
<td>10</td>
<td>600</td>
<td>4,013</td>
<td>66.7</td>
</tr>
<tr>
<td>Burkina Fasu</td>
<td>7 ... 5</td>
<td>11</td>
<td>274</td>
<td>3,192</td>
<td>40.3</td>
</tr>
<tr>
<td>Burundi</td>
<td>40 ... 6</td>
<td>46</td>
<td>28</td>
<td>974</td>
<td>0.70</td>
</tr>
<tr>
<td>Cameroon</td>
<td>13 ... 9</td>
<td>22</td>
<td>475</td>
<td>4,591</td>
<td>36.29</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>1 ... 0</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>3.67</td>
</tr>
<tr>
<td>Central Af. R.</td>
<td>3 ... 2</td>
<td>5</td>
<td>623</td>
<td>5,203</td>
<td>200.96</td>
</tr>
<tr>
<td>Chad</td>
<td>30 ... 5</td>
<td>35</td>
<td>1,284</td>
<td>5,968</td>
<td>42.66</td>
</tr>
<tr>
<td>Congo (Rep. of)</td>
<td>10 ... 5</td>
<td>15</td>
<td>342</td>
<td>5,504</td>
<td>34.20</td>
</tr>
<tr>
<td>Congo (DRC)</td>
<td>56 ... 37</td>
<td>93</td>
<td>2,345</td>
<td>10,744</td>
<td>41.96</td>
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<tr>
<td>Côte d’Ivoire</td>
<td>8 12</td>
<td>7 27</td>
<td>322</td>
<td>3,110</td>
<td>38.39</td>
</tr>
<tr>
<td>Djibouti</td>
<td>8 ... 4</td>
<td>13</td>
<td>22</td>
<td>508</td>
<td>2.62</td>
</tr>
<tr>
<td>Eq. Guinea</td>
<td>1 ... 0</td>
<td>2</td>
<td>28</td>
<td>539</td>
<td>21.58</td>
</tr>
<tr>
<td>Eritrea</td>
<td>200 120</td>
<td>320</td>
<td>121</td>
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<td>0.61</td>
</tr>
<tr>
<td>Ethiopia</td>
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<td>5,311</td>
<td>3,20</td>
<td>3.20</td>
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<td>268</td>
<td>2,551</td>
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<td>Gambia</td>
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<td>1</td>
<td>740</td>
<td>14.13</td>
<td>14.13</td>
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<td>Ghana</td>
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<td>8</td>
<td>239</td>
<td>2,093</td>
<td>34.08</td>
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<tr>
<td>Guinea</td>
<td>10 ... 10</td>
<td>19</td>
<td>246</td>
<td>3,399</td>
<td>25.35</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>7 ... 2</td>
<td>9</td>
<td>36</td>
<td>724</td>
<td>4.95</td>
</tr>
<tr>
<td>Kenya</td>
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<td>27</td>
<td>583</td>
<td>3,466</td>
<td>26.25</td>
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<tr>
<td>Lesotho</td>
<td>2 ... 2</td>
<td>30</td>
<td>909</td>
<td>15.18</td>
<td>15.18</td>
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<td>Liberia</td>
<td>15 ... 15</td>
<td>11</td>
<td>1,585</td>
<td>7.42</td>
<td>7.42</td>
</tr>
<tr>
<td>Madagascar</td>
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<td>29</td>
<td>587</td>
<td>27.95</td>
<td>20.60</td>
</tr>
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<td>Mali</td>
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<td>6</td>
<td>118</td>
<td>2,881</td>
<td>23.70</td>
</tr>
<tr>
<td>Mauritania</td>
<td>16 ... 5</td>
<td>21</td>
<td>1,031</td>
<td>5,074</td>
<td>65.65</td>
</tr>
<tr>
<td>Mauritius</td>
<td>... 2</td>
<td>2</td>
<td>2</td>
<td>n.a.</td>
<td>1.03</td>
</tr>
<tr>
<td>Mozambique</td>
<td>6 ... 6</td>
<td>820</td>
<td>4,571</td>
<td>131.41</td>
<td>131.41</td>
</tr>
<tr>
<td>Namibia</td>
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<td>9</td>
<td>825</td>
<td>3,824</td>
<td>91.71</td>
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<tr>
<td>Niger</td>
<td>5 ... 5</td>
<td>11</td>
<td>1,267</td>
<td>5,697</td>
<td>239.06</td>
</tr>
<tr>
<td>Nigeria</td>
<td>77 ... 30</td>
<td>107</td>
<td>924</td>
<td>4,047</td>
<td>12.08</td>
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<td>Rwanda</td>
<td>70 ... 6</td>
<td>76</td>
<td>26</td>
<td>893</td>
<td>0.38</td>
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<td>Senegal</td>
<td>9 ... 6</td>
<td>15</td>
<td>196</td>
<td>2,640</td>
<td>20.87</td>
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<tr>
<td>Seychelles</td>
<td>0 ... 0</td>
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<td>0.5</td>
<td>0</td>
<td>2.28</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>3 ... 1</td>
<td>4</td>
<td>72</td>
<td>958</td>
<td>23.91</td>
</tr>
<tr>
<td>Somalia</td>
<td>50 ... 50</td>
<td>638</td>
<td>2,366</td>
<td>12.75</td>
<td>12.75</td>
</tr>
<tr>
<td>South Africa</td>
<td>63 87</td>
<td>159</td>
<td>1,220</td>
<td>4,750</td>
<td>19.24</td>
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<tr>
<td>Sudan</td>
<td>105 ... 15</td>
<td>120</td>
<td>2,506</td>
<td>7,687</td>
<td>23.98</td>
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<tr>
<td>Swaziland</td>
<td>... 0</td>
<td>17</td>
<td>535</td>
<td>n.a.</td>
<td>n.a.</td>
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<tr>
<td>Tanzania</td>
<td>34 80</td>
<td>115</td>
<td>945</td>
<td>3,402</td>
<td>27.80</td>
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<tr>
<td>Togo</td>
<td>7 ... 1</td>
<td>8</td>
<td>57</td>
<td>1,647</td>
<td>8.11</td>
</tr>
<tr>
<td>Uganda</td>
<td>50 ... 1</td>
<td>51</td>
<td>236</td>
<td>2,698</td>
<td>4.72</td>
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<td>Zambia</td>
<td>22 ... 1</td>
<td>23</td>
<td>753</td>
<td>5,664</td>
<td>34.84</td>
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<tr>
<td>Zimbabwe</td>
<td>40 ... 22</td>
<td>62</td>
<td>390</td>
<td>3,066</td>
<td>9.76</td>
</tr>
<tr>
<td>Total</td>
<td>1,5120 299 233 2,053</td>
<td>24,333</td>
<td>143,564</td>
<td>16.0</td>
<td>0.5</td>
</tr>
</tbody>
</table>

For comparison

<table>
<thead>
<tr>
<th>Country</th>
<th>Armed Forces (000)</th>
<th>Territory 1000 Km²</th>
<th>Land border Km</th>
<th>Km2/Troops Regular</th>
<th>Total Troops</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>1,366 1,212 89</td>
<td>2,666</td>
<td>9,629</td>
<td>12,248</td>
<td>7.1</td>
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<tr>
<td>Germany</td>
<td>221 364 ... 585</td>
<td>357</td>
<td>3,618</td>
<td>1.6</td>
<td>0.6</td>
</tr>
<tr>
<td>France</td>
<td>294 419 95 808</td>
<td>547</td>
<td>2,889</td>
<td>1.9</td>
<td>0.7</td>
</tr>
<tr>
<td>Denmark</td>
<td>22 65 ... 87</td>
<td>43</td>
<td>68</td>
<td>2.0</td>
<td>0.5</td>
</tr>
</tbody>
</table>

Legend: Reg.: Regular armed forces; Res.: Reserves; Param.: Paramilitary forces
The above comparison of military manpower even underestimates the deficiencies in terms of military strength and the wide gap between Africa and the North, as it takes into account neither the quality of the troops nor of their equipment. First of all, military personnel in African armed forces are generally poorly educated and trained in comparison with their northern colleagues; and the armies are often ethnically very mixed, even in such countries where ethnic divisions run deep, making their loyalty to the state somewhat dubious.\(^{101}\)

Secondly, these deficiencies in terms of manpower are all the more crippling as African states cannot afford the luxury of replacing men with machines, i.e. of making their defence more capital- or weapons-intensive. This is all the more impossible, because they have no indigenous arms production but rely almost exclusively on arms imports. As deficiencies such as these cannot be corrected, if at all, without thereby causing major economic problems and thus setting back economic development,\(^{102}\) the use of PMCs may be preferable. It may also help reducing the risk of military coups of which Africa has had more than its fair share (see Table 4) by abolishing the standing armies upon which would-be praetorians tend to rely.\(^{103}\)

### Table 4: Military Coups and other Unconstitutional Political Changes in Africa (-2000)\(^{104}\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Years</th>
<th>Country</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>1965, 1992</td>
<td>Libya</td>
<td>1969</td>
</tr>
<tr>
<td>Angola</td>
<td>None</td>
<td>Madagascar</td>
<td>1972</td>
</tr>
<tr>
<td>Botswana</td>
<td>None</td>
<td>Mali</td>
<td>1968, 1991</td>
</tr>
<tr>
<td>Burundi</td>
<td>1966a-b, 1976, 1987, 1996</td>
<td>Mauritius</td>
<td>None</td>
</tr>
<tr>
<td>Cameroon</td>
<td>None</td>
<td>Morocco</td>
<td>None</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>None</td>
<td>Mozambique</td>
<td>None</td>
</tr>
<tr>
<td>Cote d’Ivoire</td>
<td>1999</td>
<td>Sahrawi</td>
<td>n.a.</td>
</tr>
<tr>
<td>Djibouti</td>
<td>None</td>
<td>Senegal</td>
<td>None</td>
</tr>
<tr>
<td>Egypt</td>
<td>1952, 1954</td>
<td>Seychelles</td>
<td>1977</td>
</tr>
<tr>
<td>Eritrea</td>
<td>None</td>
<td>Somalia</td>
<td>1969, 1991</td>
</tr>
<tr>
<td>The Gambia</td>
<td>1994</td>
<td>Swaziland</td>
<td>None</td>
</tr>
<tr>
<td>Guinea</td>
<td>1984</td>
<td>Togo</td>
<td>1963, 1967</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>1980, 1989, 1999</td>
<td>Tunisia</td>
<td>None</td>
</tr>
<tr>
<td>Liberia</td>
<td>1980, 1990</td>
<td>Zimbabwe</td>
<td>None</td>
</tr>
</tbody>
</table>

Legend: **Boldface:** Military deposes civilian government; *Italics:* Contested categorisation as “military coup”; **Regular:** Other unconstitutional changes, including “intra-military coups”
One might, of course, question whether private entrepreneurs would be able to field the kinds of forces required. First of all, however, according to just about any economic theory, demand generally generates supply via the market, so we should expect that a decision by major western powers to solicit the services of PMCs would lead to a commensurate change in their “product profile”, i.e. an expansion of the number of troops they would be able to “deliver”. Secondly, for most of the likely scenarios, rather modest force contingents could make a big difference if deployed swiftly. For instance, it has been estimated that a force of a mere 5,000 troops (others have mentioned 2,500) could have prevented the 1994 Rwandan genocide with an estimated death toll of at least around a million, mainly civilians.\textsuperscript{105} In retrospect one might have wished that Western governments had contracted a PMC for the task of fighting the genocidaires of the FAR (\textit{Forces Armées Rwandaises}), the Interahamwe and other genocidal militias. Considering the limited numbers and primitive equipment of most of these forces, a PMC could probably easily have recruited the requisite forces to defeat them, and the price of such a limited deployment would surely have been worth paying.

\subsection*{4.3.3 To Ban or Regulate?}

What stands in the way of options such as those referred to above is primarily the stigma which remains attached to mercenaries. This raises the question whether it might be possible to regulate the use of mercenaries and PMCs to such an extent that they could be accepted as legitimate military instruments.

It is debatable whether the use of PMC ought to be regulated as such regulation will obviously entail a legalisation of PMC as such as well as perhaps an ethical legitimisation of activities and companies which may not deserve it. What speaks against such considerations, however, is the fact that the experience to date does not give grounds to believe than a mere condemnation and proscription makes the phenomenon disappear. From the point of view of consequentialist ethics (as opposed to a deontological one which holds that actions have a positive or negative value, regardless of their effects)\textsuperscript{106} it therefore seems appropriate to explore the options of regulation.

International conventions and customary law already provide a certain legal basis for the treatment of mercenaries, largely tantamount to a condemnation without visible effects:

\begin{itemize}
  \item The UN General Assembly in 1969 passed a resolution (no. 2548) condemning the use of mercenaries, especially directed against their use by colonial powers against liberation movements.
  \item The UN Security Council in 1977 passed a resolution condemning the use of mercenaries to overthrow the government of any member state.
\end{itemize}
The UN General Assembly in 1989 adopted the “International Convention on the Recruitment, Use, Financing and Training of Mercenaries” (GA Res. 44/34, 1989), which was only ratified by a few member states and thus has not entered into force.

In 1976 the Geneva Convention of 1949 was renegotiated, which resulted in the signing of two additional protocols. Additional Protocol I (art. 47) made clear that mercenaries were not allowed the status as combatants or prisoners of war (POW) and further defined who should count as mercenaries—a definition which must be reckoned as authoritative: “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 direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.”

In 1977 the OAU (as a follow-up to resolutions from 1967 and 1971 and a brief convention from 1972) adopted a “Convention for the Elimination of Mercenarism in Africa” which entered into force in 1985. It obliged signatories to abstain from the use of mercenaries as well as to prohibit their citizens to enrol as such and to make offences “punishable by severest penalties under its laws, including capital punishment” (art. 7).

In addition to such international “legislation”, individual states can of course legislate, either as a means to implement the above regulations or for other reasons. South Africa thus in 1998 passed legislation (the “Regulation of Foreign Military Assistance Act”) which forbade its citizens to let themselves be recruited as, or participate in the recruitment of others as mercenaries, with penalties up to ten years imprisonment or fines of up to one million Rand. While the aforementioned Executive Outcomes initially chose to register in accordance with the law, after a couple of months it decided to close its offices in Pretoria. As an illustration of the problems with national legislation, however, it seems as if its activities have not been terminated, but rather transferred to its previous collaborator, Sandline Inc. in London. The British parliament has also recently explored the options for regulation through national legislation, but apparently without taking any decisions on the matter.

4.3.4 Recommendations for Regulation
As mentioned above the regulation in force has been far from effective in terms of preventing the use of mercenaries or PMC—even though it is, of course, impossible to ascertain with any
certainty how widespread their use would have been in the absence of the above regulation. This raises the question whether regulation could be improved, which can be subdivided into three sets of questions: What kind regulation is desirable, i.e. which obligations and proscriptions should it encompass? Who should adopt and implement this regulation? and Which instruments could be used?

This first question can be further disaggregated. First comes the question which customers should be acceptable, which is more complex that one might expect:

- An obvious and seductively simple, criterion would be “only internationally recognized governments”, but this may be too permissive. Regimes such as that of Milosevic in the former Yugoslavia, Mobuto in Zaïre and Saddam Hussein in Iraq thus enjoyed formal international recognition (which is not the same as respect or sympathy), which remains the case of, e.g., and Colonel Gadaffi’s Libya.

- Alternatively, the list of customers could be limited to a subgroup of recognised states, e.g. defined by their observance of international conventions, including those on human rights. This would, however, raise a number of questions such as whether merely severe and systematic violations should exclude countries, or whether to include also minor violations—and about who should determine whether one or the other is the case.

- It is also possible to argue that such liberation movements should be included as acceptable customers as are fighting against governments which are in violation of the above criteria. This might have applied to, e.g., the ANC in its struggle against the apartheid regime (even though the ANC never expressed any interest in the use of mercenaries), to the rebels of Laurent Kabila seeking the overthrow of the Mobuto regime in Zaïre or perhaps to the SPLM/A in Sudan.

- One could also envision private companies as legitimate customers (as has already happened, e.g. in Angola) if only they could prove that they need protection for legal economic activities or assets.

- Finally, the UN and its affiliates should, of course, belong to the list of legitimate customers, as might regional and sub-regional organisations such as the African Union or the Southern African Development Community (SADC) —or NATO for that matter.

The most practical approach might be to establish a “positive list“ of acceptable customers. The decision to include an entity on the list, or strike it, might be taken by, for instance, the UN Security Council or whichever body it would entrust with the task (e.g. UN Secretariat, the DPKO, the World Bank, or the World Trade Organisation). However, it would be important to
ensure open negotiations based on publicly available documentation, so that NGOs could also have a say on the matter.

Second comes the question which activities should be acknowledged as acceptable. Here as well there are a number of options.

- The most restrictive criterion would be “merely training of (and possibly other support for) local forces”, but this would rule out options which had perhaps better be kept open. For instance, the use of PMC would have been precluded in Rwanda where the local armed forces (FAR and Interahamwe) were the main problem.

- To grant PMC full freedom to perform all direct combat tasks (with an implicit ”licence to kill”) would, on the other hand, be too permissive, at least as long as mercenaries are neither subjects to humanitarian law (e.g. the Geneva Conventions), nor subject to the rulings of the ICC (International Criminal Court), in charge of genocide, crimes against humanity and war crimes.112

Until PMC are granted a status as warring parties similar to that of states some special legislation will thus be called for. However, this might deliberately emulate the legislation pertaining to states, i.e. strive to make the same rules applicable to the employees of PMC as to regular troops, e.g. the right to (something very similar to) the status as a POW in exchange for the same obligations and risks of prosecution in case of violation of the rules. Considering that the aforementioned ICC (as opposed to the International Court of Justice which only has jurisdiction over states) has jurisdiction over individuals, albeit only such as are in the service of states, it would merely require minor amendments of the existing sets of rules. One might even contemplate making the rules pertaining to PMC personnel somewhat more rigid than those for regular armed forces, e.g. in terms of compulsory courses in the Geneva conventions or annual HIV/AIDS tests.

Third comes the question which companies should be acceptable providers of the services. The simplest solution to this problem would probably be a certification scheme, implying that a PMC would require a certification for it to be allowed to cater for the “international community”, consisting of the UN and the signatories to the arrangement (vide supra). A conditio sine qua non of certification could be an abidance by all the other regulations.

A wide range of actors could play a role in the regulation of PMC.
Because PMCs are, by their very nature, an international (or at least transnational) phenomenon, the most obvious political entity would be the proverbial “international community”, represented by the UN and its various affiliates—not least the aforementioned ICC. An obvious division of labour would be for the UN General Assembly to “legislate” (through the passing of resolutions), the Security Council and the Secretary General to implement and enforce, and the ICC to adjudicate and interpret. Regional actors might also play a role, as the OAU has already done with the conventions mentioned above. States would be important “transmission cords” between the international and supranational authorities and their citizens (who might be recruited as mercenaries) and the PMC who are registered on their territory, thereby falling under their jurisdiction. “World opinion” would also play a role, represented both by the media (who will, hopefully, be vigilant and critical) and the plethora of NGOs operating in exactly those conflict areas where we could expect PMC to be employed and who would thus be in a good position to report on any breach of the rules.

Some of these entities would appear in the dual role of potential customer and controller which is never unproblematic. It will undoubtedly prove difficult to ensure the smooth collaboration between the various actors, but given the requisite political will it should not be dismissed as impossible.

Depending on which kind of regulation which political authority would want to implement, different instruments would recommend themselves. They can be subdivided into legal and economic instruments, in both cases subdivided into regulations pertaining to the companies and to their employees, i.e. the mercenaries.

As far as the companies are concerned, the first requirement would be that they should actually be subject to legislation, i.e. preventing them from registering in countries with a more liberal legislation, whilst actually operating out of places such as London (as is the case of Sandline, registered in the Bahamas). This demand could be included under the criteria for the certification mentioned above. Other relevant criteria for certification might be the demand for a continuous state control of contracts, accounts, personnel lists and the like, and an obligation to allow on-site inspections of company activities abroad. Even though such inspections would, strictly speaking, fall beyond the jurisdiction of the state in question, the right to conduct them could simply be made an indispensable precondition for certification. A violation of the rules might lead to legal prosecution in the country of legal residence according to its laws as well as to a loss of certification.
As PMCs are driven by profit motives (as all other private enterprises) the most effective instruments of control would probably be the economic ones. Governments hold a tremendous leverage in this respect as they would undoubtedly be the most important customers. While it might be tempting for a PMC to sign contracts with the likes of RUF or UNITA (or the al-Qaeda network for that matter) the prospects of losing future contracts with “respectable” states would undoubtedly have a considerable deterrent effect. Moreover, there are many advantages associated with being able to operate legally and from a metropolis such as London, compared with operating in a legal “grey zone” from offices in the Bahamas or in Freetown. A visit to the websites of, for instance, Sandline or the MPRI also clearly shows companies placing a great emphasis on legality, legitimacy and respectability. Even though they may not yet have earned this respectability, their very ambitions in this respect provides the controlling authorities with considerable leverage—and in their endeavour to control PMCs they would surely be able to draw on information from the press, the NGO community and others who will undoubtedly be eager to report any faux pas.

Indeed, a number of PMCs which are members of the International Peace Operations Association (IPOA) have recently adopted a “Code of Conduct”, including the following principles:

Members believe that private firms should be required to be more accountable, transparent and candid about their motivations than similar military organizations operated by states (...) In all their operations, signatories will strictly adhere to all relevant international laws and protocols on human rights. They will take every practicable measure to minimize the loss of life and destruction of property. Signatories involved in armed operations will follow the United Nations International Covenant on Civil and Political Rights and the Geneva Conventions in the propagation of that conflict, and will seek a swift, equitable and beneficial conclusion. (...) Signatories support the use of trained, independent, apolitical observers and neutral oversight of all their operations. (...) Signatories pledge to support official investigations into allegations of contractual and human rights violations. Signatories pledge to work only for legitimate, recognized governments, international organizations, and non-governmental organisations. (...) Signatories strongly endorse the establishment of inclusive advisory and coordination councils as soon as practically possible, consisting of key players such as international organizations, NGOs, local leaders, client representatives and government officials, and will treat their recommendations and suggestions with the utmost respect and diligence. (...) Signatories that may become involved in combat situations will have
appropriate “Rules of Engagement” established with their clients before deployment
(...) All rules should emphasize appropriate restraint and caution to minimize
casualties and damage. (...) Signatories pledge to utilize fully trained and repaired
international personnel in all their operations. (...) \[113\]

As far as the personnel, i.e. the mercenaries, are concerned there is, first of all, the opportunity to
prevent PMC from hiring “undesirable elements”, e.g. by making it a prerequisite for certification
that companies employ only personnel with an unblemished legal record. Compulsory records
(like old-fashioned “servant’s conduct books”) would allow for a control both of the companies
and their employees. They should record all violations of the professional code (or at least all
serious breaches thereof), to which one could also reckon the Geneva conventions. A register
could thus be kept of which soldiers would be entitled to perform the trade within registered and
certified PMC. Another powerful instrument would be state control of seniority and pension
rules. As it is today, e.g. in South Africa, members of the regular forces lose their right to return if
they enrol with a PMC. In combination with the above records, states could grant their troops
the right to return to the ranks without loss of seniority and pension rights, provided that their
records are satisfactory.

It would undoubtedly be naïve to expect the measures listed above to be able to remove all the
“nastiness” presently characterizing both mercenaries and PMC. However, this seems to be a
weak argument against such regulation. The real choice seems to be between a complete
“liberalisation of the market” (which would be utterly unacceptable) and a continuing
condemnation, which may give some moral satisfaction, but seems to have no verifiable effect.
By means of a regulation as the one sketched above, most of the activities of the PMC could
probably be made more acceptable and controllable. There would undoubtedly still be firms
which would escape control, but hardly more than is presently the case. Undoubtedly there will
also be “undesirable elements” who manage to slip through, but probably fewer than today—
who are therefore able to commit fewer crimes against humanity or war crimes than they have
done so far.

5. Conclusion: Decline of the State?

Should PMC and mercenaries gradually come to be viewed, even by the states of the West as
legitimate means to their military and security political ends, this would have significant
implications for the very relationship between states, peoples and armies.
Since the Peace of Westphalia (1648), and certainly since the Napoleonic wars, the West has come to view this as a harmonious relationship between the three corners of a “trinity”, as Martin Van Creveld described it. Wars are supposed to be waged as “a continuation of politics by other means”, as formulated by Clausewitz, and to be waged by states, acting on behalf of their respective peoples, against other States. Moreover, they are supposed to be fought against armies by means of armies, which are presumed to be equally representative of the People as the State.

However, while this may remain a fairly accurate description of the situation in the strong and well-established states of the West, this is surely an exception, both historically and geographically. At most, it describes the West after 1648, whereas war was a much messier (but less destructive) business before this juncture. In the rest of the world, “Trinitarian war” has always been a rare exception. States have rarely represented their peoples in any meaningful sense, and they have frequently used their armies for the exact opposite of what is implied by the Trinitarian paradigm, i.e. for oppression or even genocide (as in Rwanda) rather than for national security. More often than not, armies have merely consisted of segments of the population (thus being far from representative of the “People” as such) and very often they have been highly politicised. In many cases states have preferred what were effectively mercenaries (albeit not always referred to as such) to indigenous troops. Quite often, it has not been the State which controlled the army, but the other way around, either directly (as in the case of military rule) or indirectly, with the army defining the borderlines of what is permissible for civilian leaders.

It would certainly be premature to proclaim a universal retreat or “decline of the state” as argued by Martin Van Creveld, and it is surely conceivable that the use of mercenaries and PMC will, in due course, reveal itself as merely a passing stage, i.e. that it will be used as an instrument in state-building, as it was in Europe at a comparable stage of development. On the other hand, it is also conceivable that the whole world is moving “beyond Westphalia” into an era where military force ceases to be the prerogative of the State, and where PMC (duly regulated and controlled by the State) may come to play a legitimate role.
6. Endnotes

1 Besides national defence and justice, Adam Smith thus mentioned as duties of the state “erecting and maintaining those public institutions and those public works, which, though they may be in the highest degree advantageous to a great society, are, however, of such a nature that the profit could never repay the expense to any individual or small number of individuals, and which it therefore cannot be expected that any individual or small number of individuals should erect or maintain.” See Book 5, Chapter I, Part 3 (“Of the Expense of Public Works and Public Institutions”) in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), at www.adamsmith.org/smith/won-b5-c1-pt-3.htm.


19 NGOs have been defined by the UN as “any non-profit, voluntary citizens’ group which is organized on a local, national or international level” (www.un.org/dpi/ngosection/brochure.htm).


25 www.unglobalcompact.org/dirportal/.


61 See Keen, David “Incentives and Disincentives for Violence”, in Berdal & Malone (eds.): op. cit. (note 38), pp. 19-41.


65 Cleary, Sean: “Angola—A Case Study of Private Military Involvement”, in Cilliers & Mason (eds.): op. cit. (note 45), pp. 141-174, especially pp. 149-50, where the author quotes Human Rights Watch as his source. Most other analyses, however, discount these allegations (vide infra).


67 See notes 63 and 65 above.

Soldiers of Good. With Islamic Warriors in Afghanistan and Pakistan

Group: "Darfur Rising: Sudan's New Crisis",

Woodward, Bob: troops beyond the borders of their respective mandate areas.,


Reservoirs of Men: A History of the Black Troops of French West Africa

In 1999 an agreement was reached between the two countries on termination of this support, making allowance of hot pursuits of rebels across the border. See “Agreement between the Governments of Sudan and Uganda, 8 December, 1999” at www.usip.org/library/pa/sudan_uganda_12081999.html.


On the Interahamwe see the works in note 50 above. On the Kamajohs see Hirsch: op. cit. (note 68), pp. 51-54, 117.


This and the following two sections are partly based on the author’s “Private militære virksomheder og fredoperationer i Afrika”, Militært Tidsskrift, vol. 130, no. 3 (June 2001) (Special issue on Africa II), pp. 175-199


On the mandate period see Callahan, Michael D.: Mandates and Empire. The League of Nations and Africa (Brighton: Sussex Academic Press, 1999), especially pp. 92-98 on the British and pp. 113-117 on the French use of African troops beyond the borders of their respective mandate areas.,


See note 64 above.

Cawthra: op. cit. (note 49), pp. 76-80.


Data from Africa at a Glance. Facts and Figures 2001/2 (Pretoria: Africa Institute of South Africa, 2002), pp. 72-85. Alex Thomson provides a slightly different categorisation in op. cit. (note 6), pp. 124-125, in most cases counting intra-military struggles as military coups. His listing is indicated in italics.


