



The Privatization of Military Affairs: A Look into the Private Military Industry

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In the push to revolutionize military affairs, governments are turning to private companies to conduct many tasks that were once undertaken by the military alone. Anything from feeding troops to fighting on the front line can now be outsourced to highly advanced, corporate-structured private military firms (PMFs). In the United States, for example, PMFs now “provide logistics of every major US military deployment, maintain such strategic weapons systems as the B-2 stealth bomber and Global Hawk unmanned aerial vehicle, and [are] taking over the ROTC programs in over 200 American universities.”¹

Where the idea of nongovernmental actors participating in war is nothing new, the capabilities of today’s firms raise new questions and concerns while presenting innovative solutions to an array of international dilemmas. Thus, as the private military industry enhances its capabilities and becomes more frequently and deeply integrated in military affairs, its emergence remains highly controversial. Therefore, there must be public discourse regarding the issues surrounding private military firms as their presence on the world stage is already having a huge impact and will continue to do so far into the future.

First, PMFs are defined and a history of the private military industry is presented. Then, the increased significance of PMFs in the post-Cold War era is discussed. The tectonic shifts on the post-September 11th world stage are also discussed in route to weighing the benefits and shortcomings of PMFs in the current international climate. It is shown that the integration of PMFs is a foregone conclusion and that the question is not whether PMFs should be used but rather how these firms should be used. In accord with these findings, this paper will address the implications of the rise of the private military industry and its capabilities while focusing on the relationship between PMFs and the central tenets of international law. It will be seen that with the emergence of PMFs has come an increasing need to adjust international law in order to better uphold the integrity of the world system.

The Rise of the State and Military Organization—A Review of Theoretical Concepts

In order to better understand the rise of the private military industry, one must place this emergence in the context of a broader evolution of international relations and human history. Because the world is experiencing major shifts tantamount to those experienced after the Second World War and the collapse of the Soviet Union, it is extremely important that one is aware of the latest phenomena of world affairs. For the purposes of this paper, it is worthwhile to ponder and extrapolate the theories of state power as they relate to the organization and nature of modern warfare. According to Martin van Creveld, the modern state is a “corporation, just like universities, trade unions, and churches... [which] has directors, employees, and shareholders.”² It would, therefore, be extremely instructive in studying the rise of the private military industry to first understand the intimate interplay of war history and the changing dynamic of the modern state.

The idea of sovereignty was first introduced into doctrine in the Treaty of Westphalia of 1648. According to Hans Morgenthau, sovereignty equates to a “centralized power that exercised its lawmaking and law-enforcing authority within a certain territory.”³ In other words, what arose was the modern state which, as Max Weber declares, “is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.”⁴ Hans Morgenthau continues and states: “This power... was superior to the other forces that made themselves felt in that territory. Within a century, it became unchallengeable either from within the territory or without... It had become supreme.”⁵

¹ P.W. Singer. “Peacekeepers Inc.” *Policy Review*. June/July 2003. Iss. 119. Pp. 59

² Martin van Creveld. *The Rise and Fall of the Modern State*. New York: Cambridge University Press. 1999. Pp. 1

³ Hans J. Morgenthau. *Politics Among Nations: The Struggle for Power and Peace*. 5th Edition. New York: Alfred A. Knopf, Inc. 1973. Pp. 306.

⁴ Max Weber. Excerpt from “Politics as a Vocation.” 1918. Pp. 110-112 in Charles Lemert (ed.). *Social Theory: The Multicultural and Classic Readings*. Boulder, CO: Westview Press. 1999. Pp. 111.

⁵ Hans J. Morgenthau. 1973. Pp. 306.

The realist perspective of international relations is based heavily upon this conception of the state. In this era of human history, the state was, indeed, the driving force of the world system and the “billiard ball model” was appropriate in analyzing world affairs. In essence, the character of the state, in the realist perspective, determines the way in which it acts on the global stage. As societies advanced and grew more organized, modes of transportation, communication, and war-waging did as well, creating drastic changes in international relations. According to Carroll Quigley, in *Western Civilization*:

The development of weapons and the steady improvement in transportation and communication made it possible to compel obedience over wider and wider areas, and made it necessary to base allegiance on something wider than personal fealty to a monarch [or chief].⁶

Moreover, “when weapons are cheap to get and so easy to use that almost anyone can use them after a short period of training [amateur weapons], armies are generally made up of large masses of amateur soldiers.”⁷ Periods of “specialist weapons”—weapons that require much training to use—are generally periods of small professional armies.⁸ Thus:

In periods of specialist weapons the minority who has such weapons can usually force the majority who lack them to obey... [giving] rise to a period of minority rule and authoritarian government. But a period of amateur weapons is a period in which all men are roughly equal in military power... and majority rule or even democratic government tends to rise.⁹

Machiavelli offered a similar view in highlighting the fact that “Rome and Sparta were for many centuries well armed and free. The Swiss are well armed and enjoy great freedom.”¹⁰

Thus, as violence became monopolized, those societies in which the masses experienced relative political freedom (as in tribes without leaders), the means of that violence was widespread among the citizenry. Conversely, in those societies in which the masses experienced little to no political freedom (i.e. tribes with leaders and absolute monarchies), the means of “legitimate” violence were consolidated in the hands of the ruling powers. In times of specialist weapons and, in turn, with the lack of widespread political power, the ruling parties often turned to mercenary forces. These mercenaries would stay loyal to the hiring party only as long as they were paid. When the pay was gone, they would mutiny, switch sides, or simply go home.¹¹ As a result, in these societies the masses “watched as their betters battled each other [with mercenary forces], and, of course, often paid the price.”¹²

As the Agricultural and Industrial Revolutions took hold in Western Civilization, living standards rose and democracy spread. The production of arms grew cheaper as the weapons became easier to use. During this time of amateur weapons, one sees revolutions in the United States and France and, because the means of warfare were widespread, state armies were raised from the civilian population. The Agricultural and Industrial Revolutions “allowed for the equipping and arming of vastly expanding mass armies” while the French and American Revolutions “provided the human material for these mass armies by profoundly transforming the State from one based on dynastic succession to one based on popular sovereignty.”¹³

Consequently, the Western state became more bureaucratic, as did the military forces that it controlled. This made it possible to mobilize most of the population for war, either as soldiers or in supporting roles, and thus, made armies larger and war more total.¹⁴ War also became the exclusive domain of the state as it became “trinitarian”—i.e. a joint venture between the state, the army, and the masses.¹⁵ This was especially apparent during the two World Wars and the Cold War. The trinitarian quality of warfare at this time led to the development of a state-centered war machine:

...The technology of modern warfare and communications [had] made the overall development of heavy industries an indispensable element of national power... the competition among nations for power transforms itself largely into competition for the production of bigger, better, and more implements of war.¹⁶

⁶ Carroll Quigley. *Tragedy and Hope: A History of the World in Our Time*. New York: The Macmillan Company. 1966. Pp. 36

⁷ Ibid. Pp. 34

⁸ Ibid. Pp. 34

⁹ Ibid Pp. 34

¹⁰ Machiavelli. *The Prince*. New York: The New American Library. 1952. Pp. 73

¹¹ Geoffrey Parker. *The Army of Flanders and the Spanish Road*. London: Cambridge University Press. 1972. Chapter 8 – this chapter speaks about mercenaries in warfare during this time.

Martin van Creveld. *The Rise and Fall of the Modern State*. New York: Cambridge University Press. 1999. Pp. 156

¹³ Bjorn Moller. “The Political Economy of War: Privatisation and Commercialisation.” Working paper for the Copenhagen Peace Research Institute (CORPI). 2002. Pp. 2

¹⁴ Christopher Bellamy. *The Evolution of Modern Land Warfare: Theory and Practice*. London: Routledge. 1990. Pp. 58

¹⁵ Martin van Creveld. *The Transformation of War*. New York: Free Press. 1991. – this term is used throughout the book.

¹⁶ Hans J. Morgenthau. 1973. Pp. 119.

Thus, the state's tools of war grew more complex, specialized, and destructive as states grew more patriotic and cohesive.

The modern state has two main defining characters: (1) As a sovereign, it refuses to share its functions with others and concentrates them into its own hands; and (2) It exercises its power over those who live within its distinguishable borders. However, as Samuel P. Huntington observes:

Globally there has been a trend for state governments to lose power... In many states, including those in the developed world, regional movements exist promoting substantial autonomy or secession. State governments have in considerable measure lost the ability to control the flow of money in and out of their country and are having increasing difficulty controlling the flow of ideas, technology, goods, and people. State borders, in short, have become increasingly permeable. All these developments have led many to see the gradual... emergence of a varied, complex, multi-layered international order more closely resembling that of [pre-Westphalian] times.¹⁷

As the Berlin Wall came crashing down the "impossibility of sustaining closed autarchic societies in a world of accelerated travel and communication... was implicit in the evolution of the concept of transnational civil society."¹⁸ With this emerging concept of transnational civil society has come a "greater interest and moral engagement on the part of the global citizenry which is more aware of the wars that are being fought and which insist on the articulation of global norms."¹⁹ Thus, one sees the rise in power of what Margaret E. Keck and Kathryn Sikkink call "transnational advocacy networks"²⁰ and other nonstate actors. This "process of creating transnational social space" is what Anna Leander calls "globalization"²¹ and is the force that is eroding the traditional structure of the state.

The rise in significance of nonstate actors places politics beyond any state's borders and, "previously depoliticized areas of decision-making now find themselves politicized."²² In this way, "there has been an expansion of the polity people see themselves part of... [as many] try to carve out space for their own identities... and define their politics in relation to a transnational sphere."²³ Thus one not only sees the rise of human rights advocates and other issue-specific networks across the globe. Also (re)emerging are nonstate actors such as the ETA in Spain, the FARC in Colombia, fundamentalist Islam and al-Qaeda, and private military firms, to name a few. These all bring a new element of nonstate violence that changes the dynamic of the warfare experienced in the past. These developments have a huge impact on warfare and international conflict.

In attempt to define the changing dynamic of post-Cold War warfare, Mary Kaldor sets out to classify what she calls "new war." In Kaldor's view, "new wars" are waged by nonstate actors whose goals are to contest the legitimacy of the state. The mode of warfare is not centered on a national, hierarchically controlled army and the economic and political support of the warring factions is transnational rather than state-based.²⁴ As Peter Wallerstein and Margreta Sollenberg point out, the vast majority of all major armed conflicts since the end of the Cold War have been "intrastate" and transnational in nature.²⁵ No longer are states the major global threat but rather, transnational nonstate actors present the greatest challenge of the time. Thus, with the rise of transnational society, there has been an erosion of the modern state as their legitimacy and authority has been called into question across the globe.

Many transnational, economic, and technological forces are encouraging the state to retreat from its traditional role. Thus one sees the decline in state-owned enterprises, social security systems, and prison systems, to name a few.²⁶ In fact, even state-sponsored terrorism has been privatized to transnational "venture capitalists" such as Osama bin Laden.²⁷ Such a "diffusion of authority away from national governments has left a yawning hole of non-authority. Ungovernance it might be called."²⁸ This ungovernance is typified by the "weakening state structure and a retreat of the state from its monopoly on

¹⁷ Samuel P. Huntington. *The Clash of Civilization and the Remaking of World Order*. New York: Touchstone. 1996. Pp. 35

¹⁸ Mary Kaldor. "Transnational Civil Society" Pp. 195-213 (Chapter 7) in Tim Dunne and Nicholas J. Wheeler (eds.) *Human Rights in Global Politics*. New York: Cambridge University Press. 1999. Pp. 198

¹⁹ Christopher Coker. "Globalisation and Insecurity in the Twenty-First Century" Oxford: The International Institute for Strategic Studies. Adelphi Paper 345. 2002. Pp. 27

²⁰ Margaret E. Keck and Kathryn Sikkink. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press. 1998.

²¹ Anna Leander. "Globalisation and the Eroding State Monopoly of Legitimate Violence". Copenhagen Peace Research Institute's Institute for International Studies Working Paper 24. 2001. Pp. 14n.

²² Ulrich Beck. Translated by Patrick Camiller. "What is Globalization?" Oxford: Blackwell Publishers. 2000. Pp. 99

²³ Anna Leander. 2001. Pp. 14

²⁴ Mary Kaldor. "Reconceptualizing Organized Violence" Pp. 91-110 in Danielle Archibugi, David Held, and Martin Kohler (eds.) *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*. Cambridge: Polity Press. 1998. Pp. 97

²⁵ Peter Wallerstein and Margreta Sollenberg. "Armed Conflict 1989-99" Pp. 635-49 in *Journal of Peace Research* Vol. 37 No. 5. September 2000.

²⁶ Martin van Creveld. 1999. Pp. 418

²⁷ Ian Lesser. *Countering the New Terrorism*. Santa Monica, CA: RAND Corporation. 1999

²⁸ Susan Strange. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press. 1996. Pp. 14

violence” that among other things, creates a demand, supply, and ethos for private military firms.²⁹ Private military firms are quickly replacing the state on the battlefield in many respects just as private firms have replaced government in the management of public schools and prisons.³⁰

“At the high intensity level of warfare, the requirement of advanced technology has dramatically increased the need for specialized expertise, which often must be pulled from the private sector.”³¹ Thus, in this time of specialist weapons, one sees the need for a very specialized corps of armed soldiers. In the past, governments turned to mercenaries to fill this role. In a more powerful transnational society fueled by nonstate actors, governments turn to the world market and the private military firm. This dependence on the private sector highlights the decay of the state’s monopoly on legitimate violence to a degree unforeseen in the history of the state structure. As the state of Hobbesian war was at the core of protective associations and the state, it is no coincidence that, as the claim to the monopoly of legitimate violence increasingly becomes privatized, one sees the decline of the modern state.

What is a Private Military Firm?

According to Kevin A. O’Brien, there are four major subdivisions within the nongovernmental military market: (1) mercenaries; (2) private armies/militias and warlords; (3) private security firms; and (4) private military firms.³² In defining PMFs, it would be helpful to understand these distinctions.

Often referred to as “soldiers of fortune” or “dogs of war,” private military firms are likened to standard mercenaries. However, the term *mercenary* is a misnomer if used to describe PMFs. Attempts to update the *Geneva Convention* between 1974 and 1977 led to *Additional Protocol I* which provides a specific cumulative definition of a mercenary. A mercenary is a 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 hostilities;
- c) Is motivated to take part in 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 function 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.³³

“Private armies/militias and warlords”, on the other hand, include “such diverse entities as transnational terrorist organizations” and “religiously-motivated combatant groups” that “fight with more organization than mercenaries and [whose] efforts are more directed over longer periods of time.”³⁴ Entities such as the Revolutionary Armed Forces of Colombia (FARC) and Sudan’s John Garang fall in this category. They do not necessarily have a national outlook and willingly enjoy support from any entity that provides funds and hardware.

The third classification—private security companies—are better organized and established businesses that exist in legal and extralegal markets. These companies provide such services as personnel and installation protection, security training, and “counter-industrial espionage” to corporate clients engaged in business in regions of instability or conflict.³⁵

Finally, private military firms are “the ultimate evolution of all of the above.”³⁶ Certainly, they are motivated by financial gain, partake in conflict to which they are not party, and can be found on the front lines of battle. However, David Shearer notes the PMF’s “distinct corporate character” and asserts that such firms have

²⁹ Anna Leander. 2001. Pp. 9

³⁰ Ann Markusen. *The Case Against Privatizing National Security*. Presented at the Council on Foreign Relations’ Study Group on Arms Trade and the Transnationalization of the Defense Industry in New York. 1 October 1999. Pp. 15.

³¹ P.W. Singer. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, NY: Columbia University Press. 2003. Pp. 61

³² Kevin A. O’Brien. “PMCs, Myths, and Mercenaries.” *Royal United Service Institute Journal*. February 2000. – He actually uses the term Private Military Companies (PMCs) but PMFs will be used for consistency.

³³ *Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict*, opened for signature 12 December 1977, 1125 UNTS 3 (entered into force 7 December 1978). Art. 47(2).

³⁴ Kevin A. O’Brien. February 2000.

³⁵ *Ibid.*

³⁶ *Ibid.*

“used internationally accepted legal and financial means in conducting business.”³⁷ According to Lieutenant Colonel Eugene B. Smith, PMFs are legally chartered companies or corporations that “operate along business lines and [are] engaged in military operations across the spectrum of conflict.”³⁸ Moreover, such firms are bound by the terms of business contracts and tend to be extremely well organized and well equipped.³⁹

Despite a relative upsurge in public awareness regarding PMFs, the private military industry is nothing new. Some believe that “private military forces are as old as war itself.”⁴⁰ David Isenberg of the Center for Defense Information claims that mercenaries “were used frequently” as far back as the Middle Ages.⁴¹ For example, in the eleventh century, half of William the Conqueror’s army was made up of mercenaries. Italy experienced a drastic rise in such activity in the 1300s as the city-states hired *condottieri*. By 1815, the East India Company had an army of over 145,000 troops as it helped colonize much of India.

Moreover, private military forces have played a role in the United States since its inception. For example, Great Britain hired nearly 35,000 Hessian soldiers to fight in the United States’ Revolutionary War⁴² and General George Washington hired similar forces himself. In fact, private naval forces were able to destroy up to 600 British ships during this war.⁴³ During the War of 1812, the United States continued to use these forces as private navies captured nearly 1,300 ships.⁴⁴ Even the Confederacy utilized private forces during the American Civil War.

Although few had recognized the emergence of PMFs before the early 1990s, the first PMF was created in the 1960s by several members of the British Special Air Service (SAS). Among the founders was Colonel Sir David Stirling who went on to form WatchGuard International in 1967. Mainly composed of former SAS personnel, WatchGuard enjoyed a high demand for its services. It trained several militaries of the sultanates of the Persian Gulf and provided “support for their operations against rebel movements and internal dissidents.”⁴⁵ WatchGuard remained highly active in the Middle East and quickly became engaged in Africa, Latin America, and East Asia.

Thus, with WatchGuard as a model, a slew of PMFs emerged and the array of military tasks undertaken by private actors continued to expand. For example, Stirling, himself, assumed anti-poaching operations as the World Wildlife Federation hired another of his firms, KAS Enterprises.⁴⁶ Companies such as KMS and Saladin Security (the former being a subsidiary of the latter) specialized in intelligence operations while the corporation, Lonrho, hired Gurkhas to protect its assets during the Civil War in Mozambique.

The Post-Cold War Rise of PMFs and Their Expanding Role

One can see that the emergence of PMFs is not a recent phenomenon. However, in the post-Cold War era, the private military industry has become a force unlike any in the past. Never before have private companies been so advanced and organized. Thus, since the end of the Cold War, the use of PMFs has grown exponentially and such firms now play a pivotal role in international relations.

P.W. Singer of the Brookings Institution identifies three major forces driving the growth of the private military industry. According to Singer:

Not only did global military downsizing create a new labor pool of over 6 million recently retired soldiers, but at the same time there was an increase in violent, but less strategically significant, conflicts around the world. With the great powers less willing to intervene or prop up local allies, the outcome was a gap in the market of security, which private firms found themselves able to fill.⁴⁷

The end of the Cold War has been met with an increase of internal and intrastate conflict fueled by the absence of bipolarity and the massive weapons surplus seen around the world. Moreover, with the world’s major powers downsizing and reorganizing their militaries, millions of soldiers have flooded the private sector. One estimate claims that the 6,873,000 soldiers employed worldwide in 1990 had been cut to 3,283,000 by 1997.⁴⁸ The United States alone has cut nearly 700,000 active-duty troops from the ranks

³⁷ David Shearer. “Outsourcing War”. Pp. 68-81 in *Foreign Policy*. Iss. 112. Fall 1998. Pp. 68.

³⁸ Eugene B. Smith. “The Condottieri and US Policy: The Privatization of Conflict and Its Implications.” . Pp 104-119 in *Parameters* (US Army War College Quarterly). Winter 2002-03. Pp. 104.

³⁹ United Nations. *Report of the Special Rapporteur on Mercenaries*. E/CN.4/1995/29. 29 August 1995.

⁴⁰ David Shearer. Fall 1998.

⁴¹ David Isenberg. *Soldiers of Fortune Ltd.: A Profile of Today’s Private Sector Corporate Mercenary Firms*. Prepared for the Center for Defense Information (CDI). November 1997.

⁴² Rodneu Atwood. *The Hessians: Mercenaries from Hessen-Kassel in the American Revolution*. Cambridge University Press. 1980.

⁴³ Eugene B. Smith. Winter 2002-03.

⁴⁴ *Ibid.*

⁴⁵ Kevin A. O’Brien. February 2000.

⁴⁶ *Ibid.*

⁴⁷ P.W. Singer. June/July 2003. Pp. 59

⁴⁸ Kevin A. O’Brien. February 2000.

since the end of the Cold War.⁴⁹ In addition, as the West has emerged the victor of the Cold War, the push for privatization has never been greater. Thus, it has been in this environment that private military firms have grown in strength, number, and capability. Most importantly, this environment fosters the demand for such firms.

Executive Outcomes (EO), a firm based in South Africa, was one of the first to meet this increased demand. In 1993, the National Union for the Total Independence of Angola (UNITA) captured an oil storage area. The Forças Armadas Angolanas (FAA—Angola's armed force) was unable to eject the rebels. With a group of fifty former officers, EO trained and led the FAA with great success. EO was then hired to guard the area.⁵⁰ EO remained in Angola and was paid \$40 million for "military training." However, EO was "allowed to carry out pre-emptive strikes against UNITA if they felt they or the mine were threatened."⁵¹ By 1998, EO was the primary trainer of the Angolan army.

Executive Outcomes' success was recognized throughout Africa. In fact, EO found itself in Sierra Leone by March 1995. Sierra Leone's internal instability caught the international community's attention in January 1995 when the Revolutionary United Front (RUF) occupied the diamond mines of Sierra Rutile and Sieromco.⁵² Without the diamond revenue, the government of Sierra Leone was unable to repay International Monetary Fund (IMF) loans and its military, marred with "sobels" (soldiers by day, rebels by night), was unable to regain access to the mines.⁵³

With a force of merely 150 soldiers, EO drove the rebels out of the mines and away from the capitol in only 11 days.⁵⁴ EO used "helicopter gunships, pre-assault mortar barrages, and ground assaults"⁵⁵—all of which were inaccessible to the RUF and too expensive for the government of Sierra Leone. Even RUF leader, Foday Sankoh, recognizes the pivotal role played by EO as he claimed that if not for EO, the RUF would have captured Freetown and won the war.⁵⁶ The military successes in 1995 led to elections and allowed nearly 1 million displaced peoples to return home.⁵⁷ In fact, the government was so satisfied with the private military industry that when the conflict resumed after EO left the country, the government turned to Sandline International, a London-based PMF, in March 1998.

The aforementioned are just two examples. Sandline was hired by the government of Papua New Guinea (PNG) and, despite PNG's denial, admits to participating in direct combat.⁵⁸ Military Professional Resources Incorporated (MPRI) was hired to guard the Serbian border and enforce the embargo on supplying Bosnian Serbs. MPRI has also enjoyed a contract with the Republic of Croatia under the Democracy Transition Assistance Program (DTAP), has been used by the Swedish and Taiwanese armed forces, and has a high profile contract through the "Train and Equip" program to "build up" the Bosnian army.⁵⁹ Virginia-based DynCorp has been operating in Colombia conducting "flying missions to eradicate coca field" for nearly 20 years under contracts with the United States Government.⁶⁰

However, the presence of PMFs is not only felt in the developing world. Certainly, these firms have seen success in low-intensity conflicts and the like in Africa, Eastern Europe, and Latin America. Yet, the growth of private military firms is also seen in their relationship with states in the developed world. For example, during the United States' Operation Desert Shield and Desert Storm, "one in 50 Americans deployed in-theater was a civilian."⁶¹ By contrast, one in 10 Americans deployed for the North Atlantic Treaty Organization's (NATO) peacekeeping operation in the Balkans was a civilian.⁶² Between 1994 and 2002, the Department of Defense (DoD) entered more than 3,000 contracts with private firms at a value of roughly \$300 billion.

This exponential growth is indicative of how the major global powers view privatization—especially in the realm of national security. Through Circular A-76, the United States' Office of Management and Budget (OMB) has declared that:

⁴⁹ Katherine McIntire Peters. "Civilians at War." *Government Executive*. July 1996. Pp. 27

⁵⁰ Thomas K. Adams. "The New Mercenaries and the Privatization of Conflict." Pp. 103-116 in *Parameters* (US Army War College Quarterly). Summer 1999. Pp. 107

⁵¹ *Ibid.*

⁵² Dena Montague. "The Business of War and the Prospects of Peace in Sierra Leone." Pp. 229-37 in *The Brown Journal of World Affairs*. Vol. IX, Iss. 1. Spring 2002. Pp. 233

⁵³ *Ibid.*

⁵⁴ Steven Brayton. "Outsourcing War: Mercenaries and the Privatization of Peacekeeping." Pp. 303-29 in *Journal of International Affairs* (Columbia University). Spring 2002. Pp. 313.

⁵⁵ Dena Montague. Spring 2002. Pp. 233

⁵⁶ Steven Brayton. Spring 2002. Pp. 314.

⁵⁷ William Shawcross. *Deliver Us from Evil*. New York: Simon & Schuster. 2000 Pp. 203-4

⁵⁸ Peter Lewis Young. "Bougainville Conflict Enters its Ninth Year." *Jane's Intelligence Review*. June 1997 Pp. 283.

⁵⁹ David Isenberg. November 1997.

⁶⁰ Dan Baum. "This Gun For Hire." *Wired Magazine*. Iss. 11.02. February 2003. http://www.wired.com/wired/archive/11.02/gunhire_pr.html.

⁶¹ Lieutenant Colonel Lourdes A. Castillo, USAF. "Waging War With Civilians." Pp. 26-31 in *Aerospace Power Journal*. Fall 2000. Pp. 27.

⁶² Katherine McIntire Peters. July 1996. Pp. 27

In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services that the Government needs.⁶³

Great Britain's Foreign Minister, Jack Straw, subscribes to this idea as he states: "It is the British government policy to outsource certain tasks that in earlier days would have been undertaken by the armed forces."⁶⁴

Because the United States and other developed countries have made large technological leaps in military hardware, the continued relationship between PMFs and governments implies that the private military industry has not only been able to keep up with the Pentagon but has, in fact, surpassed DoD capabilities. Even Secretary of Defense Donald Rumsfeld acknowledges the fact that technical and scientific skills are in such high demand in the private sector that DoD is experiencing an "officer retention challenge."⁶⁵ This is precisely why many government entities are turning to the private sector. For example, the Central Intelligence Agency (CIA) created In-Q-Tel in 1999. In-Q-Tel—the venture capitalist branch of the CIA— was created "to tap the best minds in the technology sector and spur the development of products the CIA desperately needs and doesn't have the time or expertise to develop itself."⁶⁶

Therefore, private firms do not merely support military bases and provide armed guards. They also maintain highly sophisticated weapons systems such as "the B-2 bomber, F-117 stealth fighter, Apache helicopter, KC-10 refueling tanker, U-2 reconnaissance plane, and the unmanned Global Hawk reconnaissance unit."⁶⁷ In addition, David Shearer claims that certain PMFs maintain close relationships with governments and are an "important source of intelligence."⁶⁸ As military hardware becomes more complex and the armed forces seek to place more focus on their core competency (i.e. fighting), private industry grows more sophisticated and becomes immensely integrated. Thus, "the arguments favoring privatization envision both competition-based savings and better quality weapons and services."⁶⁹ Consequently, the military becomes increasingly dependent on private firms.

Post-9/11, the Revolution in Military Affairs, and the Promise of PMFs

The terrorist attack on September 11, 2001 presented a threat of a new kind that requires the world's major powers to revolutionize the way in which they defend themselves. The 2002 *Secretary of Defense Annual Report to the President and to the Congress* concludes: "uncertainty and surprise [are] the defining characteristics of the 21st century security environment."⁷⁰ It is seen that the world faces unique challenges to which innovative approaches are imperative.

In the face of such challenges, the United States' National Security Strategy of 2002 claims the "right of self-defense by acting preemptively."⁷¹ President George Bush explains: "If we wait for threats to fully materialize, we will have waited too long."⁷² Therefore, in "planning for victory across the spectrum of possible conflict," DoD will restructure its forces to better suit them for "defending the homeland, forward deterrence, warfighting missions, and the conduct of smaller-scale contingency operations."⁷³ In essence, a US "military structured to deter massive Cold War-era armies must be transformed to focus more on how an adversary might fight rather than where and when a war might occur."⁷⁴

Many argue that, in order to address these new challenges and materialize the transformations DoD has communicated, the United States must more earnestly pursue a revolution in military affairs (RMA). Proponents of a RMA suggest that "advances in...modern technologies, together with associated changes in war-fighting organization and doctrine, can help transform the nature of future war and with it the size and structure of the US military."⁷⁵ In fact, in his 2002 report, even Secretary Rumsfeld has expressed that the

⁶³ Office of Management and Budget. *Circular A-76*. 4 August 1983 (Revised 1999).

⁶⁴ Jack Straw qtd. in Nick Cohen. "The Mercenaries Who Fight for Britain." Pp. 20-21 in *New Statesman*. Vol. 16 Iss. 741. 27 January 2003 Pp. 21.

⁶⁵ Secretary Of Defense Donald H. Rumsfeld. *Annual Report to the President and the Congress*. 2002.

<<http://www.defenselink.mil/execsec/adr2002/index.htm>> pp. 37

⁶⁶ Declan McCullagh. "CIA Looks to Venture Capital." *Wired News*. 19 October 2000.

<<http://www.wired.com/news/business/0,1367,39468,00.html>>

⁶⁷ Barry Yeoman. "Soldiers of Good Fortune." Pp. 38-46 in *Mother Jones*. May/June 2003.

⁶⁸ David Shearer. Fall 1998. Pp. 76

⁶⁹ Ann Markusen. *The Case Against Privatizing National Security*. Presented at the Council on Foreign Relations' Study Group on Arms Trade and the Transnationalization of the Defense Industry in New York. 1 October 1999. Pp. 2.

⁷⁰ Donald H. Rumsfeld. *Secretary of Defense's Annual Report to the President and the Congress*. 2002.

<<http://www.defenselink.mil/execsec/adr2002/index.htm>> pp. 25

⁷¹ White House. *The National Security Strategy of the United States*. 17 September 2002. <http://www.whitehouse.gov/nsc/nssall.html>.

⁷² President George W. Bush. *Speech at West Point*. 1 June 2002. <http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>

⁷³ Donald H. Rumsfeld. 2002 Pp. 51

⁷⁴ White House. *The National Security Strategy of the United States*. 17 September 2002.

⁷⁵ Michael E. O'Hanlon. *Defense Policy Choices for the Bush Administration: Second Edition*. Washington, DC: Brookings Institution Press. 2002. Pp. 87.

required transformations can be achieved “by harnessing an ongoing revolution in military affairs.”⁷⁶ However, to pursue an RMA, large amounts of funds would have to be devoted to innovations in military hardware, research and development, and new technologies. The logical tradeoff would be to appropriate “less money... to military operations, training, and readiness.”⁷⁷ According to the October 1997 report by the Business Executives for National Security (BENS) Tail-to-Tooth Commission, “several studies have found that spending on the tail [i.e. everything that is not “military readiness and force modernization”] may exceed 60 percent of the defense budget, or \$150 billion annually.”⁷⁸ For this reason, many have suggested that, in order to “free up funds” for a RMA, the United States must “reduce US global engagement and weaken the military’s deterrent posture.”⁷⁹ In the post-September 11th era, this is simply not an option and it is clear that the Bush Administration has rejected this notion.

In addition, the massive defense build-up under the Reagan Administration is no longer sufficient as much of the technology is outdated. Although the United States enjoyed a “procurement holiday” in the 1990s, estimates suggest that a massive increase in military acquisition spending is inevitable and will most likely occur in the last half of this decade.

It is seen that the United States faces significant challenges unique to this era in history. A large advance in technology coupled with the new threat that has emerged requires a drastic revolution in military affairs. In addition, the procurement holiday of the 1990s requires the United States to replace its old hardware with a new generation of technology. Because defense resources are finite, many, such as Eugene B. Smith assert: “military means are not sufficient to allow full and efficient implementation of the US national security strategy.”⁸⁰ For this reason, the United States, once again, has turned to the private military industry in the post-September 11th era in what has been called a revolution in business affairs.⁸¹

Thus, according to Dr. Tony Gray SES (Ret.), “contractors are used by the [US] Defense Department to save money and to free uniformed military to perform critical military skills.” In fact, he continues, in the post-September 11th environment, “the military has no choice because they are heavily committed in so many places globally.”⁸² In the words of Herb Fenster of McKenna & Cuneo LLP: “a major move to privatize most defense operations... is fiscally imperative.”⁸³ Thus, much like in the post-Cold War era, the current era has seen the private military industry “plugging the holes” in international security. “By outsourcing services not related to military readiness and force modernization, the Pentagon can improve efficiency and realize the savings needed to fund the modern weapons systems that are essential to continued military pre-eminence.”⁸⁴ In this way, the use of PMFs may better able the United States to pursue a revolution in military affairs and implement the defense policy outlined by Secretary Rumsfeld.

Can PMFs Benefit the United States?

Facing a new threat, a revolution in military affairs, and the burden of increased procurement, the United States must find solutions. Some suggest that the United States should disengage from the world stage and redirect funds to an RMA and military hardware. PMFs provide another solution, however, that allows the United States to maintain its current role in the world. It will be shown that, with the use of PMFs, DoD can address these challenges, achieve several of the “critical operational goals” laid out in the Secretary’s 2002 Annual Report, and remain the global power it is today. According to Secretary Rumsfeld’s report, “wars in the 21st century will increasingly require use of all elements of national power.”⁸⁵ With the most capable private military industry in the world, DoD and the US government has no choice but to utilize this element of national power.

According to *The President’s Management Agenda for FY2002*, “nearly half of all federal employees perform tasks that are readily available in the commercial market.”⁸⁶ Many believe that for the first time in history, the United States has an industry with the ability to handle virtually all military goods and services. Thus, through Circular A-76, for example, goods and services from the private sector and federal government providers are placed in competition with the desired goal being the delivery of quality good and services at the best available cost. According to studies from the General Accounting Office (GAO) and the Center for

⁷⁶ Donald H. Rumsfeld. 2002 Pp. 67

⁷⁷ Michael E. O’Hanlon. 2002 Pp. 88

⁷⁸ Business Executives for National Security (BENS) Tail-to-Tooth Commission. *The Revolution in Military Business Affairs*. October 1997. Pp. 3

⁷⁹ Michael E. O’Hanlon. 2002 Pp. 88

⁸⁰ Eugene. B. Smith. Winter 2002-03 Pp. 110

⁸¹ This revolution has been part of public discourse long before September 11, 2001 but provides a phrase that encompasses current actions.

⁸² Dr. Tony Gray SES (Ret.). Personal Interview. 30 November 2003. – Dr. Gray is the editor of *Tiger Times* at the National Defense University.

⁸³ Herb Fenster. “Time Ripe for Full-Blown Privatization Allowing Pentagon to Focus on Combat.” *National Defense*. Vol. 83. Iss. 539. July/August 1998. Pp. 10

⁸⁴ BENS. October 1997. Pp. 7

⁸⁵ Donald H. Rumsfeld. 2002 Pp. 30

⁸⁶ United States Office of Management and Budget. *The President’s Management Agenda for FY2002*. Washington, DC: OMB. 2001 Pp. 17

Naval Analyses, holding such competitions save an average of 30 percent.⁸⁷ Following this logic, the United States' Army has initiated the so-called "Third Wave." Under the Third Wave, the Army is "reviewing all of its commands to identify how to focus the agency's activities on its war-time fighting capabilities."⁸⁸ Once all non-core competencies are identified, they will be placed in competition with private military firms. Retired Army General and president of Logistics Management Institute, Bill Tuttle, asserts that civilian contractors can cut logistics costs by 20 percent.⁸⁹ With the potential savings, DoD can redirect resources to fully implement its security strategy.

In the past, DoD has made extraordinary efforts to assure the bulk of its weapon-system expertise remained in DoD itself. A paradigm shift has occurred in recent years and now, DoD no longer has to train an employee for eight years to benefit from his or her eight years of experience.⁹⁰ DoD is able to turn to a PMF for the needed experience and expertise. The PMF bears the cost of training and maintaining these experts while DoD saves. For example, if the army "needs to hire four hundred technicians with 10 or more years of experience to maintain rotary-wing aircraft, it can contract for exactly that." The experts can be provided "on a case-by-case basis without the cost of training, housing, and paying the individuals for the previous 10 years."⁹¹

The same is true for military hardware. As Secretary Rumsfeld has recognized, DoD can avoid the "prohibitive cost of maintaining military systems that duplicate readily available civil-sector capabilities."⁹² The United States can now turn to PMFs for unmanned aerial vehicles, U-2 spy planes, B-2 bombers, satellite imaging, radio intercept systems, JANUS & BBS computer hardware and software, helicopters, and tanks. The list is virtually infinite. In the private sector, "the manufacturer of weapons systems should bear the responsibility for the system throughout its life."⁹³ If a firm wishes to remain competitive in the military industry, it will have to maintain quality goods and services. In addition, the firm will have to acquire new technologies in order to attract government contracts. In this way, market forces will alleviate DoD's maintenance and research and development costs and will assist in flattening the procurement curve. In fact, DynCorp has already been developing next-generation weapons for the Naval Undersea Warfare Center. Thus, a business relationship with the private sector translates to DoD's ability to focus on its core competencies while still benefiting from cutting-edge technologies and the pursuit of the impending RMA.

Furthermore, Secretary Rumsfeld has "identified six critical operational goals addressing the most significant challenges and opportunities U.S. forces may face in the future."⁹⁴ Among these are:

- Protecting critical bases of operations (U.S. homeland, forces abroad, allies and friends) and defeating NBC weapons and their means of delivery;
- Projecting and sustaining U.S. forces in distant anti-access or area-denial environments and defeating anti-access and area-denial threats;
- Denying sanctuary to enemies by providing persistent surveillance, tracking and rapid engagement with high volume precision strike, through a combination of complementary air, ground, and naval capabilities, against critical mobile and fixed targets at various ranges and in all weather and terrains;
- Leveraging information technology and innovative concepts to develop an interoperable, joint C4ISR architecture and capability that includes a tailorable joint operational picture;
- Assuring information systems in the face of attack and conducting effective information operations; and
- Enhancing the capability and survivability of space systems and supporting infrastructure.⁹⁵

In order to materialize these goals, the government of the United States can turn to the private military sector. The first objective mentioned is protecting bases of operation and defeating nuclear, biological, and chemical (NBC) weapons. In protecting bases, DoD may hire private security firms. Vinnell Corporation has successfully protected the Saudi Royal family and Saudi oil fields since 1975 and corporations like Occidental Petroleum have been protected in Colombia by firms like AirScan and Defense Security Limited.

⁸⁷ United States Office of Management and Budget. *Press Release: New OMB Reports Updates Plans for Carrying Out the President's Competitive Sourcing Initiative*. Washington, DC: OMB. 25 July 2003.

⁸⁸ Valerie Bailey Grasso. *RL30392- Defense Outsourcing: The OMB Circular A-76 Policy*. Congressional Research Service (CRS). 20 October 2003.

⁸⁹ George Cahlink. "Contractors Win Kudos for Support in Kosovo Operation." *Federal Times*. 27 September 2001 Pp. 6

⁹⁰ Lieutenant Colonel Lourdes A, Castillo. Fall 2000. Pp. 28.

⁹¹ Ibid.

⁹² Donald H. Rumsfeld. 2002 Pp. 60

⁹³ Herb Fenster. July/August 1998 Pp. 10

⁹⁴ Donald H. Rumsfeld. 2002 Pp. 68-9

⁹⁵ Ibid

The firm ArmorGroup has been hired by the British government to protect its embassies around the world⁹⁶ as DynCorp does the same for the United States. In addition, private firms have been on the cutting edge in regards to protecting people against NBC weapons. In fact, DynCorp is already producing the majority of the United States government's smallpox and anthrax vaccines and has other large contract with the Center for Disease Control (CDC).

The second stated goal is projecting US forces into distant "anti-access" or "area-denial" environments. Although PMFs are not able to forcefully enter areas in which the United States is not present, PMFs are able to conduct business where the United States Armed Forces are not allowed. For example, as outlined in the Dayton Accords, a "Train and Equip Program" was to be implemented in order to assist the Bosnian military in maintaining stability in the Balkans. Because the United States was involved in NATO's Implementation Force and Stabilization Force in Bosnia, the US Government was unable to provide training to the army. However, the US State Department's Military Stabilization in the Balkans Office monitors the contract between the Bosnian armed forces and Military Professional Resources Incorporated (MPRI). Bosnia "hired MPRI using money that was provided by a group of Islamic nations, including Saudi Arabia, Kuwait, Brunei, the United Arab Emirates and Malaysia. These nations deposited money in the United States Treasury, which MPRI drew against."⁹⁷ According to P.W. Singer, "It was a brilliant move in that the U.S. government got someone else to pay for what we wanted from a policy standpoint."⁹⁸

This is similar to the way DoD and the Department of State advance their objectives in Colombia despite Congressional restrictions. Apparently, the Congressional limit on US troops in Colombia will not hinder US policy in the region so long as private firms are able to work there. In addition, the PMF, International Charter Incorporated (ICI) of Oregon developed a medical treatment program in southern Sudan through its charitable organization, the ICI Foundation "under US-government auspices."⁹⁹ This program coincided with the United States \$13 million of support for the opposition rebels in the region.¹⁰⁰ Thus, the United States is able to project forces into "anti-access" environment. Although not a comprehensive solution to all anti-access dilemmas, this tactic remains a tool when cooperating with the private sector.

The third goal laid out above can also be enhanced by PMFs. AirScan, for example, "sends airplanes loaded with surveillance gear and manned by U.S. military veterans to search for guerrillas in the jungles of Colombia and Angola"¹⁰¹ and has "provided tactical information to Colombian officials" for many years.¹⁰² Civilians from Vinnell Corporation were operating the highly successful Global Hawk unmanned aerial vehicle (UAV) during Operation Enduring Freedom. Several PMFs carry UAVs and high-tech weapon systems in their arsenal. With the support of PMFs, the United States could clearly enhance their ability to "deny sanctuary to enemies" around the world.

The remaining three goals expressed by Secretary Rumsfeld deal with information technology (IT), interoperable and joint C4ISR architecture and capability, and space-based systems. Private military firms are able to do this as well. DynCorp, for example, has been "the information technology department" for countless government agencies including the Security and Exchange Commission, the CDC, the Federal Aviation Administration, Department of State and "just about every three-letter national security, law enforcement, and defense-related agency."¹⁰³ DynCorp won the contract with the Federal Bureau of Investigation (FBI) to build its computer network, Trilogi.¹⁰⁴ A group of PMFs—including DynCorp—is networking American embassies and "taking the government's emergency phone system wireless."¹⁰⁵

Moreover, according to John Stammreich, Vice President for Homeland Security at the Boeing Company, "space surveillance via civilian and the country's national technical means has seen a 'tremendous upsurge' in the war on terrorism."¹⁰⁶ For example, the US National Imagery and Mapping Agency (NIMA) bought "exclusive and perpetual rights" to all images of Afghanistan taken by the Space Imaging Company's IKONOS satellite.¹⁰⁷ In this way, the US government has expanded its use of commercial satellite imagery with two distinct advantages in mind. First, the use of commercial imagery has "expanded the overall collection capability of the United States and has allowed it to reserve more sophisticated imagery capabilities for those area where they were most needed."¹⁰⁸ Second, commercial imagery allowed the

⁹⁶ International Consortium of Investigative Journalists. "Privatizing Combat, the New World Order." *The Center for Public Integrity*. 2002. Pp. 11

⁹⁷ Leslie Wayne. "America's For-Profit Secret Army." *New York Times*. 13 October 2002

⁹⁸ Ibid

⁹⁹ International Consortium of Investigative Journalists. 2002. Pp. 11

¹⁰⁰ Ibid

¹⁰¹ Juan O. Tamayo. "Colombia: Private Firms Take on US Military Role in Drug War." *Miami Herald*. 22 May 2001.

¹⁰² T. Christian Miller. "Videotape Shows Americans' Role In Village Bombing." *Los Angeles Times*, 16 March 2002.

¹⁰³ Dan Baum. February 2003.

¹⁰⁴ Christopher J. Dorobek. "FBI Pick DynCorp for Trilogi." *Federal Computer Week*. 7 May 2001.

¹⁰⁵ <http://www.fcw.com/fcw/articles/2001/0507/web-trilogi-05-07-01.asp>.

¹⁰⁶ Dan Baum. February 2003.

¹⁰⁷ Leonard David. "Military, Civilian Spacecraft Respond to Homeland Defense Needs." *Space.com*. 9 April 2002

¹⁰⁸ http://www.space.com/news/nss_homeland_020409.html.

¹⁰⁷ Mark M. Lowenthal. *Intelligence: From Secrets to Policy*. Washington, DC: CQ Press 2003. Pp. 68-9

¹⁰⁸ Ibid.

United States to share imagery with others without revealing “classified capabilities.”¹⁰⁹ Furthermore, a RAND Corporation study concludes that, “from an operational viewpoint,” the ideal manner in which to satisfy the United States’ military satellite communication (SATCOM) needs “will likely consist of a mix of DoD-unique assets that provide special capabilities and commercial systems that provide relatively inexpensive SATCOM capacity.”¹¹⁰ Therefore, it is seen that the private sector maintains the ability to enhance the United States’ security and military needs. Such a relationship will provide technical advancement as well as the interoperability needed for the global war on terrorism. In conjunction with the private military industry, DoD will be able to achieve the Secretary’s goals.

Cooperation with the private sector will enable the United States to meet the many challenges of the post-9/11 era. New threats can be combated while maintaining a strong presence on the global stage. Moreover, the United States may engage in the revolution in military affairs and compensate for its procurement holiday with no sacrifice to its national security. However, employing the private sector has not been done without controversy. In fact, there are several negative aspects of the private military industry that must be considered.

Can PMFs Benefit the International Community?

Since the end of the Cold War, the world has witnessed a rise in intrastate and internal conflict that has attracted far less attention from the world’s major powers. As the cohesion imposed by polarization erodes, opposing factions find themselves at odds once again and developed states find such conflict less strategically important. This scenario has already played out to its worst possible outcome in Rwanda. Nearly one million people were systematically murdered as the world watched in horror. The United Nations’ call for action was ignored and the United States was apprehensive after watching its soldiers being dragged through the streets of Mogadishu just one year earlier. In addition, Rwanda’s internal instability did not pose a threat to any state that had the means to do anything. Secretary General Kofi Annan stated: “If I had one reinforced brigade, that is, fire power and men—well trained and well equipped—I could have saved hundreds and thousands of lives.”¹¹¹

However, private military firms are driven by profits—not politics. This relatively apolitical nature may mean that PMFs are willing to go where unwilling governments will not. Using its own forces, a PMF would “establish protected safe havens where civilians can take refuge and receive assistance from international aid agencies... All the company asks for is a check for \$150 million.”¹¹² If applied to Rwanda, everybody wins. The firm makes its profit, thousands of lives are saved, politicians do not have to justify body bags, and international aid agencies are able to work in a safe environment. In addition, the world is a more stable and safe place. If the PMF is hired to train legitimate troops, a government is better able to exercise its power for the betterment of society. Also, international funds can be returned to the economy through PMFs rather than lining the pockets of corrupt, unstable governments like Pakistan (the most active “gun-for-hire” state in the world). Ultimately, according to defense consultant James L. Woods, “if the international community cannot get its act together and help these countries keep themselves together and protect commerce and protect the citizenry, you’re going to see more and more [PMFs] doing the job.”¹¹³

Furthermore, many claim that PMFs are able to perform such missions at less cost. The United Nations’ peacekeeping operation in Angola, for example, cost nearly \$1 million per day for two-years. On the other hand, Executive Outcomes (EO) was able to “end Angola’s three-year civil war” for merely \$60 million with only 20 casualties.¹¹⁴ EO effectively tipped the balance of power toward the Luanda regime, forcing UNITA to the negotiating table. EO spent 22 months in Sierra Leone for a total of \$35 million while the UN spent \$47 million for its 8-month stay in the country.¹¹⁵ Thus, it is no surprise that the United Nations’ annual cost for humanitarian aid and war relief has “increased ten-fold, from about \$300 million a year in the 1980s to \$3 billion a year in the 1990s.”¹¹⁶ PMFs clearly possess the ability to relieve some of these costs.

The Negative Aspects of PMFs

Despite the several benefits presented above, the emergence of PMFs has brought about many dilemmas as well. Certainly, the private military industry offers several innovations that will help revolutionize military and business affairs. Many argue that the industry will enable the United States to carry out its national security objectives, as well. Nonetheless, many critics highlight the shortcomings of using PMFs and remain skeptical of the benefits of such firms.

¹⁰⁹ Ibid. Pp. 69

¹¹⁰ Tim Bonds, Michael Mattock, Thomas Hamilton, Carl Rhodes, Michael Scheiern, Phillip Feldman, David Frelinger, Robert Uy. *Employing Commercial Satellite Communications: Wideband Investment Options for DoD*. Santa Monica, CA: RAND Corporation. 2000 Pp. 64

¹¹¹ Karen Davies. “Genocide in Rwanda Could Have Been Prevented.” *Patriot News*. Harrison, PA. 5 May 1998. Pp. A7

¹¹² P.W. Singer. June/July 2003 Pp. 59

¹¹³ James L. Woods qtd. in Thomas K. Adams. Summer 1999. Pp. 110

¹¹⁴ David Isenberg. November 1997.

¹¹⁵ Steven Brayton. Spring 2002 Pp. 313

¹¹⁶ Jeffrey Boutwell and Michael Klare. “Small Arms and Light Weapons: Controlling the real instruments of War.” Pp. 15-25 in *Arms Control Today*. Vol. 28, Iss. 6. August/September 1998.

One basic problem in the use of PMFs for peacekeeping and enforcing is the source of funds used to pay the firms. In the example of Rwanda, the existence of PMFs does not change the fact that all major powers were unwilling to get involved. Certainly, the availability of PMFs may change the calculus of a state. If the state is no longer asked to sacrifice its resources and the lives of its own troops, perhaps the state will be more inclined to act. Nevertheless, if a situation is so politically unimportant—as Rwanda was to the United States, for example—the state will remain unwilling to contribute to the PMF's effort.

Another issue with PMFs is the fact that their long-term benefits remain unclear. Where PMFs have seen great success in bringing peace in the short-run, many have argued that these firms are unable to bring a lasting peace to a conflict. Executive Outcomes' general success in Sierra Leone has been widely recognized. Yet, once the company pulled out, Sierra Leone's conflict spiraled out of control.¹¹⁷ Some highlight the fact that EO's success was based on the firm's close relationship with local militias and claim that this relationship contributed to the instability of the country. In one case, former EO employees in Angola have been accused of working with both the government and the rebel group, UNITA.¹¹⁸

Some also point out that, although the presence of these firms do, in fact, tip the balance of power toward the hiring party, the subsequent absence of the firms often leaves the balance of power in a state of instability. In other words, the military capability of a PMF provides a government with the might needed to defend itself. Once the firm leaves, the government is often as vulnerable as before. This phenomenon led Machiavelli to believe that "armed republics submit less easily to the rule of one of its citizens than a republic armed by foreign forces."¹¹⁹ The use of force is often used to establish a government's legitimacy. If a private firm carries out that force, the hiring government never truly establishes that legitimacy. This is likely to yield further conflict in the future. "The companies may become a temporary mechanism for preserving peace but still do little to address the underlying causes of unrest and violence."¹²⁰

In addition, global bodies like the United Nations are only as enthusiastic as their member states allow. Typical political barriers will continue to hinder humanitarian intervention regardless of a firm's willingness to intervene. The UN Department of Peacekeeping and the US National Security Council spoke of using a private firm to alleviate Zaire's refugee crisis in 1996. "The plan was dismissed when the question of who would actually foot the bill was raised."¹²¹ Moreover, a large consortium of firms called International Peace Operations Association has been unable to find any funds to intervene in the Eastern Congo as the conflict continues to escalate.¹²² No intervention was undertaken. Yet, if the international community were able to circumvent such financial and political barriers, PMFs may be able to provide the forces needed to make the world a more stable place.

Another major claim against the private military industry is that it fosters the world's arms proliferation problems. According to P.W. Singer of the Brookings Institution, "PMFs obtain weapons through all sorts of means. Some get them through official channels, including the client government itself. Some get them through international arms market legally, and some get through international and local black market."¹²³ Sandline International was hired to suppress an uprising in Papua New Guinea (PNG) and "import Russian arms."¹²⁴ The PNG government was using development funds and aid provided by Australia to pay for the firm's services.¹²⁵ Nearly \$36 million was used to purchase "former Soviet surplus equipment" which included Mi-24 and Mi8/17 helicopters, 500 cases of ammunition and explosives, heat-seeking missiles, and light weapons.¹²⁶ As reported by the *New York Times*, when the Croatian government hired MPRI through the Democracy Transition Assistance Program, Croatia was spending more than \$1 billion to acquire equipment and weapons through brokers in Eastern Europe to complement the training it was receiving.¹²⁷ This was done in violation of a UN embargo.

A more damning example is that of Nour USA in Iraq. Following the United States removal of Saddam Hussein, Nour USA won a \$327 million contract from the United States to "equip the new Iraqi army."¹²⁸ The firm claimed it would supply arms to the Iraqi military as the lead company of the DES Group. Listed as a partner to Nour USA in the firm's proposal was DES Group member, Ostrowski Arms—a firm that had no license to export arms.¹²⁹ If not for the protests lodged by the Bumar Group and four other firms— all of

¹¹⁷ Steven Brayton. Spring 2002. Pp. 313

¹¹⁸ "Can Anyone Curb Africa's Dogs of War?" 16-22 January 1999 Pp. 41

¹¹⁹ Machiavelli. *The Prince*. New York: The New American Library. 1952. Pp. 73

¹²⁰ P.W. Singer. June/July 2003. Pp. 59

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ P.W. Singer. Personal Interview. 31 March 2004

¹²⁴ Michael Crowley, Damian Lilly, Sami Makki, Sarah Meek, and Abdel-Fatau Musah. "Private Military Companies and the Proliferation of Small Arms: Regulating the Actors." Produced for *British American Security Information Council, International Alert, and Safeworld*. 2002 Pp. 8

¹²⁵ "Mercenaries Leave New Guinea in Turmoil." *Reuters*. 21 March 1997.

¹²⁶ Michael Crowley et al. 2002 Pp. 8

¹²⁷ Roger Cohen. "US Cooling Ties to Croatia After Winking at its Buildup." *New York Times*. 28 October 1995. Pp. A1.

¹²⁸ T. Christian Miller. "Polish Firm Protests Loss of Iraqi Bid." *Los Angeles Times*. 19 February 2004. Pp. A4

¹²⁹ *Ibid.*

which were out-bid by Nour USA—the contract would have been implemented and arms would have been unlawfully dumped into the open war zone in Iraq. The United States has terminated the contract and reopened the task to competitive bidding. Although T. Christian Miller, the journalist who broke this story for the *Los Angeles Times*, “got no sense that Nour planned to sell arms to anyone except the US government (which would then turn them over to the Iraqis),”¹³⁰ that assumption is not yet clear. Even Doug Brooks of the International Peace Operations Association (IPOA)¹³¹—a nonprofit advocate for privatized peace operations—says that the Nour USA case highlights the “wink-and-nudge system of authorizing weapons” in Iraq.¹³² One thing is for sure, says P.W. Singer: “The Nour case definitely doesn’t pass the smell test.”¹³³

Neither does the recent arrest of former Executive Outcomes employee and Logo Logistics “administrative contact”, Simon Mann, in Zimbabwe. Mann purchased \$180,000 worth of AK-47s and explosives from the director of Zimbabwe’s state-run Defense Industries for a group of men whom were either mercenaries set on overthrowing the government of Equatorial Guinea or private contractors heading to the Democratic Republic of Congo to secure some gold mines (the details are not clear although one of the men admitted on television that it was a coup plot).¹³⁴ Under the auspices of Sandline International—a firm in the United Kingdom run by EO’s former director Tony Buckingham—nearly “thirty tons of arms (mainly AK-47s and ammunition) were transported from Bulgaria through Nigeria, in violation of an EU arms embargo against military dictator Sani Abacha’s Nigerian army.”¹³⁵ Thus, one can see that the private military industry is, at best, an under-regulated source of arms.

The growing political power of PMFs also generates major concerns. The relationships between PMFs and governments have continued to blur the distinction between the two. For example, Nour USA’s president, A. Huda Farouki, is a good friend of the US-appointed leader of the Iraqi National Congress, Ahmad Chalabi.¹³⁶ Many “retired high-ranking military officials” were listed as advisors to the firm although several denied any involvement when contacted by the *Los Angeles Times*.¹³⁷

MPRI has very close ties to the United States government, as well. It was founded in 1987 by eight former US senior military officers. MPRI’s President and CEO is Major General Vernon B. Lewis Jr. (Ret.) Among MPRI’s staff is former US Army Chief of Staff, General Carl Vuono and former commander of the US Army in Europe, General Crosby Saint.¹³⁸ One *New York Times* article claims that MPRI has up to 10 thousand former military personnel on their payroll.¹³⁹ It is no coincidence that the firm continually finds business with government entities such as the Defense Advanced Research Projects Agency (DARPA), the Department of State, the Office of the Secretary of Defense (OSD), Office of the Joint Chiefs of Staff, and the United States Army.¹⁴⁰ In 1994, when the government of Croatia was in search of military training, the Pentagon referred it to MPRI. Leading that training effort was another retired US military officer, Major General Richard B. Griffiths.¹⁴¹

At DynCorp, 98 percent of sales come from federal contracts.¹⁴² In fact, it is DynCorp who has provided personal protection for Afghan president, Hamid Karzai—paid for by the Pentagon. They are also contracted to service the fleet of executive airplanes and helicopters,¹⁴³ manage the California border with Mexico, and service several US weapons-testing sites. DynCorp has also been the core of the police force in Bosnia, employs the primary pilots of defoliating missions in Colombia (they do provide and maintain the planes as well), and, more recently, was involved in the “forward deploying” of equipment and ammunition to the Middle East for the war with Iraq.¹⁴⁴

DynCorp’s relationship with the US government is also rather cozy. In fact, when a group of Ecuadorians filed a class action lawsuit against the firm in 2001 claiming that the herbicides used by the firm in Colombia were causing illnesses and deaths across the border, Assistant Secretary of State Rand Beers personally intervened. In an 11-page filing, Beers told the judge that the lawsuit posed a “grave risk to US national security and foreign policy objectives” and claimed that Colombian rebels were trained by al Qaeda. He continued to accuse the Ecuadorians of having been “co-opted” by “drug traffickers and international terrorists.”¹⁴⁵

¹³⁰ T. Christian Miller. Personal Interview. 26 March 2004

¹³¹ “IPOA’s mission is to provide the tools and information necessary for policy-makers worldwide to make informed decisions about the use of private peace operations across the globe.” <<http://www.ipoaonline.org/>>

¹³² Doug Brooks. Personal Interview. 28 March 2004.

¹³³ P.W. Singer. Personal Interview. 31 March 2004.

¹³⁴ David Pratt. “Soldiers of Misfortune.” *The Sunday Herald*. 14 March 2004. Pp. 17

¹³⁵ Dena Montague. Spring 2002. Pp. 235

¹³⁶ T. Christian Miller. Personal Interview. 26 March 2004

¹³⁷ T. Christian Miller. “Coalition Cancels Iraq Contract.” *Los Angeles Times*. 6 March 2004. Pp. A7

¹³⁸ David Isenberg. November 1997.

¹³⁹ Leslie Wayne. 13 October 2002

¹⁴⁰ David Isenberg. November 1997.

¹⁴¹ Ibid.

¹⁴² Dan Baum. February 2003.

¹⁴³ Dan Baum. February 2003; Nelson D. Schwartz. “The War Business: The Pentagon’s Private Army.” *Fortune*. 17 May 2003.

¹⁴⁴ Dan Baum. February 2003.

¹⁴⁵ Ibid.

Although systematically denied by the firms themselves, many argue that PMFs are increasingly having a major role in creating foreign policy. Some have asserted that, “when companies have their fingers in every slice of the national security pie, it’s easy to lose track of who’s writing the orders and who’s carrying them out.”¹⁴⁶ Former National Security Agency employee, Wayne Madsen argues that, when the State Department wants a study on how policy should be handled, a company like “DynCorp says, You have to do this, this, and this; and then those same points show up in State’s requests for proposals. DynCorp writes its own ticket.”¹⁴⁷ The *Financial Times* highlights the fact that many of these private military firms—specifically, DynCorp, MPRI, and Vinnell—are delving into “military consulting” as well.¹⁴⁸ In fact, it was MPRI whom was hired by the US Army to write *Contractors on the Battlefield*—a manual that serves as a primer for the military in dealing with contractors.¹⁴⁹ In 1992, Brown & Root (now Kellogg, Brown & Root—KBR) was hired by the Pentagon to produce a classified report on how private firms may aid US troops on the battlefield.¹⁵⁰ At the time, Dick Cheney was the Defense Secretary. Following his tenure at DoD, he went on to become the CEO of Halliburton to which KBR is a subsidiary.

This highlights another major concern—some PMFs are associated with larger corporations. This will only further their power. For example, MPRI has merged with defense giant, L-3; the 12th largest contractor, Computer Science Corporation, has absorbed DynCorp¹⁵¹; and Northrop Grumman owns Vinnell. The implication of this raises concerns. Deborah D. Avant feels that this will “cause the Pentagon and State Department officials, as well as members of Congress to give undue credence to [PMFs’] lobbying efforts.”¹⁵² When L-3’s MPRI was pushing for a contract in Equatorial Guinea, it was rejected by the State Department twice. Yet, after two years of lobbying, they eventually were granted a contract to operate in that country.¹⁵³ Furthermore, the larger these corporations get, the more likely collusion will become. In such cases, the private military industry may be able to set the price of their goods and services, thereby negating the Pentagon’s savings.¹⁵⁴ Nour USA’s bid for its contract in Iraq has been said to be completely unrealistic—millions of dollars below those of competing firms. Despite a low bid to supply gasoline to the troops in Iraq, KBR charred the US government over \$1 billion for the service, causing a call for investigation in Congress.

Large corporations may also find themselves using their military branch to pursue other economic interests. The relationship between Branch Energy Ltd. and Executive Outcomes, for example, has made many conclude that EO intervened in Sierra Leone to secure Branch Energy’s share in the diamond trade.¹⁵⁵ The use of KBR in the most recent war in Iraq has led many to question whether Vice President Cheney is allowing Halliburton to secure its own interests in the region. Isenberg states: Groups entangled in a firm’s corporate web find quick deals among industry, mercenaries and arms dealers maneuvering massive amounts of money, power, and weapons... These corporations are capable of regrouping and forming subsidiaries to operate away from public scrutiny... establishing associates in a diamond or oil region often gives the overseeing company a strong, perhaps dominate, foothold in the economy of [a given] country.¹⁵⁶

Thus, there is much concern with the current developments of the private military industry.

The issue of dependence must be discussed as well. As governments increasingly turn to the private sector for its national security and defense needs, they run the risk of tying themselves down. One positive aspect discussed above was the private sector’s ability to provide experienced personnel. It was stated that DoD must no longer pay for 10 years of training to get an expert with 10 years of experience. This poses a problem because, if DoD relies on the private sector for a given skill and fails to train its own personnel, DoD will become unable to function on its own. In essence, DoD can quickly become a victim of “brain drain.” In the event that a specific good or service is unavailable in the private sector or private sector employees go on strike, a military would be unable to carry out its objectives. This may completely paralyze a state’s military.

Once the threat of death is no longer hypothetical, civilians in the theater of war may find it easy to quit, resign, or request a transfer. Following the tragedy in Fallujah where four contractors were burnt and dragged through the streets, this concern will be tested.¹⁵⁷ If contractors were to pull out, this would impede

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Thomas Catán and Stephen Fidler. “The Job of War.” *The Financial Times*. 10 August 2003.

¹⁴⁹ Mark Fineman. “Privatized Army in Harm’s Way.” *Los Angeles Times*. 24 January 2003.

¹⁵⁰ International Consortium of Investigative Journalists. 2002. Pp. 3

¹⁵¹ Ann Markusen. 1 October 1999. Pp. 7

¹⁵² Deborah D. Avant. “Privatizing Military Training.” *Foreign Policy in Focus Vol. 5, No. 17*. June 2000. Pp. 2

¹⁵³ Amnesty International. *A Catalogue of Failures: g8 Arms Exports and Human Rights Violations*. 30 March 2003. Pp. 17

¹⁵⁴ Ibid.

¹⁵⁵ Dena Montague. Spring 2002. Pp. 233

¹⁵⁶ David Isenberg. November 1997.

¹⁵⁷ In all fairness, when questioned on this point, a Blackwater employee, David Randolph, who is in Iraq said “In the face of adversity, stay the course.” David Randolph. Personal Email. 2 April 2004.

on a commander's flexibility in a time of war. Firms may be able to break a contract and merely face legal consequences while soldiers are left to die. According to the *Los Angeles Times*, Halliburton announced that it will suspend some convoys supplying US troops in Iraq and pull some employees out as a result of escalating violence.¹⁵⁸ This will adversely affect the forces capability to conduct its mission. At a time when the United States is pushing the development of rapid reaction forces and forward deterrence policies, such paralysis is unacceptable—especially in a time of “uncertainty and surprise.” In these cases, one must remember: “Once the fighting starts, the objective is no longer to cut costs or save money but to accomplish the wartime mission.”¹⁵⁹ The dependence on the private sector may hinder a government from doing that.

One final concern is that of a government getting dragged into a conflict because of a PMF's actions. It has been shown that a government may be willing to intervene when necessary. Take the example of Rand Beers' intervention in the court case against DynCorp. With the war in Iraq, the United States military has already stepped up its presence in Fallujah following the death of the four Blackwater USA employees. The kidnapping of Kellogg, Brown and Root employee, Thomas Hamill, by Iraqi insurgents, had the potential of further pushing the United States government to intervene on behalf of its civilian contractors. Certainly the situation in Iraq is different. As part of a state-sanctioned conflict in Iraq, US contractors are a part of larger war effort and thus, enjoy an elevated status—even if it is merely in the arena of public opinion. This may set a precedent of new tactics against US war efforts and may lead to the escalation of tension by pulling client governments and even the contractors' home country into open conflict. This would have far-reaching implications. Ponder the possibilities of US intervention in Colombia where many firms carry out foreign policy objectives under Plan Colombia. The outcome could be disastrous.

Attempts at Regulation

There has been a normative shift regarding the privatization of military affairs. Although many wish to outlaw the use of PMFs altogether, for better or worse, this is no longer up for debate. “The wave isn't coming—it is here. So today's pertinent question is, ‘What is the best way to utilize contractors in combat?’”¹⁶⁰ Therefore, there must be a distinct line between the government and the private sector. Even Circular A-76 recognizes the existence of an “inherently Governmental function... which is so intimately related to the public interest as to mandate performance by Government employees.”¹⁶¹ Thus, there are limits to the tasks the private sector should undertake. Dr. Tony Gray states that “these firms should be used in a supportive role” only. “If they are working with the US government, they should be supporting them. The same is true if they are working with, say, the Government of Colombia.”¹⁶² However, with the current state of the private military industry, this line is extremely unclear.

For this reason, there must be greater oversight and regulation in the private military industry. Thus far, the international community has had trouble addressing the problem presented by PMFs. Most often, national legislation is said to be sufficient for regulating PMFs. As will be shown, this is not the case. Three examples of national legislation will be discussed here to highlight such legislation's limitations—that of the United Kingdom, United States, and South Africa.

United Kingdom

In the United Kingdom, as in the United States, the Ministry of Defence (MoD) outsources many tasks to the private sector through the Private Finance Initiative (PFI).¹⁶³ “Under the PFI scheme, the British government invites private companies to bid for not only the servicing, but also the construction and maintenance of military facilities.”¹⁶⁴ PFI also seeks to outsource training and security with aims to:

- Focus on the core task of delivering operational capability
- Provide greater flexibility in planning our projects and our forward budget
- Improve the quality of services by making best use of commercial expertise and
- Improve opportunities to generate third party revenue—sharing the costs with other customers—where appropriate.¹⁶⁵

However, the United Kingdom has very little legislation to deal with private military firms.

According to a 2002 Green Paper ordered by the Foreign Affairs Committee of the House of Commons, “although successive governments have deplored the activities of mercenaries no effective legislation exists to prevent either recruitment or their participation in conflict.”¹⁶⁶ The most significant piece of legislation is the

¹⁵⁸ T. Christian Miller. “Halliburton Suspends Some Iraq Supply Convoys.” *The Los Angeles Times*. 13 April 2004.

¹⁵⁹ Lieutenant Colonel Lourdes A. Castillo, USAF. Fall 2000. Pp. 30

¹⁶⁰ *Ibid.* Pp. 27

¹⁶¹ Office of Management and Budget. *Circular A-76*. 4 August 1983 (Revised 1999)

¹⁶² Dr. Tony Gray. Personal Interview. 30 November 2003.

¹⁶³ *The Private Finance Initiative* at: <<http://www.mod.uk/aboutus/keyfacts/factfiles/pfi.htm>> Viewed December 30, 2003.

¹⁶⁴ Elke Krahnmann. *Controlling Private Military Companies: The United Kingdom and Germany*. Presented at the International Studies Association Annual Convention in Portland, Oregon. 25 February-1 March 2003

¹⁶⁵ *The Private Finance Initiative* at: <<http://www.mod.uk/aboutus/keyfacts/factfiles/pfi.htm>> Viewed December 30, 2003

¹⁶⁶ *Private Military Companies: Options for Regulation*. London: The Stationary Office. 12 February 2002.

Foreign Enlistment Act of 1870 (FEA), which does not attempt to define the term “mercenary”, but rather attempts to define the offense that it sets out to prohibit. Section 4 of the FEA states that it is illegal to accept any commission or engagement in any military service of a foreign state at war with “any friendly state” without license from the government.¹⁶⁷ Yet, this means that it is completely legal to engage in military service without license for “any force fighting a state at war with Britain”—for example, the United States.¹⁶⁸

Most importantly, the FEA does not differentiate between a mercenary and a PMF nor does it outlaw a firm’s security, training, logistical, consulting, or procurement services—all much more common than frontline battle. The legislation does not outlaw armed contractors on foreign soil nor does it preclude the use of force by British contractors in self-defense. As shown by the tragic events involving Blackwater USA employees in Fallujah, Iraq, these omissions are enough to create a situation where PMFs end up on the front lines of war.

United States

According to the United States’ Constitution, Congress has specific powers enumerated in Article 1 Section 8 that address several central issues regarding PMFs. The Constitution states that Congress must be able to “regulate Commerce with foreign nations” (paragraph 2); “declare war” and “grant Letters of Marque and Reprisal” (paragraph 11); “make Rule for the Government and Regulation of the land and naval Forces” (paragraph 14); “provide for organizing, arming and disciplining the Militia” (paragraph 16); and “make all Laws which shall be necessary and proper for carrying into Execution the forgoing Powers” of the United States government as laid out in the Constitution (paragraph 18). Thus, there is a well-documented appeal for congressional power and oversight in regard to military affairs.

Unlike legislation in the United Kingdom, the focus of the US regulatory regime is on the “transfer of knowledge, services, and goods.”¹⁶⁹ The key piece of legislation is the *International Traffic in Arms Regulations* (ITAR). According to ITAR, anyone in the United States who is “manufacturing or exporting defense articles or furnishing defense services” is required to register with the State Department’s Office of Defense Trade Control (ODTC).¹⁷⁰ Furthermore, Congress must only be notified of the following contracts:

- Those regarding “major defense equipment” valued at \$14 million or more (\$25 million for NATO members, Japan, Australia, and New Zealand)
- Those regarding “defense articles and services” valued at \$50 million or more (\$50 million for NATO members, Japan, Australia, and New Zealand)¹⁷¹

This notification is provided to the Speaker of the House of Representatives and the chairperson of the Senate Foreign Relations Committee. Congress then has 30 days to reject the contract.

Once the contract is signed, virtually nobody has the authority of oversight. Although the embassy in each country is “charged with general oversight” for all US activity in a given country, no official paperwork is required and no specific oversight measures are codified in US law. Those contracts which fall below the aforementioned \$14 and \$50 million levels are unseen by Congress. The only exception comes in the form of quarterly Presidential reports as required by section 36(a) of the Arms Export Control Act that are delivered only after such contracts are granted. These reports include all “letters of offer”, whether accepted or not, in excess of \$1 million listing the items or services exported, their quantity and price, and their “ultimate user.”¹⁷² Thus, Congress has very little say in the contracts that are granted by the US Government despite their explicit Constitutional mandate in Article 1 section 8.

The case of US contracts in post-Saddam Iraq highlights this lack of oversight and, because of the urgency of the situation, hints at the possible disaster that can arise. The Coalition Provisional Authority (CPA) has handled US contracts in Iraq which, in effect, relegates that power to a small office in Baghdad with a staff of five that is responsible for issuing up to fifteen contracts a day.¹⁷³ According to P.W. Singer, “many contracting officers have complained about the lack of attention to this issue and the lack of funding” for proper management.¹⁷⁴ Since the controversy regarding the Nour USA contract surfaced—revealing that its partner, Ostrowski Arms, was not licensed to export arms—contracting authority has been transferred to the Pentagon Renovation Office and the US Army. Because the CPA is “not a federal agency”, it has been effectively argued that the General Accounting Office (GAO)—the audit, evaluation, and investigative arm of Congress—has no dominion over the coalition authority in Iraq, including the private contracts it

¹⁶⁷ Ibid.

¹⁶⁸ Kim Richard Nossal. “Global Governance and National Interests. Regulating Transnational Security Corporations in the Post-Cold War Era”. Pp. 459-476 in *Melbourne Journal of International Law*. Volume 2. 2001. Pp. 464.

¹⁶⁹ Kim Richard Nossal. 2001. Pp. 467

¹⁷⁰ *International Traffic in Arms Regulations* (ITAR). 22 CFR § 122.1 (2001).

¹⁷¹ ITAR. 22 CFR § 124.11 (2001)—“Major defense equipment”, as defined in § 120.8, is any item on the United States Munitions List with a research and development cost of at least \$50 million or a total production cost of at least \$200 million.

¹⁷² *Arms Export Control Act* (AECA). 22 USC § 2776 (1976)

¹⁷³ T. Christian Miller. Personal Interview. 26 March 2004

¹⁷⁴ P.W. Singer. Personal Interview. 31 March 2004

authorizes.¹⁷⁵ As shown, Congress already has little oversight of military contracting. In regard to the \$18.4 billion earmarked for the reconstruction of Iraq, Congress only received a quarterly “2207 report” which address “spending and the acquisition of contracts”; again, are seen only after the contracts are granted.¹⁷⁶ The recent claim that the GAO has no authority in regard to US activity in Iraq further strips Congress of oversight powers.

According to Democratic Senator of Vermont Patrick Leahy:

There are inherent difficulties with the increasing use of contractors to carry out U.S. foreign policy. This is especially true when it involves ‘private’ soldiers who are not as accountable as U.S. military personnel. Accountability is a serious issue when it comes to carrying guns or flying helicopters in pursuit of U.S. foreign policy goals.¹⁷⁷

Consequently, when DynCorp was found to be involved in a sex-ring involving underage females in the Balkans and AirScan International opened fire upon women and children in Santo Domingo, Colombia, there was little recourse. When MPRI allegedly participated in Croatia’s Operation Storm during which many human rights abuses occurred, nothing could be done. In essence, private corporations “are accountable only to their shareholders and are, to some degree, shielded from public and government scrutiny.”¹⁷⁸ If not for concerned competitors, Nour USA and Ostrowski Arms could have imported weapons into Iraq with no accountability. Firms like Kellogg, Brown & Root (KBR) are able to purposely overcharge the CPA for outsourced goods and services¹⁷⁹ and unsubstantiated intelligence provided by AirScan can lead to the death of a missionary and her child to no consequence. Without proper oversight, such improprieties are apt to occur and can hinder the success of US foreign policy objectives as well as undermine the fabric of a democratic society.

South Africa

As the era of apartheid came to an end, elite members of the South African Defense Force (SADF) found themselves unemployed. Members of the 32nd Battalion and the Civil Cooperation Bureau (CCB)—a pool of especially effective soldiers and agents—organized to create private military outfits. The most famous—Executive Outcomes—was founded by former assistant commander of the 32nd Battalion and agent for the CCB, Eben Barlow, and was almost entirely made up of ex-SADF personnel. Thus, South Africa was a hotbed for privatized military services specializing in low-intensity conflict and counterinsurgency in obvious need of relevant legislation.

Thus, the *Regulation of Foreign Military Assistance Act of 1998* was implemented. Some have claimed that the Act “is the most far-reaching national legislation dealing with mercenaries and private military companies.”¹⁸⁰ First, the Act attempts to outlaw “mercenary activity” which it defines as “direct participation as a combatant in armed conflict for personal gain.”¹⁸¹ Section 2 states: “No person may within the Republic [of South Africa] or elsewhere recruit, use or train persons for or finance or engage in mercenary activity.”¹⁸² Thus, this Act proves ambitious as it not only prohibits the use of mercenaries but also sets out to prohibit their recruitment and training anywhere in the world.

Second, and more pertinent to the private military industry, the Act sets out regulate military assistance abroad. It does so rather efficiently in two ways: (a) by defining military assistance in a very comprehensive way and (b) by implementing an element of direct government oversight. According to section 1(iii):

“foreign military assistance” means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of—

- (a) military assistance to a party to the armed conflict by means of—
 - (i) advice or training;
 - (ii) personnel, financial, logistical, intelligence or operational support;
 - (iii) personnel recruitment;
 - (iv) medical or para-medical services; or
 - (v) procurement of equipment;

¹⁷⁵ Jackie Spinner and Ariana Eunjung Cha. “US Decisions on Iraq Spending Made in Private.” *The Washington Post*. 27 December 2003. A1.

¹⁷⁶ T. Christian Miller. Personal Interview. 26 March 2004.

¹⁷⁷ Leslie Wayne. 13 October 2002

¹⁷⁸ Steven Brayton. Spring 2002 Pp. 318

¹⁷⁹ Michael Janofsky. “Democrat Says Pentagon Questions Estimates on Iraq.” *The New York Times*. 12 March 2004.

¹⁸⁰ Michael Crowley, Damian Lilly, Sami Makki, Sarah Meek, and Abdel-Fatau Musah. “Private Military Companies and the Proliferation of Small Arms: Regulating the Actors.” Produced for *British American Security Information Council, International Alert, and Safeworld*. 2002 Pp. 13

¹⁸¹ *Regulation of Foreign Military Assistance Act 1998* (South Africa). <<http://www.gov.za/acts/1998/a15-98.pdf>>. The prohibition of “mercenary activity” is found in § 2 and “mercenary activity” is defined in § 1(iv).

¹⁸² *Ibid.* § 2.

- (b) security services for the protection of individuals involved in armed conflict or their property;
- (c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;
- (d) **any other action that has the result of furthering the military interests of a party to the armed conflict**, but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict [bold added].¹⁸³

Section 1(iii)d (bold above) leaves elasticity heralded by many proponents of the Act. Section 3 of the Act states that military assistance “within the Republic of South Africa or elsewhere” may only be rendered under authorization from the government.¹⁸⁴ This authorization comes through a process outlined in sections 4 and 5 by which one must submit an application to the National Conventional Arms Committee whereby the Committee reviews the application. The Committee then forwards a “recommendation” to the Minister of Defence regarding the application and, in cooperation with the Committee, the Minister accepts or rejects the proposal.¹⁸⁵

According to the President of IPOA, Doug Brooks, however, “the South African legislation... is poorly written, arbitrary, and frankly unenforceable.”¹⁸⁶ Some claim that the strict definitions within the Act make it impracticable. For example, according to the Act, “armed conflict” includes any conflict between:

- (a) the armed forces of foreign states;
- (b) the armed forces of a foreign state and dissident armed forces or other armed groups; or
- (c) armed groups¹⁸⁷

Considering the definition of “foreign military assistance” in section 1(iii) and the definition of “armed conflict” in section 1(i), people engaged in the following activities may have to apply for authorization through the National Conventional Arms Committee:

- conducting or speaking at seminars involving government officials and/or members of the armed forces;
- working for international aid agencies such as the ICRC, the UN High Commissioner for Refugees, the UN Development Programme and MSF (Doctors Without Borders);
- human rights and election monitoring;
- procurement of equipment for water sanitation, medical supplies, etc. for a humanitarian organisation;
- service within the civilian component of a peace operation; and
- provision of security services as provided by the domestic private security industry.¹⁸⁸

Moreover, according to section 4(5) and 5(5), the expense of the application and approval process falls upon the applicant. The Act sheds no light on the possible costs to the applicant nor does it set guidelines as to the timeframe of the prescribe application and approval process. Thus, the process acts as a disincentive as an applicant may suffer unreasonable fees and waiting periods that run counter to efficient business practices.

So stringent is the *Regulation of Foreign Military Assistance Act* that many attribute the demise of South Africa-based Executive Outcomes in 1998 to the “hostile business environment” the Act created. In fact, as Doug Brooks claims, “twice the government [of South Africa] has evaded the same law to carry out its own

¹⁸³ Ibid. § 1(iii)

¹⁸⁴ Ibid § 3

¹⁸⁵ Ibid § 4 and 5

¹⁸⁶ Doug Brooks. Personal Interview. 28 March 2004.

¹⁸⁷ *Regulation of Foreign Military Assistance Act 1998* (South Africa). § 1(i)

¹⁸⁸ Jakkie Cilliers and Mark Malan. “Mercenaries and Mischief: The Regulation of the Foreign Military Assistance Bill.” Occasional Paper Number 25. Institute for Security Studies. September 1997.

policies.”¹⁸⁹ To avoid the law themselves, private firms “can easily relocate to other countries” like Angola, where nearly 80 firms with joint ownership have sprung up in recent years.¹⁹⁰

The most pressing alternative to adhering to the Act, however, is for these firms to be dissolved and find work in the more secretive black and gray markets. “The heavy-handed approach the South African government has taken... means that the larger players may now... break off into much more covert companies which the government will not be able to keep track of with anywhere near the same ease which they had...previously.”¹⁹¹ Recent events have shown that this scenario is all too real.

Seventy men were recently arrested in Harare International Airport in Zimbabwe for conspiring to overthrow President Teodoro Obiang Nguema of Equatorial Guinea. Their 727-100 cargo plane took off from South Africa and landed in Harare where the group was to acquire their weapons. Simon Mann, former British Special Air Service (SAS) officer and Executive Outcomes (EO) employee, allegedly purchased arms from the director of the state-owned Zimbabwe Defense Industries for the group.¹⁹² The group was then to go to a “covert military training camp in Cameroon” where many mercenaries had been training for six months for the operation.¹⁹³ Ultimately, conspirators were arrested in Zimbabwe and Equatorial Guinea. Many were former members of South Africa’s infamous “Battalion 32” of apartheid South Africa¹⁹⁴ and several, such as Simon Mann, Simon Witherspoon, Nick du Toit, and the two pilots were former employees of EO.¹⁹⁵

Interestingly, the mercenary forces claimed to be working for a private military firm called Logo Logistics heading to the Democratic Republic of Congo (DRC) to protect gold mines. The 727 airplane was registered to Logo Logistics and Simon Mann was registered as the “administrative contact” upon registering the company’s domain name (logo4log.com).¹⁹⁶ Yet, Nick du Toit appeared on state-run television in Zimbabwe and said: “It wasn’t a question of taking the life of the head of state, but of spiriting him away, taking him to Spain and forcing him into exile.”¹⁹⁷ He continued and claimed that the “entire plot...was hatched by Severo Moto, an Equatorial Guinean opposition figure and longtime fomenter of quashed coups who lives in exile in Madrid.”¹⁹⁸

These three examples highlight several major problems presented by national legislation and the private military industry it attempts to regulate. In order to be effective, it is imperative that national legislation be up to speed on current international developments as shown by the United Kingdom’s *Foreign Enlistment Act*. Moreover, it must institute proper oversight of the private military industry as shown by the United States’ regulatory regime. However, this legislation must not be unduly hostile to the industry as is South Africa’s *Regulation of Foreign Military Assistance Act*. Outdated and flawed legislation leaves the private military industry unregulated—a condition in which few would find comfort. On the other hand, in a global economy, firms can easily find business in black and gray markets. What has been perceived as unfriendly legislation in South Africa has been partly blamed for the demise of Executive Outcomes. Some claim that the level of scrutiny undertaken by the South African government “was too constrictive” creating a climate that was not “conducive to doing business.”¹⁹⁹ Regardless of how one views the downfall of EO (i.e. as a success or failure), it is clear that the legislation in South Africa did not have the desired effect. Not only have affiliates and “spin-off” firms absorbed much of EO’s clientele²⁰⁰ but many of EO’s employees have found work in the black market such as those involved in the illegal weapons purchase by Simon Mann and the 727 full of “mercenary” forces in Zimbabwe.

More importantly, the analysis of this national legislation highlights a broader point. If the legislation is not universally enforced and if not all countries have legislation dealing with PMFs, such legislation will have little effect on the private military industry. As stated by Dr. Kim Richard Nossal, the “patchwork of national legislation... leaves too many jurisdictions where [PMFs] can operate without regulation.”²⁰¹ However, considering that the United Kingdom’s FEA has not been used since 1896, many conclude that, although “neutrality laws like the UK Foreign Enlistment Act are deficient in many respects, it is often a question of political will that they have not been made more effective and enforceable.”²⁰² For this reason, in order to legitimize the private military industry and hold it to acceptable standards, the international community must address the issue through international bodies. Not only do critics of the industry call for such action but

¹⁸⁹ Doug Brooks. Personal Interview. 28 March 2004

¹⁹⁰ David Shearer. “Outsourcing War.” Pp. 68-81 in *Foreign Policy*. Iss. 112. Fall 1998. Pp. 79

¹⁹¹ Kevin A. O’Brien. “PMCs, Myths, and Mercenaries.” *Royal United Service Institute Journal*. February 2000.

¹⁹² David Pratt. 14 March 2004. Pp. 17

¹⁹³ Ibid.

¹⁹⁴ “The Fog and Dogs of War.” *The Economist*. 20-26 March 2004. Pp. 45

¹⁹⁵ David Pratt. 14 March 2004. Pp. 17

¹⁹⁶ The author thanks William Knowles of c4i.org Computer Security & Intelligence for this information. This information can be obtained by searching the domain name at <www.networksolutions.com>

¹⁹⁷ Michael Wines. “Where Coup Plots are Routine, One That is Not.” *The New York Times*. 17 March 2004. Pp. A1

¹⁹⁸ Ibid.

¹⁹⁹ Kevin A. O’Brien. February 2000.

²⁰⁰ P.W. Singer. 2003 Pp. 118.

²⁰¹ Kim Richard Nossal. 2001. Pp. 468.— Dr. Nossal uses the term “transnational security company” in lieu of “private military firm.”

²⁰² Damian Lilly. Review of the Green Paper Submission “Private Military Companies: Options for Regulation” for the organization International Alert. July 2002. Pp. 7

PMFs do so, as well. As articulated by Doug Brooks, “while there is a great deal of domestic regulation already out there... rational international regulation would be helpful in standardizing the behavior of the industry, in screening out fly-by-night companies, and in giving potential clients the confidence to utilize private companies.”²⁰³

Yet, current international law suffers from the same misnomer as the United Kingdom’s FEA. There is yet to be an international body or agreement that differentiates between a mercenary and a private military firm. Initial attempts to outlaw “mercenary activity” occurred during the Cold War inspired by an influx of European mercenaries, or so-called “vagabond mercenaries,” in African affairs.²⁰⁴ By leaving a loophole that, in effect, allowed states to treat mercenaries as criminals or spies (as opposed to prisoners of war), the international community attempted to make a “humanitarian legal environment so antithetical to mercenaries” that the practice would be deterred.²⁰⁵ On this basis, the first *Additional Protocol to the Geneva Convention* was agreed upon in 1977. As previously noted, however, “mercenary” is defined in the protocol specifically to address a small group of European individuals who freelanced their military expertise such as Bob Denard and “Mad” Mike Hoare. (See above.) Thus, large loopholes remain and have been exploited by PMFs, mercenaries, and states. When incorporated into national armed forces or corporately structured, private military contractors and even traditional mercenaries fall outside the purview of the Protocol.

Unfortunately, all international attempts to regulate this activity are predicated upon this definition. The *Organization of African Unity Convention for the Elimination of Mercenarism in Africa*, in addition to having a limited regional reach, uses *Addition Protocol I*.²⁰⁶ Moreover, besides never entering into force, the *International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries*, as adopted by the United Nations in 1989, also uses the Protocol and places a ban only on activity aimed at “overthrowing a Government” and “undermining of the constitutional order” or “territorial integrity of a State.”²⁰⁷ Very few PMFs engage in such activity.

By analyzing the existing national and international attempts to regulate mercenary and private military activity, one can see that they are insufficient. For this reason, many place their hopes in the jurisdiction of the International Court of Justice (ICJ) and the International Criminal Court (ICC) to deal with the improprieties of the private military industry. However, upon examination, these hopes are clearly misplaced, as both the ICC and ICJ are far from adequate in dealing with this issue.

The ICJ is a judicial body whose jurisdiction applies to states only and only upon the mutual agreement of disputing states to recognize the Court’s jurisdiction. In the Court’s own words, “only States may apply to and appear before the Court.”²⁰⁸ Thus, Simon Chesterman asserts, for the ICJ to play a role in the private military industry, it would “first require the Court to accept parties that are not states. In the market place of war, death and bankruptcy seem more likely to control this important new phenomenon.”²⁰⁹

The ICC, on the other hand is a far more extensive judicial body. It has jurisdiction over only the “most serious crimes of concern to the international community” including:

1. The crime of genocide;
2. Crimes against humanity;
3. War crimes;
4. The crime of aggression.²¹⁰

Two things must be pointed out before any real analysis of the application of the ICC ensues. First, the crime of genocide is an extreme crime of which no PMF has ever been accused and clearly would be prosecuted even by the loose national laws of most states. Thus, this crime is less relevant to the private military industry. Second, the “crime of aggression” is yet to be defined by the Rome Statute. In Article 5(2) the Statue calls for a defining provision to be adopted **before** the ICC exercises its jurisdiction in regard to this crime. Thus, the ICC does not accept jurisdiction over this crime until such a provision has been adopted which is yet to be done. Therefore, the most pertinent crimes covered by the Rome Statue are “crimes against humanity” and “war crimes”.

A “crime against humanity”, as defined in the Statute, is a specific crime (listed in Article 7(1)) committed “as part of a widespread or systematic attack directed against any civilian population.”²¹¹ A “war crime” is a

²⁰³ Doug Brooks. Personal Interview. 28 March 2004.

²⁰⁴ Anthony Mockler. *The New Mercenaries*. London: Sidgwick & Jackson. 1985. Pp. 9

²⁰⁵ Kim Richard Nossal. 2001. Pp. 468

²⁰⁶ *Organization of African Unity Convention for the Elimination of Mercenarism in Africa*. Opened for signature 3 July 1977, 1490 UNTS 89 (entered into force 22 April 1985)

²⁰⁷ *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. U.N. Doc. A/RES/44/34 (1989), 29 I.L.M. 91, 4 December 1989, (not in force).

²⁰⁸ *International Court of Justice Website*. < <http://www.icj-cij.org>>

²⁰⁹ Simon Chesterman. Personal Interview. 5 April 2004.

²¹⁰ *Rome Statute of the International Criminal Court*. U.N. Doc. A/CONF.183/9. 17 July 1998. Article 5(1).

²¹¹ *Ibid.* Article 7(1).

“grave breach” of the Geneva Convention and other “violations of the laws and customs applicable in international armed conflict within the established framework of international law.”²¹² Because the ICC “has jurisdiction over nationals of states that ratify... [and] over crimes that occur in the territory of states that have ratified”²¹³, it appears that the Court has the ability to prosecute PMFs for their crimes.

However, in article 7(2) regarding crimes against humanity, the phrase “attack against any civilian population” means “a course of conduct... **pursuant to or in furtherance of a State or organizational policy to commit such attack** [bold added].”²¹⁴ In article 8 regarding war crimes, it states: “The Court shall have jurisdiction in respect to war crimes in particular when committed as a part of **a plan or policy or as part of a large-scale commission of such crimes** [bold added].”²¹⁵ Of all the crimes committed by PMFs discussed here, few, if any, would fit this definition. Certainly, the “massacre” in Santo Domingo, Colombia—in which a firm hired by Occidental Petroleum was involved in the aerial assault on civilians—was not planned, policy, or part of a large-scale commission. Despite Dr. Noam Chomsky calling the coca eradication effort in Colombia “chemical warfare,”²¹⁶ there is no evidence that the adverse effect on civilians’ health was the policy of the firms involved. Moreover, because state governments hire the firm, the responsibility tends to fall upon the hiring party rather than the firm itself. Generally speaking, such crimes are committed by individuals and do not reflect the firm’s *modus operandi*. The only unethical or illegal acts so far committed by a firm as a matter of procedure are those such as “breach of contract” or unfair business practices. In this regard, the ICC has no jurisdiction.

By analyzing existing national and international laws, it is clear that the private military industry is dangerously unregulated. The human rights abuses, crimes, and failures of the private military industry are rarely even noticed, much less prosecuted to the full extent of the law. Moreover, it is clear that the full extent of the law is not nearly extensive enough as the need for specific and practicable regulation is apparent.

In addition to being unregulated, PMFs are unprotected, as well. Not only are PMFs’ human rights abuses, crimes, and failures absent from such legislation. The private military industry’s legitimacy and rights are absent as well, leaving a world open to rogue firms and leaving firms without the ability to conduct legitimate business. Essentially, “legal companies have to operate legally”²¹⁷ and thus, institutionalizing PMFs would empower the international community to protect itself against the crimes and failures of the industry while allowing these firms to operate under safe and legal mandates. Unfortunately, as of late, the private military industry has been forced to become an extralegal market. Doug Brooks asserts:

There will always be individuals that do whatever they want whatever the rules and regulations are. But, legitimate firms would love to have oversight of their operations. It gives them protection not only from the reputation given the industry by the few unscrupulous firms but from ‘spicy mercenary stories’ that perpetuate this unrealistic view of the industry, as well.²¹⁸

Thus, with regulation, the industry and the international community would be able to benefit from the legitimacy of the privatization of military affairs while pursuing those firms and individuals that break national and international law.

Conclusion

The way in which humankind organizes its societies and military structures has always played a huge role in the structure of the world stage. With the rise of the modern state came the ability of sovereign entities to monopolize the claim to the legitimate use of physical force and thus, gave rise to a “billiard ball” paradigm of international relations. As the cohesiveness and authority of the Weberian state erodes with the dynamic changes of the transnational world system, that monopoly dissipates and gives rise to new entities and paradigms that change the way in which warfare and international affairs are conceptualized. The private military firm (PMF) is one such entity that has had and will continue to have a huge impact on international relations and global politics.

Although the rise of the private military industry is nothing new, its “distinct corporate structure” and the fact that it “operates along business lines... across the spectrum of conflict”²¹⁹ differentiates the industry from anything the world has seen. Certainly mercenaries and other nonstate forces have played a role in warfare in the past. However, the level of the private military industry’s professionalism and expertise is unprecedented. Consisting mostly of highly trained former military personnel and experts in their field, PMFs can undertake anything from the staffing of mess halls and the construction of barracks to the management of complex weapons systems and psychological operations.

²¹² Ibid. Article 8—this article continues and lists several crimes it sets out to prohibit.

²¹³ Simon Chesterman. Personal Interview. 5 April 2004.

²¹⁴ *Rome Statute of the International Criminal Court*. Article 7(2).

²¹⁵ Ibid. Article 8.

²¹⁶ Noam Chomsky. Personal Interview. 3 November 2003.

²¹⁷ Doug Brooks. Personal Interview. 28 March 2004.

²¹⁸ Ibid.

²¹⁹ Eugene B. Smith. Winter 2002-03. Pp. 104.

Therefore, there is an increasing demand for such firms as evidenced by the 500 percent increase in the civilian-to-soldier ratio on the battlefield between the Gulf War and NATO's intervention in the Balkans. This demand is spurred not only by the hopes of financial saving and the desire to focus on "core competencies." It is also fostered by the benefits that such firms may furnish in the dynamic realm of national, international, and human security in a world Donald Rumsfeld asserts is typified by its element of "uncertainty and surprise." PMFs will allow world powers to benefit from cutting edge technology and market forces while allowing them to restructure their militaries and pursue a revolution in military affairs (RMA). All this can be done without a lapse in military capability and without an unwelcomed retreat from international engagement.

Moreover, PMFs may provide a solution to the many problems that hinder peacekeeping and humanitarian operations. Speaking of the genocide in Rwanda, Kofi Annan said, "If I had fire power and men—well trained and well equipped—I could have saved hundreds and thousands of lives."²²⁰ In the absence of willing state parties, PMFs may be able to fill the void left by apprehension and the collapse of the bipolar world structure. Hypothetically, this would make the world a more safe and secure place.

However, the employment of the private military industry must be undertaken with caution. Advocates and critics agree that there are several issues that must be addressed before PMFs are declared the best solution available. Issues ranging from arms proliferation and human rights abuses to political corruption and the industry's undue influence on foreign policy are issues demanding attention. Moreover, as PMFs are hired primarily by states, their existence does not inspire widespread political will to engage crises of relatively low consequence (i.e. relative to potential clients). The United States had no will to get involved in Rwanda and would most likely lack the will to allocate economic resources for PMFs to intervene.

The overarching issue in the expansion of the private military industry is the lack of regulation and legitimacy. Extensive national legislation exists, but is fundamentally flawed in two ways. First, national legislation either is impracticable as in the United Kingdom, too harsh as in South Africa, or lacks the proper measures needed to assure the legislation is effective and respected as in the United States. Second, regulation is ineffective when there is only a "patchwork of national legislation [that]... leaves too many jurisdictions where [PMFs] can operate without regulation."²²¹ Thus many have called for "rational international regulation that would be helpful in standardizing the behavior of the industry."²²²

Unfortunately, attempts at international legislation are flawed, as well. Based on an outdated definition of mercenary activity, such regulation has left gaping loopholes that have allowed even the most dubious characters to undertake military action. Moreover, international efforts have been focused on the most egregious of international crimes that dwarf those of the private military industry. Current definitions of "genocide," "war crimes," and "crimes against humanity" are far too narrow to include the smaller scale crimes and failures of the private military industry.

On final analysis, the use of private military firms is hardly a panacea for international conflict. Certainly PMFs can tip the balance of power in the favor of hiring governments. Yet, it is impossible for private military firms to resolve the problem of weak state structures and put an end to conflict once and for all. Once Executive Outcomes successfully restored the power of the government in Sierra Leone, Sandline International had to be called back in when conflict and violence recurred a few year later. Might does not always make right; as Doug Brooks asserts, "security is 90% of the problem but only 10% of the solution."²²³ Moreover, some even claim that the presence of PMFs has an adverse effect on institutionalization of peace as these firms "undermine the building of state institutions for controlling violence."²²⁴

Nonetheless, "the wave isn't coming—it is here. So today's pertinent question is, 'What is the best way to utilize contractors in combat?'"²²⁵ Generally speaking, PMFs present many innovative solutions to the world's problems. Yet, as with any normative and tectonic shift in the world system, the emergence of PMFs presents a new set of issues with which the international community must deal. "The issue should be constantly studied and re-examined to assess the long term impacts."²²⁶ Therefore, it is imperative that the international community discuss the pros and cons of private military firms and formulate the proper regulations and appropriate roles for these firms. Only when the private military industry is legitimized completely through international, regional, and national laws and agreements can the international community fully benefit from private military firms.

²²⁰ Karen Davies. "Genocide in Rwanda Could Have Been Prevented." *Patriot News*. Harrison, PA. 5 May 1998. Pp. A7

²²¹ Kim Richard Nossal. 2001. Pp. 468.— Dr. Nossal uses the term "transnational security company" in lieu of "private military firm."

²²² Doug Brooks. Personal Interview. 28 March 2004.

²²³ Ibid.

²²⁴ Anna Leander. 2001. Pp. 12

²²⁵ Ibid. Pp. 27

²²⁶ Dr. Tony Gray. Personal Interview. 30 November 2003.

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