



CONFERENCE REPORT
on
THE INVOLVEMENT OF THE PRIVATE SECURITY SECTOR
IN HUMANITARIAN ASSISTANCE OPERATIONS IN AFRICA
By
Michon Motzouris



Collaboration between
African Conflict Prevention Programme - Addis Ababa and
Security Sector Governance Programme - Pretoria

Institute for Security Studies, Get House Building, Africa Avenue
Addis Ababa, Ethiopia
September 14 and 15, 2011

Day 1: 14 September 2011

WELCOMING ADDRESS

AMBASSADOR OLUSEGUN AKINSANYA

The conference began with a welcoming address by Ambassador Olusegun Akinsanya, the Institute for Security Studies (ISS) Addis Ababa Office Director. In his address, the Ambassador emphasized the importance of the debate on the involvement of the private security industry in humanitarian assistance operations and cautioned that such involvement had implications to peace and security in Africa. He noted that the outsourcing of security-related tasks to private security actors in humanitarian assistance operations presented a number of ethical, operational and strategic challenges in Africa. The Ambassador criticized the lack of effective oversight mechanisms, either regulatory or sustainable systems to monitor the activities within the private military and security industry.



Ambassador Akinsanya emphasized that the main purpose of the conference was to build a knowledge foundation for the improved understanding of the role of the private security sector in humanitarian assistance operations, particularly in Africa. He stated that the conference was, among other things, aimed at examining the African Union (AU) normative and institutional framework related to PMSCs (if any), particularly in the context of the recent uprisings in North Africa, especially Libya. He further stated that the conference sought to engender a robust debate aimed at fashioning an appropriate regulatory regime for private military and security companies' (PMSCs') engagement in Africa, especially as relates to humanitarian assistance.

Ambassador Akinsanya concluded his address by making special mention of Ms Njeri Karuru, Senior Programme Specialist from the International Development Research Centre (IDRC) and Mr Jose Luiz Gomez Del Prado, Chairperson of the United Nations (UN) Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Ambassador finally welcomed dignitaries, AU Officials, representatives of the diplomatic core, as well as friends of the ISS to the conference, and wished all attendees very successful deliberations.



**IDRC-ISS PARTNERSHIP ON THE PROJECT ON PRIVATE MILITARY/SECURITY COMPANIES
MS NJERI KARURU**

The Ambassador then introduced Ms Njeri Karuru, the IDRC representative who spoke about the IDRC-ISS partnership on the project on PMSCs dating back to 2006. Ms Karuru briefed participants on the two projects, which brought the ISS and IDRC together. The first project was the Regulation of Private Security Sector in three countries in Africa, namely, South Africa, Uganda and the Democratic Republic of the Congo (DRC). This project revealed the lack of knowledge regarding the private security sector in Africa. Ms Karuru stated that the need for further evidence-based research, which could be used for policy development and change, was critical. This project led to the next project, focusing on the role of PMSCs in African conflicts, peacekeeping missions and humanitarian assistance operations.

Ms Karuru explained that it is recognized that security sector governance and management is key to development and the IDRC supports research in this field. Global attention is increasingly focused on the challenges experienced by developing states. In addition to deaths, injuries and destroyed infrastructure, armed violence and insecurity also increases the

cost of doing business, scares investors, increases the cost of human capital and reduces overall economic opportunities. The IDRC therefore recognizes the importance of addressing security issues if sustainable development is to be attained. PMSCs have played both positive and negative roles in these processes and it was important to document this and also explore effective mechanisms where such companies can compliment state security.

Ms Karuru briefed the participants on the Governance Security and Justice (GSJ) programme, which was launched in 2011. She stated that the GSJ project supports research on governance, security and justice in developing countries. Ms Karura stated that the main goal of this programme is to support the creation of policy-relevant knowledge to the conditions for increasing the legitimacy and accountability of public authorities in the areas of governance, security and justice. She emphasized that security from threat and violence is critical in the African context. Insecurity hinders social, economic and political development. Experts increasingly acknowledge the complex relationship between state security forces, private security and other non-state armed groups, and understand that security is no longer just a state concern, and the causal links between public and private security are emerging. The fact that the private security sector has grown so significantly indicates that there is a gap in security provision. According the Ms Karuru, the ISS projects over the last 6 years have attempted to fill this gap in knowledge regarding the private military and security industry.

INTRODUCTION TO THE SSG PROJECT ON PRIVATE MILITARY/SECURITY COMPANIES

MR SABELO GUMEDZE

After Ms Karuru's presentation, Mr Sabelo Gumedze, the project leader for the project *The Involvement of the Private Security Sector in African Conflicts, Peacekeeping Missions and Humanitarian Assistance Operations* was called upon to give a synopsis of the project. In his presentation, Mr Gumedze emphasized that the IDRC-ISS partnership had been extremely important in unpacking some of the important findings that have the potential to influence policy processes within the UN, AU, Regional Economic Communities (RECs) and national jurisdictions.

Mr Gumedze spoke about the project's objectives, which include investigating and enhancing understanding of the role of the private sector in three thematic areas, namely in African conflicts, peacekeeping missions and humanitarian assistance operations. He stated that the project was largely aimed at informing the development and application of appropriate norms and standards at all levels of regulation, including, hopefully, a revision of the outdated 1977 Organization of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa, which is currently only focused on mercenaries, and therefore outdated in terms of current private military and security companies in Africa. Other objectives of the project was to explore the interplay between the private security industry and gender, focusing on the extent to which private security affects women.

Mr Gumedze discussed the draft policy framework on security sector reform that is currently being debated at the AU level. He highlighted some of the criticisms toward the draft framework, including the lack of adequate definitions of Private Military Companies (PMCs), Private Security Companies (PSCs) and PMSCs. Mr Gumedze noted that need for regulation of this industry is emphasized in the draft policy framework on security sector was due to the fact that the proliferation of PMSCs had in fact outpaced the development of regulatory frameworks at almost all levels.

Mr Gumedze highlighted a few controversial issues relating to the discourse on privatisation of security: firstly, the fact that the definition of PMSCs remains contentious as some companies are involved in providing military services, others in providing security services, and some perform both functions; secondly, that PMSCs arguably challenge the Weberian notion of the state and the monopoly on the use of force; thirdly, that the monitoring,

regulation and oversight of PMSCs is an issue and measures must be put in place to ensure they are accountable; and finally, that the ongoing debate of what is and what is not a state function, and which services should be outsourced and which should not be outsourced?

In his presentation, Mr Gumedze stated that is a challenge for the AU, REC's and African states to ensure that PMSCs are regulated and monitored and that there is some kind of exercise of their oversight. He cautioned that if PMSCs go unchecked, they could become a force unto themselves. Hence there is a need to develop appropriate norms and standards. PMSC contracts are always shrouded in secrecy, which is rather unfortunate as it makes it difficult to determine the costs of their contracts, the activities which companies are contracted for and the extent of subcontracting to subsidiaries, which raise issues of accountability. Mr Gumedze noted that the other issue is whether we should support the UN draft convention on regulating private military and security companies, or whether we should advocate for the AU to develop its own regulatory instrument? Will the convention at the UN level ever see the light of day, or should the AU ensure some kind of legislative framework is developed? The issue of implementation at the AU level remains a contentious issue as many previous attempts to implement conventions by the AU have failed. Mr Gumedze also touched upon the question of self-regulation, asking whether we could rely on external, international or continental regulatory mechanisms, or whether self-regulation at a local level was necessary?

In conclusion, Mr Gumedze affirmed that PMSCs are here to stay, and that there was a need to find a way to address the challenges they pose in all these thematic areas (including their involvement in maritime security), particularly in terms of developing and implementing an effective regulatory framework for this burgeoning industry.



SESSION 1: THE ROLE OF PMSCS IN HUMANITARIAN ASSISTANCE OPERATIONS

CHAIR: AMBASSADOR MBUYO ISAAC G. MUNLO, *Ambassador Extraordinary and Plenipotentiary of the Republic of Malawi to Ethiopia, AU, ECA and accredited to 24 African states*

CONTRADICTIONARY ATTITUDES TOWARD PRIVATE ENTERPRISE AND SECURITY SYSTEMS

MR CONWAY WADDINGTON

In his presentation, Mr Waddington examined the arguments for and against the use of PMSCs in humanitarian assistance operations. His presentation began with a brief background to PMSCs and the privatisation of security as a whole. Mr Waddington introduced the idea of kinetic and non-kinetic roles, meaning those roles that involve actual war fighting and those which are more focused towards support operations, respectively. He emphasized the difficulty of discerning between private military companies, private security companies and mercenaries. Mr Waddington explained that the clarity of these definitions were vital to the establishment of effective legislation and regulation, especially with regards to the different state attitudes to privatization and the different multi-lateral approaches, specifically in terms of the AU and the UN.

Mr Waddington then moved on to discuss the market of privatized peacekeeping. He explained that this market should theoretically have exploded due to the demand of privatized services. Mr Waddington examined privatization concerns, which include: lack of accountability, the poor systems of regulation and the failure of oversight, for which he made reference to the events of the Nisour Square shootings as an example. Also, the question of whether privatizing military and security operations in some ways undermined the legitimacy

of the state and civil military relations? And finally, the problem of the dependency syndrome, and whether a country, such as the United States, is nowadays able to fight a war without PMSCs? He stated that the only solution to these problems is to develop a legislative framework at the national and supranational level, which is occurring at too slow a pace considering the rapid growth of this industry.

Mr Waddington stated that the UN and the AU have a historical aversion to privatisation due to the historical prevalence of mercenaries in Africa. He argues that this historical aversion to mercenaries had affected and slowed any current discussion on privatization and therefore affected the development of effective regulatory measures and blotted out any legitimate concerns about privatisation.

Mr Waddington drew the participants' attention to the apparent contradictions that existed in the moral attitudes of states in relation to the private military, security and arms industries. He dealt with the 'morality of mercenarism' and the problem of mixing profit motive with war. He questioned whether profit motive should exist in conflict situations, or if that is not in some way immoral? Mr Waddington set up this moral contradiction through the use of the military industrial complex and the idea of the modern defense industry and the private military industry, and how private enterprise starts to interface with government on matters pertaining to the military. According to Mr Waddington, the defense industry should be thought as a form of foreign policy in terms of using the sale of weapons or defense material as a means of furthering political goals. He noted that it should also be thought of in terms of domestic politics and the way in which internal politics start to play a massive role in what contracts are taken up. Another area to be taken into consideration is the economics of the defense industry that is significant, as one cannot begin to make moral assertions about an industry with any hope of that industry being shut down while such astronomical amounts are flowing within it.

To emphasize this contradiction in the condemnation of profit motive having a place in privatized peacekeeping and at the same time the acceptance of profit motive in the defense industry, Mr Waddington made use of the example of Libya. He talks about the manner in which non-African states dealt with the Libyan revolution and how they had benefited from the Gaddafi regime. Mr Waddington explained that oil, water, Libya's political position during the Cold War and the question of covert assistance by Libya, play a role in the American and European involvement in Libya, however, despite all of these reasons they claim the key reason for the intervention was humanitarian assistance, specifically the aerial bombardment of Benghazi. Another area of interest in Libya is arms, and specifically Libdex 2010, where most or all of the countries that were involved in the Libya bombings were trying to sell arms to Libya, just a year ago.

In conclusion, Mr Waddington explained that if you are going to investigate the notion of privatised peacekeeping, it is not enough to resort to some sort of naïve ideological belief that simply mixing profit motive with military activity is wrong and therefore should be avoided



at all costs; that mercenaries, whether they are mercenaries, PSCs, PMCs, or PMSCs are bad by virtue of what they do and should be avoided in humanitarian matters. He suggested that perhaps an expediency argument is needed; perhaps it is a necessary evil; perhaps while there are still concerns about the morality of mercenarism or privatisation of military functions; perhaps its worth overlooking some of those concerns: We have certainly done it with the defense industry, why not with privatised peacekeeping?

HUMANITARIAN FORCES: THE ROLE OF PMSCS IN HUMANITARIAN ASSISTNACE IN AFRICA

MS. MARGARET GICHANGA

Ms Margaret Gichanga's presentation focused on the history of humanitarianism and the role humanitarian organisations played during conflict situations, post-conflict reconstruction, as well as the recent roles played by PMSCs in humanitarian assistance operations. Tracing two defining trends experienced by humanitarian action in the post-cold war period, Ms Gichanga considered how the involvement of PMSCs in humanitarian assistance operations had evolved. These defining trends were firstly, the willingness of the international community to play a role in rendering assistance to those in need and secondly, the unfortunate insecurity environment in which humanitarians had to operate.

According to Ms Gichanga, the history of armed conflict is often accompanied with the unavoidable fact of civilian suffering and death. This is viewed by the belligerents of a conflict as a means to an end, one that must be tolerated in order to receive land, resources, and ultimately power. The Battle of Solferino in 1869 significantly changed this existing humanitarian landscape, after Henri Dunant, a Swiss businessman witnessed the horror that remained at the end of a battle. He appealed to the world to form associations of volunteers that would be available to help the wounded when war broke out, and to draw up some internationally accepted principles on the basis of which those associations could do their work. This led to the signing of the Geneva Convention, which asserted the access of doctors and nurses in a battle zone, and the universally accepted neutrality principle. The aim was not to intervene or stop the fighting, but rather to ameliorate its immediate effects.

According to Ms Gichanga, humanitarian assistance refers to the impartial, independent and neutral task of delivering humanitarian aid in the form of food, healthcare, tents, sanitation facilities and a plethora of other amenities that would not be readily available in a conflict or post conflict environment. The consent based approach historically guaranteed the protection of humanitarian actors. Following the Cold War however, the basic assumptions underpinning the consent-based approach were eroded, as 79 out of 82 armed conflicts were non-international involving state militaries and an abundance of non-state armed groups. The shift from international armed conflicts to an increase in non-international armed conflict has tragically cost many humanitarians their lives and has created a need for increased security for humanitarian workers. This has given rise to the intense debate regarding the ethical and pragmatic use of private security forces to protect humanitarians in their delivery of aid. Ms Gichanga posed the question: should humanitarian organisations at all costs concentrate on delivering much needed assistance to the victims of a conflict or ensure that priority is given to the safety and security of their personnel?

Ms Gichanga believes that the underlying principles of humanitarianism run the risk of being negated by the contracting of PMSCs; paradoxically, refusal to ensure security for humanitarians and their relief aid mean that the victims of conflict must endure more suffering. PMSCs have asserted their role in today's modern security architecture and have arguably presented an alternative to the traditional state-centric approach for the provision of military and security services, however humanitarian organisations remain hesitant due to the lack of a legally binding framework.

One of the serious challenges that this new reality poses to human rights and humanitarian actors is the difficulty of identifying representatives of non-state armed groups, many of whom do not have recognizable command structures with which to negotiate access. This challenge is exacerbated by the lack of knowledge or respect of the protected status of humanitarian personnel under international humanitarian law. Compounding the problem is the fact that rebel groups believe that negotiating with international aid organisations enhances their status so they intentionally dishonor agreements in order to create new occasions to negotiate.

Ms Gichanga emphatically stated that there is no major humanitarian provider, which can claim that it has never outsourced security, including armed protective services such as guards, escorts, and bodyguards, especially in the most insecure context. In Somalia, the only way in which humanitarian work could continue, without fear of attack, was through the use of armed guards. Ms Gichanga emphasized that Somalia presented a special case, as in 1991 there was no central government and therefore no way of obtaining access to provide relief through the traditional humanitarian principles. The International Committee of the Red Cross (ICRC) had to decide between aborting their mission to provide immediate relief to helpless Somali's or obtaining alternative security and alleviating a potentially catastrophic situation. The ICRC took the decision to operate as part of a military mission as that was the only method to prevent widespread starvation in a war torn country.

Ms Gichanga explained that under International Humanitarian law (IHL), humanitarian personnel enjoy a protected status. The need for this arose due to the growing incidents of attacks on humanitarian personnel. The UN Safety Convention was adopted specifically to provide safety and access of humanitarian organisations to civilians during armed conflict. Security personnel escorting humanitarian organisations were similarly afforded civilian status unless and until such a time that they directly participate in hostilities. A universally accepted definition of direct participation in hostilities remains a mute topic, however the UN Safety Convention recognizes the right to act in self-defense. A civilian is not considered to be taking part in direct conflict if carrying a light weapon for self-defense. She further explained that unarmed or armed is the distinction that determines the kind of protection required. Every organization preferred to use unarmed security guards through presence and show of vigilance, however increased violence due to easily acceptable weapons, or increased political instability would render unarmed guards incapable of deterring theft or crime. Organisations condemned the use of armed security guards despite acknowledging the need for this type of protection. The risk that this posed for exacerbating the situation was noted.

According to Ms Gichanga, it had become standard procedure for PMSCs to employ local PMSC employees, the rationale is that the local staff know the national context better, are known and trusted by their compatriots, and are therefore better able to navigate the risks and hazards that they face. Although this may be true in some contexts, the reverse may also be true. Expatriate aid staff may be seen as being less corruptible and more impartial than local staff. The implication for local staff is that they face a greater risk of being targeted for attack.

In conclusion, Ms Gichanga asserted that the right to humanitarian assistance under IHL was being increasingly challenged due to the insecure and volatile environments that humanitarians have to operate in. The international community needs to engage more robustly in this debate and ensure the protection of humanitarians through a comprehensive and legally binding doctrine that incorporates the privatisation of security. It is essential to acknowledge the added value that PMSCs offer to humanitarians who often work in extreme conflict situations. Regardless of the context, a legal framework is critical to bringing accountability, oversight and legitimacy to the operations of private security providers.



SESSION II: REGULATING PRIVATE MILITARY AND SECURITY IN HUMANITARIAN ASSISTANCE OPERATIONS

CHAIR: DR GIRMACHEW ALEMU, *Assistant Professor of Law – Addis Ababa University*

THE INCURSION OF PRIVATE SECURITY FIRMS INTO REFUGEE CAMPS

MS PAIGE MORROW

In the second session, the question of regulation received prominence. In her presentation, Ms Morrow limited her discussion to PSCs, which undertake the same roles as police, including security maintenance and investigation activities as a central component of their duties. She noted that the introduction of private security firms in refugee camps evoked images of multinational corporations seeking to make profit to the detriment of the camps' residents. Ms Morrow stated that the emergence of private security in Africa has been linked to the proliferation of light arms, reduction of armed forces after the Cold War, globalization and market liberalisation, and a general insecurity. This forced the United Nations High Commission for Refugees (UNHCR) and international NGO's to respond to this large-scale force migration to supplement the resources that domestic governments were no longer able to provide. She maintained that in humanitarian operations, the boundaries between civil and military activities have been blurred as private companies assume increasing responsibility for defensive security, protection of personnel and delivery of aid, along with providing logistical support, medical personnel and portable outhouses. Ms Morrow questioned whether privatization of refugee security was the next step?

In her presentation, Ms Morrow explained that privatisation is often viewed as the lesser of two evils, given the lack of policing in refugee camps. She discussed the ability of a host state to deploy private security in a way that will prove quite difficult for organisations such as the UN. On the other hand, if the problems caused by private contractors are serious enough to render their involvement in humanitarian crises as illegitimate, then the correct response is to ban their use, not to point to similar flaws with the use of regular police or military agents. Ms Morrow further discusses how the privatisation of prisons or refugee camps may act as a means for state to transfer responsibility to contractors, thereby not being held accountable for any wrongdoings on the part of private companies. She argued that this allows the state to evade its obligations under international and domestic law to adequately staff the camp with sufficient police personnel.

Ms Morrow also spoke of the twin challenges associated with the privatisation of security, namely, the regulation of the quality of services provided by independent contractors and ensuring that there was criminal and civil accountability for individual or group acts for wrongdoing by personnel. Private contractors wish to promote an image of responsibility, professionalism and respect for human rights. Arguably, their profit motive increases their accountability, as they want to win and retain contracts. Additionally, private contractors have argued that they are able to self-regulate through governing industry bodies, however problems with this method of regulation are experienced through the reliance on contracts, most notably, insufficient transparency during the procurement of service delivery, lack of control over the provision of services, and lack of public vetting of contracts due to their sensitive nature. Ms Morrow questioned what efforts can and should be done to regulate this industry at the domestic level if we are concerned with self-regulation?

Ms Morrow explained that due to the fact that refugee camps are situated within national territory, they are subject to the governing laws and statutes of the host state. The physical protection and security within camps remains the primary responsibility of governments under existing instruments including the OAU Refugee Convention, the UN Charter, and the Law of Armed Conflict. In the event then that a security contractor commits an ordinary crime, not related to an armed conflict, including offenses such as theft, assault, sexual assault, murder, etc., normally only the local courts would have jurisdiction to prosecute. The challenge however, is that in a post-conflict situation and or in the remote setting where refugee camps are normally located, the domestic courts may not be functioning, or the contractors may have been given effective immunity. This leaves the door open to private firms pulling out of contracts or removing personnel from countries to evade the reach of criminal tribunals. Additionally, there are no clear mechanisms of accountability for private

contractors at the international level, and if mechanisms do exist, they are generally not applicable to refugee camps as these are not considered areas of armed conflict.

Ms Morrow then went on to discuss the potential roles and responsibilities of private contractors in refugee camps. These include the strengthening of local police forces through training, provision of supplies and supplemental stipends, which have been shown to exist to some extent in capacity building. Contractors in refugee camps may also be of use in organizing short training sessions for police and or military officers from the relevant host state, before or during their deployment into refugee camps, to ensure that they understand the policing of camps. Another potential role of PSCs is the identification of combatants who may be intermingling with genuine asylum seekers. As theoretical neutral parties in the camp, private security firms may be able to fulfill the host states obligation to identify and eject combatants without being perceived as favouring one side or the other. Finally, private security firms can assist in disarmament, in controlling the trading or bringing in of weapons and ammunition into camps, by unauthorized persons.

Lastly, Ms Morrow discussed the terms of reference, which should be adhered to in the event that PMSCs are to be deployed in refugee camps. She emphasized the importance of clear contractual obligations as well as contract allocation, contract bids, adequate contract vetting processes and ensuring some sort of track record of quality standards before contracts are awarded. The long-term goal for the use of private contractors is essentially capacity building, and therefore the allocation of training should be included in the contract. In conclusion, Ms Morrow emphasized that states cannot absolve themselves from responsibility under both domestic and international law by hiring contractors to provide security in refugee camps or settlements.



REGULATING THE PRIVATE TROOPS IN HUMANITARIAN ASSISTANCE OPERATIONS

MS MICHON MOTZOURIS

Ms Motzouris' presentation focused on how best to regulate the private troops in humanitarian assistance operations. Ms Motzouris began by briefing participants on how the nature of conflicts had changed since the end of the Cold War and how the need for large-scale full-time state forces decreased and the recruitment pool of highly skilled military personnel grew very rapidly within a short period of time. She emphasized how the changing nature of warfare had led to an even greater need for humanitarian assistance due to the increasing violence of intrastate conflicts.

Ms Motzouris discussed the recent development of the private military and security industry in Africa, the offensive role played by Executive Outcomes, and how PMSC operations had become more defensive and reactive. She further discussed the lack of clarification of core and non-core activities. PMSCs are not permitted to participate in direct conflict, however there was much controversy as to what direct conflict entails.

Ms Motzouris pointed out that while humanitarian organisations have historically operated with state consent under the classic humanitarian principles of independence, impartiality and neutrality, this was often not possible with the current security challenges faced by humanitarian agencies in volatile situations. With conflict largely occurring between non-state actors, states could no longer guarantee the safety of humanitarian personnel operating in areas of conflict. While the symbol of the World Food Programme (WFP) or the ICRC for example, was previously a symbol to be respected, it had become a weapon and a source of

power for many non-state actors. Rebel groups often used hunger and lack of access to humanitarian aid as a weapon.

According to Ms Motzouris, organisations are therefore faced with the choice of not providing assistance at all, or opting for alternative sources of protection for humanitarian convoys. The use of armed escorts by humanitarian organisations has proved highly controversial as it reportedly goes against the fundamental principles of independence, neutrality and impartiality. However, it is argued that armed escorts provided by PMSCs may prove more independent, neutral and impartial than the use of state forces who may be party to the conflict. Ms Motzouris noted how the lack of effective oversight and accountability mechanisms for PMSCs has brought the industry into disrepute, so much so that the hiring of PMSCs by humanitarian organisations had largely occurred under a veil of silence.

Ms Motzouris then moved on to examine the regulation debate, which comprises of both the self-regulation and legally binding mechanisms. She discussed industry associations and the adherence of members to their codes of conduct in an attempt to protect the reputation of this industry. She also made reference to IHL and the limited provisions made for the use of PMSCs in humanitarian assistance operations. She briefly mentioned the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination and their development in order to monitor mercenaries and mercenary related activities with special regard to violations of human rights. Finally she moved on to discuss the two initiatives developed under the auspices of the Swiss Initiative: The Montreux Document which was effective in discussing international law as it related to PMSCs, which however did not add any thing new to the regulation debate as it was simply a compilation of existing laws, and it was not legally binding and the International Code of Conduct, which moves beyond self-regulation and encourages cooperation and regulation between various role players, including PMSCs, states, associations and individuals. Ms Motzouris explained that the Code is one of the most comprehensive regulatory mechanisms available to date, and while it is not legally binding per say, it could be upheld in a court of law if both parties involved in the contract are signatories to the Code and the contract was designed in accordance with the Code.

Ms Motzouris concluded by emphasizing that while the development of regulatory measures was still an important step towards regulating the industry, clarity was still needed regarding definitions of direct hostilities or direct combat, and core and non-core operations; as well as who is responsible for the actions of private security personnel and the unclear status of personnel involved in humanitarian assistance operations.

SESSION III: OPTIONS FOR THE FUTURE

CHAIR: DR. J.M OKEKE, *Intelligence and Security Analyst, Africa Peace and Security Program – African Union/IPSS*

A UNITED NATIONS BINDING INSTRUMENT TO REGULATE AND MONITOR THE ACTIVITIES OF PRIVATE MILITARY AND SECURITY COMPANIES **MR JOSE LUIS GOMEZ DEL PRADO**

In the third session, Mr del Prado, who is the former chairperson of the UN working group on mercenaries gave a presentation on the mandate of the Working Group which was mainly two fold. He explained that firstly, the Working Group was



mandated to monitor the use of mercenaries as a means of violating human rights and impeding the rights of peoples to self-determination. Secondly, the Working group was mandated to monitor and study the effects of the activities of private companies offering

military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.

Mr del Prado briefed participants on how the UN Working Group was created by the United Nations Human Rights Council (UNHRC) in order to monitor human rights violations created through mercenary activity. Upon assumption of duty, the UN Working Group discovered new modalities in the form of PMSCs, which was disturbing because of the fact that while they were legally constituted, they were not regulated. Legitimate companies providing military services to states, and other entities, had developed in place of the previous, so called 'Dogs of War' or mercenary groups. Mr del Prado explained how the personnel of the private military and security industry had evolved from mercenary types like that of Mike Hoare to those such as Tim Spicer, who headed up a legally recognized PMSC. Following this discovery, in 2005, the mandate of the UN Working Group was doubled, to include monitoring and regulating PMSCs as well as mercenary activities with regards to human rights violations. According to Mr del Prado, the UN Working Group does not distinguish between private military companies and private security companies; instead they are covered under the blanket term of PMSCs, as they are involved in such over-lapping functions. He explained that even more problematic was that fact some PMSCs were still involved in mercenarism, and some undertook inherent state functions, making it difficult to classify them in one category or another.

Mr del Prado listed the services provided by PMSCs to include maintenance, logistics, military counseling and security, military intelligence, training, protection of premises, persons and convoys, enforcing public order, operational support in combat and finally direct participation in combat. He noted that PMSC services were in demand from a large number of role players including governments, transnational corporations, embassies, international organisations, NGOs, rebel movements, insurgents, criminal organisations and paramilitaries. Through his research with the UN Working group, Mr del Prado explained that common patterns regarding PMSCs had emerged in all regions of the world. There is a lack of common standards, registration, licensing, vetting, training and general safekeeping of weapons.

Due to all of these issues, Mr del Prado explained how the working group realized the need for a legally binding international instrument, which culminated in the proposal of a possible draft convention by the UN Working Group, which elaborated on current conventions but aimed specifically at regulating and monitoring PMSC activities which violate human rights. The purposes of the draft convention include to reaffirm state responsibility for the legitimate use of force, to identify inherent state functions that cannot be outsourced, to provide guidance for regulation by States of the activities of PMSCs and their potential sub-contractors, and lastly to promote cooperation between states regarding the licensing and regulation of PMSC activities.

Once it comes into force, the draft convention would be implemented at national level through the creation of monitoring bodies, and at the international level through the establishment of a treaty body, which would provide oversight and monitoring to the national bodies. At the national level, a centralized system for registration of PMSCs would be implemented which would prohibit the registration of companies offshore. A licensing system for companies, personnel and contracts would also be put in place at a national level to ensure transparency of this industry. And finally, state parties responsible for licensing and registration would be required to submit period reports to a UN established oversight body at the international level. The international committee on the regulation, oversight and monitoring of PMSCs would be responsible for receiving and dealing with reports from state parties, petitions from individuals and groups of individuals, confidential inquiries and

complaints from state parties. Mr del Prado explained that this multi-layer management system would ensure that any violations come to light; it also eliminates the option of brushing issues aside or dealing with them internally.

The Draft Convention defines what inherently state functions that cannot be outsourced include, which until now, has been relatively unclear. Mr del Prado noted that these include direct participation in hostilities, waging war and/or combat operations, taking prisoners, police powers, especially the powers of arrest or detention including the interrogation of detainees, law-making or the elaboration of military doctrine, intelligence, and finally the use of and other activities related to weapons of mass destruction. Detention and interrogation of detainees and intelligence services, have been common practice amongst PMSCs, however upon implementation of the Draft Convention, these services would be outlawed.

Unlike many other regulatory attempts, which are simply applicable to PMSC involvement in state contracts in areas of armed conflict, the Draft Convention has a much wider scope. According to Mr del Prado, the scope is applicable to a variety of situations, not only those of armed conflict. Unfortunately, the Draft Convention cannot not be directly applicable to PMSCs and individuals due to the convention forming part of international law which prohibits involvement in state issues, however it will be applicable to not only states, but international organisations as well, who have increasingly been involved in the use of PMSCs.

In his presentation, Mr del Prado observed that the industry remained lucrative and the need to address the challenges it poses was extremely important. He stated that there is a need for complementarity between the draft convention and international regulatory measures, such as the International Code of Conduct for Private Security Service Providers. He clearly emphasized that a binding instrument was necessary while self-regulation was not sufficient. In his opinion, Mr del Prado believed that it was very unlikely that the UN member states would eventually adopt the draft convention on PMSCs. The reason for his pessimism was none other than the resistance from Western States, who favoured the soft law approach instead of the hard law approach that would interfere with their practice of outsourcing core military functions.



THE AU NORMATIVE AND INSTITUTIONAL FRAMEWORK ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT: THE CASE OF MERCENARISM

DR MEHARI TADDELE MARU

Dr Mehari Maru, the Program Head for the African Conflict Prevention Programme at the ISS Addis Ababa Office, offered the final presentation of the day. His presentation focused

on the AUs normative and institutional framework on unconstitutional change of government. Dr Maru's presentation discussed the AU normative framework and various other AU instruments, including the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration). He sought to determine whether the uprising in North Africa and the involvement of mercenaries in Libya were in line with the AU normative framework. Dr Maru also made mention of the complementarity of the UN Working Groups Draft Convention and how this could be in line with current efforts of the AU to regulate PMSCs and mercenaries operating on the continent.

The Lomé Declaration as explained by Dr Maru, is to do away with unconstitutional replacement and emplacement of governments or a group appointed through the interest of the people. He explained that replacement is the illegal accession of power, including coup

d'état, mercenary intervention or rebel insurgency. Replacement through these measures involves a strict sanction regime and punishment, criminal penalty at a national level, and the consequence that no author of this type of unconstitutional change is permitted to run for election. Emplacement is the illegal retention of power and can refer to emplacement of oneself, or implantation of someone else. Emplacement generally involves tampering with constitutions, for example illegally extending terms of office, whereas constitutional amendments can only legally occur through national consensus if possible, or referendums if necessary.

Dr Maru discussed another AU instrument known as the Addis Charter, which he noted is not legally binding, as it had not yet been ratified by member states. The Addis Charter is a compilation of previous charters and is therefore not new. The objective of the Addis Charter is similar to that of the Lomé Declaration, and deals with entrenching constitutionalism in Africa, and indirectly deals with the unconstitutional change of government. The ultimate policy objective is to create constitutional regions through Africa, and this takes into account recent election related violence and conflict in a variety of countries Africa.

Dr Maru discussed how the OAU Convention against Mercenarism compliments with the work of the UN Working Group. He explained how mercenarism works against peace and security in Africa. This Convention was developed due to the 1960 proliferation of mercenaries in Africa. Dr Maru explained that mercenarism could be considered unconstitutional as it acts against the will of the people and the sovereignty of the state, it goes against self-determination, it creates instability, it is against the counter territorial integrity of a country and finally, there is difficulty in holding mercenaries accountable. Mercenarism could be considered as a means to divert the will of the people and to topple governments that are legitimately elected.

Dr Maru expressed the opinion that one approach to addressing the issue of PMSCs in Africa was not to produce a new convention under the auspices of the AU, but to develop a declaration (endorsing all the existing instruments on PMSCs), which would after all, have a binding effect. He stated that a complimentary relationship was necessary between the UN and the AU to take into consideration any concerns in the development of the UN Draft Convention and its incorporation at a continental level to an AU Convention.



DAY 2: 15 September 2011

SESSION IV: COUNTRY PROFILES PART IV

CHAIR: AMBASSADOR LIBERE BARARUNYERETSE,
*Permanent Representative – Organisation of the Francophone
to the AU and ECA*

**FROM COMBAT TO NON COMBAT ACTION: PMSCS AND HUMANITARIAN
ASSISTANCE OPERATIONS IN DARFUR/SUDAN**

MR CHRIS KWAJA

Mr Chris Kwaja began the fourth session with an interrogation of the rationale and centrality of non-state military and security providers in the provision and delivery of humanitarian assistance operations in Darfur/Sudan. He argued that the rise of PMSC involvement in humanitarian assistance operations was due to the rising amount of armed conflicts and the inability of states to contain these conflicts, the decline of state troop contributions, the success and popularity of neo-liberalism which encouraged private sector involvement and the weakness of states to fulfill their constitutional obligations of security provision for the masses. Mr Kwaja also stated that PMSCs were arguably able to fill the capacity gap in terms of high-tech skill provision, that national militaries lack.

According to Mr Kwaja, PMSCs participating in aid provision play a role in the following areas: securing and protecting refugees and internally displaced persons (IDPs) camps from attack, protection of civilians in Darfur and across the border into Chad, setting up no-fly zones around the camps and in high-risk communities, providing security to humanitarian organisations, as well as monitoring movement of rebel groups and militia and providing intelligence on their locations and operations. DynCorp and PAE have been very instrumental in security provision and humanitarian assistance operations in Darfur/Sudan.

Mr Kwaja argued that PMSCs provide a credible and cost-effective alternative for humanitarian agencies that are in dire need of military and security services as a precondition for delivering assistance in this challenging security environment. His argument against the use of PMSCs, however, emphasized the absence of effective regulatory mechanisms, which creates a regime of impunity as they could not be held responsible for illegal behaviour; the lack of accountability, which is compounded by the unprofessional way in which PMSCs are hired by humanitarian agencies; and finally, the fact that there was no coordination among humanitarian and supra-national agencies that engage in the services of PMSCs.

Mr Kwaja believes that the role of PMSCs in humanitarian assistance operations in this conflict-ridden area was pivotal, considering the lack of services provided by humanitarian and supra-national agencies. He does however believe that effective strategies are necessary for the successful engagement of PMSCs in humanitarian assistance operations. These strategies include, obtaining records of human rights violations and past activities of PMSCs; developing contracts clearly defining the scope of activities; clear and appropriate rules of engagement, including rules on carrying and using firearms; clauses to remove contractors from duty and to terminate contracts with erring contractors; training requirements for contractors developed in line with international humanitarian law and human rights; and monitoring and reporting of PMSCs activities to determine whether contractual terms and rules of engagement are being observed.

Mr Kwaja concluded that PMSC involvement in Darfur/Sudan reinforces the fact that the provision of non-combat assistance is central to the success or otherwise of the AU-UN mission and other humanitarian organisations. In the absence of skilled and well equipped national militaries willing to take part in the logistical and security related challenges in Darfur/Sudan, the involvement of PMSCs in the provision of humanitarian assistance operations is likely to become the norm. Mr. Kwaja believes that the provision of humanitarian support in zones of conflict could be futile in the absence of PMSC involvement.



CASE STUDY: SOUTHERN SUDAN DR SARAH WASHBURNE

Mr Kwaja's was followed by a presentation by Dr Sarah Washburne. Dr Washburne provided a case study on the involvement of the Private Security Sector in Humanitarian Assistance Operations in South Sudan. She began with a historical overview of the civil war in Sudan, where she discussed how the Sudan People's Liberation Movement (SPLM) fought against the government in Khartoum for political, civil and economic rights. During this time, local populations were subjected to aerial bombings, raids, fighting between communities and large-scale killing of civilians. Due to all this violence, a large presence of humanitarian aid organisations became involved, particularly in South Sudan, where the violence was most rife. During the civil war, aid agencies were generally not targeted as long as they cooperated with both sides to the conflict.

Dr Washburne explained that since the signing of the Comprehensive Peace Agreement in 2005, security in South Sudan had progressively deteriorated as the ruling SPLM and former fighters had difficulty transitioning into a political party; the SPLM proved rather inefficient and corrupt, and there was a major lack of development, jobs and education opportunities, as well as tribal discontent left over from the war. Most humanitarian assistance and development fell on the shoulders of international agencies. There were over 200 humanitarian and development agencies operating in South Sudan. During the war, aid agencies were safer than they are now. International organisations face unpredictable threats as well as rising crime, armed assaults within compounds, random shootings, tribal violence and road insecurity.

According to research undertaken by Dr Washburne amongst private military and security companies operating in South Sudan, most international organisations did not anticipate the rising levels of violence directed at them, this led to a great reliance on PMSCs by many of these organisations. The services offered by these companies include: security guards, access control, perimeter security, CCTV and alarm systems with emergency response. PMSCs operating in South Sudan at present, mainly work for local businesses, embassies, and humanitarian aid and development agencies, but they are looking to expand their services to oil companies in the near future. South Sudanese PMSCs have a close working relationship with security forces, and often rely on these forces for assistance in volatile situations, which cannot be dealt with by the PMSCs alone.

Dr Washburne explained that PMSCs in South Sudan operate with very little government oversight, as there was no specific ministry or independent body tasked with providing oversight to this industry. PMSCs must register as a company to operate in South Sudan, they must have a local shareholder and security companies have to obtain a letter from the Minister of Internal Affairs to operate; however, only the President can authorize firearm use for PMSCs. PMSCs in South Sudan make humanitarian organization staff feel safer, even through physical security is not a complete guarantee. Transparency and accountability

among PMSCs contracted to humanitarian organisations in South Sudan has been good, mainly due to the fact that security guards are mainly local and are well equipped to deal with problems arising from the local community. So far no human rights abuses by guards have been reported.

Dr Washburne asserts that some of the issues, which have come to light in terms of the use of PMSCs for humanitarian organisations in South Sudan, included reports of theft by guards from the organisations and inconsistent guard rotation. Organisations which make use of PMSCs also become isolated from the community which they provide aid to. Finally PMSCs in South Sudan were very expensive and are often a strain on the budget of humanitarian organisations. She explained that before PMSCs could operate effectively for humanitarian organisations in South Sudan, some gaps or inconsistencies needed to be overcome. PMSCs needed to adequately vet all personnel employed by them, they need to provide proper training, and provide for the overall well being of guards. Government oversight is desperately needed, but is not likely in the near future. PMSCs must ensure that all operations are legitimate, and that they do not cross the line of mercenarism.

According to Dr Washburn, so far, there was a good working relationship with very few complaints between PMSCs and humanitarian organisations in South Sudan. The presence of security guards and barbed wire fences and barriers contributes to the image of insecurity of humanitarian organisations, however due to the nature of conflict in South Sudan, and the fact that international organisations have been targeted, there is very little option but to employ the services of PMSCs in order to secure humanitarian organisations and their personnel.

SESSION V: COUNTRY PROFILES PART II

CHAIR: MS RITA AMUKHOBU NDETO,
*Humanitarian Affairs, Department of Political
Affairs – African Union Commission*



CASE STUDY: COTE D’IVOIRE

MS LAURA ESPOSITO

Ms Esposito looked at the use of PMSCs in humanitarian assistance operations in Cote D’Ivoire. According to Ms Esposito, humanitarian organisations in Cote D’Ivoire make use of two approaches regarding PMSCs, either the acceptance or the protection approach. The acceptance approach deals with the independence of humanitarian organisations from those parties who have the potential to undermine their work. The protection approach on the other hand entails the use of some security devices. Humanitarian organisations in Cote D’Ivoire use the direct assistance approach in face-to-face interaction with civilians, while they make use of the protection approach when involved in indirect assistance activities, which include all instances when not in direct contact with civilians.

Through her research Ms Esposito discovered that humanitarian organisations in Cote D’Ivoire largely make use of the services of unarmed local guardians or guardians under contract to PMSCs, and electronic surveillance and convoy escorts provided by PMSCs. Ms Esposito stated that most, if not all, humanitarian organisations in Cote D’Ivoire were against the use of arms as they felt it would increase the level of violence and insecurity.

Ms Esposito provided a profile of PMSCs operating in Cote D’Ivoire. She stated that according to a United Nations Development Programme (UNDP) report, in 2008 there were approximately 957 mainly local PMSCs operating in Cote D’Ivoire. To be considered a local PMSC, companies have to have a local director, and must own a 30 percent stake in the company, however there was a great amount of international involvement in local companies. The main clients of PMSCs in Cote D’Ivoire are embassies, private companies and banks.

According to Ms Esposito, the working conditions of guardians from PMSCs in Cote D'Ivoire are rather poor; they are often not paid the minimum wage, their salaries are paid late, they have long shifts, they have poor training and no medical insurance or other benefits. This is something that affects the quality of their work. Due to the lack of regulation or oversight mechanisms, and a poor personnel-vetting system in this sector in Cote D'Ivoire, PMSCs had become an instrument for the recruitment of former militiamen that comprise of local and foreign mercenaries and child soldiers.

The main reasons for the use of PMSCs by humanitarian organisations in Cote D'Ivoire according to Ms Esposito includes a lack of public security, criminality including robberies and experience of theft from their offices and compounds and assaults on their personnel, decreased costs, no in-house security expertise, and the requirements of insurance companies.

Ms Esposito stated that there was a lack of effective policies and guidelines for the use of PMSCs in Cote D'Ivoire. Humanitarian organisations also do not have specific funds to cover security needs; therefore they must rely on their office budget, meant to cover other expenses such as office maintenance. Humanitarian organisations locally based country offices decide on the awarding of PMSC contracts in total autonomy from international offices, which therefore creates accountability, transparency and contractual concerns when things go wrong.

Some of the reasons for humanitarian organisations in Cote D'Ivoire not employing the services of PMSCs, according to Ms Esposito, include the fact that it is cheaper to make use of local guardians, and they do not believe they need PMSCs as yet; there is a lack of national oversight on PMSCs; the use of PMSCs may jeopardise their neutrality; and finally, recruiting PMSCs may compromise local actors perceptions of the humanitarian organisations and create a poor image for these organisations, as well as making them a target and thereby risking the security of the civilians they assist.

In conclusion, Ms Esposito recommended that humanitarian organisations in Cote D'Ivoire should rely as much as possible on the acceptance approach. Donors should provide appropriate funding in order to cover the security needs of humanitarian organisations. And finally, public security provision needs to be strengthened so that organisations are not forced to rely on the usage of PMSCs.

CASE STUDY: SOMALIA MS KERRY O'DONOGHUE

Ms O'Donoghue's presentation centered on research she had undertaken regarding the involvement of private military and security companies in humanitarian assistance operations in Somalia. Due to the poor security situation in Somalia, her research was conducted in Kenya on organisations involved in Somalia.



Ms O'Donoghue found that at least 4 million Somalis are now in need of humanitarian aid. Approximately 3 million of these Somalis are situated in the South of Somalia which is largely under Al Shabaab control, and therefore particularly insecure and inaccessible. Ms O'Donoghue stated that the traditional humanitarian principles of humanity, neutrality and impartiality could not be relied upon to maintain humanitarian space or to gain acceptance from the local population within enemy territory in Somalia. The inaccessibility of Somalia for humanitarian organisations not only means that people are dying of starvation and disease because aid is unable to reach them, but it also puts the lives of humanitarian workers and the principles of humanitarianism under threat.

According to Ms O'Donoghue, humanitarian providers operating in Somalia are being forced to consider security strategies other than those being offered by weak governments and overstretched peacekeeping forces, namely PMSCs. While traditionally, the interplay between the humanitarian sector and the private security sector may not be obvious, in a context such as Somalia, it becomes more of a necessity. PMSCs have the potential to be a great resource, but only if utilized effectively. Ms O'Donoghue stated that this potential is currently being hampered by a lack of clarity, lack of regulation, lack of accountability and moral concerns regarding PMSCs.

Ms O'Donoghue uncovered a few key findings through her research in Somalia. Firstly, humanitarian aid delivery comes with a risk for both the humanitarian workers and for those in need. The internal conflicts of various groups, the politicization of aid and the often negative perception of humanitarian assistance have seen increased attacks on humanitarian workers, increased looting and the expulsion of several humanitarian providers. Of particular concern in Somalia, is when so many people are at a high risk of starvation, food aid has particularly come under attack being both politically divisive and a valuable commodity.

Secondly, Ms. O'Donoghue stated that the humanitarian community on the whole in Somalia remains against interaction with the private security sector preferring instead to hire local guards. Many humanitarian providers have relocated their main operations to Nairobi, and now rely on remote management of operations and transferring the risk to local counterparts. This development of an informal, unregulated private security sector in Somalia, distinct from the PMSC industry may come with many of its own unaccounted challenges, according to Ms. O'Donoghue. The ad hoc nature of security contracting by humanitarian organisations means that there is a lack of transparency of security costs for many humanitarian organisations, there is also a lack of common vetting or training standards, the transfer of responsibility is taken for granted and there is also the potential of such local recruitments further cementing clan divisions.

Thirdly, Ms. O'Donoghue stated that PMSCs operating in Somalia focus on logistics, training, and security services including static guards, mobile convoy protection, consultancy and advisory roles, training and mentoring. The focus of PMSCs currently remains protection rather than overtly defensive strategies, although this could change if the private security industry continues to grow in and around Somalia and within the maritime industry. According to Ms. O'Donoghue, the very presence of PMSCs in Somalia affects the context and so indirectly can affect humanitarian operations, whether or not they are directly involved with each other. The weakness of the Somali state is particularly worrying in the face of potential PMSC proliferation.

Lastly, Ms O'Donoghue emphasized the poor regulatory framework utilized for the private military and security sector. The legal debate surrounding issues of regulation for this industry remains long and incoherent. Ms O'Donoghue stated that continent wide or regional level action and regulation is particularly important for Somalia because of its weak state structures. She suggested that a soft regulatory approach would be the best place to start through the introduction of requirements for personnel vetting and training. Ms O'Donoghue believes that a regulatory body should be established within the African Union to monitor the activities of PMSCs across member states and investigate any complaints regarding PMSCs and their conduct and activities. Better international level regulation is also needed that goes beyond the normative framework of International Humanitarian Law and Human Rights Law. Ms O'Donoghue believes that the efforts of self-regulation and initiatives for regulating and monitoring the industry from the inside are a very important interim measure while other regulatory mechanisms are being developed.

In conclusion, Ms O'Donoghue stated that more dialogue was needed between humanitarian organisations and PMSCs, and a clear definition of roles was essential. Organisations need to

decide whether aid should be delivered no matter what, or whether they are willing to stick to the traditional principles of humanitarian aid, thereby sacrificing aid delivery to dangerous areas. Ms O'Donoghue emphasized that the involvement of private security, the use of armed protection, whether local or international, formal or informal, had the potential for harm if left unchecked. It could undermine the rebuilding of the state; including its security forces and so could cause long and short-term goals to conflict. With better regulation it was possible that the private security sector could play a more positive role within humanitarian operations; however at present this was unclear.

WORLD FOOD PROGRAMME PRIVATEERS – OUTSOURCING HUMANITARIAN AID IN THE GULF OF ADEN

MR JOHN STUPART

Mr Stupart took the whole PMSC debate into the maritime security sector, specifically in the Gulf of Aden. His presentation explored the use of PMSCs specifically to escort the World Food Programme charters from South Africa to Somalia. Mr Stupart explained how piracy began to flourish, although on a rather small scale, from 2005. He discussed how there was a reduction in piracy in 2006 due to the tsunami that severely affected and destroyed much of the pirates' equipment, as well as Al-Shabaab taking control of Puntland for six months, which affected the pirate bases from which most of their operations were controlled. Following these incidents, he explained how 2007 saw a resurgence of piracy in this area and the spread of piracy southwards closer to Madagascar. In 2009 piracy began to move further off the coast as counter-piracy measures were stepped up and pirate operations were forced further out to sea. In 2010, piracy became a real threat and operations spread out of the Gulf of Aden, through the entire east coast region of Africa. Attacks became common in the Arabic Sea and Southwards off the coast of Tanzania and Madagascar, and even as far South as Mozambique, which prompted a major SADC reaction to the issue.

Mr Stupart explained how with approximately 90% of the WFP food aid designated for Somalia was shipped by sea from South Africa. As a result of increased insecurity in the transport of aid to Somalia, as well as chartered ships and their crews refusing to work in Somali territorial waters without some security, the WFP might have to explore private security options in order to ensure continued delivery to Somalia. While the EU Naval Force working through Operation Atlanta has placed the protection of WFP vessels as a primary objective, this is a very expensive operation and the success of the navy escort has not yet been proven. According to Mr Stupart, approximately 40 out of 16000 vessels transiting the Gulf of Aden have been successfully hijacked. Therefore, it is not yet known whether Atlanta's protection has been the cause of no piracy attempts occurring on WFP vessels, or whether this can be accredited to the proportionally small chance of attack.

What has become clear, according to Mr Stupart, was that the use of PMSCs for the protection of WFP vessels was a much cheaper option than the current use of European Union Naval Force Somalia (EU NAVFOR). If PMSCs were able to take over the WFP protection role, EU NAVFOR would be able to focus more on the issue of counter-piracy itself. State navies can become less involved in vessel escorts and more involved in active counter-piracy operations, such as hunting mother-ships and responding to distress calls. Mr Stupart explained how PMSCs are able to fill a wide range of services as is required, from a simple security on board the vessel itself to a modified civilian ship utilized to provide protection services for vessels transiting the Gulf of Aden.

Potential problems with the use of PMSCs in counter-piracy efforts, according to Mr Stupart, include firstly the issue of legality, where the use of PMSCs under current international maritime law is not very clear. In order to overcome this issue, calls for the reintroduction of the Letters of Marque have been suggested. The letters of Marque refers to the definition of piracy, the jurisdiction being decided upon, and the rules of engagement being determined by the flag state under which the vessel operates. Another issue raised by Mr Stupart relates to

the possible escalation of violence. If pirates feel a risk due to the arming of vessels with PMSCs, they may adopt more aggressive tactics. This will be a major problem, especially for all merchant vessels that are not escorted or guarded by PMSCs.

While issues of regulation provide a major debate for the use of PMSCs in humanitarian assistance operations on land, Mr Stupart did not believe this was an issue for PMSCs operating on board vessels at sea. PMSCs operating at sea do not work in the same conflict context as those operating on land, and PMSCs role would be clear of virtually all major ambiguous tactical situations due to the clear distinction between combatants and non-combatants at sea. PMSCs on vessels would operate in a purely defensive role, and the use of deadly force would only occur during moments of clear self-defense. He believes that private naval contractors will not have to opportunity to become involved in illegal, aggressive activities as they would be monitored at all times by vessel crews and the captain, and under strict contractual obligations.

Mr Stupart concluded that while contractors are associated with considerable negative stereotypes on land, this should not be the case in this specific maritime context. By putting a reputable PMSC on board WFP vessels, or in hiring an escort ship or fleet, the traditional risks of using contractors are virtually eliminated. The benefits of intelligence and communication sharing must also be kept in mind, as private contractors are able to report the



positions of suspected pirate dhows and mother-ships, and well as the whereabouts of vulnerable civilian vessels at risk of attack, to navies operating in those areas, and visa versa. While there are still considerable issues to overcome before making use of PMSCs on WFP and other international organisations vessels, the utility cannot be ignored as piracy in the Gulf of Aden continues to increase in occurrence and in violence.

SESSION VI: CONCLUDING SESSION

CHAIR: MR ABDEL-KADER HAIRECHE, *Head of Political Affairs – United Nations Office to the African Union*

ISS PROJECT ON THE INVOLVEMENT OF THE PRIVATE SECURITY SECTOR IN AFRICAN CONFLICTS, PEACEKEEPING MISSIONS AND HUMANITARIAN ASSISTANCE OPERATIONS – PROJECT FINDINGS

MR SABELO GUMEDZE

The final presentation was from Mr Gumedze who presented the findings from the ISS Project on the Involvement of the Private Security Sector in African Conflicts, Peacekeeping Missions and Humanitarian Assistance Operations. He began by discussing two examples that epitomize the rise of PMSC engagement in Africa. These include the involvement of Executive Outcomes in conflicts in Angola and Sierra Leone, and Sandline Internationals involvement in Sierra Leone. While these companies are now considered mercenaries, they were the initial founders of the booming industry that we recognize today. Today's legitimate PMSCs are a different breed of corporate entity which diversify their business ventures to suit the needs of their clients.

According to Mr Gumedze, some of the reasons for the privatisation of security in Africa include: the end of the Cold War and a decline in direct engagement with external powers which left a security vacuum, general human insecurity in Africa due mainly to intra-state conflict and weak or failed states, globalization and the marketization of the public sphere, downsizing of armed forces, liberalization of the arms trade making it easy for the private sector to obtain and utilize weapons, and the insecurity of aid workers in Africa which makes the private security sector indispensable.

Mr Gumedze explained the modern PMSCs according to Peter Singer's 'tip of the spear' metaphor. This metaphor categorizes PMSCs into three groups: tip of the spear, middle of the spear and further from tip of spear. Tip of the spear refers to those PMSCs which provide implementation and command services (front liners), middle of the spear refers to those PMSCs providing advisory and training services, and further from the tip of the spear are those firms providing non-lethal aid and assistance.

Mr Gumedze went on to discuss the research findings from the project on the involvement of PMSCs in African conflicts, peacekeeping and humanitarian assistance operations in terms of Singer's 'tip of the spear' metaphor. The role of PMSCs in African conflicts forms part of the tip of the spear category with case studies conducted in Angola, Sierra Leone and Sudan. He explained that results from the Sudanese case study revealed that PMSCs will intervene in the event that states do not want to intervene in complex Africa conflicts and that PMSCs are more likely to be attracted to areas rich in mineral resources. The involvement of PMSCs in cases of oil protection in Sudan actually accentuated divisions and led to more conflict. Regulation of PMSCs in Sudan was found to only suit the needs of the employer and not necessarily to protect human rights.

Mr Gumedze explained that PMSC involvement in peacekeeping missions represented the middle of the spear category, and case studies were conducted in Liberia, Cote D'Ivoire and Sudan. Results from the case study in Liberia revealed that PMSCs provide logistical support in peacekeeping missions as well as security sector reform. PMSCs were even providing training to the fully-fledged Liberian military. The main challenge facing PMSCs in Liberia is that they are only accountable to their employer and not the state in which they operate. PMSCs in Liberia had diversified their services and are now involved in pursuing smart-power contracts, including post-conflict reconstruction and development. PMSCs were essentially becoming 'jacks of all trades', and invading the space that was originally occupied by NGO's, to ensure profit-maximisation.

Finally, Mr Gumedze discussed PMSC involvement in humanitarian assistance operations and how this falls into the further from the tip of the spear category. Case studies for this research area were conducted in Cote D'Ivoire, Somalia and Sudan. In the Somali case study, no evidence of PMSCs offering humanitarian assistance was found, and international PMSC involvement in the country is limited. Humanitarian organisations operating in Somalia made use of mainly local security providers, often hired with the consent of the local community. Beyond the humanitarian sector there was a variety of international PMSCs providing services such as training, context, risk analysis and consultancy, and mobile convoy protection.

In conclusion, Mr Gumedze stated that while privatisation of security in Africa is on the increase, regulation, monitoring and oversight mechanisms were slow to develop and largely ineffective. He also noted that the Weberian notion of the state is being eroded with the growing trend of privatisation, however that privatisation of security in Africa is always context based. Mr Gumedze predicted that the role of PMSCs in maritime security as well as post-conflict reconstruction and development was likely to increase, and that further research into these areas was certainly necessary.

CLOSING REMARKS

DR MEHARI TADDELE MARU

In his closing remarks, Dr Maru complimented the participants and attendees on a rich and fruitful discussion that tackled the issues related to the role of PMSCs in humanitarian assistance operations in Africa. He emphasized the need for greater debate on the issue of regulation for the private military and



security sector at an international, continental and national level. He noted that private military and security industry was a very important part of the changing global security architecture and it is an industry that is here to stay. We now need to develop measures to ensure maximum effectiveness of this industry, while at the same time demanding transparency, accountability and regulation.

Dr Maru thanked the IDRC for their commitment and support to this important project, and complimented the ISS partner programmes, ACPP Addis and SSG Pretoria, for organizing a successful and informative conference. Finally, Dr Maru again thanked all the participants and wished them well as they returned to their respective homes.