

THE WAGES OF WAR:
TOWARD A LEGAL AND LEGITIMATE ROLE
FOR PRIVATE MILITARY COMPANIES IN AFRICA

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1. INTRODUCTION

In the wake of the Cold War, a new breed (or brand?) of warrior has emerged.¹ Mercenaries have joined the corporate world. Equipped with the finest weapons that civilians can buy, modern-day mercenaries—Private Military Companies (PMC's)—occupy a lucrative, yet tenuous, position.

International regulations impose significant limits—if not total bans—on their use. However, these prohibitions overlook the dire conditions that states—such as those in Africa—sometimes face. The United Nations and individual countries have shown an inability or unwillingness to intervene militarily on behalf of endangered states. If indigenous defenses fail, PMC's sometimes represent the last line of defense. African states in jeopardy have successfully used the services of PMC's to advance their legitimate security interests.

Forced to choose between pressing security interests and violating an unrealistic international prohibition, a state will choose security—especially if no foreign assistance is forthcoming. The international community could amend mercenary regulations to accommodate the legitimate security needs and practices of African states.

2. THE HISTORY OF MERCENARIES

¹ See generally David Shearer, *Outsourcing War*, FOREIGN POLICY, no. 68, Fall 1998.

Mercenaries are almost as old as organized warfare itself. For much of history, mercenaries were the norm, not the exception—and only in modern times did armies motivated by nationalist allegiances predominate. In 1294 B.C., Numidian mercenaries served on behalf of Egyptian Pharaoh Ramses II in the Battle of Kadesh.² The Roman Empire also drew upon mercenaries³—as did William the Conqueror in the Norman conquests,⁴ Renaissance city-states (using condottieri),⁵ and the British in the American Revolutionary War (using Hessians).⁶

Nationalist armies grew in favor around the time of the French Revolution and became predominant by the time of the Franco-Prussian War in 1870.⁷ Anthony Mockler attributed this transition to nationalist movements, which provided a new motivation (aside from profit) for individuals to fight on behalf of a state: “The idea, now so widely accepted that a man can be obliged to fight for his country could only be accepted when a man had a country that was more than a geographical expression to fight for.”⁸ Bureaucratic states in the nineteenth century finally could match mercenaries’ abilities to organize violence.⁹ Likewise, states found that mercenaries posed a threat to state sovereignty and acted to limit their influence.¹⁰

As Africa de-colonized and entered its post-colonial period, mercenaries earned a sordid reputation for meddling in state affairs. For instance, in the 1960’s, “ragtag freebooters” such as

² R. ERNEST DUPUY & TREVOR N. DUPUY, *THE ENCYCLOPEDIA OF MILITARY HISTORY FROM 3500 B.C. TO THE PRESENT* 6 (2d ed. 1986).

³ DUPUY, *supra* note 2, at 98.

⁴ E.A. FREEMAN, *HISTORY OF THE NORMAN CONQUEST* 232 (1876).

⁵ ANTHONY MOCKLER, *MERCENARIES* 43-73 (1969).

⁶ ANTHONY MOCKLER, *THE NEW MERCENARIES* 6 (1985).

⁷ MOCKLER, *MERCENARIES*, *supra* note 5, at 15.

⁸ MOCKLER, *MERCENARIES*, *supra* note 5, at 15.

⁹ Eugene B. Smith, *The New Condottieri and U.S. Policy: The Privatization of Conflict and Its Implications*, *PARAMETERS*, Winter 2002, at 107-08.

¹⁰ *Id.*

Bob Denard and “Mad Mike” Hoare participated in battles and coups throughout Africa.¹¹ This post-colonial breed of foreign mercenary inspired contemporary mercenary regulations.¹²

3. THE EMERGENCE OF PMC’S

Although nationalist armies supplanted them as the preferred providers of military services, mercenaries did not cease to exist. They endure primarily in corporate form, a model which originated with Norse mercenaries in the Byzantine Empire in 1032.¹³ Over several hundreds of years, corporate mercenaries prospered—serving with distinction in France and the Italian states, for instance.¹⁴

In modern times, corporate mercenaries have assumed the form of private military companies (PMC). Among their many titles, they are also known as private security firms, military service providers, and private military contractors. Post-Cold War military demobilization and lucrative opportunities in the private sector have been a boon to PMC recruiting.¹⁵ Insurance tends to be comprehensive and the salary well exceeds government-grade pay.¹⁶ These benefits have attracted professional soldiers from countries such as the United States, the United Kingdom, and South Africa.¹⁷

Such a high-caliber of expertise allows most PMC’s to offer a wide array of services. Most firms, such as Military Professional Resources, Inc., limit their purview to military training and logistics, and merely prepare the client’s forces to conduct operations autonomously and

¹¹ *Can anyone curb Africa’s dogs of war?*, THE ECONOMIST, Jan. 16, 1999. KEN SILVERSTEIN, PRIVATE WARRIORS 146-47 (2000).

¹² See Organization of African Unity, Convention for the Elimination of Mercenarism in Africa, OAU Doc. CM/817 (XXIX), Annex II, art. 1(2) (3d rev. 1977) [hereinafter OAU Mercenary Convention].

¹³ DUPUY, *supra* note 2, at 303.

¹⁴ MOCKLER, THE NEW MERCENARIES, *supra* note 6, at 9-15. DUPUY, *supra* note 2, at 409. G.T. GRIFFITH, THE MERCENARIES OF THE HELLENISTIC WORLD 2-3 (Groningen 1968) (1935).

¹⁵ HERBERT M. HOWE, AMBIGUOUS ORDER: MILITARY FORCES IN AFRICAN STATES 79-80 (2001).

¹⁶ Adam Zagorin, *Soldiers for Sale*, TIME, May 26, 1997, at 44.

¹⁷ *Id.*

competently.¹⁸ However, a few firms, such as Executive Outcomes, offered full-combat services to their clients.¹⁹

4. INTERNATIONAL LAW ON MERCENARIES

4.1. The Hague Conventions of 1907

One of the Hague Conventions of 1907 is the first international regulation of mercenary activities. In particular, the Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land obliges a neutral state to prevent domestic military staging and recruitment, but the state has no duty to prevent individuals from crossing its borders to assist another state as mercenaries.²⁰

4.2. The Geneva Conventions of 1949

The Geneva Convention Relative to the Treatment of Prisoners of War does not refer to mercenaries specifically.²¹ However, the Geneva Conventions require that parties to the Conventions hold mercenaries accountable for conduct that amounts to grave breaches of the Conventions' terms.²²

¹⁸ MPRI, Home Page, at <http://www.mpri.com/site/capabilities.html> (last visited December 29, 2003). Major Thomas J. Milton, *The New Mercenaries—Corporate Armies for Hire*, FOREIGN AREA OFFICER ASS'N J., Dec. 1997, at <http://www.faoa.org/journal/newmerc3.html>.

¹⁹ See generally UNITED KINGDOM FOREIGN AND COMMONWEALTH OFFICE, PRIVATE MILITARY COMPANIES: OPTIONS FOR REGULATION (2002); SILVERSTEIN, *supra* note 11.

²⁰ Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague Convention No. V), Oct. 18, 1907, 36 Stat. 2310-31; 1 Bevans 654-68.

²¹ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 4, 6 U.S.T. 3316, 75 U.N.T.S. 135.

²² See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, arts. 146-147, 6 U.S.T. 3516, 75 U.N.T.S. 287; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, arts. 50-51, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, arts. 49-50, 6 U.S.T. 3114, 75 U.N.T.S. 31.

4.3. The United Nations Charter and General Assembly resolutions

The United Nations Charter imposes broad limitations upon a member state's right to use force. Signed in 1945, the Charter established a collective security mechanism which permitted force only in cases of self-defense or approval by the Security Council.²³ Moreover, under Article 2(4), members are obliged to refrain from threatening force or using it "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."²⁴

Subsequently, the General Assembly has issued resolutions that have imposed non-binding limitations upon a state's right to use force—including the use of mercenaries. In 1968, Resolution 2465 criminalized the use of mercenaries against national liberation or independence movements.²⁵ In 1970, Resolution 2625 held that states may not organize or encourage mercenaries, but the states are not forbidden from knowingly tolerating mercenary conduct which crosses state borders.²⁶ In 1973, Resolution 3103 criminalized the "use of mercenaries by colonial and racist regimes against the national liberation movements."²⁷ In 1974, Resolution 3314 included the conveyance of mercenaries in the definition of "act of aggression."²⁸

General Assembly resolutions do not have binding effect, but they may reflect customary international law. Resolutions 2465 and 3103, which dealt with liberation movements, received less support and thus are not included in the aggregate analysis.²⁹ Cumulatively, the other three resolutions on mercenaries indicate that states may not organize, encourage, or send mercenaries, although knowingly tolerating mercenary activity is not forbidden.

²³ U.N. CHARTER art. 51.

²⁴ *Id.* arts. 39, 42.

²⁵ G.A. Res. 2465, U.N. GAOR, 23d Sess., Supp. No. 18, at 4, U.N. Doc. A/7218 (1968).

²⁶ G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 123, U.N. Doc. A/8028 (1970).

²⁷ G.A. Res. 3103, U.N. GAOR, 28th Sess., Supp. No. 30, at 142, U.N. Doc. A/9030 (1973).

²⁸ G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 143, U.N. Doc. A/9631 (1974).

²⁹ G.A. Res. 2465, *supra* note 25. G.A. Res. 3103, *supra* note 27.

4.4. Article 47 of Protocol I

In 1977, a diplomatic conference released an additional protocol (Protocol I) for the Geneva Conventions of 1949. Article 47 of Protocol I deprives mercenaries of lawful combatant or prisoner of war status, exposing them to domestic prosecution (where possible).³⁰ It does not define a specific crime of mercenary activity, nor does it criminalize the financing, training, or recruiting of mercenaries. Notably, several Third World participants in the drafting process lashed out at mercenaries.³¹ The Soviet Union's representative later based his support for the protocol on its positive effect upon national liberation movements.³² This might lead one to surmise that the Third World's experiences with colonial mercenaries influenced their interpretations of the protocol—and perhaps other mercenary regulations.³³

4.5. The Organization of African Unity's declarations and conventions

Independent African states founded the Organization of African Unity (OAU) in 1963.³⁴ Its Charter, reminiscent of the UN Charter, deemed national borders inviolable and opposed interference in a state's internal affairs.³⁵ Four years later, in response to foreign mercenary involvement in the Congo's Katangese war of secession, the OAU released the Resolution on the Activities of Mercenaries. It condemned the mercenary activities in the Congo and urged

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, art. 47, 1125 U.N.T.S. 3 [hereinafter Protocol I].

³¹ 15 OFFICIAL RECORDS OF THE DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS, GENEVA (1974-1977) para. 33, 196 (Swiss Federal Political Department 1978) [hereinafter OFFICIAL RECORDS] (CDDH/III/SR.57, Apr. 29, 1977). 6 *id.* at 193.

³² 6 *id.* at 193 (CDDH/SR.41, Annex, May 26, 1977).

³³ 15 *id.* para. 33, at 196 (CDDH/III/SR.57, Apr. 29, 1977).

³⁴ P. Mweti Munya, *The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation*, 19 B.C. THIRD WORLD L.J. 540-43 (1999).

³⁵ *Id.* at 542.

domestic criminal legislation to stop the recruitment and training of mercenaries.³⁶ In 1971, the OAU released another resolution condemning the relationship between mercenaries and colonial domination.³⁷ This sentiment later influenced the 1972 Draft Convention for the Elimination of Mercenaries in Africa, which criminalized mercenary activities and recruiting.³⁸ Both of the UN resolutions (2465 and 3103) which deal with mercenary involvement in colonial domination echo the language of the OAU resolutions.³⁹

In 1976, the Luanda Convention, written against the backdrop of mercenary prosecutions, once again reflected a preoccupation with post-colonial interference in African affairs.⁴⁰ Its colonially-based definition of mercenary activity reappeared one year later in the OAU's Convention for the Elimination of Mercenarism in Africa.⁴¹ As for the definition of a mercenary, the Convention resembles Article 47 of Protocol I (discussed above), depriving mercenaries of lawful combatant or prisoner of war status.⁴² Perhaps due to the OAU's preoccupation with post-colonial mercenaries and their meddling in African affairs, the Convention does not regulate government-contracted mercenaries (provided they do not direct their force against another state).⁴³ That noteworthy distinction will be examined in greater detail later in this article.

³⁶ Organization of African Unity, Resolution on the Activities of Mercenaries, AHG/Res. 49 (IV) (1967), *reprinted in* MERCENARIES: AN AFRICAN SECURITY DILEMMA 281-82, app. III (Abdel- Fatau Musah & J. Kayode Fayemi eds., 2000).

³⁷ Organization of African Unity, Declaration on the Activities of Mercenaries in Africa, June 23, 1971, *reprinted in* MERCENARIES: AN AFRICAN SECURITY DILEMMA, *supra* note 36, at 43, 48.

³⁸ OAU Doc. CM/433/Rev. L, Annex 1 (1972), *reprinted in* MERCENARIES: AN AFRICAN SECURITY DILEMMA, *supra* note 36, app. V, at 286-88.

³⁹ G.A. Res. 2465, *supra* note 25. G.A. Res. 3103, *supra* note 27.

⁴⁰ International Commission of Inquiry on Mercenaries, Draft Convention on the Prevention and Suppression of Mercenarism pmb., para. 2. (1976) [hereinafter Luanda Convention], *reprinted in* Paul W. Mourning, Leashing the Dogs of War: Outlawing the Recruitment and Use of Mercenaries, 22 VA. J. INT'L L. 589, 615 (1982).

⁴¹ OAU Mercenary Convention, *supra* note 12.

⁴² *Id.* art. 3. *Cf.* Protocol I, *supra* note 30, art. 47(1).

⁴³ OAU Mercenary Convention, *supra* note 12, art. 1(2).

4.6. The UN Mercenary Convention

In 1989, the UN General Assembly adopted the UN Mercenary Convention and made it available for signature by member states.⁴⁴ The Convention draws upon previous mercenary regulations. The mercenary definition resembles Article 47 of Protocol I, which deprives mercenaries of lawful combatant or prisoner of war status.⁴⁵ As for the mercenary activities definition, the Convention draws upon the Luanda Convention and the OAU Mercenary Convention.⁴⁶ In addition to these definitions, the Convention (1) criminalizes mercenary violence;⁴⁷ (2) the training, recruiting, financing, and use of mercenaries;⁴⁸ (3) attempts;⁴⁹ and (4) accomplices.⁵⁰

Significantly, the UN Convention differs from the OAU Convention on the issue of state-hired mercenaries. Although the OAU Convention opposed mercenaries that meddled in African affairs—on behalf of a former colonial power, for instance—it did not prohibit state-hired mercenaries.⁵¹ In contrast, the UN Convention does not permit mercenaries hired by a private party or a state.⁵²

The UN Convention entered into force in October 2001.⁵³ However, a mere twenty-five of the UN's 191 member states have become parties to it.⁵⁴ Thirteen percent of the UN hardly

⁴⁴ U.N. GAOR, 44th Sess., Supp. No. 43, U.N. Doc. A/RES/44/34 (1989) (entered into force Oct. 20, 2001) [hereinafter UN Mercenary Convention].

⁴⁵ *Id.* art. 3. Cf. Protocol I, *supra* note 30, art. 47(1).

⁴⁶ UN Mercenary Convention, *supra* note 44, art. 1(2). Cf. Luanda Convention, *supra* note 40, pmb., para. 2; OAU Mercenary Convention, *supra* note 12, art. 1(2).

⁴⁷ UN Mercenary Convention, *supra* note 44, art. 3(1).

⁴⁸ *Id.* art. 2.

⁴⁹ *Id.* art. 4(a).

⁵⁰ *Id.* art. 4(b).

⁵¹ OAU Mercenary Convention, *supra* note 12, art. 1(2).

⁵² UN Mercenary Convention, *supra* note 44, arts. 2, 5.

⁵³ U.N. GAOR, 44th Sess., Supp. No. 43, U.N. Doc. A/RES/44/34 (1989) (entered into force Oct. 20, 2001) [hereinafter UN Mercenary Convention].

⁵⁴ UN Treaty Collection, *Status of Multilateral Treaties Deposited with the Secretary-General* (December 29, 2003) [hereinafter UN Treaty Status], available at

reflects a broad international consensus on the UN Mercenary Convention. This might also call into question the international consensus on mercenary regulations (discussed above) which preceded and influenced the Convention.

5. THE LIMITS OF THE INTERNATIONAL LAW ON MERCENARIES

As shown in the previous section, several international provisions regulate mercenaries and their activities—whether liability rests with individuals, state actors, or states. However, these well-intentioned regulations are at odds with practical issues. Their broad restrictions and preoccupations with the post-colonial era have resulted in ossified regulations. Specifically, they fail to account for African accession statistics and state practices, as well as the positive state interests that PMC's can advance.

5.1. AFRICAN ACCESSION STATISTICS AND STATE PRACTICES

Although international regulations limit a state's use of mercenaries, African states have not uniformly adopted them, nor have they observed their provisions. These incongruities cast doubt upon the effectiveness and legitimacy of such regulations.

First, the accession statistics of the mercenary regulations do not reflect widespread African support. Six OAU states originally signed the UN Mercenary Convention in 1990, but only Cameroon became a party to it.⁵⁵ Not even Nigeria has become a party, although it originally proposed the UN Mercenary Convention and signed it in 1990.⁵⁶ Seven states which were not signatories later became parties to the Convention, bringing the total number of African

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty6.asp> (last visited December 29, 2003).

⁵⁵ *Id.*

⁵⁶ *Id.* See Draft Resolution on Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, U.N. GAOR, 35th Sess., U.N. Doc. A/C.6/35/L.14 (1980).

state parties to eight.⁵⁷ As for the OAU Mercenary Convention, twenty-four members of the fifty-three states in the African Union (the successor to the OAU)⁵⁸ have ratified or acceded to it.⁵⁹

These statistics do not reflect widespread support among African states for the OAU or UN Mercenary Conventions. The OAU Convention garners more support than the UN Convention, but it does not even have fifty percent of OAU member states as parties. The UN Convention merely has fifteen percent of African states as parties. The two conventions are the general instruments of mercenary regulation, so paltry support for them among African states suggests a general African dissatisfaction with mercenary regulation.

Second, state practice in Africa trends toward the use of mercenaries—contrary to what mercenary regulations proscribe. Since the 1960's, at least eighteen African states have employed mercenaries or received their services.⁶⁰ Two of the states had acceded to the UN Mercenary Convention—which bans state use of mercenaries—and three had signed the convention.⁶¹ The OAU Mercenary Convention is less of a concern since it does not regulate government-contracted mercenaries (provided that they do not direct their force against another state).⁶²

⁵⁷ UN Treaty Status, *supra* note 54.

⁵⁸ For the sake of continuity, this article will use the OAU abbreviation, not the AU abbreviation (for African Union).

⁵⁹ African Union, *List of Countries which have Signed, Ratified/Acceded to OAU Convention for the Elimination of Mercenarism In Africa* [hereinafter OAU Treaty Status], available at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/List/ELIMINATION%20%20MERCENARISM%20IN%20AFRICA.pdf (last visited December 29, 2003). Note: Contrary to the table provided, Morocco (table item 34) is no longer in the African Union.

⁶⁰ Kenya, Nigeria, Zambia, Tanzania, Malawi, Sierra Leone, Mozambique, Sudan, Cameroon, Botswana, Rwanda, Uganda, Ivory Coast, Ghana, Togo, Namibia, Angola, and the Democratic Republic of the Congo. HOWE, *supra* note 15, at 228. Kevin A. O'Brien, *Private Military Companies and African Security: 1990-98*, in *MERCENARIES: AN AFRICAN SECURITY DILEMMA* 46-48, 62-63 (Abdel-Fatau Musah & J. Kayode Fayemi eds., 2000).

⁶¹ Cameroon and Togo had signed the UN Mercenary Convention. Nigeria, Togo, and the Democratic Republic of the Congo had signed it. UN Treaty Status, *supra* note 54.

⁶² OAU Mercenary Convention, *supra* note 12, art. 1(2).

The paltry support for the OAU and UN Mercenary Conventions that was discussed above might be attributed to states that reserved the option to use PMC's or used them already. A sizable number of African states use PMC's, which casts doubt on the effectiveness of those regulations. Moreover, less than half of African states have acceded to the regulations, thereby calling into question the regulations' legitimacy.

5.2. POSITIVE STATE INTERESTS THAT PMC'S ADVANCE

Current mercenary regulations, which are either overbroad or based on unfavorable post-colonial experiences, disregard the positive state interests that PMC's can advance. In their current form, these regulations needlessly limit a state's security options, which in many cases are narrow already.

5.2.1. Limited Options for Endangered States

First, individual states either lack the sufficient will or the means to intervene on behalf of beleaguered states. As for the sufficient will to intervene, the specter of casualties looms over potential interventions—such as the stark reminder of American troops being dragged through the streets of Mogadishu, Somalia.⁶³ An aversion to casualties could cripple support for a military operation—even those primarily involving humanitarian aid, such as the Somalian intervention.⁶⁴ This aversion could be even more pronounced if the potential mission does not advance the intervening state's strategic interests, which might not include African states.

⁶³ Doug Brooks, *Forum: The Dogs of Peace*, THE POST-GAZETTE, March 7, 1999.

⁶⁴ *Id.*

As for the sufficient resources to intervene, global defense spending has trended downward since the end of the Cold War.⁶⁵ These trends have imposed constraints upon states' defense options. Faced with limited resources, states prioritize their interests and act accordingly. As a result, interests which are less pressing are not pursued, such as humanitarian and military interventions in peripheral African states.

Second, the international community lacks the sufficient will and means to intervene on behalf of beleaguered states. As for the sufficient will to intervene, consider the UN Security Council, the UN body which authorizes the use of force. It has succumbed to political indecision and paralysis on numerous occasions. Between 1945 and 1999, "two-thirds of the current membership. . . fought 291 interstate conflicts resulting in some 22 million deaths."⁶⁶ Only twice has the Security Council authorized force to "maintain or restore international peace security"—and in both cases, it delegated enforcement to member states known as "coalitions of the willing."⁶⁷ Those damning statistics do not even include intrastate conflicts, which can also pose considerable danger to states.

As for the sufficient resources to intervene, international organizations such as the UN face the budgetary limitations of individual states, which comprise their membership. The Security Council has never had standing forces at its disposal in the manner envisioned by Article 43 of the UN Charter, so the Council relies on the good will contributions of member states.⁶⁸

⁶⁵ UNITED STATES DEPARTMENT OF STATE, WORLD MILITARY EXPENDITURES AND ARMS TRANSFERS 51 tbl.1 (2003), available at <http://www.state.gov/documents/organization/18739.pdf>.

⁶⁶ John F. Cullinan, *The Preemption Doctrines*, NATIONAL REVIEW ONLINE, Dec. 17, 2002, at <http://www.nationalreview.com/comment/comment-cullinan121702.asp>.

⁶⁷ S.C. Res. 83, U.N. SCOR, 5th Sess., 474th mtg. at 5, U.N. Doc. S/1511 (1950); S.C. Res. 678, U.N. SCOR, 45th Sess., 2963 mtg. at 27, U.N. Doc. S/RES/678 (1990).

⁶⁸ U.N. CHARTER art. 43.

Financial constraints work against the creation of a standing force. Sir Brian Urquhart cites a yearly cost of \$300 million dollars to maintain one brigade-sized contingent.⁶⁹ Though a fraction of the peacekeeping budget—2.17 billion dollars in 2003/2004, for instance—this figure unsettles member states, which object to a standing force’s potentially expanded role.⁷⁰ It is worth noting that a standing force might actually reduce overall peacekeeping costs by staving off crises at their outset. However, if no political will exists to catalyze the decision-making process, financial matters are irrelevant. All told, political and financial realities have ruled out a standing force. The lack of consensus among member states will not be overcome in the foreseeable future, nor will the financial drawbacks of proposals on a standing force.⁷¹

“Coalitions of the willing” currently serve as the UN’s primary means of force generation. The Security Council conducts political oversight and authorizes force, whereas *ad hoc* coalitions of states execute the military orders. For the foreseeable future, “coalitions of the willing” remain the most financially and politically feasible arrangements. As a result, the UN military apparatus is subject to the whims of member states, which themselves are subject to budgetary and political constraints. Such variables make the UN an unreliable source of military aid—as are other international organizations, which are also subject to the budgetary and political constraints of their member states.

5.2.2. A State’s Last Line of Defense

As shown, neither individual states nor international organizations can dependably relieve endangered states. If indigenous defenses fail and foreigners opt not to intervene, states

⁶⁹ Francois Heisbourg and Brian Urquhart, *Prospects for a Rapid Response Capability: A Dialogue*, in PEACEMAKING AND PEACEKEEPING FOR THE NEW CENTURY 198 (Olaro A. Otunnu & Michael W. Doyle eds., 1998).

⁷⁰ United Nations Department of Peacekeeping Operations, *Facts and Figures*, available at <http://www.un.org/peace/bnote010101.pdf> (last visited January 1, 2004).

⁷¹ PAUL DIEHL, INTERNATIONAL PEACEKEEPING 69 (1993).

have little recourse but to rely on another provider of security—PMC’s. The range of services that PMC’s provide can advance a state’s security interests. For instance, combat support can thwart a rebellion or foreign invasion. Training and logistics can help prepare a state’s forces to conduct operations autonomously and competently. PMC’s can act quickly, inexpensively, and do not provoke the public’s anxiety over the casualties of regular troops. Consider two situations in which a PMC—Executive Outcomes (EO)—provided African states with services that were otherwise unavailable from indigenous sources, international organizations, or individual states. In both Angola and Sierra Leone, EO suppressed rebellions, paving the way to peace talks and elections.

5.2.2.1. Angola

The MPLA and UNITA—two rival groups—agreed to a cease-fire in 1992.⁷² The MPLA prevailed in the UN-certified elections which took place later that year.⁷³ The leader of UNITA refused to honor the election results and resumed hostilities.⁷⁴ It controlled much of the country by 1993.⁷⁵ That year, the MPLA first hired EO to regain Soyo, whose oil helped fund their war effort.⁷⁶ In conjunction with Angolan troops, EO regained Soyo, though UNITA reclaimed it once the firm departed.⁷⁷

By September 1993, UNITA had claimed more territory.⁷⁸ The MPLA turned to EO again, hiring them for forty million dollars to train Angolan troops and pilots, as well as direct

⁷² Tim Judah, *Time to Come Home*, THE GUARDIAN, Oct. 11, 2003, at 34.

⁷³ *The long road to peace in Angola*, AGENCE FRANCE PRESSE, Apr. 2, 2003.

⁷⁴ Judah, *supra* note 72.

⁷⁵ DAVID SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION 46 (ADELPHI PAPER NO. 316) (1998).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

combat operations over one year.⁷⁹ The contract was eventually renewed until 1996.⁸⁰ Under the tutelage of five-hundred EO advisers, Angolan troops regained key towns and resources throughout the country in 1994.⁸¹

By late 1994, these setbacks convinced UNITA to negotiate, leading to a peace accord in Lusaka that November.⁸² In the accord, UNITA even requested that foreign “mercenaries” be expelled.⁸³ EO advanced the interests of its client—and did so cheaply. Angola alone spent \$678 million on its military between 1994 and 1995, whereas EO completed the job for a mere \$60 million.⁸⁴ Low-level hostilities continued, but the bulk of the fighting had ceased.⁸⁵

5.2.2.2. Sierra Leone

The Sierra Leonean government under Valentine Strasser had come to power in a coup in 1992.⁸⁶ It faced an especially vicious rebel group, the Revolutionary United Front (RUF).⁸⁷ The government had hired another PMC, Gurkha Security Group, to train the military.⁸⁸ However, it had to withdraw in early 1995 after sustaining casualties in a rebel ambush.⁸⁹ By the time EO

⁷⁹ Yves Goulet, *Executive Outcomes: Mixing Business with Bullets*, 9 JANE’S INTELLIGENCE REVIEW, no. 9, Sept. 1997, at 429.

⁸⁰ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75.

⁸¹ *Id.*

⁸² HUMAN RIGHTS WATCH, ANGOLA UNRAVELS: THE RISE AND FALL OF THE LUSAKA PEACE PROCESS (1999), available at <http://www.hrw.org/reports/1999/angola/Angl1998-04.htm> (last visited January 2, 2004).

⁸³ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 48. See Marc Thiessen, *Savimbi’s Strategy*, 48 NATIONAL REVIEW, no. 18, Sept. 30, 1996, at 25.

⁸⁴ DAVID ISENBERG, CENTERS FOR DEFENSE INFORMATION, SOLDIERS OF FORTUNE, LTD. (1997), available at <http://www.cdi.org/issues/mercenaries/merc1.html> (last visited January 2, 2004). Aside from its fee from the government, EO obtained oil and diamond concessions. SILVERSTEIN, *supra* note 11, at 164.

⁸⁵ HUMAN RIGHTS WATCH, *supra* note 82.

⁸⁶ David Isenberg, *Combat for Sale*, USA TODAY (Magazine), Mar. 2000.

⁸⁷ Elizabeth Rubin, *An army of one’s own*, 294 HARPER’S MAGAZINE, no. 1761, Feb. 1997, at 44. The leader of the rebellion “was ostensibly aiming to stir up a grass-roots revolution to topple the old regime and his singularly cruel, charismatic rebellion made rapid advances against the ragtag national army. Unwilling farmers were press-ganged into his army or intimidated by his trademark tactics: cutting off hands, arms, ears, and genitals; gouging out eyeballs; and eating the organs of victims.”

⁸⁸ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 82, at 49.

⁸⁹ *Id.*

arrived in May 1995, RUF rebels were within reach of the capital, Freetown.⁹⁰ Likewise, RUF had captured mineral deposits that provided a large percentage of the country's export earnings.⁹¹

EO trained the military and led offensives against the rebels.⁹² Under its direction, Sierra Leonean troops protected the capital and reclaimed valuable mines by the end of 1995.⁹³ In early 1996, an EO-led ground assault destroyed the rebels' stronghold in the Kangari Hills.⁹⁴ The rebels then agreed to negotiate with the government.⁹⁵ Thanks to the stability created by EO and its Sierra Leonean cohorts, elections took place from February to March 1996.⁹⁶ A civilian government then took over.⁹⁷ When the rebels reneged on a promise to sign a peace agreement, the government authorized another EO-led operation.⁹⁸ It destroyed the rebels' headquarters in the south-east.⁹⁹ Days later, RUF leader Foday Sankoh consented to a peace agreement.¹⁰⁰

Significantly, Sankoh—much like UNITA—conditioned the peace agreement upon the expulsion of EO.¹⁰¹ He later credited EO with defeating the rebels.¹⁰² The operation lasted twenty-one months and cost the government thirty million dollars—a mere third of the government's total costs during its war with the rebels.¹⁰³ Just as it had done for the Angolan government, EO advanced the interests of its client—and did so cheaply. Aid workers could

⁹⁰ Isenberg, *Combat for Sale*, *supra* note 86.

⁹¹ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 49.

⁹² Rubin, *supra* note 87.

⁹³ Rubin, *supra* note 87.

⁹⁴ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 51.

⁹⁵ *Id.*

⁹⁶ Rubin, *supra* note 87.

⁹⁷ Rubin, *supra* note 87.

⁹⁸ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 51.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Jim Hooper, *Peace in Sierra Leone: A Temporary Outcome?*, 9 JANE'S INTELLIGENCE REVIEW, no. 2, Feb. 1997, at 91-94.

¹⁰³ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 51. Aside from its fee from the government, EO obtained mineral concessions. SILVERSTEIN, *supra* note 11, at 165.

safely reach the needy.¹⁰⁴ Most of the million people displaced by the war could return to their homes.¹⁰⁵ The stability created by EO made elections feasible.¹⁰⁶

5.2.2.3. When PMC's Might Have Made a Difference: Rwanda

Consider a scenario in which a government, without adequate foreign assistance or defenses of its own, could have used the services of a PMC to great effect. Had a PMC intervened early enough in the Rwandan civil war, it might have been able to prevent the slaughters of thousands, if not hundreds of thousands.

From 1990 to 1994, Rwanda was plagued by a civil war between Hutu and Tutsi ethnic groups. Violence—assaults, murders, and rapes—began in 1990, but it hardly matched the savagery that was to come.¹⁰⁷ As the violence escalated, peaking in 1994, individual states and the UN balked at intervening militarily.¹⁰⁸ In a mere one hundred days, 600,000 people were killed.¹⁰⁹

By the time the genocide started, a PMC likely would not have had the resources to stop the large-scale atrocities. However, early forceful intervention by an outside party might limit the scope of hostilities and change their course.¹¹⁰ In the case of Rwanda, before the violence reached a critical mass, a PMC could have intervened to dispel the conditions which encouraged the bloodshed to escalate. For instance, it could have undermined the atmosphere of lawlessness by restraining the low-scale violence that started early in the civil war. Jamming the signals of

¹⁰⁴ Kirsten Sellars, *Old dogs of war learn new tricks*, 126 NEW STATESMAN, no. 4331, Apr. 25, 1997, at 24.

¹⁰⁵ SHEARER, PRIVATE ARMIES AND MILITARY INTERVENTION, *supra* note 75, at 51.

¹⁰⁶ Isenberg, *Combat for Sale*, *supra* note 86.

¹⁰⁷ Joseph A. Keeler, *Genocide: Prevention Through Nonmilitary Measures*, 171 MIL. L. REV. 168 (2002).

¹⁰⁸ WILLIAM SHAWCROSS, DELIVER US FROM EVIL: PEACEKEEPERS, WARLORDS, AND A WORLD OF ENDLESS CONFLICT 124-29 (2000).

¹⁰⁹ Keeler, *supra* note 107, at 162-63.

¹¹⁰ DAVID CALLAHAN, UNWINNABLE WARS: AMERICAN POWER AND ETHNIC CONFLICT 205 (1997).

Hutu-controlled radio stations—such as Radio Mille Collines—or capturing them would have limited the vicious propaganda.¹¹¹

In Rwanda, indigenous defenses failed and foreign assistance proved insufficient or nonexistent. The Rwandan people had no “last line of defense.” Left to themselves, the government and thousands of its citizens succumbed to the slaughter. Whether hired by Rwanda or outside powers, a PMC might have successfully intervened to limit the carnage—or at least attempted to limit it. That is more than can be said of the other parties involved, which stood by helplessly as genocide unfolded in Rwanda.

6. SUGGESTED CHANGES IN THE LAW

Mercenary regulations could be amended to reflect African state security needs and practices. As shown above, many African states have not acceded to the UN and OAU Mercenary Conventions, nor have they abided by their provisions. Moreover, the conventions do not account for the positive state interests that PMC’s can advance—such as basic security for inhabitants or the stability required for elections.

The OAU Mercenary Convention has flaws—such as an outdated fixation with post-colonial mercenaries. Though flawed, the Convention does not regulate government-contracted mercenaries (provided they do not direct their force against another state).¹¹² Since this article primarily concerns itself with the use of PMC’s by African states, it will focus on ways to amend the UN Mercenary Convention, which even prohibits state use of PMC’s.¹¹³

There is a conflict between the UN’s strict limits on force and the sometimes dire conditions facing states. The UN represents a global effort to establish peace and order through

¹¹¹ SHAWCROSS, *supra* note 108, at 139-40.

¹¹² OAU Mercenary Convention, *supra* note 12, art. 1(2).

¹¹³ UN Mercenary Convention, *supra* note 44, arts. 2, 5.

the rule of law. However, the very spirit of that grand enterprise comes into question when it bars defensive measures that could avert disaster for member states. African states might choose to ignore the UN if it stands between them and impending doom—and sympathetic member states might indulge them. Forced to choose between pressing security interests and violating an unrealistic international prohibition, an endangered state will choose security—especially if no foreign assistance is forthcoming.

However understandable these breaches of the law may be, they could ultimately undermine the rule of law. Over time, respect for the UN and international law could erode if its member states flout conventions with impunity. The UN could reach a compromise by accommodating states' legitimate security interests in its Mercenary Convention. For instance, it could legalize state use of mercenaries, much like the OAU Mercenary Convention does.¹¹⁴ To help ensure that client states do not use PMC's illegitimately, the Convention could require that member states impose compliance requirements upon PMC's that issue from their territory. Conceivably, these standards of conduct would deal with matters such as human rights abuses, interstate warfare, and other conceivably illegitimate PMC uses. Were a PMC to violate these standards, the state of origin would be obligated to sanction it.

7. CONCLUSIONS

Due to the unwillingness or inability of individual states and the UN to intervene militarily, PMC's sometimes represent the last line of defense for endangered states. Granted, the word "mercenary" conjures up images of unsavory characters motivated by greed alone. PMC's merely add a corporate gloss to this stigmatized profession—a profession that indeed warrants regulation, but not complete prohibition.

¹¹⁴ OAU Mercenary Convention, *supra* note 12, art. 1(2).

In the absence of alternatives, PMC's provide vital security services to countries that would otherwise suffer. When African states—such as Sierra Leone and Angola—faced chaos and carnage, greedy mercenaries intervened while others stood idle a world away. Until those who now stand idle can do more than mangle or moralize using outdated international law, they have little to contribute to the real security of endangered states.