

Private Military Companies and the Proliferation of Small Arms: Regulating the Actors

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Contents

- Executive Summary.....2
- Private Military and Security Companies and Small Arms Proliferation.....4
- Existing Efforts to Control Mercenaries and Private Military and Security Companies.....7
- Developing an International Regulatory Framework..... 11
- Conclusion 16
- Endnotes.....17

Executive Summary

The 1990s witnessed a change in the way wars were fought as the amount of available weaponry increased and the types of actors engaged in warfare multiplied. The opening up of the international arms trade, in particular with new buyers and more channels of supply, has raised concerns about who purchases weapons and for what use. A feature of this changing nature of conflict has been the continuing, if not growing, presence of mercenaries and the emergence of private companies contracted to provide military and security services. These range from logistical support and training to advice and procurement of arms and on-the-ground intervention. This briefing highlights how the activities of mercenaries and private military and security companies can contribute to small arms proliferation and misuse and examines steps the international community can take at the UN Small Arms Conference and elsewhere to effectively combat mercenarism and regulate the activities of private military and security companies.

The role played by these companies relates not only to provisions contained in the contracts they sign with their clients to provide large amounts of weaponry, but also how the military and security services and training that they provide contributes to the demand for weapons in the regions where they operate. There are a number of ways in which mercenaries and private military and security companies are involved in small arms proliferation. These include:

- Arms brokering and transportation activities
- Violations of UN arms embargoes
- Impact on human rights and humanitarian law
- Driving demand for small arms

Various measures already exist to ban the activities of mercenaries and regulate some of the activities of private military and security companies either through national legislation or international agreements. However, there is concern these efforts are neither comprehensive nor accepted widely enough to effectively control the activities of mercenaries and private military and security companies.

Executive Summary

To date, action to control mercenaries and private military and security companies has been ad hoc and sporadic. While most countries recognise the need to prohibit the activities of mercenaries, few have developed relevant laws to support the international agreement that exists. The more complicated matter of private military and security companies has been left largely to self-regulation and corporate responsibility, with only a few countries (e.g. South Africa and the United States) developing and implementing specific laws on this issue. There is an urgent need for States to take steps to control not only the role of these actors in the arms trade but also their provision of military and security services. An interlocking framework of national, regional and international control mechanisms is required. Key priorities for States for the development of such a framework include:

- Ratification of relevant international and regional legal instruments.
 - Introduction of controls over arms brokering and shipping agents that recognise the role played by private military and security companies;
 - Development of national legislation to control the activities of private providers of military and security services;
 - Better and more rigorous implementation of UN arms embargoes and sanctions, which include in their scope military and security services and technical assistance that may accompany arms transfers;
 - Support for the continuation and broadening of the mandate of the Special Rapporteur on mercenaries to include private military and security companies; and
 - Promotion of security sector reform programmes that lead to the development of accountable security forces with proper civilian oversight and control so as to reduce the need for the use of private military and security companies and support efforts to combat the illicit trade in small arms.
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Private Military and Security Companies and Small Arms Proliferation

Introduction

The 1990s witnessed a change in the way wars are fought as the amount of available weaponry increased and the types of actors engaged in warfare multiplied. The opening up of the international arms trade, in particular, with new buyers and more channels of supply has raised concerns about who purchases weapons and for what use. A feature of this changing nature of conflict has been the continuing, if not growing, presence of mercenaries and the emergence of private companies, contracted to provide military and security services, ranging from logistical support and training to advice, procurement of arms and on-the-ground intervention. There is a strong rationale that as the international community moves to consider how to regulate the activities of the actors involved in the international arms trade, such as arms brokers or arms transportation agents, the activities of private military and security companies should also become an area of attention and control.

The focus of this briefing is on how the activities of mercenaries and private military and security companies can contribute to small arms proliferation and misuse and what steps could be taken to address their role at the UN Small Arms Conference. The role played by private military and security companies relates not only to provisions contained in the contracts they sign with their clients to provide large amounts of weaponry, but also how the military and security services and training that they provide contributes to the demand for weapons in the regions where they operate. In this way private military and security companies contribute to the negative impact small arms proliferation can have on conflict transformation, human rights and humanitarian law, as well as post-conflict stability and development. While generally not considered a central issue for the UN Small Arms Conference, a recently organised expert meeting on mercenaries by the Office of the UN High Commissioner for Human Rights called for addressing the issues linking mercenaries – in whatever form – and arms trafficking.¹ This briefing makes key recommendations for how the issue could be tackled and loopholes closed in existing legislation. The regulation of military and security services that often accompany weapons sales is an emerging issue that should be addressed in the follow-up to the Conference and through other fora.

Definitions

Three terms are often used interchangeably in the debate on the privatisation of security: mercenaries, private military companies and private security companies. In simple terms, they can be defined as:

- *mercenaries* – individuals who fight for financial gain in foreign conflicts that are primarily used by non-State armed groups and more occasionally by governments;
- *private military companies* (PMCs) – corporate entities providing offensive services designed to have a military impact in a given situation that are generally contracted by governments; and
- *private security companies* (PSCs) – corporate entities providing defensive services to protect individuals and property, frequently used by multinational companies in the extractive sector, humanitarian agencies and individuals in situations of conflict or instability.

Private Military and Security Companies and Small Arms Proliferation

The range of activities and services encompassed by these three groups include:

- combat and operational support
- military advice and training
- arms procurement
- intelligence gathering
- security and crime prevention services
- logistical support

There are differences between mercenaries, PMCs and PSCs, specifically in the services they provide and the activities in which they engage, as well as their target clients, which may be governments, multinational corporations or humanitarian agencies. Generally speaking, most PMCs have refrained from signing contracts with non-State armed actors (stating that they will only work for internationally-recognised governments) although the fact that there are few legal safeguards to prevent them doing so is a cause for concern. Private security companies are usually used by multinational or national companies or by humanitarian agencies in situations of conflict or instability. Mercenaries on the other hand have been defined historically and in international law by the threat they pose to the political integrity and constitutional order of States by fighting alongside rebel groups. However, it must be recognised that there are areas of overlap between these groups of actors, in particular when PMCs hire mercenaries or where certain companies provide 'dual services' including both defensive security and offensive military capabilities. This briefing focuses primarily on the role of PMCs and PSCs in small arms proliferation, although the role of mercenaries, whose activities are less understood, is also considered.

Factors in the privatisation of security

There are a number of factors that have contributed to the privatisation of security and the outsourcing of military and security services. The end of the Cold War reduced the need for large standing armies and led to the demobilisation of tens of thousands of highly professional soldiers across Europe, North America and parts of Africa. Some of these soldiers have established or have turned to employment with private military and security companies or have become freelance mercenaries. The close of the Cold War has also left a power vacuum in certain regions and countries affected by conflict which has in places been filled by private military and security companies that have been hired by warring factions. Another factor has been the opening up of the international arms trade to an increasing number of buyers and sellers, which has allowed a broader number of different actors with the necessary resources to access weaponry, not least of which are the small arms and light weapons often used in direct combat. In the past these weapons moved through legal and/or illegal channels, but predominantly to government end-users. Although there are concerns about the misuse of arms by State forces, the proliferation of non-government end-users and lack of adequate governmental control has increased the use of arms to fuel conflicts and to facilitate human rights abuses and breaches of international humanitarian law. Finally, globalisation and the integration of the global market driven by electronic financial transactions and highly mobile and accessible communication equipment has eased the means by which transnational organised criminal groups have been able to circumvent controls and exploit States with weak regulation or porous borders to conduct criminal activity, including the smuggling of weapons.

Private Military and Security Companies and Small Arms Proliferation

The UN response

The international community has already responded to traditional mercenary activity by developing international norms to prohibit it. In 1987, the UN Commission on Human Rights appointed a Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding of the right of peoples to self-determination, and in 1989 the UN adopted an International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries. The UN Special Rapporteur, however, whose role it is to report to the Commission on Human Rights and General Assembly, has drawn attention to the numerous gaps and ambiguities in the international legislation and the persistence of, and increase in, mercenary activities.² On the issue of private military and security companies the way forward is not so straightforward. There are certain legitimate and acceptable roles for PMCs and PSCs, acting in accordance with national and international law. However, there are situations in which certain services performed by PMCs and PSCs have increased the amount of weaponry in a region, prolonged or exacerbated conflict or facilitated human rights abuses. In his most recent report the Special Rapporteur noted:

“...While private companies play an important role in the area of security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.”³

Of particular concern is the lack of accountability and absence of regulation in the private provision of military and security services. Existing control lacunae are currently being exploited by unscrupulous private actors. As the international community moves to adopt greater norms of responsibility, accountability and control over the provision and use of small arms and light weapons, it is important that governments ensure that similar controls are extended towards the activities of PMCs and PSCs.

Existing Efforts to Control Mercenaries and Private Military and Security Companies

The role of mercenaries, PMCs and PSCs in the proliferation and misuse of small arms

Arms procurement and brokering of small arms and light weapons (SALW) are integral aspects of the activities of mercenaries, private military companies and private security companies. The links between these actors and the arms trade relates not only to their role in obtaining or facilitating the purchase of weapons but also how the military and security services and training that they provide contributes to the demand for, and misuse of, weapons in the regions where they operate. The role played is complex and requires further research. The connections between mercenaries and the illicit trafficking of small arms has been identified by the UN, with the Special Rapporteur noting:

“The many forms of criminal associations involving mercenaries include illicit arms trafficking, which constitutes one of the illegal activities that causes the greatest harm to mankind. Many armed conflicts occur because they have been provoked by arms merchants and others are unnecessarily prolonged by them. The investigations conducted by various United Nations bodies indicate that arms trafficking is the most widespread form of illegal operation. In the Special Rapporteur’s view, the mercenary component is usually present in illicit arms traffic operations. Mercenaries are hired as pilots, co-pilots or flight engineers for the transport of weapons, as arms salesmen in the field or as instructors in the use of the weapons and military material that have been sold, and to train troops or paramilitary groups, which in many cases comprise raw recruits, persons with little training or knowledge or ad hoc combatants.”⁴

There are a number of ways in which mercenaries and private military and security companies are involved in small arms proliferation that need to be taken into consideration at the UN Small Arms Conference. These and their consequences are listed below.

Arms brokering and transportation activities

An important role played by private military and security companies in the spread and misuse of small arms is when they perform arms brokering and transportation services (See box on Papua New Guinea).⁵ Arms brokering and transport agents are individuals or companies that act as intermediaries between suppliers of arms and recipients. Their involvement may range from simply matching buyer and seller, to facilitating the entire transaction on behalf of the purchaser, which in certain cases includes the transportation of arms. Research has shown that arms brokering and transportation activities have resulted in weapons being channelled to regions of conflict and human rights crisis zones. As such, the arms brokering issue has become a major focus for concern at the UN Small Arms Conference.⁶

Existing Efforts to Control Mercenaries and Private Military and Security Companies

Papua New Guinea

An example of a private military company involved in arms brokering and providing military services is illustrated by the involvement of the UK company Sandline International in Papua New Guinea (PNG) in 1997. The company had been hired by the PNG government in January 1997 to put down a rebellion on the island of Bougainville and to import Russian arms. The military force was sub-contracted from another PMC, Executive Outcomes (EO), and was composed of South African, British and Ethiopian personnel.

As part of its contract, Sandline International procured four attack (Mi-24) and transport (Mi8/17) helicopters (originating in Belarus), armoured fighting vehicles, light weapons, heat-seeking missiles, electronic warfare equipment, communications systems, 500 cases of ammunition and explosives. End-user certificates were provided by the PNG Defence Forces and were processed through a London-based company that “brokered the sale of former Soviet surplus equipment purchased in Belarus...for sale at high prices to governments of developing countries.”⁷ The contract attracted negative attention when it became clear that the PNG government was using \$36 million in aid and development funds from Australia to pay for the company’s services.⁸

The contract called for Sandline International to conduct offensive operations in Bougainville in conjunction with the PNG Defence Forces (PNGDF) to render the [armed group] militarily ineffective and repossess the Panguna mine. It soon became apparent that the political leaders in PNG had not informed the military of their business interests in this operation⁹ and resistance to Sandline International’s involvement began to develop from within the PNGDF. In revolt, the PNGDF staged Operation “Rausim Kwik” (‘Remove Quickly’) under which the Army ‘detained’EO personnel. At the end of March 1997, the 44 Sandline International employees were expelled and the contract was suspended.

Violations of UN arms embargoes

Another area of concern relates to the operation of private military and security companies in violation of UN or other regional arms embargoes. For example, in 1998 Sandline International signed a contract with the then-exiled President of Sierra Leone, Ahmed Tejan Kabbah, to supply a 35 tonne shipment of arms from Bulgaria which led to controversy about whether this was in contravention of the UN arms embargo on the country at the time.¹⁰

While most arms embargoes do not cover military services, the UN Security Council sanctions on Eritrea and Ethiopia in 2000 made such provisions. The resolution stated that “all states should prevent the sale or supply to Eritrea and Ethiopia of arms and related material of all types and the provision of technical assistance or training related to prohibited materials.”¹¹ However, due to the inadequate enforcement of arms embargoes by many countries, it is difficult to ascertain whether or not these prohibitions have been followed, as noted by the Security Council in its report of May 2001.¹²

Existing Efforts to Control Mercenaries and Private Military and Security Companies

Impact on human rights and humanitarian law

The UN General Assembly, the Security Council, the Economic and Social Council, and the Commission on Human Rights have all condemned the use of mercenaries as undermining the rights of peoples to self-determination and enjoyment of human rights. The UN Special Rapporteur, moreover, has in his reports underlined the negative impacts that mercenaries have on the protection of human rights.¹³ In his latest report, he says that:

“The work done by the Office of the Special Rapporteur since its creation makes it abundantly clear that there is a direct relationship between mercenary activities and the human rights of the peoples affected by the criminal activities of mercenaries [...and] mercenaries also violate human rights by committing crimes, carrying out executions, torture and other illegal acts referred to in international instruments.”¹⁴

There have also been reports of private military and security companies being implicated or complicit in human rights abuses or breaches of international humanitarian law (see box Colombia). For example, there is documented evidence of the South Africa company Executive Outcomes being responsible for introducing indiscriminate weapons, such as fuel air explosives, into Angola.¹⁵

Colombia

It is estimated that during the last 10 years tens of thousands of people have been victims of politically motivated killings during the conflict in Colombia between the government armed forces and paramilitary organisations that operate with their support or acquiescence, and the FARC (Fuerzas Armadas Revolucionarias de Colombia) and ELN (Ejército de Liberación Nacional), both non-State armed opposition groups.¹⁶

In October 1998 concerns arose about the activities of Defence Systems Colombia (DSC), a subsidiary of the UK-based private security company, Defence Systems Limited (DSL).¹⁷ Defence Systems Colombia was under contract by British Petroleum (BP) to run its security operations in Colombia, and, until 1997, was also contracted by OCENSA— the consortium company which owned the pipeline from the oil fields to the coast – of which BP is a partner along with other transnational oil companies.

According to information provided to the UK newspaper The Guardian¹⁸ the security strategy of OCENSA/DSC may have directly or indirectly contributed to human rights violations against the civilian population in Colombia. The security strategy reportedly relied heavily on paid informants whose purpose was to covertly gather “intelligence information”. This intelligence information would then reportedly be passed on by OCENSA to Colombian military officers who, with their private paramilitary allies, were widely believed to have been responsible for numerous, “disappearances”, torture and extra-judicial executions.

Furthermore, evidence emerged that in 1997 OCENSA/DSC purchased military equipment for the Colombian army’s XIV Brigade, which had reportedly been involved in numerous human rights violations. At the time that the equipment was purchased, via Silver Shadow, a private Israeli security company, army personnel attached to the XIV Brigade were under investigation for complicity in the massacre of 15 unarmed civilians in Segovia in April 1996.

Existing Efforts to Control Mercenaries and Private Military and Security Companies

Driving demand for small arms

The services provided by private security and military companies, including direct combat duties and military training, may be a factor in the demand for SALW in the regions where such companies have operated (see box on Croatia and Bosnia-Herzegovina). In this way, such companies can present a risk, contributing to the militarisation of society and the exacerbation of tensions in a region. There have also been problems with stockpiles of surplus weapons that private military and security companies have left behind once their contracts have finished. The lack of accountability in this area is proving a serious issue for concern. The existence of uncontrolled pools of weapons (left behind by PMCs after operations) can undermine efforts to sustain peace and foster development once conflict has ceased.

Croatia and Bosnia-Herzegovina

During the 1992-1995 cease-fire between Croatia and the Federal Republic of Yugoslavia, the United States (US) government responded to requests from the Croatian government to provide training to the Croat Army. In late 1994, Military Professional Resources Incorporated (MPRI), a US company, was contracted by the Croat government as a component of a larger "Democracy Transition Assistance Programme." Under US regulations, MPRI had to obtain a licence and authorisation from the US State Department's Office of Defence Trade Controls to be allowed to provide such services.

Although the contract was for non-strategic training, concerns surfaced that it could be leading to a militarisation of the region. It was reported, for example, that Croatia was spending more than US\$1 billion to purchase equipment and weapons for itself – drawn largely from Eastern European merchants and in violation of the UN embargo – to complement the training it was receiving.¹⁹ Furthermore it has been debated whether or not MPRI's training of the Croatian army could have worsened human rights violations committed by it during a subsequent offensive in Krajina against Serb forces.²⁰

In 1996, MPRI was also selected by the Federation of Bosnia-Herzegovina to train its new armed forces. The "Train and Equip" programme established by MPRI was to "assist the Army of the Federation in becoming a self-sufficient and fully operable force capable of providing security for the Federation and stability for the region."²¹ The company was granted a contract reportedly worth US\$40 million, paid for largely by Saudi Arabia, Kuwait, Brunei and Malaysia. Such training was to be alongside the provision of military hardware (almost US\$100 million worth of surplus US military equipment) by the US government to the Federation Army with MPRI's job being to provide training for how this should be used.

It is unlikely that MPRI provided anything more than "democracy-transition" training to the Federation Army.²² However, for many observers the training did not increase security and stability in the Balkans but rather contributed to a more volatile situation. Former UN Representative to Bosnia, Carl Bildt, has stated that 'Train and Equip' could start an arms race... It is inflaming a situation which is already inflammatory. That's not what it was originally designed to do."²³

Developing an International Regulatory Framework

Existing controls

Various measures already exist to ban the activities of mercenaries and regulate some of the activities of private military and security companies, either through national legislation or international agreements. However, to date, these efforts have not been enough to effectively control the activities of mercenaries and private military and security companies or to mitigate the negative effects of their operations as they relate to the proliferation and misuse of SALW. This includes the roles of these actors in arms brokering and the provision of military and security services or equipment to governments or armed opposition groups who cannot access these goods through regulated State-to-State channels. The regulation of private security companies has received even less international attention.

International

International Convention against the Recruitment, Use, Financing, and Training of Mercenaries

This Convention, adopted by the UN in 1989, is the only international instrument solely applicable to controlling the activities of mercenaries. (Mercenaries are included in the Geneva Conventions but only for the purposes of defining them in international humanitarian law). It does not impose a total ban on mercenarism, only on those activities aimed at overthrowing or undermining the constitutional order and territorial integrity of a State. To enter into force the Convention must be ratified by 22 UN Member States, but to date only 21 States have done so.²⁴ The activities of private military and security companies are not seen as falling within the scope of the Convention.

UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms Ammunition and other Related Materials

The UN Firearms Protocol, as part of the Convention on Transnational Organised Crime, is one of the newest international agreements²⁵ and one which could encompass some of the activities described in the previous section. In the preamble, the Protocol reaffirms that States should give high priority to combating illicit trafficking because of "the links of such activities with drug trafficking, terrorism, transnational organised crime and mercenary and criminal activities." The Protocol therefore recognises the important link between individuals or companies providing military services that are also involved in illicit arms trafficking. The parent Convention defines transnational organised crime as any "structured group of three or more persons existing for a period of time and having the aim of committing serious crime in order to, directly or indirectly, obtain a financial or other material benefit" and so can be read in particular instances to cover mercenaries and PMCs/PSCs within its remit.

Developing an International Regulatory Framework

Regional

The OAU Convention for the Elimination of Mercenaries in Africa

The seemingly uncontrollable spread of mercenaries in Africa in the 1960s and 1970s led governments in the region to try to limit their activities. In 1977 the Member States of the Organisation of Africa Unity (OAU) signed the Convention for the Elimination of Mercenaries in Africa which came into force in 1985, making it the only enforceable international legal instrument on mercenaries. The OAU Convention does not suffer from all of the same pitfalls as the International Convention, since it uses a different definition of mercenarism. However, its scope is also restricted to acts aimed at overthrowing recognised governments or undermining a State's territorial integrity and does not include private military and security companies. A lack of resources, legal capacity and political will in many African States has also meant that the Convention has seldom been implemented and enforced.

National

Very few countries have legislation which bans mercenaries and supports, reinforces and implements at the national level the International and OAU Conventions. Only a handful include military services in the scope of their national regulations on arms exports or have adequate laws to regulate private military and security companies operating out of their territory. South Africa and the United States have perhaps the most advanced national legislation, while the UK is considering steps it could take. However, closer inspection shows that even these measures are not totally adequate or effective.

United Kingdom

The Foreign Enlistment Act of 1870 is the only UK law specifically relevant to mercenaries and private military and security companies. This law prohibits British subjects from becoming mercenaries and recruiting others to do so, but there are doubts about its applicability in modern circumstances. For example, it defines the offence of leaving the UK to enlist as a mercenary by reference only to departure by ship, so that leaving by air would not be unlawful. The last case where a person was tried under this law dates back to 1896. However, prompted by the 1998 "arms to Africa affair" the UK government has said that it is considering options for updating these regulations and in April 1999 the then Foreign Secretary, Robin Cook, announced that the government would produce a Green (consultation) paper on the issue by the end of 2000. This is still to be published.

In the UK, the only existing controls over arms brokering stem from powers given to the Government under the United Nations Act of 1946. In June 2001, the Government published plans for the regulation of brokering and trafficking in arms by UK persons through a registration and licensing system. The further development of proposals to include restrictions on technical assistance in areas covered by a UN or EU embargo is being actively considered. This may include some, but not all private military activities, the remainder of which should form part of the proposed Green paper.

Developing an International Regulatory Framework

South Africa

The 1998 South African Regulation of Foreign Military Assistance Act is the most far-reaching national legislation dealing with mercenaries and private military companies. Mercenary activity is banned under the Act, however, its wider purpose is to regulate foreign military assistance, defined as including: "advice and training; personnel, financial, logistical, intelligence and operational support; personnel recruitment; medical or paramedical services, or procurement of equipment." The rendering of foreign military assistance is not proscribed under the Act but instead controlled by a licensing and authorisation procedure under the competence of the National Conventional Arms Control Committee. The Act includes extra-territorial application and punitive powers for those that do not abide by it. However, to date it has been enforced only to a limited degree and controversy has surrounded its practical application.

The United States

In the US, controls over arms brokering and the export of military services are dealt with in a similar way,²⁶ through the International Traffic in Arms Regulations (ITAR), overseen by the Department of State's Office of Defence Trade Controls.²⁷ The regulations cover the activities of private military contractors since it applies to the US Munitions Lists, which include military training and other services. Under the regulations, registered companies must apply for a license if intending to engage in brokering activities or providing military services. The licensing process involves various offices within the State Department and regionally with controversial cases referred to the Assistant Secretary of State.²⁸ Once a contract has been signed between a company and a foreign government, the US State Department continues to monitor and regulate the flow of assistance and weapons, while US Customs enforce the regulation. However, there are few provisions for information to be provided to Congress. This lack of transparency and controversial use of military contractors by the US government has been highlighted in the military aid package to Colombia, Plan Colombia.

Developing an International Regulatory Framework

Developing international action

To date, action to control mercenaries and private military and security companies has been ad hoc and sporadic. While most countries recognise the need to prohibit the activities of mercenaries, few have developed relevant laws to support the international agreement that exists. The more complicated matter of private military and security companies has been left largely to self-regulation and corporate responsibility, with only a few countries developing and implementing specific laws on this issue. This briefing has highlighted the urgent need and responsibility of States to take steps to control not only the role of these actors in the arms trade but also their provision of military and security services. The inadequate regulation of such services can have serious consequences for peace and security. An interlocking framework of national, regional and international control mechanisms is required. Key priorities for States include the need to:

- Ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries so that it enters into force and seek to negotiate a protocol to the instrument to regulate the activities of private military and security companies;
- Enforce the OAU Convention on the Elimination of Mercenaries in Africa and seek its amendment to include private military and security companies;
- Ratify the UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and other Related Materials;
- Introduce controls over arms brokering and shipping agents into the scope of arms export controls that recognise the role played by private military and security companies;
- Introduce national legislation to control the activities of private providers of military and security services who should be required to register and apply for authorisation for each contract they enter into. Such applications should be assessed in accordance with publicly available criteria based on international human rights standards and humanitarian law;
- Implement and more rigorously enforce UN arms embargoes and sanctions, which include in their scope military and security services and technical assistance that may accompany arms transfers;
- Support the continuation and broadening of the mandate of the Special Rapporteur on mercenaries to include private military and security companies;
- Take steps to incorporate technical assistance and military and security services into all national, regional and international arms export controls regimes;
- Develop international measures to share information on private military and security companies;
- Introduce and promote common standards for the regulation of private military and security companies within the UN and regional bodies such as the OSCE, OAS, OAU and EU;

Developing an International Regulatory Framework

- Promote measures to ensure that employers of private military and security companies introduce sufficient safeguards to prevent breaches of human rights standards, international humanitarian law, and other relevant aspects of international law by PMC or PSC personnel. Private security companies should not employ individuals credibly implicated in human rights abuses and there should be strictly enforced controls governing when force and firearms can be used. These controls should be in accordance with international standards on the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All personnel should be properly trained in and committed to respect for such standards; and
- Promote security sector reform programmes that lead to the development of accountable security forces with proper civilian oversight and control so as to reduce the need for the use of private military and security companies and support efforts to combat the illicit trade in small arms.

Conclusion

The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and its follow-up provisions provide an important opportunity to reinforce, co-ordinate and strengthen international efforts to address the problems associated with illicit trafficking and the proliferation and misuse of small arms and light weapons. By addressing the potential role of mercenaries and private military and security companies in the illicit trade in small arms and light weapons, and by taking strides to incorporate military and security services within the scope of arms export controls, the international community can augment its efforts to combat the problems associated with these weapons. At the same time this would represent an important step towards greater regulation of private military and security companies which is an emerging priority for the international community.

While not a prime focus of the UN Small Arms Conference, a recognition of the different actors, such as private military and security companies, involved in the international arms trade, and the range of activities which can impact on the proliferation and misuse of SALW will build momentum for other fora to take steps to address the issue.

Endnotes

- 1 UN Document E/CN.4/2001, Report of the meeting of experts of the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of people to self-determination.
- 2 See International Alert, *The Mercenary Issue at the UN Commission on Human Rights: the Need for a New Approach*, January 2001.
- 3 Enrique Bernales Ballesteros, "The question of the use of mercenaries as means of violating human rights and impeding the exercise of the rights of peoples to self determination", January 2001, E/CN.4/2001/19, paragraph 64.
- 4 Ibid. paragraphs 60 and 61.
- 5 See Arms brokers and shipping agents, in Owen Greene with Elizabeth Clegg, Sarah Meek and Geraldine O'Callaghan, *Framework Briefing: The 2001 Conference: Setting the Agenda*, Biting the Bullet briefing 1, 2000.
- 6 See Elizabeth Clegg and Michael Crowley, *Controlling Arms Brokering and Shipping Agents: Time for International Action*, Biting the Bullet briefing 8, 2001.
- 7 Brian Wood and Johan Peleman, *The Arms Fixers – Controlling the Brokers and Shipping Agents*, BASIC/PRIO, 1999, p. 85.
- 8 "Mercenaries Leave New Guinea in Turmoil", Reuters, 21 March 1997.
- 9 Sheppard, Simon. "Foot Soldiers of the New World Order: The Rise of the Corporate Military". *New Left Review* 228 (March/April 1998).
- 10 UN Security Council, S/RES/1132, 8 October 1997, paragraph 6.
- 11 UN Security Council, S/RES/1298, 2000, paragraph 6.
- 12 UN Security Council, Report of the Security Council Committee established pursuant to resolution 1298 (2000) concerning the situation between Eritrea and Ethiopia, S/RES/1298 (2000), 17 May 2001, p. 3.
- 13 Enrique Bernales Ballesteros, *Report on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of People to Self-determination*, UN Document A/55/334, 30 August 2000.
- 14 E/CN.4/2001/19, op. cit., paragraph 87.
- 15 See for example Alex Vines, "Mercenaries and the Privatisation of Security in Africa" in Greg Mills and John Strelau, *The Privatisation of Security in Africa*, South Africa, The South African Institute of International Affairs (SAIIA), March 1999, p. 54; "Executive Outcomes: The War Business", Journeyman Productions, London, 1997; and Philip Trewitt, "The Business of Killing", The Parliamentary Human Rights Group, London, 1999, p. 14-15.
- 16 See for example Amnesty International 2001 Annual Report, AI Index: POL10/001/2001, June 2001 and Human Rights Watch World Report 2001, <http://www.hrw.org/wr2k1>.
- 17 Defence Systems Limited's clients have included De Beers, Texaco, Chevron-Schlumberger, British Gas, Amoco, Exxon, Mobil, Ranger Oil, British Gas, British Petroleum, American Airlines and Shell. DSLhas subsequently become a subsidiary of the US-based Armor Group.
- 18 See "BPhands tarred in pipeline dirty war", 17 October 1998, The Guardian; "BP's secret military advisers", 30 June 1997, The Guardian; "Stopping the torture trade", AI Index: ACT40/002/2001, Amnesty International, March 2001.
- 19 Roger Cohen, "US Cooling Ties to Croatia after Winking at its Buildup", *New York Times*, 28 October 1995, p. A1.
- 20 See for example, Deborah Avant, "The Market for Force: Exploring the Export of Private Military Advice and Training from the US," paper prepared for American Political Science Association, Atlanta, 2-5 September 1999, p. 29.
- 21 David Shearer, *Private armies and military intervention*, International Institute for Strategic Studies, Adelphi Paper 316, Oxford, Oxford University Press, February 1998, p. 60.
- 22 Philip Trewitt, *The Business of Killing*. The Parliamentary Human Rights Group, House of Commons (London), July 1999, p. 11.
- 23 James Drake, "Old GIs fade away – to Bosnia", *Baltimore Sun*, 11 December 1997.
- 24 The following twenty-one States have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.
- 25 For a detailed analysis of the UN Firearms Protocol. See Geraldine O'Callaghan and Sarah Meek, *The UN Firearms Protocol: Considerations for the UN 2001 Conference*, Biting the Bullet briefing 4, 2001.
- 26 Section 38(1)(A) of the UN Firearms Protocol.
- 27 Brokering activities are defined as including "the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defence article or defence service."
- 28 For an assessment of the existing US regulatory framework, see Loretta Bondi and Elise Keppler *Casting the Net? The implications of the US Law on Arms brokering*, The Fund for Peace, January 2001. See also GAO *Conventional Arms Transfers; US Efforts to Control the Availability of Small Arms and Light Weapons*, Report to the US Senate, GAO/NSIAD-00-141, July 2000.