

## **Humanitarian principles, private military agents: some implications of the privatised military industry for the humanitarian community<sup>1</sup>**

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In Afghanistan, a private demining team clears decades-old minefields, permitting local villagers to till their fields. In Iraq, a unit of corporate commandos escorts an engineering team, allowing it to fix local sewage facilities. In Darfur, private helicopter crews provide transport for African peacekeepers. In the Democratic Republic of Congo (DRC), a team of private soldiers guards UN facilities and warehouses. And along the US Gulf Coast, ravaged by Hurricane Katrina, private clients and the US government hire private firms to guard buildings from looters, rescue stranded families by helicopter, even collect and process the dead.

The context in which humanitarians are operating has seen many changes in recent decades, especially with the challenges of complex emergencies, man-made humanitarian disasters and new security threats. One of the more notable – but least understood – developments has been the emergence of hired military services, better known as the ‘privatised military industry’. Privatised military firms (PMFs) are defined as business providers of professional services linked to warfare. They are corporate bodies that specialise in the provision of military skills, conducting tactical combat operations and strategic planning, providing intelligence, operational and logistics support and offering troop training and technical

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<sup>1</sup> In the course of this study, interviews were conducted with 39 representatives of state and non-state humanitarian actors, seven experts in the humanitarian field (scholars and former senior humanitarian officials) and more than 50 PMF employees and executives; the work also drew on previous research for the author’s *Corporate Warriors* (Singer, 2003). The interviews were conducted in person or via phone and email. The author would like to thank the interviewees, as well as Elina Noor, Research Assistant at the Brookings Institution.

assistance. While the notion of soldiers for hire is by no means new,<sup>2</sup> PMFs represent the trade in a new form; organised as business entities and structured along corporate lines, they mark the corporate evolution of the mercenary trade.<sup>3</sup> In some ways, this trend in defence contracting mirrors broader changes in the world economy, as industries move away from manufacturing to service provision, and countries increasingly outsource functions once considered the preserve of the state. At the same time, however, affairs of conflict and warfare are unlike any other aspect of human conduct, and cannot simply be viewed as mere business. In that sense, the rise of this new industry represents a profound development in the way that security is understood and realised.

It is important at the outset to distinguish between the various functions which PMFs may be asked to perform. This chapter considers two kinds of arrangement. One involves contracts directly between aid agencies and PMFs for the provision of services to the agency in the conduct of its field operations. The second (much larger) category involves arrangements between PMFs and political-military actors for the provision of military services, ranging from logistical support to the actual conduct of military operations, that affect the environment in which humanitarians operate. Both raise important, but little-discussed, questions for the humanitarian community. This chapter covers five main issues: the history and makeup of the private military industry; the growing link between humanitarian actors and the private military community; the potential opportunities that PMFs offer to humanitarian organisations; the potential perils and complications that must be considered; and lessons for optimising the relationship if such contracting is to occur.

## **5.1 The private military industry explained**

The private military industry emerged at the start of the 1990s. The end of the Cold War saw a significant reduction in the size of professional armies and growing global insecurity, increasing both the supply of private military expertise, and the demand for it. More than six

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<sup>2</sup> Historical examples include the free companies of the Hundred Years War, the Condottieri of the 1500s and the army of Albrecht von Wallenstein in the Thirty Years War. More recent examples include *Les Affreux* of 1960s Congo.

<sup>3</sup> For more on the history of the private military industry, see Singer (2003): 19–39.

million soldiers were demobilised around the world at the end of the Cold War, more weapons are in private hands than in public stocks, and the number of areas of instability and conflict has doubled (Singer, 2003: chapter 4). At the same time, a shift towards outsourcing and the privatisation of state services, from prisons to the mail, created an ideological climate conducive to the private provision of military services.<sup>4</sup> As Hellinger (2004: 192) puts it: ‘The erosion of Westphalian norms, the spread of neoliberal economic tendencies, especially the privatization of services, and the globalization of the production of goods and services are working to institutionalize PMC [private military company] activity. Their presence in humanitarian, peacekeeping, and peace-enforcement operations is likely to be permanent’. Today, PMFs operate in over 50 countries, and have been decisive actors in conflicts in Angola, Croatia, Ethiopia–Eritrea and Sierra Leone. Even the US military, arguably the most powerful armed force in history, is a client; between 1994 and 2002, the US Defense Department entered into over 3,000 contracts with US-based firms, worth an estimated \$300 billion (International Consortium of Investigative Journalists, 2002).

PMFs range from small consulting firms run by retired generals to transnational corporations leasing out fighter jets and battalions of commandos. Broadly speaking, the industry can be divided into three basic business sectors (Singer, 2003: 88–101).

1. Military provider firms, commonly known as ‘private military companies’ or ‘PMCs’ (also sometimes self-described as ‘private security firms’). These offer direct, tactical military assistance, including serving in combat roles. Executive Outcomes, a now-defunct South African firm, opened the sector in the early 1990s. While clients such as the UN and humanitarian agencies (including NGOs) often prefer to work with low-profile security providers like Olive, Hart, Armorgoup-DSL

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<sup>4</sup> In a similar way, there has been an increasing tendency to outsource functions to the non-governmental aid sector. Roughly 75% of USAID’s activities are carried out by a mix of for-profit companies and not-for-profit NGOs. In Iraq, USAID has contracted work worth more than \$3.2 billion to for-profit firms (USAID (2005)).

and AKE, they have also hired firms with a wider media profile, such as Blackwater or Custer Battles.<sup>5</sup>

2. Military consulting firms. Akin to management consultants, these companies draw on retired senior and non-commissioned officers to provide military advice and training, but do not carry out operations themselves. The best-known of these firms is the Washington-based Military Professional Resources Incorporated (MPRI), a company made up primarily of retired US senior army officers.
3. Military support firms. These companies provide logistics, intelligence and maintenance services. The biggest player in this sector is the US company Halliburton, and its KBR subsidiary.

### *5.1.1 Terminology*

There is no standard definition of what constitutes the private military industry. The term Privatised Military Firms (PMF) is used here in recognition of the wide range of roles that make up the military function in addition to actual military operations. Whilst many use the term Private Military Companies (PMC) to describe the industry, this denotes only the armed sector of firms that provide tactical services, not the wider range of services once limited to militaries that PMFs offer, ranging from combat training to logistical support.

Many in the industry itself have argued for the relabelling of firms in the tactical sector as providing 'private security', on the grounds that they perform only 'defensive' roles (earlier in the industry's history, the terms 'active' and 'passive' were also used).<sup>6</sup> This definition fails on multiple levels. The distinction between 'offensive' and 'defensive' functions is an analytic device used nowhere within the military; infantry soldiers do not become non-military actors when assigned to guard duty, and nor are units classified in terms of whether they conduct purely defensive or purely offensive tasks. Second, the categorisation generally degenerates into a division of the industry in which security/defensive firms are 'good', and military/offensive firms are 'bad'. It is understandable that some firms (and their

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<sup>5</sup> Interview with industry expert, September 2005; Robert Young Pelton, email, 19 September 2005.

<sup>6</sup> See, for example, Brooks (2000).

advocates and clients) should be quick to describe themselves as offering ‘security’, since this makes for a better public image and a better claim to legitimacy. But this does not make it analytically useful. Moreover, the line between offensive and defensive is essentially subjective. A unit, function or weapon that one force describes as purely defensive can be viewed by another as completely offensive. Moreover, the same basic obligations and rights under international humanitarian law (IHL) pertain regardless of whether one’s actions are described as offensive or defensive in nature.

## **5.2 ‘Don’t ask, don’t tell’: humanitarian actors and private military firms**

Just as the privatised military industry is diverse, so too is its clientele, ranging from ‘ruthless dictators, rebels and drug cartels’ to ‘legitimate sovereign states, respected multinational corporations, and humanitarian NGOs’ (Brooks and Solomon, 2000). Humanitarian actors make greater use of private military agents than is generally recognised; certainly, assumptions that such contacts are ‘unique’ or ‘limited’ are false. As one senior humanitarian security officer put it, humanitarian actors use PMFs ‘more than people think’, and this use ‘is growing’.<sup>7</sup> Contracts between humanitarian actors and PMFs have taken place in nearly every notable war zone, including Afghanistan, Bosnia, the DRC, East Timor, Haiti, Iraq, Kosovo, Mozambique, Sierra Leone, Somalia and Sudan. Typically, PMFs are hired in areas where the state government is unable to provide security, and the international community is over-extended or unwilling to dedicate sufficient resources to do so. Unfortunately, these characteristics typify the environment in which humanitarians operate today.

### *5.2.1 The changing security landscape for humanitarian action*

Humanitarian actors typically under-invest in security. For example, a study undertaken in 2000 (Martin, 2000) found that 25% of UNHCR’s ‘high risk’ posts lacked even a single security officer. A survey of 78 humanitarian organisations in 2004 (ECHO, 2004) found systematic failures in the recruitment, training and retention of qualified security managers, caused by, among other reasons, a lack of funding and the absence of external pressure to manage security well. Meanwhile, a significant number of well-qualified and experienced

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<sup>7</sup> Interview, 28 September 2005.

security personnel have been lost to PMFs, who can pay larger salaries (one humanitarian official described ‘the loss of security human resources’ as ‘a huge problem, especially in Iraq and Afghanistan’, noting that ‘qualified humanitarian security experts would not be able to stay unemployed for longer than a week’).<sup>8</sup>

At the same time, the wars that humanitarian agencies operate in typically feature local, unprofessional factions, characterised by large-scale criminality and a lack of discretion and distinction between civilians and combatants. Between 1992 and 2004, there were over 270 violent attacks on UN compounds or convoys, and 218 UN civilian personnel were killed as a result of ‘malicious acts’ in 45 different countries (this number does not include the deaths of peacekeepers or those who died in aircraft accidents or shoot-downs); 270 were taken hostage in 27 countries and more than 120 UN staff members were seriously assaulted (UN, 2004; Cohen, 2003: a19; UN News Service, 2003). Data on non-UN agencies is patchy, but there is some evidence to suggest that the security situation has grown worse over the last decade, and particularly since 9/11. In 2003 alone, 76 humanitarian workers were killed by hostile action worldwide (one US government report on humanitarian work described 2003 as ‘The Year of Living Dangerously’ (NSC, 2004)). As one human rights organisation coordinator put, there is ‘No empirical evidence that declaring yourself to be neutral actually enhances your security’.<sup>9</sup> Only 24 perpetrators have ever been held accountable in a court. In February 2005, the UN General Assembly admitted that threats to its staff and associated personnel had escalated dramatically, and that ‘perpetrators of acts of violence seemingly operate with impunity’ (UN, 2005).

This, of course, goes to the heart of the dilemma humanitarian agencies face. The crisis may demand a humanitarian presence: without aid, people will suffer, die of disease or be exposed to greater levels of violence. Yet the situation is not safe for aid agencies without some kind of protection. Without armed protection, assets are liable to be looted, staff placed at extreme risk and operational access rendered impossible. But by hiring armed guards, agencies risk losing the perception of neutrality that they rely on to maintain their

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<sup>8</sup> Interview, 29 September 2005.

<sup>9</sup> Interview, September 2005.

access and ensure their immunity from attack. Like it or not, they risk becoming associated with one or other side in the conflict, potentially undermining acceptance of their presence by local actors. If guards are locally hired, they put cash into the local war economy – perhaps directly into the hands of warlords. In turn, with even a hiring agency or PMF, there is a very limited basis for accountability. As Kenny Gluck, Director of Operations for MSF-Holland, puts it:

*Non-state armed actors operating for profit create unique problems for humanitarians. They are clearly not military, but neither are they local actors. Local people in conflict situations are generally able to identify local belligerents and tell us who they are. Military actors are generally easily identified and belong to a hierarchy with clear lines of authority which can be approached to facilitate protest or negotiation. But with private security element, who is responsible? Who can be held to account? The shareholders? (Gluck, quoted in Kielthy, 2004).*

Humanitarians are faced by what one human rights coordinator has described as the ‘double-edged sword of neutrality’: while neutrality is a guiding principle, it is offering less and less protection. As Harris and Dombrowski (2002) puts it, for humanitarian workers ‘Death is becoming a significant occupational hazard’. Concurrently, emergencies are growing so complex and immense in scale that, when the state proves unable to act, needs often overwhelm the collective international capacity to respond effectively. Traditionally, this has meant relying on state military capacities (ranging from logistics and air transport to protection by peacekeeping or stabilisation forces), provided either independently or through the UN or multilateral arrangements. The emerging marketplace of private military provision offers humanitarian organisations a means to enhance their capacities without turning to traditional state military assistance. This option is being chosen by humanitarian clients, albeit very quietly. However, with greater power comes greater responsibility. The privatised military industry may open up a range of possibilities, but it also poses some fundamental questions that go to the heart of the humanitarian identity.<sup>10</sup>

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<sup>10</sup> Complications emerge sometimes in quite unexpected areas. For example, in April 2005 the US Congress discussed having the US Agency for International Development (USAID)

### *5.2.2 The role of PMFs and the humanitarian response*

The nature of contemporary conflict has stimulated interest in investing in security and stability. The research for this chapter identified more than 40 different contracts between humanitarian actors and private military firms. Contracts have been held by a range of humanitarian actors, including privately funded NGOs (both secular and religious), state governments and internationally mandated organisations. For example, the London-based firm Armorgroup has worked for UNICEF, the International Rescue Committee (IRC), CARE, CARITAS and the European Commission Humanitarian Aid Office (ECHO) (Hellinger, 2004: 213). Government agencies like the US Agency for International Development (USAID) and the UK's Department for International Development (DFID) have also engaged private military firms; DFID, for example, employs Control Risks Group (CRG) to provide armed protection for its staff in Iraq, and to give intelligence and security advice (DFID, 2004; Vaux et al., 2001). In post-invasion Iraq, CARE hired former South African intelligence experts to advise on security.<sup>11</sup> Worldvision and Caritas hired the firms Lifeguard and Southern Cross to protect their facilities and staff in Sierra Leone (Avant, 1999).

Perhaps the largest humanitarian action carried out via private military forces was the construction and operation of aid camps housing hundred of thousands of refugees during the Kosovo crisis during 1999. While the task is generally credited to the US army, the job was in fact outsourced to Halliburton's controversial KBR division, working with UNHCR and international aid groups (Copetas, 1999). Demining is another important private military/humanitarian domain. More than 60 firms are engaged in clearing minefields (once a task that state militaries alone could perform) in countries such as Afghanistan, Angola, Bosnia, Iraq and Mozambique. Corporations involved include Parsons Corp., EOD Technology Inc., Tetra Tech Inc. and USA Environmental Inc.; a new breed of African firms has also emerged, such as Mechem, Mine-Tech and SCS (Zenda, 1999).

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determine what type of military equipment and training private soldiers in Iraq should have, and then to regulate its use.

<sup>11</sup> Robert Young Pelton, email, 19 September 2005.



The extent of contracting between humanitarian actors and PMFs seems to be greater than is generally recognised, or at least publicly acknowledged. Koenraad Van Brabant, a former co-director of the Humanitarian Accountability Project International, has noted that, despite the growing use of PMFs, ‘there is widespread refusal to square up to the subject’ (Van Brabant, 2004). The response by humanitarian actors to the growth of the private military industry has been ambiguous; according to one senior official, in private humanitarian acceptance of private military firms is growing, but in public the subject is still a source of embarrassment (Van Brabant, 2004). Indicating the controversial nature of the issue, most interviewees from the humanitarian community chose to stay anonymous (representatives of the PMF community are eager to discuss the topic, but cite clauses that prevent them from full disclosure of contracts or clients). Industry representatives estimate that approximately 25% of the ‘high-end’ firms that provide security services, and over 50% of firms that provide military support or logistics functions, such as military air transport, have worked for humanitarian clients.<sup>12</sup> By comparison, interviews with humanitarian actors reveal a far lower awareness of the issue. For example, one UN official stated that the entire organisation had hired PMF personnel on only one occasion (to do election monitoring, which does not count as private military activity under the definition used in this survey).<sup>13</sup> However, the research for this study revealed that at least seven different UN agencies have hired PMFs for activities such as guarding UN personnel and offices in war zones, and transporting food to refugees.

There are several reasons why humanitarian agencies downplay their links with PMFs. Doug Brooks, President of the International Peace Operations Association (the IPOA, an industry trade group), argues that it is simple pragmatism: ‘Too many NGOs would risk their funding bases if it were publicized that they were working with the peace and stability industry, no matter what the humanitarian benefits’.<sup>14</sup> For example, in 1996 the journal *Africa Confidential* revealed that the now-defunct Executive Outcomes was providing security and

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<sup>12</sup> Interview with industry representatives, September 2005.

<sup>13</sup> Interview with UN official, September 2005.

<sup>14</sup> Doug Brooks, email, 28 August 2005.

information to an international aid agency; the agency subsequently went quiet in the face of its donors' disapproval (Sellars, 1997). Robert Young Pelton, author of the forthcoming book *Licensed to Kill: A Journey Through the Privatization of the War on Terror*, puts it more bluntly: 'They are of course hypocrites, because on one hand they say they don't want or need armed assistance, but as soon as they are kidnapped or blown up, they have two choices: Quit the area or hire muscle'.<sup>15</sup>

Given the ethical and practical issues hiring PMFs raises, it must be a source of concern that few humanitarian actors seem to be properly prepared for this type of contracting. For example, our research found only three humanitarian agencies – Oxfam, Mercy Corps and the ICRC – that had formal documents on how their workers should relate to PMFs and their staff. One senior humanitarian security expert interviewed knew of only one organisation that had detailed oversight guidance for its PMF employees, including rules of engagement and weapons handling procedures. However, the organisation had difficulty implementing the guidelines due to a lack of expertise within country teams.<sup>16</sup> One interviewee from a human rights organisation described how, having hired armed security in Afghanistan, members of the in-country team flummoxed senior staff at headquarters by asking what the organisation's policy was on rules of engagement.<sup>17</sup>

Typically, agencies do not deal with the PMF issues at all. InterAction, for example, has very detailed guidelines covering its relations with military forces 'engaged in, or training for, peacekeeping and disaster response', but these cover only government military forces (the US, NATO and NATO partnership countries, and contingents that work with the UN Department of Peacekeeping Operations (DPKO) (InterAction, 2003c)). They do not, however, cover relations with PMFs. Some agencies have dealt with the problem by instructing their staff to avoid contact with PMF personnel whenever possible. A senior official at an international humanitarian organisation explained that this minimum contact position in the field was a conscious decision designed to protect the organisation's

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<sup>15</sup> Robert Young Pelton, email, 19 September 2005.

<sup>16</sup> Interview, 29 September 2005.

<sup>17</sup> Interview with human rights organisation coordinator, September 2005.

personnel.<sup>18</sup> But the pervasiveness of PMFs in environments of humanitarian concern means that this ‘don’t talk to strangers’ approach will not be effective in the long term, and most organisations have instructed their staff to deal with PMF employees as they would any other armed combatants. One senior humanitarian official acknowledged that PMFs cannot simply be ignored: the fact that humanitarians and private military/security companies are operating in the same theatres means that their actions affect a mutual security environment, implying a need for some level of dialogue.<sup>19</sup>

Overall, interviews for this study revealed a concern among humanitarian actors not only about issues of control over PMFs, but also access to simple information about the past activities of PMF personnel, pricing and trends in the industry.<sup>20</sup> There is no single place within either the international/UN system or the humanitarian research community where information on the connections and contracts between humanitarians and PMFs is gathered or processed. This means that future contracts will not be informed by past lessons nor systematically shared. There are at least three reasons for this data gap. The first is that this is a new and not well understood issue. That the UN is not collecting data becomes less of a concern when one notes that the US Defense Department is not doing so either, despite being asked to by the US Congress. Second, humanitarian organisations are competitive and are often unwilling to pool information, particularly in an area where image and liability concerns are so important.<sup>21</sup> Third, contracts are private and thus proprietary, which means that they can be kept confidential (either by the firm or the client).

### **5.3 Private military firms and humanitarian action: potential benefits, potential problems**

#### *5.3.1 Potential benefits*

The combination of an increasingly perilous and difficult humanitarian environment and the rise of new marketised military capabilities has led some to call for a twenty-first century

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<sup>18</sup> Interview, 27 September 2005.

<sup>19</sup> Interview, 30 September 2005.

<sup>20</sup> Interviews with humanitarian officials, July 2005.

<sup>21</sup> Interviews with humanitarian officials, July 2005, September 2005.

business solution to the twenty-first century's human security problems. If everything from prisons to welfare has been privatised, goes the reasoning, why not the protection and provision of humanitarian assistance? Proponents of this idea obviously include the companies who stand to profit from it. There are also, however, some surprising voices raised in its support, driven primarily by frustration at the international failure to take prompt action in places like Rwanda, and the sorry experiences of peacekeeping in Somalia, Bosnia and the DRC; even UN Secretary-General Kofi Annan, though publicly rejecting the use of PMFs, reportedly proposed engaging them to disarm Rwandan paramilitaries when he was head of UN peacekeeping operations (Mandel, 2003). As General Ian Douglas, a former UN mission commander in Sierra Leone, put it: 'In a perfect world, we wouldn't need them or want them ... But the world isn't perfect'.<sup>22</sup>

For a client hiring a private military firm, the potential advantages stem from its location in a domain – business – in which rules of efficiency and expediency are paramount. Thus, PMFs offer the potential of greater flexibility and agility than state or international organisations. By drawing on a global pool of military labour, PMFs can often call on personnel who are more experienced and better trained than state or local forces, and thus they may be able to operate more effectively on the ground, and in fewer numbers. The political consequences of soldiers being killed or wounded in action are also 'outsourced', in the sense that casualties among private contractors are less likely to cause political difficulties and domestic pressure for withdrawal, such as that seen in the US exit from Somalia in the early 1990s. Financial savings are also often cited as an advantage, though this is rarely a causal factor in whether PMFs are hired; few clients ever do cost estimates or competitive market analysis. Many contracts are funded via budget supplementals, which means that they do not impinge on regular appropriations.

The key benefit to humanitarian actors of engaging a PMF is that such an arrangement regularises the provision of security. Many humanitarian organisations operating in dangerous places already pay for protection – sometimes at the request of the state or simply by virtue of high levels of violent insecurity – by hiring armed escorts or guards affiliated

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<sup>22</sup> General Ian Douglas, cited in Dangerfield (2002).

with local warlords. Many NGOs working in countries like Afghanistan, Russia, the DRC, Yemen and Somalia have had to develop quasi-contractual relationships with local 'security' units, clans or warlord groups to protect their staff and allow their operations to continue. In reality, these relationships are more in the nature of a protection racket (guards are paid off mainly to prevent them or affiliates from attacking an agency's assets or staff) than a professional relationship, and may further empower local criminal groups (Johns Hopkins, 2004). The more formal business alternative that PMFs offer could be preferable.

Some argue that the role of PMFs could even be extended to include guarding, not only humanitarian workers and/or their compounds, but also vulnerable local civilians and refugees. For anyone who doubts the private military sector's interest in this area, they need only read the mission statement of the International Executive Service Corporation (IESC), a new PMF that has, since its inception, specifically targeted this as a potential market: 'We strive to bring harmony and stability to regions under conflict, quickly and with the minimum of disruption to the local population. We are able to rapidly deploy, allowing stability to return, thus enabling deployment of aid. Agencies are then able to carry out emergency relief unhindered and without fear of physical harm. This underpins the essence of the company ethos and indeed the motto, "Ethics in Action"' (cited in Hellinger, 2004). According to the owner of the Blackwater PMF: 'In areas where the UN is, where there's a lot of instability, sending a big, large-footprint conventional force is politically unpalatable; it's expensive, diplomatically difficult as well. We could put together a multinational, professional force, supply it, manage it, lead it, put it under UN or NATO or US control, however it would best be done, we can help stabilize the situation' (Prince, 2005). This may sound far-fetched, but it is the focus of an immense amount of industry lobbying, and is a founding goal of the IPOA.

The contrasting experiences in Sierra Leone of Executive Outcomes and the UN's peacekeeping operation are the most often cited example of the promise of privatisation. In 1995, the Sierra Leone government was near defeat at the hands of the Revolutionary United Front (RUF). Supported by multinational mining interests, the government hired Executive Outcomes to rescue it. The RUF was defeated in weeks, allowing Sierra Leone to hold its

first election in over a decade. After Executive Outcomes' contract was terminated the war restarted, and in 1999 the UN was sent in. Proponents of the expansion of privatisation note that, despite having a budget and personnel nearly 20 times larger than Executive Outcomes, it took several years, and the deployment by the British military, for the UN to create an environment in which the next set of elections could take place (Brooks, 2000a and 2000b). According to Executive Outcomes, during the genocide in Rwanda in 1994 the company could have deployed armed troops on the ground within 14 days of being hired. The cost of a six-month operation to provide protected safe havens was estimated at \$150 million (around \$600,000 a day), compared with the \$3 million-a-day UN relief operation.<sup>23</sup>

Outsourcing international peacekeeping responsibilities would not only open up a vast marketplace but would also, the industry argues, increase its legitimacy. The IPOA has put forward plans by which PMFs might be hired to stop ethnic cleansing or create 'zones of peace' where civilians could take refuge, and where aid activities could proceed.<sup>24</sup> These have included plans for Liberia, Burundi and the DRC. The Association claims that it could be more effective in policing Darfur than current efforts, and at a fraction of the cost – \$40 million compared to the African Union's \$221 million a year (Hukill, 2004; OCHA, 2005). According to the Association, these costs could be met by the UN, regional organisations and individual governments.

Beyond armed protection roles, humanitarian clients could take better advantage of the skills and specialisations of consulting and support firms. Consulting firms offer expertise in areas such as security assessments, analysis and training. This is an area where humanitarian agencies are notably weak. The Security Iraq Accountability Panel (a UN panel formed to investigate security practices within the organisation after the 2003 Baghdad bombings) found that security training, if it was given at all, consisted of giving humanitarian workers a CD-ROM of procedures to follow. The type of sophisticated training PMFs could provide

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<sup>23</sup> For more on this episode, see Singer (2003), chapter 11.

<sup>24</sup> See the website of the IPOA: <http://www.ipoaonline.org>.

ranges from threat awareness to driver training in war zones (Hellinger, 2004: 14).<sup>25</sup> The PMF industry also offers logistics, engineering, air transport and other capacities that could be valuable in aid distribution and provision (Gantz, 2003). In addition to KBR's work in Kosovo, firms like Dyncorp have been contracted by national governments to provide logistics services in East Timor; in Côte d'Ivoire, Pacific Architects & Engineers provided the logistics for the UN peacekeeping force, taking care of everything from fuel supplies and rations to vehicle maintenance.

#### **Box 5.1: Case study: Iraq**

Iraq is the world's single largest marketplace for the private military industry. Over 80 firms employing more than 20,000 private, non-Iraqi personnel carry out military functions there.<sup>26</sup> To put this in context, the private military industry has contributed more forces to Iraq than all of the non-US countries in the Coalition combined. More than 280 private military employees are thought to have been killed, and as many as 3,000 wounded. Again, these numbers are greater than the rest of the Coalition put together, and larger than the losses suffered by any single US army division (Singer, 2005).

PMFs have been involved in all stages of the operation, from war-gaming and field training before the invasion to logistics and support in the build-up to war (the massive US complex at Camp Doha in Kuwait, which served as the launch-pad for the invasion, was built by private contractors and is operated and guarded by private companies).<sup>27</sup> During the invasion

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<sup>25</sup> The British NGO RedR has also moved into this sector, and is offering security training to humanitarian workers.

<sup>26</sup> This figure, based on industry interviews, is also used by the Pentagon, the US Congress and major US newspapers such as the *Washington Post*. Actual numbers could be significantly higher. However, figures are disputed. For example, between December 2004 and July 2005, the IPOA used estimates ranging from 3,000 to 20,000. See Frontline (2005); Sullivan (2004): A24; and Fox News (2005).

<sup>27</sup> The complex is operated by Combat Support Associates; see [http://www.csakuwait.com/csa\\_home.htm](http://www.csakuwait.com/csa_home.htm).

private contractors maintained and operated weapons systems, and in its aftermath they have secured significant reconstruction contracts. Halliburton's KBR division is thought to have secured work worth as much as \$13 billion (an amount roughly two and a half times greater than the cost to the US of the 1991 Gulf war). Other roles PMFs have played in Iraq include security sector reform and training for local forces. PMFs also carry out tactical military functions, such as protecting key installations and leaders (Paul Bremer, the head of the Coalition Provisional Authority (CPA), was guarded by a Blackwater team with its own armed helicopters) and escorting convoys. PMFs have, in short, been essential to the overall Coalition effort in Iraq. At the same time, however, some of the most controversial aspects of the war have also involved PMFs. These include the allegations of war profiteering around Vice-President Dick Cheney's old firm Halliburton, the brutal killing of Blackwater employees at Fallujah by Iraqi insurgents, which was captured on television, and the fighting and lawsuits that followed, and the role of CACI and Titan contractors working as military interrogators and translators at Abu Ghraib prison.

Humanitarian agencies in Iraq have also contracted PMFs, particularly in the wake of the bombing of the UN headquarters in Baghdad in August 2003 (a week before the attack, a private firm had approached the UN offering hired protection, but had been turned down). Agencies including Save the Children and CARE have hired security advisors and former military personnel. Triple Canopy and Erinys have provided protection for USAID. The contracting of PMFs by humanitarian agencies is coordinated through a centre operated by Aegis, a private military firm owned and operated by Tim Spicer, whose firm Sandline has been involved in controversial contracts in Africa and Papua New Guinea (Flaherty, 2004; Singer, 2004). Subsequent investigations have examined aspects of Aegis' operations, including the screening and training of its employees.

### *5.3.2 Potential problems*

There are, of course, many perils in the use of private military firms by humanitarian actors. While private military businesses may be able to operate more efficiently and more effectively than the forces of public organisations, hiring them also raises important concerns. These include how contracts will be managed; contractual and control issues;



questions of legal accountability and liability; and the long-term implications for the humanitarian community and the local political environment.

### *The 'culture clash'*

The first and perhaps most obvious source of tension arises from the very different worlds that military firms and humanitarian agencies inhabit, and the possibilities for misunderstanding that this contains. Interviewees discussed problems arising from firms not understanding the context in which their clients operated. Firms come in with their own expectations, often shaped by their particular military background, and often have trouble understanding, not only individual NGOs, but the humanitarian endeavour as a whole. As one humanitarian security officer put it bluntly: 'They don't understand our community, period! ... And in that lies a danger for our community'.<sup>28</sup> The feeling was that each NGO is different, with a unique founding vision which affects its operating procedures. Firms (who must work with a variety of clients) sometimes discuss adapting their operations to a particular client, but the reality is that each has its own way of doing business (which it understandably thinks is the best). Humanitarian actors also usually have particular relationships with the local environment and local populations. One NGO's way of working in one village might be very different from another's just 20km away. By contrast, PMFs tend to think in military terms, of routes, sectors and regions.

### *Market realities and staffing issues*

The private military market is fluid, and is buffeted by both external and internal forces. For example, in the early 1990s the relatively limited number of PMFs meant that firms could pick and choose the most qualified recruits, and were able to assemble teams comprising individuals who had worked together in the same units in the past, and thus had common training and experience. The labour market is, however, shifting such that many firms are competing for workers, who play offers off against each other. For example, one PMF soldier interviewed said that he had five competing contract offers (three in Iraq, one in Afghanistan and one in Colombia).<sup>29</sup> Most firms face this market like any other industry

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<sup>28</sup> Interview , September 29, 2005.

<sup>29</sup> Interview with PMF employee, Washington DC, September 2004.

would: by lowering hiring standards, hiring employees that have never worked together, or bringing in third-party nationals. Thus, cost savings can come at the price of lower unit cohesion, which can affect the unit's conduct (many episodes of human rights abuse have occurred in units characterised by weak internal bonding and poor leadership; the massacre at My Lai in Vietnam in 1968 is one example, the Abu Ghraib abuses in Iraq another).

Many PMF employees represent the peak of the military profession in terms of both training and ethics. For example, there are a great number of recently retired US special forces operatives in Iraq; more ex-British Special Air Service (SAS) troops are working with PMFs in Iraq than serve in the current SAS force. At the same time, however, military firms do not always look for the most congenial workforce, but instead recruit those known for their effectiveness. Many former members of the most notorious and ruthless units of the Soviet and apartheid South Africa regimes have found employment in the private military industry, including with firms working for humanitarian clients in Sierra Leone, Liberia, Iraq, Sudan and the DRC.<sup>30</sup> Even if one does seek to screen employees, this can be quite difficult; few prospective employees list their human rights violations on their CV.

In Iraq, this problem has been magnified by the 'gold rush effect', where multiple firms entered the market that were either entirely new to the business, or had expanded rapidly to meet demand. The rush for profits and the need for large numbers of personnel have brought in troops with lesser skills. As Harry Schulte, a former US army commander in Iraq, put it: 'As the security world rapidly expanded, I think some had to incorporate into their labor pool people with significantly less experience' (Finer, 2005). US army investigators looking into the Abu Ghraib prison abuse scandal found that 'Approximately 35% of the contract interrogators [hired by the firm CACI] lacked formal military training as interrogators' (Fay and Jones, 2004). In the aftermath of the revelations, experienced military interrogators noted that the measures used at Abu Ghraib were not only well beyond the bounds of what is allowed under the law (military and IHL), but were also not taught at military schools.<sup>31</sup>

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<sup>30</sup> See Singer (2003).

<sup>31</sup> Interview with former US army interrogator, March 2004.

### *Scaling up and applicability*

Changing market conditions also mean that firms are rarely able to assemble units at any scalable level. This issue becomes most pertinent in relation to the subject of ‘outsourced’ peacekeeping operations, discussed above. While the idea of a private company rapidly deploying battalion-sized units to a crisis-affected country might be appealing, no PMF has such forces on call – even if it were politically feasible to deploy them. Similarly, to develop such a capacity would mean establishing standing forces and logistics chains, which would directly undermine the potential cost advantage that PMFs have over national military forces.

Comparisons between PMF interventions and fully fledged UN peacekeeping operations are often misleading. The Executive Outcomes deployment in Sierra Leone in 1995, described above, is often cited by PMF advocates. However, the firm’s task was to push rebels back from the capital and secure diamond mines; it was not contracted to handle the range of activities demanded of a UN operation, nor did it have the capacity to do so. It was also operating under different rules of engagement and according to different political considerations. Executive Outcomes effectively had a free rein to undertake whatever actions it felt necessary, wherever it felt necessary. UN peacekeeping forces, by comparison, are usually limited by rules of engagement that minimise their options on when they can use force (there is debate over the definition of ‘self-defence’, for example), and what constitutes permissible risk. Indeed, if hired by the UN it is likely that a PMF would be hampered by many of the same challenges of mandate, rules of engagement and other operational issues.

The act of becoming a peacekeeper is about more than just changing the colour of one’s helmet or beret. Peacekeeping differs markedly from regular military operations in its roles and responsibilities. It requires a different culture and training, and increasingly a focus on humanitarian concerns (particularly a mandate to protect civilians affected by conflict), which at times can conflict with or restrain standard military responses. The most successful peacekeeping operations, such as those in Mozambique, Namibia and Guatemala, have included tasks ranging from ceasefire monitoring and troop disarmament and demobilisation

to reconstruction and election monitoring. Private military firms, untrained or uninterested in the culture of peacekeeping, might be ill-equipped to handle these functions.

Ultimately, PMFs and their advocates face precisely the same problems of political will and funding that confront traditional interventions. As the authors of a UK Royal Military College of Science report put it: ‘If PMCs are, as some of their lobbyists have suggested, going to work under a UN peacekeeping mandate (and therefore presumably paid by the UN) then their speed of deployment will still be dictated by the political will and urgency of the Security Council and Member States. For PMCs to suggest an alternative method of operating under the UN is disingenuous and ignores the most fundamental aspect of the UN charter, Member State collective responsibility’ (Dangerfield et al., 2002). As the field evolves and organisations and situations change, this attitude may alter. But if there was support among Member States for contracting out peacekeeping wholesale, we would expect to have seen discussion of the issue within the Security Council, the Special Committee on Peacekeeping or the wider General Assembly. None of these forums has held such a discussion, and neither of the two key reform agendas for the UN and peacekeeping in recent years – the Brahimi Report and the Report of the High-Level Panel – mentioned PMFs in this context.

### *Contractual issues*

If a humanitarian actor decides that it wants to hire a firm, it must establish both good policy and good business practices to minimise contracting concerns. These include clear and competitive contract award processes to identify the best firm for the job at the best price; oversight requirements to ensure that the contract goes as planned; and contingency plans for replacing the firm if it fails in its duty. To properly oversee and manage PMF contracts, NGOs and humanitarian agencies will need to develop a range of new contract mechanisms, as well as in-house military and security expertise. Hiring such firms will require knowledge of such issues as the prevailing market rates for military functions and equipment, and an ability to judge skills, tactics and rules of engagement. Developing these mechanisms suggests a shift in policy approach, and in an organisation’s guiding doctrines and recruitment practices. For instance, the US Congress’ proposal that USAID should help to

decide on and regulate such matters as PMF training and equipment standards when working under contract appears sensible on one level, as USAID has a well-regarded contract management programme. However, the workability of this proposal is questionable, as the individuals and institutions in the agency are not yet equipped to deal with issues such as the security screening of PMF employees or minimum requirements for weapons training.<sup>32</sup>

There are no international controls governing who PMFs work for. The firms make this determination based on what they see as best business practices, their understanding of domestic law and a concern to maximise profits. PMFs have worked for governments, the UN and humanitarian groups, but they have also been linked with dictatorships, rebel groups, drug cartels and, pre-9/11, two al-Qaeda-linked groups. Likewise, humanitarian actors must be concerned that the PMFs they hire are not involved in belligerent or otherwise questionable activities, either in the same war zone or elsewhere. Clients only exert an influence over the firm for as long as it is employed, and only to the extent of their relative buying power. Clients must also be aware of the complexities of the firm's relationships, its shell structures and other hidden ownership. For example, the UN hired Lifeguard Services to guard its offices and personnel in Sierra Leone in 1999, when the company was linked with Executive Outcomes (including shifting staff back and forth), a firm which the UN had publicly excoriated in other environments (Kelly, 2000). A US government agency hired Aegis in Iraq, but had no knowledge of the controversial history of the personnel behind the firm (Singer, 2004).

The kind of screening that hiring PMFs demands has proved difficult enough for governments; humanitarian actors certainly do not have this capacity, and have rarely even tried to screen the firms they engage. As noted above, there is no industry database, and the only screening mechanism found by this research was 'word of mouth'.<sup>33</sup>

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<sup>32</sup> Interview with USAID personnel, May 2005; see also US House of Representatives (2005).

<sup>33</sup> Interview with humanitarian organisation official, 29 September 2005.

The final issue here concerns questions of liability. If a PMF or its employees commit a crime, it is not clear how far responsibility for that crime extends: does it extend to corporate officers, for example, or to shareholders, or to the client? If a humanitarian actor has hired a PMF without adequate screening, management or guidance, it could be considered culpable if that PMF violates IHL. Nor is it clear whether contract law extends into conflict zones at all. This is a new industry, and courts are only beginning to wrestle with questions of liability and how far it extends.

#### *Questions of law, accountability and regulation*

The private military market is effectively unregulated. Although firms and their employees are bound by IHL (as are all actors in armed conflicts), there are significant legal grey areas. According to a senior official at a human rights organisation, his ‘biggest concern is with the very grey place in the law when it comes to regulating these companies, especially in places like Iraq ... Within this, where is the accountability for these firms? Who is holding them accountable? Who is checking up on them?’.<sup>34</sup> These views are echoed by Human Rights Watch; in the wake of the Abu Ghraib prison abuse scandal, the organisation noted that the ‘virtual immunity’ of PMFs was of deep concern: ‘Allowing private contractors to operate in a legal vacuum is an invitation to abuse’ (Human Rights Watch, 2004). This lack of regulation can be as much of a problem for the military as for humanitarians or human rights groups. As one senior US military commander in Iraq put it: ‘These guys run loose in this country and do stupid stuff. There’s no authority over them, so you can’t come down on them hard when they escalate force. They shoot people, and someone else has to deal with the aftermath’ (Charlotte Observer, 2005).

The only formal codes of conduct within the private military industry are voluntary ones. These range from codes that firms set for themselves (Armorgroup and Control Risks Group are notable examples) to attempts at wider self-regulation by trade groups. For example, member companies of the IPOA have a code of conduct developed over several years, in discussion with experts and some NGOs.<sup>35</sup> It is commendable in its level of detail. However,

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<sup>34</sup> Interview, 11 October 2005.

<sup>35</sup> The IPOA code of conduct can be accessed at <http://www.ipoaonline.org/code.htm>.

it is still a voluntary code, with no capacity to impose sanctions to influence behaviour. The only punishment the IPOA can dispense to a firm violating the code is to dismiss it from the organisation, though this may not be in its interests since it is paid for by its members. In any case, the concerns with any system of industry self-regulation are obvious, and have been illustrated by the failures of such mechanisms in the oil and gas industry. Proposals are generally quite limited in their scope. For example, SCI has proposed that the licensing of PMFs should include only a general review, not a review of individual contracts and operations.

If a firm is left to police itself, there is little incentive for it to turn its employees over to the authorities should they violate the law. To do so would risk deterring prospective employees and even clients, should they prefer to keep such matters quiet. For example, several employees of Dyncorp, which was hired by the US and the UN to provide international police in Haiti and the Balkans, became involved in the sex and arms trade. No Dyncorp employee was ever prosecuted (Barnett, 2003: 4; Crewdson, 2003: C3; O'Meara, 2002; Barnett and Hughes, 2001: 4; Capps, 2002). Market forces and considerations of reputation are not always enough; Dyncorp went on to win a much larger contract in Iraq. Even firms that are seemingly guided by self-regulation standards can falter in this domain. For example, Armorgroup, one of the more respected firms in the industry with revenues of over \$200 million, was reported in 2004 to have hired a former British soldier who had spent four years in prison for cooperating with Irish terrorists (he was fired after a British newspaper reported the story, and subsequently rehired by another PMF) (Glantz, 2004; Hellinger, 2004: 213; [www.Armorgroup.com](http://www.Armorgroup.com)).

These questions of status and other legal difficulties have important implications for accountability. It is often unclear what authority should investigate, prosecute and punish crimes committed by PMFs and/or their employees. The military has established legal structures that constitute a court martial system, and soldiers are accountable to the military code of justice wherever they are located. How a business organisation and its corporate chain of command are held accountable for crimes committed in war is not clear. As one military lawyer succinctly puts it: 'There is a dearth of doctrine, procedure, and policy'

(Perlak, 2001). Private military firms and their employees carry out military-type functions in conflict zones, often against local armed adversaries. But they are not part of the military; they are not bound to a chain of command, nor have they sworn any oath of office. This means that legal codes which seek to create a sharp delineation between civilians and soldiers are not readily useful. Nor do PMFs and their employees meet the international definition of mercenary in either legal or analytical terms (Singer, 2003: 40–48). This leaves a legal vacuum; as one analyst of military law notes: ‘Legally speaking, they [military contractors] fall into the same grey area as the unlawful combatants detained at Guantanamo Bay’ (Singer, 2004).

This is not just important for accountability. It also means that PMF employees may not always receive the rights and protections afforded to participants in armed conflict (as the case of three California Microwave Systems contractors held for more than two years in Colombia illustrates). If PMFs are not incorporated into the armed forces of a state, but nonetheless carry out activities that amount to taking a direct part in hostilities, their staff could be judged to be ‘unlawful combatants’. If they are captured during an international armed conflict, they would be entitled to the protection of the Fourth Geneva Convention or Article 75 of Additional Protocol I. If captured during a non-international armed conflict, they are entitled to the protection of common Article 3 of the Geneva Conventions, Additional Protocol II if applicable and the rules of IHL applicable in non-international armed conflict. The key in all of this is that their status, and how to interpret it, would be up to their captors; as the US designation of inmates at Guantanamo Bay as ‘unlawful combatants’ has shown, such interpretation is a matter of dispute.

Even if international law dealt more effectively with the question of PMFs, it does not have the means to enforce itself; the obligation to search out and prosecute individuals suspected of breaching IHL rests with states. This obligation is, however, rarely met, to the extent that PMF executives and employees do not even consider the possibility of a prosecution under international law in their planning. While there are hopes that the International Criminal Court (ICC) will one day be able to fill this gap, that day is decades away. Moreover, the ICC is designed to deal with large-scale war crimes like genocide, not the everyday



occurrences of criminality that also need to be regulated. This defers the legal questions to the state level. PMFs, like humanitarian organisations, typically operate in fragile states; indeed, the absence of an effective local state is usually why they are there in the first place. The local authorities in such areas often have neither the power nor the wherewithal to challenge these firms, and usually are not interested in doing so (they are, after all, often the client, or they may indirectly benefit from the PMF's activities). The central government in Sierra Leone could not control its own capital, let alone monitor and punish the actions of a foreign military firm, which it had itself hired (Venter, 1995; Vines, 1998). In Iraq, the very absence of established local political institutions in the first two years after the invasion was precisely the reason why PMFs thrived there.

Status of Forces Agreements (SOFAs) can pose an additional enforcement challenge. SOFAs typically provide separate legal provisions for foreign military personnel. Some of the SOFAs drawn up for US forces include protection for contractors working on behalf of the US Defense Department. For example, the US government linked its aid package to Colombia (a signatory of the ICC) to an agreement to exempt American military personnel and contractors from the ICC's jurisdiction (Spearin, 2003). It is unclear if such SOFA protections extend to contractors working on behalf of multiple clients (for example, a PMF employee may escort a humanitarian client one day, and a US government client the next).

During the period of greatest need, any true legal enforcement will usually have to be extraterritorial, emanating from the firm's and/or the client's home states. However, few issues are more difficult than attempts by one state to exercise legal powers within another's sovereign territory. Some states have effective laws, but no means to enforce them abroad; South Africa and Nepal, for example, have tried to prohibit their citizens from working for PMFs in Iraq, but to no avail (more than 3,000 Nepali and South African citizens are thought to be working in Iraq). In any case, many PMFs are registered in locales like the Caymans or the Channel Isles and operate through subsidiaries registered elsewhere for the purpose of evading troublesome legislation in their home states. State-level legal mechanisms usually focus on licensing (when and where can a firm work), rather than on monitoring performance. For most of the world's governments, however, there are simply

no applicable laws to regulate PMFs.

Iraq is a good example of how this lack of regulation and legal accountability plays out on the ground. Of the 20,000-plus private military contractors in the country, none has been prosecuted or punished for any crime. In Abu Ghraib prison, all of the translators and up to half of the interrogators were reportedly private contractors from the firms Titan and CACI respectively. Although the US army found that contractors were involved in a third of the incidents of abuse at the jail, and identified six employees in its reports, none has been indicted, prosecuted or punished (Fay and Jones, 2004; Yeoman, 2004; Davidson, 2004; Leigh, 2004; Ante and Crock, 2004; McCarthy and Merle, 2004). Many enlisted US army personnel, on the other hand, have been called to account through the court martial system. Equally, the investigation has ignored the corporate chain of command, and has not considered whether any executive decisions merit punishment. The only formal investigation of the corporate role in the scandal has been conducted by CACI, the firm involved; unsurprisingly, CACI found that CACI had done nothing wrong.

Questions of liability must also be weighed by humanitarian actors. Another way to think about this is that, in the absence of regulation, many people (particularly Americans) turn to litigation. If a PMF or its employees commit a crime or undertake an action that causes local harm, it is unclear how far responsibility extends. Another open legal area concerns how far contract law extends into conflict zones. As this is a new industry, the civil legal courts are only now beginning to wrestle with such questions, with the first lawsuits entering the system. Current cases range from Iraqis suing CACI and Titan firm for their role at Abu Ghraib to a lawsuit against the Blackwater firm launched by the families of employees killed at Fallujah (Mekay, 2004).

#### *Issues for the long term*

The final challenge arising from the confluence of PMFs and humanitarian actors concerns issues of more long-term implication. Private security is a temporary mechanism for preserving peace, but it can do little to address the underlying causes of unrest and violence. As noted earlier, the presence of private military firms might put at risk local perceptions of

the neutrality of aid groups, and may simply multiply the array of armed forces present in a conflict zone.

If PMFs are limited to the protection of aid workers and aid facilities, this may increase the risks faced by local groups that do not enjoy such protection, such as the poor or refugees. The privatisation of security risks reinforcing internal divisions in weak states between those who enjoy security and those who do not. When security is a profit-driven exercise – a commodity to be bought and sold – the wealthy are inherently favoured. Multinational companies operating within ‘commercial enclaves’ see private security as just another function they have to provide for themselves, along with providing their own energy or building their own infrastructure. It is part of the cost of doing business. That this should take place in the humanitarian sector is not a happy development and certainly not one that fits well with humanitarian ideals. Determining who enjoys protection and who does not is a political act; when they hire PMFs, humanitarian actors are taking upon themselves decisions that were once the prerogative of the state.

It could be argued that this shift towards the private provision of security will free up public forces and enable them to better protect the rest of society. In practice, however, this does not happen. Not only are the worst threats deflected from privately protected areas, but those portions of society come to rely on declining, unstable or non-existent public means (Huggins and MacTurk, 2000). Moreover, one must also consider the effect of the industry’s ability to attract top personnel from the public security sector. For example, security firms operating in Sierra Leone were able to offer salaries more than double those offered by local public forces. In Iraq, salaries are typically four times higher than the government pays.<sup>36</sup>

In all of this discussion, it is important to remember what drives the PMF business: these firms do not hire themselves; they are hired to meet the needs of their clients. The areas in which many privatised military firms operate have often experienced some of the worst episodes of violence and atrocity in the world. Rarely is hiring them the first choice of states or other clients. More often, it is the result of frustration at the failure of other, more

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<sup>36</sup> Interview with PMF executive, March 2003.

traditional options. Thus, if a state cannot provide security and protection for its citizens, and no other public body is willing to help, it seems hypocritical to say that private options must be forsworn. As David Shearer writes: ‘Private military forces cannot be defined in absolute terms: they occupy a grey area that challenges the liberal conscience. Moral judgments on the use of mercenaries are usually passed at a distance from the situations in which these forces are involved. Those facing conflict and defeat have fewer moral compunctions’ (Shearer, 1998: 13).

#### **5.4 Think first, privatise better**

The confluence of the private military industry and the humanitarian community raises a series of tough questions that must be openly faced. The humanitarian community’s links with the PMF industry are expanding, both as clients and as inhabitants of the same war zones. At the same time, however, there are no standard guidelines as to how humanitarians should relate to PMFs, or what their various rights and responsibilities properly are. Humanitarian actors tend to contract firms in an *ad hoc* manner, which means that knowledge networks and principles of good practice remain limited. As one senior official with a human rights organisation put it: ‘Before we contract out [with such firms], we need to be unbelievably careful to work out the full implications ... I don’t think, by and large, the humanitarian community has thought hard enough about this issue. It has come a bit late to it and not with the political sophistication needed’.<sup>37</sup> If the decision is to go down this route, it is clear that the humanitarian community is not taking advantage of the private military sector as fully and effectively as it might. Humanitarian actors might explore not only how private firms might enable them to carry out their operations better within conflict zones, but also where the private market might offer more efficiency than public or state provision.

The onus is on the humanitarian community to deal with these issues. The debates over civil–military cooperation in humanitarian operations during the 1990s might provide some lessons. At the start of the decade, the concept of NGOs and militaries working together was under-developed. Today, there are standard operating procedures, guidelines and norms, and

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<sup>37</sup> Interview, 11 October 2005.

nodes of coordination and cooperation. Likewise, the military too have adjusted, and by the end of the decade had developed mechanisms such as civil–military coordination groups and military scenarios that included NGO representatives as participants in the planning process. The system is certainly far from ideal – at best the relationship is uneasy, and there are continued concerns about the proper separation of roles between humanitarian actors and military forces, especially where these forces are parties to a conflict (Cohen, 2002). But at least there is now a range of resources and a body of research, and some focused thinking about the military–humanitarian relationship. Given the growing contact in the field between humanitarian actors and the private military world, and the attractive possibilities and thorny problems that such contact presents, a similar focus is required on the humanitarian community’s relationship with PMFs, now and in the future.

One step would be for agencies to undertake a full accounting of their contacts and contracts with PMFs. As this chapter has shown, the relationship is more extensive than is usually recognised. Such a comprehensive compilation will enable agencies to move past the present state of denial that often permeates thinking on PMFs. It will also generate a body of data for lessons learned on a range of issues, including best practices and the vetting of firms. In their advocacy efforts, humanitarian groups should also support current government efforts to assemble data on the extent, type and contract performance of public sector contracting of PMFs, as a way of increasing the transparency of the marketplace and so informing their own efforts. Humanitarian organisations should also explore establishing their own formal lines of communication with industry organisations, the analysts who track the industry and other clients. ICRC has begun to do this, and other NGOs are quietly opening dialogues in the margins of meetings, or setting up their own databases and research efforts.<sup>38</sup> These are positive steps towards becoming better informed, and would benefit from being expanded and formalised. We should look for models in the efforts to establish the humanitarian community’s stance towards such issues as staff security and the relationship with state military actors, such as meetings within the Inter-Agency Standing Committee (the best example is the High Level Humanitarian Forum held in Geneva in March 2004) and within

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<sup>38</sup> See ICRC (2004); interview with NGO representative, September 2005.

NGO networks like InterAction.<sup>39</sup> There is an important proviso, however. Humanitarian actors must be prepared to deal with the industry from an informed and prepared position, and, most importantly, must factor in the consequences of their actions. That is, humanitarian organisations must meet the challenge of building ties with PMFs without granting them legitimacy. Akin to the problem of dealing with warlords on the ground, humanitarian actors can, usually unwittingly, provide an air of legitimacy to the groups they encounter.

As the humanitarian community explores these issues, a primary concern must be to determine when, where, and by whom it is appropriate to hire PMFs, how to interact with them in the field, and the community's its rights and responsibilities towards PMF employees. Humanitarians also need to find ways to mitigate the underlying concerns with contracting out roles within humanitarian operations, both within their own organisations and the broader political environment, and must develop ways of ensuring that IHL can be applied. In the absence of external guidance and regulation, the humanitarian community will have to rely on its own efforts. Given the potential consequences, agencies should be more judicious in their contracting with these firms. They should weigh the long- and short-term benefits of contracting beforehand, and should constantly update their analysis based on the development of local public capacities. They must also do their utmost to ensure that contracting is carried out in accordance with, and supported by, the appropriate political authorities. Humanitarian actors must be willing to share lessons learned (both success stories and failures), and must be willing to report agencies, organisations, and firms that violate proper rules or best practices. It is of deep concern that humanitarian organisations are often unwilling to share what information they have, often out of image and liability concerns, and should instead work to forge common standards. It is a mistake to equate the setting of minimal quality assurance measures with inflexibility. There have been some moves towards setting standards for the provision of humanitarian aid, including specific guidelines for field operations, training and evaluation, such as through the Sphere Project.

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<sup>39</sup> The Geneva meeting brought together some 40 humanitarian agencies and 20 international and national NGOs to discuss humanitarian security. See Chairperson's Summary, High-Level Humanitarian Forum, 31 March 2004.

Nothing similar has been attempted for humanitarian security, or more particularly for the relationship between humanitarian agencies and private military firms. If humanitarian agencies decide that they are going to continue to expand their use of PMFs, institutional changes will need to be made. Agencies hiring PMFs will need to update and amend their contracting oversight processes, and may also need to recruit their own military expertise in-house. More staff will be needed to oversee contracts.<sup>40</sup>

At the level of the broader humanitarian community, a good starting point would be the creation of standardised monitoring and contracting processes. Other priorities include the establishment of clear contractual standards and incentives programmes, systems for the outside vetting of personnel and the creation of independent observer teams with powers to monitor and control payments, in order to establish their authority over the firm. The UN and/or umbrella aid organisations might also consider establishing a database of vetted and financially transparent firms that have met international standards. This database would have to be constantly updated, with the attachment of military observers and auditors to monitor contracts. Thinking will also be needed on the rules of engagement that forces contracted by humanitarians should operate under, what limitations should be imposed on weaponry, and whether such forces should be identified as armed, but civilian, combatants. There should also be discussion within the humanitarian community as to whether measures are needed to distinguish humanitarian vehicles from PMF ones amid the proliferation of white SUVs in combat zones.

Humanitarian actors should explore ways to enhance their capacity to control contracted PMFs. Areas to explore include the use of exclusivity clauses to avoid firms double-billing for assets shared across contracts, collective action in contracting to enhance buying power and market clout, and working with insurance firms (who often contract with both

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<sup>40</sup> USAID had only three personnel on the ground in Iraq to oversee \$3 billion-worth of contracts in 2003. USAID sought to solve the problem by contracting out oversight. Overall numbers of US Defense Department contract officers have fallen by roughly 50%, while the amount of contracting increased by 12% a year between 1990 and 2000. See US GAO (2003); Dickinson (2005: 36); Harris (2003).

humanitarian clients and PMFs, thus giving them enhanced influence) to set standards and to aid in vetting. The example of insurance companies also illustrates that the humanitarian sector should be willing to explore possible coordination on these issues with other responsible client sectors, an outcome that would be useful to both parties. The US military, for example, has begun to consolidate its doctrine towards private contractors on the battlefield, albeit with minimal attention as yet on key questions to do with status, roles and legal accountability.<sup>41</sup>

The most important step would be to bring PMFs under the control of the law, just like any other industry. Such a clarification and expansion of law at both the international and national levels is certainly not within the power of humanitarian actors, but they can and should lobby for it. Humanitarian actors have largely been absent from discussions on potential legislation in the US to regulate PMFs, despite their clear interest in seeing the issue resolved successfully. The same is true in other jurisdictions, for instance in the European Union. Beyond pushing states to make progress, individual agencies could include clauses in contracts specifying training requirements for employees (both technical training and training in IHL), providing for enhanced monitoring by third parties, establishing performance benchmarks, mandating evaluations, requiring some type of accreditation, and incorporating ‘whistleblower’ protections and the rights of third parties (including local beneficiaries) to enforce contractual terms through lawsuits (Dickinson, 2005).

At an international level, proposals range from updating international anti-mercenary laws to creating a UN body to sanction and regulate PMFs. However, any movement on the international front will take years. This means that every state that is involved with the industry, either as a client or as a home base, has an imperative need to develop and amend its laws relevant to PMFs. Ideally, states would coordinate their efforts and attempt to involve regional bodies and humanitarian organisations to maximise coverage and ease the way to international standards. Discussions of regulation in the UK, for instance, should be coordinated with other states in the EU. The US should communicate on this issue with its

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<sup>41</sup> Draft DoD document provided to the author, February 2005.



friends and allies as it lays out new doctrines and regulations. Equally, the ICRC should begin to link with the US military law community, which has held several conferences on related issues of contractor accountability.

The key obstacle is not capacity within the law, but a lack of political will. It is extremely unlikely that any international body will be willing to take on this complex regulatory function. Until the overall legal and policy issues are settled, the burden will continue to fall on clients to ensure the proper vetting and screening of firms. In an ideal world, peacekeeping would be left to the real peacekeepers, and humanitarian action to the real humanitarian actors. In reality, this is not always possible. PMFs are already in contact with humanitarian actors in almost every war zone, and many are already working on behalf of humanitarian actors. Such a confluence of military, business and humanitarian interests constitutes a defining change in the humanitarian landscape.

