



Submission: Open-ended intergovernmental working group mandated to elaborate on the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (Human Rights Council Resolution 45/16)

Contextual Background

Many private military and security companies (PMCs) have established themselves as private corporations, with their own set of codes and practices that act as checks and balances for the activities that they undertake. The role of PMC's is generally understood to provide security to companies, individuals and property, as well as to provide training and tactical support to governments, including their armed forces.

PMC's operate within the spaces left by states' armed forces, where traditional militaries are perceived as unable to carry out operations. Many states have scaled back their military spending which has created these gaps, or in other instances states do not have the capacity to carry out certain activities, and thus turn to PMCs. PMCs are able to carry out a number of tasks that militaries would traditionally undertake, but at a cheaper price, thus making the use of PMCs an appealing option for many states.

However, conflicts are generally understood to take place between states, without the involvement of non-state entities, meaning that existing regulations related to conduct during a conflict are only understood to be applicable to state actors. PMCs, therefore, operate in an area not understood to be regulated by international norms and regulations. Attempts at monitoring the activities of PMCs, and the regulations that they conform to, are thus weak or ineffective. This has led to the perception that PMCs are a law unto themselves, and that states and international organisations have difficulty in holding PMCs accountable for their actions.

There are two major international documents on PMCs, namely the United Nations (UN) International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and the Montreux Document. The UN convention was concluded in 1989 and came into effect in 2001, with 31 states being party to the convention. The convention makes it illegal for signatories to hire and use mercenaries. On the other hand, the Montreux Document identifies and prescribes best practices in relation to PMCs. The Montreux Convention has 57 signatories. However, the Document is non-binding. Both the Document and the Convention illustrates that attempts to encourage states to regulate PMCs has not been successful. Additionally, many PMCs operate in states that they do not originate from, raising questions as to which state would need to enforce regulations on PMCs.

PMCs in Africa

In the context of Africa, the African Union (AU) Convention for the Elimination of Mercenarism in Africa was adopted in 1977 and entered into force in 1985. The AU Convention obliged signatories to create and adopt domestic laws to regulate PMCs in their states. However, no



enforcement mechanisms for the AU Convention exists, meaning that it falls to states to enact legislation required by the Convention. The AU Convention was one of the first international conventions to categorise mercenary activities as a crime, and marked a significant step in attempts by the African continent to regulate the activities of mercenaries on the continent. However, both regional and international attempts to regulate the PMC industry have not produced a more regulated industry. Instead the common perception is that PMCs continue to operate with little international oversight of their actions. Therefore, strong international and regional conventions and documents are needed to regulate the industry, while more states also need to buy into regulating the industry in order to give international conventions greater strength.

Mercenaries and PMCs have long been active on the African continent. PMCs have been used in conflicts in the Angola, Democratic Republic of the Congo (DRC), Libya, Mozambique, Sierra Leone, Sudan, and many more. In some cases, such as in Angola and Sierra Leone, it is believed that both governments relied on PMCs to regain control of territory in the hands of rebels, rather than making use of their own armed forces. Adversely, there have been instances where PMCs have been used to overthrow sitting governments and place new leaders in power, showcasing the destabilising impact that PMCs can have.

There are also reports that PMCs have been used by the Nigerian government to regain territory in the hands of Boko Haram in northern Nigeria. Similarly, it is understood that the Mozambican government is using PMCs to combat the ongoing insurrection in Cabo Delgado, while the Central African Republic Government is also understood to be using PMCs to combat rebels, and to train their armed forces. In some cases, the national armed forces lack the capacity and training to deal with the security threats that they face, and are therefore ineffectual in defending their state's territory. In other instances, governments may lack the funds to adequately equip and pay their army regularly, making PMCs a cheaper, and a more effective option to government, as they only need to pay them if and when their services are used.

Some governments have made use of PMCs to help establish stability, and to reinstitute their authority within their territory. However, many states in Africa continue to struggle to impose their authority over all of their territories. The gaps that exist in state control provide space for rebel groups and extremist entities to grow and impose their authority over local communities, which only serves to further destabilise states. Additionally, a number of African states are the hosts of UN Missions and foreign forces, such as the French Operation Barkhane in the Sahel, which further illustrates Africa's reliance on forces from outside of the continent. This highlights the weakness of many African states' security infrastructure. However, in recent times there has been a scaling back of military operations from states, such as the United States who are withdrawing troops from the Middle East, and France, who are withdrawing troops from the Sahel. This current trend may indicate an unwillingness by major international states to deploy their militaries to operations in Africa. However, these withdrawals are not being accompanied by improved African militaries, suggesting that a skills and capacity gap will be left in Africa.



The root causes of conflict on the Continent, such as poverty, unemployment, and inequality, persists, which lends itself to the argument that conflicts, insecurity and instability will likewise persist in some parts of Africa. The lack of strong African militaries, and diminishing support from Western states, are leaving gaps and opportunities for PMCs. Due to the persistence of conflict in Africa, it is likely that PMCs will continue to be actors on the African continent for many years to come. As such, it is important for Africa that regulations on the activities of PMCs exist.

Regulations are needed to ensure that PMCs do not carry out human rights abuses in Africa, and that they do not abuse their positions. PMCs operate in areas where government presence is low, meaning that PMCs can act with impunity in certain communities, as communities cannot turn to the government for protection and recourse. Ensuring that local communities are protected from the actions of PMCs is therefore important in Africa. Checks and balances need to be put in place in order to monitor the actions of PMCs in local communities, and to ensure that they do not take advantage of the lack of, or weak, government presence in local communities. Similarly, checks and balances also needs to be put in place to ensure that governments do not prioritise their relationships with PMCs over their duties to protect their local populations.

Furthermore, regulations need to be put in place to ensure that PMCs do not gain too much local influence in countries where they operate, either over the government that has hired them, or over the local population with whom they interact. States and local populations may become beholden to PMCs that have helped to establish stability in their country or region, which may result in PMCs controlling access to services, or imposing themselves on local communities. PMCs may also gain control over natural resources such as gold or diamond mines, which states do not have the capacity to take control back from the PMCs.

While many African states may lack the military capacity to defend themselves against all threats to their territories, at the regional level structures such as the African Peace and Security Architecture (APSA), and the African Standby Force (ASF), should be viewed as alternatives to the use of PMCs. Attempts to strengthen these structures may help to establish them as viable solutions to instability and conflict on the Continent, and prevent the need for African states to turn to PMCs to assist in re-establishing control over their sovereign territories. Despite being established in 2003 the ASF is not combat ready and underprepared in a number of areas, resulting in the ASF currently not being a viable option for states. However, greater investment in the ASF and the APSA, to the point where they are both effective institutions, offers African states another option to using PMCs during times of conflict and instability.

Conclusion

Due to the likely continued persistence of conflict and instability in Africa, as well as weak militaries and lack of sovereign control for many African states, it is likely that PMCs will continue to play a key role on the Continent. The existing international and regional conventions have not been successful in regulating the activities of PMCs. Additionally, local African communities and governments may find themselves negatively affected by the increasing influence of PMCs. As



such, regulations are required in order to protect African governments, and local communities, from the activities of PMCs on the continent.