CHAPTER 1
TO EMBRACE OR NOT TO EMBRACE: ADDRESSING THE PRIVATE SECURITY INDUSTRY PHENOMENON IN AFRICA
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Introduction

Writing on the relationship between trans-national privatised security and the international protection of human rights, Creutz (2006:9) observes that ‘[t]he mixture of state and private actors within the field of security is here to stay and consequently the international community has to find a way, if not to embrace it, at least to cope with it’. The question of whether or not Africa, as part of the international community, should cope with the rapidly growing industry of private security actors is a predicament confronting the continent today. Africa does not seem to have a choice, however, as the industry has permeated all spheres of life and increasingly supplants the state’s primary responsibilities. While accepting the fact that Africa was caught unawares by this phenomenon, the need to arrive at a thorough understanding of the dynamics around the private security industry in the African context cannot be overemphasised.

Much has been said about the industry being associated with mercenarism and this has in effect blurred understanding of the sector vis-à-vis its importance in addressing security issues in Africa. Within international law, mercenaries were for quite some time unequivocally associated with the process of armed opposition to decolonisation as reflected in the 1977 OAU Convention on the Elimination of Mercenarism in Africa and the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries (Cilliers 1999:1). Little did the drafters of these instruments know that the private security industry (made up of companies/corporations as opposed to individuals) would need to be controlled and regulated towards the close of the 20th century, and thereafter, as they are more likely to get involved in mercenary activities as a result of greed. In this regard, the best example is the now defunct Executive Outcomes and its founder’s alleged role in a coup plot that was aimed at toppling President Teodoro Obiang Nguema of Equatorial Guinea and seizing the country’s oil riches.

This monograph is a premier collection of scholarly contributions interrogating the private security industry phenomenon in Africa. The topics addressed in
the various chapters provide a wealth of African perspectives on the private
security industry. The monograph focuses on four broad aspects of the private
security sector. First, it sets the scene by looking at the industry’s growth in
Africa. Second, it underscores the need for addressing this growth through a
variety of regulatory frameworks and an examination of the interplay between
international humanitarian law (IHL) and the private security industry with
specific reference to Africa. Third, it presents perspectives on the private
security industry from South Africa and Swaziland. Finally, the monograph
presents the Swiss Initiative on PMCs and PSCs.

The private security phenomenon evokes divergent opinions on the topics of
its rapid growth and the approach needed for its containment and regulation.
Contributors offer various interesting perspectives on the question of how
Africa must cope with the private security industry, which has become part
and parcel of the global security architecture.

The growth of the private security industry in Africa

Perhaps the first point to note in this discourse is one that Stead (2006:36)
raises, namely that ‘Africa remains a turbulent environment [and] is
perceived as a continent in continuous conflict, although there are countries
and regions where instability is absent’. Any explanation of the situation in
Africa (whether during peace or war) should be put into perspective while
taking into account a number of issues; in other words, African challenges
must always be viewed in context rather than in isolation. Kisiangani (2007)
likens the African continent to a forest that cannot be fully appreciated and
understood by examining individual trees. The private security industry,
which is broadly divided into private security companies (PSCs) and
private military companies (PMCs), operates in both stable and unstable
environments in Africa. The growth of the private security industry in
Africa can be ascribed to a number of reasons, and that being the case, any
approach to the challenges brought about by PSCs/PMCs must be informed
by an understanding of the industry’s growth and of the environment within
which it operates.

Opening the discussion, Ndlovu-Gatsheni (chapter 2) addresses the
relationship between weak states and the growth of the private security
sector in Africa. He argues that the weak African state owes its existence
to the end of the Cold War when the demobilisation, disarmament and
reintegration (DDR) processes left many soldiers stranded without resources.
Accordingly, he argues that the weak African state is ‘not just an innocent
political formation in need of humanitarian rehabilitation’ but ‘a dangerous phenomenon if conceptualised from a security perspective.’ This observation is pertinent to the debate in that due to the weakness of the African state, African leaders resort to the private security sector for assistance in order to maintain power. This presents an enormous challenge in terms of regulating an industry that is much utilised by African leaders to ensure that they stay in power.

Taking the debate further, Foaleng (chapter 3) looks at the nexus between natural resources, civil wars and the involvement of the private security sector. Taking Kisiangani’s ‘forest-Africa’ example, Foaleng examines the ‘forest’ by looking at what lies on the ground in the undergrowth. The presence of the private security industry in this context is therefore informed by the natural resources found in a particular state. The most ‘popular’ African countries mostly infested with ‘soldiers of fortune’ include Angola, Mozambique, Sierra Leone, Sudan, Liberia, Congo (Brazzaville), and Democratic Republic of Congo (DRC). All these countries have one thing in common: They are well endowed in terms of natural resources. What makes things worse in these countries is the fact that when conflicts erupt as a result of the ‘scramble’ for natural resources, civilians shoulder the pain of being internally displaced, seeking refuge, being subjected to human rights abuse, and even being killed. African conflicts have no doubt resulted in an exceedingly high number of refugees.

Foaleng highlights the risk involved in using military companies as security companies, as well as the relationship between natural resources and civil wars. She argues that the nexus between the exploitation of Africa’s natural resources and its wars is exacerbated by the intervention by different actors who fan the wars in order to gain access to and exploit natural resources. Presented with the ‘get rich or die trying’ dilemma, private security actors in Africa are always in favour of the obvious. Economic gain is the only reason why private security actors are operating in Africa; the continent’s peace and stability have no place on their agenda. Hence Foaleng’s questioning their claim of assisting legitimate African governments. She concludes by stating that in many cases, rather than empowering the state, the engagement of PSCs has been an obstacle to the development the state’s capacity to control and manage its national natural resources.

Underscoring the importance of the private security sector in peace and stability operations, Messner (chapter 4) vociferously disputes Foaleng’s criticism of the private security actors’ claim that they are ‘angels’ of peace and security in Africa. He makes it clear that the industry has in fact ‘rapidly
become an indispensable component of peace and stability operations worldwide’. Messner differentiates between legitimate companies that support peace and stability operations and the illegitimate actors who have participated in some of Africa’s conflicts over the past few decades. He argues further that peace and stability operations frown upon the use of the term ‘mercenary’ because it has not been defined legally and credibly and is often used by the industry’s opponents to tarnish its importance and reputation. Throughout his chapter, it is interesting to note that Messner avoids the use of the terms ‘private security company/corporation’ and ‘private military company/corporation’ in favour of ‘private contractors in peace and stability operations’, thereby dispelling their involvement in mercenary and other illegal activities. Their mission in African conflicts is, therefore, to ensure peace and stability. Whether the African continent is now peaceful and stable as a result of inter alia the involvement of private contractors is a matter deserving of thorough investigative scrutiny.

Messner identifies the clients of the private security industry, which includes the United States (US), the United Nations (UN) and the African Union (AU), to name but a few. He notes that there is an important need for private contractors in peace and stability operations in the sense that they offer greater accountability and professionalism. He is however quick to concede that private contractors are not immune to abuses and problems. Despite this, because of their commercial reputation is at stake, private contractors are more ‘prone to allocate greater attention to risk management in conflict situations, since jeopardising the life of their employees is, if not anything else, highly unprofitable’. The issue of profitability is what Messner implores serious researchers to appreciate as it is, from a commercial perspective, a concern and an incentive that deter private contractors from jeopardising their business. Messner further discusses the various methods and structures for regulation of private contractors in peace and stability operations and identifies contracts, domestic and international law, and internal industry standards as tools in this regard. In conclusion, Messner steadfastly argues that ‘[t]he increased use of private companies in peace and stability operations has become a fact of life, and is impossible to reverse.’

Addressing private security sector challenges in Africa

Bearpark and Schulz (chapter 5) present a qualification to Messner’s argument that private contractors are rapidly becoming indispensable components of peace and stability operations worldwide and particularly in Africa. Although they accept that the private security phenomenon in Africa presents great
opportunities, Bearpark and Schulz recognise that the industry also poses severe risks. This recognition is important in this discourse since not every PSC that operates in Africa can be said to be interested in peace and stability. They argue that on the one hand, PSCs have the potential of improving the security situation for people where the state fails to do so provided such a service is delivered in a professional and accountable manner. On the other hand, they aver that ‘in the absence of professional standards, [the] activities [of PSCs] may aggravate an existing security activity or simply reinforce it through leaving the underlying causes of insecurity untouched’. They note that any effort aimed at regulating the industry must take these risks into account. Perhaps two additional questions should also be considered in this debate: Who determines whether or not private security providers are professional and accountable? And, what benchmarks should be used to examine these providers? Regulation of the private security industry must be coupled with agreed minimum standards below which service providers should not be allowed to operate in the market. Whether this is feasible is another matter.

Bearpark and Schulz also tackle the definitional challenges with regard to private security activity in Africa. They map out the various activities provided by PSCs and divide them into four broad, distinct categories, namely:

- Companies that offer both armed and unarmed private security services in the domestic market

- Companies with headquarters or offices in several countries (in other words, international companies) that offer ‘premium’ security services, including static armed guarding of embassies, facilities of international corporations, oil fields and pipelines, mines and critical infrastructure

- Companies that offer military services (in other words PMCs)

Bearpark and Schulz point out that the distinction between PSCs and PMCs may be largely semantic reflecting cultural preferences and caveats. They contextualise the challenges of the private security sector in Africa by providing examples from Nigeria, Kenya and Sierra Leone and argue for the need for regulation of the industry in Africa through what they refer to as a ‘matrix approach’. The matrix approach consists of regulatory schemes at the national, regional and international levels, as well as at industry level. In conclusion, the authors argue that governments must fulfil their obligations towards their citizens, especially when it comes to the provision of security, and should develop and enforce effective regulatory mechanisms in order
for the industry ‘to contribute meaningfully to the creation of a secure and stable environment’.

Presenting a humanitarian dimension to the private security sector debate, Williamson (chapter 6) highlights the position of PMCs and PSCs in international humanitarian law. He discusses the new realities of conflict, including the increased presence of PSCs and PMCs in armed conflict situations, the changing nature of support provided by these companies and the increased presence and increased contact with persons protected under IHL. In his chapter Williamson emphasises the blurring roles of PSCs and PMCs and argues that PSCs/PMCs should be aware of their responsibilities and position under IHL. He argues that states must meet their obligations under IHL in relation to the actions of PSCs/PMCs and notes that there is no legal vacuum in armed conflict situations since IHL is applicable. Williamson outlines what constitutes IHL and depicts conflict as a reality. He then discusses the development of the Geneva Conventions and Additional Protocols and the possibility of viewing PSCs/PMCs as combatants under IHL, defining combatant status in terms of their responsibilities.

Williamson further discusses criminal responsibility, focusing specifically on war crimes, individual criminal responsibility and state regulations. He defines war crimes as grave breaches as covered by the Geneva Conventions and Additional Protocol I and other serious violations, covered in Additional Protocol II, Statutes of International Tribunals and national legislation. He argues that war crimes must be punished and that states must enact national legislation prohibiting and punishing grave breaches. In addition, states must either initiate prosecution proceedings or hand suspects over for trial in another state. Concluding his chapter Williamson reiterates that IHL is adequate and that a pragmatic approach to dealing with complex IHL questions should be adopted. If in doubt about their status, PSCs/PMCs should not take part in hostilities. Finally, he stresses that IHL must be respected at all times in armed conflict.

Following Williamson’s chapter, Fallah (chapter 7) takes the debate further by presenting the practical challenges of IHL with regard to the principle of distinction between combatants and civilians, which she views as critical to the conduct of hostilities. It is through this principle that a framework for the regulation of actors (including private security actors) in an armed conflict is formulated. In her discussion, Fallah considers the principle of distinction to be ‘a fundamental aspect of IHL’ as it operates on the basis that those individuals already legitimately involved in the war effort may be the objects
of attack, whereas those who are not are to be protected. She dissects the principle and considers its significance for the private military industry.

The specific enquiry to which Fallah confines her discussion is whether private security contractors could be said to be participating directly in hostilities and the impact of this enquiry on those private security contractors in terms of the principle of distinction. Fallah looks closely at the meaning of direct participation in hostilities under IHL and the implication thereof on the involvement of private security operators. She concludes her discussion by stating that, owing to the complexities involved in armed conflicts, no useful international legal instrument is capable of providing an exhaustive list of the conduct that amounts to direct participation in hostilities. The law will always rely upon the judgment of actors in an armed conflict but where situations become tricky, the judiciary becomes essential.

**Regulation of the private security industry at the domestic level**

Two case studies pertaining to the private security sector at the domestic level are presented in this monograph, namely South Africa and Swaziland. Minnaar (chapter 8) considers the notions of oversight and monitoring of non-state/private policing. He focuses on the questions of misconduct, the use of force and criminal activities associated with private practitioners in South Africa. Minnaar acknowledges the fact that the South African private security industry is reasonably well regulated by legislation, but notes that legislation does not make provision for an oversight monitoring body. He lays a foundation by presenting the context within which the private security industry has grown in South Africa, especially after 1994. The South African private security sector remains the fastest growing industry in South Africa and accordingly, the ratio of private security officers to every uniformed police member stands at 2:1.

Minnaar highlights the feelings of insecurity and fear of crime among South Africans as the main reason for the increasing reliance upon the private security sector, whose functions are those which used to be the sole preserve of the public police. He also considers the regulations of the private security sector in South Africa in much detail and goes on to discuss the additional oversight and monitoring problem within the South African context as against international control/monitoring responses. He also considers formal public-private partnerships, oversight and the need for monitoring. In conclusion, Minnaar underscores the need for professional training in policing and the formulation of accountability structures among the private security sector.
providers, which are both essential elements for monitoring and oversight of the industry.

Presenting the Swazi perspective, Simelane (chapter 10) investigates the question of the state, security dilemma and the development of the private security sector in Swaziland. He presents a brief literature review of the growth of the private security industry and argues that Swaziland is no exception in the proliferation of the industry, which is largely informed by the Swazi people’s concerns over their personal security. Due to the absence of previous research in this field as it relates to Swaziland, Simelane relies on personal interviews. Stating that since Swaziland does not have any PMCs—owing to its small geographical scale and the fact that it has enjoyed relative political peace—his discussion is confined to PSCs operating at the domestic level. Mapping out the development of the private security industry in Swaziland, Simelane argues that this is largely a post-colonial phenomenon. He indicates that the industry in Swaziland is almost completely confined to the guarding sector.

In so far as the implications of the growth of the security sector on the Swazi state are concerned, Simelane argues that the privatisation of security implies that traditional responsibilities of the state have shifted to the private security industry, which is largely uncontrolled. The growth of the private security industry is an indication of the weakness of the Swazi state. As a result of this weakness, a community police forum has developed but does not have a cordial relationship with state police. He argues that the conflict between these two have not reached a crisis level due to the fact that public security forces still have the upper hand in security-related activities. Simelane concludes his chapter by stating that ‘[t]he development of the private security sector in Swaziland has had small beginnings but it contains all the trappings of the industry as it has grown in other countries’.

**Charting the way forward**

Having considered the growth of the private security industry in Africa, the various ways in which it manifests itself and the dilemma it presents in Africa at both the domestic and the international level and in peace and conflict, Markus Dutly charts the way forward by presenting the Swiss Initiative on Private Military and Security Companies. The Swiss Initiative is a response to the ever-increasing number of private military and security companies that are more and more involved in a variety of actions during war/conflict and times of peace across the world. Dutly gives a background of the
Swiss Initiative, an inter-governmental dialogue initiated by Switzerland in cooperation with the International Committee of the Red Cross (ICRC) with a view to ensuring and promoting respect of IHL and human rights by states and security companies. His focus is on the trans-national sector.

Dutly also identifies the main objectives of the Initiative, as follows:

- To contribute to an inter-governmental exchange on the challenges posed by the use of PMCs/PSCs
- To re-affirm and clarify the existing obligations of states and other actors under international law, in particular under international humanitarian and human rights law
- To study options of regulation and other appropriate measures at the national and, where possible, at regional and international levels, and possibly elaborate good practices for states, in order to assist them to meet their responsibilities under international law

He presents an overview of two expert meetings that took place in 2006 with the objectives of discussing the various issues, reflecting on possible answers and elaborating on best practices with regard to PSCs and PMCs. He reports on the outcomes of the meetings and concludes by stating that participants expressed interest in continued study of the options of regulatory models and further elaboration, on the basis of existing obligations, on good practice for states with regard to elements of national (or other) regulation contracts. He gives the assurance that Switzerland and the ICRC will continue the inter-governmental exchange on the important issue of PSCs and PMCs and the elaboration of good practice for states to meet their obligations under IHL and human rights law, and emphasises the particular importance of the perspective and experience of African governments in this regard.

**Conclusion**

The contributions in this monograph cover a wide range of interesting yet complex issues arising from the involvement of the private security sector in Africa. From its growth, operations, and the challenges it presents at the national, regional and international levels, the contributors offer various options on how to best regulate and control the industry in Africa. While there is no one-size-fits-all answer to the manner in which the industry could be best regulated, it is clear that African states must take the lead
to get involved, collectively and individually, in debates that are aimed at facilitating an understanding of the industry, its advantages and disadvantages and how to address all of these effectively in Africa. Such debates should ensure that African states augment their efforts to provide security to its citizens, especially to those who cannot afford to pay for private security services. African States have an obligation to ensure the security of their citizens and the ever-increasing proliferation of PSCs and PMCs in Africa should be allowed provided that it complement African states’ objectives and contribute significantly to peace, security and stability in Africa. Any PMC or PSC with a mission beyond this objective is unwelcome.

The fact that the privatisation of security is going nowhere is a reality that Africa must live with. It is a phenomenon that Africa must address robustly at all levels. This should be informed by a thorough understanding of the industry and, in particular, that it does not necessarily represent mercenarism, which is its darker side. Thus, a distinction should be made between PSCs, PMCs, mercenaries and vigilantes since their roles are potentially overlapping and criss-crossing activities, personnel, and relationships usually blur their roles (Spear 2006:22). Ensuring that the industry does not get into this ‘darker side’ should be the concern of every African state. This monograph lays down a solid foundation for a further debate on the elimination of mercenarism in Africa, which should be pursued at all costs-mercenarism being what the private security sector is most likely to be trapped into as a result the drive to maximise profit. It is hoped that this premier contribution to the debate on private security in Africa will stimulate further discussions that would, in the long run, be essential to ensuring human security in Africa.

**Bibliography**


