



## SUMMARY

### **Proceedings of the Seminar on the Prohibition of Mercenary Activities and Regulation of Certain Activities in Areas of Armed Conflict Act 27 of 2006 Pretoria, 22 May 2008**

The Security Sector Governance Programme of the ISS, through its *Regulation of the Security Sector in Africa* project hosted a seminar on *South Africa's Prohibition of Mercenary Activities in Country of Armed Conflict Act No. 27 of 2006*, for purposes of providing an analysis and commenting on the Act from different perspectives. The commentary on the Act was in view of the global discourse on the emergence of private security/military actors (operating in conflict situations), which are most often than not associated with mercenary activities, rightly or wrongly. The seminar also interrogated the impact of the Act on South African citizens and permanent residents with regard to the exportation of their security and military expertise beyond the South African borders and on the overall regulatory framework (if any) for private security actors at regional and international levels.

A number of presentations were made namely: -

- *A Critical Analysis of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006;*
- *The Impact of Privatizing Security on the Military Profession in Light of the Prohibition of Mercenary Activities in Country of Armed Conflict Act No. 27 of 2006;*
- *The Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006: An International Humanitarian Law Perspective; and*
- *The Impact of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006 on Peacekeeping Missions;*

The presenters' analysis provided a number of critical reflections, which require further debate such as: Isn't it likely that the strictness of the Act would push mercenary organisations further underground? Who is the mercenary? Are private security companies (PSCs)/private military companies (PMCs) mercenary organisations? How do they impact on the military profession? What impact will the Act in question have in terms of armies' ability to make use of the services provided by these companies? Does the South African initiative represent a national best practice that the rest of the world can look at and use for worldwide impact? Is South Africa shooting itself in the foot when looking at foreign policy objectives (in terms

of the role of PSCs/PMCs in assisting the government in peacekeeping operations for example)? In whose interest does insecurity become?

Given this, a number of gaps within the Act were observed: The Act casts a wide and vague net in terms of the individuals it seeks to regulate, extending it to include individuals that provide other necessary support such as humanitarian assistance. Definitions within the Act are subject to major challenges, such as what constitutes a mercenary, which does not necessarily take into account the definitions provided for under international law. In this regard, it also does not specify what constitutes humanitarian assistance. The Act does not make provision for civilian oversight or even parliamentary oversight; giving the executive a wide range of powers that are not provided for in the constitution. Lastly, the punitive nature of the Act provides no incentive for compliance and an arguably dubious institution, the National Conventional Arms Control Committee (NCACC), regulates this compliance.

The discussion that followed then focused on the Act's impact domestically and internationally. The debate looked at the importance of regulating PSC and PMC operations and establishing a partnership with public security services that, due to the nature of African armies, need technical and other related assistance. This is critical as South Africa takes a leading role in a number of peacekeeping missions on the continent. The Act itself should then be lauded as a good effort towards curbing mercenarism though it was instituted to address domestic concerns around ex South African Army operatives' role in destabilizing countries.

To conclude, the way forward was established as being to encourage further debate on the Act as it is seen to cut across a number of fields. This is equally important as it has not yet been operationalized pending the Presidential proclamation in a *Gazette* and such debate could positively influence amendments or modifications, if need be. Insecurity exists and with globalisation pressures grow and Africa needs more assistance that PSCs/PMCs (not all) offer as they arguably create peace and stability. However, we should not forget the impact they have on the military profession as they encroach into military combat role and the need as such for their regulation. In this light, a partnership between public private security providers is perhaps essential. The Act itself is watertight, and there is a need to understand the role which PSCs and PMCs in order to create an informed approach.