

Chapter 3

Engaging Armed Non-State Actors in Post-Conflict Settings

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45

Introduction

It is often inferred that the Weberian model of the state – in possession of a monopoly on the sanction, control and use of force – has proved elusive, particularly in parts of Latin America, Asia and Africa.¹ In recent decades the outsourcing of various security and military functions to private companies has further challenged conventional assumptions about the state's exclusive role in military and security affairs, even in the Euro-Atlantic context.² Data on conflicts give yet further indication of the prominence of armed non-state actors: in 2004 the 19 conflicts recorded by the Uppsala Conflict Data Programme as 'major armed conflicts' were all fought within states, by definition involving at least one non-state actor.³ In addition, 31 non-state conflicts (conflicts involving the use of armed force between two organised groups, neither of which is the government of a state) were recorded for 2003.⁴

Defining 'armed non-state actors' (NSAs) as *armed groups that operate beyond state control* purposely casts the net wide.⁵ It includes, but is not limited to, the following groups:

- Rebel opposition groups (groups with a stated incompatibility with the government, generally concerning the control of government or the control of territory);
- Local militias (ethnically, clan or otherwise based);
- Vigilantes;
- Warlords;
- Civil defence forces and paramilitary groups (when such are clearly beyond state control);
- Private companies that provide military and security services (hereafter private security companies or PSCs).⁶

The categories offered here are fluid, and the same group may be differently classified over time. The splintering of rebel groups, inter-faction or inter-militia hostility, and the various roles played by warlords further add to the definitional conundrum, as illustrated by the recurrence of violence in the West African sub-region, the Great Lakes and Afghanistan.⁷ The conflicts in Sierra Leone, Angola and more recently, Iraq, are illustrative of the extent to which security relations both during and after conflict are shaped by a multiplicity of armed non-state actors (armed groups and the private sector alike), whereas the contracting of private security by other non-state entities, such as rebel groups (e.g. in Colombia), adds further complexity to the armed non-state actor picture.⁸

The relationship between state and non-state actors in conflict or post-conflict settings is often ambivalent. States at times acquiesce in, or actively partake in, the use of private protection to eschew their responsibilities.⁹ Corrupt or ineffective governments may pursue a 'divide-and-rule' logic, preferring competition between various armed groups over the emergence of one strong actor effectively challenging the state's existence; in this instance, the term 'quasi-states', meaning states internationally enfranchised as sovereign but demonstrably lacking in crucial

capacities (e.g. Somalia), is particularly apt.¹⁰ Such conditions may offer significant benefit, often financial, to elite constituencies in society, causing them to have strong stakes in preserving the status quo. In some cases, an armed group may initially be under state control or sanction, only to later assume an autonomous status (e.g. paramilitary groups in Colombia). In other cases, an armed group may originally be considered illegal but further down the line make the transition into the realm of the acceptable (e.g. various Nigerian vigilante groups).¹¹

This chapter affirms the centrality of establishing effective and democratically accountable security sector governance in the context of post-conflict peacebuilding. When⁴⁶ government, tacitly or explicitly, allows other actors to shoulder the burden of its own security responsibilities or failings, including a lack of accountability of its own security forces, this impacts negatively on the legitimacy of the state. The persistent existence of armed non-state actors can thus be seen to provide an entry-point into the process of (re)negotiating the social contract that takes place in the transition from conflict to post-conflict. As such it provides clues as to how accountability and transparency in relations between state and citizen are constructed.

The main objective of this chapter is to illustrate and elaborate on the possibilities for influencing the conduct of armed non-state actors as a preliminary means to establish effective security sector governance in post-conflict settings. The role and functioning of armed groups in various contexts differs substantially from that of (international) private security companies, and the scope for drawing generic lessons as regards the governance of ‘armed non-state actors’ as a unitary category is extremely limited. For this reason, the chapter is divided into two main parts. The first part deals with armed groups as a challenge for security governance in the transition from conflict to post-conflict, illustrating how such groups may both abuse and protect human security needs of local populations. It is argued that the international community is at present too reticent about its interaction with armed groups, primarily because of the inherent state-bias of the international system. There is a need to increase the respect for international humanitarian and human rights standards of armed groups; some practical recommendations for this will be made at the end of this section. The second part of the chapter concerns the special case of private companies being used for the provision of security and military services. The increasing use of international PSCs under the aegis of post-conflict reconstruction and peacebuilding efforts raises questions about states’ capacities (and willingness) to establish effective security sector governance. Prospects for regulating the industry will be suggested as a means of increasing accountability of private sector actors in the security sphere.

Addressing Armed Groups

Armed groups, whether in Comfort Ero’s words simply a ‘home-grown response to insecurity’ or rebel groups with clear political objectives, to a great extent shape the security situation of local populations in weak or conflict-affected states.¹² However, there is little consistency in the way the international community deals with armed groups. Strategies are often determined on the basis of whether a group is conceived as a criminal threat (to be dealt with through law enforcement mechanisms) or a political opponent (to be dealt with in the context of political negotiations); and the arbitration between the two may be subject to political opportunism. When armed groups are formal parties to peace negotiations, influencing their behaviour becomes an integral part of the political bargaining process – subject to much discussion in literature on mediation and peace negotiations. The focus of the present chapter is rather on measures taken *in the absence of* or *beyond* formal negotiation to influence the conduct, practices and attitudes to violence of armed groups.¹³

Armed Groups – Both Abusive and Protective

In the first instance armed groups constitute a threat to human security. Populations generally suffer both direct, physical violence (armed attacks, killings, beatings, kidnappings, rape, genital mutilation) and indirect violence (forced displacement, enslavement, occupation and destruction of property) at the hands of armed groups, of which the activity of Sierra Leone's Revolutionary United Front (RUF) and Uganda's Lord's Resistance Army (LRA) are particularly gruesome examples. Threats to human security may also take more subtle forms through the forming of structures exploitative of civilian populations, for example through economic predation by⁴⁷ rebel and criminal groups on populations or by intimidation to garner 'support' and refuge amongst local populations – a pattern recognisable from the Nepalese Maoist insurgency and the legacy of the Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) in Colombia.

However, armed groups may also serve 'positive' functions for both their members and local constituencies. Well-documented in this regard are economic incentives to violence and the establishment of clandestine economies through looting and 'pay yourself' arrangements ordered or tolerated by leaders of armed groups. Asset transfers may under such circumstances benefit civilian constituencies linked to the group in question.¹⁴ The accruing of economic benefit to one segment of the population at the expense of others illustrates the ways in which human security concerns cut both ways: armed groups may both protect and abuse economic needs of local populations.

Yet less frequently discussed is the way in which armed groups 'protect' other human security needs amongst their members, notably social or psycho-sociological needs. Membership of an armed group may provide not just a means to livelihood and a source of physical protection, but an alternative unit of solidarity and identity. David Keen has pointed to the way in which 'war, status and visibility have been inverted by young people through violence', to explain both the persistence and level of brutality exercised by the RUF in Sierra Leone.¹⁵ Interviews with ex-fighters from insurgencies in Liberia, Sierra Leone and Guinea have illustrated how forced recruitment or abduction at a young age, separation from families and alienation from normal societal structures may lead fighters to confer on commanders a surrogate father role.¹⁶ The social relations of armed non-state groups are complex; and their security roles cannot be treated in isolation from other human security functions such groups may (however inconsistently and undemocratically) serve if peacebuilding strategies are to deal effectively with their existence.

Moreover, local populations' perceptions of state security forces impact on their willingness to join or support armed groups. A study carried out in 2004 including women members of 18 different armed groups indicated that 'nearly all women joined armed groups to shield themselves from violation of their physical and mental integrity by state actors'.¹⁷ In the same vein, members of the Nigerian Njemenze Vigilante Service cite rising crime and a prevalent culture of impunity as central to their decision to establish an armed group.¹⁸

Ultimately, the objective of addressing – or governing – armed groups, as pointed out by Ebo, is a question of either 'eliminating or accommodating' such groups.¹⁹ However, the process of elimination (depriving groups of their possession of arms rather than liquidating their existence as a collective unit) or accommodation (where a negotiated settlement leads to a peace agreement, often followed by the incorporation of former rebel/militia forces into reformed or transitional state forces, military or police) is neither quick nor straightforward, as illustrated by the legacy of groups rearming/reforming, and the challenges of reintegrating ex-fighters in Sierra Leone, the DRC and Burundi. An emphasis on the 'positive' functions served by membership of an armed group should not be seen as giving licence to such groups' existence; but a more subtle understanding of reasons for their longevity is fundamental in devising effective strategies to *counter* their existence, and achieve sustainable post-conflict peacebuilding.

A key difficulty in addressing armed non-state actors is that legal and normative frameworks governing the use of force (international humanitarian law (IHL) and international human rights law (HRL)) are still understood primarily on the state level. The classic conception of the state as guarantor of citizens' rights conceptualises the existence and conduct of armed groups as a domestic politico-criminal problem for the state, regardless of the identity of the perpetrator. International agreements such as the Optional Protocol to the Convention on the Rights of the Child (adopted in 2000, entered into force 2002) are in most cases no exception to this approach, with the key enforcement mechanism being the criminalisation of (recruitment of)⁴⁸ child soldiers by states party to the Protocol.²⁰

The 1977 addition of Protocol II to the Geneva Conventions addressing 'non-international conflicts' represents the first significant attempt to confront the inherent state-bias in provisions of international law. Non-state actors under the jurisdiction of the Conventions are defined as groups that have a clear organisational structure and hierarchy (enabling leaders to control their subordinates) and which control sufficient territory to permit them to carry out substantial and concerted military efforts. Protocol II does not only call upon the High Contracting Parties to respect and protect certain fundamental human rights in times of internal armed conflict, but also confers the same obligation to non-state armed actors, and thus alters their legal personality and standing within international law.

Central in the provisions of laws and norms of war is the protection of civilian life. A distinction between 'combatants' and 'non-combatants' is continuously stressed by the UN Security Council, calling on 'all parties' to respect the sanctity of civilian life.²¹ However, given the frequently deep entrenchment of armed groups within civilian constituencies, this distinction may be manipulated by state and non-state armed groups alike. In Somalia, for instance, militias have attacked entire villages on the basis of clan or ethnic identity. The UN Security Council *Aide Memoire*, adopted in 2002, requests attempts at securing humanitarian access on a 'structured and co-ordinated basis'.²² The *Aide Memoire* outlines various broad areas for consideration (e.g. security for displaced persons, access to vulnerable populations, security of humanitarian personnel, rule of law objectives) but provides no guidelines as to how or by whom contacts with armed groups should be made.

A significant shift in international human rights norms took place during the 1980s and 90s when leading human rights organisations such as Amnesty International and Human Rights Watch (HRW) altered their definitions of human rights abuse to include acts committed by non-state actors. Subsequent issuing of public statements and reports to reflect this has produced a global practice of 'naming and shaming' armed groups that perpetrate human rights abuses, both in the context of armed confrontation with state or non-state warring parties and against civilian populations.²³ The normative significance of increased reporting and documenting of human rights abuse *per se* is a considerable achievement; yet the susceptibility of groups to such pressure and actual impact on their behaviour is evidently varied.

The impact of public denunciation on a group's behaviour is contingent on a range of factors, such as the level of organisational structure, leadership and general international standing of the group in question. Clearly a group such as the Sudanese SPLA/M, after years of partaking in a comprehensive and internationally supported peace process with the Government of Sudan, would be more conscious of its international reputation than the Janjaweed militias, who have no ambition of assuming a political role, whose organisational structure and leadership is unclear, and who have earned themselves an international reputation as bandits.²⁴ Groups that are dependent on financial support from diaspora communities may be among those more susceptible to international denunciation given the negative effects that this may have on their international constituencies' willingness to support their cause.²⁵

In recent decades, the interplay between the strengthening of international normative frameworks and efforts to promote respect for human rights standards amongst armed groups has been complicated by the global counter-terrorism agenda; and the enactment of new legislation to

combat international terrorism has in some cases been criticised for compromising civil liberties.²⁶ While harder security measures, such as international police cooperation or inter-state collaboration on border monitoring, are important, there is risk that such measures are developed without sufficient consideration of softer aspects of security of affected populations, or without being complemented by measures to address attitudes of people ready to take up arms against civilians. In many cases, the use of the label ‘terrorist’ has given significant political benefit to governments that are less concerned with upholding human rights, such as in the case of the⁴⁹ Russian government’s handling of the conflict in Chechnya or recent developments in Uzbekistan, and has obvious implications for the capacity to influence armed groups.²⁷ In some cases the application of counter-terrorism policies has even impeded efforts to deliver aid to populations affected by armed conflict, as recognised in a recent UN Secretary General Report.²⁸

Soft Measures – Directly Engaging Armed Groups

Efforts to influence the attitudes and hence conduct of armed groups are generally made by actors other than the government of the state in question, most importantly international organisations and NGOs active in the field. It may also be a task under the mandate of a multilateral peace operation.²⁹ The International Committee of the Red Cross (ICRC) occupies a unique position in its work to raise awareness of, and increase respect for, IHL and human rights standards amongst armed groups by virtue of its permanent mandate under international law and recognised policy of impartiality, independence and neutrality. In many cases this makes the organisation the only accepted external actor in situations of widespread violence and abuse, where information campaigns and training in IHL and IHRs are prominent amongst ‘soft’ measures to ‘govern’ armed groups.³⁰

Interaction, and hence attempts to influence the behaviour of armed groups, also takes place when such groups share operational space with external actors. Importantly, NGOs and humanitarian actors in many cases find that the delivery of aid and humanitarian relief to populations forces them into a situation where they need to enter into dialogue with an armed group. The negotiation of ‘safe corridors’, both land and water, in rebel or militia-controlled areas often involves talking directly to armed groups, as does catering for the needs of displaced populations and protection of camps for refugees or internally displaced populations (IDPs). The long-standing presence of Rwandan rebels (Forces démocratiques de libération du Rwanda, FDLR), periodically launching attacks on Rwanda from the eastern provinces of the DRC, and the population of refugee dependents illustrates the intricate challenge of confronting refugee populations.³¹ By negotiating temporary and isolated instances of cooperation or agreement with an armed group, external actors exercise a measure of influence over the group in question, albeit limited.

The presence of multinational corporations (MNCs) in areas affected by, or under the effective control of, armed groups adds to the web of actors, both during and post-conflict. Instances of MNCs engaging in dialogue with, and at times securing cooperation from, armed groups have been reported in most of Africa’s conflict areas. Reports that AngloGold Ashanti, part of the international mining conglomerate Anglo American, developed links with the Nationalist and Integrationist Front (FNI), a group infamous for atrocities committed against civilians, in order to secure access to the mining sites around Mongabwalu in the Democratic Republic of Congo (DRC)’s Ituri district, illustrates the treacherous ground occupied by MNCs in conflict affected areas.³² In recent years, considerable effort has been devoted to making companies more sensitive to the effects on conflict of trade in natural resources, with the Kimberly Process regulating international trade in rough diamonds as a notable success.³³ Whether MNCs entering into direct dialogue with armed groups could add to the abundance of actors seeking to influence the conduct of armed groups has been less explored. International Alert, a London-based NGO, has recently argued that companies could be viewed as

intermediaries between rebel commanders and peace negotiators or the government in question, using their leverage with armed groups to influence their behaviour and promote peace.³⁴

An instance of direct engagement with armed groups is found in the work of Geneva Call, an NGO advocating the signing of a 'deed of commitment' (DoC) by armed non-state groups to stipulate the non-use of anti-personnel landmines. The DoC instrument is unique in that armed groups are generally not eligible to sign international treaties or join international organisations. Although the monitoring and verification of landmine non-use by armed groups is notoriously difficult, Geneva Call's efforts are interesting in that they provide armed groups with a forum⁵⁰ for seeking international recognition beyond traditional frameworks. Though the DoC instrument is exclusive to Geneva Call, there is no reason that a similar tool could not be constructed for other issue areas, such as the recruitment of child soldiers.³⁵

Common to attempts by external actors to influence armed groups is the ad hoc nature of their activity and the lack of an agreed framework within which such activity takes place. The international community has not solved 'the rebel problem' and, with the notable exception of the ICRC, humanitarian actors, conflict management NGOs and private companies are largely left to devise their own strategy of engagement with armed groups – in most cases without state or UN sanction.³⁶ The lack of consensus on what such strategies should look like is further complicated by the fact that much engagement takes place on an informal basis, by actors that themselves do not have official (state-sanctioned) status. The example of the European Union funding a two-year project by Geneva Call to engage with the ELN on the issue of landmines (despite the ELN being branded as an international terrorist organisation), while the Colombian government itself has proven reluctant to support the process, is indicative of the mixed messages external actors face in this regard.³⁷ Another example of state-resistance is seen in the stalled discussions within the UN Group working to draft a legally binding instrument for the protection of all persons from forced disappearances; discussions faltered on the issue of whether the instrument should be made binding on non-state actors as well as states.³⁸

The lack of established principles on which armed groups the international community should engage in dialogue, and under what circumstances, makes for fragmented efforts at influencing their behaviour. Within the range of actors and strategies used, some efforts are clearly more effective than others and the lack of communication and trust between track 1 and 2 actors in particular complicates discrimination between methods. Moreover, there are specific risks associated with large number of actors interacting with armed groups without sufficient coordination of efforts; for instance there have been reports of armed groups playing different humanitarian agencies against each other to gain political, tactical or material advantages, both mitigating the efforts at addressing the treatment of civilians and further diminishing the space for humanitarian action.

Towards a More Systematic and Effective Engagement of Armed Groups

Efforts should in the first instance be directed at reinstating a state monopoly on the use of force, effective rule of law, and individual accountability for crimes committed. Although the issue of engaging armed groups is inherently fraught, broad guidelines could be identified to provide for a more systematic and effective engagement with armed groups until they are effectively demobilised. A precondition for this is a more frank dialogue between affected parties, including affected states.

Attempts to govern or influence armed groups should be seen in the context of broader sensitisation programmes that seek to increase respect for human rights amongst the population at large.³⁹ Various external actors, in particular UN agencies and international civil society organisations (CSOs), have long been conducting such programmes, often in the form of information dissemination and educational campaigns. However, research on the challenges of effective disarmament, demobilisation and reintegration (DDR) suggests that individual fighters

often have negligible knowledge of human rights principles. Recent attention to DDR as a process of ‘social engineering’ indicates the link with efforts to affect the attitude and behaviour of armed groups.⁴⁰ Engagement with armed groups prior to formal DDR, and as a complement to it, should be given priority, and efforts thereto by CSOs given more recognition at the state/international level. In this respect the targeting of particular constituencies within armed groups, such as women or youth, may lead to more effective sensitisation.⁴¹ Furthermore, addressing armed groups in the context of broader sensitisation programmes skirts the issue of whether or not a particular group is considered an official actor in the conflict, which may impact on its involvement in formal DDR.⁴²

The fact that armed groups often maintain links across state borders, drawing on the same constituencies of populations (frequently displaced as a result of earlier conflicts) and/or receiving financial or material support from neighbouring governments, means that efforts to influence the attitudes of fighters need to take a regional approach.⁴³ The re-recruitment of ex-fighters having gone through the DDR process in Liberia to insurgency movements in Guinea, as well as the rising tensions amongst refugee populations in Guinea’s *Région Forrestière* are recent examples of porous borders permitting spill-over of both people and arms.⁴⁴ A preliminary report published in 2004 by the Small Arms Survey and the Foreign Ministry of Mali (as chair of the Human Security Network) identified 25 armed non-state groups, active in nine of the fifteen ECOWAS member countries. The report called for more frank tackling of the issue by states: ‘today’s pro-government militias may become tomorrow’s rebel groups.’⁴⁵

Attempts have been made at addressing human security in West Africa through regional cooperation; such collaboration should consider the issue of influencing armed groups in more detail. The first ECOWAS-civil society consultation in 2003 saw the creation of a West African Civil Society Forum (WACSOF), a support network of over 100 civil society organisations.⁴⁶ Though it is still young, WACSOF might provide a good stage for strengthening cooperation between track 1 and 2 efforts at governing armed groups in the sub-region.⁴⁷ The West Africa Network for Peacebuilding (WANEP), which facilitates networking and training of peace activists, may be another forum in which practitioners could share experience on addressing armed groups in the context of post-conflict peacebuilding.

The involvement of local communities is frequently cited as a key priority within the peacebuilding agenda.⁴⁸ Potentially interesting, but relatively unexplored in this respect, is the potential for gearing leaders of armed groups toward peacebuilding by making them more sensitive to IHL and human rights during the conflict phase. Though such efforts require sensitive calibration there is a clear need to ‘talk to the bad guys’, even in the absence of formal settlement, if peace is going to last. Research on efforts to draw on local leadership capacity in peace processes – converting ‘warlords into peacelords’ – in Afghanistan, Sierra Leone and Kosovo, has shown that there is uncertainty as to how best to capitalise on local leaders’ influence, as well as integrate local capacities with international ones.⁴⁹ Giving more attention to the factors at work in the transition to order after conflict necessarily involves engaging all armed constituencies, and may perhaps be seen as an incentive for local leaders to promote good behaviour.

Furthermore, efforts to affect the behaviour of armed groups need to operate on a case-by-case basis. The contrast between a situation such as Colombia, where there has been a high degree of continuity in the composition of armed groups over the last decades, and West Africa or the Great Lakes, where groups have frequently splintered and reformed, indicates that strategies for engagement may not be transferable from one context to another.⁵⁰ Context-specific approaches would also need to take into account the societal structures and the particular constituencies (young, destitute or well-off and powerful) that armed groups draw on for support. Consideration of a particular group’s degree of organisation, cohesiveness, political agenda, leadership and membership is likely to influence the degree of success of various strategies. A particularly important determinant for the possibility to affect change is the armed groups’

organisational coherence and command structure - in the absence of a capacity for command and control, attitudes of leaders may have little impact on the conduct of individual fighters.

What Role for the United Nations?

The recommendations in the 2004 report by the UN High Level Panel (HLP) on Threats, Challenges and Change, that the organisation give renewed priority to mediation (articles 100-103), deserve attention in the context of addressing armed groups.⁵¹ Departing from a human security perspective, the HLP specifically recommends a field-oriented mediation support capacity; greater interaction with national mediators, regional organisations and NGOs involved in conflict resolution; and greater consultation with and involvement of civil society in peace processes. Drawing NGOs and civil society organisations closer to the UN framework would raise the profile of work done to change the attitudes of armed groups and shield such organisations from possible resistance from the host government which may object to any dealings with armed groups in its territory. The UN and regional organisations could in this way strengthen the normative frameworks within which contact with armed groups takes place.⁵²

However, there are also limitations to what the UN or regional (intergovernmental) organisations can do. Establishing standards concerning which groups the international community should engage is unlikely to be productive. The likelihood is that member states would have an interest in presenting the groups they oppose as illegitimate, thus making the criteria for engagement excessively strict and closing the door to dialogue with other groups. In terms of how external actors engage with armed groups, however, more flexibility might be available for setting standards by the international community. In the interest of the UN assuming a more active mediating role and the importance of being perceived as neutral in this task, the argument could be made for a separation of tasks between external actors so that the same actor would not establish the close contacts needed to ensure influence over their attitudes and behaviour of an armed group, and then be forced to act as a neutral arbitrator and mediator in peace negotiations.

Making armed groups conform to IHL and demonstrate greater respect for civilian life is a key human security concern, and one that the UN will likely have to give more attention to, regardless of whether it is doing so in its own capacity or by promoting the assumption of such a 'governance' role by civil society organisations in the transition to post-conflict. The UN Peacebuilding Commission should provide the international community with an institutional framework for influencing armed groups in the transition from conflict to post-conflict, and also enhance continuity, sustainability and coordination of such efforts.

Addressing Private Security Companies

The contemporary private security industry provides a wide range of services. Such services range from those provided at a comfortable distance from the frontline, such as logistics and communications; while others are carried out close to combat environments, e.g. maintenance of key weapons systems or operational support of regular troops. Yet other services may have significant tactical and strategic impact, such as military advice and training, intelligence and even interrogation services.⁵³ Armed protection of sites as well as personal close protection are other key services of the private security industry in weak and conflict-prone states.

Like that of other armed non-state actors, the presence of private security companies in weak states is clearly linked to a security sector deficit or security vacuum. However, as a general rule international PSCs do not operate in response to local (civilian) populations' security needs.⁵⁴ In most conflict and (violent) post-conflict states, private security companies are contracted either by national governments to bolster state security forces, or by external actors, notably multilateral

peace operations, NGOs, MNCs and members of the international media requiring close protection for their staff or other support services. A growing segment of the industry's operations is located in the context of donor-sponsored security sector reform (SSR) programmes, where PSCs are hired to rebuild and retrain police, military and intelligence agencies. The contracting of the US company DynCorp to recruit and train the new Liberian military forces in 2005, as well as the staggering presence of private security personnel in Iraq, is illustrative of the prominent role that the industry has come to play in post-conflict peacebuilding.⁵⁵

⁵³ *Problems of Accountability, Legitimacy and Sustainability*

The use of PSCs raises a wide range of concerns and challenges. First, structures are lacking to ensure that companies – and their employees – perform their tasks to high standards of accountability. The deficiency in accountability of PSCs impacts on a number of levels but most immediately includes a lack of clear mandates, standard operating procedures or rules of engagement, inadequate safeguarding of companies' respect for human rights, inadequate vetting and training of personnel, as well as problems of financial accountability and contractual oversight and monitoring; all of which complicates, and risks undermining, effective and equitable peacebuilding.

Second, the use of private security providers by external actors risks creating a skewed distribution of security as safe 'enclaves' are established within an otherwise insecure environment. This may in turn fuel grievances amongst populations who observe an increased militarisation of society while their own physical security remains uncertain. The coupling of MNCs with international PSCs is particularly compromising in contexts where an inequitable distribution of resource revenues may have triggered grievances and rebellion in the first place.⁵⁶

Third, there is a risk that shouldering of costs for protection by external actors is seen as an alternative to building up sustainable, effective and democratically accountable state institutions.⁵⁷ Though the use of private actors to implement SSR programmes may provide donor countries with a quick avenue to channel support, there is a risk that such companies are seen as a short cut to the costly and politically burdensome task of rooting out corruption and misconduct within state forces. This in turn may dilute the political content of the relationship between donor and recipient state, as well as promote the aim of increasing effectiveness and capacity of security forces over that of increasing democratic accountability and legitimacy, both aspects that are integral to sustainable SSR and wider peacebuilding.⁵⁸ An important, and related, concern is that of international companies offering highly competitive salaries and thereby enticing away individuals from state security forces, a trend that has added to the difficulties faced in recruiting and protecting staff for Iraqi police forces, as well as in the reconstruction process in Afghanistan, another private security epicentre.⁵⁹

Regulating the Private Military and Security Industry

A complete ban on the private security industry has been widely discarded as counterproductive, running the risk of promoting 'rogue' companies over those seeking respectability, pushing the industry further underground, and, on some accounts, wasting a potentially useful resource.⁶⁰ If sufficiently regulated, the potential for international PSCs to contribute positively to SSR, post-conflict reconstruction and support of multilateral peace operations more generally would be significantly improved.⁶¹ However, any constructive effort at regulation must balance a wide set of interests and issues in order to be effective: those of the 'host' state, the state in which the company is operating, those of the exporting or 'home' state, and, importantly, the host state populations. In addition, the industry's international clients, NGOs, MNCs and international or

regional organisations, need to ensure that their use of the private sector meets agreed standards. The global reach of the industry and the ease with which companies can shift country of registration makes it unlikely that any one instrument will capture all activities; accountability, legitimacy and practicability of private security provision need be ensured through overlapping structures of regulation.

For states that are host to international PSCs, the primary need is to ensure that individual contractors operate under individual legal accountability and respect human rights. The inadequacy of international legal instruments covering the activities of private security⁵⁴ personnel defers the issue of individual accountability to the state level.⁶² The case of Iraq, where contractors have been granted immunity from local prosecution under Coalition Provisional Authority Order 17, is not exceptional; and although this theoretically deflects responsibility for holding individuals accountable for wrongs committed to the country in which the company is based, the record for enforcement is not encouraging.⁶³ The negotiating away of accountability under local legislation considerably reduces the host state's influence over private security personnel on its territory.

Further, it should be the responsibility of exporting states to ensure that 'their' PSC operations meet adequate standards of accountability and legitimacy. However, few exporting states have sufficient regulation in place. The United States operates a licensing scheme for security and military services under the International Traffic in Arms (ITAR) legislation; but this is widely regarded as inadequate or even idiosyncratic, with little procedural consistency.⁶⁴ Despite considerable pressure for UK regulation of the export of private security services, the Government has so far failed to deliver on this; neither US and UK stated intentions to improve on existing regulation has so far made any significant advancement.⁶⁵

In principle, licensing schemes for exporting countries could operate on two levels: on the company level, where the company would apply for a general licence and then be subject to registration of individual contracts; or on a specific activity/contract basis, where each contract would have to be licensed by the exporting government. Given the different strategic impact of the same type of service depending on operational environment, the latter option is clearly favourable. Providing close protection services in Iraq, for instance, has frequently brought contractors into exchange of fire with insurgents and direct participation in combat; while in less insecure environments such services may have more of a deterrent effect.

The ease with which companies can relocate to other countries means that interstate collaboration on setting standards is required. The European Union, which regulates its member states' exports of armaments, is one conceivable forum for a broader regulatory 'regime' on the exporting of private security services.⁶⁶ This in turn might provide a platform for further international discussion on private security transfers. NGOs, MNCs and intergovernmental organisations (UN, EU, African Union, ECOWAS) need also to adopt clear standards for the circumstances under which they contract private security. Though there have been attempts at formulating standards for international clients' contracting of PSCs, such as the 2000 Voluntary Principles for Security and Human Rights setting standards for MNC's contracting of private security, primarily for close protection, such standards have suffered from permissive language and a comparative lack of international endorsement.⁶⁷

A complementary measure that could be taken should come from the industry itself.⁶⁸ An international code of conduct (CoC) for the operation of private security companies, preferably drawn up by the members of the industry in cooperation with constituencies that have knowledge of, and high credentials within, the context of IHL and human rights norms (importantly humanitarian agencies and NGOs that share operational context with PSCs), as well as international organisations, could be adopted by companies as a standard contractual clause. This would provide clients, whose current frames of reference for contracting services are largely based on anecdotal evidence and personal relationships, with a standard of reference.⁶⁹ Issues covered by an international code should be compatible with those relevant to national licensing

procedures, and include provisions for the adequate training and vetting of personnel, clear tendering and contracting procedures, transparency both in contracting and in operations (including financial transparency), and due consideration of the sensitivity and particularity of the operational environment that PSCs generally operate within.

Crucial to any regulatory framework, whether national licensing or international standards, is the question of oversight and monitoring. If the UN would formally endorse standards for the industry's operation, the organisation could perhaps also develop an 'audit capacity' by⁵⁵ providing trained staff to monitor PSC operations through intermittent checks and regular dialogue with all affected parties (companies, governments, NGOs). Such a capacity could conceivably be developed under the new UN Special Rapporteur on Mercenaries' Office, preferably in conjunction with the UN Peacebuilding Commission.

Conclusion and Policy Recommendations

As alluded to at the outset of this chapter, efforts to 'govern' armed non-state actors, whether armed groups or private security companies, are generally met with two sets of common concerns. The first relates to the relationship between state and non-state actors. The argument is frequently made that by addressing and engaging armed non-state actors, the international community is in effect conferring undue legitimacy on what are inherently illegitimate actors. Governments that are reluctant for armed groups to receive an international voice by proclaiming a commitment to fair practices frequently raise this concern. Similarly, some critics of the private security industry have argued that there is no place for private companies in post-conflict peacebuilding, regardless of the standards to which such companies adhere.

The state/non-state relationship is important both on a philosophical and practical level, and underlines the importance of addressing armed non-state actors only as a complement to building up functioning state institutions, including judicial and penal systems. From a human security perspective however, threats to civilian life need to be countered regardless of the identity of the abuser of human security, and before effective re-instatement of a state monopoly on violence can take place. With regards to international PSCs, neither demand nor supply show any sign of waning, and efforts at regulation of the industry should not be seen as a relinquishing of the goal of a state monopoly of violence *per se*, but as a pragmatic engagement with current realities.

A second concern is that by governing armed non-state actors there is a risk of prolonging or sustaining conflict by making the behaviour of rebel actors seem more legitimate, or by allowing governments to prop up their forces with private sector support. However, from a utilitarian point of view it can be argued that whatever increases the security of civilian populations should be seen as a good in itself. Moreover, engaging armed groups can be seen as a first step toward a 'socialisation' process, where the promotion of democratic standards is directed at all segments of society. Similarly, private sector competence can be usefully drawn on, without leading to a prolonging of conflict or intervention 'on the cheap', if done to high standards and with clear demarcations of acceptable and unacceptable activity.

Because of the complex and sometimes contradictory relationships between state and non-state actors, the push for a nascent 'governance' structure of armed non-state actors likely needs to be made from supra- or sub-state levels; most importantly from the UN, regional organisations and civil society organisations. Several possibilities for this have been suggested in this chapter.

With respect to armed groups, external actors need to coordinate their efforts at increasing respect for humanitarian and human rights norms amongst all parties. There need also be more effective coordination between track 1 and 2 efforts, to mitigate the risk that organisations that interact with armed groups are played out against each other. Notably the UN, the African Union and ECOWAS need for this reason to draw civil society organisations closer to their own work,

and look more carefully at what can be learned from the various methods developed, including the pin-pointing of armed group-type specific strategies. Further recommendations to influence the conduct of armed groups include targeting specific constituencies within armed groups (e.g. women and children); giving concern to regional dynamics; as well as devising of context-specific instruments and methods. Within this framework the UN should be encouraged to take the lead in devising strategies and coordinating efforts for influencing armed groups, until they can be either eliminated or accommodated in the context of functioning security governance structures.⁵⁶

With regards to private security companies, it has been recommended that the international community collectively set standards for the operation and conduct of PSCs, including clear mandates, rules of engagement, standard operational procedures, and vetting and training of personnel. Licensing of exports from home states should be based on similar considerations, applied for on a service rather than company basis, and extended also to consideration of specific circumstances of operation. The implementation of regulatory schemes, whether national or international, should be monitored and verified by independent 'audit' agents.

The goal of successful security governance in the context of post-conflict peacebuilding should be the establishment of effective, transparent and democratically accountable state institutions. However, the persistent existence of armed non-state actors - whether in the shape of armed groups that outlive formal peace settlements, or ones that resurface in response to post-conflict insecurity, or in the shape of international PSCs brought in by external actors – means that efforts need to be directed also below and beyond the state level. As measures complementary to the rebuilding of the state, efforts at constraining armed non-state actors, protecting vulnerable populations from abuse (or recruitment into non-state entities), and increasing respect for human rights, influencing armed non-state actors should be seen as an integral part of post-conflict peacebuilding.

Notes

- 1 To be found in Parsons, T. (ed.), *The Theory of Economic and Social Organisation* (Free Press: New York, 1964). For recent contributions to this debate, see Davis, D. E., Pereira, A. W., Koonings, K., Kruijt, D. (eds.), *Armed actors: Organized violence and state failure in Latin America* (Zed Books: London, 2004).
- 2 For a historical analysis, see Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press: Ithaca, 2004), chapter 1.
- 3 According to the Uppsala Conflict Data Project a 'major armed conflict' is one that has resulted in over 1,000 battle related deaths in any one given year. Wallensteen, P., Harbom, L., 'Appendix 2A: Patterns in major armed conflicts, 1990-2004', *SIPRI Yearbook 2005: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, forthcoming).
- 4 Data for 2004 will be published in *Human Security Report 2005* (Oxford University Press: Oxford, forthcoming). For further information on definitions and methodology, see Eck, K., 'Collective Violence in 2002 and 2003', Harbom, L. (ed.), *States in Armed Conflict 2003*, (Department of Peace and Conflict Research: Upsala, 2004), pp. 143-158.
- 5 Definition used here draws on David Petrasak's ('groups that are armed and use force to achieve their objectives and are not under state control'). Petrasak, D., *Ends and means: human rights approaches to armed groups* (International Council on Human Rights Policy: Geneva, September 2000).
- 6 Different terminology is used in the literature to denote non-statutory armed forces: 'irregular armed forces' (Davis, D. E., Pereira, A. W. (eds.), *Irregular Armed Forces and Their Role in State Formation* (Cambridge University Press: Cambridge, 2003); 'armed groups' (Armed Groups Project, Policzer, P., Capie, D., URL <www.armedgroups.org>); 'armed groups as non-state actors' (Bruederlein, C., *The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars* (Geneva, 2000), URL <www.humansecuritynetwork.org/docs/report_may2000_2-e.php>). Here 'armed non-state actors' are used as the collective term, encompassing both 'armed groups' and private security companies (PSCs).
- 7 Warlords in Afghanistan have been drawn upon for support by the interim government and coalition forces. For more detail, see Peake, G., Gormely-Heenan, C., Fitzduff, M., *From Warlords to Peacelords: Local Leadership Capacity in Peace Processes*, INCORE Report (December 2004).
- 8 Rebel groups in Angola, the DRC, Sierra Leone and Colombia have all used private security companies to bolster capacity through training and assistance in the use of high-technology weapons. Singer, P. W., 'Corporate

- Warriors: The Rise and Ramifications of the Privatized Military Industry', *International Security* vol. 26, no. 2 (2001/2002), p. 32.
- 9 In Nepal, for instance, the government has created local militia groups to counter attacks by the Maoist rebels. International Crisis Group, 'Nepal: dangerous plans for village militias', *ICG Asia Briefing* no. 30 (17 February 2004), URL < www.crisisweb.org>. See also Duffield, M., 'Post-modern conflict: warlords, post-adjustment states and private protection', *Civil Wars* vol.1, no. 2 (Spring 1998), pp. 65-102.
- 10 Jackson, R., *Quasi-states: Sovereignty, International Relations and the Third World*, (Cambridge University Press: New York, 1990).
- 11 The Bakassi Boys, have periodically been sponsored by Nigerian state authorities and even given official status as the Anambra State Vigilante Services, despite documented abuses of human rights. Human Rights Watch and Centre for Law Enforcement Education (CLEEN), *The Bakassi Boys: The Legitimization of Murder and Torture* vol. 14, no. 5 (May 2002). See also Human Rights Watch, 'Rivers and Blood: Guns, Oil and Power in Nigeria's River States', *HRW Briefing Paper* (February 2005); Elaigwu, J. I., 'Ethnic Militias and Democracy in Nigeria', paper presented at the National Workshop on Ethnic Militias, Democracy and National Security (Abuja, 16-18 July 2002).
- 12 Ero, C., 'Vigilantes, civil defence forces and militia groups: The other side of the privatization of security in Africa', *Conflict Trends* vol. 1 (2000), pp. 25-29. For detailed analysis of Eritrean, Ethiopian, Sudanese, Somali, Ugandan, Rwandan, Congolese, Liberian and Sierra Leonean insurgency groups, see Clapham, C. (ed.), *African Guerillas* (James Currey Ltd.: Oxford, 2000).
- 13 See for example, Fortna, P. V., *Peace Time: Ceasefire Agreements and the Durability of Peace* (Princeton University Press: Princeton, 2004); Stedman, S. J., Rothchild, D., Cousens, E. M. (eds.), *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner Publishers: London, 2002).
- 14 See for example Keen, D., 'Incentives and Disincentives for Violence', Berdal, M., Malone, D. (eds.), *Greed and Grievance: Economic Agendas in Civil Wars* (Lynne Rienner Publishers: London, 2000), pp. 19-43.
- 15 Keen, D., "'Since I Am A Dog, Beware my Fangs": Beyond a 'Rational Violence' Framework in the Sierra Leonean Conflict', *Crisis States Working Paper* no. 14 (August 2002), p. 5.
- 16 Human Rights Watch, 'Youth, Poverty and Blood: The Lethal Legacy of Africa's Regional Warriors', HRW report (New York, 13 April 2005).
- 17 Mazurana, D., 'Women in Armed Opposition Groups Speak on War, Protection and Obligations under International Humanitarian Law and Human Rights Law', Report of a workshop organized in Geneva by Geneva Call and the Program for the Study of the International Organization(s) (PSIO) (Geneva Call: Geneva, 26-29 August 2004) p. 6, URL < www.genevacall.org>.
- 18 Human Rights Watch, *op. cit.*, p. 10.
- 19 Ebo, A. 'Security Sector Reform: West Africa', Bryden, A., Hänggi, H. (eds.), *Reform and Reconstruction of the Security Sector* (Lit Verlag: Münster, 2004), p. 70.
- 20 Adopted by General Assembly Resolution, UN doc. A/RES/54/263 (25 May 2000). Capie, D., 'Armed Groups, Weapons Availability and Misuse: An Overview of the Issues and Options for Action', background paper for a meeting organized by the Centre for Humanitarian Dialogue in Advance of the Sixth Meeting of the Human Security Network (Bamako, 25 May 2004).
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- 23 For an excellent coverage of the 'politics of naming' and attendant debates, see 'The Politics of Naming: Rebels, Terrorists, Criminals, Bandits and Subversives', *Third World Quarterly* (Special Issue) vol. 25, no. 1 (2005); especially the article by Bhatia, M. V., 'Fighting words: naming terrorists, bandits, rebels and other violent actors' on pp. 5-22.
- 24 Overwhelming evidence suggests that the Janjaweed operate, if not at the instigation, then certainly under the acquiescence of the Sudanese Government. The Economist, 'Fleeing the horsemen that kill for Khartoum' (15 May 2004), p. 22.
- 25 As regards attitudes amongst international supporters of armed groups the reverse may also be true, as in the case of extreme factions within the Christian lobby in the United States' support for the SPLM/A in the early periods of the insurgency.
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- 31 The Economist, 'Killers next door?' (1 May 2004), p. 44.
- 32 Human Rights Watch, *The Curse of Gold: The Democratic Republic of Congo*, Human Rights Watch report (2 July 2005).
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- 42 Pouligny, B., *op. cit.*
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