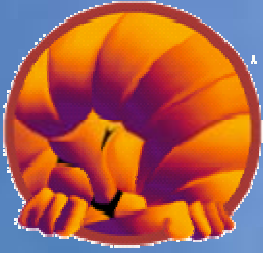


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# JOURNAL OF INTERNATIONAL PEACE OPERATIONS

THE PUBLICATION OF THE INTERNATIONAL PEACE OPERATIONS ASSOCIATION AND THE PEACE OPERATIONS INSTITUTE

## Peace Operations and the Law



Volume 2, Number 4  
January/February 2007

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Photo: Ian Britton

**COVER PHOTO:** The statue of blind justice towers above the Central London Criminal Court, better known as "The Old Bailey."



Photo: Somaliland Government

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Photo: Sophia Paris/MINUSTAH

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# A New Congress Facing Old Challenges

## *Accountability in the Peace and Stability Industry Continues to be Critically Important*



DOUG BROOKS

**T**HE PRIVATE SECTOR functions best within a framework of clear and effective laws and enforcement mechanisms. However, many parts of the world do not even approach this ideal. By its very nature the Peace and Stability Industry specializes in providing critical services in exactly these locations. This naturally raises issues of accountability, perhaps the single greatest concern of NGOs and humanitarians. Perfect accountability cannot exist in these environments – not just for the private firms, but for all of the key players in peace operations. Nevertheless, the fact that the industry has been consistently keen to work with policy makers and NGOs to address this issue should not surprise anyone. The industry has often made the point that the more comfortable policy-makers are with levels of accountability, the more likely quality companies – such as IPOA's members – are to win contracts.

The new U.S. Congress will undoubtedly be raising the accountability issue in 2007 and we see it as an excellent opportunity to move forward on this important issue. There are enormous misperceptions and journalistic exaggerations perpetuated about the peace and stability industry, especially regarding

Iraq. Open hearings and credible studies could do much to clarify these issues and substantiate the value that these companies bring to peace and stability operations. For IPOA members this is a key value of their trade association – proving their commitment to ethical and professional services in support of government policies. We have a number of options that could improve cost effectiveness, ethical control

to be few obvious or immediate solutions. The attention that the problem is receiving is wonderful, but at the same time there is a dearth of useful and practical solutions. While private companies are already instrumental in supporting AU peacekeepers, there is much more that could be done to alleviate the bloodshed – from aerial surveillance to humanitarian security, most of which could be done within the existing mandate. We should be clear, however, that while the private sector could potentially do a great deal more to support the AU in ending the killing, ultimately there will still need to be a political solution. It will take international organizations and policy-makers to establish terms and agreements for long-term peace. The private sector is ready to step up as a key partner to help make peace a reality.



Photo: U.S. House of Representatives  
*The new Democrat leadership in the U.S. House and Senate has signaled its intention to closely examine private contractors working in Iraq.*

and accountability in the industry and we look forward to sharing these ideas with members of Congress.

I had the opportunity to attend a peacekeeping conference in Brussels in December, and I have to say it was astonishing how the level of discussion regarding peace and stability operations has matured. Much of the audience came from NATO militaries, and almost all of them had been deployed to an area of conflict at some point in the past two years. This meant that discussion rarely stayed in the theoretical stratosphere, but involved pragmatic discussion based on the field experience of junior officers. This was an impressive contrast to conferences just four or five years ago when few participants had any field experience to support their perceptions or doctrine.

Unfortunately Darfur remains very much in the news with under-resourced African Union troops doing their best to contain a horrendous humanitarian situation. While a number of ideas are being kicked around in policy circles, there appear

operations. One of its key roles will be to increase research and understanding of the private sector's role in making peacekeeping more effective.

POI is seeking 501(c)(3) taxation status, which will set it apart from IPOA, which is a 501(c)(6) entity. POI's proposed tax status should make it easier to apply for grants and donations, particularly from philanthropic organizations.

POI is also intended to take much of the research burden away from IPOA, and allow IPOA to act much more in a trade association capacity. Nevertheless, POI and IPOA will remain closely associated, will share staff and resources and will be co-located.

The formation of the POI Board of Directors is expected to occur within the next month.

Doug Brooks  
 President

*International Peace Operations Association*

**IPOA**



### Executive Committee of the IPOA Board of Directors

Mr. Jim Schmitt (Chair)	ArmorGroup
Mr. Joe Mayo (Deputy Chair)	EODT
Mr. William Clontz	MPRI
Mr. Pieter de Weerd	MSS
Mr. Simon Falkner	HART Group
Ms. Judith McCallum	Olive Group
Mr. Chris Taylor	Blackwater USA

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## *Rolling Out Medical Solutions to the World's Trouble Spots at Short Notice*



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In addition to providing medical support to peace operations, MSS serves oil, gas and mining operations, airlines and film and production companies.

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Photo: Australian Defence Force  
A medical evacuation operation.

*Profile contributed by Medical Support Solutions*



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<b>Joined IPOA:</b>	January 2004		pieterdw@medsupportolutions.com
<b>On the Web:</b>	<a href="http://www.medsupportolutions.com">http://www.medsupportolutions.com</a>		Raymond Uren (Director)
<b>Telephone:</b>	+44 23 8081 2700		raymond@medsupportolutions.com

### PEACE OPERATIONS UPDATES

## Iraq Study Group Report Released

**O**N DECEMBER 6th, the Baker-Hamilton group released a report that gave a stark and critical appraisal of the ongoing American mission in Iraq. The report, written by a bipartisan committee including former cabinet members, former congressmen and a former Supreme Court justice, advocated new diplomatic engagement with Syria and Iran, a phased withdrawal of combat troops and an increased training and advisory role for the U.S. military. The work of the ISG was generally well-received, although some critics found it to be overly vague and difficult to implement.



Photo: Kimberlee Hewitt/White House  
U.S. President George W. Bush and senior cabinet members meet with the Iraq Study Group at the White House.

acts in return for money or food. The UN has acknowledged that sexual exploitation of vulnerable populations will always be a problem in peacekeeping missions, and has pledged to take a zero-tolerance approach to future reports of misconduct.

#### **TOP EX-DIPLOMATS PRESSURE SUDAN TO ACCEPT UN-AU FORCE**

A group of high-ranking ex-diplomats, including former U.S. Secretary of State Madeleine Albright, have called on the Sudanese government to accept a joint UN-African Union peacekeeping force by the end of the year or face sanctions. Conflict in Sudan has claimed over 200,000 lives and displaced 2.5 million over the past three years.

#### **DEMOCRATS ELECT NEW LEADERS TO KEY CONGRESSIONAL COMMITTEES**

After winning majorities in both the House and the Senate in the 2006 midterm elections, the Democratic Party has appointed new chairs for key legislative committees in the 110th Congress — Silvestre Reyes for the Senate Select Intelligence Committee, Ike Skelton for the House Armed Services, Joseph Biden for Senate Foreign Relations, and Henry Waxman for the House Government Reform Committee. Rep. Waxman has already announced his intention to hold oversight hearings on the regulation of PSCs in Iraq and Afghanistan when the new Congress convenes in 2007.

#### **CONFLICT IN THE HORN OF AFRICA**

The Union of Islamic Courts issued a warning for Ethiopian troops to leave Somalia or they would face "major attack". The Somali Transitional Federal Government (TFG) is now surrounded at its seat in Baidoa. So far multi-lateral talks aimed at averting conflict have failed.

#### **UN PEACEKEEPERS IN HAITI ACCUSED OF SEXUAL ABUSE**

A report by the BBC in November revealed that girls as young as 11 years old have been raped by UN peacekeepers in Haiti, while others have been forced to perform sexual

#### **FJI SUSPENDED FROM COMMONWEALTH AFTER MILITARY COUP**

The Commonwealth announced that Fiji's membership would be suspended after the Fijian military, led by its chief Commodore Frank Bainimarama, staged a coup deposing the nation's prime minister Laisenia Qarase and suspending democratic rule for up to two years. The coup, which was the fourth in Fiji's 19 years of independence, was widely anticipated — and condemned — by domestic and international observers.

*Updates by Fiona Mangan and Kerstin Mikalbrown*



# IPOA Hosts Roundtable with SO/LIC

*Critical Issues Regarding Stability Operations Discussed with Key Defense Department Officials*



CARRIE SCHENKEL

**M**ICHAEL MCNERNEY, Director of International Capabilities for Department of Defense Stability Operations, and Clark Adams, Director of USG Capabilities Development of the Office of the Under Secretary of Defense for Policy, joined IPOA for a roundtable discussion on December 11, 2006 at the Army-Navy Club in Washington, D.C.

The presenters, representing the Office for Special Operations and Low-Intensity Conflict (SO/LIC), addressed the challenges of global stability operations in light of the changing nature of today's long war model. The group also discussed the DoD's progress and shortcomings concerning Directive 3000.05, which raised the priority of stability operations within the DoD to a level comparable to combat operations. McNerney and Adams emphasized that stability operations will continue to be conducted by the DoD long after the Iraq and Afghanistan missions have been completed, contrary to common misperceptions, and that the Department is working to improve its stability operations capabilities through internal, interagency, and international channels.

IPOA looks forward to the opportunity to continue to work with Mr. McNerney, Mr. Adams, and others in the Office of the Secretary of Defense to explore future opportunities for collaboration.

*The author is a Research Associate at IPOA.*



Photo: Carrie Schenkel/IPOA

*Left to Right: IPOA's Director of Programs & Operations, J. J. Messner and Director of Membership and Finance, Derek Wright, with Clark Adams and Mike McNerney of SO/LIC.*

## Receptions Held for Members, Friends

**O**N WEDNESDAY, November 15, IPOA hosted a members and guests cocktail reception to coincide with the Department of State's Overseas Security Advisory Council (OSAC) Annual Briefing in Washington, D.C. The event attracted members from across the U.S. and the U.K., and was kindly sponsored by Olive Group.

Olive Group



Meanwhile, on Tuesday, December 19, IPOA hosted its Annual Holiday Party at its Headquarters in Washington, D.C. The event was attended by IPOA members and friends from government and the NGO community. The Holiday Party was kindly sponsored by EODT.

IPOA wishes to thank its members for supporting these events.

## IPOA Welcomes a Multitude of New Member Companies

*New Companies Join from the South Africa, U.K., U.S. and U.A.E.*



DEREK WRIGHT

**I**POA IS PLEASED to announce that we have added several new members over the course of the past quarter of operations. These highly professional and deeply respected companies span the globe with their bases of operations and cover all facets of conflict and post-conflict service capabilities, from logistics & support to development to private security.

The new companies who have joined over the past few months include Intac Security Services, Greystone Ltd., MAC

*The author is Director of Membership and Finance at IPOA.*

**NEW MEMBER COMPANIES**

Iraq, PADCO-AECOM, RA International, Regis Trading International/Seraph Risk, Track 24 and Unity Resources Group.

With 30 members, IPOA is firmly established as the world's premier international association of companies specializing in conflict and post-conflict service provision. IPOA's voice, capability, influence, and reach increase with every new member we add, and we look forward to continued strong growth in 2007 and beyond.

Companies wishing to apply for membership should visit the IPOA Web site, [www.ipoaonline.org](http://www.ipoaonline.org) for more information, or contact Derek Wright, Director of Membership, at [dwright@ipoaonline.org](mailto:dwright@ipoaonline.org) or +1 (202) 464-0721.

# IPOA Members Adopt Revised Code of Conduct

*Eleventh Version a Result of Extensive Consultation with Member Companies, NGOs*



J. J. MESSNER

**A**FTER EXTENSIVE consultation with member companies and NGOs, IPOA's amended Code of Conduct went into effect on December 1, 2006, after the month-long ratification period passed successfully without any objections from the IPOA Board being lodged against the new Code.

The new Code of Conduct is the eleventh version since it first went into effect on April 1, 2001. The most notable changes include:

- the inclusion of the 1975 Convention Against Torture;
- a pledge to endeavor to employ local nationals in field operations;
- various international minimum labor standards;
- a pledge to operate only on behalf of legitimate entities in accordance with international law;
- the use of proportional force; and
- the education of company employees on the basic principles of the Code.

The full text of the new Code of Conduct can be viewed on the IPOA Web site. The eleventh version is expected to remain in effect for two years, during which time further consultation will occur with industry stakeholders that will result in a twelfth version sometime in the future.

*The author is the Editor-in-Chief of the Journal of International Peace Operations and is the Director of Programs and Operations at IPOA.*

## KEY CHANGES TO THE CODE OF CONDUCT

- 6.7** Where appropriate, signatories should seek employees that are broadly representative of the local population.
- 6.8** Payment of different wages to different nationalities must be based on merit and national economic differential, and cannot be based on racial, gender or ethnic grounds.
- 6.9** In the hiring of employees engaged in continuous formal employment, signatories agree to respect the age-minimum standard of 15 years of age as defined by the International Labor Organization Minimum Age Convention (1973).
- 6.10** No employee will be denied the right to terminate their employment. Furthermore, no signatory may retain the personal travel documents of its employees against their will.

- 8.2** Contracts shall not be predicated on an offensive mission unless mandated by a legitimate authority in accordance with international law.

- 9.2.2** All Rules of Engagement should be in compliance with international humanitarian law and human rights law and emphasize appropriate restraint and caution to minimize casualties and damage, while preserving a person's inherent right of self-defense. Signatories pledge, when necessary, to use force that is proportional to the threat.

- 10.3** The future of the peace operations industry depends on both technical and ethical excellence. Not only is it important for IPOA member companies to adhere to the principles expressed in this Code, each member should encourage and support compliance and recognition of the Code across the industry.

- 11.3** Member companies will endeavor to impart the basic principles of the IPOA Code of Conduct to their employees.

## 2007 IPOA Committees Established

*Membership and Standards Committees Reconvene; General Counsels Committee Debuts*

### STANDARDS COMMITTEE



**Chair:** Judith McCallum (Olive Group);

**Members:** Aric Mutchnick (ArmorGroup); Tom Johnson (EODT); Mark Lonsdale (Hart Group); Pieter de Weerd (Medical Support Solutions); Hank Allen (MPRI).

**Chief Liaison Officer:** J. J. Messner (IPOA, non-voting).

### MEMBERSHIP & FINANCE COMMITTEE



**Chair:** Aric Mutchnick (ArmorGroup);

**Members:** Danielle Morrison (Blackwater USA); Bill Pearce (EODT); Mark Lonsdale (Hart Group); John Wilkinson (RONCO Consulting).

**Chief Liaison Officer:** Derek Wright (IPOA, non-voting).

### GENERAL COUNSELS COMMITTEE



**Members:** Ted Hoffman (Agility Logistics); Steve Capace, Andy Howell (Blackwater USA); Eric Quist (EODT); Scott Greathead (Hart Group); Jeff Spears, Tom Miller (MPRI); David Green (RONCO Consulting).

**Chief Liaison Officer:** Fiona Mangan (IPOA, non-voting).

**J**UDITH MCCALLUM of Olive Group has been elected Chair of the IPOA Standards Committee for the next six months. ArmorGroup, EODT, Hart Group, Medical Support Solutions and MPRI delegates were also elected to the Committee.

Meanwhile, Aric Mutchnick has been elected Chair of the IPOA Membership & Finance Committee for a second straight six-month term. ArmorGroup, Blackwater USA, EODT, Hart Group, Medical Support Solutions and Ronco representatives were also elected to the Committee.

IPOA's inaugural General Counsels Committee, which will hold its first meeting in the next few weeks, has been formed. IPOA Members Agility Logistics, Blackwater USA, EODT, Hart Group, MPRI and RONCO Consulting will form the new Committee.



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The DOD directive 3000.05 released on November 28, 2005 identifies the priority of DOD to plan, train and prepare to conduct and support stability operations.

Pre-Conference Workshop  
January 30, 2007

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**Department of State**

**Stuart Bowen**  
Special Inspector General, Iraq Reconstruction

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# Assessing the Accountability of Private Security Provision

## *A Study of Business Ethics in the Realm of Peace and Stability Operations*



CARLOS ORTIZ

**T**HE ACCOUNTABILITY of security contractors, or the apparent lack of it, is an issue commonly raised in the debate about the privatization of security. Yet what precisely is implied by accountability and how best to approach it are problematic.

Accountability is a wide notion, or a notion with multiple meanings depending on the particular discipline and approach from which it unfolds. Its philosophical underpinnings and history are best discussed in the field of ethics, which largely examines and theorizes about moral choices and values in human activity.

An applied approach to business ethics examines theoretical ethics alongside its application to spheres of economic activity. There is often a focus on particular issues such as corporate social responsibility, transparency, responsible business, ethical investment, environmental protection, and respect for employee rights. Accountability often becomes interchangeable with particular issues, or is defined by the aggregated meaning of a set of them. Hitherto, business ethics as a scholarly discipline has yet to make deep inroads into the study of the privatization of security.

In politics, accountability tends to focus on the actions of elected representatives and public officials, who ought to answer for the disposal of their duties, responsibilities, and authority. Questions are raised about why to opt for the private security alternative, how to privatize and how far to go, contracting processes, costs, and oversight. To some extent, this has resulted in the apportioning of governmental accountability wrongs to the security industry. Indeed, there are some unsavory apples in the barrel, but in fairness blanket judgments tend to display some bias and over-generalization, and are therefore counterproductive. Narrowing the regulatory gap would contribute to a more coherent accountability exercise and to more clearly delineated boundaries between political and corporate accountability.

At the same time, it needs to be acknowledged that accountability is culturally and spatially variable, reflecting different moral codes across cultures, boundaries, and agencies. Thus, accountability comes to be understood differently by different people, whether approached from a business ethics or a

politics perspective.

For the security industry, perhaps the most challenging arena of accountability is that involving the undertakings of its employees in conflict zones, especially in wars. People die. Not only are combatants and innocent civilians maimed or killed, but security personnel too. According to a recent report, nearly 700 of them have died in the Iraq conflict so far. At a basic level, one's innate sense of right and wrong, the essence of ethical thinking, may drive one to condemn any human undertaking in which

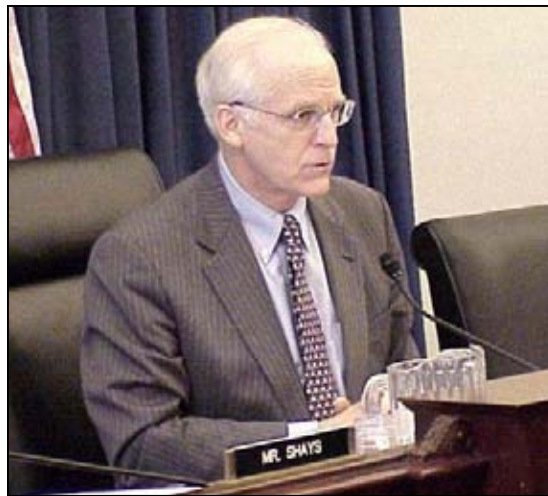


Photo: U.S. House of Representatives  
Rep. Christopher Shays (R-Conn.) has led hearings into the accountability of U.S. contractors in Iraq.

the direct or remote possibility of maiming or killing becomes part of the job. Even more if a profit motive is involved. However, assessing accountability in this arena is much more complex than an exercise of right and wrong; particularly considering the blurring between civilians and combatants characteristic of new conflicts and between foes and friends as a result of the growing threat posed by fundamentalist terrorism.

I would like to propose that the problem involves at least updating theories of just war to reflect the realities of new conflicts vis-à-vis the more regular participation of private personnel in them. In turn, this new understanding would need to merge with new business ethics paradigms applied in particular to the international provision of security. This approach might initially result in certain ambiguities and overlaps between public and private responsibilities in the provision of security. On the other hand, these ambiguities might ultimately reflect that security on many occasions is now satisfied through public-private and multilateral-private partnerships.

Therefore, alongside other aspects of the

privatization of security that remain under-researched, the study of the accountability of the international provision of security is in need of crisscrossing disciplinary boundaries and developing its own guiding principles and vocabulary. This is not to imply that the points raised by many authors are not valid enough or do not reflect genuine concerns, but rather the desirability of establishing the study of the accountability of security provision as a research project in its own right.

This project would involve engaging in an ongoing dialogue with the international security industry in order to establish general boundaries to apply to the critical study of accountability. Yet, at the same time, these boundaries should also acknowledge the aspirations of an industry in search of public awareness and respectability. While the quest for analytical objectivity might persuade some of the opposite, it is my view that a constructive dialogue is needed to reach balanced and informed conclusions. Debating the codes of practice promoted by professional associations representing security firms, such as IPOA, may be the basis of this dialogue.

IPOA reflects the collective aspirations of its membership, conceptualized around the notion of a peace and stability industry. This industry comprises specialized and multi-task enterprises engaged in a variety of support activities in reconstruction environments and not just security provision. IPOA's Code of Conduct has an ethical dimension. It encourages service delivery consistent with international laws governing conflict and values purporting the respect of human rights.

Although skepticism might move some to dismiss codes of practice as merely wishful thinking or PR tools, their examination is necessary for the accountability exercise. Codes respond to public concerns and expectations for service delivery in a particular sector. As statements of 'best practice', companies need to answer for divergences and transgressions from stated rules and values. Moreover, the systematic assessment of codes facilitates tracking the evolution of the accountability record of a particular company, association, or industry. The codes of ethics literature is well established, offering valuable insights that have not yet been applied to the study of the privatization of security. This substantive aim should be a part of the accountability project here proposed. It is hoped some other fruitful avenues for research will follow this proposal.

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# Geneva Conventions Struggle to Contain Modern War

*A Lot Has Changed in Conflict and Post-Conflict Environments Since the Geneva Conventions*



MICHAEL HOFFMAN

**T**HE LAW OF WAR has not kept pace with changes in warfare itself. Commanders, policy-makers, and operational planners face challenges not imagined when the present legal paradigm took hold in the mid-twentieth century. That paradigm unhelpfully drives our understanding of what constitutes war and obstructs efforts to implement effective legal strategies. The law of war is in transition to address these changes, but perhaps not quickly enough to ensure its utility in changing operational settings. If this is taken into account, some operational challenges are more readily understood and effectively addressed.

The law of war (sometimes also known as the law of armed conflict or international humanitarian law) began centuries ago when combatants adopted their own system of unwritten rules to govern battlefield conduct and ensure humanitarian restraint. The modern, treaty-based law of war system first emerged in the mid-19th century. By the mid-20th, it was firmly in place and the Geneva Conventions of 1949 now stand as the foundation for rules of war in the early 21st century.

Under the four Geneva Conventions of 1949 state actors are obligated to protect all wounded, sick and shipwrecked members of armed forces in wartime, without regard to which side they are on, as well as civilians who are caught up in war zones, detained for security purposes, or living under military occupation. Hospitals are also accorded special protection along with civilian infrastructure. These rules form the world's most comprehensive source of humanitarian legal guidance. Unfortunately for military and security professionals tasked to enforce them, the Geneva Conventions also fall far short in addressing the myriad forms taken by modern war.

With just one exception, the rules of the Geneva Conventions only apply to interstate warfare between sovereign states. The sole

exception, famously known as "common article three" is a provision set aside to provide limited rules for domestic insurgencies and other forms of intrastate warfare. In 1977 two Protocols were adopted to update the Geneva Conventions. Though these protocols and other law of war treaties adopted since then have also been influential in shaping military action, they sustain that international-internal taxonomy for legal



Photo: IHL

*The signing of the first Geneva Convention, predecessor to the modern Geneva Conventions, in 1864.*

regulation of warfare. Unfortunately this model doesn't address important operational and political factors that must, nonetheless, be faced in the field.

When the Geneva Conventions of 1949 were adopted it was assumed that most future war would erupt between sovereign states. In exceptional cases civil conflict might play out within a single nation (hence "common article three"). This paradigm began eroding almost immediately, when the Korean War generated questions as to what rules of war applied when United Nations forces intervened in war between two halves of a divided state — a scenario far removed from any anticipated in the Geneva Conventions. This erosion accelerated through the second half of the 20th century. By the beginning of the 21st century a new balance among forms of warfare and emerging new actors had evolved, and it now confronts military and security professionals and their legal advisors.

They face four fundamental legal challenges:

1. Intrastate warfare is now far more prevalent than international, but its rules remain more limited in scope. This paradigm persists despite the operational reality that domestic wars are often total wars within their (sometimes relatively) limited geographic domain and this calls for greater legal guidance and protection.

2. The distinction between "war" and "peace" is breaking down. Historically speaking, the circumstances in which rules of war applied were easily identified. When hostilities erupted between states, the international law of war prevailed between warring parties. At all other times the international law of peace was in force and regulated all contact among nations. The emergence of fragile and failed states, chronic insurgency, proliferating non-state belligerents, and global mobility all make it difficult to draw the line between "war" and "peace" and select appropriate legal strategies.

3. Peace Operations, a form of intervention almost unknown to military and legal history before the second half of the 20th century, had attained important political and diplomatic standing by the early 21st century. However, it lacks any clear legal context under international law. The law of war doesn't take into account armed forces that deploy under the authority of an international organization such as the UN rather than a sovereign state. Similarly, it doesn't anticipate

intervention by third party military or security forces to shape the battlefield, or influence behavior among local belligerents without becoming a party to the conflict.

4. Global terrorism sometimes constitutes a form of war unlike any that's addressed by the law of war. No law of war treaty takes into account non-state actors who organize their own military forces in order to cross international boundaries and commit acts of war in furtherance of their own ideological or political goals. Some argue that such terrorist threats should be addressed under peacetime rules, but where they constitute a force too powerful to be subdued solely by law enforcement means, or constitute a threat of military dimensions, it may be essential to apply rules of war to meet the threat. However, there is little guidance on how to select, in such circumstances, between the rules of law enforcement and the rules of war.

Situational understanding is essential to the application of operational military art. There are situations-and their numbers grow-where the existing law of war framework militates against this. Understanding the gap between established rules of war and the present operational environment brings some clarity to ambiguous circumstances. It makes it possible to devise legal strategies for a period of profound operational and political change.

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# UCMJ v. MEJA: Two Options For Regulating Contractors

## *Should Contractors Have the Legal Status of Civilians or Military?*



ROBERT VAINSHTEIN

**I**N IRAQ, AFGHANISTAN and other countries hosting American military missions, the use of private contractors alongside U.S. troops in peace and stability operations has become an indispensable component of American foreign policy. In an age when outsourcing has become a cost-effective norm for businesses and governments alike, the Department of Defense has followed suit, contracting dozens of private companies that employ former servicemen to carry out essential security and logistical functions that were once exclusively performed by uniformed personnel within the chain of command. Trading fatigues and steel-toed boots for jeans, khaki vests and sneakers, the vast majority of employees for private contractors come from the upper ranks of the American and other national military

establishments, especially at the special forces level. Working in some of the most dangerous and volatile environments imaginable, these former servicemen are counted on to bring order and stability where the rule of law has collapsed, and are trusted because of their superior technical expertise and the high ethical standards of conduct they have been trained to follow.

Given the challenges they surmount day in and day out, the employees of private contractors represent some of the best that the peace and stability industry has to offer. But even the best can make mistakes, including offenses that violate international humanitarian law. When offenses occur, responsibility first lies with the companies themselves to rein in those employees responsible for the wrongdoing. But oversight does not simply end there. Indeed, it is ultimately the Pentagon's responsibility to prosecute private contractors when those who commit the acts are in a position to do so only because they received employment through a contract directly established by the

Department of Defense, and for the government's vital security and foreign policy interests. The Defense Department currently has two instruments at its disposal for prosecuting private military contractors: the Uniform Code of Military Justice (UCMJ) and the Military Extraterritorial Judicial Act (MEJA). Each offers a unique course of legal action that comes with distinct advantages as well as substantial obstacles for ensuring that private contractors are charged and tried for alleged criminal acts.

Established in 1950 as the criminal code for the U.S. military, the UCMJ provides an avenue for prosecution that is entirely administered by military authorities. Contractors suspected of committing crimes under the UCMJ are first arrested by a commanding officer and then tried in a court-martial, in which a military judge presides and at least five officers or enlisted members determine the verdict and sentencing of the accused. Due to the ad-hoc

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# Civilian or Military? Two Options for Private Companies

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basis on which courts-martial are convened, and their ability to be set up in the midst of conflict environments, courts-martial provide an efficient method for trying civilian contractors and for deterring future wrongful acts by indicating that wrongful acts committed by private contractors will be swiftly dealt with and could potentially result in imprisonment under military auspices if contractors are found to be guilty.

To convene a court-martial for a contractor, three conditions need to be met, as stipulated in Article 2 (a)(10): 1) the contractor must be "serving with or accompanying an armed force," 2) the contractor must be "in the field," and 3) the trial must take place "in time of war."<sup>1</sup> The first two conditions have been interpreted in broad ways that sufficiently cover contractors, provided that they are directly connected to or in service of a U.S. military mission, and are working in a place where military operations are occurring.<sup>2</sup> Nevertheless, a series of court decisions between 1956 and 1970 circumscribed the jurisdiction of UCMJ even when these two conditions were met. Today, contractors accused of committing crimes in peacetime or when U.S. forces are deployed under international agreements will have little chance of being tried before a court-martial because, as civilians, their constitutional right to trial by jury has been ruled to supersede the court-martial jurisdiction of the UCMJ.

The third condition concerning "in time of war" has created even more problems for applying the UCMJ to contractors. Since 1970 the Supreme Court has maintained a very narrow conception of "in time of war": a formal declaration of war by Congress must be passed before a "time of war" can exist, which would then allow a court-martial to prosecute a contractor. Consequently, private contractors currently operating in Iraq are considered to be outside the scope of court-martial jurisdiction because Congress never officially passed a declaration of war against Iraq. In fact, Congress has refrained from issuing a formal declaration of war against another nation-state since World War II. It is simply archaic for the Court to insist that a congressional declaration of war is still necessary to allow courts-martial to try contractors, given that over the last sixty years Congress has used joint resolutions

instead of war declarations to authorize the use of armed force by the president outside the United States. Efforts to change this flawed interpretation of "in time of war" have gained headway in the last few years, but it remains to be seen whether court-martial jurisdiction will be expanded to include undeclared but active hostilities in which contractors are working alongside U.S. armed forces.

Whereas the UCMJ attempts to try



Photo: Spc. Matthew Chlosta / U.S. Army

*UCMJ in action: Pfc. Lynndie England during her court-martial for her participation in the abuse of detainees at Abu Ghraib. Could private contractors be subjected to the same code?*

contractors in military courts, the Military Extraterritorial Judicial Act (MEJA) authorizes private military contractors to be prosecuted in U.S. federal courts. Passed in 2000 (and revised in 2004), the MEJA specifically targets offenses committed overseas by private contractors that are contracted to the Department of Defense or to any other federal agency. To come under the jurisdiction of MEJA, an offense needs to fulfill two prerequisites: 1) it has to be committed by contractors who are employed by or accompanying U.S. armed forces overseas, and 2) it has to result in over a year of imprisonment if it had been committed in the United States. Enforcement of the MEJA rests primarily on the shoulders of federal judges and the Defense Department. Should an offense meet the prerequisites, federal judges are authorized to order the removal of accused individuals to face prosecution in the United States, with Defense Department law enforcement officials undertaking the arrest and transfer of the accused.<sup>3</sup> By

empowering federal civilian judges to exercise jurisdiction over contractors, the MEJA provides another means for prosecuting private contractors that avoids the constitutional and "in time of war" complexities confronting the use of courts-martial.

At the end of the day, the process of detaining and prosecuting a contractor remains dependent above all on political will. No arrest can be accomplished if the

Secretary of Defense does not authorize Defense Department law enforcement personnel to detain the contractor accused of wrongdoing; similarly, no federal trial can begin if the judge does not order the arrest of the contractor and their transfer to the U.S. Because of the extensive political connections enjoyed by private security companies, and their critical contributions to U.S. military missions abroad, any move to prosecute contractors is fraught with risk, except in the rare instance when widespread public condemnation essentially mandates legal action for an alleged offense, as was seen with the torture abuses at Abu Ghraib. To prevent a climate of impunity from taking hold around private military contractors, public knowledge concerning alleged crimes by private contractors will need to translate into pressure upon elected officials to mobilize federal judges and Defense Department officials into carrying out their respective

responsibilities under the MEJA. With these officials' active engagement, the MEJA will be able to overcome the shortcomings of the UCMJ and ensure that an effective legal regime exists to regulate the present and future conduct of private contractors.

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# Contracting and the Threat of Civil Litigation

## Ensuring Procedures to Protect Companies and the Rights and Safety of Civilians



JAMES W. HRYEKEWICZ

**A**S PRIVATE Security Companies (PSCs) assume roles previously reserved for governmental units, civil litigation aimed at those PSCs and the companies that hire them is inevitable. We are already seeing an initial wave of these suits brought by individual contractors<sup>1</sup> or their estates.<sup>2</sup>

As governments become increasingly comfortable with using PSCs, those companies may find themselves employed in ever more unstable environments. And as PSCs are increasingly employed in protracted situations, such as Iraq, the demands on, and expectations for, the PSCs will constantly evolve. Thus, as the use of PSCs increases, logic dictates that the number of related civil suits may increase, at

least proportionately, and the chances of civil litigation could grow ever faster.

One suit that has already been filed against a PSC relating to events in Iraq is *Boone v. MVM, Inc.*<sup>3</sup> Although this suit nominally only involves alleged employment-type claims, it could foretell a coming wave of litigation filed directly by Iraqi citizens alleging they were harmed by the actions of a PSC. In his suit, Mr. Boone alleges, *inter alia*, that he was terminated by MVM after he observed other MVM personnel shoot “indiscriminately into an Iraqi civilian residential area where no targets were present.”<sup>4</sup> Regardless of whether Mr. Boone’s claims are meritorious, the question arises: How long will it be before we start seeing suits by Iraqi citizens alleging that they were the victims of excessive force used by a PSC? Are PSCs taking reasonable steps to protect innocent civilians from unnecessary force and themselves from unnecessary liability?

As with most defensive measures, a PSC

is best served by up-arming against civil liability before it comes under attack. This includes the physical attack on the ground, as well as a subsequent legal attack in the courtroom. By carefully examining its procedures now, a PSC helps to reduce its chances of being involved in an otherwise avoidable deadly force incident. Such a proactive approach also helps to establish the PSC’s reasonableness should litigation later follow.

By way of example, let’s look at the current USCENTCOM Rules for the Use of Force by Contracted Security in Iraq, and more specifically Rule No. 4, addressing graduated force. This rule states:

*GRADUATED FORCE: You will use the reasonable amount of force necessary. The following are some techniques you can use, if their use will not unnecessarily endanger you or others:*

*a. SHOUT: Verbal warnings to HALT in*

**SEE Civil Litigation, Page 14**

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# Civil Litigation: A Reality for the Peace Ops Industry

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JAMES W. HRYKEWICZ

*native language.*

b. *SHOVE: physically restrain, block access, or detain.*

c. *SHOW: your weapon and demonstrate intent to use it.*

d. *SHOOT: to remove the threat only where necessary.*

The careful reader will note that neither USCENTCOM nor the CPA claim that these lists are all-inclusive. Indeed, both expressly note that these are "some techniques you can use." Additionally, neither entity requires PSCs to always implement each of these steps in the listed order. Instead, both state that these techniques can be used "if their use will not unnecessarily endanger you or others."

Like it or not, a sophisticated plaintiff's attorney will argue that these rules give the PSC significant discretion regarding both how to graduate force and in determining the reasonable amount of force necessary. That same attorney will undoubtedly have a plan of attack for his attempt to convince the jury that the PSC did not act reasonably in exercising that discretion. Likewise, a careful PSC will have a plan in place to minimize the number of deadly force encounters and to demonstrate the reasonableness of its action in those encounters that could not be avoided.

One weakness of using examples to demonstrate policy — such as using Shout/Shove/Show/Shoot to demonstrate the principle of graduated force — is that the examples may not be equally applicable to all possible scenarios. For example, literal shouting can only be effective if the intended recipient can hear and understand the shout. Increased background noise, increased distance, and a lack of fluency in the native language can all diminish the effectiveness of literal shouting. Similarly, the "Shove" element included in the CPA's rules could only literally work where the actor is close enough to be shoved.

Such a situation — where the guiding principle of graduated force is unambiguous, but few illustrative examples are given — provides an opportunity, as well as a challenge. There can be no doubt that the role of a PSC is far different than that of a traditional governmental military. In this relatively new and rapidly evolving field, who is better situated to "fill in the details" regarding the proper use of graduated force than professionally run PSCs?

The challenge for a professional PSC is to pull together its expertise and brainstorm about how best to implement a graduated force procedure for each environment where it is operating.<sup>5</sup> In greatly simplified form,



Photo: U.S. Marine Corps

*A fuel convoy traversing the hazardous roads of Iraq. Private contractors are heavily involved in protecting such convoys, and their actions are closely scrutinized.*

this process involves three basic steps:

1. Define the objective.
2. Generate ideas.
3. Evaluate the ideas and select solutions.

If the problem is sufficiently broad (such as developing graduated force procedures for each operating environment), one may need to break that problem down into sub-parts. For instance, the PSC may find it helpful to first identify each of the applicable environments (e.g., Iraq or Sudan), and then the different types of duties it will perform in each environment (e.g., convoy protection or static facility protection), and then each broad level of force to be addressed (e.g., Shout or Shove).

While the group is generating ideas during the second phase, it is important to not jump ahead to the third phase of evaluating ideas and selecting solutions. Instead, the goal is to encourage creativity and novel ideas.

Only once all of the group's ideas have been collected should the focus change to evaluating the ideas and formulating possible solutions. If legal counsel consents, the group might consider keeping a record of what was rejected and why. Situations change with time and something that sounds good at the time of trial may not have been possible or appropriate back when the PSC was developing its procedures. A record of what was rejected and why could help safeguard against an imperfect memory, as well as showing the PSC's willingness to seriously consider new ideas.

Finally, the PSC should periodically revisit its procedures in light of the constantly evolving situation on the ground,

as well the lessons it has learned since the last time it formulated procedures.

In short, we are in rapidly changing times. PSCs have a chance not only to play a major role in world events but also to help set the standards by which their actions will be judged. Just as PSCs contributed to the formulation of the Voluntary Principles on Security and Human Rights, they can play a key role in detailing how graduated force is best employed across a wide spectrum of situations. By taking such a proactive role, PSCs won't just help protect themselves from civil liability; they will also help to promote professional private security in difficult environments, help to better safeguard their clients, and help to preserve the human rights of everyone they encounter.

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1. e.g., *Boone v. MVM, Inc.*, No. 1:05-CV-02504 (D. Colo. filed Dec. 9, 2005).
2. e.g., *Nordan, et al v. Blackwater Security, et al*, No 5:05-CV-00048 (E.D.N.C. filed Jan. 24, 2005).
3. *Boone v. MVM, Inc.*, No. 1:05-CV-02504 (D. Colo.). The author has no knowledge regarding the veracity or accuracy of Mr. Boone's claims and allegations.
4. Amended Complaint and Jury Demand at 14, *Boone v. MVM, Inc.*, No. 1:05-CV-02504 (D. Colo.).
5. Because these decisions that could have significant legal implications, PSCs are strongly encouraged to consult with legal counsel early and often. Significant legal issues that could be implicated in brainstorming sessions include, but are not limited to: deciding whether the process and results are intended to be kept confidential or to be proactively used in court if litigation ensues; deciding whether to involve outside experts (and, if so, how to best use them); and maintaining the confidentiality of privileged communications.



# Legal Implications of Abuses by UN Peacekeepers

## *A Case Study of Sexual Abuse by UN Peacekeepers in the D. R. Congo*

SUSAN NOTAR

**W**HILE MOST peacekeepers perform their duties honorably in dangerous situations, others have sexually exploited the very citizens they were sent to protect.

Such is the case in the Democratic Republic of Congo (DRC), where during the past several years, reports of peacekeeper abuses surfaced that included exchanging sex for food with children, rape, fathering "peacekeeper babies" and deserting them, and even pornographic videotaping of Congolese women and children.<sup>1</sup>

The DRC is situated next to Rwanda, Uganda, Burundi, and Sudan. A former Belgian colony, it endured a complex conflict in the late 1990s resulting in the rapes and deaths through murder and disease of millions of its civilians. To help promote international peace and security in the region, in November 1999, the UN Security Council passed resolution 1279 authorizing peacekeeping forces and creating the UN Mission in the Democratic Republic of the Congo (MONUC). What began as a rather small contingent of 500 peacekeepers grew to its current force of 18,497 total uniformed personnel, with 98 fatalities occurring since MONUC's inception.<sup>2</sup>

Unfortunately, the DRC is not the only peacekeeping mission where allegations of peacekeeper exploitation of the local population have arisen. Similar accusations arose with respect to peacekeeping missions in Bosnia, Burundi, Guinea, Liberia, and Sierra Leone.<sup>3</sup> Over the past decade the UN has attempted to respond to these incidents in a variety of ways, including issuing a "zero tolerance policy" for all UN staff on sexual abuse and exploitation,<sup>4</sup> developing training manuals and codes of conduct for peacekeepers, and informing them of the specific human rights legal norms that the UN has explicitly stated are transgressed by sexual exploitation and abuse of a local population.

These human rights norms include the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

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These important international treaties provide certain fundamental rights to women and children including equality of the basis of sex. The UDHR, ICCPR, CEDAW, and the CRC require the right to life and security of the person. By sexually abusing and exploiting women and children, the peacekeepers are transgressing the rights to security of the person. Another international human rights norm violated by the abusive acts of the peacekeepers is the right to be free from torture, cruel, inhuman, or degrading treatment, or punishment, contained in the UNCHR, the ICCPR, CEDAW, and the CRC. When the peacekeepers sexually exploit an already vulnerable populace, they violate this norm, particularly because of the power imbalance between uniformed peacekeepers and a poverty-ridden populace.

Responding to numerous negative press accounts of the peacekeeper abuse, in 2004 the UN Office of Internal Oversight Services (OIOS) conducted an investigation of seventy-two reported cases of abuse in the DRC and issued its report in 2005. There are a number of troubling aspects to the report, including the fact that there is almost certainly underreporting of incidences of abuse because of the power disparity described above between civilians and the peacekeeping forces. Another disturbing facet of the report was that it found that sexual activity between peacekeeping forces and children continued during the time period the investigation took place, as evidenced by freshly used condoms near military posts and guard stations, showing a lack of concern with the ramifications of the inquiry. Further, some senior level officers in MONUC failed to respond to OIOS requests for information in a timely manner, or engaged in behavior meant to disrupt the inquiry. The report concluded that the majority of the victims were young girls, between twelve and eighteen years of age, who engaged in "survival sex" to obtain food, perhaps a tablespoon of peanut butter, or a small amount of money.<sup>5</sup>

Despite the UN's "zero tolerance policy" there are legal, political, and practical impediments to holding peacekeepers to account. One such barrier is the Status of Forces Agreement (SOFA) that troop-contributing nations enter into with the UN which generally provide that the troop-contributing nation will prosecute for alleged offenses. A second obstacle is that some nations clearly take crimes against women and children more seriously than do others, and will prosecute as did Morocco in 2005 when it arrested six peacekeepers for sexual assault in the DRC; while others will not.

Further, a varying level of immunities provided to peacekeeping forces, also preclude prosecution. While the International Criminal Court (ICC) could theoretically prosecute peacekeeper abuses, it is unlikely to. The statute of the court limits its jurisdiction under Article 5 to "the most serious crimes of concern to the international community as a whole" including genocide, crimes against humanity, war crimes, and the crime of aggression. While the peacekeeper abuses are horrific, they arguably do not fall within any of the statutory rubrics to be prosecuted in the ICC.

Because the prospect for prosecution of peacekeeper abuses is dim, it might be better for the UN to focus instead upon prevention efforts. These could include better training of peacekeepers before deployment, ensuring that leadership in peacekeeping missions will repatriate abusers to "send a message" that such behavior will not be tolerated, and devoting a portion of the budget of a peacekeeping mission to improving the quality of life of citizens in the host nation. Such efforts could include food distribution, education and training programs, and HIV/AIDS prevention courses. These attempts could help to remedy some of the underlying reasons why civilians engage in "survival sex" with peacekeepers, and could ultimately improve the somewhat tarnished image of peacekeeping forces that the abuse scandals have perpetrated.

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# Somalia: Who is Really in Charge?

## *The Current Crisis in Somalia and Threat of Terrorism*

TED DAGNE

**A**FTER YEARS OF failed talks, in August 2004, a new 275-member Transitional Federal Government, consisting of the major political factions and seeming to represent all the major clans of Somalia was inaugurated in Kenya. However, the transitional government, led by President Abdullahi Yusuf Ahmed, has not been able to function effectively or move to Mogadishu in large part due to opposition by the warlords in that city, even though some of these warlords signed the agreement and are even ministers in the government. The inability of the transitional government to establish effective control has allowed warlords and clan factions to dominate many parts of Somalia.

Some parts of Somalia are relatively peaceful despite the absence of a functioning central government in Mogadishu. The northwest region, the self-declared "Republic of Somaliland" is considered by many analysts to be stable and peaceful, with a functioning democratic government. This region seceded from the rest of Somalia in 1991, after the collapse of the Siad Barre government, but remains unrecognized by the international community.

The recent fighting in Mogadishu between Islamic Courts Union (ICU) forces and the now defunct Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT), reportedly formed in February 2006, further complicates the political crisis in Somalia, but also represents an important shift in the balance of power in Mogadishu. The so-called Alliance was the creation of well-known warlords in Mogadishu who have been the main source of instability and violence in Somalia.

The recent crisis received unusual international attention in large part due to reported U.S. support for the so-called anti-terror Alliance. The American decision to support the Alliance seems largely driven by longstanding concerns that terrorist individuals and groups have used and continue to use Somalia as transit and a place to hide. Some of the ICU leaders are seen by U.S. officials as being extremists or terrorists. The newly elected leader of the Council of Islamic Courts, Hasan Dahir Aweys, was one of the top leaders of Al-Ittihad and was designated as a terrorist by the Bush Administration. Aweys is dismissive of his designation as a terrorist and contends he is being targeted because of

his religion. In a recent interview, Aweys stated that "if strictly following my religion and love for Islam makes me a terrorist, then I will accept the designation."

Al-Ittihad's strength and the threats it allegedly posed was highly exaggerated and information about its alleged links with international terrorist organizations is unreliable. There is no reliable information or pattern of behavior to suggest that Al-Ittihad had an international agenda. If Al-Ittihad had a clear internationally-oriented agenda, its obvious ally in the region would be the National Islamic Front regime in Sudan or the Sudanese-backed Eritrean Islamic Jihad.

The forces of the ICU expanded areas under their control after the defeat of the warlords in Mogadishu. ICU forces captured the towns of Jowhar, Kismayo, and Beledweyne shortly after the fall of Mogadishu. Moreover, for the first time in years, Mogadishu appears relatively peaceful and the ICU seems to have the support of the population in areas it controls. The level of support enjoyed by the ICU is difficult to measure, although the group seems to consist of constituencies from multiple sub-clans and appears to have broad support among Somali women. During the Mogadishu fighting, women supporters of ICU played an important role. The ICU success in Mogadishu effectively led to the collapse of the ARPCT and forced the warlords to flee or join the ICU.

Negotiations between the Transitional Federal Government and the ICU did not lead to a major breakthrough, although the talks ended speculation that the ICU rejects negotiations. In fact, it was the transitional government that rejected talks with the ICU in early December 2006. Negotiations between the Speaker of Parliament and the ICU in December in Yemen led to an agreement. It is not clear, however, if the transitional government is supportive of the Speaker's negotiations with the ICU. A negotiated settlement between the ICU and the transitional government seem impossible at this juncture as Ethiopia and Somalia go to all out war. Ethiopia's support for the transitional government and its military presence in Somalia has given the ICU strong support among the Somali population and has increased recruitment for the ICU.

In June 2006, the transitional parliament voted in favor of a foreign peacekeeping force. But this was rejected by some Islamic Courts leaders as being unnecessary and counter-productive. The African Union approved a proposal for Uganda and Sudan to deploy a peacekeeping force to Somalia under the auspices of the

Inter-Governmental Authority for Development (IGAD). The deployment did not take place in large part because of the refusal of the UN Security Council to remove an arms embargo on Somalia. In December, the Security Council passed resolution 1725 endorsing the deployment of a peacekeeping force by IGAD and provided exemption for the force from the arms embargo.

In mid-June, an International Somalia Contact Group, consisting of the United States, Norway, United Kingdom, Sweden, Italy, Tanzania, and the European Union, was formed and met to discuss the unfolding Somalia crisis. However, many Somalis are skeptical that the international community will help end the crisis. International support after the signing of the agreement in 2004 has been limited and sporadic.

The defeat of the warlords in Mogadishu and renewed international interest in Somalia may offer an opportunity to help establish an effective, all-inclusive central government in Mogadishu. But peace and stability in Somalia are unlikely to occur in the near future, even if Somalis resolve their differences and establish a central government in Mogadishu. Resolving the status of Somaliland likely requires serious negotiations. The role of Somalia's neighbors, unless focused in support of a peaceful and stable Somalia, will likely continue to contribute to the instability and chaos in the country. If the international community fails to seriously engage and attempt to isolate the new leaders in Mogadishu, they are likely to fight back.

In the view of many Somalis, the threat of international terrorism cannot be effectively dealt with without a functioning government in Mogadishu. The danger for the United States, however, is being perceived by Somalis as anti-Islam. The label of some Somali groups as terrorists or extremists may have led some in Somalia to reach the conclusion that they are being labeled because of their religion. Somalis are Muslims and secular.

No Somali extremist or fundamentalist group has succeeded in dominating the political scene since independence. A heavy handed approach in the absence of a clear evidence or threat could be seen as targeting a weak and defenseless country. The desperation and anger in Somalia may be so entrenched that many Somalis are likely to support and fight for any group that aims or claims to fight for peace and stability. After over a decade of violence and chaos, Somalis are more concerned about the safety and survival of their family than the threat of extremism in their country.

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# Somaliland: A Pressing Need for Recognition

*Despite its Relative Calm, Somaliland Risks being Drawn into the Somali Maelstrom*



FIONA MANGAN

**T**HE INTERNATIONAL spotlight has returned to Somalia in recent months.

In the south, the Islamic Courts movement has rapidly overthrown the warlords and left the Transitional Federal Government cowering in Baidoa. Meanwhile, in the north of the country, democracy, stability and law-abiding calm have been quietly flourishing, despite being deprived of the world's attention. This oasis of sanity — the self-proclaimed Republic of Somaliland — stands out in a region of Africa otherwise seemingly locked in a cycle of self-destruction.

The Republic of Somaliland has a peripheral existence as an unrecognized breakaway state in the northernmost tip of the country, along the border with Ethiopia. It declared its secession from Somalia in 1991, and in 15 years of independence Somaliland has developed into a peaceful democracy with all the symbols and internal dynamics of a state, but lacking the international recognition required for official statehood.

The government of Somaliland has repeatedly called on the international community to recognize the country's existence and its own authority. This plea, largely unanswered, is gathering urgency.

For the first time in almost 16 years, a single force, the Islamic Courts movement, has the objective of full control of Somalia within its reach. While many of the courts are considered moderate, several extremist cells exist within its shadowy structure which raise legitimate concerns for the region and globally. Somaliland is now vulnerable to such extremist attitudes penetrating from the south.

The international community has implicitly acknowledged Somaliland's stability by awarding it a growing proportion of development aid. This year the European Union directed approximately 70 percent of its aid allocation for Somalia to the north in an effort to reward progress in the region. Such investment is funneled through NGOs to avoid facing up to the issue of recognition. The UN also has a large presence in Somaliland, but despite outright engagement with the government, it has made no pronouncement on the issue of self-determination. "We work in conjunction with the Somaliland government but we still call it Somalia" observes a bemused Hargeisa-based, Somalilander and UN worker.

The issue thus falls to the African Union (AU). In December 2005, Somaliland's application for membership of the AU was submitted by President Dahir Rayale Kahin. This request was scheduled to be discussed at the Seventh AU Summit held at the beginning of July in Banjul, Gambia, but somewhere along the line it was quietly dropped from the agenda.

Somaliland's bid to separate from Somalia is the product of its different history. The Republic of Somaliland encompasses the former British protectorate of Somaliland and lies in the north west of Somalia, sharing borders with Ethiopia, Djibouti and Somalia.



Photo: Fiona Mangan

*Life in Somaliland is quite peaceful and orderly.  
But for how much longer?*

In 1960 Somaliland was granted independence from Britain and spent six days as a sovereign state before opting to merge with the former Italian colony, Somalia, forming a single state.

Any post-independence illusions of harmony soon evaporated as the north found itself in a situation of political and economic isolation, which became further pronounced after a coup in 1969 that delivered the military dictator, Mohamed Siad Barre to power. Resentment amongst northerners grew and opposition organized in the form of the Somali National Movement (SNM) in 1981. In response, Siad Barre conducted a campaign of aerial bombardment and artillery shelling, killing civilians and reducing the north's capital, Hargeisa, to rubble. In addition, the authorities carried out ethnic cleansing of members of the Isaaq clan, the dominant tribe in the north and the primary components of the SNM.

The overthrow of Siad Barre in 1991 pitched Somalia into a state of anarchy, now infamous due to its portrayal in the book and subsequent film, *Black Hawk Down*. Throughout the south violence raged. Meanwhile, the Republic of Somaliland

announced its independence and established peace using traditional clan-based methods of reconciliation.

Since declaring independence, the SNM military leadership has peacefully given way to successive civilian governments. Programs of disarmament and demobilization of SNM forces and clan militia have been a success and viable institutions of statehood are now in place. The state has adopted a bicameral model. The traditional clan elder system has been retained as the upper guurti chamber, in combination with a democratically elected lower chamber, with an executive president.

The democratization process was further entrenched by the first multi-party elections, held in September 2005, which were hailed by international observers as "a great example to the people of the Horn of Africa region".

The Republic of Somaliland exists in a state of limbo, lying between factual and actual independence. Without *de jure* international recognition this *de facto* state is prevented from engaging in any substantial economic development. Should the Islamic Courts movement — the emergence of which has gripped and surprised Somalia — choose to progress northward it will undoubtedly be met with armed resistance from Somaliland forces but, in its current legal position, Somaliland does not have the right to

defend itself and it is likely to be viewed as nothing more than further factional fighting in Somalia. The invasion of Somaliland by victorious Islamists would not merely mean the subjection of one faction to another — in Somalia, nothing new — but would mean the destruction of a functioning African democracy by a theocratic regime.

"We want to survive," says President Rayale Kahin. "We are running from evil nations but we want to be with the good and peaceful nations. We are waiting for the international community to recognize us. We want no more than we deserve."

Recognizing Somaliland's independence will not open the floodgates for secessionist movements worldwide. Its claim is unique, hinging as it does on its separate colonial history, its brief period of independence in 1960 and the fact that it entered voluntarily into the combined state of Somalia.

To continue to ignore this stable and functioning democracy, which has stood alone for 15 years, is to condemn it to political isolation, the stagnation of its economic promise and, with current security concerns, an uncertain future.

*The author is a Research Associate at IPOA.*

# Germany: Facing Up to its Peacekeeping Responsibilities

*Despite its Role as a Political and Economic Power, Germany Remains Averse to Peacekeeping*



CARRIE SCHENKEL

SOME OF US never learn from our mistakes, continually repeating them without a hint of recognition of the many lessons that can be taken from them. Others are so painfully aware of their failures that they are reticent to take even the tiniest of steps in a past direction, regardless of the cause. The tragedy of the holocaust and the stigma attached to German military operations in World War II has led the German people down the latter path, hesitant to volunteer its Bundeswehr for peace and stability operations worldwide. For decades, Germany carefully avoided sending troops to peacekeeping missions by first citing the "enemy states" clauses of the UN charter.

After being granted membership in the United Nations in 1973, requests for German participation in peacekeeping missions steadily increased, and the government shifted to a position that such action was precluded by limitations within its own constitutional framework. Germany's leadership was criticized for opting not to supply military resources to the Gulf War in support of Kuwait in 1990, instead providing financial backing and post-war minesweeping efforts. It soon became clear that Germany could no longer ignore calls to play a greater role in peacekeeping operations, and on July 12, 1994 Germany's Constitutional Court determined that provisions within the Constitution did not prohibit participation in UN peacekeeping missions. In 1999, Germany deployed troops to the Balkans in its first post-World War II combat mission.

Today, Germany has over 10,000 military personnel stationed in Afghanistan, the Balkans, Congo, and off the coast of Lebanon. However, in spite of this increased participation and its desire to reaffirm its position as a global leader, Germany continues to face numerous challenges to its role in global peacekeeping more than sixty years after the end of the Second World War.

The conflict that quickly re-emerged between Israel and Hezbollah in September 2007 put Germany in a predicament that required quite a bit of panache to overcome. Germany's history has brought about tacit support for Israel's cause and a reluctance to take up arms against its troops. At the same time, German leaders have chosen to avoid getting involved in issues in the Middle East, often using its history as a risk-aversion measure that has given them some credibility

with Arab states. However, after requests for assistance from both Israel and Lebanon, it soon became clear to Chancellor Angela Merkel that this excuse would no longer be acceptable. As a compromise, refusing to risk direct combat with Israeli forces, Germany agreed to provide naval vessels to patrol the Lebanese coastline in order to prevent arms from reaching Hezbollah and end Israel's sea blockade of Lebanon. Although the measure was overwhelmingly approved by 442 Germany's 599 parliamentarians, the majority of the public was strongly opposed.

This strong pacifistic current has



Photo: Deutscher Bundestag

German Bundesverteidigungsminister (Defense Minister) Peter Struck inspects German Bundeswehr troops.

provided other problems for the German military. As a result of this deployment to Lebanon and its continuing presence in northern Afghanistan, the Bundeswehr's \$30 billion budget has been unsurprisingly stretched to its limits, and these costs are expected to continue to increase in the coming year. To prevent the perception of a buildup of the German military among its own citizens, of which 64 percent are opposed to an increase in military budgeting, the military has turned to finding ways to "unofficially" supplement its budget through "indirect financial support." For example,

military officials will cover the costs of the peacekeeping mission in Lebanon by submitting "expenses higher than planned," receiving general administration funding to fill the gap. Minister of Finance Peer Steinbrück is also able to claim "immediate need for operative reasons" to help defray rising costs in Afghanistan.

Public opinion toward the growing military involvement in peacekeeping missions was not helped when, in late 2006, photos were released of German soldiers posing with human skeletons in Afghanistan. Not long before, a former Guantanamo prisoner had accused German soldiers of mistreating him in a jail in Afghanistan. A close call off the coast of Lebanon also rattled the German public when Israeli fighter jets fired shots over a helicopter and a German ship, raising further doubts about the decision to deploy there.

All this skepticism has led the military to primarily opt for non-combat roles when signing up for peacekeeping missions, and to refuse to recognize soldiers who have lost their lives in these missions as "war dead" to avoid the stigma attached to the terminology. Nevertheless, the government has recently published a White Paper to define Germany's national interests and parameters for the deployment of the military. This document addresses current security threats and terrorism, while also promoting participation in global peace and security operations and suggesting a "need to expand the constitutional framework for the deployment of armed forces" – a sensitive subject for most Germans.

Chancellor Merkel and her cabinet clearly hope to redefine Germany's role on the global stage, and she seems to be making strides in that direction. In the meantime, she will have to redefine it in the minds of her cautious constituency, ever mindful of their country's tumultuous military history.

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# Protecting the Rights of Third Country Nationals in Iraq

## *A Regulatory Balancing Act - Infringing Worker Freedoms or Protecting Against Abuse?*



KERSTIN MIKALBROWN

**F**OREIGN LABORERS from Southeast Asia are the backbone of the reconstruction effort in Iraq. American and British contractors working in Iraq hire laborers from the Philippines, Nepal, India, Bangladesh and other countries in the region to provide a wide variety of support services. Exact numbers are difficult to find, but rough estimates suggest that these Third Country Nationals (TCNs) make up close to 75 percent of the contracted labor force in Iraq.

The use of TCN labor allows contractors to provide cost-effective services, and provides comparatively lucrative jobs for workers from poor countries with limited domestic employment opportunities. It has also led to some serious allegations of abuse.

In 2005, a series of investigative reports in the U.S. media revealed that TCNs in Iraq were often subject to a variety of exploitative labor practices by recruiters and subcontractors working for American companies. The accusation that companies were violating international labor standards and potentially engaging in the trafficking of persons captured the attention of the U.S. government. Investigations by the Government Accountability Office, the State Department and the Department of Defense all found evidence to support the various accusations of abuse, including those of human trafficking. In response, the Joint Contracting Command of the Multi-National Force Iraq declared a new zero tolerance policy towards exploitative labor practices.

In a memo sent to all contractors on April 19, 2006, General Casey issued guidelines that outlawed various employer practices and required contractors to use only licensed recruiting firms and to comply with all international laws regarding visa and immigration procedures. These guidelines, if they are properly enforced, can play a vital role in protecting the rights of TCNs working in Iraq, but they may also have unintended consequences. By requiring all contractors to comply with all international and host country requirements for work visas, the memo effectively outlaws the use of Filipino and Nepalese labor in Iraq.

Nepal and the Philippines are two of the largest suppliers of TCN labor for the reconstruction effort. Both countries are economically dependent on exporting their labor force, and workers from both countries

are highly sought after by American and British contractors. Nepalese workers, especially the Gurkhas who were trained by the British army, have valuable military training and experience, while Filipinos have English language skills and a reputation for being particularly hard-working. Both countries have also issued bans forbidding their citizens from working in Iraq.

The government of Nepal took action in August of 2004, when 12 Nepalese truck drivers were kidnapped and killed by insurgents in Iraq. The murders caused a national uproar in Nepal, and led to wide-



Photo: U.K. Ministry of Defence  
Nepalese Gurkhas, like these soldiers serving in the British army as part of the SFOR mission in Kosovo, are highly sought-after by private companies.

spread rioting where anger was directed at the U.S., the local Muslim population, and the Nepalese government for not doing enough to protect its citizens. After a period of civil unrest, the Nepalese government issued a ban on travel to Iraq for the purposes of employment.

The Philippines also issued a ban on travel to Iraq in the summer of 2004, after a Filipino truck driver was held hostage by Iraqis who threatened to behead him if the Philippines didn't withdraw from the country immediately. The government, initially a member of the coalition of the willing, immediately withdrew its remaining troops and passed a law forbidding any Filipino citizen from working in Iraq.

Before the new labor contracting guidelines were issued, these official bans had done very little to deter Filipinos and Nepalese citizens from working in Iraq. They could enter through Dubai or

Jordan, and were quickly employed by local subcontractors who managed to bribe customs officials into ignoring the "not valid for Iraq" stamp on their passports. While some of these workers may have been deceived about the nature of their employment, others clearly went willingly. Filipinos, according to the country's Secretary-General for international migration, "believe it is better to work in Iraq with their lives in danger rather than face the danger of not having breakfast, lunch, or dinner in the Philippines."

It is not yet clear what impact the new guidelines have had on the employment of Filipinos and Nepalese citizens in Iraq, but it is possible that the use of labor from Bangladesh, Pakistan, Thailand and India is also technically prohibited as well, since all of these countries have taken some steps to prevent their citizens from traveling and working in Iraq.

It is likely that some portion of this population will continue to work illegally in Iraq, because they have the skills that employers are looking for, and many of them are desperate for the financial compensation. If certain groups of TCNs are outlawed in Iraq, they may, like many other groups of illegal laborers, become more vulnerable to the kind of exploitative practices that the new guidelines were designed to eliminate.

In order to continue to progress towards better regulation of the TCN labor market in Iraq, the U.S. authorities should continue to work closely with host governments who may have workers employed illegally in Iraq. A compromise can then be sought that honors the right of TCNs to seek gainful employment, without endangering the protections that should be afforded all workers, regardless of national origin or place of employment.

*The author is a research associate at IPOA.*

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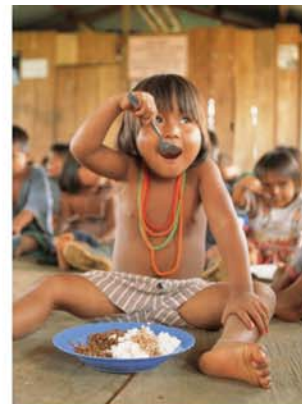
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# Private Security Enters the Humanitarian Field

## *Humanitarians and Private Security Companies: Time for Dialogue*



JEAN S. RENOUF

**W**ELL AHEAD OF his time, Jean Marguin wrote, as early as 2000, "It is not out of the question to believe that the armed defense of most countries in the world, the missions of collective security entrusted to international organizations and the protection of NGOs' humanitarian operations will one day be provided by private military-humanitarian multinationals."<sup>1</sup> We are not quite there yet, but we aren't far off. While Blackwater recently proposed sending brigade-sized rapid reaction forces to support or replace peacekeepers in war zones, Pacific Architects and Engineers and Medical Support Solutions in fact did provide logistical support as well as medical services for the African Union in Sudan in 2002-2003. Dyncorp recruited and trained new armed forces as part of the reform of the Liberian security sector, and also ensured security for President Hamid Karzai in Afghanistan. Blue Sky supervised the cease-fire in Aceh; and, for a number of years, Centurion has been training humanitarians headed for high-risk zones.

What do these various operations have in common? Known as private security companies (PSCs), or sometimes private military companies (PMCs), they offer services designed to have a strategic impact on the security of persons or property. While the American and British governments and multinationals of all sorts are their main clients, humanitarians are not absent from the list.

The growing importance of private security companies has both a direct and indirect impact on humanitarian players. Direct, because an increasingly larger number of humanitarian organizations are signing contracts with PSCs. The services provided vary from context analysis to the review and implementation of security procedures; from demining to crisis management or support; from training to static or mobile protection – sometimes armed. Indirect, because the presence and activities of these new players in places



Photo: USAID

*Increasingly, the role of private companies is entering the humanitarian sphere in conflict/post-conflict zones. Private companies are already working to assist with refugee camps, like this one, in Sudan.*

traditionally occupied by humanitarian organizations changes the environment in which humanitarian action is taking place as well as the perception that local populations have of humanitarian organizations.

The question now becomes, is this good a good thing or a bad thing? Should we applaud or condemn Blackwater's proposal to support or supply African Union forces in Darfur? Should the United Nations Security Council have contracted the services of a PSC to limit the Rwandan genocide as it was contemplating doing at the time?<sup>2</sup> When we think of the multiple roles that PSCs are taking on or could take on, the instinctive and simple reaction is of an ethical nature: "should I respect these people who are fighting for money?" For a number of humanitarians, this ethical/emotional reaction will direct the decision-making process towards distancing themselves from these players. This completely understandable position can be justified by the fact that an organization which has built its legitimacy on respect for ethical principles cannot agree to move towards collaboration with these companies which are often called modern-day mercenaries. A number of humanitarians also fear that such a rapprochement runs the risk of tarnishing their reputation. This position, however, also has its limits. Because they have signed contracts with governments, donors, UN agencies or other NGOs, PSCs will be increasingly present in contexts of humanitarian operations. Without necessarily legitimizing PSCs, it is important

to engage in dialogue with them. Just as humanitarians and militaries decided about fifteen years ago on the need to develop exchanges between the two communities, the humanitarian sector and the private security sector working together on the ground – the same ground – need to better understand each other.

Because of the seeming impasse in the situation in Darfur, Blackwater's proposal made headlines since it provided an original idea to the mix of proposed solutions. This proposal is based on the real or supposed advantages of the use of private security companies. Whether this be to supply the Blue Helmets or the African Union troops, to assist or protect humanitarian organizations, what are these advantages?

- **Alternative:** As illustrated in this individual case, using a PSC offers an alternative to methods of public protection, whether they be national or international, often paralyzed by political considerations.
- **Responsibility:** While critics point to the lack of transparency of PSCs, their supporters proclaim, on the contrary, that PSCs are responsible players. They must respect the laws of the countries in which they are operating, as well as the contractual obligations which bind them to their clients. If the client is a humanitarian organization, the contract will necessarily include a clause requiring respect for international humanitarian law, human rights or refugee rights.

*The author, a graduate of the Paris Institute for Political Studies (Sciences Po Paris), has previously worked on humanitarian missions in Cuba, D.R. Congo, Iraq, and North Korea. He is currently pursuing a doctorate in international relations at the London School of Economics and Political Science.*

*This article is an English translation of the original French version. The original French version may be found at [www.peaceops.com](http://www.peaceops.com).*

# Security and the Humanitarian Field

**FROM** page 21  
JEAN RENOUF

- **Speed and cost:** PSCs can, in theory, be deployed rapidly and at a lower cost than Blue Helmets.
- **Control unit:** As the operations of the United Nations often include personnel and supplies from a number of different countries, the operational capacity and the means of the troops differ appreciably from one zone to another. Moreover, the effectiveness of the command structure is often watered down as a result of the loyalty of each of these troops to their country of origin<sup>3</sup>. A PSC, on the other hand, benefits from a unified chain of command which, in comparison, increases its effectiveness.
- **Versatility:** In addition to their technical (medical or logistical, for example) skills, PSCs offer a wide range of services – anything from managing the disarmament process and troop training to the conceptualization of reforms to the security sector; but they can also protect populations in danger as well as humanitarian players or those responsible for the economic reconstruction of the country, etc.

As they provide tailor-made solutions, private security companies are attractive for a number of decision-makers. The consequences of medium- and long-term privatization of certain aspects of security, however, should be considered, and the advantages weighed against the disadvantages.

- PSCs do not necessarily resolve the root causes of problems, just as humanitarians are often criticized for serving as bandages on untreated wounds. Similarly, a PSC can contribute a sense of protection for some without necessarily being in a position to resolve the root causes of the insecurity. The risk is thus to reduce multidimensional and sensitive peace-keeping operations to simple technical operations.
- Security is no longer considered a public good, but reserved for those who can pay for it. A population that fails to benefit from security may become embittered and alienated.
- When provided by for-profit companies, assistance may in the end be based on financial consideration rather than need.
- PSCs may have questionable relations with local or global individuals or institutions which are, themselves, sometimes questionable (politicians, armed forces, multinationals). The use of a PSC by a humanitarian organization can therefore compromise the local populations', the

local armed groups' or the media's perception of the organization. Moreover, if the PSC provides armed protection, it may be perceived as a party to the conflict.

- Recent experiences in Colombia, Iraq or Afghanistan show that PSCs are not always accountable, especially with respect to human rights or international humanitarian rights. Likewise, it is difficult to say where the responsibility begins and ends in the case of incidents caused by PSCs: is it the company who is responsible or the client who has hired the company?
- While PSCs provide a multitude of services, we should also recall that they have limited capacities; it would be a mistake to imagine that they can do or resolve everything.
- Finally, and probably the most important aspect for a number of humanitarians, the presence of PSCs on the ground increases the risk of confusion among private sector, humanitarian personnel, the military and private security providers. At a time when the debate on the preservation of the humanitarian zone is livelier than ever, there is no question but that the presence of PSCs adds a new dimension to the problem.

Is humanitarian action in the process of evolving in a way that Henry Dunant would never have predicted? We would be well advised to follow this question closely. Because the privatization of security has a direct and indirect impact on humanitarian action, joining the dialogue with private security companies – following the example of the ICRC –, irregardless of the position of each humanitarian organization is a constructive step. A critical debate is currently taking place on a global scale on the process of PSC regulation. Everyone is in agreement that there is an urgent need to regulate PSC operations, but the process is still in the trial and error phase. Humanitarians who rub elbows daily with them are, most surprisingly, absent from this discussion.

## ENDNOTES

1. Jean Marguin, "Towards the Privatization of Armed Forces", Foundation for Strategic Research, [http://www.frstrategie.org/barreFRS/publications\\_colloques/archives/perspec\\_strat/50/50-2.php](http://www.frstrategie.org/barreFRS/publications_colloques/archives/perspec_strat/50/50-2.php), 2000.
2. For more details, see Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security*, Cambridge University Press, USA, 2005.
3. Which thereby creates a double chain of command and decision-making.

This article was initially published in French in the *Humacoop Lettre d'Information*, September 2006, under the title "Humanitaire et Sociétés de Sécurité Privée: il est temps d'engager le dialogue". The article was translated thanks to Ms. Elizabeth Lang.



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## C O L U M N I S T S

# Democratic Republic of the Congo: A Ray of Hope

*Despite a Contested Election, Joseph Kabila is Sworn-in as President*



AMBASSADOR HERMAN J. COHEN

**T**HE SWEARING-IN of Joseph Kabila on December 6 2006 as the elected President of the Democratic of the Congo brings to an end ten years of wars, insurgencies, and stalemated government. From the point of view of the Congolese people, the economic and social situation has deteriorated to its lowest point since the Congo's independence from Belgium in June 1960. There is no place to go but up.

Now that President Kabila no longer has to share power with former rebel leaders, he has the opportunity and sole responsibility to begin the long and difficult process of reconstruction, rehabilitation and economic revival. What are his chances?

For the first time since externally generated civil war started in 1996, it is possible to express cautious optimism about the DRC's prospects. Of paramount importance to this view is the fact that none of the Congo's neighbors has an current interest in destabilization activities. Uganda and Rwanda, on the DRC's eastern border, were responsible for the bulk of the continuous violence in North Kivu, South Kivu and Ituri provinces over a period of five ears. Today, these neighbors have access to ample cross-border trading advantages, and do not need to pillage the Congo's resources, as they have done in the past.

Kabila can also ride a wave of high commodity prices in the search for reconstruction and rehabilitation revenue. Copper, cobalt, coltan, gold, and other minerals should provide unprecedented levels of royalties and taxes.

Nevertheless there are daunting challenges to the new Kabila government. The biggest is probably the military. The troops have never been properly paid, and have consistently lived off the population. Needless to say, this situation does not make for a viable state, and must be reformed. There are a few DRC military units that have become battle hardened in fighting in the country's northeast since the year 2000. But in general, a total reorganization and professionalization will be necessary.

Secondly, the country's infrastructure

*The author is a former Assistant Secretary of State for Africa, and is President of Cohen & Woods International. Ambassador Cohen's column appears regularly in the Journal.*



Photo: UN

*Kabila is sworn-in as President of D.R. Congo.*

will have to be rebuilt from the ground up. The only element that is operational is the portable telephone network. Roads, river transport, and railroads will need major rehabilitation. The great Inga hydropower station near the mouth of the Congo River will need approximately \$400 million worth



Photo: Billa Tchechalhe/MONUC

*Congolese citizens line-up to vote in the UN-supervised elections.*

of reconstruction in order to regain the 17,000 MW of electricity output it had in 1975. In the long run, electricity may become the DRC's most important export money earner.

Third, governmental institutions will require a great deal of work. This will be especially true in the provinces where decentralized government will require viable legislatures and local governments where none have existed before. The entire judiciary and civil service, while retaining some competent professionals from the old

days, will need to be reconstituted. Possibly the one bright spot within the administrative structure is the Central Bank which has been run on a sound basis throughout the period of security crisis.

Fortunately, a lot of assistance resources will be available from the international community, particularly the World Bank, the European Union and the African Development Bank. Also, an expansion of foreign investments, especially in the extractive industries, is already taking place, especially in the southeastern Katanga province, the traditional home of copper and other high value nonferrous ores. The Congo's once great tropical agricultural industry could be rehabilitated for the benefit of millions of subsistence farmers.

While economic rehabilitation and development assistance is likely to be significant, it will be unfortunate if there is no commensurate assistance in the security field. The United Nations peacekeeping operation in the DRC (MONUC) has been one of the largest in the organization's history with 17,000 blue helmets. Much of this force should remain for at least a year to insure a trouble-free political transition. In addition, some of this force should be replaced by professional military trainers and professional military reformers, coming mainly from the private security community. If the security sector cannot be professionalized and appropriately equipped, the economic and political transitions are unlikely to be successful.

Looking back at the UN peace operation in the Congo, one can say that it has been very successful, and possibly even a role model for the future. The partnership between the UN military and civilian components, the nongovernmental relief organizations, and the private sector security contractors merits further study as a possible template for future operations. Unfortunate and even criminal behavior by some elements of some military units notwithstanding, the MONUC operation can be deemed a success.

The DRC is a country with immense territory and tremendous potential for the production of economic wealth. The restoration of security and the achievement of a democratic transition between 2002 and 2006 far surpassed the modest hopes of a few years ago. The international community should not allow this experiment in nation rebuilding to fail.

# A Government Falls in the Pacific. Does Anybody Care?

*After a Day at the Rugby and a Round of Drinks, Fiji Suffers its Fourth Coup in Nineteen Years*



J. J. MESSNER

**F**OR MANY PEOPLE, the islands of the Pacific are an enticing paradise-like holiday destination, resplendent with blue skies, clear water, golden beaches and palm trees. However, the truth is far from the common perception. By any standard, a number of the small island nations of the Pacific are anything but stable.

Fiji, a Pacific nation of just under a million people, is no stranger to political instability. Indeed, when Commodore Voreqe Bainimarama (or "Frank" to his friends) launched a military coup this November against the democratically-elected government of Prime Minister Laisenia Qarase, it was the fourth such coup the country had witnessed in 19 years.

The current crisis has its roots in the previous coup. In 1999, George Speight, an ex-pat Fijian businessman from Brisbane, spearheaded a coup against the government of Prime Minister Mahendra Chaudhry, the first leader of Fiji to come from the country's ethnic Indian minority. Speight, who is an ethnically indigenous Fijian, wished to thwart the multiracial government and its land reform plans which he believed would disadvantage the indigenous population. The coup initially succeeded in toppling Chaudhry's government, but failed in the long-run, as the military assumed power — under the leadership of Commodore Bainimarama — and the Fijian High Court reinstated constitutional democracy.

The spark for the current coup came when the Qarase government, made up of ethnically indigenous hardliners, proposed granting amnesty to those involved in perpetrating the 1999 coup. This move launched a stand-off between Qarase and Bainimarama, the former demanding the latter's resignation (a request which the Commodore politely turned down). A tit-for-tat ultimatum was then issued by Bainimarama to Qarase to back down on his proposed policy, and as the ultimatum's deadline passed, Qarase and his cabinet fled into hiding. Bainimarama and his men, far from pouncing on government, decided to spend their time at a rugby game before finally getting around to assuming power.

*The author is the Editor-in-Chief of the Journal of International Peace Operations and is the Director of Programs and Operations at IPOA.*

All-in-all, the Fijian coup was peaceful and laid-back, very much like this year's earlier coup in Thailand that brought down Prime Minister Thaksin Shinawatra in a bloodless, military-led rebellion.

But a coup is a coup, and bloodless or not, it unseated a democratically-elected government, and it should thus be condemned regardless of how corrupt and ill-intentioned the now former government may have been. The coup risks making a less than stable region even more precarious. A



Photo: Government of Fiji

*Ousted Fijian Prime Minister Laisenia Qarase (right) is believed to have gone into hiding. Australian Prime Minister John Howard (left) has dismissed calls for Australia to intervene in Fiji's crisis.*

quick census of the region finds that Timor-Leste is currently the scene of a UN peacekeeping mission after violence flared again earlier this year and still continues; civil order in the Solomon Islands is barely being held together by an unwelcome peacekeeping mission led by Australia and New Zealand; and the pro-democracy campaign against King George Tupou V in Tonga has finally turned violent, leading to riots in the capital, Nuku'alofa.

But should the rest of the world care? After all, for all intents and purposes, this is like a small altercation at Club Med.

Firstly, the coup has inflicted serious economic and political consequences on Fiji, an already poor country with a per capita income of just over US\$6,000, the 93rd placed country in the world. The Commonwealth — although normally an archaic institution of nations that still hang a portrait of Her Majesty Queen Elizabeth II on their walls — acted swiftly with the only instrument of relevance in their toolbox, by suspending Fiji's membership and along with it their technical assistance programs

that included law-revision, debt-management and trade.

Secondly, Australia and New Zealand have both imposed targeted sanctions and the United States has slashed its aid programs to Fiji. The mainstay of the Fijian economy, tourism, has also been hit hard, recording up to a 50 percent cancellation rate among foreign visitors.

Thirdly, and most significantly for global peace operations, the UN has threatened to remove Fijian troops from its peacekeeping missions. This would have a negative impact on Fiji (given the importance of UN peacekeeping *per diem* to the Fijian economy) and also a significant impact on the UN itself, for a body that is so short of peacekeepers really cannot afford to lose a national contingent of the size of Fiji's.

But is that really enough to make the rest of the world care? Probably not. After all, (and thankfully) it is not as if Fijians are being slaughtered in the streets of Suva.

There were initial calls for the international community to take drastic action. Australia, for example, refused calls for it to intervene in the Fijian crisis, and well they should. Australia's relations in the Pacific region are already hanging by a thread, and such an imperialist intervention would surely derail regional relations for years to come.

Such an intervention would also cause practical problems for an over-stretched Australian military (which is already deployed to Afghanistan, Iraq, Solomon Islands and Timor-Leste), and it could also lead to potential future cries of help from the likes of King George of Tonga, whose time as absolute monarch must surely be coming to an end.

A coup is definitely not something to be encouraged, especially when it topples a democratically-elected government. But there is a distinct difference between bloody and bloodless coups. Coups like these should definitely be punished by the international community in some way, through diplomatic and carefully targeted economic sanctions. Fiji must also be given plenty of incentive to return to constitutional democracy quickly, to ensure that the military keeps only a fleeting grip on power. But it would be entirely inappropriate for any further action to be taken on what amounts to an internal matter.

Despite calls for armed intervention, it is not for the world to decide who should govern Fiji.



## NGO PROFILE

# Universal Human Rights Network

## *Advocating for Enhanced Respect for Human Rights Worldwide*

**U**NIVERSAL HUMAN Rights Network (UHRN) is a Washington, D.C.-based, United Nations associated, non-governmental organization that promotes respect for human rights globally. The organization is nonprofit, nonpartisan, and non-sectarian and offers humanitarian assistance to victims of gross human rights abuses.

The organization conducts its activities through a variety of programs, projects, campaigns and initiatives aimed at specific areas of concern within the realm of human rights.

Through the use of networking, strategic partnerships, collaboration and joint ventures with organizations who share the organization's concerns for the fundamental principles delineated in the Universal Declaration of Human Rights, UHRN strives to achieve its mission.

UHRN serves as an umbrella for several working groups. Included in this group is the Resource Bank for Civilian Peacekeeping. This is a data bank which pools experts from a variety of professional disciplines who are

deployed to countries where the human rights situation necessitates the presence of highly skilled, well trained, objective human rights monitors or election observers. These professionals are deployed on a short term basis and provide insightful reports regarding human rights abuses and transparencies in the conduct of the electoral process in areas where tensions are high as a result of prior disaster or conflict.

Our second group is the Human Rights Consultancy Group. This working group offers practical advice and guidance to countries seeking to enhance their commitment to fundamental principles of human rights and or maintain millennium goals set forth by the United Nations and key donor states. Additionally, the Consultancy Group offers advice to, board members, senior management and key staff of multinational corporations on identifying effective means of implementing their commitment to corporate responsibility and human rights. This includes training and assistance in the establishment of codes of conduct that reflect the concern for human rights in the various

**UNIRIGHTS**  
UNIVERSAL HUMAN RIGHTS NETWORK  
1050 17<sup>TH</sup> STREET NW  
SUITE 1000  
WASHINGTON, D.C. 20036

### UHRN FACTBOX

**Founded:** 2001  
**Head Office:** Washington, D.C.  
**On the Web:** <http://www.unirights.net>  
**Contact:** Michael Davis  
Executive Director  
**Address:** 1050 17th Street NW, Suite 1000  
Washington, D.C.  
**Telephone:** +1 (202) 955-1010  
**E-mail:** [mdavis@unirights.net](mailto:mdavis@unirights.net)

countries in which they are engaged in business.

Integrity is the foundation upon which the UHRN has built its reputation and its unwavering approach to fairness in its reports.

*Profile contributed by Universal Rights Network.*

## PEACE OPERATIONS EQUIPMENT PROFILE

## The Mil Mi-8: An Aerial Workhorse of the World's PKOs

### *From the Former Soviet Military to Commercial Operators in the West*



Photo: ICI Oregon

*Two Mi-8 helicopters flying in formation during the UN mission to Sierra Leone in 1999.*

**T**HE MIL MI-8 helicopter has become almost as ubiquitous in the world's peacekeeping operations as blue berets. The type first flew 45 years ago, in 1961, and has continued to form the backbone of logistics operations in peacekeeping operations from Africa to Iraq.

The Mi-8, manufactured by the Mil Moscow Helicopter Plant, was once a common feature of the militaries of the former "East." Though the craft is still used widely by the Russian military, it also forms an important part of Chinese, Indian and

Iranian military operations as well as those of over 50 other countries. Importantly for the world's peacekeeping operations, the type is also employed by commercial operators — many of them based in western countries — who in turn fly them on behalf of the UN and other international organizations in conflict and post-conflict zones.

Twin turbines give Mi-8s an extra degree of safety as well as the capacity to carry 24 passengers or 3,000-4,000kg cargo. The Mi-8MTV is a super-charged variant of the Mi-8 with vastly more powerful engines. But like the other versions of the Mi-8, it has a negative reputation as a gas-hog.

In Africa, the ubiquitous Mi-8s fly in the most difficult conditions in the world, which combined with poor maintenance common to the continent has led to an unfortunately high accident rate. However, when maintained to factory specifications, the Mi-8 has demonstrated a much higher readiness and reliability rate than similar, more modern, and far more expensive western helicopters such as the Blackhawk. Those features may explain why the Mi-8 remains

not only the most widely used of the Mil helicopter family, but also one of the most widely used helicopters of its genre around the world.

*Profile by J. J. Messner.*

### EQUIPMENT FACTBOX

#### MOSCOW HELICOPTER PLANT MIL MI-8

**First Built**  
1961 (introduced into regular service in 1967)

**Crew**  
Three (two pilots, one engineer)

**Capacity**  
Passengers: 24 passengers - OR -  
Cargo: 3,000kg (6,600lb) payload

**Dimensions**  
Length: 18.2 m (59.8ft)  
Height: 3 m (9ft 10in)  
Rotor Diameter: 21.3 m (69ft 11in)

**Weights**  
Gross (empty): 6,990kg (15,410 lb)  
Loaded: 11,000kg (24,500 lb)  
Maximum take-off: 12,000kg (26,500 lb)

**Performance**  
Maximum Speed: 250 km/h (156 mph)  
Maximum Range: 450 km (280 miles)

**Unit Cost (for Used Models)**  
Approximately US\$800,000

# The UN Attempts to Bring Peace to Troubled Haiti

*Nine Missions to the Poorest Nation in the Western Hemisphere ... and Still Counting*



DENITZA MANTCHEVA

**F**OLLOWING A succession of transitory leadership post 1986, Haiti's provisional Government requested the United Nation's assistance in 1990 in light of the coming elections in the country. Accordingly, the United Nations Observer Group for the Verification of the Elections in Haiti (ONUVEH) was established to monitor what was later defined as a successful election process. Yet, shortly after taking office in February 1991, the democratically elected President Jean-Bertrand Aristide was overthrown by rebellious Lieutenant-General Raoul Cédras. After diplomacy had failed, the UN, in conjunction with the Organization of American States (OAS), formed the International Civilian Mission in Haiti



Photo: Sophia Paris/MINUSTAH

*A Brazilian peacekeeper conducts a weapons search during the 2005 Haitian elections.*

(MICIVIH) in 1993 to monitor human rights violations and negotiate the return of the democratically elected President. An oil and arms embargo was imposed on Haiti by the Security Council resulting in an agreement over a new cabinet and the establishment of the United Nations Mission in Haiti (UNMIH) by Resolution 867 of the Security Council. After resumption of the embargo and several diplomatic attempts, the Haitian military Government and the US finally came to an agreement in September 1994. A multinational force of 20,000 was deployed in Haiti, as were the UNMIH and MICIVIH.

President Aristide returned into power on October 15, 1994, and in 1995 UNMIH replaced the multinational force in assisting the new Government with keeping the stability in the country and creating the Haitian National Police (HNP). Subsequent to another round of democratic elections, the UNMIH mandate was extended by

Resolution 1048 of the Security Council until June 30, 1996.

The June 5, 1996 report of the Secretary-General to the Security Council greeted Haiti's progress towards democracy but declared the Haitian authorities not yet ready to maintain the stability in the country. Hence, Resolution 1063 of the Security Council established yet another mission to Haiti, namely, the United Nations Support Mission in Haiti (UNSMIH). The initial mandate of UNSMIH equaled six months but got extended twice and expired in July 1997. As the mission preceding it, the UNSMIH was aimed at the professionalization of the HNP, crowd control and keeping the stability in the country. Yet the Secretary-General's report at the end of its mandate offered similar conclusions to earlier reports highlighting the need to continue the UN support to Haitian authorities.

The successive version of peacekeeping operation was named the United Nations Transition Mission in Haiti (UNTMIH), this time mandated for four months only. Then again, the United Nations Civilian Police Mission in Haiti (MIPONUH) was brought together in December 1997 with the purpose of consolidating the achievements of all the previous UN missions. As the already extended end of MIPONUH's mandate approached, another report of the Secretary-General called for an extension of the peacekeeping operations in Haiti, once again resulting in the launch of yet another mission, namely, the International Civilian Support Mission in Haiti (MICAH) on December 17, 1999.

The new millennium brought another chain of turbulent events in Haiti with the internationally contested victory of President Aristide and his Fanmi Lavalas party. As civil conflict broke out in February 2004, UN involvement was sought once again. Resolution 1529 aided the formation of the Multinational Interim Force (MIF), which stabilization function was taken over by the newly established United Nations Stabilization Mission in Haiti (MINUSTAH) on June 1, 2004. Little to anyone's surprise, as new elections approached in Haiti in 2005, the Security Council extended MINUSTAH's mandate until June 1, 2005 (resolution 1576). Furthermore, the Council's delegation to Haiti in April yielded two additional extensions of the MINUSTAH rendering it, as of now, the latest undertaking of UN in Haiti mandated until February 17, 2007.

The international community now holds its breath for the advent of the next Haitian elections.



Satellite Images from Google Maps

## MISSION FACTBOX

### MINUSTAH

#### Mission des Nations Unies pour la Stabilisation en Haïti

##### Commenced

1 June 2004

##### Due to expire

15 February 2007

##### Special Representative of the

Sec-Gen and Head of Mission

Edmond Mulet

(Guatemala)

##### Force Commander

Lt. General José Elito

Carvalho Siqueira

(Brazil)

##### Current strength

6,642 troops

1,700 police

428 international civilian personnel

442 local civilian staff

169 United Nations Volunteers

(8,342 total uniformed personnel)

##### Contributors of Military Personnel

Argentina, Bolivia, Brazil, Canada, Chile, Croatia, Ecuador, France, Guatemala, Jordan, Morocco, Nepal, Pakistan, Paraguay, Peru, Phillipines, Sri Lanka, U.S.A. and Uruguay

##### Contributors of Police Personnel

Argentina, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, Chad, Chile, China, Colombia, Egypt, El Salvador, France, Grenada, Guinea, Jordan, Madagascar, Mali, Mauritius, Nepal, Niger, Nigeria, Pakistan, Phillipines, Romania, Russian Federation, Senegal, Sierra Leone, Spain, Togo, Turkey, U.S.A., Uruguay, Vanuatu, Yemen and Zambia

##### Fatalities

12 military personnel

3 police

2 international civilian

1 local civilian personnel

##### Costs

US\$510.039 million

(1 July 2006 - 30 June 2007)



Photo: UNDPKO

*Edmond Mulet,  
MINUSTAH  
SRSG.*



Border delays TSA compliance Fuel costs Local customs officials Detour on the A10 Exchange rates  
 Incomplete documentation Cross-docking No Fly Zones Port congestion New cargo security regulations  
 Offshore manufacturing Holiday rush orders Oversized goods Untraceable shipments Network crashes  
 Labor disputes Multi-SKU inventory issues Confidentiality and security Port tariffs Moved-up deadlines  
 Military exercises UN sanctions Hazmat restrictions Vendor managed inventory Software incompatibility  
 Vandalism Excessive packaging Free trade agreements Outdated technology Supplier management  
 Hard-drive crashes Air Cargo Manifest – Form 7509 Turkey Certificate of Origin and Consular Invoice  
 Handshake deals Contingent liability Enlargement of the EU Regional protection Monopolies  
 Government regulation of foreign investments New Port of Shanghai Heathrow's capacity  
 Political turmoil Cold chain temperature control Missing forms  
 Consumer product recalls New infrastructure projects  
 Six-sigma process improvement Hidden fees Regional airports  
 conflicts Driver availability Proof of delivery  
 Blockade at the Port of Beirut  
 Landing rights Fuel surcharges  
 Trade shows Digital positioning  
 Population shift  
 New road taxes  
 Shortages  
 Lazy data entry  
 Ordering delays  
 Inflation  
 Overage  
 Staff training  
 Material receipts  
 Embargoes  
 State regulations  
 European distribution centers  
 Shortcuts that aren't Grandfather clauses  
 The unimaginable Cultural ignorance  
 Category 5 hurricane in the Caribbean  
 Last-minute redirects Misspelled labels Archaic M.I.W. shopping carts  
 Two-digit fields when four are required Epidemics Damaged goods  
 Security clearances Trade subsidies New product introductions  
 Poorly written manuals Changing regulations Pick-up and delivery Routine maintenance  
 Work permits Production shut-downs Insufficient lighting Employee relocation Government tender  
 procedures Political change Sudden market fluctuations Long labor negotiations Earthquake in Kabul  
 Price controls Mountains of paperwork Port storage costs Multilateral treaties Coast Guard inspections  
 New production technology VAT deferral Point-of-sale data collection Mismanagement Zoning restrictions  
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