

Handle with Care: Private Security Companies in Timor-Leste

*Sarah Parker*¹

East Timor Law Journal 2009

I. Introduction

In the wake of several highly publicized and troubling incidents involving private security companies (PSCs) in Iraq and Afghanistan in recent years,² scholars and the media have increasingly focused on the role of PSCs in providing security in conflict and post-conflict settings. The international debate surrounding the engagement of private security providers is becoming increasingly important in Timor-Leste, where two developments have influenced the local discussion. Firstly, the number of PSCs operating in Timor-Leste has increased since independence. Secondly, the government is considering legislation authorizing non-state security personnel (and other civilians) to carry and use firearms in the course of their duties.³

In parallel with the debate on the roles and regulation of private security providers, there is an emerging body of standards and best practices covering the activities of security firms, many of which originate within the industry itself. These standards should inform the development of regulations and/or codes of conduct governing the selection, licensing, and activities of private security personnel in Timor-Leste.

The use of arms by private security personnel poses special challenges for Timor-Leste, where government capacity to appropriately regulate, monitor, and enforce weapons possession laws remains in question. If the Timorese government *does* proceed to adopt legislation allowing private security personnel to carry and use firearms, strong regulations should be carefully considered, such as strict restrictions on carrying and a prohibition on storing guns at home after hours.

The aims of this paper are to:

1. explore what is meant by 'private security' and the status of private security personnel;
2. provide an overview of the PSCs operating in Timor-Leste;
3. analyse efforts to regulate the private security industry at the national and international levels, with a special focus on the access to and use of arms by private security personnel; and
4. explore some of the negative impacts of the use of armed private security in other countries.

II. What are private security companies?

Private individuals and groups are increasingly being engaged in conflict and post-conflict settings to provide an expanding range of security services to various actors, including governments, international organizations, humanitarian agencies, private companies, and other non-governmental actors. In some instances, locally owned and operated companies who offer basic domestic property protection and surveillance systems provide these services. In other cases, multinational corporations are offering international clients a range of services, including some that are traditionally seen as

military operations reserved for states' armed forces. In Iraq, for example, they are reported to account for 16 per cent of foreign personnel on the ground.⁴

The classification given to non-state actors security providers depends on the nature of their services. While there is no agreed definition, generally speaking, a distinction is made among mercenaries, private military companies (PMCs), and PSCs.

Mercenaries, in general terms, are non-nationals hired by one of the parties to an armed conflict to take part in the conflict. They are motivated by commercial interests rather than loyalty to a cause, and hence are often referred to as 'soldiers of fortune'. There is no undisputed definition under international law, but the 1989 *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* defines a mercenary as

any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to the conflict; and
- (e) Has not been sent by a State that is not a party to the conflict on official duty as a member of its armed forces.

2. A mercenary is also any person who, in any other situation:

- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
 - (ii) Undermining the territorial integrity of a State;
- (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- (c) Is neither a national nor a resident of the State against which such an act is directed;
- (d) Has not been sent by a State on official duty; and
- (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.⁵

PMCs or private military firms (PMFs) provide military services associated with replacing or backing up an army or armed group or to enhance effectiveness.⁶ Accordingly, they tend to specialize in the provision of military skills, including combat operations, strategic planning, intelligence, risk assessment, consulting on strategic planning and force deployment, operational and logistical support, training, maintenance of weapon systems, and technical skills to legitimate domestic and foreign entities.⁷ It has been noted that these services were once generally assumed to be exclusively inside the public domain.⁸ PMCs/PMFs are often described or regarded as modern mercenaries.

PSCs are registered civilian companies that specialize in providing contract commercial services to domestic and foreign entities aimed at protecting personnel

and property from criminal activity.⁹ PSC services can be divided into the following broad categories:

- the guarding sector, including:
 - a) industrial and commercial site protection;
 - b) humanitarian aid protection;
 - c) embassy/mission protection;
 - d) VIP/close protection;
- the electronic security, sensor, and surveillance sector;
- the investigation and risk management sector; and
- the private intelligence sector.¹⁰

Although the distinction between PMCs/PMFs and PSCs appears to be fairly clear on the surface—one group provides *military* or ‘active’ services to entities involved in combat operations, while the other provides primarily protection or ‘passive’ services, and is not engaged in combat activities—in fact, it is not easy to make a precise distinction in practice, and the issue has been much debated.¹¹ In an effort to sidestep arguments that seek to differentiate between private military and private security companies, and nuanced deliberations over whether companies are engaged in ‘offensive’ or ‘defensive’ services, or ‘directly participate in hostilities’, they are often grouped together as ‘private military and security companies’ (PMSCs).

For example, the Special Rapporteur on the question of the use of mercenaries included a comment on ‘Private and Military Assistance Companies Operating Internationally’ in his annual reports to the UN General Assembly. Similarly, the Montreux Document (pertaining to situations of armed conflict) uses the term ‘PMSCs’ and defines it as follows:

PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.¹²

It is not necessary to explore or debate the distinction for the purposes of this paper, since the private security providers operating in Timor-Leste have not been operating in a situation of armed conflict since 2006 and are engaged exclusively in protecting personnel and property (see Table 1).

III. Overview of PSCs operating in Timor-Leste

According to the UN, private security guards or non-state security actors in Timor-Leste outnumber police and military combined, and are particularly visible in cities and towns.¹³ The focus of this paper is on the operations of PSCs that are providing primarily close security and surveillance services to a range of actors in Timor-Leste, including the UN; international NGOs; humanitarian agencies; embassies; and the private sector, including banks and oil extraction companies. Three companies dominate the private security industry in Timor-Leste: APAC Security, Maubere Security, and Gardamor Security.¹⁴ Table 1 provides an overview of the size and nature of their activities.

An estimated 3,500 employees work as private security personnel for the three main PSCs operating in Timor-Leste. PSC personnel are generally not subject to thorough background checks or screening, and although there is a preference for employing people with previous security experience, this is not a requirement. PSC personnel are not currently permitted to carry firearms. Some carry defensive weapons such as batons and tasers, however.¹⁵

It is not clear what level of specialized training is provided to PSC employees in Timor-Leste, although one company claimed that all of its employees undergo at least four days of guard training incorporating information on the company's code of conduct, patrolling duties, radio use, body searches with handheld detectors, basic reporting, and vehicle searches. Employees are also taught emergency evacuation and fire procedures, and supplemental training is provided to certain guards in explosive detection with atomisers and by x-ray detection. The company also provides training to employees in specific roles, including force continuum¹⁶ to guards at facility sites or in tasks where it is likely that they will have to use reasonable force (e.g. cash-in-transit operations).¹⁷

An important question to ask is *why* PSCs are increasingly being employed to provide security in Timor-Leste. Reliance on private security is often a response to the existence of a security threat and a perception that the state does not or cannot provide adequate public protection against the threat by way of policing and law enforcement. In Timor-Leste, past antagonism between the PNTL¹⁸ and the F-FDTL¹⁹ and confusion regarding who is responsible for which aspects of internal security have no doubt contributed to this perception and instability. Weak state capacity to ensure public security (one of the core functions of the state) leads to the creation of alternative security structures, including private security operations.²⁰ This, in turn, blurs the perception of security as a *public* good and causes confusion about the boundaries of responsibility between the private and the public sector.

Private security is inherently inequitable, because it is costly, rather than provided at low/no cost by the state, making it inaccessible to the poorest. This may serve to exacerbate tensions within society, especially where they relate to a class or economic conflict. Additionally, allegations of misconduct by PSC personnel or of inappropriate links between PSCs and political parties or paramilitaries are frequent.²¹ Most importantly, perhaps, the domestic private security industry is largely unregulated and thus often hires poorly trained and inadequately screened guards. The absence of appropriate regulation and state policies may reinforce rather than alleviate existing social divisions and tensions.²²

In Timor-Leste, the Ministry of Defence and Security has the responsibility for authorizing the formation of PSCs and supervising their activities.²³ There are no specific regulations governing the activities of PSCs operating in Timor-Leste, although one of the aims of the Security Sector Review in Timor-Leste project—run by UNMIT in collaboration with UNDP, as well as the Secretary of State for Security—is to promote professionalism within the private security industry. It makes policy recommendations for ensuring that the sector plays an effective role in the socio-economic development of the country. It is not clear what action, if any, has been taken to pursue this aim to date.

Table 1 Private security companies in Timor-Leste

Company	Country of origin	Main clients							Nature of services (currently all <i>unarmed</i>)	Employees	Duration of operations
		Government	UN	Humanitarian agencies	International organizations	International NGOs	Private sector	Civilians			
APAC Security	Australian/American owned	TL government institutions	X	X	X	X	X ^a		<ul style="list-style-type: none"> • Close protection • Secure movement of money • Security alarm systems and mobile response • Stationary guards (guarding property) • Private investigations • Sector intelligence 	1,700 100% Timorese ^b	Seprosetil set up in 2003; APAC set up in 2007 to present
Maubere Security	Locally registered and operated company with Timorese and Australian ownership	Embassies	X				X		<ul style="list-style-type: none"> • Close protection • Secure movement of money • Security alarm systems • Stationary guards (guarding property) 	2,500 100% Timorese ^c	2004 to present; previously Chubb Security
Gardamor Security	100% Timorese owned	Embassies & govt institutions					X		<ul style="list-style-type: none"> • Close protection • Secure movement of money • Building/property static security 	550 (100 Timorese)	2008 to present

TABLE NOTES:

^a Many of the major petrol companies based in Dili use APAC Security, including Conoco Philips and Eni Spa.

^b The company employs three international executives: the president (CEO), chief of operations, and managing director.

^c The company employs three international advisors: director/advisor, operations advisor, and customer service.

Sources: Correspondence with APAC Security personnel, 11 June 2009; correspondence with Maubere Security personnel, 10 June 2009; correspondence with Edward Rees, TLAVA analyst, various dates

IV. Efforts to regulate the private security industry

The use of private, commercial actors to provide security and military services is problematic for many reasons, but two in particular stand out. Firstly, the industry remains attached to the **legacy of mercenarism**. Mercenaries or ‘soldiers of fortune’ have been engaged in numerous civil conflicts, especially in Africa, during and since the end of the Cold War to help overthrow and undermine legitimate governments. For instance, the apartheid regime in South Africa resorted to mercenaries to destabilize regimes considered threatening and to attack leaders of the African National Congress.²⁴ Mercenaries have also been associated with arms and diamond smuggling and other criminal activities during their engagement in such conflicts.

Secondly, the hiring of private contractors to fight wars and provide security raises challenges to the **state's monopoly on the use of force**. These challenges are increased and the distinction between public and private actors further obscured when these private actors are *armed*.

Private security contractors have gained prominence in recent years for a number of reasons. The downsizing of many of the world’s militaries since the end of the Cold War has meant that states have fewer troops to deploy to overseas peace and stability operations in other ‘weaker’ states.²⁵ Also, the major powers have gradually withdrawn from many parts of the developing world. Finally, global processes or market liberalization have rapidly sped up, making it easier for PSCs to operate internationally. The status of non-state security providers under international law remains unclear and their activities remain largely unregulated at the international level, while at the national level, only a handful of states have adopted specific regulations addressing the issue.

However, awareness of some of the dangers and problems associated with the use of private military and security industry has grown in recent years, thanks to media attention, and efforts to regulate the industry at the international and regional level are under way. A brief description of some of those efforts follows.

National regulation

Several countries have specific legislation and regulations governing PSCs. Common elements of existing national legislation and best practices include the following:

- the registration of PSCs with the relevant authority;
- the licensing of PSCs, as part of which the types of services they may provide are clearly defined and an assessment is carried out of the likelihood that the PSC might exacerbate instability or threaten public safety;
- measures to ensure the transparency and accountability of PSCs, including record-keeping requirements and internal systems of governance (such as staff recruitment policies, training and conduct, etc.);
- requirements for appropriate insurance coverage;
- commitment to a relevant code of conduct; and
- the requirement of financial security, or at least solvency.

With respect to security personnel employed by PSCs, common elements include a requirements that individuals:

- be licensed to work as security guards and providers;
- be of a certain age;
- undergo a thorough background checks (e.g. to ensure they do not have a criminal record or mental illness); and
- have completed an appropriate training course. Ideally the training course would be created and overseen by state authorities.

Despite the common elements, there are a variety of specific legal requirements, traceable to a range of factors, including local customs, laws, and histories, and attitudes towards guns and state security. In some jurisdictions, including the UK, Ireland, Denmark, France, and the Netherlands, private security personnel are expressly prohibited from carrying weapons. In countries where security personnel are permitted to carry weapons, they are often required to undergo additional training with respect to the use and handling of the weapons, and other restrictions may be applied. For example, in the US state of Utah, an individual applying for licensure as an *armed* private security officer must submit, in addition to proof of other basic security training, a certificate confirming that he or she has completed 12 hours of firearms instruction and has achieved a minimum score of 80 per cent on the practical test.²⁶

Similarly, in South Africa, the code of conduct governing security service providers prohibits the possession or use of a firearm or ammunition by personnel unless they have been successfully trained in the possession and use of the weapon and are able to use it lawfully, safely, and correctly in the relevant circumstances.²⁷ In the state of New South Wales in Australia, armed security guards must wear a recognizable uniform when they are on duty²⁸ and must not store their firearm at the home of anyone who has been convicted of a criminal offence.²⁹

The call for these additional checks and restrictions for *armed* private security should be situated within the practicalities and realities of the existing local industry. For example, Morocco introduced legislation in 2008 permitting the arming of security guards as part of a general increase in security measures in response to growing concerns about terrorist threats. Security industry professionals in the country expressed reservations about the new law, noting that few PSCs in Morocco had the expertise or the capacity to provide the advanced level of professional training required to work with weapons.³⁰ Similar reservations have been expressed by the Timorese private security industry.³¹

International regulation

i) Existing international humanitarian law

Where PMCs and PSCs operate in situations of armed conflict, international humanitarian law (IHL) applies, but their classification as civilians or combatants (and the associated entitlements and protection afforded them) depends on the nature of their activities. If they operate as part of the armed forces of one of the states party to the conflict and have express authorization and recognition from the state, they are considered to be combatants. This implies entitlement to prisoner of war status if captured. If the conditions of combatant are not met, however, they are considered civilians under IHL and are entitled to due protection from military operations.³² In

practice, making this determination is often very difficult, as a grey area exists between 'service support' and 'military' functions.

ii) UN process

Attempts by the UN to regulate and restrict the involvement of non-state individuals in the conduct of war began in 1968 with a General Assembly resolution calling on states to take all measures to prevent the recruitment and training of mercenaries in the Portuguese colonial wars in Angola, Guinea-Bissau, and Mozambique.³³ Then, in 1980, the UN established the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and adopted the draft convention prepared by the Ad Hoc Committee in 1989.³⁴

UN time line: consideration of mercenaries

1968: UNGA resolution condemning recruitment of mercenaries (UNGA res. 2395 (XXIII) of 29 November)

1980: Ad Hoc Committee appointed to draft a convention (UNGA res. 35/48 of 4 December)

1987: Special Rapporteur on the use of mercenaries appointed (Commission on Human Rights res. 1987/16 of 9 March)

1989: *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* adopted by UNGA (UNGA res. 44/34 of 4 December)

2005: Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-determination established (Commission on Human Rights res. 2005/2)

2008: *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* ('Montreux Document')³⁵

Following the appointment by the Commission on Human Rights³⁶ of a Special Rapporteur on the use of mercenaries in 1987, annual reports on human rights violations involving mercenaries were submitted to the General Assembly by the Special Rapporteur. Increasingly, these reports included information and analysis of private security and military assistance companies operating internationally. The reports observed that some of these companies were involved in activities that constituted a threat to security and peace in the countries or regions where they operated, and some were in fact hiring mercenaries to carry out their operations.³⁷ Indeed, the Special Rapporteur expressed the belief that 'one of the new forms of mercenary activity is that which takes place through private security companies that hire out military services, using mercenaries for that purpose'.³⁸

The mandate of the Working Group on the Use of Mercenaries established in July 2005 to succeed the Special Rapporteur contains a specific commitment:

To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination,

and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.³⁹

This new commitment acknowledges the fact that:

mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities, and in this regard requests its members to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights by everyone and every people and, in particular, on the exercise of the right of peoples to self-determination.⁴⁰

iii) Swiss Initiative

The first international agreement specifically addressing PSCs was adopted by 17 states on 17 September 2008, as a result of an initiative launched jointly by Switzerland and the International Committee of the Red Cross in 2006 (the ‘Swiss Initiative’).⁴¹ The *Montreux Document* sets out the international law applicable to the activities of PMSCs whenever these are operating in an armed conflict. It also identifies good practices such as introducing transparent licensing regimes, public disclosure of PMSC contracting regulations, and parliamentary oversight.⁴²

Weapons-specific recommendations

Although the *Montreux Document* specifically relates to the engagement of PMSCs by states in the context of an armed conflict, many of its principles are of relevance to the recruitment and hiring of PSCs at a local level and generally. Notably, the *Montreux Document* contains specific provisions regarding the use of weapons and/or firearms by PMSCs, including recommendations that, when selecting a PMSC, states should take into account:

1. the past conduct of the PMSC and its personnel, including whether any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces (Part Two, paras. 6 and 32);
2. whether the PMSC maintains accurate and up-to-date personnel and property records, in particular with regard to weapons and ammunition, available for inspection on demand (Part Two, paras. 9 and 34);
3. whether the PMSC’s personnel are adequately trained, including with regard to rules on the use of force and firearms (Part Two, paras. 10(a) and 35(a));
4. whether the PMSC:
 - a. acquires its equipment, in particular its weapons, lawfully;
 - b. uses equipment, in particular weapons, that is not prohibited by international law;
 - c. has complied with contractual provisions concerning return and/or disposition of weapons and ammunition (Part Two, para. 11).
5. whether the PMSC’s internal regulations include policies on the use of force and firearms (Part Two, para. 12);
6. including in the contract a clause confirming that equipment, in particular weapons, used by the PMSC have been acquired lawfully (Part Two, para. 14);

7. including a requirement that the PMSC respects relevant regulations and rules of conduct, including rules on the use of force and firearms, such as:
 - a. using force and firearms only when necessary in self-defence or defence of third persons;
 - b. immediate reporting to and cooperation with competent authorities in the case of use of force and firearms (Part Two, para. 18).

With respect to states where PMSCs are operating, the *Montreux Document* recommends that, in addition to incorporating many of the above provisions into their licensing laws, states should establish appropriate rules on the possession of weapons by PMSCs and their personnel, such as:

1. limiting the types and quantity of weapons and ammunition that a PMSC may import, possess or acquire;
2. requiring the registration of weapons, including their serial number and calibre, and ammunition, with a competent authority;
3. requiring PMSC personnel to obtain an authorisation to carry weapons that is shown upon demand;
4. limiting the number of employees allowed to carry weapons in a specific context or area;
5. requiring the storage of weapons and ammunition in a secure and safe facility when personnel are off duty;
6. requiring that PMSC personnel carry authorised weapons only while on duty;
7. controlling the further possession and use of weapons and ammunition after an assignment is completed, including return to point of origin or other proper disposition of weapons and ammunition (Part Two, para. 44).

In summary, the *Montreux Document* contains a number of detailed provisions reflecting good practice in the area of firearm access and management by PSCs that can be reflected in national regulations in countries where *armed* private security operations are permitted.

iv) European Union

There are no specific laws or regulations governing the private military and security industry at the EU level. However, almost all EU member states have specific national legislation and regulations governing the industry.⁴³ Many states also have national associations, some of whom formed a European umbrella organization for national associations, the Confederation of European Security Services (CoESS), in 1989. The aim of CoESS is to defend and represent the interests of the organizations and national companies that provide security services in Europe, for example, through involvement in the work aimed at the harmonization of national legislation affecting the industry. The CoESS, in partnership with UNI-Europa,⁴⁴ has established a voluntary code of conduct and ethics for the private security sector in pursuit of this aim.⁴⁵

In December 2008 the Parliamentary Assembly of the Council of Europe made a recommendation that the Committee of Ministers draw up a Council of Europe convention aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activities of these private companies. The concern raised in the recommendation was that:

The increasing use of private military and/or security companies (PMSCs) undermines the position of a state as the only actor allowed to legitimately and lawfully use force. It presents a challenge to modern democracies, as the right to use force shifts from the state, guarantor of the public interest, to private actors driven by corporate interests.⁴⁶

Industry codes of conduct

International Peace Operations Association

The International Peace Operations Association (IPOA) is a non-profit trade association for firms and companies engaged in the peace and stability operations industry, which boasts a wide range of members, including PSCs that operate internationally. In 2001 the IPOA developed a code of conduct in an effort to ensure that member companies operating in conflict and post-conflict settings adhere to certain ethical standards with respect to human rights, IHL, safety and employment rights affecting employees, the engagement of subcontractors, rules of engagement should they be involved in armed hostilities, and the use of weapons.⁴⁷

For example, the code of conduct provides that member companies ‘shall provide their personnel with the appropriate training, equipment and materials necessary to perform their duties’ (art. 6.11) and that where they might become involved in armed hostilities, they ‘shall have appropriate Rules for the Use of Force established with their clients before deployment’ (art. 9.2). With specific reference to arms control, the code of conduct includes a provision whereby member companies that use weapons ‘shall put the highest emphasis on accounting for and controlling all weapons and ammunition utilized during an operation and for ensuring their legal and proper accounting and disposal at the end of a contract’ (art. 9.4.1).

National industry codes of conduct

In several jurisdictions, voluntary codes of conduct governing the activities of private security providers have been adopted by industry in addition to legislation. No such code of conduct exists in Timor-Leste. Countries that have developed such codes of conduct include the following.

Australia

In Australia, each state and territory has its own legislation and regulations governing the private security industry. In addition, the private security industry has established its own association, the Australia Security Industry Association Ltd (ASIAL), which provides information on the legislation affecting the industry in each state, and which has established a code of conduct. The code of conduct encourages members to act with respect for the public interest; to inform ASIAL if they think other members are guilty of unethical practices; and to help improve the body of knowledge of the profession by exchanging information and experience with fellow members and by applying their special skill and training for the benefit of others, among other guidelines.⁴⁸ The ASIAL has also established a dispute resolution process to handle complaints relating to customer dissatisfaction, public concern, and members’ complaints against one another.

Bosnia and Herzegovina

In 2006 Saferworld and the Centre for Security Studies (Bosnia and Herzegovina) initiated the Sarajevo Process in which stakeholders from the Bosnian government, client groups, and international organizations met to develop and implement comprehensive regulations and voluntary guidelines governing the private security industry. A significant number of local PSCs also participated in the consultations. The resulting Sarajevo Code of Conduct and Sarajevo Client Guidelines for the Procurement of Private Security Companies were agreed and launched in September 2006.⁴⁹

The Sarajevo Code of Conduct contains a set of basic standards of professionalism and service delivery to be applied by all employers and employees in the private security industry. It includes standards on the selection and recruitment of workers; vocational training; health and safety at work; non-discrimination; and relations with clients, the police, and other security companies. It also contains guidelines on the use of force and firearms by PSCs, which encourage PSCs to develop strict and detailed guidelines for employees on the use of minimal force in accordance with best international practice (including the *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and the *United Nations Code of Conduct for Law Enforcement Officials*). It also stipulates that standard operating procedures relating to weapons and ammunition will be developed to cover:

- a) the use, storage, accounting, maintenance, ownership, and registration of weapons;
- b) the safe loading and unloading of firearms;
- c) accurate record-keeping; and
- d) incident reporting.

The Sarajevo Client Guidelines outline a voluntary procurement procedure that client organizations are advised to follow when contracting private security providers. It encourages them to take into account a range of factors when making procurement decisions, such as standards of internal governance, quality of service, levels of training, adherence to national legislation, and a voluntary code of conduct.

United Kingdom

The UK Foreign and Commonwealth Office released a Green Paper in 2002⁵⁰ raising the possibility of regulating the activities of the private military and security industry and the export of private military services. The Green Paper set out six options for their regulation, ranging from a ban on all military activity by such groups to a licensing or registration system similar to that used for approving arms sales. Seven years later, in April 2009, the UK government announced that its preferred option for regulating the industry is through the adoption of a voluntary code of conduct, to be prepared in collaboration with the industry.

In the interim, the private security industry in the UK established its own trade association in 2006, the British Association of Private Security Companies (BAPSC), which works to promote the interests and regulate the activities of UK-based PSCs working overseas. This self-regulating body established a charter and a code of conduct that seek to improve standards in the industry and decrease the likelihood of

violations of IHL and international human rights law by companies operating overseas.

The charter places as its primary requirement a pledge to avoid any *armed* exchange, except when necessary to protect clients or security personnel (Principle 1). In addition to developing processes to ensure the accountability of companies and punish individual offenders, the BAPSC is calling for the nomination of an independent ombudsman within a government department to collect complaints against companies, investigate, and process them.⁵¹

V. The impact of armed private security

Generally speaking, PSCs are employed to enhance the security of their clients. In some contexts, however, their presence can negatively affect community security. A study conducted by Swisspeace on PSCs and local populations in Afghanistan and Angola revealed that civilians often feel intimidated and threatened by the presence of armed security personnel. This was especially the case in Luanda, Angola, where many private security personnel were found to carry AK-47s and other similar weapons identified by civilians as ‘weapons of war’, thus perpetuating a culture of war as opposed to a climate of peace in the post-conflict period in that country. During the war, the carrying of weapons had provided a sense of superiority to public security agents, fuelling their abuse of power. The carrying of weapons by PSC personnel recalled these negative memories.⁵²

Civilian responses to and perceptions of armed PSCs in Afghanistan were not dissimilar, with civilians reporting that they found it difficult to see/accept PSCs as legitimate business enterprises, given that the civilian population had suffered repeatedly from armed militias.⁵³ This is not always the case, of course, and in some societies such as Israel and South Africa, armed private security is accepted by the civilian population as a necessary reality in light of persistent security threats. Nevertheless, the emergence of private security in these societies has raised its own/other problems.

In Israel, for example, the private security industry grew up relatively quickly during the years of the second *intifada*, in which bombings in cafes, restaurants, and other public places were frequent. The sudden need to place guards at the entrance to every public space led to a boom in the industry. While PSCs sought to recruit additional personnel to meet the increased demand for their services, the government simultaneously called up 20,000 of its army reservists for active duty. As a consequence, fewer people with army and police training/experience were available to take up jobs as private security guards, leaving only untrained/unskilled workers to occupy many of the posts.⁵⁴

At the same time, the legislation regulating access to and use of firearms was relaxed, allowing companies to purchase guns in bulk rather than through individual licences. This, in turn, is believed to have led to an increase in gun violence.⁵⁵ Anecdotal evidence suggests some explanations for this. Private security personnel are some of the most exploited workers in the economy. They are generally poorly paid and come from disenfranchised groups, including immigrants and older men. At the same time, they are not required to keep their weapons on their employers’ premises after work,

but rather take them home with them. So, on the one hand, exploited individuals are doing dangerous work; but on the other, they take their weapons home with them, increasing the likelihood that firearms will be used in domestic violence incidents.

A committee appointed by the Israeli government in 2005 to investigate the issue of PSC operations in Israel made a number of findings with respect to the use of and access to firearms, including the following:

the present reality is that in a very large number of cases the firearm remains with the guard after he has completed his shift. The system does not take care to adhere to the requirement that the firearm be entrusted to the guard only for the duration and the needs of his work shift.⁵⁶

and ‘given the lack of conditions allowing the orderly transfer of firearms among the guards, the number of firearms throughout the state exceeds the necessary amount’.⁵⁷ In response to these findings, the committee made specific recommendations that weapons should be kept at the workplace, but, as yet, this recommendation has not been implemented.

It should be noted that in Timor-Leste, police and soldiers regularly take their guns home with them. PSC personnel are likely to do the same if they are armed, thus establishing another potential source of gun leakage into the community.

On a final note, the use of PSCs by private actors and civilians (as opposed to government and international agencies, for example) can be mechanisms for exclusion and social stratification (since only wealthy civilians can afford them). In this regard, it is important that the Timorese government give consideration to the *social context* into which it seeks to introduce armed private security and should monitor public perceptions of this growing industry.

VI. Conclusion

Increased reliance on private security providers in Timor-Leste and other post-conflict, fragile states gives a clear indication that the security situation remains volatile and that the state agencies responsible for public security are not yet fully fulfilling this role. However, the mere presence of PSCs is not necessarily a bad thing. If private security personnel conduct their duties in a professional and accountable manner, PSCs have the potential to improve the security situation for people where the state fails to live up to its duties, and—if handled wisely—may complement official policies and measures.⁵⁸ However, if PSCs are not well regulated and are poorly trained, their activities may aggravate the existing security situation and may become an obstacle to peacebuilding and good governance. In such contexts, allowing PSCs to carry and use firearms without proper controls and well-enforced regulations would add a further destabilizing effect.

It is likely that the Timorese government will adopt legislation permitting the ownership of firearms by civilians. If it does, regulations pertaining specifically to PSCs and the use of firearms by their personnel should be strongly considered. As outlined in parts IV(a) and IV(b)(iii) of this paper, there are already a plethora of

national best practices and international standards that could form the basis of such regulation.

The extent to which the government would be able to enforce such regulations, however, remains open to question. If every person currently working as a PSC employee in Timor-Leste were to be armed, the country would have an additional 3,500 guns on the street. That is a substantial increase from current levels—and these weapons would go essentially to civilians with only partial accountability to the state. A lack of capacity on the part of the government to effectively enforce rigorous gun regulations governing PSCs is perhaps the strongest argument in favour of denying this population weapons.

In its recommendations to the Committee of Ministers in December 2008 the Parliamentary Assembly of the Council of Europe warned that

the recourse to services of PMSCs—especially in ‘weak’ and ‘fragile’ states—entails disempowerment of the state, the weakening of public governance and ... often leads to erosion of public order, and may ultimately result in the collapse of the state itself.⁵⁹

What remains to be seen is whether the Timorese government will handle the situation wisely, by appropriately regulating the activities of PSCs operating in Timor-Leste and, more specifically, regulating their access to and use of firearms in the event that proposed legislation allowing civilian access to firearms is adopted.

The Timor-Leste Armed Violence Assessment

The Timor-Leste Armed Violence Assessment (TLAVA) is an independent research project overseen by ActionAid (formerly Austcare) and the Small Arms Survey. Designed in consultation with public and non-governmental partners, the project seeks to identify and disseminate concrete entry points to prevent and reduce real and perceived armed violence in Timor-Leste. The project functions as a Dili-based repository of international and domestic data on violence trends. From 2008 to 2010, the TLAVA is to serve as a clearinghouse for information and analysis with specific focus on:

- the risk factors, impacts, and socioeconomic costs of armed violence in relation to population health—particularly women, children and male youth, and internally displaced people;
- the dynamics of armed violence associated with 'high-risk' groups such as gangs, specific communities in affected districts, petitioners, veterans, state institutions, and potential triggers such as elections; and
- the availability and misuse of arms (e.g. bladed, homemade, or 'craft' manufactured) as a factor contributing to armed violence and routine insecurity.

The project's objective is to provide valid evidence-based policy options to reduce armed violence for the Timorese government, civil society, and their partners. The project draws on a combination of methods—from public health surveillance to focus group and interview-based research—to identify appropriate priorities and practical strategies. Findings are released in Tetum, Bahasa, Portuguese, and English. TLAVA *Issue Briefs* provide timely reports on important aspects of armed violence in Timor-Leste, including the availability and distribution of small arms and craft weapons and election-related violence.

The project is supported by AusAID.

Contact

For more information, visit www.timor-leste-violence.org or contact info@timor-leste-violence.org.

Bibliography

- Bearpark, Andy and Sabrina Schulz. 2007. 'The Private Security Challenge in Africa: Problems and Options for Regulation.' In S. Gumedze, ed. *Private Security in Africa: Manifestation, Challenges and Regulation*. ISS Monograph Series No. 139. Pretoria: Institute for Security Studies, pp. 73–87.
- Born, Hans, Marina Caparini, and Eden Cole. 2007. *Regulating Private Security Companies*. DCAF Policy Paper No. 20. <<http://www.cmr-net.ch/publications/kms/details.cfm?lng=en&id=43475>>
- Cockayne, James. 2009. 'Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document.' *Journal of Conflict and Security Law*, Vol. 13, No. 3, pp. 401–28.
- and Emily Speers Mears. 2009. *Private Military and Security Companies: A Framework for Regulation*. New York: International Peace Institute, March 2009.
- Dekker, Guido Den. 2009. *The Regulatory Context of Private Military and Security Services at the European Union Level*. National Reports Series No. 04/09. <<http://priv-war.eu/wordpress/wp-content/uploads/2009/05/nr-04-09-eu.pdf>>
- Faite, Alexander. 2004. 'Involvement of Private Contractors in Armed Conflict: Implications under International Humanitarian Law.' *Defence Studies*, Vol. 4, No. 2, Summer. <<http://www.icrc.org/web/eng/siteeng0.nsf/html/pmc-article-310804>>
- Goddard, S. 2001. *The Private Military Company: A Legitimate International Entity within Modern Conflict*. Thesis, Faculty of the U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.
- Holmqvist, Caroline. 2005. *Private Security Companies: The Case for Regulation*. SIPRI Policy Paper No. 9. Stockholm: SIPRI. January.
- IPOA (International Peace Operations Association). 2009. *Code of Conduct: Version 12*. Adopted February (original version adopted April 2001).
- Magharebia. 2008. 'Morocco Increases Security, Passes Legislation Arming Private Security Guards.' 15 January. <http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2008/01/15/feature-02>
- Makki, Sam, Sarah Meek, Abdel-Fatau Musah, Michael Crowley, and Damien Lilly. 2001. *Private Military Companies and the Proliferation of Small Arms: Regulating the Actors*. Biting the Bullet Briefing No. 10. London: BASIC, International Alert, and Saferworld.
- NSW (New South Wales). 1997. Security Industry Act. Sydney.

- Observer, The*. 2005. 'Abu Ghraib Abuse Firms Are Rewarded: As Prison Ringleader Awaits Sentence, Defence Contractors Win Multi-million Pentagon Contracts.' 16 January. <<http://www.guardian.co.uk/world/2005/jan/16/usa.iraq>>
- Parker, Sarah. 2008. 'Commentary on the Draft Arms Law in Timor-Leste.' *East Timor Law Journal*. July. <http://www.eastimorlawjournal.org/Commentary_on_the_Draft_Arms_Law_in_Timor-Leste.pdf>
- Perlo-Freemna, Sam and Elisabeth Sköns. 2008. *The Private Military Services Industry*. SIPRI Insights on Peace and Security No. 2008/1. Stockholm: SIPRI. September.
- Pew Research Center. 2007. 'A Media Mystery: Private Security Companies in Iraq—A PEJ Study.' 21 June. <<http://www.journalism.org/node/6153>>
- Richards, Anna and Henry Smith. 2007. 'Addressing the Role of Private Security Companies within Security Sector Reform Programmes.' *Journal of Security Sector Management*, Vol. 5, No 1, May, pp. <http://www.ssronline.org/jofssm/issues/jofssm_0501_richards&smith.pdf?CFID=1714330&CFTOKEN=67526974>
- Rimli, Lisa and Susanne Schmeidl. 2007. *Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola*. Berne: Swisspeace.
- Schreier, Fred and Marina Caparini. 2005. *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper No. 6. Geneva: DCAF. March.
- Siddique, Haroon. 2009. 'Private Security Firms Face Tough Times in Iraq.' *Guardian* (UK), 10 August. <<http://www.guardian.co.uk/world/2009/aug/10/iraq-murder-security-firms>>
- Singer, Peter Warren. 2003. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca: Cornell University Press.
- . 2004. 'War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law.' *Columbia Journal of Transnational Law*, S521–49.
- South Africa. 2001. Private Security Industry Regulation Act No. 56. Pretoria: Government Printer.
- Stoddard, Abby, Adele Harmer, and Victoria DiDomenico. 2008. *The Use of Private Security Providers and Services in Humanitarian Operations*. Humanitarian Policy Group Report No. 27. London: Overseas Development Institute. September. <<http://www.odi.org.uk/resources/download/2816.pdf>>

- UK (United Kingdom). 2002. Private Military Companies: Options for Regulation. Green Paper. 12 February. <http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_privatemilitarycompanies>
- UNGA (United Nations General Assembly). 1989. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. A/RES/44/34 of 4 December. <<http://www.un.org/documents/ga/res/44/a44r034.htm>>
- . 2001. *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination*. A/56/224 of 27 July.
- . 2008a. *Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination*. A/HRC/7/7 of 9 January.
- . 2008b. *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*. A/63/467–S/2008/636 of 17 September. <http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467>
- UNMIT (UN Mission in Timor-Leste) and UNDP (UN Development Programme). 2008. *Project Document: Security Sector Review in Timor-Leste*. June. <<http://unmit.unmissions.org/Portals/UNMIT/SSR/Project%20document%20for%20SSR%20signed%2013June2008.pdf>>
- Utah. Division of Occupational and Professional Licensing. 2009. ‘Application for licensure.’ In *Application Instructions and Information*. March. <http://www.dopl.utah.gov/licensing/forms/applications/037_security_officer.pdf>
- Voice of America News*. 2002. ‘Private Security Companies Booming in Israel.’ 3 April. <<http://www.voanews.com/english/archive/2002-04/a-2002-04-03-19-Private.cfm?moddate=2002-04-03>>
- Williamson, J. 2007. ‘Private Security Companies and Private Military Companies under International Humanitarian Law.’ In S. Gumedze, ed. *Private Security in Africa: Manifestation, Challenges and Regulation*. ISS Monograph Series No. 139. Pretoria: Institute for Security Studies, pp. 89–96.
- Wulf, Herbert. 2006. *Good Governance beyond Borders: Creating a Multi-level Public Monopoly of Legitimate Force*. Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper No. 10. Geneva: DCAF. April.

Notes

¹ Sarah Parker LLB (Hons) is a researcher with the Small Arms Survey, an independent research project located at the Graduate Institute of International Studies in Geneva, Switzerland. The Small Arms Survey serves as the principal international source of public information on all aspects of small arms and as a resource for governments, policy-makers, researchers, and activists (www.smallarmssurvey.org). This paper was prepared in collaboration with ActionAid Australia (formerly Austcare) as part of a joint project: *Timor-Leste Armed Violence Assessment*. To provide comments and feedback on this paper please contact Sarah Parker at: sarah.parker@smallarmssurvey.org.

² For example, employees of two PSCs operating in Iraq—Titan Corporation and CACI International—were allegedly involved in human right abuses in Abu Ghraib prison in 2004. See *The Observer* (2005).

³ For further details of the proposed legislation, see Parker (2008).

⁴ Pew Research Center (2007).

⁵ UNGA (1989), art. 1.

⁶ Faite (2004), p. 3.

⁷ Goddard (2001), p. 8; Schreier and Caparini (2005), pp. 23–25.

⁸ Singer (2003), p. 8.

⁹ Goddard (2001), p. 8; Faite (2003), p. 3.

¹⁰ Schreier and Caparini (2005), p. 27.

¹¹ For a summary of some of the arguments, see Holmqvist (2005), pp. 5–6.

¹² UNGA (2008b), para. 9.

¹³ UNMIT and UNDP (2008).

¹⁴ Another PSC established in 2004, High Risk Security Group, purports to be providing private security services, including close protection, stationary guards, and security awareness training in Timor-Leste, but detailed information on this company's operations was not made available in time for publication of this paper.

¹⁵ Email correspondence with Maubere Security, 9 June 2009.

¹⁶ A use of force continuum is a standard that provides law enforcement officials and security guards with guidelines on how much force may be used against a resisting subject in a given situation.

¹⁷ Email correspondence with Maubere Security, 6 July 2009.

¹⁸ Policia Nacional de Timor-Leste.

¹⁹ FALINTIL-Forças de Defesa de Timor-Leste (FALINTIL: Forças Armados de Libertacao Nacional de Timor-Leste).

²⁰ Bearpark and Schulz (2007), p. 79.

²¹ Richards and Smith (2007), p. 4.

²² Bearpark and Schulz (2007), p. 77; Schreier and Caparini (2005), p. 28; Richards and Smith (2007), p. 2.

²³ Oversight passed to the Ministry of Defence and Security from the Ministry of Interior, which no longer exists as a stand-alone agency. In addition, all businesses are required to register with other state agencies, such as the Ministry of Justice.

²⁴ UNGA (2001), para. 47, p. 12.

²⁵ It may also be argued that, not only do they have insufficient troops, but Western militaries are disinclined to do the dirty work of fighting wars on behalf of fragile or collapsed states, and private security contractors are an optimum solution.

²⁶ Utah (2009).

²⁷ The code of conduct was adopted in 2003 in accordance with section 28 of the Private Security Industry Regulation Act (South Africa, 2001).

²⁸ NSW (1997), sec. 23A.

²⁹ NSW (1997), sec. 23B.

³⁰ *Magharebia* (2008).

³¹ Conversation and email correspondence with Edward Rees, TLAVA analyst, various dates.

-
- ³² Williamson (2007), p. 29.
- ³³ UN General Assembly res. 2395 (XXIII), para. 9.
- ³⁴ UNGA (1989).
- ³⁵ UNGA (2008b).
- ³⁶ Now the Human Rights Council.
- ³⁷ UNGA (2001), para. 71, p. 15.
- ³⁸ UNGA (2001), para. 72, p. 16.
- ³⁹ Commission on Human Rights res. 2005/2, para. 12(e).
- ⁴⁰ Commission on Human Rights res. 2005/2, para. 17.
- ⁴¹ Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the UK, Ukraine, and the US. At the time of writing, 31 states support the *Montreux Document*. The following additional states joined the *Montreux Document* since its release (with date of communication of support): Macedonia (3 February 2009), Ecuador (12 February 2009), Albania (17 February 2009), the Netherlands (20 February 2009), Bosnia and Herzegovina (9 March 2009), Greece (13 March 2009), Portugal (27 March 2009), Chile (6 April 2009), Uruguay (22 April 2009), Liechtenstein (27 April 2009), Qatar (30 April 2009), Jordan (18 May 2009), Spain (20 May 2009), and Italy (15 June 2009).
- ⁴² UNGA (2008b).
- ⁴³ Dekker (2009), p. 7.
- ⁴⁴ UNI-Europa is a European trade union federation for services and communication.
- ⁴⁵ Although the focus is on ensuring professionalism within the profession, compliance with national regulations, labour rights, etc., not on operations overseas.
- ⁴⁶ Draft recommendation, point 5.
- ⁴⁷ IPOA (2009).
- ⁴⁸ See <<http://www.asial.com.au/Codeofconduct>>.
- ⁴⁹ See <<http://www.saferworld.org.uk/images/pubdocs/Code%2520of%2520conduct.pdf>>.
- ⁵⁰ UK (2002).
- ⁵¹ Bearpark and Schulz (2007), p. 83.
- ⁵² Rimli and Schmeidl (2007), p. 60.
- ⁵³ Rimli and Schmeidl (2007), p. 28.
- ⁵⁴ *Voice of America News* (2002).
- ⁵⁵ Telephone interview with Rela Mazali, research consultant, Israel, 24 June 2009.
- ⁵⁶ *Brinker Report* (2005), p. 12, item 7. Translation by Rela Mazali.
- ⁵⁷ *Brinker Report* (2005), p. 13, item 15. Translation by Rela Mazali.
- ⁵⁸ Bearpark and Schulz (2007), pp. 73, 77.
- ⁵⁹ Explanatory memorandum (draft recommendation, point 7).