

– Translation –

## MEMORANDUM

SUBMITTED TO  
THE SPECIAL RAPPORTEUR ON THE USE OF MERCENARIES OF THE HUMAN RIGHTS COMMISSION  
OF THE UNITED NATIONS  
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### TOWARDS A SPIRAL OF VIOLENCE?

**“THE DANGERS OF PRIVATISING RISK MANAGEMENT OF INVESTMENTS  
IN AFRICA”**

**MINING ACTIVITIES AND THE USE OF PRIVATE SECURITY COMPANIES**

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# Introduction

The objective of this Memorandum is to draw attention to the serious implications behind the present tendency of mining companies in areas of Africa characterised by the state's weakness, delegitimisation or disintegration, to rely on private security companies<sup>1</sup>. This growing phenomenon raises a number of concerns with respect to human rights, and over the longer-term, with respect to its consequences for the economic and social development of the countries involved.

Despite the high level of risk associated with civil and military conflicts, statistics show that mining companies, in particular foreign mining companies, are increasing their involvement both in exploration and in production in Africa. Therefore, one should expect a corresponding increase in a tendency that has already been demonstrated by these companies, that is their reliance on private security companies to reduce the risks that such situations pose to their investments.

In the areas concerned — often situations characterised by the deregulation of labour, social and environmental norms and by the disintegration of the nation state — the threat to the rights of the local population is particularly acute. Under such circumstances, public authority is not able to exercise its legitimate monopoly over the use of force, to revert to force as a means of defending the population, or in some cases, even to control the conditions under which the development of natural resources takes place within their own borders.

Situations meeting this description currently exist in a number of mineral-rich African countries, in particular those possessing precious metals. To mention but a few, Angola, Sierra Leone and the Democratic Republic of the Congo (DRC) provide eloquent examples. These countries, to which one must add Congo Brazzaville, according to the Special Rapporteur on the Use of Mercenaries under the Human Rights Commission of the United Nations, are the four countries where “mercenary” activities have become endemic<sup>2</sup>.

The tendency to opt for indirect solutions to the management of risk by delegating the use of coercion in situations of conflict, has potential implications for human rights and social and economic development which do not seem to have received the attention which they merit despite the gravity and urgency which such situations represent.

The failure to update and to amend international laws in this field and to establish the means to ensure that such laws are respected, reduces all efforts to determine who is politically and socially responsible for the activities of private security companies to, at best, wishful thinking. What responsibility is vested in the security companies themselves, in the mining companies or in local governments that are the ultimate employers of these firms? What are the responsibilities of the governments of the countries from which the security companies or mining companies originate?

Over the short term, this situation represents a serious threat to the basic rights of the people in the regions where security companies operate. Over the medium and longer term, the presence of these firms may constitute a significant obstacle to the economic and social development of the countries involved. As much as possible, the private security companies involved set out to reduce the threat to the mining company's investments by responding to the unstable circumstances and violent context with force. However, their actions do not seek to resolve the causes underlying the insecurity. Consequently, in the absence of formal rules determining political responsibilities and identifying accountabilities, their involvement can contribute to a heightening in the level of violence rather than to its reduction. Such situations threaten to encourage the political disengagement of the states where the companies intervene, as well as that of the states from which the security companies and the mining

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<sup>1</sup> As we shall see below, there are various terms to describe these, *private security agencies* or *private military companies* also designated by the UN as “mercenaries”. We have regrouped these under the term “private **security companies**”. What they are called and the wide range of services they offer are at the heart of the problem of controlling their activities.

<sup>2</sup> Press release GA/SHC/3533, October 21, 1999. A member of the DRC Government nevertheless challenged the allegations against his country brought forward by the Special Rapporteur.

companies that employ them originate. At the same time, such situations threaten to reinforce approaches to natural resource development and to forms of integration into the international economy and consequently, particular patterns of revenue distribution which are incompatible with — or opposed to — sustainable economic and social development strategies of benefit to the populations involved.

In the present context of the internationalisation of capital flows, trade, and services, the growing tendency towards the privatisation of security forces in the absence of adequate national laws or international norms demands an urgent international response. The United Nations must revise the currently ineffective 1977 international instruments on the use of mercenaries, adopt pertinent laws in line with the current reality in this area and take the necessary measures to ensure that these are respected.

We believe this to be an indispensable step in addressing the serious threats embodied in the present situation. The escalation of violence in certain mineral-rich countries and the mining companies' recourse to private security companies to reduce the risks involved in extracting resources are factors that can contribute to the intensification and spread of violence, rather than the prevention of further conflicts in Africa.

With this document, we seek first of all to demonstrate the economic and strategic importance of the mining sector in Africa. Following this, we shall show how the risks which result from the important political and armed conflicts in the region, have not deterred the development of sizeable mining projects. To illustrate this fact, a listing of recent projects and investments by Canadian mining companies active in the DRC appears in the annex. We shall then examine the phenomenon of the development of private security companies, their links to the mining companies, the threat they pose to human rights and their more recent activities. Finally, having identified the failings of existing international laws, we shall put forward four recommendations.

# 1. The economic and strategic importance of the mining sector in Africa

Before examining the links that exist between the mining companies and the new private security companies and coming to understand the determining role that the latter can have in certain circumstances, it is important to point out the economic and strategic importance of Africa's mineral wealth. This aspect is often eclipsed by the wars and humanitarian dramas that all too often visit the continent.

In their book, Short Changed. Africa and World Trade, Michael Barratt Brown and Pauline Tiffen point out that:

*"Sub-Saharan Africa exports gold and diamonds, but also large quantities of copper, bauxite, iron ore, uranium, phosphate rock and manganese; smaller quantities of asbestos, beryllium, cadmium, chromite, cobalt, germanium, lead, lithium, nickel, platinum, tantalite, tin, tungsten, nickel, vanadium, zinc<sup>3</sup>."*

And according to the US Department of the Interior:

*"Historically, Africa has been a major supplier of strategic minerals to the United States and world markets... Africa accounts for between 11% and 45% of the world supply of eight major mineral commodities, chromite, cobalt, diamond, gold, manganese ore, crude petroleum, phosphate, and uranium and are (sic) major producers of value added ferroalloys and aluminium<sup>4</sup>."*

This same source confirms the increased international investment in this sector:

*"Africa possesses significant mineral resources, however the exploration emphasis in 1995 was on high-unit-value minerals, such as gold and diamonds. According to the Metals Economics Group of Halifax, Nova Scotia, over \$320 million of exploration budgets for the companies surveyed were expended in Africa. This large increase from \$199 million in 1994 indicates renewed international interest in African mineral investment<sup>5</sup>."*

Another source is equally very explicit on the strategic role that Africa's mineral wealth plays:

*"Since the second world war, the African continent has been an essential producer of strategic metals: the Belgian Congo ensured the delivery of uranium to the Americans while the Nazis dreamed of a railway line to extract minerals linking Algiers to the Niger. (...) The continent's production of cobalt accounts for 40% of the world's needs with the Democratic Republic of the Congo (DRC the former Zaire) alone holding 50 to 60% of the world's known reserves; Zambia is the world's second largest producer and may soon be joined by Uganda once the Kasese mine comes on stream."*

*Africa also accounts for half the world's volume of diamonds. The major producers are the DRC, Botswana and South Africa. According the US Bureau of Mines, 90% of the reserves of metals in the platinum group (platinum, palladium, rhodium, ruthenium, iridium, and osmium) are located in South Africa. Zimbabwe is also a producer of these with other countries like Burundi, Ethiopia, Sierra Leone or Kenya holding known or probable reserves<sup>6</sup>."*

According to this same source with respect to the DRC, the county:

*"contains two thirds of the global reserves of cobalt, a tenth of its copper, a third of its diamonds as*

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<sup>3</sup> Michael Barratt Brown and Pauline Tiffen, Short Changed. Africa and World Trade, Pluto Press, London with the Transnational Institute (TNI), 1992, p.66.

<sup>4</sup> United States Department of the Interior, U.S. Geological Survey, Minerals Yearbook, Area Report: International 1995. Mineral Industries of Africa and the Middle East, vol III, Washington, p.1. According to the same source, Guinea provided 39% of the bauxite imports into the United States 1995. Ibid. See "Guinea", p.43.

<sup>5</sup> Ibid.

<sup>6</sup> François Misser and Olivier Vallée, "Les nouveaux acteurs du secteur minier africain", Le Monde Diplomatique, Paris, May 1998, p. 24.

*well as a considerable potential for gold, uranium and manganese<sup>7</sup>."*

The recent liberalisation and privatisation policies recommended by the Bretton Woods institutions are recognised by the US Department of the Interior as an indispensable condition for opening the DRC's vast mineral resources to foreign capital:

*"By yearend, (1995) the Zairian Government through the Ministry of Mines, which controls most of the mining enterprises, had begun to set in motion, at the encouragement of the World Bank, efforts to privatize the mining sector and to attract new foreign investment through joint ventures with Gecamines. Targets for privatization or joint venture redevelopment were the more (sic) than 20 copper-cobalt and zinc mines and processing facilities owned by Gecamines; the gold-tin producer Société Minière et Industrielle de Kivu (Sominki); the major diamond producer Société Minière de Bakwanga (MIBA); and the major gold producer Office des Mines d'Or de Kilo-Moto (Okimo)<sup>8</sup>."*

According to this source, the incredible scope of the country's mineral reserves is not in doubt:

*"Zaire's major mineral resources were generally considered sufficient for many years of production, with known copper ore grades running two to eight times the grade of typical copper ore mined in North America and South America. However, reserve data on copper, cobalt, gold and zinc has not been updated for several years and must be re-evaluated in light of current economic conditions in Zaire and in light of the deterioration of Gecamines and other facilities<sup>9</sup>."*

It is important to note that given the extraordinary wealth of the country's resources, its difficult political situation did not present a major obstacle for foreign mining companies. Quoting the same source:

*"Despite the perceived high political risk, the known high grade copper-cobalt resources and basic in-place mining infrastructure should be attractive to some international mining companies<sup>10</sup>."*

As for the central question of risks that might negatively impact returns on investment, it is useful to consider the results of an UNCTAD report on foreign direct investment (FDI) in Africa generally:

*"In the case of United States FDI..., it is noteworthy that between 1980 and 1997 there was only one year (1986) in which rate of return on investment was below 10 per cent. Since 1990, the rate of return in Africa has averaged 29 per cent and since 1991 it has been higher than that in any other region, including developed countries as a group, by a factor of two or more, in many years. Net income from British direct investment in Africa was reported to have increased by 60 per cent between 1989 and 1995... and, in 1995, Japanese affiliates in Africa turned more profitable than in the early 1990's and have been even more profitable than those in any other region except for Latin America and the Caribbean and West Asia<sup>11</sup>."*

According to this same source, between 1983 and 1996, the rate of return on direct American investment in Africa grew from 17.7% to 34.2%<sup>12</sup>. These figures are averages that cover the primary, secondary and tertiary sectors of the economy. For the primary sector, encompassing mining activities, the rate of return for 1996 was 36.9%.

These results leave little doubt as to why the flow of direct private investment to Africa had not stagnated, despite an erroneous but persistent public perception to the contrary, but even grew slightly when compared in global terms with other regions of the world. To the contrary, and despite the decline in the flow of direct investment in Africa from USA\$9.4 billion in 1997 to USA\$8.3 billion in 1998,

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<sup>7</sup> [Ibid.](#)

<sup>8</sup> United States Department of the Interior, Mineral Industries of Africa and the Middle East, [Minerals Yearbook](#), vol III, Area Reports: International 1995, (Washington). "Zaire" p. 123.

<sup>9</sup> [Ibid.](#), p. 125.

<sup>10</sup> [Ibid.](#), p. 124.

<sup>11</sup> United Nations Conference on Trade and Development, [World Investment Report 1998: Trends and Determinants](#). United Nations, New York and Geneva, 1998, p. 175.

<sup>12</sup> [Ibid.](#), Table VI.6. p.176.

the value of investments at the end of the 1990s was far higher than the average that had been seen over the first part of the decade<sup>13</sup>.

With these figures, we gain some insight into the attraction that the African continent has for mining companies, despite its violent conflicts that the companies would normally see as highly threatening for investment. To a remarkable degree, Canadian mining companies exercised a significant role in the restructuring of the African mining sector.

## 1.1 Canadian mining interests in Africa

Despite the relatively small size of its economy in relation to the other G7 countries, Canada is very active in the mining sector. With its own development having been very much tied to natural resources for a number of decades, Canada has staked out a significant role for itself in this field. In 1997, Canada was in the front ranks of countries involved in mineral exploration and led the field in financing these activities throughout the world.

Since the beginning of the 1990's, Canadian mining companies significantly increased their exploration budgets in Canada and abroad. By 1998, they held interests in more than 8,300 holdings throughout the world with 3,400 of these being foreign and 330 of these in Africa<sup>14</sup>. Every year since the beginning of the decade, the proportion of their exploration budgets devoted to international exploration activities has grown by an average of 45% to the point where 70% of the budgets of larger mining companies<sup>15</sup> are devoted to exploration activities outside of Canada<sup>16</sup>.

A number of factors contribute to Canada's emergence as a dominant player in the field. Its positive reputation with respect to human rights concerns, its expertise and experience with human resources that for decades have been devoted to exploration and production in the mining sector are certainly important contributing factors. However, without question, the legal framework that regulates the way mining companies are financed, and that contributes to offsetting the risks of exploration, is a determinant element behind the international influence of Canadian mining companies.

*"Canadian laws related to investment in mineral production, in Canada or abroad, are such that the fiscal burden on profits is at least comparable if not more advantageous than those of other mineral producing nations<sup>17</sup>."*

These conditions, coupled with the scale of risk capital available on the North American stock exchanges and the liberalised climate favouring investment in mining, have encouraged Canadian mining companies to expand overseas and particularly in Africa.

On the continent, a growing percentage of foreign mining companies are Canadian<sup>18</sup>. Among the larger companies active in 1998, nine planned to launch key exploration projects in eight African countries. Among these one finds: a CAN\$30M investment by *Sutton Resources Ltd* in Tanzania; a CAN\$17M investment by *Southern Era Resources Limited* in Angola; a CAN\$14M investment by *Tenke Mining Corp* in DRC; a further CAN\$11M investment by *Banro Resources Corp* also in the DRC and a CAN\$7M investment by *High River Gold Mines Ltd* in Burkina Faso<sup>19</sup>.

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<sup>13</sup> UNCTAD, World Investment Report 1999. Foreign Direct Investment and the Challenge of Development, United Nations, New York and Geneva, 1999, p.45.

<sup>14</sup> MiningWatch Canada, Review of the Export Development Act, Presentation to the Standing Committee on Foreign Affairs and International Trade, November 6, 1999

<sup>15</sup> Companies whose annual exploration budgets are at least CAN\$4M.

<sup>16</sup> Except where indicated otherwise, the statistics come from Keith J. Brewer and André Lemieux, La place du Canada dans l'industrie minière mondiale. Financement d'origine canadienne de l'industrie minière internationale, presented to *Metal Finance the 4<sup>th</sup> International Conference. Finance for the Global Metals Industry*, Toronto, May 7-9, 1997.

<sup>17</sup> *Ibid.* p.vi.

<sup>18</sup> According to Mines et énergie. Les Canadiens roulent pour l'Afrique, *Stratégie*, May-June, 1998, the proportion involved could rise to 50%.

<sup>19</sup> André Lemieux; La présence de l'industrie minière canadienne dans le monde, *Annuaire des minéraux du Canada*, Ressources naturelles Canada, 1998.

Moreover, the number of mining properties in Africa held by Canadian companies and registered with Canadian stock exchanges increased on average by 50% per year between 1992 and 1998. Several factors explain this rediscovery of the African continent<sup>20</sup>:

- the mining sector has the advantage of offering readily identifiable and measurable business opportunities;
- for a high quality product, production and exploration costs are lower in Africa than they are in Canada;
- with reduced reserves, the profitability of Canadian sites is in decline. To ensure their survival Canadian mining companies must find new sources of supply;
- the liberalisation of the African legal and financial environments as well as the promotional efforts of the Multilateral Investment Guarantee Agency (MIGA) with regard to investors has succeeded in convincing Canadian businesses to invest on the continent.

However, it would seem that Canada has not only seized the opportunity to invest in one of its strategic sectors by alone providing 30% of the world investment in African mining, it has also contributed to shaping this sector.

The IMF and World Bank's introduction of structural adjustment programs in the 1980s marks the beginning of a period of liberalisation that promoted greater space for the private sector. Since the end of the decade, a series of conferences bringing together the IMF, the World Bank and the main players in the world's mining industry concluded that it was necessary to take the brakes off global investment in the mining sector as a whole. The "strongly recommended" liberalisation of this sector resulted in a wave of industry privatisations, as well as in the redrafting of most national laws regulating investment in the field<sup>21</sup>. Consequently, the mining codes of several African countries were amended to encourage foreign investment.

Canada was very much involved in redefining these new parameters. At the same time, a certain number of former Federal and Provincial Ministers were or continue to be linked with mining companies as advisors or as Board members, or were personally involved in promoting the favourable conditions being offered by the African mining sector to foreign investors<sup>22</sup>. Furthermore, the Canadian Government, through the Export Development Corporation (EDC), assisted Canadian exporters and investors to establish themselves overseas by offering credit facilities and risk insurance. With respect to the African mining sector, the EDC's role was largely translated into providing export credits for mining equipment<sup>23</sup>, the financing of exported counselling services (map making, etc.) or the provision of political risk insurance on mining investments.

CIDA, the Canadian International Development Agency's role in support for Canadian private investment in Africa's mining sector goes even further and can be summarised as follows: it prepares the way. For example in Botswana and Zambia where diamonds are a focus of much interest, Canada is the country that has provided the most international aid to the mining sector<sup>24</sup>.

In these countries, CIDA's involvement goes well beyond the task of helping to assess mineral and geological resources; in Botswana CIDA participated in establishing the Ministry of Mines and in Zimbabwe it aided in the training of higher echelon civil servants. With CIDA support, the Canadian Association of Community Colleges has helped to reinforce the School of Mining.

These activities have an indispensable cumulative effect in furthering the activities of Canadian mining companies. They permit saving time, money and energy through ready access to geological information on these countries from governments, from individuals trained in Canada, or from Canadians already in place — all favourably inclined towards Canadian business and know-how.

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<sup>20</sup> See Abdoulaye Rokhaya Wane; «La preuve par les mines», *Stratégies*, May-June, p.5, 1998.

<sup>21</sup> MiningWatch Canada (1999), *op. cit.*

<sup>22</sup> See *The Canadian Political Elite Discovers Africa*, *AfriCan Access Magazine*, Victoria, B.C. 1st Quarter 1998, pp. 8-10.

<sup>23</sup> For example on December 22, 1997, the EDC provided a loan of CAN\$940,000 in support of the sale of Canadian made heavy-duty trucks for a mining project in Ghana.

<sup>24</sup> Smith, Elizabeth (1997), *Expansion minière au Botswana et Zimbabwe: le rôle canadien*, ACIDI. (<http://w3.acdi-cida.gc.ca/>)

## 2. The privatisation of instability and risk management via private security companies

### 2.1 The development of the phenomenon

The use of paid foreign forces to ensure security or victory over an enemy is not a new phenomenon<sup>25</sup>. In Africa itself, numerous cases have been documented including that of the Katanga war<sup>26</sup> in 1960 in Zaire. However, the present period differs in that it is marked by the growing tendency toward the use of security companies by private interests as opposed to by states. Among current employers of security agencies, one finds a large number of mining companies, which are not prepared to see their foreign investments blocked by the dangers of armed conflicts such as those frequently encountered in mineral rich African countries. This reality has furthered the growth of private security agencies which have expanded their activities to a remarkable degree<sup>27</sup>.

The field involves different entities with various names: private security companies, private military companies, etc., which for purposes of convenience we have regrouped under the single term "**private security companies.**" The services offered by these companies are also quite diversified<sup>28</sup>. Their very diversity and multipurpose character lies at the root of the difficulties facing efforts to control their activities.

The clientele of these security companies is quite varied as well and includes businesses, political delegations, and national governments. A commercial airline company might call upon a security agency to ensure the security of its African stopovers. Moreover, the UN has taken this same route to ensure the safety of its delegations to conflict zones<sup>29</sup>. At the same time, more than one country has relied upon the services of private security companies in reaction to situations of instability (*Sandline International* in the case of Sierra Leone or *Executive Outcomes* for that of Angola).

Security companies offer a range of services. Some specialise in combat in the context of armed struggles and are consequently known as "military companies".

In this category, we find the following activities<sup>30</sup>:

#### **Military operational support:**

- combat: e.g. - *Sandline, Executive Outcomes (EO)*<sup>31</sup>

#### **Military advice:**

- Military training and assistance e.g. - *Military Professional Resources Incorporated (MPRI), Saladin Security, Defence Systems Limited (DSL)*<sup>32</sup>
- procurement: e.g. - *Levdan, Sandline, EO*
- military analysis: e.g. - *Sandline, MPRI, Saladin.*

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<sup>25</sup> David Shearer, Private Armies and Military Intervention, International Institute for Strategic Studies, Adelphi Paper 316. Oxford University Press, New York, 1998, page 13.

<sup>26</sup> The mercenaries were under the command of Colonel Bob Denard and Mike Hoare. Human Rights Commission, E/CN.4/1999/11, January 13, 1999, article 35.

<sup>27</sup> However, according to Shearer the perceived or real increase in criminality in developed countries resulted in the significant growth in the number of security companies, particularly in the United States and Russia. Shearer, op.cit., page 24.

<sup>28</sup> These services "run from strategic advice to close security protection, to the war on drugs, to the establishment of intelligence units, logistical support and the training of elite units, without forgetting the provision of equipment and more rarely participation in battle." Sandrine Tolotti, "Les nouveaux mercenaires" in Croissance, no. 423, February 1999, p. 20.

<sup>29</sup> Ibid., p. 22.

<sup>30</sup> Shearer, op.cit., p. 25.

<sup>31</sup> Both are subsidiaries of the huge holding company Strategic Resources Corporation (SRC). These two companies maintain close links with each serving as a sub-contractor to the other from time to time. Richard Banégas, « Le nouveau business mercenaire » in Critique internationale, Paris, no.1, Fall 1998, p. 180.

<sup>32</sup> In 1997, DSL, the British giant, merged with the American Armor Holdings Group, a company registered on the stock exchange. DSL employs some 4,000 people and its capital is held in financial institutions such as City Bank, NatWest Ventures and Phonex Funds Managers Ltd., Croissance, op.cit., no.423, February 1999, p. 20.

Other security companies do not intervene directly in combat situations and focus more on the protection of installations. These offer the following services<sup>33</sup>:

**Logistical support and security services:**

- logistics: e.g. - *DSL, Brown and Root*
- post-conflict resolution; e.g. - *Saracen, Saladin Security services*
- commercial security protection: e.g. - *Group 4, Rapport Research and Analysis*
- risk analysis: e.g. - *CRG, DSL, Kroll*

**Crime prevention services:**

- investigation and intelligence-gathering: e.g. - *Network Security Management, Argen, Asmara*
- kidnap response: e.g. - *CRG, Brinks, Neil Young Associates.*

These private military or security companies are active in different countries. The majority evolve not only abroad but also within the countries in which they are registered. For example, *Military Professional Resources Incorporated* (MPRI) is based in Alexandria, Virginia in the United States and its international contracts have involved interventions in the Balkans (Bosnia, Croatia, Macedonia, and Serbia), in Saudi Arabia, in Taiwan, and in several African countries including Nigeria, and more recently in Colombia<sup>34</sup>. *Executive Outcomes* is of South African origin and in the 1990s signed agreements with the governments of Angola and of Sierra Leone<sup>35</sup>.

The clients of security agencies are also varied and numerous. *MPRI*, whose clients are mostly in the United States, and whose recruitment efforts are directed at the private sector and at local and the federal governments, including the Department of Defense, provides a good example. Similarly, its overseas clientele includes various private companies from different sectors, as well as governments.

The services offered by these security companies are particularly of interest to mining companies. The instability in some of the countries where the mining companies operate encourages them to take advantage of the protection offered by such security companies. By way of example, the *Defence Systems Limited* security company, has been given responsibility for the security of mining activities in the DRC<sup>36</sup> and *DiamondWorks*, a Canadian diamond company registered on the Toronto Stock Exchange, has called upon the *Teleservice* agency in Angola<sup>37</sup>. The mineral wealth of several African countries such as Angola, Sierra Leone and the DRC, combined with the context of political, social and economic instability in these same countries, constitute ideal circumstances for the growth of security companies.

We can illustrate the interconnections between the activities of mining companies and those of security companies under certain circumstances in Africa using the example of a Canadian mining company, *Black Pearl Petroleum Ltd.*, founded in British Columbia in 1979 and following several transformations was re-baptised in 1995 as *American Minerals Fields* (AMF) in the Yukon. At the beginning of the 1990s, the Government of Sierra Leone and its creditors chose to allocate responsibility for collecting mining receipts and for protecting diamond production in the country to a foreign company, *Sunshine Boule* of Dallas Texas. Jean-Raymond Boule<sup>38</sup> is a very important stockholder in *American Mineral Fields* (AMF), a company that was present in the DRC over the course of the first rebellion in 1996 that brought the forces of Laurent-Désirée Kabila to power. In 1998, AMF was present in the DRC through

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<sup>33</sup> Shearer, *op.cit.*, pages 25-26.

<sup>34</sup> Information taken from the company's web site [<http://www.mpri.com>] on January 13, 2000. According certain sources, MPRI could be seen at the side of Laurent Kabila's in 1997 before he took power. See: *Croissance*, *op.cit.*, no. 423, February 1999, p.22.

<sup>35</sup> Shearer, *op.cit.*, page 40.

<sup>36</sup> A/54/326, September 7, 1999, article 41.

<sup>37</sup> Taken from the web site [<http://www.diamondworks.com>] of the *Teleservice*, or *Telervice Sociedade de Telecomunicações, Segurança e Serviços* company. SARL is an Angolan private security firm that protects *DiamondWorks* in Angola. (Report to the Securities and Exchange Commission, Washington, April 29, 1999, page 16.)

<sup>38</sup> Jean-Raymond Boule was the General Director of De Beers in the former Zaire, until he became involved in large scale sale of diamonds in Texas. In 1992 he established *Diamond Fields Resources*. It was resold to Inco the Canadian mining firm after its stock market value had increased due to the announcement of a gigantic deposit of nickel and cobalt. François Misser and Olivier Vallée, "Les nouveaux acteurs du secteur minier africain", *Le Monde Diplomatique*, May 1998, p.25.

two of its ten subsidiaries.<sup>39</sup> The company was also present in Zambia and Angola and is involved in copper and cobalt production in Kolwezi and Kipushi, in Katanga. In May of 1998, the company reached an agreement concerning its Kolwesi project that established the *Congo Mineral Development* (CMD) company, with each party retaining a 50% interest.

In announcing this important agreement in its 1998 annual report, *American Mineral Fields* pointed to the question of "Risk Factors," indicating that this was one of the important issues with which it had to deal, without specifying the means involved:

*"A significant portion of the Company's operations are located in emerging nations and consequently may be subjected to a high level of risk compared to developed countries. Operations, the status of mineral property rights, and the recoverability of investments in these emerging nations can be affected by changing economic, regulatory and political situations in Angola, the DRC, Zambia, Russia and Brazil. Civil unrest and armed conflict currently exist in the DRC and Angola, and in respect to Angola, the Company is not currently able to access its mineral properties because of this situation."<sup>40</sup>*

Other companies are more explicit with respect to the means to be used to address risk factors, specifically through the employing of private security companies<sup>41</sup>.

For the moment there are two key elements needing to be underlined:

1. For companies such as *American Mineral Fields*, the list of African countries that meet the definition of "involving risk" is certainly a long one.
2. However, based on recent announcements by Canadian mining companies with respect to Africa, situations of "high risk" do not appear to present an obstacle to pursuing new investment opportunities there.

In this regard, in 1998:

- *SouthernEra Resources Limited* planned investments in excess of CAN\$17M in diamond exploration in Angola;
- *Tenke Mining Corporation* foresaw CAN\$14M and *Banro Resource Corporation* CAN\$11M of new investment in the DRC (the activities of the latter were suspended following a legal disagreement with the Government);
- *Samax Gold Inc* planned to invest CAN\$0.7M in the Congo;
- *DiamondWorks Ltd* foresaw investing CAN\$0.4M in Sierra Leone<sup>42</sup>.

Thus under the circumstances, it would not seem an exaggeration to conclude that if civil and military conflicts represent clear and serious risk for mining companies, these same factors represent a source of new contracts and new wealth for the private security companies.

In summary, the private security companies are more inclined to intervene under conditions that are the antithesis of: "peace, political stability, the rule of law and of democracy, the rational exploitation of natural resources, social integration and a level of progress that benefits all while preventing misery<sup>43</sup>."

The likelihood of reverting to private security companies grows with the increase in tension or in conflicts in mining areas. However, as these agencies protect the staff, resources, and material of their clients, the result is a form of risk management that in no way addresses the causes at the origin of the instability.

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<sup>39</sup> American Mineral Fields' declared objective is to allow American investors to benefit from the wealthy mineral deposits of Africa. *Ibid.*, p.25.

<sup>40</sup> American Mineral Field, Annual Information Form, Fiscal Year Ended October 31, 1998. Name of the site: <http://www.sedar.com> Document dated March 19, 1999, p.15.

<sup>41</sup> However one needs note among the agreements signed by American Mineral Fields, an agreement with IDAS-Resources, a Belgian-Dutch company specialised in removing anti-personnel mines but it is also the holder of diamond concessions the size of Switzerland in the Cuango River area of Angola. François Misser and Olivier Vallée, *op.cit.*, p. 25.

<sup>42</sup> André Lemieux, "Canadian Exploration Activity around the World during 1998", Reprint from the 1998 Canadian Minerals Yearbook, Natural Resources Canada, Ottawa, 1999, p.7.12.

<sup>43</sup> Report of the Special UN Rapporteur on the Use of Mercenaries, Binales Ballesteros, A/54/326, September 7, 1999, article 45.

## 2.2 The concerns surrounding the use of private security companies

- **Definition of terms**

If in past, it was possible to identify the differences between security agencies and individual mercenaries, the fact that the latter are more and more likely to be recruited by security companies or agencies leads one to conclude that the two phenomena are less and less distinguishable. In this regard, the distinction appears to have disappeared for the United Nations, as this body points out that mercenaries are often employed by security agencies<sup>44</sup>. Consequently, for the UN the term mercenary includes all those recruited or paid to fight in a foreign conflict.

As we shall see below, the fact that these two categories are less and less distinct underscores the difficulty with the definition of the notion of mercenary as it exists in present legislation and which has yet to be updated. Finally, in our opinion, the convergence of the two phenomena is such that the conclusions and recommendations regarding mercenaries can apply to private security companies or to security agencies in general.

- **Ambiguity surrounding the mandate of security companies**

It is difficult to identify with clarity the activities of security companies due to the ambiguity of their mandates. Information on the issue is not readily available. Unlike others, *DiamondWorks*, a Vancouver based company with concessions in Sierra Leone, Angola and Lesotho, provides some information in its reports to the Washington *Securities and Exchange Commission*. These reports indicated that security agreements were important for all of the activities in the field of precious metals and in particular in Angola and Sierra Leone. In Angola, security services are provided to the company by:

*"Teleservice Sociedade de Telecomunicações, Segurança e Serviços, SARL (Teleservice) and by Mambodji, both Angolan private companies at arm's length to the Company. Both companies provide security services on commercial terms to various foreign and domestic business enterprises in Angola. The security services provided are intended to protect the assets and personnel located at the Luo and Yetwene properties from fire, theft, burglary, vandalism, terrorism, riot or civil commotion and include the following: 24-hour armed foot and mobile patrols; access and egress control; establishment and manning of observation posts covering the area by sight; escorting the personnel to and from the area of operations; armed standby protection forces; and protection for the residential area. The overall current security costs in Angola are approximately \$400 000 per month. Security services will be required at the Company's other properties in Angola when operations commence at those properties<sup>45</sup>."*

Under this contract, the notion of civil commotion can in effect include many forms of social tension, regardless of its intensity or its origin. This alone contributes to increasing the potential areas of intervention by security companies and further hinders the possibilities of controlling their activities through an independent body. In addition, their ambiguous mandates, on the whole sweeping and very vague, add to the difficulties in defining exactly what is an employee of a security company. To the extent that the mandates of such companies are increasingly all encompassing, what is needed is a definition that covers all of the future categories of activity that might be involved. This lack of precision constitutes one of the major gaps in international legislation.

## 2.3 Impunity

The difficulty in identifying the exact activities of the private security companies is the result as well, of their total absence of public accountability. Except where national legislation requires that they respect

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<sup>44</sup> GA/SHC/3533, October 21, 1999

<sup>45</sup> Report to the Securities and Exchange Commission, Washington, April 29, 1999, page 16. Taken from web site: <http://www.diamondworks.com>.

certain regulations, which is a rare exception, security companies negotiate their mandate exclusively with their clients. Moreover, they do not report on their activities except to these same private interests. Nothing requires them to report on their activities to the local population, to host governments or to the governments of the countries from which they originate. Consequently, the possibility of recourse against these firms is very slim.

The impunity which these private companies enjoy, and the fact that they intervene in certain areas such as those concerning military and security issues normally reserved to the state, raise pressing concerns with regard to the extent of their power and the consequences of their actions with respect to human rights.

The increasing reliance on private security companies, the lack of a legislative or regulatory framework overseeing their activities and the threat that they pose to the sovereignty of the states involved have not gone unnoticed. According to Colonel Doug Fraser, Executive Director of the *Canadian Council for International Peace and Security*, an Ottawa based research institute on public policy:

*"Countries have to guard against giving up their sovereignty. Private security companies are filling the gap and are now a growth industry, although there are concerns about them as well. Who is going to legislate and manage these firms? There has to be an appropriate supervisory and legislative capacity in the country (monitoring these groups)<sup>46</sup>."*

## 2.4 Some consequences of the use of private security companies

### 2.4.1 Violations of Human Rights

One of the major concerns flowing from the impunity that such companies enjoy and from the lack of control over activities which concern the protection of individuals and property, as well as the use of military force, is the possibility of violations of human rights. Numerous accounts attest to violence against civilian population, particularly in conflict situations in areas where private security companies are involved. According to the Special Rapporteur:

*"mercenaries often carried out assassination attempts, sabotage, acts of terrorism and torture, etc.<sup>47</sup>."*

It has been alleged that the Colombian subsidiary of *Defence Systems Limited*, responsible for protecting *British Petroleum* in Colombia, has been responsible for acts of murder<sup>48</sup>.

Further, mining companies seeking to develop a new deposit sometimes relocate the local population. This practice can lead to violations of basic rights. Following a visit to the gold-bearing areas in Ghana that were being mined by Canadian companies, *Golden Knight Resources, Prestea Sankofa Gold, Prestea Resources Ltd* and *Birim Goldfields*, among others, a team specialised in foreign mining companies and their activities in Africa commented:

*"We had understood that the expansion of their operations has entailed taking over the land already settled by Ghanaian people and their families, notably in the Tarkwa area and has given rise to resettlement and/or relocation. During our visits to the two communities of Nkwanta-krom and Atuabo, we collectively observed situations which are an affront to human dignity and contravene the rights of people as contained in the Universal Declaration of Human Rights, notably Article 25, and the rights contained in the National Constitution of Ghana."<sup>49</sup>*

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<sup>46</sup> Quoted in Marina Jimenez, "Canadians seek fortune in land of anarchy, violence. Ex-soldiers go unarmed", in *National Post*, Toronto, August 23<sup>rd</sup>, 1999.

<sup>47</sup> A/54/326, September 7, 1999, article 44.

<sup>48</sup> A member of the Colombian Government nevertheless challenged these facts, who claims no evidence exists proving these allegations. A/54/326, September 7, 1999, articles 18-19.

<sup>49</sup> Taken from the *Statement Regarding Human Rights Abuses in the Tarkwa Mining District*, November 18, 1999 and published in the *Ghanaian Times*, December 2, 1999.

In the context of the privatisation and deregulation policies introduced in Africa since the 1980s, there are an increasing number of examples in Zambia, Ghana, and Tanzania, to name but a few, that demonstrate that this tendency has taken on important dimensions<sup>50</sup>.

A separate, but nonetheless disquieting aspect from the perspective of the violation of human rights, is the employment by mining companies of companies specialised in human resettlement to whom they subcontract responsibility to relocate expropriated populations due to the expansion of mining concessions. This phenomenon is taking on increasingly important dimensions on the one hand because of recent privatisations, and more importantly on the other, because of the rapid growth of mining activities in a number of African countries. By way of illustration, *John van Nostrand Associates Limited*, a Canadian company whose name recently changed to *Planning Alliance*, was hired by the South African company *Goldfields Ghana* to relocate more than 20,000 people in the Tarkwa district in the west of Ghana. Several communities refused to accept the relocation terms proposed and ultimately imposed by the *Goldfields* mining company. *Goldfields* went ahead with the destruction of houses and schools and forbade the cultivation of fields. There have been violent confrontations where people were killed. In February 2000, the situation remained unresolved for several communities. To cite but one source, the observations made by foreign observers around this case, contained in a December 1999 public statement (see note 49) pointed out that relocation operations can give rise to grave violations of human rights.

The context of deregulation, privatisation, and of state disengagement — a situation that exists in many mineral rich African countries — increases the likelihood of such violations. We note that these same dangers are also real and pressing with respect to oil exporting countries: Nigeria, Sudan, Cameroon, Congo-Brazzaville, etc.<sup>51</sup>.

While it must be stressed that it is in no way intended to assimilate agencies employed by mining companies to relocate communities, to private security companies, it should be pointed out that the context in which such relocations take place, that is situations characterised by deregulation, state disengagement and even sometimes the disintegration of the national states, gives rise to the very real danger of serious violations of human rights.

#### 2.4.2 The loss of mining returns and the breakdown of the official commercial and financial channels.

Countries that transfer their national security to private companies are often in a difficult financial situation. This factor increasingly has led to the granting of concessions over natural resources to cover the costs of the services rendered. Similarly, nations "that possess natural resources but whose political organization is weak" are poorly protected against non-state security forces<sup>52</sup>. According to the Special Rapporteur on the Use of Mercenaries, Angola, the DRC, Sierra Leone and Congo-Brazzaville are four countries where mercenary activities have become endemic<sup>53</sup>. At the same time, these countries are among the nations whose mineral deposits are the richest, particularly with respect to precious metals. This demonstrates that the impact of the presence of security companies goes well beyond armed intervention. Payment in mineral wealth and even in concessions<sup>54</sup> appears to have taken on

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<sup>50</sup> On this topic see: Patricia Feeney "The Human Rights Implications of Zambia's Privatisation Programme" in Michael K. Addo (ed), Human Rights Standards and the Responsibility of Transnational Corporations, Kluwer Law International, 1999, Great Britain, pp.323-350.

Dominic Ayine "The Human Rights Dimension to Corporate Mining in Ghana: The Case of the Tarkwa District", and Tiundu Lissu, "Tanzania's Mining Act, 1998 and its Implications on Land Tenure Rights and the Environment". Documents presented to the "Mining, Development and Social Conflicts in Africa" conference organised by the Third World Network, Accra, Ghana, November 15-18, 1999.

<sup>51</sup> A Canadian engineering company based in Calgary is in charge of building a new city in the Niger River Delta to provide for 12,000 people relocated at the request *Chevron Nigeria*.

<sup>52</sup> A/54/326, September 7, 1999, article 53.

<sup>53</sup> Press release, GA/SHC/3533, October 21, 1999. A member of the DRC Government nonetheless challenged the allegations of the Special Rapporteur against his country.

<sup>54</sup> "The organizational and operational chart of the Strategic Resources Corporation (SRC) holding company reveals the synergy between warlike activities and mining activities in the "liberated" countries, that is to say between security companies in the strict sense and the commercial firms of Branch-Heritage led by Tony Buckingham. It appears that the members of the Barlow-Spicer-Buckingham network provided their military assistance in exchange for access to mining concessions and/or exploration permits for natural resources which were confirmed by the emission of binding contracts.." R. Banégas, op.cit., p. 182.

unsuspected proportions. Such payments contribute to the transfer of non-renewable resources outside official, national and governmental channels, they increase the potential for the breakdown of commercial and financial networks, they deprive the state of significant portions of the returns on mining activities, and they contribute to the disorganisation of the nations employing private security companies.

Certain analysts have gone as far as to refer to:

*“...a new systematic mode of the appropriation of the natural resources of the world, particularly those of Africa under the cover of ‘securitization’ as most of these companies seem to have as their primary goal to trade their military assistance and services in exchange for mining concessions or exploration permits for other natural resources. The arrival of the men of Executive Outcomes in Sierra Leone in 1995, with the rebels within 20 kilometres of Freetown, opened up lucrative opportunities for the conglomerate of mining companies: indeed, the Government attributed Branch Energy and then Diamondworks the rights to exploit the diamond mines re-gained by Executive Outcomes. With regard to similar issues, François Misser and Philippe Chapleau have revealed that in Angola, International Defense and Security (IDAS), the Belgium-Dutch company, obtained the rights to a diamond concession larger than Belgium in exchange for its security services. In Congo-Brazzaville, Levdan, an Israeli firm, saw itself awarded half of the shares of the Marine III oil production permit by the Lissouba Government for having trained the Zulu militia. In close collaboration with mining interests, Sandline International, which is associated with the EO, recently mounted a counter coup in Sierra Leone that in February of 1998 returned President Kabbah to power. According to Africa Confidential, Rakesh Saxena, the Thai banker, paid 1.5 million dollars to Sandline to launch the operation with the declared objective of being awarded several diamond concessions through the transaction...”<sup>55</sup>”*

### 2.4.3 The weakening and eventual disengagement of states

The attribution of security responsibilities to private groups has significant consequences in terms of weakening the states which forego their obligation to guarantee public security and social order. Once security becomes a commercial property, the state loses its monopoly over the legitimate use of force<sup>56</sup>. The weakening and disintegration of a state is one of the causes that pushes companies, including mining companies, to seek to guarantee order and stability themselves. The phenomenon of security agencies, far from resolving the initial problem of insecurity, on the contrary, can create a climate of conflict and contribute to the greater isolation of the fragile state and reduce its chances of finding a more lasting solution<sup>57</sup> to the problems with which it is faced.

What is more, the use of private security companies can lead to favouring foreign financial interests over those of the state. During a visit to London, the Special Rapporteur expressed his concerns around security companies to the British Government:

*“Private security companies benefited financially from mercenary activities. States should prohibit the forming of those private units which benefited from armed conflicts and States’ problems”<sup>58</sup>.*”

The Special Rapporteur declared himself that once a government agrees to delegate functions normally vested in the national army or in its police forces to commercial security agencies, it exposes its population to security operations that could potentially be discriminatory with regard to certain groups on ethnic or ideological grounds<sup>59</sup>. In effect, it opens the door to the possibility of the violations of fundamental human rights.

<sup>55</sup> Croissance, no.423, February 1999, p.21.

<sup>56</sup> E/CN.4/1999/11, January 13, 1999, article 68. According to Bernales-Ballesteros, the Human Rights Commission must adopt a general principle directing its analysis and perspective on the question of mercenaries. The main thrust of its approach should be that national and public security, along with activities undertaken to combat rebels or terrorists, are not marketable or saleable products. This principle must underlie all decisions regarding issues of private security.

<sup>57</sup> To resolve the dilemma of the weakness of states, and to overcome constitutional deadlocks or internal conflicts, the UN recommends the application of multilateral security agreements. E/CN.4/1999/11, January 13, 1999, article 71.

<sup>58</sup> Press release, Special Rapporteur Bernales Ballesteros, GA/SHC/3533, October 21, 1999.

### 3. Existing international legislation

Existing international legislation in this field is largely ineffective. It has been rendered outdated by the new ways in which security companies operate. More specifically, there exist no international laws or instruments on security companies, agencies or firms.

The two forms of legislation of concern in this area date from 1977 and address the use of mercenaries and not security companies or the military interventions that have flowed from these. This is a crucial flaw that shows just how necessary it is to create laws that take the present phenomenon into account.

In addition, existing laws have little impact because of the lack of precision of many of the articles of the existing texts which do little more than provide loop-holes, and because of the lack of political support by certain countries. According to Bernales-Ballesteros, the shortcomings of international legislation are in part responsible for the upsurge in the scope of this phenomenon and for the use of mercenaries under more modern forms.

At present there are two international instruments in effect that are relevant to this discussion. These are Article 47 of the Additional Protocol I (1977) to the 1949 Geneva Conventions and the OAU, Organisation of African Unity's Convention concerning the Elimination of Recourse to Mercenaries in Africa (1977). The International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries, while adopted in 1989 by the UN's General Assembly, has not as yet been implemented as an insufficient number of countries have ratified it.

Article 47 contains two paragraphs, the second of which provides the most commonly used definition of a mercenary. According to it, an individual is considered a mercenary if he meets the following criteria:

- a) is specifically recruited locally or abroad in order to fight in an armed conflict;*
- b) does, in fact, take direct part in the hostilities;*
- c) 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 ranks and functions in the armed forces of that party;*
- d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;*
- e) is not a member of the armed forces of a party to the conflict;*
- f) has not been sent by a state which is not a party to the conflict on official duty as a member of the armed forces<sup>60</sup>.*

This definition contains numerous flaws and ambiguities that compromise its usefulness. It also has little political or legal weight given the ease with which it can be bypassed. For example, it only accounts for international conflicts or national liberation movements (in a struggle against a coloniser) and consequently does not apply in the case of a civil war.

The key drawback reducing the usefulness of Article 47 is the fact that it is difficult to apply to employees of a private security firm, to those providing assistance or to military advisors. The distinction between "employees" of a security company and mercenaries lies in the fact that the former are part of an official, public and legal entity which to a large extent organises its activities. They are also liable to their superiors who are bound to their clients by formal contract. It remains nonetheless true that mercenaries and members of security companies share certain common characteristics, which include: their military background, their status as foreigners in the country where they work, and the salary which they receive for their efforts<sup>61</sup>. As these companies which have a military character are frequently accused of

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<sup>59</sup> E/CN.4/1999/11, January 13, 1999, article 70.

<sup>60</sup> Shearer, *op.cit.*, page 17.

<sup>61</sup> Shearer, *op.cit.*, page 21.

recruiting mercenaries who are the object of Article 47 and outlawed by some national legislation, certain observers believe that we should now include the activities of these security companies under the scope of Article 47<sup>62</sup>. However, the definition that this article puts forward is too restricted to cover the staff of the security companies.

For example, under criterion a) of Article 47, it is specified that the hiring must be done with a view to a specific conflict. Given that the employees of security companies are often recruited for a lengthy period, they do not meet the criteria of a specific conflict. Moreover, companies such as *Executive Outcomes* and *Military Professional Resources Incorporated* (MPRI) defend themselves from being viewed as a network of mercenaries by appealing to criterion b). Military companies can emphasise the fact that their staff are advisors and strategists and that they do not directly participate in conflict.

Finally, security company employees who become soldiers for a country at war avoid the title of mercenary through recourse to criterion (e). This same outcome becomes a possibility through recourse to criterion (d) where citizenship or resident status of one of the belligerent parties is attributed to the individual<sup>63</sup>. In addition, Article 47 of the Protocol neither regulates nor forbids the activities of mercenaries. It simply proposes a definition of mercenaries (b) and, in its first paragraph specifies their legal status with respect to the categories of combatants or prisoners of war. This distinction amounts to a condemnation of their participation in armed conflicts as it deprives mercenaries of the recognised rights of the wounded and prisoners of war.<sup>64</sup>

As for the OAU Convention, it was adopted in 1977 at the meeting in Libreville and has been in effect since 1985. The Special Rapporteur argues that due to this convention, African countries have a greater legal protection against the activities of mercenaries. Nevertheless, its definition of the notion of a mercenary differs only slightly from that of Article 47 and the legal protection is only partial in that it does not include all of the possible forms that mercenary activity can take<sup>65</sup>. Finally, in cases where it is a state that hires these companies or private security agencies for reasons of security and public order, there is also further possibility of confusion<sup>66</sup>.

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<sup>62</sup> Shearer, *op.cit.*, page 17.

<sup>63</sup> Shearer, *op.cit.*, pages 17-18).

<sup>64</sup> A/RES/52/112, February 18, 1998, article 48.

<sup>65</sup> E/CN.4/1999/11, January 13, 1999, article 53.

<sup>66</sup> A/RES/52/112, February 18, 1998, article 51.

## 4. Recommendations

National and public security as well as activities undertaken with a view of combating rebellion or terrorism should not be marketable or saleable products. However, faced with the situation that we have observed, particularly in Africa, where in periods of conflict or insecurity, recourse is increasingly made toward private security companies, we put forward the four following recommendations:

### 1. Implementing the International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries.

Such implementation would be a first step towards improved international legislation. As we have already seen, in 1989 the Convention was adopted by the UN General Assembly; however, as a sufficient number of states have yet to ratify the agreement, it awaits implementation. In effect, the Convention remains inoperative until the thirtieth day following its ratification by a 22nd state<sup>67</sup>. A decade after the adoption of this International Convention, the existing international legislation in place is still limited to Article 47 of the Protocol and to the Convention of the OAU<sup>68</sup>.

The ratification of the International Convention would contribute to confirming the resolutions and declarations of the UN condemning "mercenary" activity and would strengthen its capacity to regulate these activities. It would "*prosecute and punish offenders effectively, determine jurisdiction clearly in each case and facilitate extradition procedures and preventive cooperation among States*"<sup>69</sup>.

However, the International Convention reproduces, almost integrally, the definition of a mercenary found in Article 47 and remains very close to the older legislation. Consequently, it does not resolve the gaps that exist with respect to security companies, those with military characteristics, and the circumstances surrounding their interventions. The Special Rapporteur insists however, that this instrument could be reworked and improved were it in effect<sup>70</sup>. It is clearly in this direction that we need to act without delay.

### 2. Strengthening the national laws of vulnerable African countries.

It would be useful for countries that are likely to be host to private security companies to be encouraged and supported in their efforts to introduce clear laws restraining or at least controlling the activities of such groups within their national territory, be these national or foreign companies. At present, some states have their own laws concerning the use of mercenaries but in most cases these are largely ignored. Some laws forbid only the recruitment of mercenaries within the country, while others carry the principle one step further by going beyond national boundaries. Finally, to be truly effective, national laws must go beyond the process of recruiting individuals and apply to the protection practices and security activities themselves. As with the UN's legislation, it would also be very useful to complete the definition of "mercenary activities" and to include the phenomenon of private companies specialised in assisting and advising as well as those engaged in security and military activities.

### 3. The accountability of the countries of origin of military agencies and those using these services.

The countries in which the security companies' headquarters are located must monitor more closely the

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<sup>67</sup> As of September 1999, 19 countries had ratified the agreement: Saudi Arabia, Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Uzbekistan, Qatar, Senegal, the Seychelles, Suriname, Togo, Turkmenistan, the Ukraine and Uruguay. The nine following states had signed but had yet to ratify the agreement: Germany, Angola, Congo, Morocco, Nigeria, Poland, the RDC, Romania and Yugoslavia. A/54/326, September 7, 1999, article 72.

<sup>68</sup> E/CN.4/1999/11, January 13, 1999, article 78.

<sup>69</sup> A/RES/52/112, February 18, 1998, article 66.

<sup>70</sup> E/CN.4/1999/11, January 13, 1999, article 52.

activities in this sector of their economies. South Africa is one of the few countries that have adopted clear laws concerning private companies involved in military activities. The South African government regulates the military assistance given to foreign nations by requiring that their military companies conform to specific norms. *Executive Outcomes* has had to subject itself to this South African state regulation<sup>71</sup>. As for the United Kingdom, it "closely follows the activities of registered military security companies on its territory"<sup>72</sup>.

The proliferation of security companies occurs in the broader context of the implementation of the recommendations of the multilateral financial institutions favouring the privatisation and deregulation of public and national policies. Given that the mining companies employing security companies, often benefit from the institutional support of governments of the countries where they are headquartered, this situation raises important questions concerning the corporate, political and social responsibilities of these countries. To the extent that the promotion of the activities of these companies is furthered by the fiscal and regulatory frameworks put in place by the governments of the countries where these companies are based, or through the provision of public funds for financing or promoting mining exploration and production activities overseas, as is clearly the case for Canada, it is essential that the countries of origin of mining and security companies study the repercussions of their commercial, financial and production activities on the populations in the countries of intervention and legislate accordingly.

#### **4. The accountability the multilateral financial institutions, and notably of the World Bank and the International Monetary Fund.**

The growing tendency toward the indirect management of risk through the employment of private security companies to deal with situations of instability which might hinder the return on investment has emerged within the context of the measures of privatisation, liberalisation, and deregulation recommended by the multilateral financial institutions. This is particularly the case with regard to Africa's indebted nations. However, to the extent that this tendency risks increasing the likelihood of violations to the rights of the populations concerned — as well as contributing to the loss of mining revenues, to the disorganisation of the official financial and commercial networks of the countries involved, and consequently contributing to the weakening and disengagement of the nation states — the multilateral financial institutions are also implicated in the most direct manner. Far from contributing to the resolution of the origins of political, social and economic instability by lessening their causes, the privatisation of risk management appears a very short term solution.

This formula which is characterised by the fact that it brings in numerous actors, following different objectives, implying a wide variety of practices and strategies which are often beyond the control of national authorities or multilateral bodies, could well have the opposite effect to that which is desired, namely contributing to the intensification and the prolonging of violence. Consequently, this growing tendency which appears to have the support of large powers which seek a maximum of liberty, combined with a minimum of responsibility,<sup>73</sup> may well prove to be a very shortsighted solution. For it is a strategy which risks in itself becoming an obstacle to the very objectives of social and economic development put forward by the multilateral institutions, and notably the International Monetary Fund and the World Bank. The present situation urgently demands their response and involvement as well as that of the countries that are their principal backers.

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<sup>71</sup> E/CN.4/1999/11, January 13, 1999, article 66.

<sup>72</sup> A/54/326, September 7, 1999, article 31.

<sup>73</sup> Richard Banégas, *Critique internationale*, op.cit., p.193.