

**SHADOWS OF A TIME PAST: REPORTAGE ON THE INCIDENCES OF WAR  
COMMERCIALISATION IN SELECTED AFRICAN COUNTRIES**

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**Abstract**

Nations go to war for numerous reasons, some of which are justifiable while others are egotistical. The African continent has had its fair share of conflict; even though mostly of a non-international nature, these conflicts are still very much alive in the many states that make up the continent. Foreign governments and corporations seem to have found fortunes in these misfortunes and have been capitalizing on the clusters of non-international armed conflicts as opportunities for pecuniary gains. The average African state has a weak and poorly armed military, hence, it is often the case that governments outsource this important task to private mercenaries, lobbyists and in rare case, other sovereign nations.

This paper adopted the historiographical method to produce a detailed reportage of the incidences and activities of private mercenaries, lobbyists and other foreign interests profiteering from armed conflicts in selected African countries; Libya and Sierra Leone.

The paper noted that the foundational cause of the weak state the average African military is not unconnected to colonization which on many fronts has caused retardation to both structural and idealistic Africa. The paper recommended that governments must begin the process of decolonization of the African legal order and that foreign governments and foreign mercenary groups must be held responsible for actions arising out of their actions during these conflicts.

**Keywords: Commercialisation of War, Private Military Companies, Mercenaries, Libya, Sierra-Leone.**

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## Introduction

Africa has seen and experienced the most wars in all of the continents that make up the globe. From inter ethnic clashes, internal insurrections, secessionist movements, terrorism; banditry to even genocide, the African continent has seen it all.<sup>2</sup> In fighting these different battles, the continent has faced many challenges that slowed its responses and effectiveness in taking both precautionary and reactionary mechanisms to nip these conflicts in the bud. Some of these challenges are a spiral effect of the financial crunch that most of the countries are known for, other challenges are lack of adequate training for the military forces and a lackluster arsenal in comparison with the enemies that the State is always against.<sup>3</sup> In order to cushion the effect of these challenges, many African countries have had to seek help from external sources such as the United Nations Forces, NATO forces as in Libya<sup>4</sup>, French Forces as in Mali<sup>5</sup>, US Forces as in Niger<sup>6</sup>, the ECOMOG forces as in Sierra Leone<sup>7</sup> and many other scenarios. Many of these military forces are invited by their host country to augment the inadequate efforts of their governments while some of the forces, for example, the United Nations Forces are deployed to a country or region at the behest of the United Nations Security Council in the performance of its function provided for under the United Nations Charter and the ECOMOG forces are deployed at

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<sup>2</sup> AO Aremu and T Omomia, "Prevalence of Impulsivity among Junior Secondary Students in Lagos, Nigeria" (2010) 18 IFE Psychologia.

<sup>3</sup> *ibid*

<sup>4</sup> I Daalder and J Stavridis, "NATO's Victory in Libya: The Right Way to Run an Intervention" (*Atlantic Council* February 4, 2012) <<https://www.atlanticcouncil.org/blogs/natosource/natos-victory-in-libya-the-right-way-to-run-an-intervention/>> accessed February 9, 2022.

<sup>5</sup> David Francis, "Executive Summary the Regional Impact of the Armed Conflict and French Intervention in Mali" (2013) <<https://www.files.ethz.ch/isn/163177/f18726c3338e39049bd4d554d4a22c36.pdf>> accessed February 9, 2022.

<sup>6</sup> Beth Cole and others, "Breaking Boko Haram and Ramping up Recovery Making Peace Possible" (2013) <<https://www.usip.org/sites/default/files/3D-Lessons-Case-Lake-Chad-Region.pdf>> accessed February 9, 2022.

<sup>7</sup> Peter Arthur, "Economic Community of West African States, Regional Security and the Implementation of Humanitarian Intervention and the Responsibility to Protect: Rhetoric or Reality?" (2019) 11 *Insight on Africa* 162.

the behest of the African Union Peace and Security Council in furtherance of the AU Treaty and ECOWAS Treaty.<sup>8</sup>

Despite how in-exhaustive the international remedies are through the use of international forces are, many African States have opted for a far more superior firepower by employing the use of private military companies and mercenaries who are per se bound by no defined rules of engagement and are concerned with ensuring peace but a total annihilation of whom its paymasters point out as the enemy.<sup>9</sup> The reason for this may be justified and it may be cynical. The truth of the matter will be enunciated further as this paper progresses. The deployment of Executive Outcomes (EO), a private military company in the Sierra-Leone crisis, Sandlline International, another private military company to the crisis in the Democratic Republic of Congo (DRC) are one too many examples that validate the position afore mentioned.<sup>10</sup>

The array of private actors in the many African armed conflicts have created many interests , many of which are commercial in nature. The many incidences of the privatised or commercial nature of these conflicts are discussed in this paper

## 1.0. War/Armed Conflict

It is important that insight; however brief, be cast into the nature of war. Existing literature points to the inconclusive context of the term "war" which can be possibly spun into the following typologies: limited war and total (or total) war, cold war and hot war, local war and world war, controlled and uncontrolled war, random and deliberate war, to mention a few.<sup>11</sup> This is probably owed to the ever changing nature of war.

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<sup>8</sup> Tom Kabau, "The Responsibility to Protect and the Role of Regional Organizations: An Appraisal of the African Union's Interventions" (2012) 4 Goettingen Journal of International Law 49 <[https://www.gojil.eu/issues/41/41\\_article\\_kabau.pdf](https://www.gojil.eu/issues/41/41_article_kabau.pdf)> accessed February 9, 2022..

<sup>9</sup> Joseph Hansen, "Rethinking the Regulation of Private Military and Security Companies under International Humanitarian Law" (2012) 35 Fordham International Law Journal 698 <<https://ir.lawnet.fordham.edu/ilj/vol35/iss3/5/>> accessed February 9, 2022.

<sup>10</sup> ibid

<sup>11</sup> F Grieves, *Conflict and Order: An Introduction to International Relations* (Houghton Mifflin, Boston 1977).

According to van der Dennen, war is a form of violence, especially collective, direct, explicit, individual, deliberate, organized, institutionalized, instrumental, sanctioned, and sometimes subjected to ritualized and normative violence.<sup>12</sup> These features and dimensions are not limiting. However, it should be clear that war or state of war is a special category of violence.<sup>13</sup> Some of the war terms listed reflects attitudes and behavioral concerns related to assumptions about the causes of war. Perhaps, to fully grasp the idea of war, one must understand fully the idea of peace.<sup>14</sup> The important point is that peace and war as facts differ formally rather than materially, and are distinguishable by their locus and implements rather than by their intrinsic qualities as human behavior. Kallen opined that peace as it would appear is the aggregation of chronic, diffuse, unorganized domestic conflicts: war is conflict, acute, organized, unified and concentrated at the peripheries of a society's habitat.<sup>15</sup> As it would seem, Barbera in the same vein noted that war and peace differ not in the goals pursued, only in the means used to attain them.<sup>16</sup>

Interestingly, Eccles noted that the nature of war itself has changed. In particular there is no longer a dividing line between a state of peace and a state of war.<sup>17</sup> However the thoughts of Eccles on the non-distinguishability of war and peace, Barbera noted that the common denominator between these two concepts is the existence of a dimension of power.<sup>18</sup> Many political realists point out that the common basis of policy in both peace and war, is the quest for power, which makes them two inseparable parts of the same social activity. Diametrically

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<sup>12</sup> Johan Van Der Dennen, "On War: Concepts, Definitions, Research Data -A Short Literature Review and Bibliography" (1980) <<https://core.ac.uk/download/pdf/12857871.pdf>> accessed February 6, 2022.

<sup>13</sup> Van den BERGHE, P. 1978. Ibid pg, 121

<sup>14</sup> M Jemal Ahmed & S Tzu. "The Art of War" (2018) 6 Review of Public Administration and Management 1

<sup>15</sup>HM Kallen, "Of War and Peace" (1939) 6 Social Research 361.

<sup>16</sup>Arthur S Banks, "Rich Nations and Poor in Peace and War" (1975) 69 American Political Science Review 1465.

<sup>17</sup>Henry E Eccles, *Military Concepts and Philosophy* (Rutgers University Press 1965).

<sup>18</sup>Arthur S Banks, "Rich Nations and Poor in Peace and War" (1975) 69 American Political Science Review 1465.

opposed to the vista of peace and war as a bipolar continuum does the view of a sharp and clear-cut borderline exist between the two conditions, thus implying a boundary-transgression in the transition from one state of affairs to the other. Brodie, for example, states:

Although war represents human violence in its most intensive form, it is not simply human violence. It is something else besides, something with a distinctive and quite special configuration. The characteristics of this configuration cover a wide variety of phenomena, including the following: First, wars have tended, since antiquity, to have a clear and sharp beginning and an equally clear and sharp ending; and various ceremonials have been involved both in the initiation and the termination of war.<sup>19</sup>

## 2.0. The idea of the Commercialisation of War

The privatisation and the commercialisation of war can be likened to a bypass boulevard; the alternative choices always lead to the same destination. Naturally, States aim to achieve and maintain a monopoly on violence by controlling mercenaries and PMSCs through the principal-agency theory, however sometimes; it has thus become important to discuss the effect of this method on States, which is the commercialisation of war.<sup>20</sup>

Ayyitey helped put the commercialisation of war in context; he stated that this occurs when private actors take over the natural functions of the State. It could be by the State's voluntary divergence from its role as the provider of certain public commodities such as security and national defence which are then ventured to private actors.<sup>21</sup> Though not directly within the context with which this paper seeks to explain the privatization of war, it is however,

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<sup>19</sup> Bernard Brodie, *War Politics* (Cassell, London 1973).

<sup>20</sup> James Thuo Gathii, "Commercializing War: Private Military and Security Companies, Mercenaries and International Law" (*papers.ssrn.com* March 31, 2009) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1356887](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1356887)> accessed February 7, 2022.

<sup>21</sup> Ayyithey. & George, B.N. 1998. *Africa in Chaos* (New York: St. Martin's Press); or Bayart, Ellis & Hibou: *op. cit.* (note 46); JP Olivier de Sardan, "A Moral Economy of Corruption in Africa?" (1999) 37 *The Journal of Modern African Studies* 25

correlatively expedient to mention that the commercialisation of war could take the route in which a State's military outsources itself just like a private non state actors would to fight in wars or perform other combat function for economic reasons. Good examples could be Nigeria's excessive contribution to peacekeeping missions<sup>22</sup> or the corporate business actor status of the People's Liberation Army of China.<sup>23</sup>

Klare notes that it happens to be the case that many wars are being fought with an economic undertone serving as a representative of both public and private interests and sometimes a preponderance of the latter over the former.<sup>24</sup> Historically, this has been the truth behind many wars of an international nature and many scholars including Homer-Dixon are in agreement that these wars are reappearing.<sup>25</sup> This phenomenon may, even be more evident in non international armed conflicts where the possibility of private gains seems higher, as highlighted in several recent studies on "the political economy of civil wars"<sup>26</sup> as we have seen in many African States.<sup>27</sup>

From the above, we are able to decipher two distinctive motives for war; the most pronounced of which is the manifestation of economic greed. Either the war was started by state to wrestle back the apparatus of state from armed non state actors or whether it is vice versa, the war is just a

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<sup>22</sup>Miracle Eze, "Nigeria Participation in Peacekeeping Operations" [2018] [www.academia.edu](https://www.academia.edu/33587349/Nigeria_Participation_in_Peacekeeping_Operations) <[https://www.academia.edu/33587349/Nigeria\\_Participation\\_in\\_Peacekeeping\\_Operations](https://www.academia.edu/33587349/Nigeria_Participation_in_Peacekeeping_Operations)> accessed February 6, 2022.

<sup>23</sup> Kondapalli, Srikanth: "Civilian Production of the PLA", *Strategic Analysis* (New Delhi: Institute for Defence Studies and Analyses), vol. 19, no. 5 (August 1996), pp. 707-724

<sup>24</sup>Michael T Klare, *Resource Wars: The New Landscape of Global Conflict* (New York: Henry Holt & Co 2001).

<sup>25</sup>Richard N Cooper and Thomas F Homer-Dixon, "Environment, Scarcity, and Violence" (1999) 78 *Foreign Affairs* 135.

<sup>26</sup> Jung Dietrich, *Shadow Globalization, Ethnic Conflicts and New Wars: A Political Economy of Intra-State War* (London: Routledge 2003).

<sup>27</sup> Nigeria with Biafra, Libya with the Oil Boom effects, Sierra Leone because of the Diamond Mines or Angola because of Timber

justification to an end; the control of the resources.<sup>28</sup> Armed conflicts also last longer than they should necessarily be for and this may be caused by direct actions of the non state armed actors (in this contexts, mercenaries) who are benefiting economically from the ring of illegal and clandestine businesses such as smuggling<sup>29</sup>, drug trafficking<sup>30</sup> and payment for protection<sup>31</sup> that takes place. Keen, rightly pointed that conflict can create war economies under which ending the wars becomes herculean and winning undesirable.<sup>32</sup>

### 3.1. Commercialisation of Armed Conflict in Libya

#### 3.1.1. *The Libyan Conflict Genesis*

Libya, officially the State of Libya,<sup>33</sup> is a country in the Maghreb region in North Africa bordered by the Mediterranean Sea to the north, Egypt to the east, Sudan to the southeast, Chad to the south, Niger to the southwest, Algeria to the west and Tunisia to the northwest.

McFate made a resounding statement as to the changing character of war using Libya as an example.<sup>34</sup> He noted that war used to be politically motivated but it seems the political undertone has waned and the essence of commerce that war brings seems to be the anchor on which many wars thrive.<sup>35</sup> Muammar el-Qaddafi was the long age dictator of the Libya who was ousted from

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<sup>28</sup>Michael T Klare, *Resource Wars: The New Landscape of Global Conflict* (New York: Henry Holt & Co 2001).

<sup>29</sup> “The Issue of Mercenaries | How Does Law Protect in War? - Online Casebook” (*Icrc.org*2010) <<https://casebook.icrc.org/case-paper/issue-mercenaries>> accessed February 6, 2022.

<sup>30</sup> *ibid*

<sup>31</sup> *ibid*

<sup>32</sup>D Keen, “The Economic Functions of Violence in Civil Wars,” *Adelphi Papers* (1998).

<sup>33</sup> On 22 December 2017, the Permanent Mission of Libya to the United Nations formally notified the United Nations that the government is changing the official name of Libya to ‘State of Libya

<sup>34</sup>S McFate, “Mercenaries and War: Understanding Private Armies Today” (*National Defense University Press*) <<https://ndupress.ndu.edu/Media/News/Article/2031922/mercenaries-and-war-understanding-private-armies-today/>> accessed February 7, 2022.

<sup>35</sup> Mourad R Kamel, “Libya: UN Report Reveals Haftar’s Botched Mercenary Plan” (*The Africa Report.com* June 10, 2020) <<https://www.theafricareport.com/29592/libya-how-marshall-haftars-mercenaries-have-fallen-into-the-ridicule/>> accessed February 7, 2022.

power by an American-backed coalition in 2011.<sup>36</sup> After the overthrow and the assassination of Qaddafi, the country became ravaged by different conflicts from different groups and organisations seeking to fill the power vacuum. The United Nations came in and negotiated a peace treaty between the warring factions and an agreement was made to establish a fragile United Nations-backed government in Tripoli headed by Fayeze al-Sarraj, a move which was vehemently opposed by Mr. Hifter.<sup>37</sup>

The conflict that Libya is embroiled in is split between this UN backed Government of National Accord governed by Prime Minister Fayeze al-Sarraj, and the Libyan National Army led by General Hifter who is backed by some foreign powers and the Libyan House of Representatives.<sup>38</sup> An embargo was placed on arms by the United Nations Security Council via UN Resolution 1970 in Libya after the fall of Muammar Gaddafi, an embargo which seems to have never been respected till date.<sup>39</sup> The operation to ensure the non trade in arms along the Mediterranean was entrusted to Operation Sophia, now Operation Iirini.<sup>40</sup>

The offensive by Mr. Hifter started officially in 2014 and the scale of assault that was launched on his divide was heavily sanctioned with finesse and could not have been done by a traditional Libyan military. Having established that there are many interested parties in the ongoing war, one of the major players in the war is the powerful Kremlin-backed private army, the Wagner Group.<sup>41</sup> The assault by the Wagner Group on behalf of Mr Hifter was met with a counter assault

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<sup>36</sup> *ibid*

<sup>37</sup> *Ibid.*

<sup>38</sup> BBC, “Khalifa Haftar: The Libyan General with Big Ambitions” *BBC News* (April 8, 2019) <<https://www.bbc.com/news/world-africa-27492354>> accessed February 7, 2022.

<sup>39</sup> UNSC, “S/RES/1970 (2011) | United Nations Security Council” (*Un.org*2011) <<https://www.un.org/securitycouncil/s/res/1970-%282011%29>> accessed February 7, 2022.

<sup>40</sup> “Operation Eunavfor Med Iirini” (*Operation Iirini*) <<https://www.operationirini.eu/>> accessed February 7, 2022.

<sup>41</sup> BBC, “Khalifa Haftar: The Libyan General with Big Ambitions” *BBC News* (April 8, 2019) <<https://www.bbc.com/news/world-africa-27492354>> accessed February 7, 2022.

from Turkey which is a strong backer of the United Nations temporary administrator put in place of the Libyan government.<sup>42</sup>

### 3.12. Introduction of Private Armies in Libya

Mercenaries that came into Libya came under the guise of protecting and guarding the oil and gas facilities in Benghazi Libya with many of them coming from countries like the Britain, South Africa, Australia and the United States. Reports from an investigation carried out by the United Nations, it was made known that many of these mercenaries came into Libya through Botswana on helicopters with falsified documents.<sup>43</sup>

While the use of such contractors has been common practice since the 9/11 attacks across the Middle East, their utilisation has been particularly popular in Libya, which falls into that class of countries in which distances are huge, the population density is low, political power is local, and the troops-to-space ratio makes decisive military victories difficult.<sup>44</sup> A further fact exposed by the UN investigation was to the essence that the underlying motive for the mercenaries coming into Libya was not for safeguarding the oil facilities but to serve as hired fighter for Libyan commander Khalifa Hifter.<sup>45</sup> The mercenaries were offered \$80 million as payment for their roles

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<sup>42</sup>AfricaNews, “Libya’s Hafter Calls on Troops to ‘Drive Out’ Turkish Forces” (*Africanews*2020) <<https://www.africanews.com/2020/12/25/libya-s-hafter-calls-on-troops-to-drive-out-turkish-forces/>> accessed February 7, 2022.

<sup>43</sup>Declan Walsh, “By Air and Sea, Mercenaries Landed in Libya. Then the Plan Went South.” *The New York Times* (May 25, 2020) <<https://www.nytimes.com/2020/05/25/world/middleeast/libya-mercenaries-arms-embargo.html>> accessed February 7, 2022.

<sup>44</sup> Stasa Salacanian, “Foreign Mercenaries Are Flocking to Libya” (*Middle East Monitor*February 22, 2020) <<https://www.middleeastmonitor.com/20200222-foreign-mercenaries-are-flocking-to-libya/>> accessed February 7, 2022.

<sup>45</sup>Declan Walsh, “By Air and Sea, Mercenaries Landed in Libya. Then the Plan Went South.” *The New York Times* (May 25, 2020) <<https://www.nytimes.com/2020/05/25/world/middleeast/libya-mercenaries-arms-embargo.html>> accessed February 7, 2022.

in fighting for Commander Hifter.<sup>46</sup> The mercenaries hired by Mr Hifter were made of different nationals comprising of South Africans, Britons, Australians and Americans.<sup>47</sup> One of the important missions that was given to Mr Hifter's mercenaries was to stop the importation of weapons into Tripoli; UN administrative headquarters by the Turkish. The plan, United Nations investigators say, was to create a marine strike force using speedboats and attack helicopters that would board and search merchant ships. Investigators believe the marine force was part of a larger operation that also involved commandos who would survey and destroy enemy targets.<sup>48</sup>

The Russian government has denied it sent the Wagner Group to Libya<sup>49</sup> even when similar evidence points to the fact that the same private military and security company had prior been sent to Syria, eastern Ukraine and other hotspots, including the Central African Republic.<sup>50</sup>

The United Nations backed Government of National Accord (GNA) has pegged the number of Wagner mercenaries hired by the Gen Haftar's eastern-based Libyan National Army (LNA) to combat it at around 1,000.<sup>51</sup>

A Turkish newspaper while quoting GNA Interior Minister Fathi Bashagha seems to have lent credence to the fact that companies who arrived in Libya with plans to assist forces loyal to eastern-based military commander Khalifa Hifter in their year-long offensive to capture the

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<sup>46</sup>Mourad R Kamel, "Libya: UN Report Reveals Haftar's Botched Mercenary Plan" (*The Africa Report.com* June 10, 2020) <<https://www.theafricareport.com/29592/libya-how-marshall-haftars-mercenaries-have-fallen-into-the-ridicule/>> accessed February 7, 2022.

<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> BBC, "US Says Russia Sent Jets to Libya 'Mercenaries'" *BBC News* (May 26, 2020) <<https://www.bbc.com/news/world-africa-52811093>> accessed February 8, 2022.

<sup>50</sup> *ibid*

<sup>51</sup> BBC, "Russian Group Wagner 'Fighting in Libya'" *BBC News* (May 7, 2020) <<https://www.bbc.com/news/world-africa-52571777>> accessed February 7, 2022.

capital, Tripoli, a news report said.<sup>52</sup> These 20 men were private military contractors with Lancaster 6 DMCC and Opus Capital Asset Limited FZE being companies registered in the United Arab Emirates Freezone.<sup>53</sup>

These 20 men were of different nationalities<sup>54</sup> that were only the second support batch to the initially deployed commando led by a former British soldier. It was reported that these men gained access to Libya through a cover story in which they posed as men deployed by the United Nations to secure oil and gas installations.<sup>55</sup> Yet, they had to fly from Botswana to Jordan before coming into Benghazi, a calculated move made to mask their intentions.<sup>56</sup> Political scientists such as William Lawrence have voiced that the reason why the Emirates may be in the war in Libya may not be for private gains but may be because of their penchant for tilting towards every form of Islamism including political Islamism.<sup>57</sup>

Foreign governments having realized the logistical and political deniability benefits of using mercenaries to lend a helping hand (cynical or noble) to another country in need, they have spared no resources in ensuring that, that method is explored and exploited at every given opportunity. The rationale behind this has been summarized by Chuter in the following statement:

The point here is not to win a military victory, but to qualify for a seat at the table, and because of the forces you control or influence,

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<sup>52</sup> S Al-Atrush and D Wainer, “Western Team Went to Help Moscow’s Man in Libya, UN Finds” (*BloombergQuint*2020) <<https://www.bloombergquint.com/politics/western-mercenaries-went-to-libya-to-help-moscow-s-man-un-finds>> accessed February 7, 2022.

<sup>53</sup> Ibid.

<sup>54</sup> South Africa, Australia, Great Britain and the United States

<sup>55</sup> Mourad R Kamel, “Libya: UN Report Reveals Haftar’s Botched Mercenary Plan” (*The Africa Report.com* June 10, 2020) <<https://www.theafricareport.com/29592/libya-how-marshall-haftars-mercenaries-have-fallen-into-the-ridicule/>> accessed February 7, 2022.

<sup>56</sup> Ibid

<sup>57</sup> ICG, “Popular Protest In North Africa and the Middle East (V): Making Sense of Libya Middle East/North Africa Report N°107 -6” (2022) <[https://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_1082.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1082.pdf)>.

you can obstruct a peace settlement, so your wishes have to be taken into account.<sup>58</sup>

He added that in the normal course of events, private armies operate across all theatres with combative similitude however, the case of Libya seems to be the exception to the rule as there seems to be a proliferation of combative tactics, this is no thanks to the multiplicity of interests in the Libyan conflict.<sup>59</sup>

The conflict in Libya seems to have many financiers most of which are untraceable who have ensured the deployment of sophisticated technology and a complex web of shell companies to extend finances to the prosecutors of the war. Some of the powerful principal sponsors of the Libyan conflict were revealed to be Turkey, Russia, Egypt and the United Arab Emirates. Other interested countries in the Libyan conflict are Syria, Sudan and Chad.<sup>60</sup>

According to a confidential report submitted to the United Nations Security Council in February, many of the companies engaged in the war in Libya are owned by Christian Durrant, a man of Australian origin and a close associate of America's most renowned mercenary entrepreneur; Erik Prince.<sup>61</sup> The interests of countries involved in the Libyan conflict go beyond exerting geopolitical influence but the interests stems from the gains made from the lucrative sales made

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<sup>58</sup> "Foreign Mercenaries Are Flocking to Libya" (*Middle East Monitor* February 22, 2020) <<https://www.middleeastmonitor.com/20200222-foreign-mercenaries-are-flocking-to-libya/>> accessed February 7, 2022.

<sup>59</sup> *ibid*

<sup>60</sup> Kali Robinson, "Who's Who in Libya's War?" (*Council on Foreign Relations* June 18, 2020) <<https://www.cfr.org/in-brief/whos-who-libyas-war>> accessed February 7, 2022.

<sup>61</sup> Declan Walsh, "By Air and Sea, Mercenaries Landed in Libya. Then the Plan Went South." *The New York Times* (May 25, 2020) <<https://www.nytimes.com/2020/05/25/world/middleeast/libya-mercenaries-arms-embargo.html>> accessed February 7, 2022.

from selling arms, human trafficking for cheap labour and ultimately the smuggling of oil.<sup>62</sup>

Libya has literally been turned into an open-air stock exchange of illegalities.<sup>63</sup>

It already has been established, that most often than note, the driving force for many private military contractors is money even though some scholars as has been duly noted in this paper vehemently disagree with this conclusion. However, dwelling on the motives, some of the private military armies engaged in the Libyan conflict especially those from Sudan and Iraq with very little training<sup>64</sup> are in it for the subsistence fee for feeding of themselves and their immediate families.

Chuter added that these Sudanese and Iraq private contractors for a fee are usually just used as cannon fodders and for the physical domination of an area by bearing arms when no one else is.<sup>65</sup>

The most pronounced move that speaks to one of the probing questions of this paper is to the fact that war in the African region has been privatized or even commercialized is evident in the hefty sums that are paid to these private military and security companies. Marshal Khalifa Hifter, in an attempted short mission and final assault on the capital Tripoli, negotiated an outrageous sum of \$80m (eighty million United States dollars). Perhaps, it was a good thing for Libya and Africa that the deal did not materialize due to the failure of the private military contractors to meet combat material specifications<sup>66</sup>.

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<sup>62</sup>Fiona Mangan, "Making Peace Possible N O . 161 | M Ay 2 0 2 0 Peaceworks Illicit Drug Trafficking and Use in Libya Highs and Lows" (2020) <[https://www.usip.org/sites/default/files/2020-05/20200528-pw\\_161-illicit\\_drug\\_trafficking\\_and\\_use\\_in\\_libya\\_highs\\_and\\_lows-pw.pdf](https://www.usip.org/sites/default/files/2020-05/20200528-pw_161-illicit_drug_trafficking_and_use_in_libya_highs_and_lows-pw.pdf)> accessed February 7, 2022.

<sup>63</sup> Reuters Staff, "Libya's U.N.-Backed Government Summons Ambassador over French Presence" *Reuters* (July 26, 2016) <<https://www.reuters.com/article/us-libya-security-france-idUSKCN106263>> accessed February 7, 2022.

<sup>64</sup> Colloquially called European jihadi volunteers

<sup>65</sup> Stasa Salacanian, "Foreign Mercenaries Are Flocking to Libya" (*Middle East Monitor* February 22, 2020) <<https://www.middleeastmonitor.com/20200222-foreign-mercenaries-are-flocking-to-libya/>> accessed February 7, 2022.

<sup>66</sup>Haftar complains that the helicopters are old and do not match his order. According to documents obtained by the United Nations, the warlord should have received a Cobra attack helicopter and a LASA T-Bird, among other things.

Private military contractors that have either considerable or high amounts of combat training, numbered in their thousands with some sources pegging the figures as high as 2500 persons per unit even though this number may have been regarded as ‘Turkish exaggeration’.<sup>67</sup> Reports have it that over 2000 Syrian fighters were selected and sent to Libya for the UN backed Libya LNA.<sup>68</sup>

Each of the Syrian fighters hired by Turkey pocket as high as \$2,000 per month, coupled with a promise of Turkish citizenship.<sup>69</sup> One of the fighters stated that, younger people are coming in to earn money. It could be one year, two years or more but eventually the conflict will cool off. At some point they will start to return home.<sup>70</sup> On the flipside of the conflict, heads of the private military contractors fighting for General Khalifa Hifter pocketed up to \$150,000 each for their role in conflict even though most of the plot did not fo as planned.<sup>71</sup> Furthermore, the foot soldiers pocketed as high as \$30,000 to \$50,000 a month, or \$20,000 to \$40,000 per month depending on whether you were pilot or air crewman.<sup>72</sup>

In addition, the conflict in Libyan has opened up blooming business opportunities for international crime syndicates from all walks of life. Human trafficking, arms dealing, mercenaries, and other crimes are little of the numerous crimes that the conflict in Libya has spiraled into.

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<sup>67</sup>Stasa Salacanian, “Foreign Mercenaries Are Flocking to Libya” (*Middle East Monitor*February 22, 2020) <<https://www.middleeastmonitor.com/20200222-foreign-mercenaries-are-flocking-to-libya/>> accessed February 7, 2022.

<sup>68</sup>ibid

<sup>69</sup> ibid

<sup>70</sup> Jason Burke and Zeinab Mohammed Salih, “Mercenaries Flock to Libya Raising Fears of Prolonged War” (*the Guardian*December 24, 2019) <<https://www.theguardian.com/world/2019/dec/24/mercenaries-flock-to-libya-raising-fears-of-prolonged-war>> accessed February 7, 2022.

<sup>71</sup>British The Telegraph said Thursday, citing a secret U.N. report prepared by the Libya sanctions committee

<sup>72</sup> F Sydner, “Proceedings and Debates of the 110 Th Congress, Second Session House of Representatives” (2017) <<https://www.govinfo.gov/content/pkg/CREC-2008-01-22/pdf/CREC-2008-01-22.pdf>> accessed February 7, 2022.

### 3.2. Commercialisation of War in Sierra Leone

The history of privatization of conflict in Sierra Leone seems like a very long one, one that started as a result of necessity. At the time, the gargantuan corruption, the dwindling economic fortunes and the geometric increase in state debts led the government of Sierra Leone to seek shelter and aid with many private corporations who were willing to alleviate the burden on the government on issues of wealth generation.<sup>73</sup> It was this singular move of the government that led to the influx and incorporation of many companies with unidentifiable objectives; it was the classic exemplification of the aphorism ‘a beggar has no choice’.

According to available record, Marine/Maritime Protection Service of Sierra Leone, a firm wholly owned by the British government was the very first private military and security company to come into Sierra Leone whose main objective was the prevention of illegal fishing and the collection of fishing royalties.<sup>74</sup>

This private military contractor which was chosen over an Indigenous Regional company was funded by the International Monetary Fund.<sup>75</sup> Shortly after this company was hired, another private security company by the name of Specialist Services International (SSI), a German firm was hired for port security.<sup>76</sup> Etymologically, although the objectives of these two companies did not seem to be in any way related to war or any sort of international or non international armed

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<sup>73</sup> David Keen, “Liberalization and Conflict” (2005) 26 *International Political Science Review / Revue internationale de science politique* 73.

<sup>74</sup> David J Francis, “Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?” (1999) 20 *Third World Quarterly* 319.

<sup>75</sup> IMF Survey, “IMF Survey : Sierra Leone Gets \$102 Million in Extra IMF Financing, Debt Relief” (*IMF*2015) <<https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar030315a>> accessed February 7, 2022.

<sup>76</sup> Christopher M Faulkner, Joshua E Lambert and Jonathan M Powell, “Reassessing Private Military and Security Company (PMSC) ‘Competition’ in Civil War: Lessons from Sierra Leone” (2019) 30 *Small Wars & Insurgencies* 641.

conflict, they however were the precursors to the influx of private military and security companies that partook in the armed conflict that started in 1991.

The scope or objectives of these two companies were expanded, it was then they themselves became private military and security companies.<sup>77</sup> Both companies entered via contracts with mining corporations Sierra Rutile and Sierra Ore and Metal Company (SIERCOM). The success of the RUF in the early 1990s had led these corporations to seek outside security assistance to help maintain control of territory. FSS was responsible for defending upwards of 200 square miles in an effort to secure titanium mines.<sup>78</sup>

The Sierra Leone war started in early 1991 caused by series of attacks from the Revolutionary United Front (RUF) who had taken control of the Northern part of Sierra Leone and had seized diamond mines. It was this conflict that has also led to the initial coup that brought President Strasser into power as the head of the Sierra Leonean government.<sup>79</sup>

The first phase of the war was from 1991-1994 in which there were minimal war privatization markings. However, at the start of the second phase of the conflict around 1995<sup>80</sup> five different firms; Ibis Air International (Ibis), Executive Outcomes (EO), Defense Systems Ltd. (DSL), Gurkha Security Guards (GSG), and Control Risks (CR) were hired or more emphasizingly; were contracted to partake in the conflict in different capacities, ranging from consultancy to negotiation, and from logistics to actual combat.<sup>81</sup>

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<sup>77</sup> *ibid*

<sup>78</sup> Christopher M Faulkner, Joshua E Lambert and Jonathan M Powell, "Reassessing Private Military and Security Company (PMSC) 'Competition' in Civil War: Lessons from Sierra Leone" (2019) 30 *Small Wars & Insurgencies* 641.

<sup>79</sup> Marianne Ducasse-Rogier, "The Sierra Leonean Conflict:: Causes and Characteristics" (*JSTOR*2004) 15 <<https://www.jstor.org/stable/resrep05531.8>> accessed February 7, 2022.

<sup>80</sup> After President Strasser had written a letter to the United Nations Security Council seeking for help to get reinstated into office and help free the country that had almost been totally over run by the RUF insurgents.

<sup>81</sup> Andrea Edoardo Varisco, "The Influence of Research and Local Knowledge on British-Led Security Sector Reform Policy in Sierra Leone" (2014) 14 *Conflict, Security & Development* 89.

The Sierra Leonean war market was becoming saturated with the presence of one too many private military and security contractors contracted by different countries. Taking a look at this, one could cynically but factually state that, the large influx of private security companies hired by different countries was because these countries wanted a piece of the diamond wealth to themselves but this could not be achieved with state army because of the need for plausible deniability.<sup>82</sup>

There were constant clashes for whose group would take precedence in the security affairs, so much so that the then young head of government President (Capt) Valentine Strasser has to bring in and re-negotiate on his own terms with a new private security company; Gurkha Security Guards (GSG) to carry out the task of recovering the seized diamond rich north from the Revolutionary United Front.<sup>83</sup> A contract that did not live up to four months a resultant effect of withdrawal of the Gurkha Security Guards (GSG) from active combat in early April of 1995.

In order to maintain relevance and a continued payday, many of the proliferated private military companies that came into Sierra Leone had to amend there are of focus/specialized as against he combat specialists that they all has initially claimed. This was may be an aftermath CaptStrasser handpicking Gurkha Security Guards (GSG) as the contractor to carry out the main task.<sup>84</sup> Particularly, the Defense Systems Ltd (DSL) who initially was a combat specialist company re-invented itself as a security consultancy firm.<sup>85</sup>

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<sup>82</sup> *ibid*

<sup>83</sup> Marianne Ducasse-Rogier, "The Sierra Leonean Conflict:: Causes and Characteristics" (*JSTOR*2004) 15 <<https://www.jstor.org/stable/resrep05531.8>> accessed February 7, 2022.

<sup>84</sup> K Peters, "Footpaths to Reintegration : Armed Conflict, Youth and the Rural Crisis in Sierra Leone" [2006] *research.wur.nl* <<https://research.wur.nl/en/publications/footpaths-to-reintegration-armed-conflict-youth-and-the-rural-crisis>> accessed February 8, 2022.

<sup>85</sup> *ibid*

The withdrawal of GSG which was provoked its incompetence which led to the death of GSG commander Col. Robert McKenzie, several coworkers, and members of the Republic of Sierra Leone Military Forces (RSLMF) were killed in an ambush. Some accounts suggested rogue members within the RSLMF had tipped off the RUF about GSG's operations.<sup>86</sup> Again, the failure of the GSG and its subsequent withdrawal may not be unconnected with the plotting amidst the stiff competition in the war market between the many private security companies in Sierra Leone.<sup>87</sup> It was only normal that each of them strove to get their piece of the war economics.

Soon after Gurkha Security Guards' withdrawal came Executive Outcomes (EO)<sup>88</sup> became the private security company that ran point on the Sierra Leone conflict.<sup>89</sup> Ongoing wars in Angola and Sierra Leone led to new opportunities for the firm that had prior been in hiatus due to the coming to an end of the apartheid regime and the resultant shrinking of the South African military experienced a boom in business in the early 1990s.<sup>90</sup>

The Executive Outcome private security was backed by the British government (the truth of which the British Government is yet to confirm or deny).<sup>91</sup> This time around, the Executive Outcomes being more experienced in combat and with proper collaboration with the Republic of

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<sup>86</sup> Christopher M Faulkner, Joshua E Lambert and Jonathan M Powell, "Reassessing Private Military and Security Company (PMSC) 'Competition' in Civil War: Lessons from Sierra Leone" (2019) 30 *Small Wars & Insurgencies* 641.

<sup>87</sup> *ibid*

<sup>88</sup> A South African military firm founded by Eeben Barlow, a former lieutenant colonel in military intelligence and a senior officer in the Civilian Cooperation Bureau (CCB), the latter of which gained notoriety for its tactics against anti-Apartheid efforts (including assassinations). The company was established in 1989 and originally set out to assist with military intelligence training of the South African Defense Forces (SADF), recruiting heavily from former members of special forces units. With the end of South Africa's border war and subsequent post-Apartheid downsizing of its military, the company's priorities shifted.

<sup>89</sup> Christopher M Faulkner, Joshua E Lambert and Jonathan M Powell, "Reassessing Private Military and Security Company (PMSC) 'Competition' in Civil War: Lessons from Sierra Leone" (2019) 30 *Small Wars & Insurgencies* 641.

<sup>90</sup> *ibid*

<sup>91</sup> *ibid*

Sierra Leone Military Forces defeated the Revolutionary United Front pushing the rebels from Freetown and eventually defeating them by August, 1996.<sup>92</sup>

Finding exact proof on the concessions made to Executive Outcome seems like a herculean task because of the clandestinity with which the deal was made. The company paid about \$250 000 a year to the government as rent, out of which a quarter of that amount went to one of the military or traditional higher ups. The government takes 5% of the value of all diamonds extracted and 37.5% of the net profits.<sup>93</sup>

By the time EO departed in January 1997, it was owed \$19.5 million by the government. This debt was to be repaid at a rate of \$ 600 000 a month between March 1997 and the end of 1999.<sup>94</sup>

The new national mining code announced by the Minister of Mineral Resources in the restored Kabbah government on 14 July 1998, exempted Branch Energy from the new mining policy, which stipulates that 'foreigners will only be granted licenses only if they have a Sierra Leonean partner holding at least a 25% stake in the project'.<sup>95</sup> The economic exploitation of low-intensity conflicts by corporate mercenarism therefore becomes evident.<sup>96</sup>

Now, like the case of Libya discussed above where ghost financiers pulled the strings from behind the scenes, the success that Executive Outcomes achieved may not be unconnected with the fact that it was working for the British government<sup>97</sup> and according to Akcinaroglu and Radziszewski is principally attributable to a complex network of energy and mining corporations

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<sup>92</sup> David J Francis, "Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?" (1999) 20 Third World Quarterly 319.

<sup>93</sup>"Conflict Diamonds" (*reliefweb.int*)  
<<https://reliefweb.int/sites/reliefweb.int/files/resources/83488766797D3C36C125690D0035BF37-conflictdiamonds.htm>> accessed February 7, 2022.

<sup>94</sup> David J Francis, "Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?" (1999) 20 Third World Quarterly 319.

<sup>95</sup> *ibid*

<sup>96</sup> *Ibid*

<sup>97</sup>Seden Akcinaroglu and Elizabeth Radziszewski, "Private Military Companies, Opportunities, and Termination of Civil Wars in Africa" (2012) 57 Journal of Conflict Resolution 795.

known as the Branch-Heritage Group.<sup>98</sup> They noted that this conglomerate consisted of dozens of companies who had vested interests in mining opportunities in Sierra Leone. EO fell within this network and quickly secured mining territories within the country.<sup>99</sup> Interestingly, an affiliate of Branch-Heritage; Branch Energy, sealed a lease contract for the mining license for Koidu mine in July of 1995 barely three months after EO's contract began.<sup>100</sup> In essence, EO served as the 'arm' of Branch-Heritage, establishing control over and security of valuable mining interests.<sup>101</sup>

The third phase that explains the privatization of war in Sierra Leone was with the resumption of the fighting around 1998 when President Kabbah was President of Sierra Leone who was ousted from office and government taken by an alliance of the Armed Forces Ruling Council and the Revolutionary United Front (formed into Armed Forces Revolutionary Council (AFRC)). Following the coup in May, 1997, President Kabbah sought to hire some private military and security companies, one of which was Sandline International and its affiliates.<sup>102</sup> According to the research, in Kabbah's time, four private military companies were contracted on behalf of the exiled President. They were: Sandline and LifeGuard, Pacific Architects & Engineers (PA&E) and Cape International Corporation.<sup>103</sup>

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<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

<sup>100</sup> Ian Smillie, Ralph Hazleton and Lansana Gberie, "The Heart of the Matter" (2000) <<https://reliefweb.int/sites/reliefweb.int/files/resources/4D891EE2A7BB2A2DC1256D5F003D45FE-pac-sie-30jun.pdf>> accessed February 7, 2022.

<sup>101</sup>Ibid.

<sup>102</sup> United Nations High Commissioner for Refugees, "Refworld | Sierra Leone: Information on the 1997 Coup d'Etat, ECOMOG Harassment of Civilians, and the Current Situation in Sierra Leone" (*Refworld*2000) <<https://www.refworld.org/docid/3df0dba62.html>> accessed February 7, 2022.

<sup>103</sup>Ibid.

The private security company that ran point on this new phase of fighting was Sandline which like Executive Outcomes was backed by the British government; in fact some scholars have dubbed Sandline as the “British equivalent to Executive Outcome”.<sup>104</sup>

Again, Sandline belonged to the organisation, Branch-Heritage Network<sup>105</sup> a company which used financed and provided military muscles for the counter coup that restored the exiled President back to government.<sup>106</sup> This shadow companies and the preference for the use of private military contractors are strong indications of the profitability from either the direct acts during the lifespan of the war or the indirect or resulting acts from the end of the war. This time around, Sandline had the help of the Nigerian led ECOMOG peacekeeping mission assisted with logistical support from PA & E military contractors.<sup>107</sup>

#### **4.0. Apportioning Responsibilities During/For Privatized Armed Conflict**

##### ***4.1. State Responsibility***

State responsibility is closely related to the internationally guaranteed principles of territorial integrity and sovereignty.<sup>108</sup> Whilst these international law principles serve as overriding protective covers for states, States must however in some cases be held responsible for its actions and inactions whether the acts directly affect itself or affects others outside its jurisdiction.<sup>109</sup> In

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<sup>104</sup> *ibid*

<sup>105</sup> K Pech, “Chapter 5: Executive Outcomes -A Corporate Conquest” (2012) <<https://issafrica.s3.amazonaws.com/site/uploads/PEACECHAP5.PDF>> accessed February 7, 2022.

<sup>106</sup> *Ibid*.

<sup>107</sup> Andrew McGregor, “Quagmire in West Africa: Nigerian Peacekeeping in Sierra Leone (1997-98)” (1999) 54 *International Journal: Canada’s Journal of Global Policy Analysis* 482.

<sup>108</sup> Enrico Milano, *Chapter 3. Statehood and Territorial Sovereignty: The Tradition of Concreteness and Realism* (Brill Nijhoff 2006).

<sup>109</sup> *ibid*

consonance, Taulbee believes that a state must be made responsible for damages arising from its act and for delinquencies imputed to the state.<sup>110</sup> These points are uncontroverted.

Despite the incontrovertibility of these facts, a point of concern or better still, a point of contention remains and this contention is as to what parameters or threshold or standards with which the expected responsibility requires of states would be measured.<sup>111</sup> Responsibility for the acts of Private military and security companies or mercenaries in a state is one large part of the contentious and ongoing debate. A state's standard of performance in controlling mercenary activities, as well as PMCs, is only one part of this ongoing debate.<sup>112</sup>

The contention on the quantum of responsibility that should be placed on states engaging the services of mercenaries and PMSCs becomes more pronounced due to the absence of provisions on requirements for responsibility of states in the two major provisions that regulate the use, financing and training of mercenaries.<sup>113</sup>

As pointed out by Abraham who stated that the preemptory norms shy away from imputing responsibilities on states for acts of mercenaries out of fear of these mercenaries.<sup>114</sup> The fear could be arising out of the over reliance of many governments of the world on the theory that since a government has limited in controlling the choice of its own nationals from taking up arms as mercenaries, it therefore cannot be held responsible for their actions.<sup>115</sup> This explanation is at

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<sup>110</sup> James Taulbee, "Myths, Mercenaries and Contemporary International Law" (1985) 15 California Western International Law Journal 349.

<sup>111</sup> Sompong Sucharitkul, "State Responsibility and International Liability under International Law" (1996) 18 Publications 821.

<sup>112</sup> C Hoppe, "Passing the Buck: State Responsibility for Private Military Companies" (2008) 19 European Journal of International Law 989.

<sup>113</sup> Additional Protocol and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

<sup>114</sup> Greg Mills and John Stremlau, "The Privatisation of Security in Africa" (*Africa Portal* March 1, 1999) <<https://www.africaportal.org/publications/the-privatisation-of-security-in-africa/>> accessed February 7, 2022..

<sup>115</sup> *ibid*

best very vague. An acceptance of such proposition would be a slap on respect for international principles and practices of political independence and territorial integrity.<sup>116</sup>

Hence, if responsibility for mercenaries and private military and security companies are to be maximally realized, the first step would have to be for states to acknowledge that the affairs and domestic decisions made in a state could have spiraling effects on another. In essence, the affairs and decisions of a single state should be steered with the larger picture of the international community in mind.<sup>117</sup>

International customary law states that a State is responsible for acts of commission and omission that culminates into a breach of an international obligation attributable to it under international law.<sup>118</sup> The International Criminal Tribunal for Yugoslavia (ICTY) has also ruled that private individuals acting within the framework of, or in connection with, armed forces, or in collusion with State authorities may be regarded as *de facto* state organs.<sup>119</sup> In this case it follows that the acts of such individuals are attributed to the State, as far as State responsibility is concerned, and may also generate individual criminal responsibility.<sup>120</sup>

In addition, a state is also responsible if it has not taken the necessary measures to prevent breaches of its international obligations committed by private actors. This due diligence

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<sup>116</sup> *ibid*

<sup>117</sup> *ibid*

<sup>118</sup> Chia Lehnardt and others, "International Law and Justice Working Papers IILJ Working Paper 2007/2 Private Military Companies and State Responsibility" (2007) <<https://iilj.org/wp-content/uploads/2016/08/Lehnardt-Private-military-companies-and-state-responsibility-2007-1.pdf>> accessed February 7, 2022.

<sup>119</sup> Prosecutor v. Tadic, Case No. IT-94-1-A, Judgement, 144. July 15, 1999.

<sup>120</sup> Prosecutor v. Tadic, Case No. IT-94-1-A

obligation requires that the state act diligently and promptly to prevent, investigate, and punish the harmful conduct of private actors.<sup>121</sup>

The international legislations closest to issuing responsibility guidelines for states is the “Draft Articles on Responsibility of States for internationally Wrongful Acts” (hereinafter, “the Draft Articles”)<sup>122</sup> made on the 26th July 2001 by the International Law Commission of the United Nations even though it still remains more or less a soft law with no binding force. In the draft articles, the violation of international humanitarian law by a country’s armed forces or its organ is clearly provided for in its Article 3 which provides that:

a belligerent party shall be responsible for all the acts committed by persons forming part of its armed forces and that they are also responsible for the violations that are committed by entities or persons that are empowered to exercise elements of Governmental authority, or are *de facto* acting on its instructions or under its direction and control. Besides, States must exercise ‘due diligence’ to prevent or punish violations committed by private persons or entities. State responsibility for acts committed by entities acting on its behalf or under its direction and control<sup>123</sup>

Article 5 goes a little further in explaining the responsibilities of a state. In this article, it is made known that a state is not only responsible for the actions of their organs,<sup>124</sup> but also responsible for acts done by parastatal entities that have been empowered by such a State to act on their behalf in so far as that parastatal body is acting within the confines of the authority given to it.<sup>125</sup>

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<sup>121</sup>United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, 61-69, at 30-33 (May 24). The Inter-American Court of Human Rights took a similar position in the leading *Veldsquez Rodriguez Case*, 1988 Inter-Am. Ct. H.R. (ser. C), No. 4, 171, at 153-54. July 29, 1988.

<sup>122</sup>Draft Articles on State Responsibility, International Law Commission, U.N. Document A/56/10, 30 October 2001.

<sup>123</sup>Rephrased Article 3 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts. It should also be noted that the provisions here share a similitude with Article 3 of the Fourth Hague Convention and Article 91 of Protocol I. According to Article 3 of the 1907 Fourth Hague Convention

<sup>124</sup>Draft Articles, *ibid.* Article 4.

<sup>125</sup>Draft Articles, *ibid.* Article 5 states: “The conduct of a person or entity which is not an organ of the State under Article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be

It is this Article 5 that this paper boldly uses to cast a connection between a state and its responsibility for the acts of private military contractors or mercenaries.

In addition to situations where entities which are *empowered* by internal law to exercise governmental authority, the acts of private companies could also engage the responsibility of States if they are carried out by a person or group of persons who are *de facto* “acting on the instructions of, or under the direction and control of, that state in carrying out the conduct.”<sup>126</sup>

In furtherance to this, Article 8 of the Draft Articles point to the fact that there is no gainsaying in distinguishing the functions carried out by these persons and it would not matter whether the functions in which they are hired to carry out are ones that involves governmental activities or not.<sup>127</sup>

Also, international law dictates that a state has the responsibility in ensuring conformity with due diligence for avoidance of a breach on international law principles. An example of this can occur in a clear case of violation caused by the private military contractors, if the state becomes aware of this infraction and does nothing to stop this infraction, such a state would be said not have acted with due diligence, hence, would be directly made responsible for the infractions.<sup>128</sup>

Thus, where a Government might have reasons to believe that a private company established on its territory is involved in the commission of violations of international law abroad, it has the duty to take measures, including criminal proceedings where applicable. In such a case, the

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considered an act of the State under international law, provided the person or entity is acting in that capacity in that particular instance.”

<sup>126</sup>Draft Articles, *ibid*. Article 8 states that: “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of or under the direction or control of, that State in carrying out the conduct.”

<sup>127</sup> Article 8 *ibid*

<sup>128</sup>Chia Lehnardt and others, “International Law and Justice Working Papers IILJ Working Paper 2007/2 Private Military Companies and State Responsibility” (2007) <<https://iilj.org/wp-content/uploads/2016/08/Lehnardt-Private-military-companies-and-state-responsibility-2007-1.pdf>> accessed February 7, 2022.

obligation for States to exercise due diligence is a corollary of territorial sovereignty, which prevents other States from intervening themselves to enforce their rights beyond their borders.<sup>129</sup>

Generally, for violations of international human rights and humanitarian law, the State's duty to provide effective remedies to victims, including reparation, flows from the obligation to respect and ensure respect of international humanitarian law and human rights law, as explained above. Yet, the scope of this duty is far clearer when the conduct is attributable to the State. In particular, according to article 31 of the DASR, if the conduct of a PMSC is imputable to the State, "the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act"<sup>130</sup>

#### ***4.2. Individual Responsibilities for unlawful conduct of PMSCs***

Just like the responsibility vested on a state for acts committed by private military contractors or mercenaries, an individual could also be held responsible for acts committed that would amount to an infraction under international law. The act may be an independent act from that of the state or could be a simultaneous act leading to both state and individuals incurring responsibilities.

Importantly, an individual may be held responsible for multifarious crimes provided for under the numerous international laws; crimes such as genocide,<sup>131</sup> war crimes<sup>132</sup> or even crime against

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<sup>129</sup>M Sassòli, *La Guerre Contre Le Terrorisme*", *Annuairecanadien de Droit International* (Tome XXXIX, UBC Press 2001).

<sup>130</sup>In interpreting this principle the Permanent Court of International Justice (PCIJ) concluded in the *Factory at Chorzow case* that: "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application". *Factory atChorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9.*

<sup>131</sup> Article 6 of the Rome Statute, 2002.

humanity.<sup>133</sup> In the quest for an internationally acceptable framework on proper regulation for the activities of private military contractors, the individuals who themselves physically engage in the battle, are at the center of the apportionment of responsibilities.

International humanitarian law being applicable to all the actors in a conflict, whether they are organisational or individual must comply with the provisions of international humanitarian law. It should be stated here that, although it is the known fact that it is a country's armed forces that are primarily bound by the rules of International Humanitarian Law<sup>134</sup>, for the sake of individual criminal responsibility however, responsibility does not depend on the status of the persons or categories to which a person belongs.<sup>135</sup> The Geneva Conventions and its additional protocols give detailed scenarios that would amount to war crimes which in itself are one and the same with grave breaches under the Geneva Convention.<sup>136</sup>

It is a fact under international humanitarian law that both civilians who engage in hostilities and combatants can be commit war crimes and be duly held responsible for such.<sup>137</sup> So therefore, assuming without conceding that personnel of the private military and security companies are civilians and not combatants *per se*, it only follows that they can also be held responsible for infractions of international law.

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<sup>132</sup> Article 8 of the Rome Statute, 2002.

<sup>133</sup> Article 7 of the Rome Statute, 2002.

<sup>134</sup> The Rules are mostly covered under the Geneva Conventions and their Additional Protocols.

<sup>135</sup> Article 50 of the Geneva Convention I, 1949.

<sup>136</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). It should perhaps be noted that this is the only place in the entire GC 1949 system where such a formulation occurs. In fact, 'serious violations' never appears in the main Geneva Conventions, although, as will be seen later, 'grave breaches' does appear there.

<sup>137</sup> Advisory Service What is International Humanitarian Law

The International Criminal Tribunal for Rwanda (ICTR) confirmed the application of this principle in the appeal decision in the *Akayesu's Case*<sup>138</sup>:

The Appeal Chamber is therefore of the opinion that international humanitarian law would be lessened and called into question if it were to be admitted that certain persons be exonerated from individual criminal responsibility for a violation of common Article 3 under the pretext that they did not belong to a specific category. This nexus between violations and the armed conflict implies that, in most cases, the perpetrator of the crime will probably have a special relationship with one party to the conflict. However, such a special relationship is not a condition precedent to the application of common Article 3 in the opinion of the Appeal Chamber, the Trial Chamber erred in requiring that a special relationship should be a separate condition for triggering criminal responsibility<sup>139</sup>

Under international law, individual criminal responsibility can likewise emerge for human rights infringements not really identified with a furnished clash, for example, massacre and violations against mankind which are viewed as international wrongdoings. Especially on account of Iraq, we could examine the chance of whether the acts of some PMSCs with a huge record of assaults against regular citizen populace may arrive at the limit of violations against humanity.<sup>140</sup>

In any case, on a fundamental level the meanings of these offenses require, *entomb alia*, certain components of "huge scope" and "deliberate practice" that might be hard to fulfill for the vast majority of the episodes including PMSCs. Clearly, this does not block the responsibility of PMSC workers for specific criminal offenses under national law.<sup>141</sup>

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<sup>138</sup>*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, para. 443. 1998.

<sup>139</sup>*ibid*

<sup>140</sup> ICRC, "Individual Criminal Responsibility | How Does Law Protect in War? - Online Casebook" (*casebook.icrc.org*) <<https://casebook.icrc.org/glossary/individual-criminal-responsibility>> accessed February 7, 2022.

<sup>141</sup> C Hoppe, "Passing the Buck: State Responsibility for Private Military Companies" (2008) 19 *European Journal of International Law* 989.

At last, there is a possibility of individual criminal responsibility of PMSC work force if, when going about as bosses or administrators, they neglect to forestall or to stop wrongdoings carried out by their subordinates. The responsibility of bosses is unequivocally perceived in Additional Protocol I for grave penetrate of international humanitarian law<sup>142</sup>, be that as it may, can likewise be ascribed for other international violations.

Applying the standards of the regulation of better responsibility than PMSCs implies that "executives or directors of PMSCs might be subject for violations under international law submitted by PMSC work force under their compelling position and control, because of their inability to appropriately practice command over them".<sup>143</sup> Specifically, as opposed to the responsibility of military commandants who may bear responsibility for violations by their subordinates on the off chance that they know or should think about their bonus, specialists have concurred that non military personnel bosses may just bring about prevalent criminal responsibility "on the off chance that they either know or intentionally dismiss data about a wrongdoing carried out by their subordinates"<sup>144</sup>

A related and significant inquiry concerning individual criminal responsibility of PMSCs staff identifies with its authorization. At international level, given that meaningful and jurisdictional rules are met the primary road for indicting manhandles perpetrated by staff of PMSCs is subject them to the purview of the International Criminal Court. On account of PMSCs working in Iraq, in any case, this choice is profoundly restricted.

As a matter of first importance, in light of the fact that all together for the Court to practice its reciprocal ward, the PMSCs worker must be either a national of a State Gathering to the ICC

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<sup>142</sup>Article 86(2) Additional Protocol I

<sup>143</sup>Statement 27 of the Montreux Document

<sup>144</sup>Idem, Explanatory Comments, Superior Criminal Responsibility, p. 37.

Statute – which is Crimes against humanity are characterized in article 7 of the Statute of the International Criminal Court in the accompanying terms: "With the end goal of this Statute, 'unspeakable atrocity' signifies any of the accompanying demonstrations when carried out as a component of an across the board or methodical assault coordinated against any non military personnel populace, with information on the assault<sup>145</sup> whether it be murder;<sup>146</sup> extermination<sup>147</sup>; enslavement<sup>148</sup>; deportation or forcible transfer of population<sup>149</sup> to mention a few.

Paragraph 2 of Article 7 further provides that “for the purpose of paragraph 1: (a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack.”<sup>150</sup>

## 5.0. Challenges of Implementing Regulations

There are many possible challenges that face any possible regulation on the activities of private military contractors that form the most of war privatization. Some of these issues cut across a wide spectrum of issues, that is, from the issue of capacity to the issue of political will, to interests the inertia of bureaucracy. Some of these challenges are put into context.

- a. the regulation of private military contractors in Africa may hit a break wall because of the too many vested foreign interests and investments in the continent, for example, Dutch Oil company; Shell, spend much more than almost all African states in terms of security.

Passing a law ousting private military contractors may be detrimental to investments and

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<sup>145</sup> Statute of Rome Statute, 2002.

<sup>146</sup> Article 7(a) *ibid*.

<sup>147</sup> Article 7(b) *ibid*.

<sup>148</sup> Article 7(c) *ibid*.

<sup>149</sup> Article 7(d) *ibid*.

<sup>150</sup> Article 7(2) of the Rome Statute, 2002.

even an international relations incident with countries whose citizens are effected by such a law.<sup>151</sup>

- b. South Africa at a point had the highest amount of registered private military and security company worldwide and most of these men were ex combatants that wee relieved of their employments after the mass decommissioning of the military and the end of the apartheid regime. Taking up jobs as private military companies helped these ex combatants survive unemployment. The index of unemployment in Africa is high and passing any law banning a major labour provider would be viewed as counterproductive.<sup>152</sup>
- c. Due to the lack of a legal regime on the international front, it becomes possible that the UN implement suggestions of the UNWG with the support of the EU and UK, USA. This may be applaudable but there is the need for an indigenous law that would take care of the dynamism of the African culture.<sup>153</sup>

## Conclusion

The inescapability of conflict is one of the many truths that the world has come to accept, but its inescapability does not necessarily translate into its unconventionality. Acts, actors, relationships and attitudes of conflicting parties must abide by a code of engagement, this code of engagement are classified under the broadband head law known as international humanitarian law.

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<sup>151</sup> “Regulation and Oversight of PMSCs” (*archive.globalpolicy.org*) <<https://archive.globalpolicy.org/pmscs/50211-regulation-and-oversight-of-pmscs.html>> accessed February 8, 2022.

<sup>152</sup> *ibid*

<sup>153</sup> Adedeji Geneva, “Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper -№9 the CHALLENGES and OPPORTUNITIES of SECURITY SECTOR REFORM in POST-CONFLICT LIBERIA” (2005) <[https://issat.dcaf.ch/fre/download/19728/233769/op09\\_security\\_sector\\_reform\\_liberia.pdf](https://issat.dcaf.ch/fre/download/19728/233769/op09_security_sector_reform_liberia.pdf)> accessed February 8, 2022.

From inception, the idea of security or the militarization of same has always been a question and duty for the state since the general belief has always been that, a state has the monopoly over the legitimate use of violence. However, the truth of this seems to wane by the day as the numbers of private actors participating in conflict seems to be on a rise. These private actors usually take on a structured or an unstructured form, that is, they are either a corporate entity known as private military or security companies or mercenaries respectively. The African continent has had its fair share of conflicts most especially one of a non international nature and in this many conflicts, the United Nations, ally countries, supranational organizations, host States and even the belligerents have employed the services of private military contractors as we have seen with the employment of Executive Outcomes in Nigerian in 2015, the conglomerate of Ibis Air International (Ibis), Executive Outcomes (EO), Defense Systems Ltd. (DSL), Gurkha Security Guards (GSG), and Control Risks (CR) conflicts in 2015 and 1997 respectively. The paper has shown the role of Russian backed Wagner Group operating in Libya and the conglomerate of independent contractors hired by both Prime Minister Fayez al-Sarraj and General Haftar.

No doubt, a party that needs to emerge victorious in any conflict must have a superior fire power and there is no better place to get one than in the arsenal of a private military companys', however, it seems as though the operations, hire and use of these security companies are an illegality or euphemistically stated, their legal status is unsurprisingly elusive whether by local, regional or international law. The elusiveness of their status has led to a spiral effect on armed conflict especially on the African continent, the focus of which is the commodification, commercialisation and privatization of war efforts.

Mercenaries and private military and security companies alike charge African states enormous amounts of money per day running to as high as \$8, 000 per person per day, these companies are

driven by capitalists like every private business and are solely focused on the maximization of profits and so therefore take up interests in the common wealth of the host state like has been seen with the Executive Outcome's hold on the diamond mines in Sierra Leone, Wagner Groups hold on Libya oil fields and an attempt of US sent PMSC to annex some of Nigeria's oil wells in the Niger Delta, a matter that was totally unconnected to Boko Haram terrorists they had claimed to want to help fight. It must be mentioned that by virtue of the Geneva conventions and its additional protocols, OAU Convention against the Recruitment, Use, Financing and Training of Mercenaries 1977 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the UN in 1989 have all explicitly outlawed the use of mercenaries in armed conflict, however, these outlaws still very much operate but under the aegis of PMSCS.

There is therefore no better time than now for the United Nations, the African Union (AU), individual African states and even international organisations concerned to work together for the formulation of sound law for the regulation of the activities, roles and status of private military actors in Africa and in the world at large.

### **Recommendations**

In line with the above conclusion, the paper recommends the following:

1. That the buck of taming the predatory activities of mercenaries and private military contractors rests on the tables of individual African state, hence, each African state must pass legislation uniquely identifiable with its jurisdiction to stem the commoditization of war efforts.

2. Individual African states must limit the access of PMSC to state information beyond legislative scrutiny and to achieve this, states must be willing to entrench the principles in the draft UN Convention as regards limiting the employment of PMSC to selected cases that may seem too technical for the state's armed forces to handle because although security has been by and large transformed into a commodity. Apart from this scrutiny, judicial and disciplinary measures be put in place against erring contractors by individual countries pending the time there is a much more comprehensive documents for the regulation of this group.
3. In extreme situations as has been noted in the case of Democratic Republic of Congo and Nigeria, private military companies may be invited for specific functions and is this is done, it must be done under the direct supervision of the domestic military heads in that African Country.
4. It is recommended that the United Nations and its Security Council may resolutions with a view to establishing an all encompassing convention for the regulate, legitimate and supervise the actions of mercenaries and private military companies anywhere they are needed. The establishment of this convention will lift off the burden on the non sufficient nature of the Geneva Conventions and its Additional Protocols which until now have been used as the guiding light for the PMSC and mercenary activities.
5. Finally, the paper recommends that all African countries follow the agreement in the AU security master plan by budgeting a minimum of 10% for its security. If this issue of funding is properly addressed, in no time will the deficiency in military hardware and technicality of the armed forces be a thing of the past. Hence, the need to invite a private

military and security companies will become not only distasteful but absolutely unnecessary.

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