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INTERNATIONAL PEACE OPERATIONS ASSOCIATION

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QUICK FACTS

- The top four personnel contributing nations to UN peacekeeping missions (with over 40% of the total personnel contributions) are Pakistan, Bangladesh, India, and Nepal.†
- The United States, France, Germany, and the United Kingdom contribute less than 3% of the total personnel for UN peacekeeping missions.†

† Source: Heritage Lectures No. 868

MILITARY CIVIL ACTION PROJECTS: A HUMANITARIAN PERSPECTIVE

By Sarah E. Archer
Humanitarian Consultant
Indianapolis IN, USA

Former Secretary of State Powell is quoted as saying that humanitarian aid is "an important part of our combat force" in Iraq. US military personnel repeatedly describe the building of schools and clinics, the drilling of wells, and the repairing of roads and bridges by civil-action projects personnel in Iraq and Provincial Reconstruction Teams (PRTs) in Afghanistan as "humanitarian assistance."

US military briefers refer to military objectives for these humanitarian aid activities as ways "to win locals' hearts and minds," "to get cooperation and intel[ligence]," "to reward local politicians or warlords for doing as they are told," and "to win local support for the legitimate government."

US military personnel and government contractors are, by definition, instruments of US foreign policy. Therefore, their activities of "winning hearts and minds" and intelligence gathering may be legitimate actions for military personnel and government contractors.

The issue addressed here is that building schools and clinics or drilling wells to garner cooperation with military forces or to influence acceptance of a local government is *not* humanitarian assistance: it is implementing US foreign policy. Therein is the crucial difference between humanitarian assistance given by

US Air Force Master Sgt. Terry Nelson fits a new pair of shoes on a young Bedouin girl in a village near Tallil Air Base, Iraq.

Photo courtesy of the US Dept. of Defense.

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CIVILIANS AND CONTRACTORS DEPLOYED OVERSEAS: WHOSE LAW APPLIES?

By Davis Brown
Gentium Group
Washington DC, USA

One of the most vexing problems confronting overseas military deployments today, especially for security firms, is the question of regulation. What country's law, if any, regulates the activities of Federal civilian employees and contractors? If a civilian employee or contractor violates the law, which country's legal system will conduct the trial and administer the punishment?

For lawyers the answer is not as simple as one might think, owing to the body of different—and sometimes conflicting—laws of different jurisdictions on this subject. Host-nation law, US law, and international law all come into play. Norms of international law that affect operations include the Law of Armed Conflict, as embodied in the 1949 Geneva and 1907 Hague Conventions, and other basic human rights conventions, including the Convention Against Torture. Traditionally international law only applied to interactions between *states*, but the basic rules set forth in those treaties lie within the unwritten customary international law as well, which is why,

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IPOA MEMBER PROFILE

Company: Medical Support Solutions (MSS)

Year Founded: 1996

Location: Hampshire, UK and Johannesburg, South Africa

Key Services: Remote Site Medical Services and Medical Risk Management

Background: Medical Support Solutions (MSS) specializes in the provision of medical support in remote or hazardous environments and has supported projects globally since 1996. MSS offers proactive, preventative and cost effective solutions that reduce and contain medical risk. The services offered by MSS range from the provision of experienced medical staff and equipment through to the implementation and management of remote site hospitals. Recent peace operations support includes missions in Liberia and Sudan (Darfur and Nuba Mountains). In addition to providing medical support to peace operations, MSS serves oil, gas and mining operations, airlines and film and production companies. MSS prides itself on being able to deploy appropriate solutions at short notice.

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MESSAGE FROM THE PRESIDENT: SUPPORTING INDUSTRY STANDARDS

At the same time as this issue of the IQ comes out, we are releasing the latest improved version of our IPOA Code of Conduct, published on our website (www.IPOAonline.org).

The IPOA Code of Conduct is the heart of our association. My personal experiences and academic research in the field have demonstrated that in conflict and post-conflict environments private firms can and do operate more ethically and professionally than the overwhelming majority of militaries and peacekeepers alongside whom they serve.

In fact, the private sector can and should be held to a higher standard, something the industry readily accepts. Thus it is vitally important that the peace and stability industry maintain a public code of conduct that governments, private sector clients, and human rights organizations can use as a benchmark of quality and responsibility.

Conflicts are by nature chaotic, and the very point of peace operations is to address this chaos and bring security, order, reconstruction and reconciliation to the impacted region.

Private firms operating in these conflicts where there is rarely any sort of recognized independent legal system face enormous challenges in following the myriad of domestic and international laws and regulations applying to their work, something that exasperates company executives keen to ensure compliance.

IPOA members are industry leaders in reforming and improving laws, regulations, and oversight mechanisms. Our members specialize in providing critical conflict alleviation services in unstable environments where control and oversight are imperfect at best.

Members of IPOA recognize the need for ethical and appropriate behavior no matter what level of control and oversight exists in the field, and they take this responsibility seriously.

Beyond basic ethics, good laws are good for business. IPOA members regularly meet with international organizations, lawmakers and government departments to ensure that the private sector will be able to enhance and improve its support in peace and stability operations while clarifying and codifying laws and oversight. Most significantly, they have been proactive in preparing the IPOA Code of Conduct.

IPOA's Code of Conduct recognizes these challenges and is a roadmap for the industry on how to behave when there are few oversights on behavior and scarcely any legal structures in the area of operation.

Our Code is a public statement of ethical behavior, which is why it is so critical that potential clients, be they governments, NGOs or private firms seeking specialized services perform the basic research to determine whom they are hiring.

Clients should ensure that companies publicly agree to abide by a reasonable set of standards, whether it is the IPOA Code of Conduct or a similar set of principles.

-Doug Brooks, IPOA President

Do you have a topic or concern related to peace and stability operations that you would like to share? The IQ reaches more than 3,000 people including policymakers, peacekeepers, the private sector, and NGOs. Send your articles to: IPOA@IPOAonline.org

PMC REGULATION: A LEGAL VACUUM?

By Carlos Ortiz
University of Sussex
Sussex, UK

Over the last year, various media reports have pointed out that Private Military Companies (PMCs) operate in a legal vacuum. While it is true that an international consensus on the regulation of PMCs has failed to materialize, many of these reports fail to acknowledge the steps taken forward by some countries towards the regulation of their domestic industry.

To be fair, an examination of the wider legal trajectory does not show a legal vacuum, but concrete efforts by independent countries in coming to terms with the unexpected growth of the PMC industry.

Now, those reports have also tended to label PMCs as mercenary forces and attach blanket negative connotation to the services they offer. In this light, a 'new mercenary' category has been unveiled to the general public by the media on three occasions since PMCs started to proliferate a decade ago. Let's examine these three waves of so-called new mercenaries alongside representative attempts towards regulation at the national level.

Early in 1993 reports started to circulate about a security firm that, while protecting oil concerns in Angola, was engaging in activities not typical to the security sector. These reports spoke of South African mercenaries engaging in combat situations under the disguise of security guards. By March 1993, when three employees of the firm were reported wounded and two killed, the activities of Executive Outcomes (EO), the South African firm in question, transcended irreversibly to the international domain.

Reports of the activities of companies operating in Sub-Saharan Africa such as EO gave rise to the branding of PMCs as new mercenaries (1993 – 1995). In the background, the post-apartheid government was prompt to work on the formulation of regulation to tackle the emerging South African PMC industry. In 1998, the Regulation of Foreign Military Assistance Act was passed.

The Act discriminates between mercenaries and entities that offer genuine security and military assistance; it bans the former and implements a licensing to regulate the offering of assistance by the latter.

Subsequently to EO, it was turn for the British firm Sandline International and the US-based MPRI to lead the headlines. Sandline for its incursions in Papua New Guinea and Sierra Leone, and MPRI due to its involvement in the US-led Train-and-Equip Program for the Bosnian Federation. With these two firms as the lead examples, the new mercenary category was reintroduced to the public (1996 -1998).

The involvement of Sandline in Sierra Leone, where allegedly the firm broke a UN weapons embargo, motivated an official investigation by the UK government.

The Report of the Sierra Leone Arms Investigation was published on 27 July 1998. It was noted in the report that firms such as Sandline are "on the scene and look likely to stay on it," and that they are "entitled to carry on their business within the law and, for that purpose, to have access and support which Departments are there to provide to British citizens and companies."

With the sensationalism of the second wave of new mercenaries fading away from the spotlight, more productive exchanges between the various communities engaged in PMC issues followed. PMCs were increasingly approached as legally established enterprises and distinctive private military entities in their own right.

In the UK, a Green Paper on the Regulation of PMCs was released on 12 February 2002. This paper led to a fruitful period of consultation and debate between government officials, scholars, industry

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Spotlight on New Members

IPOA is pleased to welcome the addition of three new members to the association:

- Groupe EHC (www.groupe-ehc.com)
- Hart (www.hartsecurity.com)
- Security Support Solutions (www.sss3.co.uk)

MILITARY CIVIL ACTION PROJECTS: A HUMANITARIAN PERSPECTIVE

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nongovernment humanitarian agencies (NGHAs) and the use of "humanitarian assistance" by US military personnel and government contractors to achieve the government's objectives.

The Sphere Project, a collaborative effort since 1997 of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and more than 600 NGHAs, reaffirms adherence to the principles spelled out in the 1994 *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*. In this context disasters include both natural disasters and man-made conflicts.

The first four of the 10 principles of the *Code of Conduct* are most relevant to the crucial distinction between humanitarian assistance by NGHAs and US military personnel and/or US government contractors. These principles are:

> 1. The Humanitarian imperative comes first…As members of the international community, we recognize our obligation to provide humanitarian assistance wherever it is needed… Hence the need for unimpeded access to affected populations is of fundamental importance in exercising that responsibility.
> 2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.
> 3. Aid is not used to further a particular political or religious standpoint.
> 4. …[NGHAs] shall endeavour not to act as instruments of government foreign policy. NGHAs are agencies which act independently from governments.

Putting the humanitarian imperative first mandates that humanitarian assistance be given to any and all who need it—not just to those who cooperate with US military personnel, US government contractors or local governments that the US is supporting. Using school, clinic, or well construction to win hearts and minds or reward cooperative local leaders smacks of bribery and payoffs.

What happens to civilians who do not "qualify" for US military humanitarian aid or to civilians trapped in places like Falluja when US military personnel deny NGHAs access to them?

A June 28, 2004 IASC Reference Paper drafted by the UN Office for the Coordination of Humanitarian Affairs states, "basic requisites such as freedom of movement for humanitarian staff, freedom to conduct independent assessments, freedom of selection of staff, freedom to identify beneficiaries of assistance based on their needs, or free flow of communications between humanitarian agencies as well as with the media, must not be impeded."

US Army Spc. Jessica Briskie gives a box of clothing to an Afghan gentleman in Bagram, Afghanistan.

Photo courtesy of the US Dept. of Defense.

There are several reasons that humanitarian assistance should be left to NGHAs.

First, more civilians will die if they are denied humanitarian assistance for any reason. NGHAs must have access to all people who are in need of humanitarian assistance, no matter who they are or what they are alleged to have done.

Second, utilizing military personnel and government contractors for "humanitarian assistance" diverts energy and resources away from efforts to improve the security environment. NGHAs cannot help improve the lives of people in areas where there is open conflict, where NGHAs are targeted, or where their access to people in need is denied by military forces. NGHAs workers require security and freedom of movement to be able to assist people in need. Given that NGHAs are unarmed, they rely heavily on civil and military forces for a secure environment in which they can provide humanitarian assistance.

The end state that will enable US military forces to leave Afghanistan, Iraq, and Kosovo is that civilian organizations—such as host governments, UN agencies, and NGHAs—have a safe and secure environment. Only then can these civilian agencies help the population to improve the quality of their lives. The failure to restore at least a minimal quality of life for the host nation's population may perpetuate unrest or insurgency resulting in the requirement for continuing military presence.

Third, the blurring of humanitarian space compromises NGHAs ability to provide humanitarian assistance. In an article titled "Losing humanitarian perspective in Afghanistan," Edward Girardet writes, "the military are also providing humanitarian assistance through the deployment of armed Provincial Reconstruction Teams, or PRTs, causing great confusion. As in Iraq, insurgents in Afghanistan no longer differentiate between soldiers and aid workers, but consider them part and parcel of the same Western 'anti-Islamic crusade'."

Shortly after the ambush and murder of five Médecins Sans Frontières staff in Afghanistan in June 2004, Nelke Manders, MSF's head in Kabul, stated: "The deliberate linking of humanitarian aid with military objectives destroys the meaning of humanitarianism. It will result, in the end, in the neediest Afghans not getting badly needed aid and those providing aid being targeted." ■

CIVILIANS AND CONTRACTORS DEPLOYED OVERSEAS: WHOSE LAW APPLIES?

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for example, the 1977 Geneva Protocols are considered to influence the behavior of the US, even though the US is not a signatory to them.

Until recently, the host nation was the only jurisdiction to act when a civilian committed a crime, even a civilian accompanying US forces overseas. This is the reason that dependents of US servicemen who committed murder, for example, were tried and sentenced in the host nation, even when the crime was committed by one American against another.

Although such arrangements make good sense policy-wise, local prosecutors and law enforcement sometimes found themselves burdened with problems that they would not otherwise have. Worse still, it was possible for a civilian to engage in an act considered criminal in the United States, but not in the host nation. For example, a civilian committing an honor killing in a certain nation could receive only minor punishment, or none at all.

The Military Extraterritorial Jurisdiction Act (MEJA) was enacted in 2000 to address this problem. MEJA permits the US to prosecute civilian employees and contractors, and their dependents, for a criminal offense committed outside the US, which could result in imprisonment for more than one year. The host nation retains its jurisdiction over the crime, but if the host nation chooses not to prosecute, the US can.

MEJA's application is limited, however. When first enacted, MEJA covered only employees and contractors, and their dependents, of the Defense Department and its instrumentalities. In 2004, Congress passed an amendment to MEJA extending its application to employees and contractors, and their dependents, of any Federal agency supporting a DoD mission overseas.

The amendment to MEJA still leaves gaps, however. It does not cover civilians working for Federal agencies in projects not supporting a DoD mission. Embassy protection, for example, is not covered.

It also fails to cover civilians working for the UN or other international organizations. And, naturally, it does not cover civilians of the host-nation government or civilians working for a private company which is not employed as a contractor or subcontractor of the US government. Security contractors for Aramco, for example, are not covered under MEJA.

In an odd twist, MEJA does not exclude Third Country Nationals (TCNs), i.e. persons who are neither nationals nor residents of the US or the host nation, from its coverage. For example, an employee of a US defense contractor in Iraq who came over from Jordan would be subject to MEJA (assuming that neither Iraq nor Jordan prosecuted), but a similarly situated Iraqi would not be subject to MEJA. This may be an unintended consequence of the way MEJA was drafted.

The 2004 amendment also raises one fundamental question: which activities of other Federal agencies support DoD missions overseas? Will contractors working for the FBI doing anti-terror work overseas be subsumed in the Defense Department's "War on Terror"? Will drug interdiction operations be included?

More urgently, how many activities in Iraq will be considered to fall under the DoD mission there? Litigation may be necessary to resolve many of these questions. ■

US Laws and Regulations Governing Contractors

US Contractors operating in Iraq are regulated by a myriad of laws and regulations including:

- Military Extraterritorial Jurisdiction Act
- Foreign Acquisition Regulations
- Defense Foreign Acquisition Regulations
- International Traffic in Arms Regulations
- Defense Base Act

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representatives and NGOs. The Green Paper acknowledges the relevance of the licensing mechanism used by the US to sanction its domestic PMC industry.

This mechanism arises out of the Arms Exports Control Act (AECA), which controls the export of defense articles and services through the International Traffic in Arms Regulations (ITAR). Articles and services eligible for export are established in the United States Munitions List (USML), which is part of ITAR. American PMCs need to observe the parameters established by ITAR in order to be licensed to operate abroad.

With the ongoing conflict in Iraq and the active participation of PMCs in the reconstruction of the country; the new mercenary category has surfaced again. This has obfuscated constructive dialogue and presented the public, once more, with a view of PMCs as unscrupulous mercenary forces operating beyond the law.

It is not possible to perfectly synchronise the formulation and implementation of PMC regulation with the pace of the events that have ravaged the international scene in the last few years and the concomitant demand for PMC services they have motivated.

Yet the legal trajectory has not stalled. South Africa is currently working in tightening Foreign Military Assistance regulation. Mercenary activity prohibition bills were passed by France in 2003 and New Zealand in 2004. These bills discriminate between mercenary activity and the protective services on offer by the PMC industry. And countries emerging as new suppliers of PMC personnel, such as Chile and Fiji, have moved to examine the implications of their former servicemen joining a thriving PMC labor market.

In the end, only the cumulative efforts of legislative exercises at the national level can eventually lead to an international consensus on the regulation of PMC activity. This is clearly where we all want to converge. But the road there is paved by the efforts of individual countries such as the ones noted here and not the legal void argued by some commentators. ■

UPCOMING EVENTS

Business and Conflict Conference
April 15, 2005 - Paris, France

The Business Humanitarian Forum (BHF) and the International Chamber of Commerce (ICC) will co-sponsor this conference on "Business and Conflict" to be held in Paris on April 15, 2005. The conference will examine the potential role of business in conflict prevention, the effects on businesses when conflict arises, and the role of business in post-conflict reconstruction.

Enquires should be directed to the Business Humanitarian Forum:
E-mail: bhinfo@bhforum.org
Telephone: +41 (0)22 795 1800
Website: www.bhforum.org

Peacekeeping & Stability Operations Conference
June 13-14, 2005 - Brussels, Belgium

This conference will bring together people from all over the world to examine peacekeeping from various perspectives. Topics include: The UN and Peacekeeping Today, NATO, Force Generation for Rapid Reaction Forces, The EU, The Growing Role of the Private Sector, Multinationality in Peacekeeping , Training, DDR Programs, Police Forces, Financing Peace Operations, et al.

Enquiries should be directed to Horun Meah:
Email: hmeah@smi-online.co.uk
Telephone: +44 (0) 207 827 6192
Website: www.smi-online.co.uk

"Private Military Companies and Global Civil Society"
July 14-16, 2005 - KwaZulu-Natal, South Africa

This interdisciplinary conference will examine the ethics, theory, and practice of using private military companies. Conference papers include "The Private Protection of Human Rights: Ethical Issues," "Ruthless Humanitarianism: Why Marginalizing PMCs Kills People," "PMCs in the Current World Order: The Challenges of Regulation," et al.

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