

**IPOA Commentary on the South African
“Prohibition of Mercenary Activity and Prohibition and
Regulation of Certain Activities in an area of Armed Conflict
Bill, 2005”**

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The International Peace Operations Association (IPOA) is a nonprofit, nonpartisan, nongovernmental trade association of companies advocating for the productive utilization of private sector capabilities in support of international peace and stability operations. Member companies provide constructive services such as demining, logistics and security in conflict and post-conflict environments and are actively supporting virtually every international peace and stability operation around the world.



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Introduction

For almost a decade South Africa has been at the forefront of international peace efforts, especially on the African continent. The country has a tremendous reputation in the international community and is a recognized leader in committing personnel to international peace and stability operations. While we support the general aims of the South African “Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an area of Armed Conflict Bill, 2005,” the bill has critical flaws that would both undermine international peace operations and severely harm South Africa’s international image.

South Africans of all backgrounds are part of a larger international network that provides critical and legitimate services to make international peace operations possible in Afghanistan, Darfur, the Democratic Republic of Congo, Haiti, Iraq, among other countries. South Africans bring crucial skills and capabilities, the knowledge of

how best to mitigate humanitarian suffering in conflict and post conflict environments, and a tough readiness to serve in the most austere living conditions, making them invaluable components in successful international peace and stability operations. We firmly believe that the South African government can formulate legislation that would create a more open and legal process for South African citizens to provide their valuable services, while ensuring that excesses and humanitarian crimes are addressed in appropriate legal venues. The bill must be improved to allow South African citizens to openly and legally participate in support of international peace and stability operations without impeding upon the Republic's ability to appropriately prosecute egregious humanitarian crimes.

The South African government can ensure appropriate transparency and legitimacy of the Peace and Stability Industry by engaging with South African companies and citizens. IPOA previously proposed the formation of an inclusive South African Panel of Experts composed of representatives from the government, parliament, academia, human rights organizations and the industry. Such a panel would set an example to the world in terms of transparency while ensuring that the private sector works in partnership and accord with government policies to enhance international peace operations. The Panel of Experts would promote openness, legality, proper ethics and international cooperation.

Improving the Bill

As an industry association, IPOA supports the general aims of the "Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an area of Armed Conflict Bill, 2005" in terms of effective government oversight of South African companies and citizens, as well as ensuring appropriate international transparency and accountability of the Peace and Stability Industry. IPOA believes the bill could become viable and useful legislation with some significant modifications.

1. The Bill should accept the reality that many private sector services fundamentally assist in making international peace and stability operations successful. South African companies and individuals offering services to peace and stability operations wholeheartedly endorse the concept of transparency and are willing to work with the government as partners to ensure that such services are provided openly and ethically to the benefit of international peace and stability operations. It is in the interests of both the government and private sector that such services be transparent and legal.

2. If South Africa's leadership role in international peace and stability operations is to be maintained, it is important that South African law be harmonized with the laws and regulations of other states and international organizations that host or utilize companies in the Peace and Stability Industry. International solidarity is critical to effectively address the numerous conflicts vexing the international community today.

3. The South African Government's designations of 'areas of conflict' must be based on clear rather than arbitrary criteria. South African companies and citizens, as well as international governments and companies that employ South Africans, must have guidelines specifying in which peace and stability operations they will be allowed to provide their valuable services. There must be an appeal process, especially for those locations where South African services could address real and compelling humanitarian needs. For citizens and firms to make informed choices they must have a clear legal definition of what comprises an area of armed conflict. It is important that firm criteria be encoded within the bill.

4. The Peace and Stability Industry should be invited to participate in the decision making process. Too often laws and regulations are formulated in a vacuum, ignoring the very real desires and capabilities of the industry to support legal and ethical operations. Industry efforts to ensure reliable, useful and ethical services should not be underestimated – or ignored.

5. Legislation should not focus on assumed or vague motivations but on addressing real problems and real crimes. The United States has established the Military Extraterritorial Jurisdiction Act (MEJA) which allows the government to arrest and try contractors working in support of Department of Defense contracts. A similar South African act could ensure that the South African government would be able to try its own citizens in South African courts. The Peace and Stability Industry has been strongly supportive of MEJA and would support similar legislation in South Africa.

6. We often point out that in conflict/post-conflict environments, security is 90 percent of the problem but only 10 percent of the solution. Many companies provide support and security services to UN blue helmets, the AU and other organizations essential to ensuring that necessary security is in place to foster political reconstruction, community reconciliation and other tasks that international organizations and NGOs do so effectively. That the private sector is able to support effective security is an advantage to international peace efforts, not a threat.

7. From an international perspective, the fundamental concern with the bill as written is that it is far too expansive, and will result in negative repercussions far beyond the intended targets. Legislation should support international peace efforts and not penalize individuals and companies that have the courage to offer useful services. The bill's extraterritoriality would have chilling effects on all peace operations and would severely limit South Africa's efficacy as a base for international peace efforts on the continent.

Finally, IPOA again suggests the concept of a South African Panel of Experts that would include legislators and other government officials, company representatives from the Peace and Stability Industry, human rights specialists, nongovernmental organizations and academics. Such a panel could provide

unprecedented ethical influence, transparency and government oversight. It could review proposals and contracts and ensure that South African companies and citizens are ethically and legally providing essential peace and stability services and not hindering the Republic's foreign policies.

IPOA remains committed to improving international peace and stability operations by ensuring effective, legal and transparent private sector services from all countries. We would welcome the opportunity to provide additional information and testimony in person if so invited.

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