JUST PUBLISHED

The CETIM, in collaboration with l'Epervier publishers, decided this year to publish a book somewhat different in form - it is a biography - but not in content from what we usually produce. It is Denis O'Hearn's book, *Bobby Sands: Nothing But an Unfinished Song*.

Both the impressive research done by the author and the political analysis that he supplies throughout the book convinced us of the necessity of publishing it. Moreovoer, few books have been published in French about the situation in Northern Ireland and the anti-colonial struggle. Finally, it seemed to us pertinent that the French-language public be made aware of the enormity of what Bobby Sands and his mates accomplished faced with British intransigence during a struggle of which one can still hardly realize the scope and the conditions under which it was carried on. The book is much more than a biography of a revolutionary icon. It is also a reflection on the "modern" prison world, a hommange to the resistance of oppressed peoples, to creativity and inventivity under repression, to solidarity, to sharing, to utopias. Denis O'Hearn succeeds in making us understand that the acts of Bobby Sands and his mates belong to the history of humanity.

All these elements, and many others that you will discover in this biography, prevailed over our lack of finances and led us to translate and publish this book, without pay. It is thus also the story of a somewhat ambitious publication idea that became a collective adventure.

WHO ARE WE?

Through its publications and its work with the UN, the CETIM denounces the maldevelopment in general, ecological as much as economic and social, and promotes an exchange of critical views from both Southern and Northern societies. The CETIM is focuses in particular on respect for, implementation and promotion of economic, social and cultural rights, as well as issues related to the right to development.

Back cover

On 5 May 1981, Margaret Thatcher let Bobby Sands starve to death in prison. An MP from Northern Ireland, he was a member of the IRA, convicted of having participated in an armed attack. He requested for himself and his mates the status of political prisoner, which would have included the right to wear civilian clothes. Faced with British intransigence, nine other prisoners perished after him in the course of their hunger strike. In this passionate biography, built from direct testimony and authentic documents, Denis O'Hearn describes the determined struggle of these IRA prisoners who went all the way in their combat against British imperialism and its inhuman prison system.

Another famous prisoner took up the torch after the death of Bobby Sands: Nelson Mandela, in turn, launched his identical struggle whose outcome was less dramatic.

We present here, for the first time in French, a complete biography of one of the greatest heroes of the struggle for the liberation of Ireland. It explores all aspects of Bobby Sands' political activity, but also his his poetic and literary activity while in prison.

Price: CHF 29 / 19,50 €, 483 pages, ISBN: 978-2-880530-74-7, CETIM/Les Éditions de l'Epervier, October 2011. It can be ordered of CETIM.
The original English version can be ordered of PlutoPress:
http://www.plutobooks.com/display.asp?K=9780745325729&

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December 2011

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CETIM

EDITORIAL

Privatization, the great neo-liberal credo, not only concerns public services but also touches the military and security areas, which have, until now, been the preserve of the sovereign function of the state and its monopoly on the use of force.

In fact, for some twenty years, we have been witness to the proliferation of private military and security companies (PMSCs) that use mercenaries and offer their "services" to governments, to armed opposition groups and to transnational corporations. (TNCs).

The transition from conscripted armies to professional armies (especially in the West) and the exploitation (not to mention the pillage) of natural resources by TNCs have also favored the emergence of these entities.

Driven by greed, these PMSCs can also be used to protect a dictator or to support a coup d'état just as they can be used to repress democratic demands for reform. Certain members of these entities have been guilty of serious violations of human rights that are rarely the subject of legal action or punished. Moreover, the complex organizational form of PMSCs (transnational structure, use of out-sourcing etc.) similar to that of any TNC, allows them to escape from any democratic control, and it is extremely difficult to establish the chain of responsibility when human rights violations occur.

In spite of these damning facts, most countries hesitate to take any measures. While some support strict legally binding regulations, others would content themselves with voluntary codes of conduct.

However, the situation is, indeed, serious. The way mercenaries are used in today's world, incarnated in the PMSC, threatens the power of the state, eroding both its sovereignty in general and its monopoly on the use of force. Most countries have already given up their power over their economic life, leaving the way open to market forces. Leaving the states' regalian functions of security and defense to private companies could be extremely dangerous and could lead to the undermining of the legally constituted state ruled by law.

The current issue examines this crucial, burning issue. It aims to shed light on a series of questions about the activities of PMSCs.

Mercenaries and Human Rights: What Problems? What Solutions?

According to United Nations data at least one thirds of its member states are or have been affected by the activities of mercenaries in the course of their recent history. Africa is the most affected continent.

Considering the ever greater presence of private mercenary and security companies (PMSCs) beside regular government forces or non-state armed groups, and in view of the many serious violations that they have been guilty without ever being challenged, it is crucial now to address the matter of a legal framework for them to operate within.

Thus, the CETIM has been studying this question and has published a critical report entitled, "Mercenaries, Mercenarism and Human Rights". On 17 May 2011 in Geneva, it also organized along with the Groupe pour une Suisse sans armée (GSsA – Group for Switzerland without an Army) a public conference entitled "Armées privées, situation en Suisse et dans le monde" (Private armies, the situation in Switzerland and throughout the world). Among the panel members was José Luis Gómez Del Prado, member of the United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination. Panel members also included Vincent Chetail, professor of international law at the University of Geneva's Graduate Institute of International and Development Studies (IUHEID), Melik Özden, co-director of the CETIM (and author of the critical report), and Christophe Barbey, secretary of the GSsA. It is worth recalling that this critical report is available on our website, as are the interventions of the four conference panel members.

This article incorporates significant segments of the report and reflections presented during this conference. It attempts to answer the following questions. What is the nature of PMSC activities? Who hires them? What problems do PMSCs pose? What solutions are there at the national, regional and international levels to control them? What is the situation in Switzerland?

Area of Activities

Beyond the direct participation in armed conflicts, the PMSCs supply security services, logistics, protection of persons and strategic sites, de-mining, military infrastructure construction and intelligence as well as training for governmental armed forces.

These companies area also used by international institutions such as the United Nations and the International Red Cross and humanitarian organizations such as Care, Caritas, among others.

The use of mercenaries extends to other illicit activities such as trafficking in human persons (migrants and women), arms and munitions and drugs, the destabilization of legitimate governments and activities to control by force natural resources (diamonds, petroleum etc.).

Their use can be observed in acts of terrorism. It has been established, for example, that mercenaries have been recruited to commit attacks against hotels and tourist facilities in Cuba.[1]

Who Hires Them?

They are hired mainly by governments and transnational corporations (TNCs), who use mercenaries in both international and domestic conflicts. But sometimes armed opposition groups also make us of mercenaries.

Who are These Mercenaries and these PMSCs?

Between the 1960s and the 1980s, mercenaries were usually linked to a government army.

This type of mercenary activity gradually gave way to mercenarism as a business enterprise (the PMSCs), motivated entirely by financial gain and offering a wide range of 'services' (see above). The Human Rights Council Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (hereinafter "Working Group of Experts") defines private military and private security companies as: "including private companies which perform all kinds of security assistance, training, provision and consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military activities."[2]

The PMSC market is dominated by North American, British and South African companies. They operate on every continent and have become global players, providing a challenge to the coercive power normally exercised only by sovereign states. The hugely professional US and British PMSCs represent 70% of the market.

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- **as a volunteer.** We regularly need help with preparing our bulletin and other publications for mailing and distribution; we need translators and interpreters (French, English, Spanish) to help at conferences; we also need volunteers for proofreading different kinds of documents and helping with maintaining our archive.
- **by making a donation or a bequest.** It is possible to make a donation at any time, either in support of CETIM's actions in general, or to support a specific area of action. CETIM is recognised as a non-profit-making organisation in the public interest. All donations and bequests which it receives are tax-deductible for residents in Switzerland.
- **by becoming an intern.** For those who are looking for work experience in the field of human rights, or for activists in social movements wishing to increase their understanding of the workings of human rights bodies within the United Nations, we do accept interns. The internship periods coincide with the sessions of the U.N. Human Rights Council (March-April, June and September) and those of the Advisory Committee (February and August).
- **by taking part in the conferences, debates and campaigns** that we organise, or by publicising them in your own organisations.
- **by buying or distributing our books.**

If you would like to know more about our conferences or publications, you can either visit our website www.cetim.ch , follow us on Facebook, or contact us by email at contact@cetim.ch to join our mailing list.

CETIM ADVISES YOU THE FOLLOWING READING

L'Inde : une modernité controversée
Points de vue du Sud ?

Joint publication

In this beginning of the twenty-first centruy, India's status as an "emerging power" is uncontested. Its relative political modernity –free elections, alternating parties in power and autonomous counter-powers– in a country of some 1.2 billion citizens tends to validate its claim to being "the biggest democracy in the world".
The economic course that the country has taken since the 1900s, without quite undoing the past, has taken on clearly accented neo-liberal tones. This reform movement, which has also been accompanied by a strong acceleration of growth, corresponds at the same time to the ambition of the country to "reattain its rank". In search of an adjusted multipolar order and of international recognition (in particular by the United States), India ocsilates between national affirmation and diplomatic pragmatism, independence of action and efforts to integrate.
Howver, this "India that shines" has its dark side. The contradictions that it is prey to thwart the possibility of balanced development. The dynamics of wealth concentration have the upper hand over projects of redistribution. The gaps keeps widening between the rich and the poor, between regions, between uban areas and the countryside. Further, the fragmentation by castes and religious communities, in spite of changes, remains a source of inequalities and aggravates the discontent of the excluded masses.
In order to really "ermerge", India must overcome heavy social and environmental constraints weighing down its ascendance and meet the challenges of the democratization of society.

Price: CHF 20 / 13 €, 186 pages, ISBN: 978-2-84950-313-3, Ed. CETRI/Syllepse, 2011. It can be ordered of CETIM.

1. the Montreux Document places a heavier burden of responsibility on 'territorial states' (states where PMSCs operate) than on 'contracting states' or 'home states' where these companies originate or operate;

2. international humanitarian law applies only in armed conflict;

3. the Document fails to include a reference to the state obligation to protect and to apply the principle of due diligence;

4. there is no provision in the Document to ensure that existing law, including criminal law, is enforced, particularly – but not exclusively – the prohibition on torture and cruel, inhumane or degrading treatment, and that private military and security companies and their employees be held accountable for serious crimes;

5. the Document deals only with 'territorial states', 'contracting states' and 'home states', and ignores those states where the manpower is recruited by private military and security companies, in most cases without consultations with the respective governments.

6. the Document also fails to provide for a centralized state system responsible for registering all private military and security industry contracts in order to apply common standards and to monitor contracts.

The Working Group is of the opinion that "the commercial logic of the private military and security industry appears to be the impetus behind the [Montreux] document" and that "the industry lobby appears to have participated quite strongly in the Initiative's process".[15]

Despite the codes of conduct that have been adopted, no-one contests that PMSCs are responsible for human rights violations (extra-judicial, summary or arbitrary executions, disappearances, torture, arbitrary detention, forced displacement, human trafficking, confiscation or destruction of property etc.). Further, there is no question that they are responsible for looting natural resources because "owing to exemptions, national laws no longer apply within concessions held in mining areas, which have now become areas of lawlessness."[16]

Binding International Regulations

At the international level, several treaties regulate relations between states, starting with the United Nations Charter, which prohibits any war of conquest and promotes, inter alia, amicable relations between states, based on equal rights and self-determination of peoples (Article 1.2). It authorizes recourse to force only in the case of "threats to the peace, breaches of the peace, and acts of aggression" (Chapter VII, Articles 39 to 51) and only if a series of measures, including mediation, have failed (Article 40). The United Nations General Assembly has adopted numerous declarations and resolutions which reaffirm these principles. There are also the two international human rights covenants that, as human rights law, enshrine the right of peoples to self-determination as a human right and the right of peoples to "freely dispose of their natural wealth and resources" (Article 1.2).

Various treaties mention specifically the question of mercenaries such as Protocol I of the Geneva Conventions (Article 47) and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. For the Protocol, the main problem is that its definition is very restrictive thus not operational in the contemporary world. It also provides no criminal responsibility for legal persons.[17]

As for the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted on 4 December 1989 by the United Nations General Assembly, it is the principal, and currently the only, legally binding instrument at the international level, but it suffers from two drawbacks. 1. It provides no mechanism for monitoring; and 2. having been ratified/signed so far by only 32 states its scope is limited. (None of the major powers, neither the United States nor any of the states that make frequent use of mercenaries, has ratified the agreement.) Besides, in the interval between the adoption of the Convention and its coming into force (12 years!), with the creation of PMSCs, the Convention's definition of "mercenary" has been overtaken and is no longer relevant.

Nonetheless, appeal can be made to two jurisdictional bodies: 1. The International Court of Justice (ICJ) is the United Nations' main judicial body. All member states of the United Nations are automatically party to its Statute (Article 93.1 of the Charter), but the ICJ has no compulsory jurisdiction. In other words, it is not empowered to judge a state that does not recognize its authority (Articles 36 and 37). The ICJ has two main functions: ruling on contentious issues and offering advisory opinions. Only states can be parties in contentious cases. Regarding the use of mercenaries, the ICJ condemned the United States for undermining the sovereignty of Nicaragua.[18] Although the ICJ's condemnation is commendable, that direct armed conflict between states is almost a thing of the past makes referral to the ICJ for mercenary activities potentially "unworkable".

2. The Rome Statute of the International Criminal Court (ICC) came into force on 1st July 2002. The ICC can prosecute those responsible for war crimes, crimes against humanity and genocide (Articles 5-8). Although these crimes know no statute of limitations, the ICC does not have retroactive jurisdiction and has no jurisdiction with respect to crimes committed before 1 July 2002 (Article 11.1). Nor does the Court have jurisdiction over states for crimes that were committed before the state became a party to the Statute. (Article 11.2).[19]

During the 1998 negotiations on the adoption of the Rome Statute, the possibility of giving the ICC jurisdiction over mercenary activities was examined before being dismissed.[20] However, even if the current Rome Statute does not expressly mention the activities of mercenaries, the people or PMSCs involved should be prosecuted like anyone else who commits crimes mentioned in the Statute. The International Criminal Court should consider being a mercenary an aggravating circumstance. However, it should be noted that at present only 114 states have ratified the Statute of the Court. It is therefore not universally applicable. In addition, the United States, which constitutes the largest employer of PMSCs, has circumvented the jurisdiction of the ICC by using bilateral agreements.

State Ratifications of the International Convention against the recruitment of Mercenaries

Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cuba, Cyprus, Georgia, Guinea, Honduras, Italy, Liberia, Libya, Maldives, Mali, Mauritania, New Zealand, Peru, Qatar, Moldova, Saudi Arabia, Senegal, Seychelles, Suriname, Syria, Togo, Turkmenistan, Ukraine, Uruguay, Uzbekistan.

A Specific PMSC Convention?

In 2005, the Commission on Human Rights adopted a resolution creating a working group on the use of mercenaries as a means of violating human rights and preventing the exercise of the right of peoples to self-determination. As Mr Gómez Del Prado recalled during our public conference, one of the missions of that Working Group of Experts was the drafting of concrete proposals, norms, new general directives or basic principles likely to protect human rights, in particular the right of peoples to self-determination, while dealing with the new and current threats arising from mercenaries or activities linked to mercenaries. In line with this, the Working Group of Experts presented to the 15th session of the Human Rights Council (September 2010) a draft convention on PMSCs.[21]

The Working Group of Experts made it clear that the purpose of this legally binding agreement is not the "outright banning of PMSCs but to establish minimum international standards for States parties to regulate the activities of PMSCs and their personnel". However, it does recommend "prohibiting the outsourcing of inherently State functions to PMSCs in accordance with the principle of the State monopoly on the legitimate use of force".

Comprising six chapters and 49 articles, the draft convention is the result of wide consultation, carried out by the Working Group of Experts on every continent. The draft convention also provides for the establishment of a committee to regulate, control and supervise the activities of PMSCs. This draft convention is to be reviewed by an open-ended intergovernmental Working group, created for the purpose by the Human Rights Council for a period of two years. Given that certain countries, particularly in the West, are opposed to the convention, the task seems fairly daunting.[22]

At the Regional Level

The only specifically binding regional instrument in existence is the Convention on the Elimination of Mercenaries in Africa, adopted in 1977 by the Organization of African Unity (OAU, which became the African Union in 1999). This convention came into force in 1985 and applies only to those African states which have ratified it. Its strength is that it explicitly prohibits mercenaries and their use (Article 6c), both being defined as a crime against peace and security in Africa (section 1.3), whether committed by an individual, group, association, state or representative of a state (Article 1.2). It criminalizes any support for the activities of mercenaries (Article 2).

The two main objections to the Convention are: 1. it focuses almost exclusively on the issue of extraterritorial deployment of mercenaries and remains silent on internal deployment; 2. no African state has actually integrated the provisions of the Convention into its legal system.

THIS BULLETIN IS ALSO AVAILABLE IN FRENCH AND IN SPANISH

According to United Nation experts, the OAU convention "does not deal properly" with the issue of PMSCs.[23] African states have initiated a process to revise the Convention in order to put this right.

At the National Level

In many countries, the activities of mercenaries and/or PMSCs are not penalized. In others, the use of mercenaries is permitted but not effectively monitored, and there remains a grey area, as outlined by the Working Group of Experts, between the responsibilities of the State and those of the PMSCs. In fact, the problem has reached the point where regardless of governments' political will, it is now virtually impossible to monitor the activities in this area, and in any case there is no international register available.

What is the situation in Switzerland?

Some twenty private military and security companies currently have their headquarters in Switzerland. Until now, they have not been subjected to any licensing requirement, compulsory registration or particular legislation. In 2008, the Federal Council justified this situation by claiming that the number of such companies was "insignificant" and that any measures monitoring their activities would be "excessive".[24] Moreover, the Federal Council considered negligible the risk of any incidents likely to affect Swiss foreign policy or its neutrality. The lower house of the Swiss Parliament (National Council) supported this position and refused a motion that requested setting up a licensing procedure for PMSCs.[25] The Federal Council has always favored voluntary regulation of PMSCs and has actively supported the Montreux Document and the International Code of Conduct (presented on page 3).

The creation in the spring of 2010 of the British company Aegis Group Holdins AG in Basel, followed by several motions field by the Commission on Security Policy, has obliged the Federal Council to reevaluate its policy. It is worth recalling that Aegis is one of the biggest PMSCs in the world with more than 20,000 men in Iraq and Afghanistan hired mostly by the United States Department of Defense.

On 12 October 2011, the Federal Council opened consultation on a draft law on the services of private security firms provided abroad.[26] The discussion is under way. The CETIM will not fail to give its opinion on this draft.

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[1] Cf. *Annual Report of the Special Rapporteur on mercenaries,* presented at the 56th session of the Commission on Human Rights, E/CN.4 / 2000/14, dated 21 December 1999, pp 10 to 17.
[2] Cf. § 3 of the *Report of the Working Group of Experts*, presented at the 4th session of the Human Rights Council, A/HRC/4/42, dated 7 February 2007.
[3] Ibid, §§ 33 and 38.
[4] *Annual Report of the Working Group of Experts*, presented at the 7th session of the Human Rights Council, A/HRC/7/7, dated 9 January 2008, § 45. This order was finally rescinded in January 2009 after the new "Status of Forces Agreement" came into force (See § 85 of the *Report of the Working Group on the Mission to the United States of America*, presented at the 15th session of the Human Rights Council, A/HRC/15/25/Add.3, dated 15 June 2010)
[5] Cf. *Le Nouvel Observateur* of 6-12 May 2010.
[6] V. the written declaration by CETIM on Colombia Plan, www.cetim.ch/en/interventions_details.php?iid=155
[7] § 45, *Annual Report of the Working Group of Experts*, A/HRC/7/7, already cited.
[8] Ibid, § 44.
[9] Cf. http://www.icoc-psp.org/
[10] Afghanistan, South Africa, Germany, Angola, Australia, Austria, Canada, China, United States of America, France, Iraq, Poland, United Kingdom, Sierra Leone, Sweden, Switzerland and Ukraine.
[11] Cf. http://www.icrc.org/eng/resources/documents/publication/p0996.htm
[12] Cf. www.icrc.org/web/fre/sitefre0.nsf/html/montreux-document-feature-170908
[13] Cf. § 44 of the *Report of the Working Group of Experts*, presented at the 10th session of the Human Rights Council, A/HRC/10/14, dated 21 January 2009.
[14] Idem, §§ 45, 47 et 48.
[15] Idem, § 46.
[16] Philippe Leymarie, "En Afrique, une nouvelle génération de 'chiens de guerre'", in *Le Monde diplomatique*, November 2004.
[17] Cf. *Note by the United Nations High Commissioner for Human Rights on the first meeting of experts...*, 57th session of the Commission on Human Rights, E/CN.4/2001/18, dated 14 February 2001, § 28.
[18] See ICJ, *Military And Paramilitary Activities In And Against Nicaragua (Nicaragua v. United States Of America),* Judgement of 27 June 1986, § 292.3, 292.5 and 6 in particuliar, www.icj-cij.org/docket/files/70/6503.pdf
[19] Cf. www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf
[20] For example, Article 23 (5) et (6) of the Draft Statute For The International Criminal Court: 23 (5): "The Court shall have jurisdiction over legal persons, with the exception of States, when crimes committed were committed on behalf of such legal persons or by their agencies or representatives. 23 (6): The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons who are perpetrators or accomplices in the same crimes Draft Statute for the International Criminal". Court, Doc. off. NU, 1998, Anexo, punto 1, Doc. NU A/CONF.183/2/Add.1, www.un.org/law/n9810105.pdf
[21] Cf. *Report of the Working Group of Experts,* presented at the 15th session of the Human Rights Council, A/HRC/15/25, dated 5 July 2010.
[22] The following countries voted against this resolution at the Human Rights Council: Belgium, South Korea, Spain, United States of America, France, Hungary, Japan, Moldova, Poland, United Kingdom, Slovakia and Ukraine.
[23] Cf. *Report by the Special Rapporteur on mercenaries*, presented at the 61st session of the Commission on Human Rights, E/CN.4/2005/23, dated 18 January 2005, § 29.
[24] See http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2008/2008-05-211.html
[25] *Motion 08.3179 "Entreprises de sécurité et entreprises militaires privées ayant leur siège en Suisse. Système d'autorisation"* presented by Evi Allemann, National Council, 20 March 2008, http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20083179
[26] *Press release of Federal Council, 12 October 2011*, http://www.bj.admin.ch/content/bj/fr/home/dokumentation/medieninformationen/2011/ref_2011-10-12.html

Working at every level within the PMSCs are former senior military officers, former ministers and high-level civil servants including from the intelligence services. There are even former South African officers, who committed crimes against humanity under apartheid, now responsible for training Iraqi police[3], and then there are simply the unemployed or former police and military personnel looking for a job. Their salaries vary, depending on which company signs the contract (PMSC holder or sub-contractors), but they can be anywhere between US$ 1,000 and US$ 11,000 per month, in a country where there is conflict.

Impunity for PMSCs

In general, PMSCs and their employees are immune from any prosecution resulting from their activities. For example, Order 17 issued on 27 June 2004 by the Administrator of the Coalition Provisional Authority in Iraq, Paul Bremer, granted immunity from prosecution to PMSCs and their employees.[4] Despite its cancellation in 2010, an Xe (former Blackwater) employee told a reporter recently that "no one can touch us; if anyone challenges us, someone in the hierarchy quietly smuggles us into the boot of a car (...)"[5] It is worth noting that the Blackwater contract was cancelled by the Iraqi government following the shooting of civilians by this PMSC that resulted in 17 dead and over 20 wounded in Nissour Square in Baghdad on 16 September 2007. However, the United States is said to have continued to work with Blackwater until September 2009.

A similar situation exists in Colombia, where crimes committed by U.S. military personnel or private providers (PMSCs) operating within the framework of Plan Colombia10 will not result in any investigation or trial. Moreover, under an agreement between Colombia and the United States of America concluded in 2003, the Colombian Government cannot bring members of the U.S. military or private agents working on behalf of PMSCs, who are guilty of crimes against humanity, before the International Criminal Court.[7]

Non-accountable and not subject to control, the PMSCs "have often reinforced the potential for conflict as has been the case in the Balkans, Sierra Leone, Liberia and the Democratic Republic of the Congo."[8]

What Solutions?

The current discussion at the international level centers on two concepts: self-regulation (by the PMSCs) and binding regulation at the international, regional and national level.

Voluntary codes of conduct and the Montreux Document

In order to deal with the authorities and gain international respectability, the PMSCs today frequently cite a statement from the World Bank on the rule of law and 'good governance', and have developed codes of conduct and other ethical charters while claiming to work only with legitimately constituted governments.

We can cites the two 2005 voluntary codes of conduct adopted by the British Association of Private Security Companies (BAPSC) and by the International Peace Operations Association (IPOA). The 9 November 2010 international code of conduct is the most recent PMSC initiative. Actively supported and promoted by Switzerland, it has so far been signed by 211 companies.[9] These codes, often containing substantial gaps, are not binding. Their sole function is to reassure public opinion and show some semblance of ethics and morality.

The Montreux Document on Pertinent International Legal Obligations and Good Practices for States regarding the operations of private military and security companies during armed conflict (hereafter referred to as the Montreux Document), adopted by 17 states[10] on 17 September 2008, is an unusual document. It was drafted by governments yet is not a legally binding instrument. Launched jointly by Switzerland and the International Committee of the Red Cross (ICRC), the Montreux Document[11] is a response to the "unwelcome resurgence of the use of private military and security companies" and "reaffirms the obligation on States to ensure that private military and security companies operating in armed conflicts comply with international humanitarian and human rights law." According to the initiators, the two key points that should be noted in this document are "that delegating tasks to a contractor does not relieve a State of its responsibilities, and that governments should not let contractors take part in combat operations."[12]

For Professor Chetail, the Montreux Document acts as a teaching tool that asserts the existence of effective international law applicable to private mercenary and security companies. "The legal void resides rather in the difficulty of implementing the pertinent international law norms," he claimed during the conference.

For the Working Group of Experts, "the Montreux Document does not remedy the absence of norms concerning the responsibilities of states with regard to the conduct of PMSCs and their employees".[13]

Among the other criticism voiced by the Working Group of Experts, we would like to mention the following in particular:[14]