Ends and Means:

Assessing the Humanitarian Impact of Commercialised Security on the Ottawa Convention Banning Anti-Personnel Mines

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YCISS Occasional Paper Number 69 November 2001 In Ottawa, back in December 1997, over 120 states signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.¹ Though in a strict legal sense, the Ottawa Convention, an official element of international law since coming into force in March 1999, applies only to its signatories, the Treaty's normative implications have spread beyond its stated adherents. Production has slowed, the international trade in landmines has lessened, and non-signatories will have a hard time using them as international pressure, given weight by the convention, increases.² Also, the convention highlights the importance of humanitarian demining, an activity whose primary end, viewed holistically, is peace-building. The removal of landmines is incorporated into the larger processes of societal rejuvenation and rehabilitation. Even if 60 to 100 million landmines remain in-ground and many are still planted every day, it is now estimated that more are being taken out of the ground than are planted.³ This provides a greater sense of security and normalcy to peoples living in mine-infested states.

More recently, in May 2000, attention shifted to the means used to achieve the goals of humanitarian demining. Great controversy surrounded the decision by the United Kingdom's Department for International Development (DFID) to grant a Private Security Company (PSC), Defence Systems Limited (DSL), a £1 million contract to remove unexploded clusterbombs and landmines in Kosovo.⁴ Previously, the London-based DSL, a subsidiary of the American security conglomerate Armor Holdings, has held contracts with governments, Multinational Corporations (MNCs), Non-Governmental Organisations (NGOs), and the United Nations (UN) for operations, including humanitarian demining, all over the world. But some of these

¹From this point on, the convention will be referred to as the Ottawa Convention.

²Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, "To Walk Without Fear," in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, eds., *To Walk Without Fear: The Global Movement to Ban Landmines* (Don Mills: Oxford University Press, 1998), p. 10; Sami Faltas, "Getting Rid of Mines," in Luc Reychler and Thania Paffenhols, eds., *Peacebuilding: A Field Guide* (Boulder: Lynne Rienner Publishers, Inc., 2001), p. 429.

³United States Department of State, Bureau of Political-Military Affairs, Office of Humanitarian Demining Programs, *Hidden Killers 1998: The Global Landmine Crisis* (Washington: Department of State, 1998), p. v.

⁴While the term Private Military Companies (PMCs) is sometimes used in the literature, the acronym "PSCs" is more appropriate in a cumulative sense. It is fact that while some firms provide services which are more military in orientation, others concern themselves with protection and more passive duties. But in the final analysis, there is considerable overlap because many firms offer both military and non-military services. Moreover, the military end is but a part of a larger industry; all firms possess the capacity to have an impact via the application of their expertise; and the end goal in all cases is to make something or someone more secure. In regard to this approach, the paper refers to "security" expertise as opposed to "military" expertise.

operations have been the subject of international criticism. In particular, DSL, as part of its duties guarding oil installations for British Petroleum in Colombia, is accused of training human-rights abusing Colombian soldiers in counter-insurgency techniques and feeding intelligence on environmentalists and community leaders to the Colombian police and military.⁵ Even stronger allegations include the importation of weaponry. In reference to the DFID contract, many critics in and out of government resented money being given to an entity whose operations, albeit in another country in this case, seemed anti-thetical to the overall goals of humanitarian demining.

Yet reliance on a firm such as DSL is not unique. Spurred on by this and similar examples, this paper's subject matter pertains to how the means employed to achieve humanitarian demining may, in either the country being demined or elsewhere, retard the overall desired end of human security. Indeed, the 1994 Human Development Report of the United Nations Development Program (UNDP) features seven essential and overlapping components threatening human security: economic, food, health, environmental, personal, community, and political. These issues are not necessarily additive nor are they prioritised. Pursuing one objective may impact upon the successful pursuit of another objective because the effects of one may detract from that of another. Because human security is deemed a universal, interdependent concern, actions taken in one area of the world, no matter how beneficial their impact upon individuals, may have detrimental effects on those living elsewhere.

To complete the project, the paper is divided into two parts; the first part provides an explanation and the second adds to policy-making. The first part describes the benefits arising from humanitarian demining and then identifies reasons why outside, non-state assistance is needed for this undertaking. Essential here is an understanding of the PSC, a new post-Cold War non-state security actor. While turning to the private sector may be a necessity, the PSC industry as currently managed and regulated poses unique problems for states and NGOs in their

⁵Antony Barnett, "Anger at Kosovo Mines Contract," *The Observer* (7 May 2000), (www.observer.co.uk/uk_news/0,6903,218247,00.html).

⁶United Nations Development Program, *Human Development Report, 1994* (New York: Oxford University Press, 1994), especially chapter 4.

⁷Simon Dalby, Geopolitical Change and Contemporary Security Studies: Contextualizing the Human Security Agenda, Working Paper No. 30, Vancouver: Institute for International Relations, University of British Columbia, April 2000, p. 19.

humanitarian demining operations. In this regard, the paper explores why these problems may have been overlooked despite the negative impact of some PSC activities. Finally, the second part addresses ways to help overcome both the problems inherent in PSC activity and the reasons why solutions to them have not yet been found. It offers a sketch of an effective regulatory framework of the larger PSC industry which would have direct beneficial effects for the specific issue of humanitarian demining. Without regulation of this kind, the more problematic aspects of this new industry may gain legitimacy "through the back door" due to the current salience and popularity of humanitarian demining thanks largely due to the Ottawa Convention.

As noted in 1997 by Lloyd Axworthy, then Canada's Minister of Foreign Affairs, landmine removal is a major part of the larger agenda of human security demanding the worldwide promotion of human rights, sustainable development, and good governance. Motivated by this linkage, the paper's overarching argument is that if humanitarian demining is more than just simply detecting and digging mines out of the ground, one must pay close attention to the means employed and how they may be effectively managed in order to achieve the most desirable ends. If the abolition of landmines is at the heart of the human security agenda, and if a prime objective of Canada and other like-minded states is not only for the convention's effective implementation, but also for the greater realisation of the overall human security agenda it represents, then the PSC issue must be addressed.

PART ONE

The Need for Humanitarian Demining

The Ottawa Convention, the first ever instance whereby a whole category of conventional weapons has been outlawed, focuses upon a weapon with grave humanitarian consequences. Although difficult to quantify, the detrimental effects of landmines go further than the 26,000 annual civilian victims of landmines reported by the International Committee for the Red Cross (ICRC). Beyond the physical pain associated with the loss of life or limb, landmines are known to have: affected the delivery of emergency relief, discouraged investment, altered patterns of

⁸Lloyd Axworthy, "Canada and human security: the need for leadership," *International Journal* 52 (Spring 1997), pp. 183-196.

⁹Department of State, *Hidden Killers 1998*, p. 11.

production and transportation, inhibited the return of refugees and the demobilisation of combatants, fuelled malnutrition and the spread of disease, and prevented post-conflict recovery. A common ingredient in this mix is fear given that the number of landmines may be irrelevant; the mere threat of mines can achieve these outcomes. In short, landmines can affect social, political, and economic stability and, thus, the development of a society.

Humanitarian demining is an attempt to ameliorate this situation. In terms of thoroughness, it goes beyond military demining or 'breaching.' While breaching need not ensure 100% removal, 100% clearance is demanded for humanitarian demining because populations must have confidence that cleared areas are safe. Linked to this concern is an appreciation of the people-centric nature of humanitarian demining. The goal of humanitarian demining is not just getting rid of landmines, but doing so in a way that fosters social, political, and economic development and reconciliation.¹⁰ This was reinforced by the now defunct United Nations Department for Humanitarian Affairs (DHA), the entity once responsible for UN humanitarian demining:

Humanitarian Mine Action is not about mines. Rather it is about people and their interactions with a mine-contaminated environment. The aim of a mine action programme is not therefore a technical engineering objective - to survey, mark and eradicate landmines - but a humanitarian and developmental aim which seeks to create an environment in which people can live more safely and in which economic and social development can occur free from the constraints imposed by landmine contamination.¹¹

Indeed, this process must be conscious of basic human needs and the requirement of overcoming fragmentation and division caused by conflict. For Jan Eliasson, the former United Nations Under-Secretary General for Humanitarian Affairs, "[i]t is essential to view the land mine problem as central to peace-building programs rather than merely as a factor on the margin of a country's development."¹² This contextualised, people-centric approach to mine removal is made

¹⁰Faltas, "Getting Rid of Mines," p. 431.

¹¹Cited in Don Hubert, "The Challenge of Humanitarian Mine Clearance," in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, eds., *To Walk Without Fear: The Global Movement to Ban Landmines* (Don Mills: Oxford University Press, 1998), p. 330.

¹²Jan Eliasson, "An International Approach Toward Humanitarian Assistance and Economic Development of Countries Affected by Land Mines," in Kevin M. Cahill, ed., *Clearing the Fields: Solutions to the Global Land Mines Crisis* (New York: Basic Books, 1995), pp. 167.

plain in the Bad Honnef Guidelines developed by NGOs and the United Nations International Children's Emergency Fund (UNICEF) in Germany in 1997. The United Nations Mine Action Service (UNMAS), the latest UN entity given the task of organising and facilitating humanitarian demining, subsequently adopted these guidelines in 1998.¹³

In this light, humanitarian demining is nothing less than vital for the success of the human security agenda. If human security concerns how people live in a society, how freely they make their choices, and how much they have access to market and social opportunities, then humanitarian demining is at the heart of this process in mined states. ¹⁴ In sum, humanitarian demining addresses the issues of safety, removal of fear, and protection from sudden and hurtful disruptions in the patterns of daily life, all factors that are a part of human security.

The Need for Outside Assistance

Although the UN recognises the importance of outside expertise in order to build capacity, an objective of its approach to landmine removal is the development of indigenous capacity. Reasons of cost are coupled with peace-building motives. The UN wishes populations to take control of their own rehabilitation efforts and to give their demobilised soldiers a useful task to which they can apply their expertise.

Despite this laudable goal, outside expertise will continue to be required to serve as a catalyst for indigenous efforts and to provide needed managerial expertise. Indeed, the existing reliance on international programming and the distribution of aid and expertise have made it such that in locales like the Balkans and Africa, host countries have had little interest in initiating demining operations themselves. This is because they realise the saliency of the landmine issue internationally and, thus, they know that outside resources will likely be forthcoming. While perhaps reinforcing this undesirable trend, the international creation and monitoring of management skills pertaining to demining is, nevertheless, essential. For example, although 13,000 Afghans were trained in demining techniques, very few actually engaged in the activity.

¹³Faltas, "Getting Rid of Mines," p. 430.

¹⁴United Nations Development Program, Human Development Report.

¹⁵Mike Croll, *The History of Landmines* (Barnsley: Leo Cooper, 1998), p. 151.

¹⁶Hubert, "Challenge of Humanitarian Mine Clearance," pp. 319-320.

Furthermore, the accident rate was high and the quality of the demining poor; many people were not able to develop a sense of confidence critical to the success of humanitarian demining. Therefore, it is important that a careful balance be struck between indigenous considerations and effective management and landmine removal.

It is also evident that the employment of modern mine removal technologies requires outside assistance. Technological advancement is felt to be a solution to the woes of many mine-infested states. Achieving a fifty-fold increase in capacity is possible with current technological achievements. A similar improvement via manual methods is unthinkable; it would require training and deploying 170,000 to 200,000 deminers worldwide, a virtually impossible task whether using foreign or indigenous expertise.¹⁷ However, the minimal education levels of many potential indigenous deminers make it unlikely that they all will be able to use new tools effectively.

This poses the question of what means are available to create this balance and to provide this technological expertise. Even if the militaries of developed world states, given their expertise, appear as obvious candidates, past history and attitudes dictate otherwise. True, militaries, if instructed, will perform duties that fall outside traditional mandates and functions.¹⁸ But, undeniably, military planners often have difficulty accepting humanitarian type activity as a military responsibility. This translates into operations in the field which see humanitarian approaches and policies not always fitting well into the calculus of the military mind-set. Indeed, the goals and processes of humanitarian and military demining diverge at the simple unplanting of landmines.

In the case of Bosnia, for instance, the UN estimates that at the end of the war over 300 square kilometres posed a definite landmine threat while an additional 200 square kilometres were potential risks. Though NATO peacekeepers, then and now, both perform demining and oversee the demining operations performed by the entity armies, the priorities have frequently not been people-centric nor have they met humanitarian standards. This is odd given that many NATO

¹⁷Department of State, *Hidden Killers* 1998, p. 114.

¹⁸Note, for instance, the three decade long commitment of Canada to Cyprus and the continued American deployment in the former Yugoslavia.

member countries have wished a quick return of refugees, a goal which requires effective humanitarian demining. As an example, by mid-1997, only 1% of the estimated number of landmines planted had been cleared. Moreover, these removed landmines were only those which directly threatened NATO forces.¹⁹ Also, military timetables were short-term and demanding of a quick exit strategy. Recall the impossible demand in the Dayton Peace Accord indicating that all landmines were to be removed within 30 days of the start of the NATO mission. Factors shown in this case prove difficult to reconcile with longer-term peace-building plans.

True, efforts have been made to overcome this divide. The United Nations High Commission for Refugees (UNHCR) has published the handbooks *Working with the Military* and *Handbook for the Military*. Similarly, the latest British Army Field Manual stresses the dynamic and challenging nature of humanitarian operations. As well, the United States Army Engineer School's Countermine Training Support Center opened in April 1996 its Humanitarian Demining Training Support Center at Fort Leonard Wood, Missouri. This institution's goals go further than the development of capacity in military operations to include humanitarian demining and interaction with NGOs.²⁰

The irony is that even with this new sensitivity, military participation from developed world states may be unlikely due to the mounting costs, the divided priorities, and the casualties perceived in longer-term operations. Studies have found that many countries, especially the United States, are unwilling to undertake prolonged operations in complex political situations characterised by unrest, the exact sort of situation where humanitarian demining is required for the sake of human security.²¹ Though the military must overcome approaching "mission creep" as "mission cringe," the larger issue is that this role re-evaluation may be a moot point.²²

¹⁹Department of State, *Hidden Killers 1998*, p. 323; Jane Sharp, "Dayton Report Card," *International Security* 22 (Winter 1997/1998), (EBSCO).

²⁰Department of State, *Hidden Killers 1998*, p. 122.

²¹Eric V. Larson, Casualties and Consensus: The Historical Role of Casualties in Domestic Support for U.S. Military Operations (Santa Monica: RAND, 1996), pp. xvi-xvii. See also Mark J. Conversino, "Sawdust Superpower: Perceptions of U.S. Casualty Tolerance In The Post-Gulf War Era," Strategic Review 25 (Winter 1997), pp. 15-23.

²²Michael Pugh devised the term "mission cringe". Cited in Bradd C. Hayes and Jeffrey I. Sands, "Non-Traditional Military Responses to End Wars: Considerations for Policymakers," *Millennium* 26 (Summer 1997), p. 839.

The Privatisation/Commercialisation of Humanitarian Demining

Hence, humanitarian demining is increasingly becoming an area of expertise of the private sector. This is a part of the larger trend of privatisation in international affairs. While the delivery of aid and assistance was once the domain of the state, NGOs and private firms have now entered the aid marketplace to the degree that private entities have begun to outstrip the role of UN agencies and other bodies as the main providers of aid.²³ As recent cases like Kosovo and East Timor reveal, the marriage between private firms and 'private' NGOs is well established.

In the specific context of humanitarian demining, commercial firms working on the behalf of either NGOs or UN bodies, and in some cases directly for donor states, have become the norm. The demand for humanitarian demining raised by the Ottawa Convention, tied to the sheer overall size of the task worldwide, makes the industry both growing and well-paying. In fact, the first indication that humanitarian demining was to be a profitable undertaking came with the contracts in Kuwait following the Gulf War totalling US\$700 million.²⁴ Recent strategic research performed by Frost & Sullivan found that while the defence industry remains sluggish in many sectors, mine countermeasures generated global revenues of US\$397.8 million in 1999, an increase of 17.4% from 1998. This increase was attributed both to the continued planting of mines and to the emergence and growth of NGOs and their demands for 100% clearance in humanitarian demining.²⁵ In sum, the total cost for removing landmines worldwide could well exceed US\$33 billion.²⁶

A new breed of firm, the PSC, participates in this lucrative marketplace. Many PSCs provide the manpower, employ the technology, and train the indigenous deminers. In addition to humanitarian demining, the PSC industry writ-large offers a wide range of services from the 'soft' to the 'hard.' Although all PSCs do not sell all services, and in some cases do specialise, collectively the industry provides: military advice and training, arms procurement for further

²³Damian Lilly, *The Privatization of Security and Peacebuilding: A Framework for Action* (London: International Alert, 2000), p. 19.

²⁴Hubert, "Challenge of Humanitarian Mine Clearance," p. 321.

²⁵Frost & Sullivan, "New Strategic Uses of Mine Countermeasures Could Offset Budget Restrictions," (14 July 2000), (biz.yahoo.com/bw/000619/ca_frost_s_5.html).

²⁶Faltas, "Getting Rid of Mines," p. 430.

PSC operations, intelligence gathering, hostage rescue, supply, transportation, logistics, guarding, and, of course, humanitarian demining. Only a few PSCs offer traditional mercenary activities, the use of force and operational command, in spite of the publicity this small minority has received.

At present, the industry, mostly based and sourced in the developed world, has been generally tolerated by the international community. Though regulation is largely lacking, it is clear that the impact of PSC services can be significant and that the distinction between benign security products and those which can have a direct effect on the political-military environment is vague.²⁷ In other words, all private applications of security expertise should be viewed as sensitive. It is obvious that this has a bearing on the overall holistic goals behind humanitarian demining, and by extension, human security, whether focussed narrowly on the area of demining operations or broadly on the operations PSCs conduct worldwide. It is necessary now to identify the negative implications pertaining to this situation and suggest reasons why it has been allowed to occur.

The Implications

Obviously, a prominent concern regarding contracting remains agency problems.

Notwithstanding their wish for good client relations, positive publicity, and repeat customers, PSCs may shirk their responsibilities. This issue is particularly acute for humanitarian demining given that PSCs are a relatively new phenomenon and the humanitarian demining industry is immature.²⁸ Indeed, the effects of shirking can undermine the overall confidence necessary for successful humanitarian demining. Note, for instance, that while demining activities by the entity armies in Bosnia are monitored by NATO peacekeepers, the activities of private firms have not been awarded the same vigilance. On the one hand, the use of private firms by the UN and NGOs was their response to NATO's minimal desire to conduct humanitarian demining noted earlier. On the other hand, the unfortunate result of relying on private bodies has been that in some cases the quality and reliability of the work has been sub-standard with potentially

²⁷David Shearer, "Private Military Force and Challenges for the Future," *Cambridge Review of International Affairs* 13 (Autumn/Winter 1999), p. 85.

²⁸Hubert, "Challenge of Humanitarian Mine Clearance," p. 326.

deadly effects.²⁹ Thus, those who employ PSCs for humanitarian demining should include appropriate incentive structures and supplier monitoring in their contract arrangements in order to mitigate risks.

But most important to this paper's argument is that PSCs in their work, particularly for state clients, often reinforce the political status quo to the detriment of long-term human security. The South African PSC Executive Outcomes (EO), for instance, was credited by policymakers and NGOs alike for bringing stability to Angola and Sierra Leone in the mid-1990s. As another example, British-based Gurkha Security Guards (GSG), after completing demining contracts alone and in conjunction with DSL in Southern Africa, provided military training to the army of Sierra Leone in 1995. In both these cases, however, the cost was that the underlying issues that led to the conflict remained unaddressed, poor governance was reinforced, and the culture of violence was perpetuated.

As revealed in examples such as the DSL case presented at the beginning, other PSC activities may be problematic for the promotion of human security. Certainly, accusing PSCs directly of human rights abuses on civilians is not the issue; even the ICRC believes this argument is not warranted.³⁰ Moreover, as evident in policies such as the desire for security sector reform supported by DFID and the American use of PSCs like Military Professional Resources Incorporated (MPRI) to train African peacekeepers and reform the Nigerian military, PSCs can potentially have a positive impact.³¹ Thus, it is possible that PSCs have the capability to contribute to progressive change for the public good as manifest in humanitarian demining. Nevertheless, PSCs at present often serve instead to reinforce the current order, no matter how unjust. It incriminates humanitarian demining when a PSC provides different services or works with different clients that neglect the negative impact on human security. In this regard, one

²⁹See ibid for evidence pertaining to faulty humanitarian mining performed by private sources.

³⁰Yves Sandoz, "The Privatisation of Security: Framing A Conflict Prevention and peace-building Agenda," paper presented at Wilton Park Conference, 19-21 November 1999. (Electronic file with no page numbering.)

³¹The term "security sector", as outlined by the United Kingdom's Department for International Development, comprises "[t]hose who are responsible, or should be responsible, for protecting the state and communities within the state. Includes the military, paramilitary, intelligence services, as well as those civilian structures responsible for oversight and control of the security forces". Therefore, it refers to the instruments of organised violence and the political framework in which they operate. Department for International Development, (www.dfid.gov.uk/public./what/pdf/poverty.pdf).

should note that Saracen International, a firm that offers demining capabilities and operates primarily in Angola, was once a subsidiary of and relied upon the same personnel as EO. Because of the holistic nature of human security, this incrimination applies to areas where humanitarian demining is underway and beyond.

The Reasons

The reasons humanitarian demining continues to face this problematic situation are varied and implicate a number of actors. In the large picture, one issue is the newness of the PSC; understanding and regulation have simply lagged behind. In spite of the fact that PSCs share many of the characteristics associated with the word 'mercenary,' a term that acquired a pejorative connotation in the 20th Century, they cannot be covered by the existing international legislation governing mercenarism. While PSCs are largely foreign, work in the area of security expertise, and offer their services in return for money, their on-going corporate nature, their desire to work with "respectable clients" like states and humanitarian organisations, and their ability to capitalise on the trends of privatisation make them a breed apart. Even the United Nations Special Rapporteur on Mercenarism contends that PSCs "...cannot be strictly considered as coming within the legal scope of mercenary status."

What is more, states seemingly prefer to keep PSCs as an option for statecraft. In the developing world, leaders appreciate the possibility that PSCs might be used to achieve their goals and reinforce their governance when their security forces may be weak or disloyal. This inclination actually pre-dates the post-Cold War rise of the PSC. The Third World pushed forward documents such as the 1977 Additional Protocols of the Geneva Convention and the Organization of African Unity's (OAU) 1977 Convention for the Elimination of Mercenarism in Africa ostensibly to protect themselves from the scourge of non-state force. Nevertheless, these legal texts leave open the option for states to hire foreign security expertise.

But what of NGOs, the primary deliverers of humanitarian assistance and a key interface with PSCs? Why have they not developed their own standards to protect the integrity of humanitarian

³²Commission on Human Rights, Fifty-third session, "Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination," submitted by Enrique Ballesteros, Special Rapporteur, E/CN.4/1997/24, (20 February 1997), (www.unhchr.ch).

demining? The answer is that quality control of this type may run contrary to the "contract culture" which has become a main fixture in humanitarian operations, a field worth US\$50-55 billion annually.³³ The marketisation of humanitarian assistance, caused by the downloading of caring from states to private bodies as part of the overall trend of privatisation, has created a *laissez-faire* approach. Furthermore, the globalisation of the aid business means that reach and competition now extend worldwide. This downgrades other concerns for the sake of greater NGO exposure, an asset that facilitates further funding and operations. "The day-to-day struggle for survival of contract and media hungry NGOs is not necessarily synonymous with political acumen, good management, and accountability, nor with sustainable programs".³⁴ The end result is that helping the victim in the best way possible is ranked alongside other matters of importance to NGOs. The consequence is that a consideration of negative side-effects is often overlooked.³⁵

The thoughts of Sami Faltas are characteristic. He argues "[g]iven that right priorities, adequate resources, and careful guidance, all these kinds of organisations [military agencies, commercial contractors, and humanitarian organizations] can work according to the high standards of humanitarian demining." He also recognises that out of these three types of organisations, commercial firms are most likely to conduct the humanitarian demining. Yet, when confronted by troubling aspects of some PSC activities, he replies that "the main thing is to get the demining done properly, soon, and at an acceptable price." "Properly," in this sense, refers to nothing more than 100% removal. An appreciation for the negative impact of some PSC endeavours would seem to be lacking.

³³Edward Giradet, "The Humanitarian Aid Market," in *War, Money and Survival* (Geneva: International Committee for the Red Cross, 2000), p. 53.

³⁴Antonio Donini, "Asserting Humanitarianism in Peace-Maintenance," in Jarat Chopra, ed., *The Politics of Peace-Maintenance* (Boulder: Lynne Rienner Publishers, Inc., 1998), p. 88.

³⁵Robin Davies, "Humanitarian Assistance: Negative Spin-offs for the Host Country," in *War, Money and Survival* (Geneva: International Committee for the Red Cross, 2000), p. 82.

³⁶Faltas, "Getting Rid of Mines," p. 432.

Guidance from the UN to mitigate these effects is not forthcoming. From one angle, this might be due to the coordination and competition problems common for UN programming.³⁷ UNMAS, though responsible for the strategic management and coordination of all UN demining activities, must still battle with the alphabet soup of UN fiefdoms which perform humanitarian demining. At least nine permanent UN and UN-affiliated bodies struggle for clout and resources associated with this high profile activity. Many more temporary ventures, like specific peacekeeping operations, are also involved. Before the creation of UNMAS, the DHA struggled with the same problems in the field and in New York. Reports of humanitarian demining in Southern Africa and the Balkans divulge a lack of coordination and centralised management evidenced through indecision, inefficiencies, and in-fighting.

From another angle, UNMAS has a narrow focus towards its development of mine action assessment priorities, its mobilisation of resources, its development of technical and safety standards, and its management of mine-related action. A perusal of UNMAS policies reveals concern regarding sound operational procedures, safety, quality control, and medical qualifications. In other words, these regulations attempt to overcome some of the principal-agent problems, but they do not address the wider impact private contractors can have on humanitarian objectives.³⁸ Complicating this factor is that while UNMAS may set these guidelines, it lacks, as found in the Bosnian case, the adequate capacity to enact the proper monitoring. Vigilance, which may not be forthcoming, rests with the private deminers themselves and those that employ them.

PART TWO

Weighing Effective Regulation

If humanitarian demining is to achieve its holistic goals, PSCs must be subject to effective regulation. Indeed, without sufficient regulation, overall PSC activity may gain unquestioned

³⁷UN turf battles are well-known, even in the midst of emergencies. For Roland Paris, while many UN institutions agree on the need for better coordination, no institution wants to be "coordinated." Paris, Roland. "Peacebuilding and the limits of liberal internationalism," *International Security* 22 (Fall 1997), (EBSCO).

³⁸See the UNMAS Internet webpages (www.un.org/Depts/dpko/mine/Standard/chap_2.htm).

acceptance, to the detriment of human security goals, due to the overwhelming attention placed on humanitarian demining.

The United Nations, however, does not appear to be the likely organisational venue for such an endeavour. On one level, though human security may stress such important elements as good governance and human rights, this rubs against the fact that the UN is still a state-oriented, sovereignty promoting institution. Developing world governments of member-states rely on PSCs for their own longevity and stability and often overlook, or do not care about, the potential negative consequences. They would not tolerate the loss of the sovereign right to choose. Indeed, the regulatory documents cited earlier leave this option open on purpose. Due to the global trends in the private security marketplace and the related proclivity of leaders in the developing world to rely upon it, any UN regulation would likely necessitate excessive compromise resulting in dilution, perhaps beyond utility.

On another level, it is similarly likely that the mandate of the seemingly most appropriate UN body for regulation - the office of the Special Rapporteur on Mercenarism - while up for review in 2001, will remain unchanged. At present, the rapporteur's mandate is directed by a conception of non-state security expertise informed by the activities of the soldier-of-fortune, or vagabond mercenary, the type that ravaged post-colonial Africa during the 1960s and 1970s. It is mostly developing world states that support these resolutions and the rapporteur's mandate as it stands now. They are states that suffered from the activities of vagabond mercenaries in the past. In the present, soldiers-of-fortune plainly still exist, but the rapporteur's mandate makes it difficult to interpret and act upon this new and more influential breed of non-state security expertise and its business plans involving state, corporate, and humanitarian clients.

If this is the case, what about the utility of current home state regulation of PSCs? As documented elsewhere, appropriate international legislation to govern the operations and the competition of PSCs is non-existent.³⁹ At the national level, many states have neutrality laws. Enforcement, however, is lax and their mandates are more appropriate for past great power

³⁹See Jeffrey Herbst, "The Regulation of Private Security Forces," in Greg Mills and John Stremlau, eds., *The Privatisation of Security in Africa* (Johannesburg: The South African Institute of International Affairs, 1999), pp. 107-127.

competition rather than for the regulation of corporate security expertise. As for the specific regulation of PSCs, there are only two examples in the world - South Africa and the United States.

In July 1998, South Africa enacted its Regulation of Foreign Military Assistance Act, an initiative which regulates, but does not prohibit, the operations of South African-based PSCs. Although it bans the activities of the soldier-of-fortune mercenary outright, the act does provide a broad definition of foreign military assistance into which PSCs fall: "advice or training, personnel, financial, logistical, intelligence operational support, personnel recruitment, medical or paramedical service, or procurement." The act also spells out the acceptability of "security services for the protection of individuals involved in armed conflict or their property."⁴⁰ Firms are required to register with the Department of Defence and to obtain licenses from the National Conventional Arms Control Commission. By a manner similar to arms sales, this same body also approves PSC contracts on a case-by-case basis in accordance with criteria rooted in international law. In particular, Article 7 asserts that the committee must consider whether the assistance would result in the infringement of human rights and fundamental freedoms in the territory where the assistance will be rendered, endanger peace in a region by introducing destabilising military capabilities, or contribute to the escalation of regional conflicts. The act also indicates maximum jail sentences and fines for nationals and resident foreigners in South Africa who participate in unauthorised non-state military operations.

The law's problems, for the sake of this study, stem from both the nature of its enforcement and its approach towards human security. The broad definition of foreign military assistance goes beyond PSCs to include potentially such entities as NGOs and universities; there is a blurring of the distinction between security expertise in a conventional sense and out-reach programming to the detriment of the latter due to the risk of government heavy-handedness. Given the particular sensitivity towards constitutional rights in post-apartheid South Africa, the act has faced substantial domestic opposition due to its expansive definition.

⁴⁰Citations in Lilly, *The Privatization of Security*, p. 28.

⁴¹See Mark Malan and Jakkie Cilliers, "Mercenaries and Mischief: The Regulation of Foreign Military Assistance Bill," Occasional Paper No. 25, Institute for Security Studies, Pretoria, South Africa, September 1997.

Second, in regards to human security, the act's guidelines lack the appropriate focus. What is permissible under the law goes beyond human security promoting services like humanitarian demining or security sector reform. Even with international law serving as guidance, the act still allows for activity problematic for human security and, in a related manner, the people-centric motives of humanitarian demining. To expand, violations caused by those trained by PSCs and by the reinforcement provided to regimes with troubled legitimacy due to their lack of good governance and their reliance on the use of force are important issues. While it is conceivable that a PSC could upset a regional balance of power to the detriment of peace, it is more likely, given the intra-state focus of much activity in the developing world, that PSC expertise would help develop an internal calm, or at least pockets thereof, to the benefit of a government and its military forces, no matter how perplexing their conduct. One criteria for authorisation noted by South African officials, whether or not a potential client government was democratic, does not mitigate the situation.⁴² Many states call themselves democracies, no matter how nominal. It is crucial that periodic elections be accompanied by the requisite freedoms, liberties, openness, tolerance, and upholding of the rule of law. Thus, as a result of these two factors, it is not surprising that some question the effectiveness of this legislation.

As for the United States, the only other country with any significant form of PSC regulation, its approach shares similar characteristics to that of South Africa. Like military exports, the vetting of foreign initiated PSC contracts is monitored under the International Traffic in Arms Regulations (ITAR). PSCs must be registered under the ITAR guidelines and must seek approval from the State Department's Office of Defence Trade Controls (ODTC) for each contract. Once approval is sought, the contract is examined for its implications, including both democratic development and human rights, by a number of offices within the department. Complementing this process is the abidance to any applicable policies pertaining to US relations with another country, group of countries, or in regard to certain activities.⁴³ But if no extra legislation is applicable, the problematic aspect of ITAR guidelines alone is that they are more

⁴²Commission on Human Rights, Fifty-third session, "Report on the question."

⁴³Note that the guidelines for MPRI's activity in the African Crisis Response Initiative (ACRI) were approved by the State Department and monitoring is conducted by an American ambassador specifically assigned to oversee ACRI.

concerned with the wide gambit of UN foreign policy than the specific matter of human security promotion.⁴⁴ ITAR provides for governmental oversight and discretion, but not directive.

The Ingredients for Effective Regulation

The South African and American cases, nevertheless, provide useful guidelines as to what should and/or should not be done in the creation of an international human security-centric regime for PSCs. Taking into account these factors, in addition to the other evidence presented earlier, one can sketch the trappings of an effective regulatory regime governing PSC activity. This regime, accordingly, also reinvigorates the humanitarian impetus in demining.

Effective regulation lies in the who and the what. For the 'who', the home states where the PSCs are based, rather than all UN member states, are the main actors. These states would need to develop at the domestic level regulations pertaining to not only the licensing of firms but also to their authorisation on the basis of how a proposed contract pursues the promotion of human security. In particular, regulations would specifically consider how the contract might contribute to security sector reform. Failure to seek such authorisation would result in appropriate penalisation. As this regime became instilled, concern over past operations would be minimized as regulations standardised the marketplace. The exception would be if contracts which had been regulated revealed themselves later to have had negative implications for human security. While this approach does not necessarily restrict the usage of PSCs in military operations or training, it does assert that PSC services should be framed by and be consistent with a larger project of peace-building and conflict resolution.

To complement these domestic endeavours, effective regulation would see the development of a home state international regime. This would make sure that no country's firms had a competitive advantage due to more lax standards to the detriment of both creating a level playing field and peace-building.⁴⁵ At first, the regime might be able to sustain its operations purely in terms of its

⁴⁴Similar points are in Lilly, *The Privatization of Security*, p. 29.

⁴⁵Without international action encompassing all home states, PSCs might take advantage of the openness and mobility of globalisation to re-set their organisations in areas of lower regulation. It is true that a PSC might move to a state which did not have a PSC industry in order to take advantage of the complete lack of regulation. If this was the case, the regime would have to be able to expand to include new members. Note, however, that this type of movement has not occurred to date, largely because of the general North to South direction of the business which limits the number of potential

ability to set standards and correct market imperfections by lessening information costs and uncertainty. However, the annual sales in the international trade of private security are projected to grow from the current level of US\$56 billion to over US\$200 billion by 2010, an increase equating to a compounded annual growth of 7%. As more firms enter the marketplace, as brand names develop, and as competition increases, the regime may require strengthening through the development of mechanisms to ensure compliance and apply censure.

Indeed, such a mechanism may be needed due to the very nature of human security itself. While the benefits of promoting human security abroad are perhaps accrued in a moral sense, in a material sense the benefits through enhanced peace and stability are often indirect, hard to perceive, and in the long-term. Because of this, the rewards of compliance which might reinforce a regime are not easily or quickly felt. This is further complicated by political cycles in regime member states, by the demands placed on policymakers by short-term interests, and by the not always linear effects of peace-building in other political jurisdictions. A strong regime would prevent the fast-buck being sought or a destructive expression of self-interest.

It follows from the above that the 'what' refers specifically to PSCs. To safeguard other activity from this regulation, a specific definition of PSCs covering their characteristics would need to be devised. Characteristics should include: the provision of security expertise, their corporate nature, and their profit seeking motive. The first characteristic would deal with the security services sold by PSCs, ranging from the soft, such as the provision of advice, up to the hard, including the actual use of force. While the divide may be grey, security expertise pertains to firms that provide primarily human skills and insights into soldiering, security, and the uses of armed force rather than the straight provision of military manufactures, an interstate activity that has existed, and to a degree been regulated, for a much longer period of time.⁴⁷ The second characteristic would focus upon actors that have a permanent structure, a long-term agenda beyond just one contract, and a desire for good public relations and future contracts. This would

home countries.

⁴⁶Alex Vines, "Mercenaries and the Privatisation of Security in Africa in the 1990s," in Greg Mills and John Stremlau, eds., *The Privatisation of Security in Africa* (Johannesburg: South African Institute of International Affairs, 1999), p. 47.

⁴⁷The greyness is due to the fact that many defence companies in their foreign sales now provide "sweetners" such as long-term training and servicing packages.

mean that ad hoc formations, the traditional approach of soldier-of-fortune activities, could not possibly come into the scope of permissible activity. As for the third characteristic, it is true for mercenaries, some argue, that proof of motive is hard to obtain; emphasis instead should be placed upon what they do, not why they do it.⁴⁸ However, unless one accepts an extreme form of benevolence or self-resourcing, the long-term, corporate nature of PSC operations implicitly has at its centre the desire for profit. Likewise, the point of this exercise is not to compare the attributes of different types of combatants; it is to contrast the PSC with other entities such as NGOs and universities that do not feature profit as a central concern. In short, an appropriate definition would guarantee that limitations on the right of movement and association would be less numerous and less expansive.

As a result, the "what" does not directly cover NGOs that rely upon PSCs for their skills in training, guarding, or humanitarian demining. Indeed, while "home states" as the answer to the "who" question helps to bypass the divides and competition in NGO operations today, home state PSC regulations would provide assurances of human security quality control for NGOs in their reliance on the private sector. Also, a degree of enforceability would be possible given the close financial links that exist between states and NGOs. Even though the provision of assistance has increasingly become privatised, states, particularly in the developed world, remain primary donors. Hence, humanitarian actors that chose to employ a PSC without the necessary home state authorisation might risk the potential termination of their public funding. Similarly, the influence of the regulation might spread to private benefactors and dissuade them from contributing as well.

In the same vein, focussing on PSCs rather than on regulating the activities of developing world governments helps directly to avoid troubling aspects regarding sovereignty. On the one hand, it was made clear in the early 1990s that sovereignty is not absolute. But sovereignty does, on the other hand, still exist as a valued institution and a key factor in international life. Thus, from one viewpoint, this approach sidesteps the difficulties surrounding conditionalities frequently seen as intrusive by the recipients of outside assistance. Avoided would be the resentment caused by the requirements that call for economic or social changes which leaders would not have considered

⁴⁸See references to the United Kingdom's Diplock Report in Anthony Mockler, *The New Mercenaries* (London: Sidgwick & Jackson Limited, 1985), p. 356.

independent of the offer of assistance. In this case of PSC regulation, the focus is on state choices and the tools available as opposed to the more intrusive on-sight monitoring and ongoing conditionality. Moreover, it does not indicate what states should or should not do but rather limits the legitimately accepted means available to them.

This leads to another viewpoint: this approach does not limit the sovereign right of governments to provide for the good life in the ways that they see fit. It covers instead the transnational means available to them that are based in political jurisdictions other than their own. Indeed, since the early 1980s, the mantra of privatisation, downsizing, and the letting of contracts has restructured the inter-relations between the public and private in both the developed and developing worlds. Though the rate of privatisation varies from state to state in accordance with political direction and economic motives, it has been systematic and will likely continue. For Harvey Feigenbaum and Jeffrey Henig, privatisation, for reasons of cost and efficiency, or for political motives, has all-around appeal: If any economic policy could lay claim to popularity, at least among the world's political elites, it would certainly be privatization. Nevertheless, since PSCs appear to be here to stay, and since security expertise is a sensitive matter, and since states increasingly appreciate the perceived values of downsizing and privatisation, thought must be given to the conduct and effects of PSCs. Without a doubt, while states have the rights to privatise and to choose, it is also allowable that other states can limit what is offered on the international marketplace.

Factors to Consider...

Although these may be the ingredients for effective regulation, one must appreciate the factors which could prevent making this recipe a success. The first factor is that because the PSC industry is relatively new and constantly changing, states would have to expend resources to monitor closely PSC activity as firms develop and interact. Indeed, changes in the marketplace are constant. For example, RONCO, an American demining firm with experience in Angola, Mozambique, Afghanistan, and Bosnia, well known for its expertise in mine technologies and

⁴⁹James R. Davis, Fortune's Warriors: Private Armies and the New World Order (Vancouver: Douglas & McIntyre Ltd., 2000), p. xii; Dino Kritsiotis, "Mercenaries and the privatisation of Warfare," Fletcher Forum of World Affairs 22 (Summer/Fall 1998), p. 11.

⁵⁰Harvey B. Feigenbaum and Jeffrey R. Henig, "Privatization and Political Theory," *Journal of International Affairs* 50 (Winter 1997), p. 338.

the training of mine-sniffer dogs, started out as a development assistance firm before moving into the realm of humanitarian demining. At the same time, consolidation is taking place in the PSC industry. Armor Holdings, for instance, has been labelled a growth through acquisition oriented company in a marketplace that is currently undervalued and thus presents no barriers to further acquisitions.⁵¹ Attracted by its high profitability, Armor Holdings in March 2000 added to its Mine Action Group the firm Special Clearance Services (SCS).⁵²

Diligence would be also required because of the movement of services and contracts within the industry. It is clear, for instance, that firms alter their service packages over time, moving along the continuum of soft to hard services. For instance, GSG worked in demining and guarding in many of the world's trouble spots before turning to the more robust service of military training. It is additionally clear that sub-contracting and consortium building, to date a feature of the industry, would have to come under the scope of the regulation. In the case of humanitarian demining, DSL, RONCO, GSG, Mechem, and Royal Ordnance have all been involved in these kinds of activities to varying degrees with each other. It also extends to the more robust services: Sandline International relied upon EO to fulfill its controversial contract in Papua New Guinea. In short, corporate manifestations and manipulations should not escape regulatory oversight.

The second factor, informed by regime theory, is that home states, despite the problems noted above, would have to take a further interest in promoting human security. One must look to the independent role of states in this case because of the problems amongst NGOs which prevent them from being mobilisers for action or, in the words of Ethan Nadelmann, "transnational moral entrepreneurs." Regimes can reflect more than just economic and political concerns of states; humanitarian interests can also be engines for policy. But to do so for PSC regulation requires

⁵¹The Wall Street Transcript, (17 April 2000).

⁵²Armor Holdings, "Armor Holdings reports strong quarter," (14 November 2000), (biz.yahoo.com/prnews/001114/fl_arbor_h.htm).

⁵³See Ethan A. Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44 (Autumn 1990), pp. 479-526. One should not, however, overstate the importance of NGOs in spurring on state action. For instance, while the roles of NGOs as catalysts and coordinators in the negotiation of the Ottawa Convention was important, NGO activity in many ways reinforced the already existing pro-ban stance of states rather than bringing about a change in state policy. See Andrew Lathan, "Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines: A Research Agenda," Occasional Paper No. 62, York Centre for International and Security Studies, Toronto, Canada, October 2000, pp. 2-3.

that human security become more central to state conduct. This centrality is pivotal because studies on the evolution of non-state force reveal that states stepped in to regulate and monitor only when their own interests were jeopardised by the activities of non-state formations.⁵⁴

Thus, one should be wary of PSC-home state interaction. To a certain degree, a human security impetus has somewhat informed the actual usage of PSCs by home states. The United States employment and oversight of MPRI's Washington-sponsored security sector reform in Nigeria is but one example. There is also the fear that in the climate of downsizing, PSCs might be used by home states to maintain their influence abroad by serving as the medium for *de facto* foreign policy without the usual public oversight. With respect to humanitarian demining, note the contention that RONCO is an arms supplier that works closely with the Central Intelligence Agency (CIA). Take this allegation: during its humanitarian demining in Rwanda in 1995, RONCO imported explosives and armoured vehicles which, under the direction of the Pentagon, were given to the Rwandan military in contravention of a United Nations arms embargo.⁵⁵ True, one may give RONCO the benefit of the doubt; equipment often has dual usage, one can always question the reliability of the source, and demining has become a very competitive business which opens the door to dirty tricks. Nonetheless, the lack of transparency in PSC-home state relations does nothing to remove the cloud of suspicion. Therefore, a human security PSC policy would have to envelop not only contracts let abroad, but those also those sought at home.

Beyond their specific interest in some PSC affairs, states would also have to overcome their seemingly *laissez-faire* approach towards privatisation in the international system. While *laissez-faire* implies a high level of freedom and a lack of regulation, it is key to recall that it is the result of governmental policy. With respect to PSCs, they do not face regulation and continue to work in ways which both are damaging to human security and are reshaping the conduct of international life.

⁵⁴Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994), p. 20. For instance, South A frica stepped up its attempt to regulate its PSCs in order to prevent it further embarrassment such as that it incurred during EO's 1997 operation in Papua New Guinea.

⁵⁵See Ken Silverstein, *Private Warriors* (New York: Verso, 2000), p. 168.

As for the privatisation of relief delivery, many analysts talk of the "humanitarian alibi," activity performed that avoids essential political measures made by states.⁵⁶ For the likes of Antonio Donini and David Shearer, the more donor states magnify the importance of humanitarian assistance to the degree that it becomes a mobilising myth, the more it can be used as a substitute for political action and a contemporary form of containment.⁵⁷ One can see in the words of Andrew Natsios, the former director of the United States Office of Foreign Disaster Assistance, the degree to which humanitarianism has become a panacea:

Diplomats now use disaster response as a preventative measure to stave off chaos in an unravelling society, as a confidence-building measure during political negotiations, to protect democratic and economic reforms, to implement peace accords which the U.S. had mediated, to mitigate the effects of economic sanctions on the poor, where sanctions serve geopolitical ends, and to encourage a political settlement as a carrot to contending factions.⁵⁸

Putting all this on the plate of the private sector, and expecting timely and effective results, is unrealistic. Although privatisation may hold the means states wish to apply, it must also be subject to the engagement of states to provide political direction. States participating in the proposed regime would have to take responsibility for the effects of privatisation and hold the promotion of human security as a key motivating tenet of that responsibility.

Concluding Remarks

Obviously, as the last few sections show, re-instilling the 'humanitarian' in humanitarian demining might serve as the catalyst for a much larger enterprise. But in the even bigger picture, this endeavour's potential acceptability is actually based on the facts that it is relatively conservative in nature and not nearly as ambitious as other possibilities. It does not propose a grand international regime for human security covering all state conduct. It concerns only a small number of states and while human security is its focus, it centres attention primarily upon one type of actor. In a similar vein, it does not propose intrusive conditionalities. This mitigates

⁵⁶Donini, "Asserting Humanitarianism"; Larry Minear, "Humanitarian Action and Peacekeeping Operations," background paper for the UNITAR/IPS/NIRA Singapore Conference, 24-26 February 1997, (www-jha.sps.cam.ac.uk/a/a024.htm).

⁵⁷Donini, "Asserting Humanitarianism," p. 81; David Shearer, "Aiding and Abetting? Humanitarian Aid and Its Economic Role in Civil War," in Mats Berdal and David M. Malone, eds., *Greed & Grievance: Economic Agendas in Civil Wars* (Boulder: Lynne Rienner Publishers, 2000), p. 199.

⁵⁸Cited in Shearer, "Aiding and Abetting," p. 198.

the concerns of some critical to the human security agenda who see it as crusading, an activity which will sacrifice order in the international system.⁵⁹ Instead, this paper only makes the suggestion that limitations be placed on certain privatised means that flow generally from North to South, from home state to host state.

It is also obvious that although this course of action is not as demanding on the international community, it is nonetheless important. Humanitarian demining is core to the Ottawa Convention, peace-building, and human security. But because of reasons of expertise and post-Cold War economic and political thinking, humanitarian demining rests largely in the hands of private actors. Privatisation by itself is not necessarily a bad thing; if appropriately conceived and managed, it can bring about cost reductions, efficiency, and the effective attainment of goals. The difficulty, however, is that the work of private actors such as NGOs and PSCs, as currently managed and regulated, along with the activity and attitudes of states, has resulted in some very public problems. At times these problems have occurred in areas where humanitarian demining is underway, in other instances where it is not. But in all cases they detract from the holistic, human-centric aspects of human security. These aspects are imperative: "Mitigating the effects of landmines cannot be conceived simply as a technical problem. To be effective, interventions must always be linked to the broader objective of avoiding casualties and making productive resources available, and must be situated within the broad social and economic context."60 Achieving the ends of humanitarian demining effectively as desired by the Ottawa Convention lies in understanding the all-around impact of the means presently employed.

⁵⁹See William W. Bain, "Against Crusading: The Ethic of Human Security and Canadian Foreign Policy," *Canadian Foreign Policy* 6 (Spring 1999).

⁶⁰Hubert, "Challenge of Humanitarian Mine Clearance," p. 331.