PRIVATE SECURITY CONTRACTORS IN THE WAR ON TERRORISM:
MEN OF HONOR OR DOGS OF WAR?

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ABSTRACT

The end of the Cold War and ascendance of Globalization were the catalysts that allowed the transformation of mercenaries into Private Security Corporations (PSCs). This transformation of lone rogue warriors into legitimate corporations specializing in the market of force would have a dramatic and long lasting effect on modern warfare. PSCs, being an integral part of the legitimate use of force by sovereign states, must have mechanisms in place to ensure moral and ethic safeguards, and adherence to international law. Likewise, the Global War on Terrorism ushered in a new era of reliance on PSCs to bridge the security gaps created by a smaller military force being stretched too thin. PSCs were the logical stop gap solution. While they were awarded lucrative contracts,
little thought was given to oversight of actions by PSCs and their employees. This failure and the lack of legislative or executive branch regulation in a dynamic situation has been much more reactive than proactive, and created a “Wild West” perception that the government has taken remedial steps to correct. Reliance on PSCs are moving them toward becoming a permanent fixture in the government, thus much more work needs to be done in the area of transparency, oversight, and ability to prosecute violations of law, to ensure proper use of force in the execution of our foreign policy.
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Chapter 1

Changing Battlefields

Sovereign governments have often relied on mercenary forces to assist with maintaining power, resources, or extending foreign policy. The United States is no exception and continues the practice today, albeit in its modern form, the Private Military Corporation. Many terms are used to describe these modern day soldiers of fortune: Private military corporation (PMC), private security company (PSC), contractor, and private army, among others. The names have become synonymous, however their functions are not. This paper with focus on the armed personnel providing defensive security to US interests primarily in Iraq, and to a lesser extent in Afghanistan. These armed personnel are referred to as PSCs and are a subset of PMCs. I will refer to these corporations as private security companies and their employees as private security contractors. Both terms are abbreviated PSC.

Private Military Corporations are deeply imbedded with the US military, so much so that we would not be able to defend ourselves, let alone fight on foreign soil, without
their services. PMCs provide the full spectrum of service, from feeding our soldiers, laundry service, transportation, and maintenance to providing intelligence gathering and support to high tech equipment. Most of these jobs are performed by regular employees who are unarmed. They are strictly workers, much like service providers in civilian life, but operating in austere environments. While these people provide a vital service that is crucial to the fight, they have little direct effect, if any, outcome on battles. PSCs, on the other hand, are routinely called upon to fire shots in anger. Although PSCs are classified as defensive assets, the very nature of warfare requires offensive action. These shots fired in anger, regardless of nature, can have a critical impact on the outcome of the war and on the extension of our foreign policy.

Several incidents in Iraq, where civilians have been killed by PSCs, have created tense moments in foreign relations. There have even been times when the Secretary of State has personally intervened to calm situations. Former Secretary of State Condoleezza Rice ordered a review of the State Department’s security practices following the
Nissoor Square incident, in which 17 Iraqi civilians were killed by members of the PSC Blackwater. The panel assembled to review the security practices found: PSCs “...operate in an overall environment that is chaotic, unsupervised, deficient in oversight and accountability, and poorly coordinated.” The panel recommended that:

“...Prompt measures should be taken to strengthen the coordination, oversight, and accountability aspects of the State Department’s security practices in Iraq in order to reduce the likelihood that future incidents will occur that adversely affect the overall US mission in Iraq.”

Oversight and accountability became the mantra of Congressional and military leaders, but little has been done to correct the deficiencies. There is much work to be completed to fully integrate PSCs into the modern battlefield, while simultaneously ensuring adherence to international law and furtherance of United States security objectives. PSCs are a force multiplier when properly utilized and supervised. If the control of this

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2 Ibid., 4.

3 Ibid.
“purchased” force is not maintained they can become an even bigger liability, and have lasting negative effects on our National Security Strategy.

There is a place on the modern battlefield for this new breed of mercenaries. I have personally witnessed their sacrifice and service to this country. Unfortunately, I have also seen the negative side of PSC personnel, operating as if immune to any rules. I subsequently learned this is not far from the truth. My purpose is quite simple: identify the problems faced in accountability and oversight of PSCs and offer recommendations to fix the shortcomings, which will allow better utilization of a valuable asset.

To get to the recommendations, it is important to understand the lineage of hired soldiers. To understand modern PSCs, you must first understand their roots and the evolutionary development cycle. Chapter two offers a condensed review of the evolutionary cycle from their origin to the Global War on Terrorism. Contrary to popular belief, the Global War on Terrorism is not the first time the U. S. has hired mercenaries to assist on the
battlefield. Chapter three offers a detailed analysis of the dramatic increase in the number of soldiers for hire and the transformation into legitimate businesses operating as PSCs. Chapter four offers information about PSC conduct and the need for oversight and mechanisms to punish violations. The final chapter presents my recommendations to ensure proper measures are implemented by the U. S. government to ensure ethical and legal conduct by PSC personnel and their employers.
Chapter 2

Evolution of Mercenaries into Private Military Corporations

Over the ages, soldiers hired by sovereign governments or individuals have been called by many names. Many of the names are ambiguous, while others are very descriptive of their purpose. Mercenaries, legionnaires, wild geese, hirelings, soldiers of fortune, hired guns, contract killers, contractors, and corporate warriors are some of the more common terms. Regardless of the terminology, they all share a common thread: they wage war for money. Mercenary is the most universal term used for hired soldiers. The English word originates from the Latin words mercenarius (‘hireling’) and merces (‘reward’). The Oxford Dictionary defines mercenary as a professional soldier hired to serve in a foreign army.¹ This definition is very broad, and would encompass many people engaged in legitimate roles, such as the British Gurkhas, the French Foreign Legion, and the Swiss Guard, whose mission is to provide security to the Vatican. Webster’s Dictionary more

¹ Oxford Dictionary, s.v. “Mercenary.”
narrowly defines a mercenary as “one that serves merely for wages; especially a soldier hired for foreign service.”

The most widely-used legal definition for mercenaries is found in Article 47 of the First Additional Protocol of 1977 to the Geneva Convention, and is a very narrow definition. The Article starts by stating “a mercenary shall not have the right to be a combatant or a prisoner of war.” This very strong language establishes the general dislike for mercenaries’ involvement in armed conflict. It then defines, a mercenary is any person who:

(a) Is specially recruited locally or abroad in order to fight in an armed conflict;

(b) Does, in fact, take a direct part in the hostilities;

(c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

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2 Webster’s Dictionary, s.v. “Mercenary.”
(e) Is not a member of the armed forces of a Party to the conflict; and

(f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces. 

The definition contained in Article 47 of the Geneva Convention is considered “unworkable” by a number of governments. Because all conditions of Article 47 must be met to establish someone as a mercenary, there are loopholes, which allow participants to circumnavigate the Article, and consequently, not meet the definition. The contract language could be written in such a way that the contractors do not meet the definition of a mercenary: for example, “in its aborted contract with Papua New Guinea (1997), Sandline International’s employees were to be termed Special Constables; they would thus not have been classified as mercenaries since – under (e) above – they would have been members of the armed forces of a party to

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Mercenaries have been an integral part of warfare since the beginning of time, and are often referred to as "the second oldest profession." It can be argued that mercenaries are the oldest male profession, since the oldest profession, prostitution, exclusively dominated by women at the time. "There is no record of the first mercenary, but the profession was born the first time three required conditions were met: one, a war to fight; two, someone or a group preferring to pay for a substitute; and three, a fighter or group of them willing to hire out to do the fighting." 

The oldest record of mercenary warfare dates back to the use of foreign "auxillaries" by Ramesses II, the third

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5 Ibid.

Egyptian pharaoh of the nineteenth dynasty. The Battle of Megiddo in 1479 B.C. established an Egyptian hegemony throughout the region for several centuries. As such, Egypt’s use of mercenaries increased dramatically for two reasons. First, Egypt enjoyed increased wealth and power during this period, which had a direct impact of its citizens preferring to enjoy life rather than wage war. Second, the Nubians and other tribes of North Africa had been displaced as a result of famine in their homelands. This created a large pool of able-bodied men to recruit into military service.⁷ King Ramesses used the mercenary forces in the ranks, but maintained Egyptian nobles in the positions of leadership over them. He used his predominately mercenary force against the Hittites in the Battle of Kadesh in 1274 B.C. Although the battle ended in a stalemate, it is significant in that it demonstrated how mercenary forces would forever change the battlefield.

Within a century, the Egyptian army was comprised almost exclusively by mercenaries. This conglomeration of

contract warriors successfully defended Egypt for 700 years, before falling to the Persians in 525 B.C. The Egyptians had added Greek mercenaries to the payroll in the final years before falling to the Persians. Ironically, the Persians forces were dominated by Greek mercenaries. Shortly before the battle, Egypt experienced one of the shortcomings of reliance upon mercenaries. Many of the Greeks in the service of Egypt changed sides to fight with their brethren for the Persians. This deception gave rise to one of the biggest criticisms of reliance on mercenaries; since they pledged their allegiance to the highest bidder.

Niccolo Machiavelli would become one of the biggest critics of mercenary employment. His treatise on acquisition and maintenance of political power, The Prince, was forcefully critical of any use of mercenary forces. "Mercenaries and auxiliaries are at once useless and dangerous, and he who holds his state by means of mercenary

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8 Ibid., 6.
troops can never be solidly or securely seated.”

Machiavelli believed mercenaries were counter-productive “...because they have no tie or motive to keep them in the field beyond their paltry pay, in return for which it would be too much to expect them to give their lives.”

Mercenaries have been engaged in many of the great battles throughout history. Almost one-third of Alexander the Great’s army, approximately 12,000 men, was comprised of specialized mercenaries, which he used to invade Persia. Although outnumbered, Alexander’s forces inflicted heavy losses on the Persians. Caesar’s cavalry was almost entirely composed of mercenaries, Mercenary use continued through the Norman Conquest by William the Conqueror.

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12 Ibid., 98

While there is certainly wisdom in Machiavelli’s treatise, obviously few leaders have followed it. Mercenaries continued to be employed after Machiavelli’s stern warning. Even in Machiavelli’s homeland, the Italian city-states employed Condottieri rather than maintain a standing army, during the Renaissance. “Since the fourteenth century, Italy had been the ‘promised land’ of all knights to whom war was chiefly a means of making money. The single groups, the compagnie di ventura, were supplied and paid by their leaders, the condottieri, who offered their services to every power willing to pay their price.”

The American Revolution saw mercenaries employed by both the British and the Colonist. Landgrave Fredrick II and other German noblemen hired out thousands of their conscripted subjects to England for service in the colonies. Of the approximately 30,000 mercenaries, the majority (roughly 17,000) were Hessians, thus, all

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mercenaries were generally referred to as Hessians.\textsuperscript{15} The Battle of Trenton is one of the most famous incidents involving the Hessian mercenaries. General George Washington crossed the Delaware River, under cover of darkness, on Christmas Night, 1776. The surprise attack was highly successful, and resulted in 900 of the 1,400 Hessians being captured.

The Colonist employed a now famous mercenary: Baron von Steuben, as the first Inspector General. Baron von Steuben had been a Captain in the Prussian Army. Benjamin Franklin had met von Steuben while in Paris, in 1777, and was impressed with his abilities. Fearing General Washington would be reluctant to hire a Captain for such a daunting task as Inspector General, he embellished von Steuben’s credentials, introducing him as a Lieutenant General. Fearing General Washington and the Continental Congress would find someone else to fill the role; von Steuben volunteered to serve without pay, or more accurately, delayed compensation. He offered his

services in return for room and board, with the remainder of his compensation to come at the end of the war, should the Colonists be victorious. This was a favorable proposition for the Continental Congress, since their coffers were low. Ultimately, England lost and von Steuben was paid. For his service, von Steuben received a track of land near Utica, New York, and was granted American citizenship in 1784. The American Revolution is not the only time in our brief history that mercenaries have been employed. Abraham Lincoln hired Allan Pinkerton to provide personal security when he became the President in 1861. When the Civil War started a short time after taking office, Lincoln named Pinkerton the head of the newly formed Secret Service, and was responsible for espionage against the Confederate Army. The roles of the Pinkerton Detective Agency were often blurred between that of a government agency and private corporation. This distinction was further blurred in 1871, when the Pinkerton National Detective Agency was awarded a contract to provide

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“the detection and prosecution of those guilty of violating federal law.”

This tenuous situation led to the Anti-Pinkerton Act in 1893, which prevents an employee of the Pinkerton Detective Agency (or similar organization) from employment by the United States Government or the government of the District of Columbia.

Again in 1941, the United States relied on mercenaries. The Flying Tigers, commanded by Claire Lee Chenault, was designated the 1\textsuperscript{st} American Volunteer Group, but was far from volunteers. The Flying Tigers was a private military contractor, hired with approval of President Franklin D. Roosevelt, to defend China from Japan, prior to the United States entering World War II. China requested assistance from the United States, but since the United States had signed a non-aggression pact with Japan, this operation had to remain a covert operation. The operation was funded by the United States by loaning money to the China Defense Supplies. Purchases

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\begin{itemize}
\item[$^{18}$] 5 U.S.C. §3108
\end{itemize}
}
were then made by the Chinese under the “Cash and Carry” provision of the Neutrality Act of 1939. Chennault recruited 100 pilots from all branches of the US military. The “volunteers” were discharged from their respective branches and immediately employed by Central Aircraft Manufacturing Company, the shell company created to funnel the money. The pilots were contracted for “training and instruction,” however their real mission was air combat with the Japanese. Each pilot earned a salary of $500 a month (nearly double the average military pilot salary), and a $400 bonus for each enemy aircraft he shot down. The Flying Tigers were credited with destroying nearly 300 enemy aircraft, while only losing 16 pilots in combat, before being disbanded on July 4, 1942.

“Although not quite as direct as the British employment of the Hessians in the American Revolution, the

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21 Ibid.
United States did in fact hire Koreans, Filipinos, and Thais to fight the communists on behalf of South Vietnam.”

Although not mercenaries in the traditional sense, the United States subsidized the operational costs for the respective countries because they could not bear the financial burden alone. Additionally, the United States agreed to modernize their forces in exchange for the Vietnam service. Another example from the Vietnam conflict is OPLAN 34A, a highly-classified, covert U.S. program started in 1961 by the Central Intelligence Agency. Later it was transferred to the Military Assistance Command, Vietnam Studies and Observations Group (MACV-SOG) in 1964 during Operation Parasol/Switchback. MACV-SOG was a multi-service, unconventional warfare task force under the direct control of the Pentagon.\footnote{Robert Noe, “MACV-SOG.” http://www.macvsog.org [accessed March 1, 2009].} The operation included aerial reconnaissance, naval sabotage operations, and more importantly, insertion of mercenary teams into North Vietnam. By September, 1965, “MACV-SOG had at its disposal

\footnote{Michael Lee Manning, Mercenaries. [New York: Presidio Press, 2005], 143.}
two battalions of American-led Nung tribesmen as reaction forces capable of performing large combat operations.”

Additionally, MACV-SOG had a covert C-123 aircraft squadron piloted and manned by Nationalist Chinese. MACV-SOG often operated with CIA trained Meo and Montagnard tribesmen further evidencing the covert relationship with mercenaries during the Vietnam War.

September 11, 2001 is the date that will forever be remembered for the attacks on the World Trade Center and the Pentagon. It is also the date that changed the use of contractors on the battlefield. On September 26, 2001, a CIA undercover operative flew into the Panjshir Valley of North-Eastern Afghanistan with $3 Million. His mission was to secure a partnership with the Northern Alliance, to enable a defeat of the Taliban. The operative, known only as Gary, paid General Mohammed Fahim $1 Million to solidify his support for the United States, and guarantee Fahim’s

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24 Ibid.

25 Ibid.

10,000 soldiers would assist when the invasion started.\textsuperscript{27} This arrangement was repeated with the other Commanding Generals of the Northern Alliance, with successful results. Operation Enduring Freedom (OEF) started on October 7, 2001 as a response to the September 11\textsuperscript{th} attacks, with the invasion of Afghanistan by approximately 100 Special Forces soldiers and members of the Central Intelligence Agency’s (CIA) Special Activities Division. This initial force assisted the Northern Alliance by providing close air support, strategy and money, while the Northern Alliance provided the man-power to fight the Taliban. The Northern Alliance was arguably a mercenary body employed by the United States Government. Although the Northern Alliance was fighting for independence from the Taliban, Afghans are notorious for fighting for whichever side pays more. The American soldiers became the command and control of the Northern Alliance soldiers while their Afghan counterparts followed their direction. The initial assault by the Special Forces operators, with assistance from the Northern

Alliance, broke the Taliban stronghold of political power and caused an estimated 30,000 casualties in approximately thirty days. This set the stage for implementing a democratic government and the appointment of Hamid Karzai as the president, which solidified our Afghan foreign policy and furthered the cause of the Global War on Terrorism; a task that would have required a lot of additional US military personnel and money but for the Northern Alliance participated.

With the new democratic government being formed there was a necessity to provide security to the Afghan government officials, US government officials sent to assist, and critical infrastructure. The question became who would provide the needed security. Initially, SEAL Team 6 (also known as DEVGRU for Development Group, SEAL Team 6), the elite antiterrorism group of the United States Navy, got the job. “Most agreed that the emergency deployment of SEAL Team 6 was overkill and expensive, but the importance of Karzai’s survival to US national
interests made even extraordinary measures necessary."^{28}

The US State Department, who took the lead with forming the new government, awarded contracts for security. These contracts were for personal security of government officials, including President Karzai, and physical security of US and Afghan governmental buildings. DynCorp was already under contract to the State Department for security in Jerusalem and Bosnia, so adding $50 Million for the protection of Karzai was relatively easy.

It was believed that having civilian contractors guarding Karzai would instill a more positive public perception, rather than being guarded by US military personnel which added to the impression that he was a puppet to the United States. Additionally, while being guarded by SEAL Team 6, an attempted assassination of Karzai resulted in two innocent Afghans being killed along with the assassin. This incident, while justifiable, was unfortunate, especially in the fallout within Afghanistan. By using DynCorp contractors the US would have the ability

to shift the blame, should another unfortunate incident occur. Finally, the training for the security detail could be tailored to the mission, resulting in less chance for an unfortunate incident while maintaining the same level of protection. While SEAL Team 6 is among the premier counterterrorism forces in the world; they are not specifically trained to be body guards, and contributed to the innocent civilians’ death in the assassination attempt.

Karzai’s Security Team was led by Craig Maxim, a former US Army Delta Force operator. He recruited, trained and deployed forty-six former special operation personnel and police officers. Maxim was successful in keeping Karzai protected and not causing any unfortunate incidents during his 90 day deployment. Ironically, following Machiavelli’s edict, Maxim and his entire team quit after satisfying their 90 day contract over a dispute with DynCorp involving employee benefits and holiday pay.

Whereas von Stueben worked for room and board and the prospect of future compensation should his employer become victorious, the modern corporate soldier was compensated very well. Security contractors working for the State
Department made $450-$550 a day. The Karzai contract was even better, paying $600 a day and guaranteed year-long contract.\textsuperscript{29} The allure of money caused many military members, especially Special Forces, to leave government service and enter the market of force. Unfortunately for the Armed Forces and US tax payers, these members also took “millions of dollars worth of training and institutional knowledge to the private sector, where it is repackaged and sold back to the government at a premium.”\textsuperscript{30}

On March 20, 2003 the US invasion of Iraq began as the next phase of the Global War on Terrorism. It would also become the biggest and most lucrative playground that private security contractors had ever experienced. Although the Saddam Hussein regime was quickly toppled from power; chaos and instability followed in its wake. The United States government had a decision to make: increase troop strength to maintain law and order or outsource the security requirements to private industry. Needless to

\textsuperscript{29} Robert Young Pelton, \textit{Licensed to Kill}. [New York: Three Rivers Press, 2006], 76.

\textsuperscript{30} Robert Young Pelton, \textit{Licensed to Kill}. [New York: Three Rivers Press, 2006], 76.
say, increasing military presence would not be popular at home, and thus was never seriously considered. On April 18, DynCorp was awarded a $50 million contract to assess the security situation and hire the first one-thousand contractors to begin training for the creation of Iraq’s law enforcement capabilities. “Every epoch of history has known mercenaries in some form, and rulers of every stripe have utilized their services.”31 This was merely the beginning of a new era, both in terms of the number of security contractors, vis-à-vis mercenaries and the amount of money it required for their services.

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Chapter 3

The Need

The end of the Cold War precipitated an increase in global insecurity. Due to the breakup of the former Soviet Union, the United States was the only remaining superpower. Countries that had long been supported by either the United States or the Soviet Union were now abandoned, resulting in long-simmering conflicts reaching a boiling point. This increased insecurity created the need for private security that was readily filled from a pool of former military personnel, many with specialized training and combat experience. Of course, these ex-soldiers also joined conflict groups, which further added to the insecurity. It is estimated that as many as 7 million former soldiers, mainly from the former Communist Bloc, were unemployed due to the end of the Cold War.\(^1\) The United States cut a third of their military personnel, equating to 500,000 people. In essence, supply and demand were both greatly expanded.

“The end of the cold war has allowed conflicts long suppressed or manipulated by the superpowers to re-emerge. At the same time, most armies have got smaller and live footage on CNN of United States soldiers being killed in Somalia has had a staggering effect on the willingness of governments to commit to foreign conflicts.”

Inexpensive arms from former Soviet Bloc countries flooded the market. Former East German weapons, including over 1 million small arms, were sold for pennies on the dollar. To illustrate this point, in Uganda an AK-47 can be purchased for the price of a chicken. Likewise, the disintegration of the former Soviet Union made available huge stockpiles of small arms. The arms flooded the world market to satisfy their need for hard currency and because export controls were lost. Many of the weapons fell into the hands of Russian organized crime, who sold the weapons with no regard for their intended use. The bargain basement sale of military equipment was not limited to

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small arms. Entire inventories of sophisticated military equipment, including fighter aircraft, main battle tanks, ships and communications equipment were made available to the highest bidder through legitimate and illegitimate means.

With the market flood of cheap military equipment and personnel, a fundamental shift in the market of force occurred. “One of the things that made nation-states the most effective organizations for waging warfare in the industrial age was the overwhelming expense of troops, equipment, and supplies.”5 States no longer maintained the advantage of military superiority against rebel groups, who could now afford the most sophisticated equipment and superior-trained forces. Failing nation-states turned to PSCs to maintain control, even if temporary. These endeavors were often funded through natural resource concessions, as was the case with Executive Outcomes in Angola and Sierra Leone.

Likewise, globalization added to this paradigm shift. Borders became more permeable and countries under the former “Iron Curtain” were now among the nation-states with open markets leading to competition for money and world recognition. Western industry moved quickly into these developing countries to develop raw-material reserves and cheap labor. As such, corporations needed security for its people and facilities in these conflict-prone states.

“Consequently, such businesses were among the first to replace the protection previously afforded by the state with the services provided by PMCs.”

“These developments create real possibilities to achieve economic prosperity, spread political freedom, and promote peace. Yet they are also producing powerful forces of social fragmentation, creating critical vulnerabilities, and sowing the seeds of violence and conflict.”

Western governments have become reluctant to embark on peacekeeping missions for fear of sustaining casualties, incurring costs, and becoming

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entangled in expanding regional conflicts. President Clinton declared that the United States would only support UN peace operations if they were crucial to international security or U.S. national interest. “For years, the U.N.’s top peacekeepers have been among the world’s staunchest critics of private security contractors, often portraying them as unaccountable mercenaries. Now they are clients.”

“The vacuum of inadequate international and national security for large populations in the Third World was filled by self-appointed guarantors of social order – rebel organizations, insurgent groups, and even terrorist networks.” These conflicts have far reaching effects and are no longer contained within state boundaries. The spread of technology and knowledge along with the relative ease of movement of people has globalized insecurity, as evidenced by the 9/11 terrorist attack.

“The accelerating decay of the nation-state, the erosion of the government’s monopoly on the legitimate use of force, disappearing sovereignty, the gradual

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disintegration of society, and the formation of social factions are just some of the developments that have crystallized in the third world in the past decade. The logical—if not completely unavoidable—consequence has been the increase of markets of violence.”

The Western governments were growingly reluctant to get involved in third world conflicts; consequently, it should not come as a surprise that PMCs have filled this gap to assess, train, and even fight for client groups.

The National Energy Policy (NEP) was published by the United States on May 17, 2001. This policy stated the United States would be competing for decreasing oil supply against the rapidly expanding economies of China and India. It predicted the U.S. becoming more reliant on oil from the Caspian region, Africa and the Arabian Peninsula, making these areas strategically more important. It alleged the areas of production and supply would generally be located in weak states with questionable security. The report identified Iraq and Afghanistan as the critical areas in the supply lines. Afghanistan was crucial to transporting Caspian oil to the Indian Ocean. Iraq, with large oil

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reserves, could pressure the West to destabilize Saudi Arabia. “The NEP drew a direct link between the security of oil fields, supply lines, and future energy reserves and the national security of the United States.”\(^{11}\)

“Most dangerously, a variety of threats have become global in scope and more serious in their effects as a result of the spread of knowledge, the dispersion of advanced technologies, and the movements of people.”\(^{12}\) The terrorist attack against the United States on September 11, 2001 manifested this thesis and became a catalyst for greater security consciousness around the world. It was a logical conclusion that if the United States, arguably the most powerful country in the world, was susceptible to security risk, so too was everyone else.

Since the terrorist attacks of September 11, 2001, a diffuse climate of threat has spread throughout Western countries and has led, among wealthier social groups and individuals, to both an increased need for


security and an increased demand for professional protection services.\textsuperscript{13}

This security worldview, regardless of validity, has expanded and legitimized the niche market for private security services, and has furthered the overall sense of insecurity in developing countries.

Two vital things happened soon after the Bush Administration’s “Mission Accomplished” milestone that would have lasting effect on the use of privatized force in Iraq. First, the Coalition Provisional Authority (CPA) was created, with Ambassador L. Paul Bremmer chosen to lead the organization. The CPA and Bremmer were responsible for the reconstruction of Iraq. Bremmer would eventually have oversight, or lack thereof, of all contractors in Iraq. The other was the US government’s passive-aggressive approach of delegating the responsibility of corporations and entities in Iraq for providing their own security. Although not a terrible hindrance to the corporations, since they outsourced the security and added the cost to their contracts. This additional cost was sometimes as much

as an additional 50% of the original contract price. It did become a nuisance to the US government, especially the military, because there were thousands of armed contractors scattered across the battlefield.

In a matter of months, private security in Iraq went from a fledgling cottage industry to a multibillion dollar endeavor, with Blackwater, HART, Triple Canopy, DynCorp, ArmorGroup, Control Risks Group (CRG), Erinys, and Aegis emerging as the big players. The official Pentagon estimation of the recognized private security industry presence in Iraq by late 2003 hovered at around sixty companies with approximately twenty-five thousand employees.\(^{14}\)

This number is possibly doubled when Iraqi security companies and unregistered internal security companies are added. The General Accounting Office (GAO) set the figure much higher, although still an estimate, at 48,000.\(^{15}\)

Initially there was little coordination among the different contractors and the military. The military attempted to get better coordination by creating the Reconstruction Operations Center (ROC), after the fateful Blackwater contractor killings in Fallujah on March 31, 2004. The


incident brought to light the role of security contractors for the American public, albeit not a complete account. The images of the burned and mutilated bodies of the four contractors were shown by the world media. It was a major victory for the insurgency and dealt a tremendous blow to the Coalition. The question arose: where was the military and why didn’t they protect these contractors? The answer is very simple; the military didn’t even know they were operating in Fallujah. The ROC was the military’s response to coordinate actions of the contractors and provide support to them, when required. Blackwater refused to participate. Since they were contracted to the US State Department the military could not force their compliance, nor would the State Department require it. This noncompliance left the military leaders in a no-win situation. They could not force compliance and they could not coordinate efforts. This ticking time bomb would eventually explode.

Two additional factors contributed to the number of security contractors on the battlefield. First, the security situation in Iraq was still very tenuous even
though the war was declared over and the US Government moved into the reconstruction phase. This general “lawlessness” caused great concern for the security of diplomatic personnel, mainly ambassadors and diplomats, including Bremer, and other intra-agency personnel. The State Department awarded a $3.5 billion contract for diplomatic security, commonly called the Worldwide Personal Protective Services (WPPS) contract to three companies: DynCorp, Triple Canopy, and Blackwater. The contract was divided among the companies geographically, with DynCorp responsible for Northern Iraq, Triple Canopy in Southern Iraq, and Blackwater in Baghdad and Al Hillah. Security contractors referred to the contract as “MOAC,” or mother of all contracts\textsuperscript{16} because it was so lucrative.

Secondly, due to major downsizing of the US military force structure in the 1990s chiefly precipitated by the end of the Cold War, many of the basic non-combatant functions had been privatized. Logistics, maintenance, food service, transportation, and anything else that could

be demilitarized was contracted to PMCs. The biggest of the contracts went to Halliburton and its subsidiary, Brown and Root Services (BRS). This contract for worldwide logistic support, called Logistics Civil Augmentation Program (LOGCAP), was initially awarded just previous to the Somalia campaign in 1992, and “Brown and Root employees arrived in Mogadishu just 24 hours after the first U.S. troops and stayed until the final withdrawal in March 1995.” This set the stage for the use of security contractors over a decade later, in Iraq and Afghanistan. LOGCAP is a “cost plus” contract, meaning that the actual operating cost, plus a predetermined profit margin is paid by the government for services rendered. As previously mentioned, security costs, sometimes as high as 50% of the origin service cost, got added onto the contract as operating costs. This additional cost is not only passed on to the government, but allows for more profit, since the profit is determined by actual costs. With this in mind, regardless of the need, why wouldn’t PMCs pay for added security?

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“The armed protection of people, material, and facilities is one of the realms that the United States has almost completely outsourced to private military companies.”\(^{18}\) Even the US military hired PSCs to fill security gaps. The Army Corp of Engineers had an integral part of the reconstruction of Iraq. It was required to spend an inordinate amount of time away from the security of American bases and provide vital material throughout Iraq. Military leaders already stretched thin could not provide security. Consequently, Jack Holly, Director of logistics for the Corps of Engineers, turned to six different security companies, including Aegis. Interestingly, Holly allowed Lawrence T. Peter, the Director of the Private Security Company Association of Iraq (PSCAI), the industry trade group, to attend his daily planning meetings. Holly was very supportive of the organization, and saw it as filling “the void that had been left by the U.S. government’s failure to recognize the

problem.” It is not surprising Holly would take this approach, since Secretary of Defense Donald Rumsfeld emphasized the importance of outsourcing in the 2001 Quadrennial Defense Review. It stated, “Only those functions that must be performed by DoD should be kept by DoD. Any function that can be provided by the private sector is not a core government function.” This statement set the stage for the flood gates to open; and they did.

Outsourcing became the new mantra for the heads of the Defense Department, who believed they had found a way to extend the capacity of the armed forces with fewer personnel so as to meet the growing military challenges of the new millennium.

This radical shift in thought was captured in military doctrine. Army Field Manual 3-07, Stability Operations, published in October 2008 emphasizes engaging non-governmental and private organizations as a fundamental

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part of providing stability. This concept is nested with another doctrinal template, FM 3-24, Counterinsurgency. The manual calls for a “comprehensive approach” that integrates the cooperative efforts of the departments and agencies of the United States Government, intergovernmental and nongovernmental organizations, multinational partners, and private sector entities to achieve unity of effort toward a shared goal. Although this comprehensive approach is critical to the counterinsurgency fight, it perpetuates the need for PSCs to fill the security voids. This dilemma was not a radical new problem being faced by senior Pentagon military and civilian leaders. Barry Yeoman wrote in 2004, “Pentagon Officials say they can no longer fight a war without private contractors.” If this is the case, the Department of Defense must prepare for current and future operations that integrate the regulation

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of PSC’s conduct and provide mechanisms to prosecute criminals within their ranks.

“Military companies are unfettered by political constraints. They view conflict as a business opportunity and have taken advantage of the pervasive influence of economic liberalism in the twentieth century.”

Mercenaries have long been shrouded in mystery for a variety of reasons. The profession has cycled from noble to despicable and legal to illegal. One thing has remained constant; private soldier’s activities are kept as anonymous as possible. This anonymity creates a general lack of information that requires one to form their conclusions based upon what they believe, which may or may not be true.

Historically speaking, clients who turn to PMCs had little concern of methods as long as they got the results for which they were paid. They often turned a “blind eye” to atrocities and crimes. In 1960, Moise Tshombe, a provincial tribal leader in the Congo, declared the Southern province of Katanga independent, in an attempt to protect their copper, uranium and diamond deposits. Tshombe hired more than five hundred, mostly white, mercenaries, who were very effective, but developed a
reputation for their methods and conduct. “The demeanor and ruthlessness of the mercenaries in the service of Tshombe earned them the title of Les Affreux (the dreadful ones) during their short stay in the Congo.”¹ Mercenaries often grew their profits by plundering the “spoils of war.” “Clients demand a professional attitude and, above all, results. Employees are primarily interested in getting paid.”² This historical account is but one example of the negative perception of mercenaries that has carried forward to their contemporary successors: PSCs. The African continent has such a negative impression of mercenaries that South Africa passed the Regulation of Foreign Military Assistance Act in May 1998. Under the law, South Africa would not condone the use of mercenaries that could result in human rights violations and strictly forbid its citizens from being employed as such. “Morally, South Africa was pledged to have an ethical foreign policy and a human security doctrine, both of which required regulation of


Ironically, the legislation was the result of Executive Outcomes work on the African Continent, and reported abuses by their employees, but EO welcomed the legislation and was licensed to provide services there.4

While weak or failing states may give little regard to methods, the United States Government should be very concerned with the way PSCs conduct themselves. The US has long been a watchdog of civil rights and policing those who commit atrocities. “A company’s behavior might affect the reputation of the state from which it hails or implicate the state in conflicts to which it is not a party.”5 Avant notes that adherence to moral obligations are embedded in our military’s training.6

U.S. military personnel are subject to the Uniform Code of Military Justice (UCMJ), with the goal of maintaining “good order and discipline” within the ranks.

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6 Ibid., 52.
The UCMJ is very similar to civilian laws, and includes such offenses as murder and rape. But unlike civilian laws, there are “general articles” which make it a crime to commit moral and ethical violations, such as adultery and “Conduct unbecoming an officer and a gentleman,” and “Conduct prejudicial to good order and discipline.”

Article 133, UCMJ, Conduct unbecoming an officer and a gentleman can be almost anything that brings discredit to the service or the individual\(^7\), while Article 134, UCMJ, Conduct prejudicial to good order and discipline is any conduct that has a negative impact on a unit’s ability to perform its mission.\(^8\) Soldiers begin learning adherence to UCMJ from their first day in the military, and continue to live by its code until they are discharged, and arguably beyond. Likewise, Morris Janowitz argues,

\begin{quote}
He [the military officer] is subject to civilian control, not only because of rule or law and tradition, but also because of self-imposed
\end{quote}


\(^8\) Ibid.

Since most PSCs are based in the US and draws from a pool of former US military personnel, Avant believes this moral training extends to PSC service. Although this may be true, for the most part, there are still incidents that require a means for the US to take action against PSCs that violate standing international law, just as there are mechanisms in place for military members.

“If one believes in the democratic ideals of accountability, as well as in transparency for governmental and public scrutiny, one should expect that PMCs and PSCs and their employers, both states and transnational corporations, should be held answerable for their actions, and accountable to international and domestic legislation.”\footnote{Fred Schreier and Marina Caparini, \textit{Privatising Security: Law, Practice and Governance of Private Military and Security Companies}. [Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2005], 71.}

Furthermore, the people employed as security contractors come from the entire spectrum of society. Consequently, it is only reasonable to believe some of these people will commit crime, especially when placed in the stressful situation of a combat zone.
An inherent problem with Avant’s assertion is the United States Government has little, if any, control over who the PMC hires as employees to fulfill the contract. Questionable hiring practices have plagued the industry. With the explosive growth of private security companies, unqualified or poorly trained people are sometimes hired. “Tier I operators” (personnel that had Special Forces training) have a very unique and desirable skill set and made as much as $2,000 a day.

“Over time, the ‘market for force,’ as political scientist Deborah Avant called it, reached a kind of equilibrium. It turned out there was an endless supply of people willing to pick up a gun and thrust themselves into the middle of a war, and the price fell to about $500-$700 a day.”¹¹

Many of the contractors hired for security work had no military background, thus, they had never been socialized to the moral training of the Armed Forces that Avant claims. Additionally, there are no standards for training of PSC personnel. While “tier I operators” have received extensive training and are accustomed to the type of work PSCs perform, the majority of contractors receive little,

if any, training and have limited or no experience.

According to a Security Contractor in Iraq:

The military, for all its rigidity, was a culture of rules and accountability. That had been stripped away...I was never briefed on any rules of engagement. I was never briefed on company SOPs. The rules of engagement, the way they were briefed to me, was, “if you feel threatened, take the shot.”

Prior to CPA Memo 17, dated June 26, 2004, there was no requirement to complete background checks. Reportedly, PSCs have hired convicted felons and Lautenberg offenders, who would not be allowed to possess firearms in the United States. CPA Memo 17 was intended to correct many of the deficiencies identified after the PSCs started pouring into Iraq. In order to comply with MOI vetting standards found in CPA Memo 17, employees of PSC must:

a) Be older than 20 years;
b) Be mentally and physically fit for duties;
c) Be willing to respect the law and all human rights and freedoms of all citizens of the country;
d) Pass a security/background check that confirms:
   i. compliance with the amended CPA Order Number 1 (De-Ba’athification of Iraqi Society);
   ii. no prior felony convictions; and

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iii. no history of involvement in terrorist activity; and

e) Receive operations and weapons training to the minimum standard set for the Facilities Protection Service.\textsuperscript{13}

Interestingly, CPA Memo 17 transferred oversight of PSCs to the Iraq’s Ministry of Interior. The Iraq government also maintained licensing authority for all PSCs.

Another issue is the hiring of third world nationals, many with questionable backgrounds.

The providers may be U.S. or foreign companies and their staffs are likely to be drawn from various countries, including the United States, the United Kingdom, South Africa, Nepal, Sri Lanka, or Fiji, and may include Kurds and Arabs from Iraq.\textsuperscript{14}

“Around 30 percent of the nine hundred specialists Blackwater employed in Iraq in 2007 came from the third world.”\textsuperscript{15} Blackwater President Gary Jackson acknowledges the claim, adding that the third world employees even


include Chilean specialists from the Pinochet regime. Likewise, Triple Canopy employed many Fijians, who earned $70 a day, instead of the $500 a day earned by their American and Australian teammates.

"Their [contractors] standards of discipline are usually higher than the underpaid local militaries or rebels, which often degenerate into looting forces. Unlike local troops, as outsiders they are also less likely to hold specific grudges against any one ethnic group or faction and have less reason to commit atrocities as payback for historic grievances." 

Even some of the corporations have questionable backgrounds. Aegis was founded by Tim Spicer, a former British mercenary that had worked extensively in Africa, through his former company, Sandline International. Sandline has been at the center of many controversies, including the "Sandline Affair" in which Spicer was accused of violating a UN weapons embargo. Founded in late 2002,

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“Aegis had barely existed at the beginning of the war”\textsuperscript{20} but has grown into “the main provider of security in the maelstrom that is Iraq.”\textsuperscript{21} “Now Spicer’s start-up is a direct industry competitor to the older generation of British security firms like ArmorGroup, HART, and others, which have all privately expressed shock that Spicer could convince the U.S. government of his qualifications, despite the facts of his past exploits.”\textsuperscript{22} It is difficult to understand how someone with such a checkered past could grow into the largest security provider to the United States. Robert Young Pelton offers an explanation: “In their rush to field hired guns in Iraq, the Pentagon and State Department found it convenient to turn a blind eye to the more questionable aspects of Spicer’s past.”\textsuperscript{23} Aegis had a rocky start in Iraq and a State Department investigation ensued. The Office of the Inspector General for Iraq Reconstruction conducted an audit and determined


\textsuperscript{21} Robert Young Pelton, \textit{Licensed to Kill.} [New York: Three Rivers Press, 2006], 254.

\textsuperscript{22} Ibid., 272-273.

\textsuperscript{23} Ibid., 277.
in their report, released in early 2005, that “Aegis had not thoroughly vetted or even trained a significant portion of their personnel.”

They had nothing. They didn’t have people. They didn’t have standards...Aegis people didn’t have skills, tactics, or even vetting. They (Aegis) would take people out to the range and have them fire a few shots with no judging. (Aegis) started hiring Iraqis and giving them guns and giving them passes to enter the Green Zone.

Coincidentally, Spicer coined the term Private Military Company in 1996 during a lunch meeting to discuss the formation of Sandline International. “The principals involved began working to rebrand a politically correct band of soldiers-for-hire as a ‘private military company’ and the word mercenary was to be replaced with ‘contractor.’” "The first appearance of the term ‘Private Military Company’ in the media a few weeks after the lunch suggests that the conversation may have revolved around a


\[25\] Ibid., 278-279.

public relations strategy to recast the role of mercenary in what would become one of the most significant developments in hundreds of years of privatized warfighting.”\textsuperscript{27} Regardless of the questionable activities that Spicer has been involved with throughout the years, he is a pioneer in the private security business.

Maintaining high standards of conduct for PSCs goes beyond the requirement of abiding by the laws of war and international law. Some argue that Mercenaries (or PSCs) are illegal under international law.

Within the historical structure of the nation-state, which is still the basis of international society, it is inadmissible for any State legally to authorize mercenary activities, regardless of the form they take or the objectives they serve. Even where legislation is lacking or deficient, mercenarism is an international crime. Mercenary activity arises in the context of situations that violate the right of peoples to self-determination and the sovereignty of States. In practice, mercenaries commit atrocities and impede the exercise of human rights. The mere fact that it is a Government that recruits mercenaries, or contracts companies that recruit mercenaries, in its own defense or to provide reinforcements in armed conflicts, does not make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. Under no circumstance may they use the power conferred on them

\textsuperscript{27} Ibid., 266.
to carry out acts that impede the self-determination of peoples, to jeopardize the independence and sovereignty of the State itself or to condone actions that may do severe harm to their citizens’ lives and Security.\textsuperscript{28}

If the United States cannot fight a war without PSCs, then they would be well served in promoting lawful, ethical conduct of their contracted personnel to prevent unforeseen diplomatic crisis and unintentional international outcry, which could ultimately delegitimize their use. On June 27, 2004, L. Paul Bremer, the administrator for the Coalition Provisional Authority signed Coalition Provisional Authority Order Number 17 creating an environment directly opposed to lawful, ethical conduct. It granted contractors, including PSCs, immunity from Iraqi law and guaranteed the immunity “until the departure of the final element of the MNF (Multinational Forces) from Iraq.”\textsuperscript{29}

This order essentially created a situation where PSCs could


do anything they wanted, including murder, with no fear of prosecution. This was reinforced on June 16, 2006, when an interim rule was entered in the Federal Register to update the Defense Federal Acquisition Regulation (DFARS) to authorize deadly force by PSCs. It codified that Private Security Contractors are: "authorized to use deadly force when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract." 30 This interim ruling was predicated by the Department of Defense Instruction 3020.41 "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," dated October 3, 2005. The DoD Policy clarified the status and responsibility of contractor personnel, including applicability of U.S. laws for prosecution of offenses committed by contractor personnel, including but not limited to the Military Extraterritorial Jurisdiction Act (MEJA). The Military Extraterritorial Jurisdiction Act of 2000, 18 USC §3261 31, was enacted as Public Law 106-523 in November 2000, but was later revised,

31 18 USC §3261.
in 2005, to include contractors working for all Federal agencies. It allows for Federal prosecution of a crime considered a felony (punishable by more than one year in prison), by any person accompanying the military or other Federal agency during contingency operations.

PSCs operate with relative ambiguity and little oversight because they are private companies operating under contract to the US Government. Their corporate status allows them to forego public scrutiny. Embedded in this ambiguity are the multiple layers of subcontracts, which are common. One critic noted, "This is how the whole contracting scam works, particularly for companies in trouble. They hide under layers of subcontracts and subsidiaries," referring to Blackwater rebranding as Xe, and creating a subsidiary company, Paravant, under subcontract to Raytheon. The applicable Federal agencies can not pursue criminal prosecution using MEJA if incidents do not get reported as required.

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One such incident, by a Triple Canopy contractor, is a testament to alleged crimes being lost in the multiple layers of corporate reporting. According to Steve Fainaru, the contractor, a former marine, announced “I want to kill somebody today.” Later that day he attempted to fulfill his intention by shooting several rounds through a truck’s windshield, without provocation. According to written reports, the shooter warned his teammates, “That didn’t happen, understand?” Later the same day, the contractor, according to sworn statements, “turned his weapons on an innocent person for amusement.” It was not clear from the report if the person was shot. The contractor’s teammates reported the incident, albeit two days later, and the company initiated an investigation. The contractor accused of the unprovoked shooting was fired, along with the teammates that reported the incident. “Triple Canopy said its only obligation was to report the incident to its contract holder, KBR, which was suppose to report to its

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34 Ibid., 28
35 Ibid., 29
contract holder, Laguna Construction, which was suppose to report to its contract holder, the U.S. military.”

Triple Canopy sent a two page report to KBR concluding the incidents occurred and that the incidents “leave little doubt that the Use of Force was required.” It is unclear what (if anything), happened next, in regard to reporting the incident.

By 2007, the military had prosecuted dozens of military members in Iraq, including 64 for murder; however, not a single case had been brought against a security contractor. Recently, MEJA has been increasingly used. The 2007 Nisoor Square incident resulted in Blackwater’s operating license issued by the Iraqi Government being revoked. As an afterthought, the Justice Department filing manslaughter charges against five of the Blackwater contractors in December, 2008. The charges were dropped in December, 2009 because the case had been built using statements the accused had given in exchange for immunity

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37 Ibid.

38 Ibid., 136.
from prosecution. On January 7, 2010, the Department of Justice issued a press release acknowledging two security contractors formerly employed in Afghanistan by Paravant LLC (a subsidiary of Blackwater) had been indicted on numerous charges, including second degree murder, for their involvement in the May 2009 killing of two Afghan Nationals.39

There is a perception among some members of the military that PSCs do not have to abide by the same rules. Through personal observation and conversation with military members, there is a perception that PSCs operate under much different rules of engagement; almost to the point that anything goes. While I do not have a negative attitude toward PSC personnel, many members of the military do. Some of this negativism is a result of the high salaries of PSCs for doing essentially the same mission, but the overarching resentment stems from the perception of lawlessness. Although military members are prohibited from

consuming alcohol in Iraq and Afghanistan as a sign of respect to Muslim culture, contractors have not been bound to the same standard. Additionally, there have been numerous incidents in which PSC personnel committed, more egregious crimes, including rape\textsuperscript{40} and murder\textsuperscript{41}. A reported rape victim testifying before congress said, “Victims of crime perpetrated by employees of taxpayer-funded government contracts in Iraq deserve the same standard of treatment and protection governed by the same laws whether they are working in the U.S. or abroad.”\textsuperscript{42}

Adding to the ambiguity of contractors and a direct result of the multiple layers of subcontracts and lack of oversight from the beginning, no one knows the exact number of PSCs operating in Iraq. In April 2004, in response to a request from Congress, the Coalition Provisional Authority

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(CPA) compiled a list of 60 different firms employing a total of 20,000 personnel (including U.S. citizens, Iraqis and third-country nationals).⁴³ Nor is there requirement to report the number of contractor deaths. Representative Jan Schakowsky introduced legislation that would require more transparency in the use of contracts, saying, “By keeping the knowledge of this force hidden, it changes one’s perception and one’s evaluation of the war. There are almost a thousand dead and a large number of injuries. I think it masks the fact that we are privatizing the military in this country.”⁴⁴

Another inherent problem with PSC oversight is the lack of government contract administrators. “The acquisition workforce has dwindled by 25%, while the contracting workload has increased by a factor of seven.”⁴⁵


Furthermore, “according to the GAO, the Department of Defense does not have enough contracting oversight personnel at deployed locations.”

Most contracts for the reconstruction of Iraq did not take into account the degraded security situation or were planned with the assumption that military personnel would provide security for the projects. The lack of available military personnel and the uncertain security situation required construction companies to hire their own security. Many of these companies had little, if any, experience with hiring security contractors. Often, security contracts were awarded to big companies, and in turn, sub-contracted to other security companies. The lack of government contracting representatives, lack of experience by reconstruction contractors and the multiple layers of security sub-contracts all played a role in the loss of proper oversight of PSCs.

“These problems are manifest in the validation and approval of contracts, the drafting of adequate contracts, the management and execution of contractual

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46 Ibid.
agreements, and, above all, the monitoring of contractor performance.”

Control of force has several dimensions that must be used in concert to achieve the most stable, effective, and legitimate control. By coordinating the proper application of the dimensions of control, the negative perceptions can be reduced. The dimensions of control are: political, functional, and social.

Political control centers around the government’s ability to decide what arms and services are deployed. Senior leaders often give general edicts in order to make a statement for the media or self-protection. These statements are simplistic by design, offering conclusions without specifics. Senior leaders often make these general statements, like Defense Secretary Donald Rumsfeld advocating outsourcing all non-core activities, without specific guidance to their staff on how to achieve the intent. Specific guidance and doctrinal change are absolutely required for effective use of PSCs.

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"The key to more effectively integrating contractors into the U.S. military force structure must begin with a cultural shift: the civilian and military leadership must accept the inevitability of using private contractors and the necessity of integrating them into determinations of force structure and the fulfillment of mission requirements."\textsuperscript{48}

Integration of contractors into military capabilities is as vital as war-fighting skills, and will require a multi-dimensional approach. "This cultural shift must be accompanied by robust accountability and oversight mechanisms, greater transparency, and better integration of contracting skills into the officer 'schoolhouse.'"\textsuperscript{49}

Functional control is the kind of capabilities that are admissible. In Iraq, for example, Blackwater employed snipers, heavy weapons, and, attack helicopters. Government contracts dictate the terms of service. So too, can they dictate the terms of fulfilling those terms. Blackwater has received a lot of "bad press" about their tactics and equipment, especially since their contracts are for defensive purposes. Critics argue that sniper


\textsuperscript{49} Ibid.
employment and attack helicopters do not lend themselves to being defensive in nature. On the other hand, snipers are trained in surveillance techniques that can more readily identify threats. Additionally, they can selectively target threats, while protecting innocent bystanders from a hail of fire that a more traditional engagement may present. Attack helicopters, on the other hand, could decisively end an attack against the defenders and effectively achieve a state of less violence.

"The degree to which the use of force is integrated with prevailing international values" is social control. Soldiers have a set of acceptable behaviors codified in the Geneva Convention. Currently, PSCs are not recognized as combatants, and thus, are not afforded the protections of the convention, nor are they bound to it.

"PMCs are only bound by the contracts they sign and the commercial laws that apply where they do business. Unlike state institutions, they need neither respect national or international military agreements nor fulfill any premandated public purpose." 


These military corporations have little concern for public criticism since their clients are largely public institutions who provide a layer of deflection. "Their own publicity notwithstanding, PMCs obey only the rules of the market—that is, supply and demand."\textsuperscript{52} When public scrutiny starts affecting the company's bottom line, it merely changes its name and continues business with a clean slate. "In February 2009, Blackwater changed its name to "Xe," (pronounced like the letter "Z"), as part of a "rebranding" effort aimed at helping the company distance itself from negative incidents such as a September 2007 shooting in Nisoor Square in Baghdad, Iraq that killed at least a dozen civilians."\textsuperscript{53}

Negative perceptions aside, PSCs provide a critical service to fulfilling our national security objectives. They have protected countless diplomats, reconstruction workers, logistics facilities and convoys, and even soldiers. Most PSC corporations operate ethically, as do

\textsuperscript{52} Ibid.

\textsuperscript{53} \textit{Blackwater Picks A New Name: It's Xe}, NPR, February 13, 2009.
most of their employees. As in any profession or segment of society, there have been a few “bad apples” that tarnish the reputation of the industry and the missions they support. By integrating transparency of operation, adequate oversight, and mechanisms for disciplinary action, PSCs can overcome negative exposure.
Chapter 5

The Way Ahead:

Conclusions and Recommendations

Security is a basic necessity, and as such PSCs will continue to be required by the United States Government to fill security voids that agencies cannot bridge. Since PSCs are a necessity, the question becomes: How does the United States regulate their conduct to ensure efficient service and more importantly adherence to laws? Regulation is critical to maintaining the State’s monopoly of the legitimate use of force that was sanctioned by the Treaty of Westphalia, in 1648.

Deborah Avant argues that a state’s legitimate control of violence is “laid to waste” by PSCs.\(^1\) I whole-heartedly disagree, however, the state must exhort control of PSCs in order to maintain legitimate control of violence. If control of PSCs is lost, then Avant’s statement becomes true. PSCs operating under lawful contract to the US become agents of the government, and as such are

\(^{1}\) Deborah D. Avant, Market of Force. [Cambridge: Cambridge University Press, 2005], 1.
essentially viewed as proxy employees. This view makes regulation critical.

While MEJA was enacted in 2000, it lacked sufficient mechanisms for successful prosecution for alleged crimes. The law was not revised to correct those deficiencies until 2005. The five year gap created a “wild west” atmosphere, at least in perception, for PSCs in Iraq. Congress, the GAO, the Department of Defense and the media became growingly concerned with the use of PSCs and their conduct. Control of PSCs was lost, and thus, the legitimate control of violence was also lost. Federal agencies started the difficult process of reining in PSCs through coordination, contracting practices, and legislation. Former Secretary of State Condoleezza Rice ordered a panel to investigate the current situation with PSCs operating in Iraq, at least in part due to growing concerns about PSC conduct and as a result of the Nissoor Square incident.

“The panel’s mandate was to be ‘serious, probing and comprehensive’ in its review and to provide recommendations on how to protect U.S. mission
personnel while furthering U. S. foreign policy objectives.”

In October, 2007, the State Department panel on personal protective services in Iraq reported:

“The legal framework for providing proper oversight of Personal Protective Services (PPS) contractors is inadequate, in that the panel is unaware of any basis for holding non-Department of Defense contractors accountable under U. S. law.”

The United States government was not prepared for the unfortunate series of events in the Iraq war. The security situation deteriorated after the end of the war, creating a necessity for stop-gap contingencies. “Contractors did not anticipate the level of violence eventually encountered in Iraq and found themselves needing to quickly obtain security for their personnel, lodgings, and work sites.”

PSCs effectively filled the gaps, but proper oversight mechanisms were not in place.

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3 Ibid., 5.

Control of PSCs is absolutely vital to fulfilling our national security interests, our foreign policies, and to guarantee proper use of force. While Blackwater boasts that it has never lost a protected individual, their methods become questionable in light of the international incidents their tactics have created. While these are complex situations that requires in-depth review to determine if the use of force was within acceptable standards, I believe that if proper controls were in place, these incidents might well have never happened, or at least been minimized.

With the military scaling down in Iraq, the security requirements will likely increase. The government must act now if it is to reform the current problems that are plaguing PSC utilization.

The government should embrace the various trade associations, including the Private Security Company Association of Iraq (PSCAI) and the International Peace

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Operations Association (IPOA), among others. These organizations have attempted to establish criteria mutually respondent to the needs of the industry and the government. “PSCAI is a non-profit organization formed and maintained to discuss and address matters of mutual interest and concern to the industry conducting operations in Iraq.”

The IPOA, also a non-profit organization, requires members to abide by a code of conduct including “respect the dignity of all human beings and strictly adhere to all applicable international humanitarian and human rights laws” including adherence to the Universal Declaration of Human Rights and the Geneva Convention, among others. Their stated mission is:

“...to promote high operational and ethical standards of firms active in the Stability Operations Industry; to engage in a constructive dialogue with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development, and human security; and to inform the

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concerned public about the activities and role of the industry.”

The government should be very concerned with the people hired as PSCs. In the past, few contracts required contract holders to complete background checks on the people they hired. In the future, it is absolutely vital that the Federal government establish vetting procedures for potential PSC personnel. Vetting prospective employees by the government creates many legal and logistical challenges, it is critical to ensuring the proper level of control of force. PSC personnel could be vetted using the same procedures that are used to screen other government personnel. Although this would require a large volume of background checks initially, the sustainment of the program would be relatively easy. Implementation of the vetting process could easily be delegated to the contract holder using set government guidelines. Once vetted, the background check of the PSC employee could be reviewed by the government, then added to a government database, and regularly updated. This process is already in place for

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government employees who require a security clearance. The GAO noted that some federal agencies already require background investigations for potential employees of PSCs and there are provisions for agency approval and acceptance of those prospective employees. It is crucial to only hire citizens of the U. S., Coalition-partners and host nation, to best adhere to our foreign policy objectives and success of the counterinsurgency fight. A secondary benefit is the reduction of possible legal loopholes in the ability to prosecute PSC employees of different nationality. Host nation citizens are currently prosecuted by their home country; a policy that could be continued. Likewise, formal agreements with coalition partner countries could allow for extradition to the country of citizenship for prosecution under their applicable laws. Although not a perfect solution, it does bridge the current gap in legal status.

Likewise, PSC companies could also be evaluated and added to a General Services Administration (GSA) contract.

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schedule. This procedure would allow contracting officers that are not familiar with the security industry to have an approved list of PSC companies that meet the requirements for a particular type of contract. Additionally, contracting officers need a resource that evaluates security requirements for a given contract. Establishing an office for security evaluation and recommendation of requirements is vital to ensuring the contract is properly staffed and executed. Security requirements for personnel could be evaluated by the Diplomatic Security Agency, who specializes in personal security. Site security requirements could be evaluated by the Army Corp of Engineers, who has the most complete knowledge of facilities and construction projects. Convoy security requirements should be evaluated by the military combatant commander responsible for the area. The military has the best capabilities to plan for security based upon intelligence summaries and historical data. The GAO has noted that there have been instances where a contract has been awarded to a company for PSC work, although it had never previously engaged in that industry or lacked the
capacity to meet the requirements of the contract. Inclusion of a GSA schedule for security services would have prevented both examples.

In order to qualify for a GSA schedule, PSCs need to hire employees with the proper qualifications and have standards for security training. Currently, few contracts require any documentation for training of PSC personnel. Many industries have documented training requirements for certification, including law enforcement and the military, which could be used as a basis for establishing relevant policies. Standardization of training would also allow individuals to shuffle from one PSC employer to another, without being required to waste time and resources on training already received. Instruction in the theater’s rules of engagement and cultural awareness are critical training requirements, especially in a counterinsurgency situation. Additionally, PSC employees should be instructed in standards of conduct, as well as the procedures for reporting transgression from acceptable

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standards. Currently, self-regulation has been the accepted practice, with the PSCAI and IPOA taking the lead. The government should recognize the IPOA as an accreditation source for PSCs who wish to pursue Federal contracts. Once recognized by the government as the accreditation authority, the IPOA could maintain training records and a database of qualified individuals.

PSCs operate as a quasi-military entity with similar missions, equipment, training requirements, etc. Many of the PSC employees are former military members. As such, the PSCs would be best served by operating with a structured and documented chain of command. By utilizing a military-style chain of command, PSCs could more effectively be incorporated into military planning and coordination functions and employees could more readily identify who is in charge. An established chain of command establishes transparency and responsibility for all actions by the PSC. In the event of negligence or criminal conduct, accountability is easily identified.

Likewise, standardized uniforms and vehicle markings are critical to effectively integrating PSCs into the area
of operation and maintaining ethical conduct. Uniforms allow other PSC employees, government representatives and civilians to easily identify the status and corporate affiliation of a PSC, thus creating better transparency and identification of alleged wrongdoing.

"The lack of specific identifiers for the many private security contractors operating in Iraq has led to confusion about responsibility for reported incidents and complicated the task of determining accountability."\(^\text{11}\)

Similarly, vehicle markings would identify the PSC and allows easy identification, thus preventing friendly fire incidents, as observed by the GAO.\(^\text{12}\) Markings should include an easily identifiable vehicle number so that reported incidents can be more readily investigated.

PSCs would be required to keep dispatch logs for their vehicles in order to identify which personnel were operating them during a reported incident. Vehicle logs


could be submitted daily or weekly to the ROC, where investigators could easily review them.

Additionally, an Inspector General (IG) should be created for PSC activities. The IG would be responsible for initial inquiries into alleged misconduct and would offer an avenue for the anonymous reporting of misconduct. Employees have often been fired for reporting misconduct through their corporate supervisors. Having an independent body, such as an IG, offers some measure of protection for the employee who reports wrong-doing and prevents corporate cover-ups. Affording this additional protection would likely increase the reporting of incidents. IGs within the federal government are already an effective tool for agency heads and are supported by the Inspector General Act of 1978 (5 U.S.C. App. 3 § 8G). The Special Inspector General for Iraq Reconstruction (SIGIR) is a temporary federal agency created by Congress “to provide oversight of the Iraq Relief and Reconstruction Fund (IRRF) and all obligations, expenditures, and revenues associated with
reconstruction and rehabilitation activities in Iraq."\textsuperscript{13} Currently, SIGIR only investigates cases of suspected fraud, waste and abuse, but the scope of their responsibility could readily be expanded to include PSC misconduct. The Department of Defense has a very robust inspector general agency which reports to Congress annually. It is a logical choice for selection as a PSC centric IG, which already operates in the theater of operation, because it offers a lasting solution that will endure beyond current commitments in Iraq. Implementation could be easily accomplished with existing resources and limited additional personnel.

While proper regulation of the PSC industry is a critical first step, mechanisms must be in place to take action against PSCs who violate their contracts or the law. Violation are inevitable, as such the government must be prepared for their eventuality.

Proper contract language could allow for administrative sanctions against employees and corporations that commit or allow violations. Government contract lawyers should work closely with contracting officers to establish specific required contract language to be used in all security contracts, regardless of agency or location. The contract language should address the previous recommendations for vetting, training and other administrative requirements, as well as actions by the government for violations. Additionally, subcontracts for security services should not be allowed. The multiple layers of subcontracts allow security providers to operate anonymously and without proper oversight by contracting officers. All requirements for security contracts should be solicited as stand-alone contracts, with contract holders directly accountable to governmental contracting officers.

Enactment of MEJA was a milestone in the regulation of PSC conduct. Further refinement of the legislation is required and broader utilization to prosecute offenses
committed by PSC employees. The 2007 State Department report recommended:

“The State Department should urgently engage with the Department of Justice and the Office of Management and Budget, and then with the Congress, to establish a clear legal basis for holding contractors accountable under U. S. law.”14

To clarify the intent of MEJA, a legislative proposal could be presented renaming the law the Federal Extraterritorial Jurisdiction Act with the necessary legal language for prosecution of anyone employed by the U. S. government, including contractors.

The 2007 State Department report on PSCs recommended increasing the number of Diplomatic Security Service personnel to function as oversight for PSC employees. The report called for an immediate increase of 100 people, in order to prevent a personnel shortage in other areas of the world.15 I believe this is an excellent recommendation, but the number of required personnel is too low. Arguably, our security requirements forever changed on September 11,


15 Ibid.
2001. Due to increasing threats, the need for additional Diplomatic Security Service personnel will be ever increasing. It is vital to program additional resources into the budget as soon as possible to allow for their expansion. Additionally, I recommend utilizing these Federal agents as supervisors for PSC security details to ensure proper oversight and adherence to international law. The mere presence of an agent of the government will likely reduce the PSC misconduct, while providing first-hand documentation of any wrongdoing that does occur. In the most extreme cases of criminal misconduct, the federal agent would be able to arrest the suspect on the spot, possibly avoiding political fallout from the host nation or its citizenry.

Finally, the combatant commander is the senior military official in charge of the battle space. The Combatant Commander "owns the ground" that all other agencies work on. As such, the military must maintain coordination with and accountability of all armed personnel operating in their maneuver area. The military, I believe, understands the importance of this coordination. I am not
as confident that other agencies or PSCs fully understand the importance. Better interagency coordination by the various organization of the U. S. government operating within Iraq is critical. By extension, PSCs operating under contract to these various agencies must understand their commitment to coordinate their operations with the Combatant Commander. Proper contract language can be used to ensure compliance. Failure to provide the proper coordination, as outlined in their contract, could result in withholding payment, loss of the contract, or in serious cases, criminal prosecution. Contracting officer must be empowered to take administrative action against PSCs who fail to fulfill the terms of the contract.

The private security industry, especially trade associations, must recognize real and perceived shortcomings by their bill payers and the world community. If the industry is to remain a viable option for integration in effecting national security, steps must be taken to project commitment to fulfilling their obligation to abide by international law, and most importantly, demonstrate respect toward host nations.
Reestablishing the private security industry as an efficient, viable and ethical force will require a comprehensive approach by all stakeholders. The government has the most to lose, or conversely to gain, so it must take the lead in effecting change. The industry, both individual corporations and the associations that represent them, likewise need to continue their efforts to create a climate bound by ethical conduct.
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