

**MARKETIZED SOLDIERING: HOW PRIVATE MILITARY
COMPANIES CHALLENGE GLOBAL GOVERNANCE, ERODE
ACCOUNTABILITY AND EXACERBATE CONFLICT**

by
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ABSTRACT

The rise of the modern private military industry in the 1990s is explained and claims about the benefits and hazards of privatized military force are evaluated from a public interest perspective. Evidence about the cost effectiveness of employing private military companies (PMCs) is found to be inconclusive, although outsourcing has the potential to increase military flexibility and provide states with newly emerging capabilities in the short run. Governments are shown to have “hidden” motives for outsourcing military functions. It is argued that most benefits of privatization are conditional and that PMC-related hazards threaten to do long-term damage to the rule of law (both nationally and internationally), to the militaries which most rely on private contractors and to the fabric of constitutional democracy.

Keywords: private military companies, democratic accountability, contractors, military outsourcing, Iraq

FOR GRANDPA GINO

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"[Our] regulations seem to be engineered to prevent any mistake, and by so doing, they discourage any risk. But ours is a nation born of ideas and raised on improbability, and risk aversion is not America's ethic...and more important, it must not be ours."

— Donald Rumsfeld, 2001, speech to Pentagon staff¹

CHAPTER I: INTRODUCTION

Organized bodies of mercenaries date back to at least the 14th century, when *condottieri* —translated literally as “military contractors” — were commonly hired by various Italian states.² Since the early 19th century, however, the expectation has been that expertise pertaining to armed force was the exclusive domain of the state. As such, the state assumed responsibility and accountability for the conduct of military and security services. In the early 20th century, Max Weber formalized the idea of a state monopoly on the legitimate use of force as a political concept, arguing that the state must be characterized by the means which it, and only it, has at its disposal. The emergence of the modern private military industry, however, upsets this arrangement, revealing that the approach adopted in the modern state period no longer applies in all cases. That is, the state no longer holds a monopoly on the resources and decision-making capability related to the organized application of force.³

Some forms of private sector involvement in military affairs are, of course, long established. Defence contractors such as *Boeing*, *Northrop Grumman* and *Lockheed Martin* have for decades produced weapons and other related technology for armed forces. The United States has also periodically used private firms to assist with covert operations over the years.⁴ There are, however, several key differences between these activities and the present day use of private contractors. First, the number of contractors now working for states is unprecedented. During the 1990s and into the new century the private sector's role

¹ Donald Rumsfeld, “DoD Acquisition and Logistics Excellence Week Kickoff — Bureaucracy to Battlefield”, Speech, September 10, 2001.

² Eugene B. Smith, “The New Condottieri and U.S. Policy: The privatization of conflict and its implications,” *Parameters*, *U.S. Army War College Quarterly*, 32(4), Winter 2002-2003, 105.

³ Christopher Spearin, “Canadian Policy: Possibilities and Pitfalls on the Road to Regulation,” *Canadian Foreign Policy*, 11(2), Winter 2004, 12.

⁴ Examples include *Air America*, the CIA's secret air division in Vietnam, and *Southern Air Transport*, used to run guns to Nicaragua in the Iran-contra scandal. See William D. Hartung, “Outsourcing Is Hell,” *The Nation*, June 7, 2004.

in military affairs has mushroomed.⁵ Second, democratic governments now rely on private sector companies to provide an array of services that were once routinely performed by their militaries. While many of these functions do not appear to be inherently problematic, others, for a variety of reasons, either are or have the potential for being. Militaries, for instance, rely progressively more on contractors for operational services that require (or make increasingly likely) their use of deadly force.⁶ The fact that firms now provide several services once considered core military capabilities brings private conflict actors closer to the battlefield, in some cases seeing them fight side by side with regular forces. Also new is the extent to which the market for force has become transnational. Indeed, the private military industry is now a truly global phenomenon.⁷ Moreover, transnational military companies now function as governing nodes in crucial areas of domestic and global policy, joining the network of national governments, supranational organizations and non-governmental organizations (NGOs).⁸

Together with these developments has come concern about the effects of privatization on states and global governance. Over the past fifteen years -- and particularly over the past five -- a debate over these effects has emerged. On one side, industry lobbyists and defence establishment officials -- particularly in North Atlantic Treaty Organization (NATO) countries -- argue that extensive privatization will bring benefits for governments and for global peace and stability. Private military companies (PMCs) will deliver new security services cheaply and flexibly, in ways that will enhance state security and, by extension, global governance. On the other side of the debate, critics of military outsourcing contend that privatization will challenge global governance; reliance on private actors will be costly to states, erode accountability and exacerbate conflict.⁹ This paper serves to evaluate each outlook, as well as to explore some less talked about hazards of privatization which may tilt the resolution of the debate in favour of PMC critics. Before

⁵ In the forty-year period between 1950 and 1989, the number of conflicts involving "mercenaries" was only 15; from 1990 to 2000 this number jumped to 80. See Anna Leander, "The Power to Construct International Security: On the significance of Private Military Companies," *Millenium: Journal of International Studies*, 33(3), June 2005, 806.

⁶ Les Johnston, "Transnational Security Governance," in *Democracy, Society and the Governance of Security*, eds. Jennifer Wood and Benoit Dupont. Cambridge: Cambridge University Press, 2006, 44.

⁷ Every multilateral peace operation conducted by the United Nations in the 1990s involved the presence of private military companies. See Deborah Avant, "The Privatization of Security and Change in the Control of Force." *International Studies Perspectives*, 5(2), 2004, 153-54.

⁸ Johnston, "Transnational Security Governance," 47.

⁹ Avant, "The Privatization of Security and Change in the Control of Force," 155.

detailing the contents and organization of the paper, I will begin by first taking a closer look at some of the rhetoric employed by those in favour of an expanded role for private military companies.

The defence establishment: from tail to tooth

Just as in nonmilitary industries, privatization in the military sphere is branded by defence establishment officials as synonymous with efficiency, cost savings and flexibility.¹⁰ Proponents claim that outsourcing will allow the state to respond more quickly and effectively to new security threats and policy directions than would be possible with a conventionally oriented force. No public official has been more vocal in this regard than former United States (U.S.) Secretary of Defense Donald Rumsfeld.¹¹ On September 10, 2001, Secretary Rumsfeld gave a speech at the Pentagon in which he announced plans to “wage an all-out campaign to shift the Pentagon’s resources from bureaucracy to the battlefield, from tail to tooth.”¹² Challenging military and civilian staff to eliminate or outsource to private firms all but the inner nucleus of defence activities, Rumsfeld announced a pledge to ensure that the Department of Defense (DoD) would take advantage of the private sector’s techno-managerial expertise.¹³

Calling the modernization of the DoD a “matter of life and death...ultimately, every American’s,” Rumsfeld announced plans for a “war on bureaucracy” in which “every dollar squandered on waste is one denied to the warfighter.”¹⁴ Rumsfeld continued, “Like the private sector’s best-in-class companies, DoD should aim for excellence in functions that are either directly related to warfighting or must be performed by the Department. But in all other cases, we should seek suppliers who can provide these non-core activities efficiently and effectively.”¹⁵ Secretary Rumsfeld’s pitch, echoed elsewhere, is that PMCs can potentially mitigate risk by allowing forces to achieve military strength focused on core capabilities, rather than trying to create a force “spread so thin across the operational spectrum that it is

¹⁰ Avant, “Privatising Military Training.” Foreign Policy in Focus, 7(6), May 2002.

¹¹ Interestingly enough, Anna Leander points out that private control over the use of force has deeper roots and more legitimacy in the United States than it does in Europe. See Ann Leander, The Market for Force: The Consequences of Privatizing Security (New York: Cambridge University Press), 2005, 825.

¹² Rumsfeld, speech, 2001.

¹³ Martha Minow, “Outsourcing Power: How Privatizing Military Efforts Challenges Accountability, Professionalism and Democracy.” Boston College Law Review, 46(5), September 2005, 1002.

¹⁴ Rumsfeld, speech, 2001.

¹⁵ ibid.

in danger of inadequacy or indecisiveness at every point on that spectrum.”¹⁶ This view, now the prevailing philosophy in most defence departments, is not lost on private sector executives. Erik Prince, founder of U.S.-based PMC *Blackwater*, recently told a journalist, “We have a very long-term view to our work. We see ourselves assisting in the transformation of the DoD into a faster, more nimble organization.”¹⁷

The “Peace and Stability Industry”

Like public defence officials, lobbyists for the private military industry also draw attention to potential cost savings through military outsourcing. However, unlike those in government, industry people do not have to balance their propensity for private alternatives with a need to maintain a decent image for the public bureaucracies they administer. Thus, much of the industry rhetoric about competency and efficiency relies on extensive juxtaposition with a public sector characterized as incompetent, mismanaged and even immoral — the implication being that publicly controlled militaries will consistently under-perform relative to private firms. At the same time, private firms work to cultivate systematically an image of private security experts as merely performing work for the public, on conditions and terms that are of course defined by the public.¹⁸

Through trade organizations such as the *International Peace Operations Association*, the *British Association of Private Security Companies*, the *Private Security Company Association of Iraq* and *Business Executives for National Security*, PMCs seek to operate more publicly and present themselves as legitimate businesses. Many firms also maintain elaborate websites, grant interviews, and appear at conferences. All this is done with an eye toward nourishing a public image of PMCs as accessible, flexible tools for use in accomplishing any potential client’s security goals.¹⁹

¹⁶ Smith, “The New Condottieri,” 117.

¹⁷ Joanne Kimberlin and Bill Sizemore. “Blackwater: Inside America’s Private Army.” *The Virginian-Pilot*. Special report, July 23, 2006. On the whole, the central role now afforded to PMCs signals a change in perception on behalf of military strategists who increasingly view warfare as a struggle between non-territorial networks. No longer simply the domain of formal alliances between territorial nations, warfare has become the business of “floating coalitions.” If these coalitions can include terrorist cells strategists point out, why can they not also comprise transnational corporations? As Les Johnston observes, “relations between coalition partners need not be diplomatic; they may be contractual as well.” See Johnston, “Transnational Security Governance,” 47-48.

¹⁸ Leander, *The Market for Force*, 823.

¹⁹ Avant, “Privatising Military Training,” 2002.

The definitive PMC public relations effort is perhaps industry veteran Tim Spicer's book *An Unorthodox Soldier*.²⁰ In it, Spicer advances two central arguments — first, that PMCs are by nature cost-effective because they do what they do for money and expect to make a profit out of it; second, that PMCs exist to “tackle a growing number of situations which the world's major nations are unwilling or unable to tackle themselves.”²¹ Other industry officials have since echoed the argument that PMCs operate in the gap between state will and state capability. Spicer has even gone so far as to argue that national governments have a responsibility to call on PMCs when they feel they are unable to head off conflict. He contends, “[governments] have the right, and indeed the duty, in the absence of international intervention to find solutions that can resolve an internal situation at the greatest possible speed and the minimum cost in lives.”²² Spicer continues, “PMCs are the inevitable outcome of the UN's failure to tackle long-term problems with sufficient resolve and adequate resources.”²³ Doug Brooks, industry lobbyist and founder of the *International Peace Operations Association*, also portrays the use of PMCs as a governmental duty. In an article discussing the future of the industry, he writes, “not using legitimate private firms will probably lead to a resurgence of uncontrollable individual freelance mercenaries who will flock to satisfy the profitable demand for military expertise, but who have far less regard for the legitimacy of their clients.”²⁴ Thus, private firms are said to occupy a very reasonable position, between sluggish, antiquated conventional militaries on one hand, and dangerous, excitement-seeking thugs on the other.

While most defence establishment rhetoric focuses on saving taxpayers' dollars, the bulk of the industry's “image management” concerns the potential for PMCs to improve international peace and stability through peacekeeping, peace enforcement, military assistance and humanitarian rescue operations.²⁵ In fact, by all accounts Brooks is the

²⁰ Tim Spicer, *An Unorthodox Soldier: Peace and War and the Sandline Affair*. London: Mainstream Publishing, 1999. Tim Spicer is a former Lt.-Colonel with the Scots Guards and manager of now-defunct *Sandline International*. He is currently the CEO of U.K.-based *Aegis Defence Services*.

²¹ *Ibid.*, 23, 15.

²² *Ibid.*, 18.

²³ *Ibid.*, 22.

²⁴ Doug Brooks, “Messiahs or Mercenaries? The Future of International Private Military Services,” In *Managing Armed Conflicts in the 21st Century*, ed. by Adekeye Adebajo and Chandra Lekha Sriram. London: Frank Cass Publishers, 2001, 129. Brooks also claims that “In Africa...the trend towards privatization of military services...can only be a positive development.” 141.

²⁵ *Ibid.*, 134.

author of the euphemistic term "peace and stability industry."²⁶ Many proponents of PMCs have pointed to their potential value to the United Nations and other international organizations that wish to operate in dangerous environments, arguing that PMCs would generate less political controversy than national troops under UN auspices.²⁷ PMCs are also said to be better suited to provide the rapid deployment required in humanitarian operations, as national forces are often encumbered by the usual decision-making procedures, as well as force generation processes.²⁸

Finally, PMCs market themselves to multinational corporations (MNCs), and particularly those in the business of natural resource extraction. Lobbyists point to the potential for hefty profits brought on by the expansion of economic globalization to developing countries. Brooks states, "Even countries suffering from armed conflict offer impressive opportunities for profits... The increasing number of [PMCs] offering services in this area make security contracts for MNCs highly competitive, bringing security costs down and encouraging MNCs to expand their operations in areas of conflict."²⁹

In sum, both public officials and members of the private military industry have claimed that privatization in the military-security sphere serves the public interest. PMCs are said to be able to provide military services more efficiently, more rapidly, and at a reduced cost as compared with militaries exclusively under civil public control. Through a combination of innovation, flexibility and expediency, PMCs can act as "force multipliers" and allow state militaries to focus on core missions. At the same time, proponents praise firms' usefulness for international organizations and multinational corporations alike. Without PMCs, it is argued, these actors would be unable to operate in militarily unstable regions.

*

This paper serves to address a number of related questions. First, is the primary rationale posited by governments for using the private sector valid? That is, are perceived benefits real, or have public officials failed to understand the full range of implications in their rush to privatize? Second, are there unstated or "hidden" motives which actually underpin

²⁶ International Peace Operations Association, homepage. Available at: <http://ipoaonline.org/en/index.htm>, accessed August 23, 2006.

²⁷ Geneva Centre for the Democratic Control of Armed Forces. "DCAF Background: Private Military Companies." April 2006, 2.

²⁸ One analyst has even argued for a "contingency contract" with a PMC to ensure faster decisions ahead of humanitarian missions. See Smith, "The New Condottieri," 115.

²⁹ Brooks, "Messiahs or Mercenaries?" 132-33, 138.

the purchase of PMCs' services by governments? In answering these questions, conclusions will inevitably emerge about whether, and to what extent, widespread use of military contractors serves the public interest.³⁰

As will become clear, increased privatization of military force raises a number of important policy dilemmas, including how to safeguard against war profiteering, how to retain control over contractors who fall outside the military chain of command and justice system, and how to ensure that the activities of executive branch decision-makers do not retreat further from public oversight.³¹ As the hazards of military outsourcing appear significant enough to do long-term damage to the rule of law (both nationally and internationally), to the militaries which most rely on private contractors and to the fabric of constitutional democracy, this paper is intended as a call for dialogue among scholars, advocates, and policy-makers concerning appropriate responses to the hazards of privatization in the military-security sphere. This paper comprises a normative as well as an analytical component, and assumes from the start that without further dialogue and remedial action private military companies may be used in ways that imperil rather than serve the public interest.

The subsequent discussion will follow several steps. Chapter II begins by explaining what the term "private military company" implies, by offering a more in-depth look at the reasons for the expansion of the private military industry throughout the 1990s, and by closely scrutinizing claims about the cost effectiveness of military outsourcing. Chapter III will explore legal dilemmas concerning contractor accountability (both domestic and international), concerns related to the structure of the industry, as well as challenges to adequate contract management. Chapter IV will address how state militaries are impacted by the large-scale introduction of military contractors to the battle space, over both the short and long term. Chapter V will comprise a discussion of how PMC use can be problematic for democracies in terms of the breaching of law and notions of constitutionality. It will also include a limited discussion of various options for improving oversight and regulation of

³⁰ The term "public interest" is often contrasted with private or individual interests, under the assumption that what is good for a given individual or corporate entity may not be good for society and vice versa. For instance, the short-term goals of elites are not likely to coincide with the long-term interests of the majority. For the purposes of this paper, the term "public interest" denotes, at a minimum: stewardship of public funds (safeguarding from fraud, waste and abuse such as war profiteering); respect for the separation of powers and notions of constitutionality, preservation of the integrity of public institutions; respect for public law values such as human rights norms and the rule of law; and the expectation that military operations, launched only with broad public support, will be as effective as possible in order to advance the national interest and prevent members of the armed services from facing undue risks.

³¹ Peter W. Singer, "Outsourcing War," *Foreign Affairs*, 84(2), March/April 2005.

PMCs. The paper will close with a concluding chapter to sum up the discussion and offer recommendations based on a net assessment of risks and potential benefits.

CHAPTER II: RISE OF THE INDUSTRY

WHAT ARE PRIVATE MILITARY COMPANIES AND WHAT DO THEY DO?

How PMCs differ from mercenaries

Until recently, all conflict actors motivated by financial gain were referred to as mercenaries. Although many commentators still use the terms “PMC” and “mercenary” interchangeably — and despite the fact that a number of international treaties still govern the activities of “mercenaries” — most PMCs differ from mercenaries in scope, purpose, and legal form.³² The desire to differentiate PMCs from traditional soldiers of fortune is in part motivated by the dubious international reputation of the latter, brought on by a small group of excitement-seeking hired guns who fought primarily in the Belgian Congo and Angola during decolonization in the 1960s. Players in the modern private military industry are quick to link the ongoing negative image of private conflict actors with these “thugs,”³³ though the truth is that misgivings about modern PMCs are equally the result of the activities of a handful of combat-friendly PMCs in the past 15 years, including British PMC *Sandline International* and the South African firm *Executive Outcomes*.³⁴

It is now widely accepted among scholars and public officials that modern PMCs represent a change or evolution in mercenarism. The United Nations has admitted that PMCs do not fit the standard definition of mercenary³⁵ and, moreover, international law has begun to recognize a role for civilian support specialists on the battlefield, specifically precluding their inclusion as mercenaries.³⁶ Some authors have referred to PMCs as “the new mercenaries,” but, as O’Brien points out, this would only be possible if traditional

³² Smith, “The New Condottieri,” 104.

³³ Spicer, *An Unorthodox Soldier*, 35.

³⁴ Many companies have tried to distance themselves from the kind of overt combat missions that Executive Outcomes made famous in the mid-1990s. One industry executive remarked, “I don’t think you’ll ever see that again.” See Kimberlin & Sizemore, “Blackwater: Inside America’s Private Army.” For more on these sorts of activities, including the “Sandline affair” and the South African mercenaries who plotted “assisted regime change” in Equatorial Guinea in March 2004, see Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press), 2003.

³⁵ In 1997 the UN Special Rapporteur for Mercenaries stated that PMCs “cannot be strictly considered as coming within the legal scope of mercenary status.” The official definition of a mercenary is found in Article 47 of the 1977 Protocol I addition to the 1949 Geneva Conventions and states that in order for one to be considered a mercenary one must be (a) specifically recruited to take a direct part in hostilities, (b) fundamentally motivated by the desire for private gain, and (c) promised remuneration that is in excess of that granted to regular armed service personnel. See Smith, “The New Condottieri,” 112 and endnote #42.

³⁶ *Ibid.*, 112.

mercenaryism had disappeared entirely, which it has not.³⁷ Indeed, there are several self-labeled “PMCs” operating internationally that are in reality little more than glorified mercenary operations existing for only short periods of time.³⁸ Brooks indicates that freelance mercenaries actually have an inverse economic relationship with PMCs, in that “they thrive in areas of armed conflict where the more legitimate PMCs are usually absent.”³⁹

Not only do PMCs and mercenaries differ, but in fact it is possible, as Eugene Smith has done, to establish a three-tiered hierarchy of private conflict actors. On the bottom tier are traditional mercenaries — individuals who sell their fighting skills to the highest bidder; on the second tier are private armies or militias led by warlords, including transnational terrorist groups, drug cartel forces⁴⁰ and religiously motivated combat groups such as the Islamic Brotherhood. The third tier is reserved for the modern private military company, which has been referred to as “the ultimate evolution of private means of violence.”⁴¹

Structure of today's PMCs

Today's PMCs are legally chartered companies organized along conventional corporate lines.⁴² They are distinguished by established offices, shareholdings, boards of directors, and a core of full time corporate staff. Industry officials insist that running a PMC is “a business much like any other.”⁴³ Far from operating in the shadows, PMCs are founded by and staffed with ex-military professionals fresh out of active service — primarily from the U.S., United Kingdom (U.K.), France, Israel and South Africa. The majority of PMCs are also headquartered in these countries.⁴⁴ PMCs can range in size from small consulting firms to large transnational corporations — basically anywhere between “a retired military guy sitting

³⁷ Kevin A. O'Brien, “PMCs, Myths and Mercenaries: The debate on private military companies.” *Royal United Service Institute Journal*, February 2000.

³⁸ *Ibid.* Examples of this type of firm include Stabilco, Secrets, Security Advisory Services Ltd, and Special Projects Services Ltd.

³⁹ Brooks, “Messiahs or Mercenaries?,” 130-31.

⁴⁰ In Latin America, various drug cartels have assembled private armies composed of former soldiers, intelligence personnel and mercenaries from throughout the Western hemisphere since the early 1980s. These forces are tasked with defending the cartels' interests against each other and national governments. See O'Brien, “PMCs, Myths and Mercenaries.”

⁴¹ Smith, “The New Condottieri,” 105.

⁴² The first ever company to meet the contemporary definition of a PMC was *WatchGuard International*, founded by SAS Colonel Sir David Stirling in 1967. *WatchGuard* employed former SAS personnel to train the militaries of the sultanates of the Persian Gulf, as well as to provide support for their operations against rebel movements and internal dissidents. *WatchGuard* is generally considered to be the model for all future PMCs. See O'Brien, “PMCs, Myths and Mercenaries,” 2000.

⁴³ Spicer, *An Unorthodox Soldier*, 43.

⁴⁴ J. Eric Fredland, “Outsourcing Military Force: A Transactions Cost Perspective on the Role of Military Companies,” *Defence and Peace Economics*, 15(3), June 2004, 205.

in a spare bedroom with a fax machine and a Rolodex”⁴⁵ to huge defence systems conglomerates.

It is a common misperception that most PMCs are in the business of direct combat. In fact, the number of companies openly willing to fulfill direct combat roles is actually quite limited, as is the number of examples of these types of contracts.⁴⁶ (This does not mean, however, that PMCs are not still linked to combat operations in a meaningful way.) In reality, firms offer specialized services across the spectrum of conflict and security, including logistics support, training, maintenance, risk analysis, executive protection, prison interrogation, interpretation and intelligence work, among a broad array of other services.⁴⁷

Formulating a Typology of private military companies

An obvious first step in categorizing PMCs might be to separate them into two groups based on their relative propensity to engage in “offensive” and “defensive” operations. The term “private security company”, or “PSC”, is also found in the literature, and indeed many firms that specialize in executive and asset protection prefer this label. Brooks, too, finds it useful to separate PSCs — passive defensive/protective companies with private clients — from PMCs, described as more active military companies catering to state contracts.⁴⁸ The primary concerns with this simple division (aside from the introduction of a competing term) are first that the boundaries between active and passive, offence and defence, are usually blurred and sometimes indistinguishable (protection can have a tangible impact on the outcome of conflicts; thus it is difficult to separate this function from others that are more closely linked to combat);⁴⁹ and second, that most firms offer services in both categories.

Other scholars have also attempted to categorize PMCs in various ways, with mixed results. The best system might be termed the Brooks-Fredland typology, owing to the fact that both authors employ a similar scheme.⁵⁰

⁴⁵ James Wood quoted in Avant, “The Privatization of Security and Change in the Control of Force,” 154.

⁴⁶ Fredland, “Outsourcing Military Force,” 205.

⁴⁷ In my research I also encountered firms willing to engage in combat operations, strategic planning, procurement services, drug interdiction, protection provision for post-conflict stabilization and reconstruction, private security in disaster zones, embassy protection, support for the execution of international arrest warrants, hostage-rescue operations, protection for journalists in war zones, repatriation of prisoners, protection of refugees from harassment, food distribution, supply of clean drinking water, media relations, and the running of ports and airfields.

⁴⁸ Brooks, “Messiahs or Mercenaries?,” 130.

⁴⁹ DCAF, “Backgrounder,” 1.

⁵⁰ Fredland, “Outsourcing Military Force,” 207 and Appendix A. Fredland acknowledges that this is essentially the same typology used by Brooks. Used with permission from the author.

Table 1 — TYPOLOGY OF PRIVATE MILITARY COMPANIES

Type of Company	Example Activities	Example Companies
1. Combat Related	Immediate combat support	<i>Executive Outcomes</i> (ceased operation) <i>Sandline International</i> <i>Sayeret Group Inc.</i>
Non-Combatant		
2. Military Support	General Staff Services □ tactical training, threat analysis, advice on force development and organization, strategic planning, etc.	<i>MPRI</i> <i>Vinnell Corporation</i>
3. Private Security (PSC)	Asset security, personal protection	<i>Armor Group</i> <i>Control Risks Group</i> <i>Blackwater USA</i>
4. Non-lethal Services	Non-combat logistics, communications, surveillance, mine clearing, base operations, etc.	<i>Kellogg, Brown & Root (KBR)</i> <i>Global Development Four, Ltd.</i>

The Brooks-Fredland typology distinguishes sharply between companies which engage in combat and immediate combat support, and those which offer a host of military and quasi-military services not directly linked to combat.⁵¹ In this sense it is useful as a general guide to those unfamiliar with the industry. However, this scheme is still problematic, as is any system that separates firms into categories based on functions performed. As mentioned before, it is quite common for firms to provide services in more than one category. Secrecy is another mitigating factor: the activities of most firms are far from transparent. PMCs often describe their services in general terms and those companies which are perhaps willing to engage in direct combat almost never reveal that willingness explicitly. In fact, as a rule firms do not

⁵¹ *Ibid.*, 207.

reveal even the names of their clients, much less contractual details.⁵² Of course, private firms disclose some of their activities in promoting their services, but they can resist media and legislative inquiries, claiming that they need to protect proprietary information.⁵³ Many of the large firms in the private military industry also operate webs of subsidiaries, which further helps to impede the process. Finally, in reality it is very difficult to distinguish between combat and non-combat roles. For instance, are contractors who transport troops to the battlefield or provide force design less a part of military operation than contractors who fire the weapons? Although corporations such as *MPRI* do not actually engage in combat on behalf of foreign powers, the skills they pass on through training can prove just as lethal.⁵⁴ In 2006, a *Blackwater* vice-president announced at a security conference in Jordan that the company is ready to market private fighting forces for low-intensity conflict, up to brigade strength (about 1,700 troops).⁵⁵ Such a force could be used to safeguard a refugee camp, but it may also cross a line from defensive security into overt combat operations.⁵⁶

Separation between combat and non-combat roles seems to be, for the most part, a matter of perspective. The roles contractors fill also change with circumstances. As Fredland points out, "asset security becomes at least defensive combat in the face of an assault."⁵⁷ Peter W. Singer agrees, and has in fact sharply criticized firms that insist they will only provide defensive combat capability, calling the distinction analytically dishonest. Singer remarks, "No one in the military is defined as to whether they're offensive or defensive...a weapon is offensive or defensive depending on which side of the gun barrel you're facing." He continues, "Often these companies will say, 'We only do defensive work, so that means that we're somehow good.' Basically what they're trying to do is put a moral imprimatur on a business. Companies aren't good or bad. They're just companies. It's how they operate that determines their moral standing."⁵⁸

⁵² *Ibid.*, 217 and Appendix A.

⁵³ In the United States, private companies are not bound by the disclosure obligations placed on the government by the Freedom of Information Act (FOIA), the federal law intended to protect democracy by ensuring access to all government information compatible with security. See Minow, "Outsourcing Power," 999.

⁵⁴ Bruce Grant, "U.S. Military Expertise For Sale: Private military consultants as a tool of foreign policy." *Institute for National Strategic Studies*, 1998.

⁵⁵ Max Hastings, "We Must Fight our Instinctive Distaste for Mercenaries," *The Guardian*, August 2, 2006.

⁵⁶ Nathan Hodge, "Army For Hire," *slate.com*, August 31, 2006.

⁵⁷ Fredland, "Outsourcing Military Force," 217 and Appendix A.

⁵⁸ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 6. July 27, 2006.

As a result of excessive secrecy, the tendency among larger firms to operate numerous subsidiaries, and the blurring of combat and non-combat roles, *any* system of classification can be of only limited precision. It seems we are stuck, at least for the time being, with the term “PMC” to refer to the full range of military service providers. The best that can be said is that lumping together firms that offer such a wide variety of services (combat, consulting and logistics) reflects the degree to which these distinctions are blurred in contemporary warfare.⁵⁹

Who do PMCs work for?

States that have contracted for military services — more than fifty at last count — range from highly capable powers like the United States to failing states, such as Sierra Leone.⁶⁰ PMCs have worked on every continent but Antarctica, though perhaps more surprising than their geographic range of operations is the variety of clients they have worked for. Aside from states, private firms have contracted with the UN, humanitarian and development organizations, NGOs, multinational corporations,⁶¹ rebel groups, drug cartels, individuals, and at least two al Qaeda--linked jihadi groups.⁶²

At this point it is necessary to distinguish between two related phenomena: (1) PMCs operating in the global South (especially sub-Saharan Africa), either providing capabilities that weak states lack or protecting aid workers and the assets of multinational corporations; and (2) military outsourcing by great powers (as best exemplified by the current conflict in Iraq). In the first case, PMCs provide solutions to fragile states which lack support from great powers and are unable to provide security for their own citizens. The latter phenomenon concerns the outsourcing of a range of military functions as part of a leading power’s strategy to develop a smaller, more efficient military.⁶³

This paper will focus will be on the latter phenomenon. Enough has been written about PMC activity in Africa and indeed it is well beyond scope of this paper to cover this

⁵⁹ Avant, *The Market for Force*, 804 and footnote 1.

⁶⁰ Avant, “Mercenaries,” 154.

⁶¹ In recent years, British Petroleum, Exxon, DeBeers, and others have contracted with PMCs for site security and security planning all over the globe. See Avant, “Mercenaries,” 153.

⁶² Hiring by jihadi groups was prior to 9/11. Singer, “Outsourcing War.”

⁶³ Smith, “The New Condottieri,” 108. The archetype firms for each phenomenon would be *Executive Outcomes* in the case of developing countries and *MPRI* in the case of great powers.

phenomenon in depth.⁶⁴ Additionally, the dangers of PMC activity in the developing world are more readily identifiable than are the hazards of great power outsourcing. Thus, on top of being less explored, the latter phenomenon is all the more perilous for its hidden effects. As well, much of what appears in this paper concerns the United States, as the world's most dominant military has become more reliant on the private sector than any other state for maintaining its military capability. That said, European militaries have also become deeply dependent on the private sector for transport and support of forces overseas.⁶⁵ Similarly, much of what is appears in this paper concerns the current conflict in Iraq. This reflects not only the fact that more information is available about private sector activities in Iraq, but also the fact that the Iraq experience, as the single largest experiment in military outsourcing in history, is so valuable for understanding the PMC phenomenon.

Since U.S. President George W. Bush announced the end of "major combat operations" in May 2003, Iraq has experienced a massive influx of foreign PMCs. With U.S. and coalition forces stretched thin, and in the absence of a UN mandate which would have made UN peacekeepers and international civilian police available, the situation on the ground in Iraq is ideal for military contractors. In fact, there are now an estimated 20,000 non-Iraqi civilian contractors working for the United States inside Iraq, including about 6,000 security contractors.⁶⁶ At no time in history has the role of PMCs been more prominent or more controversial. Not only does the Iraq war represent the largest U.S. military commitment in more than a decade, but it also represents the largest ever marketplace for PMCs.⁶⁷ It is estimated that one-third of the \$4 billion monthly cost of the Iraq occupation is going to private contractors.⁶⁸ Moreover, military contractors in Iraq are closer to actual combat than ever before, now performing "mission critical" activities and operating alongside,

⁶⁴ See Xavier Renou, "Private Military Companies Against Development," Oxford Development Studies, 33(1), March 2005: 107-115; Michael von Tangen, "Private security should not be a grubby little secret," Humanitarian Affairs Review, Autumn 2004; Koenraad Van Brabant, "Humanitarian action and private security companies." Humanitarian Practice Network; Tony Vaux, Chris Seiple, Greg Nakano and K. Van Brabant. Humanitarian Action and Private Security Companies: Opening the Debate. London, U.K.: International Alert. May 2002.

⁶⁵ European troops relied on a Ukrainian firm to transport them to Afghanistan in former Soviet jets. The British military, following Washington's lead, has begun to contract out its logistics to *Halliburton*. See Singer, "Outsourcing War," 2005.

⁶⁶ Democracy Now!, webcast: "Blackwater in the Crosshairs: The Families of Four Private Security Contractors Killed in Fallujah File a Ground-Breaking Lawsuit," April 20, 2006; Jay Price. "Hired guns unaccountable." The News & Observer, March 23, 2006.

⁶⁷ Singer, "Outsourcing War," 2005.

⁶⁸ Amy Goodman, The Exception to the Rule: Exposing Oily Politicians, War Profiteers, and the Media That Love Them (New York : Hyperion), 2004, 67.

as opposed to behind, uniformed soldiers.⁶⁹ Such massive and integral presence of contractors on the battlefield is uncharted territory. For this reason, I will use Iraq as a running or foundational case study, to be visited and revisited as the discussion progresses.

GROWTH OF THE PRIVATE MILITARY INDUSTRY

Before the validity of industry and defence establishment claims can be appraised, it is necessary to take a closer look at the complex mix of factors which caused the rapid expansion (or reemergence) of the private military industry in the 1990s. As one analyst described it, the prevalence of PMCs is “a political issue enmeshed in economic and social considerations.”⁷⁰

The “peace dividend”

The end of the Cold War gave states a reason to downsize their armed forces. Reductions freed up millions of former military personnel, most of them from Western countries. At the same time, the end of Apartheid in South Africa helped to further increase the talent pool available to private military companies. Worldwide military forces, on the order of 6,873,000 in 1990, dropped to 3,283,000 in 1997.⁷¹ In the United States, this meant a reduction in troop strength from about 2.1 million to 1.4 million.⁷² In the U.K. it meant a British military reduced to its smallest size since the Napoleonic wars.⁷³ In Canada, post-Cold War defence spending was cut more than any other NATO country.⁷⁴ The Soviet Union underwent downsizing on a similar scale, though precious little has been written, at least in English, about the involvement of former Soviet military officers in the private military industry. One thing seems clear: they have not been major players in the same way that

⁶⁹ The clearest example of PMCs engaging in direct combat in Iraq were the operations against the Army of Mahdi in May 2004 in the city of Najaf. See Christian Olsson. “PMCs in Iraq: A force for good?” May 2004.

⁷⁰ Gordon L. Campbell, “Contractors on the Battlefield: The Ethics of Paying Civilians To Enter Harm's Way and Requiring Soldiers To Depend upon Them.” Springfield VA, Joint Services Conference on Professional Ethics, January 2000, 1.

⁷¹ O'Brien, “PMCs, Myths and Mercenaries,” 2000.

⁷² Today, U.S. forces and defence budgets are almost 40% lower than in 1989. In practice this means a U.S. Army with 63 combat brigades instead of 111. The U.S. National Guard and Army Reserve experienced similar reductions: 1.8 million soldiers in 1989; now about 875,000. See Campbell, “Contractors on the Battlefield,” 1.

⁷³ Singer, “Outsourcing War,” 2005.

⁷⁴ Canada's 2005 defence budget was 40 per cent less than twenty years previous. See Spearin, “The Privatization of Security in Canada,” 307.

retired military professionals from the U.S., U.K., France, Israel, South Africa, Canada and other states have been. In other words, they have not played a starring role in the private military activities that are of primary concern in this paper.⁷⁵ Massive reductions in troop levels, aside from providing a glut of seasoned recruits to private military companies, also went hand-in-hand with an ongoing push for leaner armed forces. Many Western nations, especially the United States, began to regard anything that was not associated with more fighting as something the private sector could provide.⁷⁶ This philosophy was not unique to the military. Rather, it was part of a more general, societal trend toward privatization.

Armed force in the “business civilization”

Privatization, as discussed in this paper, is simply reliance by the state on nongovernmental actors paid with publicly-funded contracts. The private sector, for its part, introduces competitive bidding and techniques of business management to government operations with an eye toward improving efficiency.⁷⁷ Managing welfare programs and operating prisons are just two examples among many other day-to-day government functions that have followed this logic. The shift toward the privatization of military functions, then, simply reflects a more general, now decades-long push that has been sweeping much of the globe.⁷⁸ The effect of this general trend has been a change in the relative standing of public and private experts in all fields, with private experts gaining credibility as efficient and competent alternatives to bulky public administrations held back by bureaucratic red tape. The same has held true in the realm of security. With the end of the Cold War, civil control over the military and security sphere was relaxed, and private expertise in this field was allowed to develop more. The result was a privileged status for “the private,” which in turn

⁷⁵ Kevin O'Brien found that tens of thousands of personnel demobilized from the armed forces and intelligence apparatus of the former Soviet Union (fSU) have joined 9,000 'private security enterprises' or 'security services companies', the overwhelming majority of which are associated with the Russian mafia. In this respect, the activities of ex-Soviet “mercenaries” are probably more dangerous than the services performed by Western PMCs. The problem is that little is known about their activities because scholarship is exceptionally scarce. Those interested in the privatization of military affairs would be well-served by a comprehensive study of this phenomenon. See “PMCs, Myths and Mercenaries,” 2000.

⁷⁶ Stephen Schooner, Interview, PBS *Frontline*. May 19, 2005.

⁷⁷ Minow, “Outsourcing Power”, 998.

⁷⁸ Political economist Susan Strange referred to these wider social changes as the advent of a “business civilization”, where the religion is money and managers are the new priests. See Leander, “The Power to Construct International Security,” 821.

opened the way for private companies to overtly promote themselves as an alternative in a sphere where their use had been previously unthinkable.⁷⁹

The desire to save money and conduct business more efficiently is now an important feature of defence policy, especially among Western powers. In the United States, Presidents Bill Clinton and George W. Bush both embraced privatization as a way to help downsize the armed forces. Bush even went so far as to identify outsourcing as one of his top five government-wide priorities.⁸⁰ In the U.K., the Ministry of Defence has contracted for commercial sector support under its CONDO (Contractors on Deployed Operations) policy and “public private partnership” programs.⁸¹ For Canada, the push for military outsourcing was made clear in a *1994 White Paper on Defence*, and the Department of National Defence (DND) implemented its Alternative Service Delivery (ASD) policy in July 1995.⁸²

The Revolution in Military Affairs and low-density skills

A third factor contributing to the rise of the private military industry in the 1990s came in the form of the so-called Revolution in Military Affairs (RMA), with its emphasis on complex weapons systems and corresponding demand for specialized skills. Along with the RMA came the widespread belief (and a certain amount of evidence to support it) that a relatively small number of well-trained military personnel equipped with advanced weapons technology can prevail against a much larger but poorly-trained force using less sophisticated equipment. From this perspective, changing technology creates favourable conditions for PMC use; hiring private firms becomes increasingly less costly than trying to achieve the same objectives with internal production because technological change puts a growing premium on human capital and new weapons systems.⁸³

⁷⁹ *Ibid.*, 822.

⁸⁰ Minow, “Outsourcing Power,” 1001. It is a misconception that military outsourcing in the U.S. is a Bush administration phenomenon. One can at a minimum trace the drive for outsourcing back to the Clinton administration, especially under the National Performance Review initiated by Vice President Al Gore. David Isenberg points out that, in fact, the push goes back further, to the issue of the Office of Management and Budget Circular A-76, in 1966. See David Isenberg, “A government in search of cover: PMCs in Iraq.” Paper prepared for “Market Forces: Regulating Private Military Companies,” March 23-24, 2006, conference, *Institute for International Law and Justice*, New York University School of Law, 3.

⁸¹ Isenberg, “A government in search of cover,” 3.

⁸² The ASD, complemented by the Canadian Contractor Augmentation Program (CONCAP) is, like similar programs in other countries, designed to achieve savings — especially in non-core, non-war fighting areas — which can in turn be invested in initiatives to turn combat personnel into specialists. See Spearin, “The Privatization of Security in Canada,” 306-07. The decision to privatize the Canadian Forces’ Department of Supply and Warehousing was met with public criticism and the origin of the phrase “Welcome to War-Mart.” See Minow, “Outsourcing Power”, 999.

⁸³ Fredland, “Outsourcing Military Force,” 215.

Many of the requisite high-tech skills are difficult to develop and maintain among uniformed soldiers. In fact, most militaries can no longer afford to train and maintain career progression for such low-density skills,⁸⁴ especially as militaries find themselves in direct competition with the non-military private sector in providing attractive career opportunities. To compensate, militaries have begun to rely more and more on contractors to help operate and provide lifetime support for the latest weapons.⁸⁵ For example, the U.S. Army is now completely dependent upon civilian contractors for maintaining its *Guardrail* surveillance aircraft. With relatively few planes crammed with specialized intelligence-gathering systems, the military did not find it cost effective to develop its own maintenance capability.⁸⁶

PMCs working for clients in the developing world have usually been asked to make up for non-existent capabilities, rather than those which are simply expensive to maintain. Now, even among advanced militaries in the developed world, contractors are increasingly brought in to provide skills that do not exist in-house. Offensive information warfare is an example of a capability that poses problems for modern militaries. The cutting-edge skills required — essentially, hacking — are difficult to maintain in the regular force. One oft-overlooked problem may be that this capability poses cultural problems because the hacker community is somewhat anarchistic, with individuality being a primary motivator. This cultural norm is fundamentally at odds with a traditional military approach⁸⁷ and impedes the in-house development of new and rapidly evolving skills. Again, sometimes outsourcing of military functions is not designed to cut costs but rather to provide capabilities that militaries do not have, thus bringing benefits to operational flexibility.⁸⁸

Doing more with less

The end of the Cold War, in addition to providing a glut of ex-military professionals, also had the double effect of “lifting the lid on many long simmering conflicts” that had been

⁸⁴ Campbell, “Contractors on the Battlefield,” 2.

⁸⁵ Isenberg, “A government in search of cover,” 4.

⁸⁶ *Ibid.* 6.

⁸⁷ Smith, “The New Condottieri,” 116.

⁸⁸ Spearin, “The Privatization of Security in Canada,” 308-309.

held in check by the two superpowers.⁸⁹ As the United States and Russia no longer felt the need to intervene as they used to, failed and failing states became less able to field sufficient armed forces to maintain internal order.⁹⁰ Just as major powers pushed to reduce defence spending and troop levels, they found themselves faced with a somewhat unexpected need to maintain capacity.⁹¹ The U.S. Army, for example, deployed troops on 36 occasions between 1989 and 2000, compared to only 10 deployments during the 40-year Cold War.⁹² Canada's contributions to numerous operations over the 1990s, coupled with its current role in Afghanistan, have caused quality of life issues for a reduced force.⁹³ The same is true for other NATO allies.

Frequent deployments have been further complicated by changes in the nature of conflict that have served to increase mission requirements in unforeseen ways. Deborah Avant notes that downsized Western forces were not sufficiently reorganized to meet the demands of regional and ethnic conflicts, humanitarian emergencies, and new missions such as counternarcotics and counterterrorism. Some tasks that had been less central to the core of modern militaries, such as policing and technical support, have increasingly moved to the forefront of maintaining security. For example, international civilian police are now a key tool in many conflicts but most states do not have an international civilian police force. Private military companies that provide these types of services emerged to recruit and deploy personnel into the field.⁹⁴ So, militaries have turned to private contractors for help in meeting more requirements with fewer personnel in a more competitive labour market.⁹⁵ As new forms of armed conflict continue to organize and spread, the divisions between government and people, soldier and civilian, public and private will become increasingly blurred.⁹⁶

⁸⁹ Isenberg, "A government in search of cover," 3. Between 1992 and 2003, the number of armed conflicts worldwide actually dropped by 40%. However, the end of the Cold War allowed the UN to oversee a dramatic increase in conflict prevention, peacemaking and post-conflict peace-building activities. The years between 1987 and 1999 witnessed a fourfold increase in the number of UN peacekeeping operations. The new missions were also, on average, far larger and more complex than those of the Cold War era. See Human Security Centre, UBC. Human Security Report 2005, (Oxford: Oxford University Press), 2005, "Overview," 3-9.

⁹⁰ Smith, "The New Condottieri," 108.

⁹¹ Spearin, "The Privatization of Security in Canada," 308.

⁹² Campbell, "Contractors on the Battlefield," 1.

⁹³ Spearin, "The Privatization of Security in Canada," 307.

⁹⁴ Avant, "The Privatization of Security and Change in the Control of Force," 154.

⁹⁵ Avant, "Privatising Military Training," 2002.

⁹⁶ Smith, "The New Condottieri," 104.

The impact of 9/11, the “war on terrorism” and the current conflict in Iraq

The astonishing growth of the private military industry is in step with a more general boom in post-9/11 homeland security. In 1999 there were nine private companies with federal homeland security contracts in the United States. By 2003 the number had grown to 3,512; by the fifth anniversary of 9/11 the number of contracts was just shy of 34,000. Since 2000, the U.S. government has handed out some \$130 billion to private firms. It is estimated that by 2015 federal spending on national security could top \$170 billion per year, much of it given to private firms.⁹⁷ Between 1992 and 2002, the Pentagon awarded about \$300 billion worth of contracts to private military companies.⁹⁸ During this time, private military companies with publicly traded stocks grew at twice the rate of the Dow Jones Industrial Average.⁹⁹ After 9/11, the stock in publicly traded PMCs jumped a further 50 per cent.¹⁰⁰ Needless to say, the ongoing conflict in Iraq has further intensified the demand for PMC services. Annual revenues of British PMCs alone jumped from £200 million before the invasion of Iraq to £1 billion after it.¹⁰¹

Though less visible than during post-“major combat operations,” PMCs were in fact central to the initial invasion of Iraq. In addition to war-gaming and field training U.S. troops before the invasion, contractors serving in paramilitary units with the CIA hit the ground in Iraq to conduct surveillance and formulate targeting plans before combat troops even arrived.¹⁰² During the U.S. campaign of “shock and awe,” the services relied on civilian contractors to run the computer systems that generated the tactical air picture for the Combined Air Operations Center. Other PMC technicians supported *Predator* unmanned aerial vehicles (UAV), as well as the data links they used to transmit information.¹⁰³ The massive U.S. complex at Camp Doha in Kuwait, which served as the launch pad for the attack, was not only built by contractors, it was also operated and guarded by a PMC. During the invasion, contractors maintained and loaded *B-2* stealth bombers, *Apache* helicopters

⁹⁷ The so-called “war on terrorism” has also prompted U.S. spy agencies to call on unprecedented numbers of outside contractors to perform jobs once done by government-employed analysts and secret agents. The number of civilian contractors at the CIA is said to have nearly doubled in the last five years and now surpasses the full-time workforce of about 17,500. See Paul Harris, “How U.S. Merchants of Fear Sparked a \$130 bn Bonanza.” *The Guardian*, September 10, 2006; and Greg Miller, “Spy Agencies Outsourcing to Fill Key Jobs.” *Los Angeles Times*, September 17, 2006.

⁹⁸ Minow, “Outsourcing Power,” 1003.

⁹⁹ Avant, “The Privatization of Security and Change in the Control of Force,” 154.

¹⁰⁰ Minow, “Outsourcing Power,” 1022.

¹⁰¹ Johnston, “Transnational Security Governance,” 42.

¹⁰² The same is true of Afghanistan. Minow, “Outsourcing Power,” 1003.

¹⁰³ Isenberg, “A government in search of cover,” 5-6.

and a host of other sophisticated weapons systems. Contractors even assisted in operating combat systems such as the Army's *Patriot* missile batteries and the Navy's *Aegis* missile-defense system.¹⁰⁴ When the U.S. Army's 4th Infantry Division hit the ground in Iraq in 2003, about 60 contractors accompanied the division to support its digital command-and-control systems.¹⁰⁵ If that were not enough, PMCs were also used for base operations and logistics support, pre-positioned equipment and generator maintenance, biological and chemical detection systems, fuel and material transport and medical services.¹⁰⁶

When the initial combat phase ended, the role of military contractors increased dramatically. This occurred for two reasons. First, the Bush administration grossly underestimated the number of troops required for stability and security operations in occupied Iraq. Disregarding the advice of its own military professionals, the administration elected to proceed with far fewer troops than were needed.¹⁰⁷ Second, in keeping with the administration's plan to implant a shining beacon of democracy in the heart of the Middle East, Iraq was to be remade into a new country. This required an enormous reconstruction project to overcome the effects of the Iran-Iraq war, the first Gulf War, and economic sanctions. Because the U.S. administration expected a benign environment, not anticipating the emergence and intensification of the insurgency, American troops were simply unavailable to protect those doing reconstruction work. Construction firms were left no choice but to call on PMCs to protect their people.¹⁰⁸ As attacks by insurgents steadily increased, tens of millions of dollars had to be diverted from reconstruction to security. PMCs already tasked with fulfilling the logistics requirements of sustaining U.S. soldiers suddenly found a booming new market for their services.¹⁰⁹

How extensive is the current use of military contractors?

Estimates vary as to the number of private security contractors currently operating in Iraq, but the truth is nobody knows for sure.¹¹⁰ Most analysts have set the figure at around

¹⁰⁴ Singer, "Outsourcing War," 2005.

¹⁰⁵ The systems were still in development, and the Army lacked uniformed personnel trained for their maintenance. See Isenberg, "A government in search of cover," 5-6.

¹⁰⁶ *Ibid.*, 6.

¹⁰⁷ *Ibid.*, 6.

¹⁰⁸ *Ibid.*, 6.

¹⁰⁹ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 3, July 24, 2006.

¹¹⁰ There are no central national, let alone international, registers. The Pentagon cannot tell how many private contractors are employed by the U.S. alone. See Leander, "The Power to Construct International Security," 806 and footnote 8.

20,000, but in June 2006 the U.S. government estimated over 48,000 contractors working for 180 companies.¹¹¹ Other estimates of the number of firms range from 60 to 400.¹¹² The situation is severely complicated by larger corporations subcontracting work to smaller outfits on a daily or weekly basis.¹¹³ These figures do not even include the tens of thousands of contractors providing nonmilitary reconstruction and oil services.¹¹⁴ Singer points out that even the 20,000 estimate is roughly equal to the number of troops provided by all of the United States' coalition partners combined.¹¹⁵

More important than the high number of PMC personnel in Iraq is the wide scope of critical functions that contractors now carry out. The range of duties handled privately in Iraq is far more extensive than in any past war.¹¹⁶ Contractors on the ground have performed (and continue to perform) front-line military functions, ranging from providing security to the Coalition Provisional Authority (*Blackwater*) to training the new Iraqi army (*Vinnell*) to guarding oil pipelines (*Erinys*) to interrogating prisoners (*CACI*).¹¹⁷ PMCs are also managing the weapons systems of drones, offering security consulting and gathering intelligence. Under the non-military rubric, contractors are doing policing, logistics and catering work, as well as activities more difficult to categorize.¹¹⁸ Generally speaking, the primary work of PMCs fits into three broad categories: (1) personal security details for senior civilian officials; (2) infrastructure and building site security; and (3) non-military convoy security.¹¹⁹ Overall,

¹¹¹ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 3, July 24, 2006.

¹¹² Robert Fisk and Severin Carrell. "Britain's secret army in Iraq: thousands of armed security men who answer to nobody." *The Independent*, March 28, 2004.

¹¹³ To get some sense of the relative increase in the scale of contractor involvement in recent years, experts have estimated the ratio of soldiers to private contractors on the battlefield, starting with the Gulf War in 1991. As usual, the estimates vary considerably. The generally agreed upon figure for the Gulf War is about 60:1 (Isenberg, Avant, Kimberlin/Sizemore). Peter Singer estimates that in Bosnia this ratio increased to 10:1 and in Kosovo it reached as high as 2:1. According to Campbell (2000: 1), at one point in Bosnia, 6,000 uniformed American soldiers were supported by 5,900 contractors. For the Iraq War in 2003, estimates range from 10:1 all the way up to 2:1 or higher (Leander, "The Privatization of Security and Change in the Control of Force," 806).

¹¹⁴ Tom Regan, "U.S. Troops, Security Contractors Increasingly at Odds in Iraq." *Christian Science Monitor*, June 13, 2005.

¹¹⁵ Singer quips that President Bush's "coalition of the willing" might thus be more aptly described as the "coalition of the billing." See "Outsourcing War," 2005. Companies estimated to have significant numbers of Western contract employees in Iraq include: *Global Risk Strategies* (1,200), *Control Risks Group* (750), *Blackwater* (600) and *Triple Canopy* (350). U.K.-based *Erinys* employs the largest number of Iraqis (14,000), as part of its contract to guard pipelines and oilfields. The single largest security contract in Iraq is held by *Aegis Defense Systems*, run by former *Sandline International* founder and industry posterboy Tim Spicer. The contract, worth \$293 million, tasks *Aegis* with coordinating all private security contractors in Iraq. See Johnston, "Transnational Security Governance," 41.

¹¹⁶ *Ibid.*

¹¹⁷ Hartung, "Outsourcing Is Hell," 2004.

¹¹⁸ Olsson, "PMCs in Iraq: A force for good?," 2004.

¹¹⁹ Isenberg, "A government in search of cover," 6.

the double duty of assisting the counterinsurgency effort and protecting the reconstruction work has created unprecedented demand for PMC services. In 2004, the inspector general of the CPA estimated that at least ten to fifteen cents of every dollar spent on reconstruction went for security.¹²⁰ Other estimates indicate that that percentage of reconstruction costs allocated to security could be double or triple that amount.¹²¹ In the words of a former U.S. commanding officer in Iraq, "There was not enough capability in the world to fill that demand."¹²²

Needless to say, fortunes have been made in the provision of security guards in Iraq alone. With business of around \$1 billion, British companies are estimated to have the largest share of private security contracts in Iraq.¹²³ U.K.-based *Control Risks* enjoyed a fifteen-fold increase in its turnover after 2003 because of the enormous demand for security details.¹²⁴ *Blackwater USA* estimated revenue growth between 2002 and 2005 at a whopping 600%.¹²⁵ In terms of annual revenue, the private military industry as a whole has increased in size from \$55.6 billion in 1990 to \$100 billion in 2000. This figure is expected to double again and reach over \$200 billion by 2010, according to industry projections.¹²⁶ Brooks identifies "uncertainty about legislation" designed to regulate or even outlaw the trade in military services as "a key wildcard" affecting the shape and growth of the industry."¹²⁷

Full-spectrum dominance

For the United States, the use of private contractors to support military operations is no longer a "nice to have." Far from an impromptu add-on to supplement a capability, contractor support is an indispensable part of U.S. force projection capability.¹²⁸ And demand for PMC services will continue to be driven by a U.S. national security strategy of global engagement, as set out in the last two Quadrennial Defense Review reports prepared by

¹²⁰ *Ibid.*, 7.

¹²¹ Johnston, "Transnational Security Governance," 42.

¹²² Colonel Thomas Hammes, Interview, PBS *Frontline*, March 21, 2005.

¹²³ Fisk and Carrell, "Britain's secret army in Iraq."

¹²⁴ Hastings, "We Must Fight our Instinctive Distaste for Mercenaries."

¹²⁵ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 2, July 23, 2006.

¹²⁶ *Ibid.*; Minow, "Outsourcing Power," 997; Leander, "The Power to Construct International Security," 806;

Avant, "Privatising Military Training," 2002.

¹²⁷ Brooks, "Messiahs or Mercenaries?," 136.

¹²⁸ Campbell, "Contractors on the Battlefield," 1. The same is true for U.S. intelligence agencies. Senior U.S. intelligence officials have said they could not function without contractors (one former CIA official remarking, "If you took away the contractor support, they'd have to put yellow tape around the building and close it down." See Miller, "Spy Agencies Outsourcing to Fill Key Jobs."

Donald Rumsfeld.¹²⁹ These documents call for “full-spectrum dominance” in order to achieve American strategic objectives worldwide. Though objectives have been detailed, the full-spectrum force has come under increasing strain in recent years. Before leaving office as Chairman of the Joint Chiefs of Staff, General Henry H. Shelton noted that “our response to the strategic environment has placed a wide range of demands on the U.S. military. Increases in missions and requirements coupled with decreases in structure...have stretched elements of the force and resulted in imbalance between strategy, force structure, and resources.”¹³⁰ Add to this the fact that even before military assets can be deployed abroad the Department of Defense must undertake its primary mission, which the QDR specifies as the defence of the continental United States. This will require at least a substantial portion of the active or reserve component, if not both.¹³¹ All things considered, it is impossible to imagine a scenario in which the U.S. military could match means with the seemingly endless objectives associated with full-spectrum dominance and homeland defence without the widespread, indeed increasing, use of private contractors.¹³²

COST EFFECTIVENESS AND FLEXIBILITY

Discussions about the relative cost-effectiveness of PMCs tend to focus on comparisons of salaries among soldiers and private contractors, on the gains in efficiency, flexibility and responsiveness that privatization is said to bring, and on the potential dangers of fraud and war profiteering inherent in contractual arrangements. This section will analyze these issues with an eye toward determining whether claims about financial savings are confirmed by the available evidence.

Salaries

The high salaries garnered by PMC personnel, especially security contractors in Iraq, have received a fair amount of media attention. Journalists and researchers alike have estimated average salaries for PMC employees, and results vary widely. According to the

¹²⁹ Donald Rumsfeld. Quadrennial Defense Review Report, February 2006.

¹³⁰ Smith, “The New Condottieri,” 114.

¹³¹ *Ibid.*, 113.

¹³² Of course no one ever mentions the possibility that the U.S. might diverge from its singled-minded focus on armed force as the sole guardian of national interests, thus making current troop levels and capabilities sufficient.

Geneva Centre for the Democratic Control of Armed Forces (DCAF), skilled contractors from the main PMC-exporting countries can earn anywhere between US \$400—\$1,000 per day.¹³³ In March 2004 *The Independent* (U.K.) reported that contractors doing security detail can receive as much as £600 (about \$1,100) per day.¹³⁴ A journalist writing for the *Christian Science Monitor* found that *Blackwater* employees doing security detail received around \$600 per day over a seven-day workweek, which translates to over \$100,000 for a six-month deployment, though many contractors do tours of only 90 days (U.S. Army soldiers typically stay 12 months).¹³⁵ A 2005 Government Accountability Office (GAO) study found that contractors were earning between \$12,000 and \$13,000 per month working on security convoys in Iraq and as much as \$33,000 per month guarding high-ranking government officials. By comparison, a typical Navy SEAL with 10 years experience — the type of person PMCs like to hire — receives \$4,670 in monthly base pay and housing allowance.¹³⁶

In light of these rather impressive salaries, many have questioned how it could cost less, as industry and defence establishment officials have so adamantly maintained, to have contractors perform duties that were previously done by uniformed soldiers earning a fraction of what contractors make. The first response to this concern is that (though this is rarely mentioned in media commentaries) many PMCs employ individuals — often client country nationals, like Iraqis — who are paid significantly less than their ex-special forces colleagues, and often less than even uniformed soldiers.¹³⁷ So, a former Navy SEAL earning \$900 per day may work alongside a former Iraqi army regular earning perhaps \$50 per day. The second response is that it is unfair to compare highly-trained, former special forces contractors with entry-level army grunts; the higher salaries of the former are in line with their superior skills.

Reducing the cost of standing armies

Many comparisons of soldier and contractor salaries overlook the fact that contractors give up employment benefits such as health care, disability coverage and

¹³³ DCAF, "Backgrounder," 2.

¹³⁴ Fisk and Carrell, "Britain's secret army in Iraq."

¹³⁵ Regan, "U.S. Troops, Security Contractors Increasingly at Odds in Iraq."

¹³⁶ Sizemore, "Pulling Down Big Bucks," July 25, 2006. Similar comparisons are found in the intelligence community as well. A recent U.S. Senate Intelligence Committee report expressed concern that reliance on contractors for intelligence work is eroding agency budgets, as contractors were typically paid 50 to 100% more than staff officers to do comparable work. See Miller, "Spy Agencies Outsourcing to Fill Key Jobs."

¹³⁷ DCAF, "Backgrounder," 2.

pensions in order to receive more money up front. Moreover, many contractors have to agree to a series of restrictive covenants. *Blackwater* employees, for instance, must sign a pledge not to divulge any confidential information about *Blackwater* for five years after they leave the company. Any violation is punishable by payment of \$250,000, due in lump sum within five days of *Blackwater's* demand.¹³⁸ Regardless of whether contractors are required to sign such pledges, the logic behind claims to cost effectiveness is essentially that governments save money by not having to pay the long-term costs of benefits and living facilities for PMC employees. The absence of these costly add-ons is then reflected in the higher salaries that contractors receive.

Aside from saving on benefits, the cost effectiveness of outsourcing is linked to the irregularity with which armed forces are called upon. Keeping soldiers on the payroll between deployments has been likened to “paying in advance” for their services. Most of the time, military personnel train, and weapons and equipment sit idle, waiting for contingencies. From an economic perspective, inactive forces and matériel represent lost economic output. Hiring these forces only when necessary, then, represents a substantial saving. Further cost savings may come from using PMCs that enjoy economies of scale in certain capacities. The size of a company relative to the resources required for any particular situation may allow overhead cost saving. Savings related to having specialized equipment and personnel specifically suited to the situation may also arise, especially if a national military, organized to face a variety of contingencies, does not have the equipment and skills in question. When forces return from deployment, governments can save again by avoiding the types of buyouts that typically accompany dramatic force reductions. In sum, national defence is very resource costly. Potential for large savings exists if governments take advantage of the “high-powered incentives” residing in market transactions. This is the same logic employed in the outsourcing of weapons manufacturing.¹³⁹

¹³⁸ Beyond that, contractors also have to assume an abundance of risks. From the contract of four *Blackwater* employees killed in Fallujah: “The risks include, among other things and without limitation, the undersigned being shot, permanently maimed and/or killed by a firearm or munitions, falling aircraft or helicopters, sniper fire, landmine, artillery fire, rocket propelled grenade, truck or car bomb, earthquake or other natural disaster, poisoning, civil uprising, terrorist activity, hand to hand combat, disease, etc., killed or maimed while a passenger in a helicopter or fixed wing aircraft, suffering hearing loss, eye injury or loss; inhalation or contact with biological or chemical contaminants (whether airborne or not) and or flying debris, etc.” See Sizemore, “What Contractors Give Up,” July 23, 2006.

¹³⁹ Fredland, “Outsourcing Military Force,” 210-212.

Private sector subsidies

Though states can save on the opportunity cost of idle capital and manpower, as well as by avoiding benefits and pension costs, they still pay the sunk costs involved in training most military contractors.¹⁴⁰ When new recruits enter the armed services, the state provides training that effectively serves as a subsidy for PMC operations. Thus, governments may save at the back end (pensions, benefits), but they do not save at the front end — a fact that is rarely pointed out by those anxious to extol the pecuniary virtues of military outsourcing. As Singer explains, “[PMCs] use public funds to offer soldiers higher pay, and then charge the government at an even higher rate, all for services provided by the human capital that the military itself originally helped build. The overall process may be brilliant from a business standpoint, but it is self-defeating from the military’s perspective.”¹⁴¹

Surge capacity and unlimited potential

Aside from saving the costs involved in long-term maintenance of military capacity, PMCs also provide militaries with the ability to increase force size quickly. National militaries tend to recruit and train personnel in a very formalistic manner, meaning there is a considerable time lag between when a person decides to join and when that person is finally assigned to a unit. Even reserves take time to transform into active forces (though they are cheaper than standing armies). One U.S. Army Lieutenant-Colonel described outsourcing to PMCs as “an easy fix,” explaining that “if you want to increase the size of the Army, it’s going to take you...six months...ten months even if you’re really fast at it ... On the other hand, you go to a contractor and say, ‘I need this in a month,’ he’ll probably tell you he can do it.”¹⁴²

Through the private sector, militaries gain access to what one analyst called the “unlimited potential”¹⁴³ of prepared personnel. Private companies, better placed to offer

¹⁴⁰ Sunk costs are costs that have already been incurred and which cannot be recovered. Sunk costs are contrasted with variable costs, which are costs that change depending on the course of action chosen. In this case, “sunk costs” refers to the cost of the original (basic) training military contractors received from their home state, which constitutes a prerequisite to their entry into the private military industry.

¹⁴¹ Singer, “Outsourcing War,” 2005. I should add that there is now some indication that a few PMCs are beginning to offer additional training to prospective employees. For instance, *Blackwater* now requires some former soldiers to complete an eight week training course that costs \$20,000. Still, some people sell possessions, quit jobs and leave behind families to enroll. See Kimberlin & Sizemore, “Blackwater: Inside America’s Private Army,” Part 1, July 23, 2006.

¹⁴² Hammes, Interview, PBS *Frontline*. The same is true in the U.S. intelligence community. Despite hiring at a record pace in recent years, the CIA says they need years to train new case officers, let alone develop “seasoned private operatives capable of delicate missions in global hot spots.” See Miller, “Spy Agencies Outsourcing to Fill Key Jobs.”

¹⁴³ Schooner, Interview, PBS *Frontline*.

recruiting bonuses and incentives to lure the people they need, provide states with more flexibility in the application of military force. The term usually used to describe this flexibility is “surge capacity”. Military outsourcing expert Steven Schooner explained: “If we decide we need to invade Iraq, we can go out and hire contractors very, very quickly at a rate we’d never be able to recruit otherwise. And then after...we should be able to draw it down to a much less expensive troop level, because we simply tell the contractors to let the people go.”¹⁴⁴ Increased surge capacity, then, potentially gives militaries the ability to do things they would not otherwise be able to do. Because PMCs are rapidly deployable, they give states operational advantages such as enhanced deployment capability. For example, countries with limited transport capacity (such as Canada), can hire contractors to move troops or matériel to relieve the burden and speed up deployment. Schooner says of *KBR*’s LOGCAP (Logistics Civil Augmentation Program) contract: “there’s no question that *KBR* was able to provide more services more quickly to the battle area than the United States military was capable of providing when we went into Iraq.”¹⁴⁵

The power of the free market?

The proposition that the potential for cost savings through military outsourcing is high is seldom, if ever, rejected outright. The rhetoric about the cost effectiveness of military outsourcing obscures the fact that privatization only brings benefits if healthy competition can be ensured.¹⁴⁶ However, in Washington and, to a lesser extent in other Western capitals, there has been a ‘privatize first, ask questions later’ mentality.¹⁴⁷ One U.S. Army commander admitted, “We’ve had an assumption that contracting is inherently a good thing. That was a going-in position at the Pentagon...[though] we get a little carried away.”¹⁴⁸

In the military context, competition is difficult or even impossible to sustain.¹⁴⁹ In reality, there is frequent collusion among firms competing for long-term contracts. This leads to opportunistic behaviour, such as firms bidding low, knowing they can add on later. Also, long-term training programs require continuity. Competition suffers because it is difficult and

¹⁴⁴ ibid.

¹⁴⁵ ibid.

¹⁴⁶ This point was confirmed by several recent Center for Naval Analyses (CNA) studies. See Avant, “Privatising Military Training.”

¹⁴⁷ Hartung, “Outsourcing Is Hell.”

¹⁴⁸ Hammes, Interview, PBS Frontline.

¹⁴⁹ Minow, “Outsourcing Power,” 1012.

costly to reopen contracts to bids on a frequent basis.¹⁵⁰ The danger then emerges of a private industry that dictates contractual arrangements, rather than the contracting governments. James Surowiecki, writing for the *New Yorker* magazine, commented, "in the market for big military contracts the bidders tend to be the usual few suspects, so that the game resembles the American auto or steel industries before Japan and Germany became major players: more comfortable than competitive."¹⁵¹ Singer is perhaps the most heavily critical analyst of military outsourcing. He writes:

The Pentagon's current, supposedly business-minded leadership seems to have forgotten Economics 101. All too often, it outsources first and never bothers to ask questions later. That something is done privately does not necessarily make it better, quicker, or cheaper. Rather, it is through leveraging free-market mechanisms that one potentially gets better private results. Success is likely only if a contract is competed for on the open market, if the winning firm can specialize on the job and build in redundancies, if the client is able to provide oversight and management to guard its own interests, and if the contractor is properly motivated by the fear of being fired. Forget these simple rules, as the U.S. government often does, and the result is not the best of privatization but the worst of monopolization.¹⁵²

The lack of competition among PMCs is often disguised, though sometimes it is explicit. Many of the contracts for rebuilding Iraq were handed out on a no-bid basis and a good portion of these were so-called "cost-plus" agreements.

Because of the perceived urgency of the situation in Iraq, the U.S. Congress permitted waivers and irregularities in established contracting procedures. Added to the urgency factor was the justification that some companies were the only firms with the relevant experience. This was argued by *Halliburton's* people in the process of winning a major oil services contract, though experts have since pointed out that *Bechtel* possessed equal, if not superior, experience. Regarding U.S. government procedures for handing out contracts, one industry proposal manager noted, "In my twelve years doing government proposals, I had never seen anything as arrogant, as egregious as the ways in which Pentagon officials...treated the bidders, how they ignored our federal laws and regulations and the procedures that...ensure fair play."¹⁵³ Singer observes that an astonishing 40 per

¹⁵⁰ Avant, "Privatising Military Training."

¹⁵¹ Quoted in Isenberg, "A government in search of cover," 5.

¹⁵² Singer, "Outsourcing War," 2005.

¹⁵³ Minow, "Outsourcing Power," 1012-13 and footnote #154.

cent of U.S. Defense Department contracts are currently granted on a noncompetitive basis. In the five years from 2000 to 2005, this was equal to \$300 billion in no-bid contracts.¹⁵⁴

War profiteering, fraud and waste

There is wide agreement, even within the private military industry, that the U.S. government is ill-prepared to guard against waste, fraud and abuse by PMCs.¹⁵⁵ This is partly a function of insufficient contract management capacity and partly due to the uncertainty inherent in conflict situations. Both make overpricing by PMCs common.¹⁵⁶ Though the accuracy of estimates may improve with time, the fact remains that assessing the cost of services provided on a complex, overseas battlefield is exceedingly difficult. In fact, one has to wonder if anyone really knows how to set a fair price for many of the services PMCs provide. A commander charged with managing the bases and facilities for the training of Iraqi armed forces remarked, "I have no idea what's a legitimate price [for some contractor services]. I do know that at times it seemed like I was paying more than I ought to, but I have no idea how to price a contractor in a combat zone."¹⁵⁷ One thing is clear: private firms certainly claim to know how to assign value for their services.

As a result of so much uncertainty, costs and fees are frequently left open in PMC contracts, leaving governments bound to "cost-plus" agreements. Under such contracts, firms' profits are a percentage of their costs. Put another way, PMCs get reimbursed for what they spend, plus an additional percentage as profit. This gives firms an incentive to keep those costs high — hardly a recipe for efficiency or thorough accounting.¹⁵⁸ Cost-plus contracts are thus generally believed to increase the likelihood of fraud. Because these contracts are demand-led, their value is open-ended. Consequently, firms have neither an incentive for good nor a disincentive for bad service.¹⁵⁹

Chief among those accused of war profiteering through no-bid and cost-plus contracts is *Halliburton Inc.*, formerly run by U.S. Vice President Dick Cheney, and the company's *Kellogg Brown & Root* division. *Halliburton's* contracts with the Department of Defense to support the Iraq war are worth around \$10 billion — \$2.5 billion to restore Iraq's

¹⁵⁴ Singer, "Outsourcing War," 2005.

¹⁵⁵ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 3, July 24, 2006.

¹⁵⁶ Leander, 2005, p. 809

¹⁵⁷ Hammes, Interview, PBS [Frontline](#).

¹⁵⁸ Isenberg, "A government in search of cover," 5.

¹⁵⁹ Johnston, "Transnational Security Governance," 42.

oil infrastructure and \$6.5 billion for *KBR* to house, feed, and otherwise care for U.S. troops. U.S. congressional and media sources have expressed dismay that *Halliburton's* contracts guarantee profits and allow the company to pass on all of its expenses to American taxpayers.¹⁶⁰ Awarded to *KBR* in 2001, the LOGCAP contract is a prime example of a cost-plus arrangement. Renewable for 10 years, under LOGCAP *KBR* is paid a fee of 2 per cent above the cost of the services it provides.¹⁶¹ The contract was granted without competitive bidding and *KBR* promptly reported a 62 per cent increase in revenues.¹⁶² Though the ultimate total is still unknown, the *KBR* LOGCAP contract is thought to be worth as much as \$13 billion. Allegations of overcharging by *Halliburton* have been circulating since 2003. One account puts unaccounted-for charges at 43 per cent of the amount *Halliburton* billed the government. Another account charges that *KBR* alone overcharged for work by \$1.8 billion. For example, one source cites more than \$60 million in overcharges for gasoline it brought to Iraq from Kuwait and \$186 million for meals that were never actually served.¹⁶³ The U.S. army has challenged the work because of insufficient documentation.¹⁶⁴

Perhaps the most stunning example of mushrooming charges on a cost-plus contract is *Halliburton's* deal to act as the logistics arm for the war in Kosovo. Beginning at \$180 million, the contract soon ballooned to more than \$2.5 billion as *Halliburton* built Camp Bondsteel and other military facilities on generous, cost-plus terms.¹⁶⁵ By 2005, the cost-plus arrangement had become the default form for all of Washington's contracts with PMCs. This system, by design or accident, effectively awards firms more profit if they spend more. When paired with too little oversight, the potential for inefficiency and abuse is enormous.¹⁶⁶ Increasing the potential for fraud further still, in many countries PMCs are not obligated to divulge the extent of their activities or the details of their expenses.¹⁶⁷ In 2006, the U.S. Defense Contract Audit Agency reported that *Halliburton* could not document 42 per cent of

¹⁶⁰ Minow, "Outsourcing Power," 990.

¹⁶¹ Johnston, "Transnational Security Governance," 42

¹⁶² Minow, "Outsourcing Power," 992.

¹⁶³ Minow, "Outsourcing Power," 990. In an effort to distribute blame more fairly, it should be pointed out that most of the contractors in Iraq were told in very explicit terms that providing services was more important than controlling costs. See Schooner, Interview, PBS [Frontline](#).

¹⁶⁴ Hartung, "Outsourcing Is Hell," 2004; DCAF "Backgrounder," 3. William Hartung observed the company's remarkable ability to "fail upward". Like *CACI* (implicated in the Abu Ghraib prison abuses), *Halliburton* was granted massive contract extensions for work in Iraq, despite being in the midst of a government investigation. See Singer, "Outsourcing War," 2005.

¹⁶⁵ Hartung, "Outsourcing Is Hell," 2004.

¹⁶⁶ Singer, "Outsourcing War," 2005.

¹⁶⁷ DCAF "Backgrounder," 4.

a \$4 billion invoice submitted to the Pentagon. Most of the charges were attributed to subcontractors about whom *Halliburton* refuses to communicate on grounds of commercial confidentiality.¹⁶⁸

The Custer Battles case

In March 2006, a \$10 million jury verdict — the first civil fraud verdict arising from the Iraq War — went against *Custer Battles LLC*, an American PMC that had been accused of defrauding the U.S. government in the initial months of the war. A former *Custer Battles* employee filed the suit under a whistleblower statute, alleging that the company had used shell companies and phoney invoices to overstate its expenses massively on a \$3 million contract to assist in establishing a new currency to replace the old Iraqi *dinar* used during Saddam Hussein's rule.¹⁶⁹ Five months later, the guilty verdict was overturned on a technicality. A U.S. district court judge, despite acknowledging that the company had in fact committed fraud, ruled that the fraud was perpetrated against the Coalition Provisional Authority (CPA) rather than against the U.S. government. Though U.S. taxpayers ultimately paid for the *Custer Battles* fraud, the district court judge ruled that the trial evidence failed to establish the correct "victim" of the company's crime. *Custer Battles* was thus released from paying any damages. The lawyer for the whistleblower argued that the CPA was created by the Bush administration in such a way that it could essentially serve as a money launderer for dishonest PMCs.¹⁷⁰ He also contended that the White House, for its part, was portraying the CPA as an international entity despite the fact that it was entirely controlled by the United States. Those advocating the denial of future contracts for PMCs found to have overcharged government saw the original *Custer Battles* verdict as an encouraging precedent.¹⁷¹ The overturning of the case, however, takes away the first civil fraud verdict from the Iraq war as a precedent for future legal action.

¹⁶⁸ Johnston, "Transnational Security Governance," 43.

¹⁶⁹ Associated Press, "\$10M Fraud Verdict Against Custer Battles Overturned." [The Providence Journal](#).

¹⁷⁰ [Ibid.](#)

¹⁷¹ Isenberg, "A government in search of cover," 16. Attorneys for the company said they considered the overturning of the verdict a complete vindication of their clients' actions.

Adding it all up

Saving money by privatizing military services is the most oft-cited justification for the use of PMCs; it is also the one with the least convincing evidence. Though industry and defence establishment officials commonly affirm that the role of PMCs has increased because they are far more cost-effective than large standing military forces, there is in fact precious little empirical evidence to confirm it.¹⁷² A series of studies by the *RAND* corporation is generally considered to be the best attempt to prove whether outsourcing saves money. However, these studies state only that there is the *potential* for significant cost savings; they do not demonstrate that this potential has been achieved.¹⁷³ There have been several episodic studies conducted since, but none of these make a compelling case for concrete savings.¹⁷⁴ The GAO, a U.S. congressional watchdog agency, found that of the major U.S. federal agencies operating in Iraq — the State Department, the Defense Department and the United States Agency for International Development (USAID) — none have complete data on the cost of using private military companies.¹⁷⁵ Schooner remarks, “I don’t think there’s any question that no one knows whether it’s cheaper or not.”¹⁷⁶

Comparing the cost effectiveness of PMCs against national militaries is difficult because private firms are paid on a per contract basis rather than as a function of the number of soldiers in the field.¹⁷⁷ This condition complicates any attempt to arrive at a decisive conclusion either way. There is also the matter of figuring out how to include in the formula the training costs of PMC personnel borne by regular militaries. Also, if future enquiries into the matter hope to establish a definitive result, they must take into account the

¹⁷² *Ibid.*, 4

¹⁷³ Schooner, Interview, PBS *Frontline*. A 1991 *RAND* study that looked at the private provision of professional military education programs in the U.S. found no cost savings. In 1999, a *RAND* report on privatizing the Reserve Officers’ Training Corps (ROTC) estimated that it would cost an additional \$10,000/year/instructor to use contractors. See Avant, “Privatising Military Training,” 2002.

¹⁷⁴ Schooner, Interview, PBS *Frontline*.

¹⁷⁵ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 3, July 24, 2006. Regarding the GAO, Martha Minow points out that, “Ironically, as the Iraq war unfolded, the GAO changed its name from the General Accounting Office to the Government Accountability Office, just as the proliferating privatization of the military made government accountability newly elusive.” See Minow, “Outsourcing Power,” 1012.

¹⁷⁶ Schooner, Interview, PBS *Frontline*. USAID is the U.S. government organization responsible for most non-military foreign aid. Its operations in Iraq include neighborhood cleanups, clinic rehabilitation, municipal building repairs and the provision of food and relief supplies.

¹⁷⁷ DCAF, “Backgrounder,” 2.

cost of contract management and oversight personnel, a factor that has thus far been overlooked in the vast majority of estimates.¹⁷⁸

Even while awaiting new empirical research a few conclusions are possible:

1. Reducing the costs associated with standing armies and military employee benefits can potentially lead to substantial savings.
2. No-bid contracts break the logical chain of privatization. Savings are dependent on open competition and strict government oversight.
3. Cost-plus contracts give firms incentives for waste, fraud and abuse.
4. Standard subcontracting practices, in which a contract may pass through several firms, can drastically reduce or reverse any gains in efficiency.¹⁷⁹

In short, cost savings are neither automatic nor guaranteed. Several mitigating factors raise serious doubts about whether military outsourcing gives taxpayers good value for their money.

¹⁷⁸ Avant, "Privatising Military Training," 2002.

¹⁷⁹ DCAF, "Backgrounder," 2.

“To pay contractors more than soldiers is one thing; to also give them a legal free pass is unconscionable.”

— Peter W. Singer¹⁸⁰

CHAPTER III: HOLDING CONTRACTORS ACCOUNTABLE

With so many private contractors active on the battlefield (and casualty figures indicate that they are quite active), a number of journalists and academics are investigating what happens when military contractors mete out rather than suffer the effects of deadly force. And beyond the question of what happens when private contractors inflict casualties on “enemy combatants,” there is now growing concern over what happens when PMCs are responsible for the deaths of civilian bystanders or, in a few instances, even their own employees. Similarly, many have begun to examine what sorts of penalties are incurred by military contractors who commit misdeeds more generally. Researchers have discovered that unlike hundreds of U.S. soldiers, and despite the fact that more than 20,000 contractors have been in the country for about three and a half years, not a single private military contractor has been prosecuted or punished for a crime in Iraq. As Singer remarks, “Either every one of them happens to be a model citizen, or there are serious shortcomings in the legal system that governs them.”¹⁸¹ By examining how PMCs are currently regulated, and by identifying the gaps in the legal system which governs their operations, this section will outline how private military companies avoid legal accountability and largely remain beholden only to shifts in the marketplace. Through a step-by-step analysis of the factors which combine to allow private contractors to go unpunished for crimes committed overseas — namely, jurisdictional conflicts of parent country law, virtual immunity provided to contractors by international treaties, underdeveloped police agencies in host countries (due to near anarchy) and the nature of PMCs themselves — this section will demonstrate that contractors operate in what is essentially a legal vacuum. The section will conclude with a brief discussion of the inadequacy of current contract management and oversight efforts.

¹⁸⁰ Singer, “Outsourcing War,” 2005

¹⁸¹ Ibid.

Market discipline

Private contractors working for the military theoretically could be subject to two systems of accountability: public oversight and private market discipline. Market accountability, however, differs from accountability in well-run military organizations. While military forces are beholden to their governments, which can use a variety of methods to hold organizations or individuals to account, the same is not true for private contractors. Advocates of military outsourcing claim that contractors are accountable simply because they can be fired. Journalist Phillip Carter writes, "The first and easiest way to discipline contractors is to fire them. Practically, this means terminating their government contract," cutting them off from millions of taxpayer dollars.¹⁸² Tim Spicer insists that firms are accountable first to their own policies and ethos, and second to their clients, with whom they have a binding negotiated contract. He dismisses the idea that PMCs should be accountable to anyone outside the contract, including public opinion and "outside politicians." Spicer states, "If a particular PMC performed badly or unethically...then the company and its principals would find that their forward order book was decidedly thin. Discarding ethical and moral principles can therefore only be a one-time opportunity."¹⁸³ *Blackwater* founder Erik Prince agrees, stating, "Those companies or individuals who disregard the moral, ethical, and legal high ground are not long for this industry."¹⁸⁴

In reality firms are rarely fired for bad behaviour — either because there is no other firm able to fill the void right away (firms may be otherwise occupied or lack the expertise) or because the offending company is protected by its political connections. In fact, there are dozens of examples of PMCs receiving sizable contract extensions despite having been implicated in criminal behaviour.¹⁸⁵ Companies often avoid being fired or suspended from bidding on future contracts by attributing misconduct to individual employees ("a few bad apples") and firing those individuals. However, if wrongful conduct is not attributed to the corporation — on the grounds that the company failed to vet, train, supervise or investigate

¹⁸² Phillip Carter, "How to Discipline Private Contractors." May 4, 2004.

¹⁸³ Spicer, *An Unorthodox Soldier*, 24-26.

¹⁸⁴ Interviewed in Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," July 24, 2006.

¹⁸⁵ When *Vinnell* was contracted for \$48 million to train the initial elements of the new Iraqi army, the company bungled the job so badly that reinforcements had to be called in from the Jordanian army and other PMCs. *Vinnell's* contract was not terminated, but subsequently was not renewed. See Hartung, "Outsourcing Is Hell." Though examples like this do exist, they remain mysteriously rare.

its employees -- little is likely to change. The "bad apples" are fired and companies go on unpunished.

The problem of jurisdiction

In the fall of 2005, a "trophy" video appeared on a website linked unofficially to *Aegis Defence Services*, one of the biggest security companies operating in Iraq. The video showed military contractors in Baghdad randomly shooting at civilian cars, sparking concerns that PMCs could be responsible for the deaths of dozens of innocent Iraqis. A reporter investigating the incidents found that PMCs working for the U.S. administration in Iraq adopt the same rules for opening fire as soldiers in the American military. Like U.S. military vehicles, contractor vehicles usually display a sign warning drivers to keep their distance. The warning, which appears in both Arabic and English, reads, "Danger. Keep back. Authorised to use lethal force."¹⁸⁶ This raises the question: what happens when contractors use this lethal force to kill Iraqi civilians?

The Iraqi Interior Ministry, which is responsible for dealing with issues of compensation, admits it has received numerous claims from Iraqis alleging that family members have been shot by private contractors travelling in road convoys. In 2005, a spokesperson for the ministry stated, "When the security companies kill people they just drive away and nothing is done. Sometimes we ring the companies concerned and they deny everything. The families don't get any money or compensation. I would say we have had about 50-60 incidents of this kind."¹⁸⁷ Another official from the Interior Ministry said "at least 12 Iraqi civilians are killed by contractors every week in Baghdad," and continued, "Enough is enough ... we are looking at ways to tighten weapons licenses, and to punish the worst cases. The culture of impunity must stop."¹⁸⁸ The Iraqi government is clearly fed up but still lacks the capacity to do anything. While sovereign in a *de jure* sense, especially since the end of the CPA and handover of power back to the Iraqi government, Iraq's sovereignty is

¹⁸⁶ Sean Rayment. "'Trophy' video exposes private security contractors shooting up Iraqi drivers." *Sunday Telegraph*, Nov. 27, 2005.

¹⁸⁷ *Ibid.*

¹⁸⁸ Regan, "U.S. Troops, Security Contractors Increasingly at Odds in Iraq." A Freedom of Information Act request made by the *Los Angeles Times*, seeking to identify the names of private security firms involved in serious shooting incidents in Iraq, was recently rejected by a U.S. federal judge on the grounds that the disclosure might tip off insurgents. The Army had released several such reports to the newspaper but blacked out the names of private firms involved. See Hodge, 8/31/2006. Rulings like these mean the public may never know the full extent of the private sector's involvement in the war on Iraq or the broader "war on terror."

still largely theoretical, given the challenges posed to it by the insurgency and its lack of resources.¹⁸⁹ The expectation that relevant Iraqi ministries will hold contractors accountable is thus quite unreasonable. Isenberg writes, "Currently, the way things stand there is nobody in the Iraqi Interior Ministry who can issue a Weapons Authorization Card. This means security contractors are using a variety of IDs, making their own, or using none at all."¹⁹⁰

In response to the controversial video, *Aegis Defence Services* issued the following press release: "Aegis personnel have substantial military and peacekeeping experience and all operate under strict and accountable Rules of Engagement of the Coalition Military (CENTCOM) and the U.S. Department of State, as well as Coalition Provisional Authority Order -- Memo 17."¹⁹¹ The Coalition Provisional Authority, the U.S.-led body which governed Iraq through June 2004, declared that PMCs were subject to the laws of their home country and not those of Iraq. In a June 2003 public notice the CPA made the following statement:

In accordance with international law, the CPA, Coalition Forces and the military and civilian personnel accompanying them are not subject to local law or the jurisdiction of local courts. With regard to criminal, civil, administrative or other legal process, they will remain subject to the exclusive jurisdiction of the State contributing them to the Coalition.¹⁹²

CPA Memorandum Number 17, cited by *Aegis* in its response to allegations of wrongdoing by the company's employees, contains rules for the use of force and a seven-point pledge, or code of conduct, for contractors in Iraq. Both of these sections call upon PMCs to operate with the utmost regard for safety, honesty, professionalism and level-headedness. The memo advocates the use of "graduated force" and encourages contractors to "make every effort to avoid civilian casualties." Somewhat paradoxically, at the top of the rules of contractor conduct appears the following sentence in bold capital letters: "NOTHING IN THESE RULES LIMITS YOUR INHERENT RIGHT TO TAKE ACTION NECESSARY TO DEFEND YOURSELF."¹⁹³

In addition to this memorandum, the CPA also issued Order Number 17 to clarify the legal status of military contractors. In section four of this order appears the following:

¹⁸⁹ See Michael Schwartz, "A Government With No Military and No Territory: Iraq's Sovereignty Vacuum." TomDispatch.com, 6.

¹⁹⁰ Isenberg, "A government in search of cover," 11.

¹⁹¹ "AEGIS Investigates Iraq Video Clips." Aegis Information Release, November 28, 2005. CENTCOM refers to United States Central Command, based at MacDill Air Force Base in Tampa, Florida. Its area of jurisdiction encompasses the Middle East, East Africa and Central Asia.

¹⁹² Coalition Provisional Authority, "Public Notice Regarding the Status of Coalition, Foreign Liaison and Contractor Personnel."

¹⁹³ Coalition Provisional Authority, "Memorandum Number 17 -- Registration Requirements for Private Security Companies," 10-12.

Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto. Nothing in this provision shall prohibit MNF [Multinational Force] Personnel from preventing acts of serious misconduct by Contractors, or otherwise temporarily detaining any Contractors who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Sending State... Certification by the Sending State that its Contractor acted pursuant to the terms and conditions of the Contract shall, in any Iraqi legal process, be conclusive evidence of the facts so certified.¹⁹⁴

CPA documents use the term "Sending State" to mean the state of nationality of the individual or entity concerned. In other words, if American contractors commit unlawful acts on the Iraqi battlefield, U.S. authorities, not Iraqi officials, are responsible for their prosecution. The immunity from local criminal prosecution granted to PMCs by the CPA was carried forward by the Iraqi interim government.¹⁹⁵

The U.S. Military Extraterritorial Jurisdiction (MEJ) Act of 2000 further reinforces this position, having been created to address the procedures and conditions under which contractors are subject to laws of the United States (rather than the territory in which they are operating).¹⁹⁶ The Act gives the U.S. Justice Department jurisdiction to prosecute military contractors working for the Department of Defense but it has not been fully tested because the DoD has not issued implementing regulations required by the law. Whether they have been discouraged from doing so by limited resources is not clear. In the case of Iraq, one thing is clear: there is no U.S. attorney's office established to govern U.S. civilian activities there.¹⁹⁷ Besides lacking specifics, the MEJ Act is hampered by another serious problem: the act leaves responsibility for initiating prosecutions of contractors with the U.S. Secretary of Defense.¹⁹⁸

Experts seeking to improve accountability in the private military industry have also examined the potential of the American Uniform Code of Military Justice (AUCMJ) for

¹⁹⁴ Coalition Provisional Authority, "Order Number 17 (Revised) -- Status of the Coalition Provisional Authority, MNF -- Iraq, Certain Missions and Personnel in Iraq." <http://www.cpa-iraq.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf>

¹⁹⁵ Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq." British American Security Information Council Report, September 2004.

¹⁹⁶ The primary reason for the initial enactment of the MEJ Act was the protection of American soldiers and their dependents on U.S. bases abroad.

¹⁹⁷ Fred Schreier and Marina Caparini. "Privatising Security: Law, Practice and Governance of Private Military and Security Companies." *Occasional Paper -- No.6*, Geneva Centre for the Democratic Control of Armed Forces, March 2005: 60.

¹⁹⁸ Military Extraterritorial Jurisdiction Act of 2000 (U.S.). <<http://www.pubklaw.com/hi/pl106-523.pdf>>; Avant, "Mercenaries," 24.

punishing contractors who commit offences abroad. The AUCMJ provides that “in time of war, persons serving with or accompanying an armed force in the field” may be tried by a military court. However, lawyers have found little precedent for military trials of civilian contractors who commit misdeeds in a war zone. In Iraq and Afghanistan, the case becomes murkier still because debate continues over whether the fighting in these countries can legally be called “wars.”¹⁹⁹ Chris Taylor, a vice president at *Blackwater*, said his company wants to keep contractors exempt from the military justice system because of possible “institutional biases” against contractors.²⁰⁰ A senior member of another PMC operating in Baghdad said in response to the suggestion that contractors become subject to prosecution for misconduct: “Like it or not we are combatants. If our guarantees are removed, we would have to leave.”²⁰¹

The DynCorp Sex Trade Scandal

Although in the case of Iraq American contractors are subject in theory to U.S. law, this condition does not always hold true. The case study of offences committed by *DynCorp* employees in the Balkans is, at least on the surface, an example of the reverse. Not only is it a case in which military contractors are supposed to be subject to the laws of the territory in which they are operating, but it is perhaps the best example of how contractors can take advantage of lawlessness and jurisdictional uncertainties to evade any and all legal action. In the summer of 1999, Bosnian police launched an investigation after local news media reported that five male employees of *DynCorp*,²⁰² a company based in Reston, Virginia, were “harbouring illegal immigrants” and that they had purchased ownership of female prostitutes from members of a Serbian organized crime outfit. A Bosnian government representative then informed the commander of the U.S. Regional Task Force of the allegations, and the Army requested that *DynCorp* remove the five men within 48 hours. The men were

¹⁹⁹ Schreier & Caparini, “Privatising Security,” 60. Labelling the conflicts in Iraq and Afghanistan “wars” is disputed because some draw a distinction between “wars” and “insurgencies”. Also, parties to “wars” are traditionally considered to have a leading person or organization which can surrender, or collapse, thus ending the war.

²⁰⁰ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 3, July 24, 2006.

²⁰¹ Regan, “U.S. Troops, Security Contractors Increasingly at Odds in Iraq.”

²⁰² *DynCorp* was operating under a \$15 million annual contract with the U.S. Department of Defense for “logistical support” in Bosnia and Kosovo. The company has also done contract work for the U.S. military in Somalia, Angola, Haiti, Colombia, Bolivia, Kuwait, Afghanistan and Iraq. *DynCorp* has mostly provided communications and weapons specialists to U.S. forces, crop eradication pilots to the State Department (supply-side drug control) and police officers to the UN. The company also provides much of the security for Afghan president Hamid Karzai and is currently helping to train police forces in Afghanistan and Iraq.

transported to *DynCorp*'s office in Germany and fired. This action apparently satisfied the Army.²⁰³

The initial firings, however, did not solve the problem. At least seven other *DynCorp* employees, including a supervisor, did not draw attention from police and continued to engage in sex crimes (including "owning" girls as young as twelve years old), prostitution rackets and the illegal arms trade.²⁰⁴ Another *DynCorp* employee, helicopter mechanic Ben Johnston, complained about the ongoing participation of co-workers in the sex trade, but the company took no action. In March of 2000, Johnston reported several specific crimes to the Army Criminal Investigative Command (known as CID). He was then fired by *DynCorp*, who later stated the reason for his dismissal was that he had "brought discredit to [*DynCorp*] and to the U.S. Army." CID launched an investigation into Johnston's complaints but soon found it would be unable to prosecute any of the contractors involved. The U.S. Office of the Staff Judge Advocate informed CID that "neither Bosnian law nor U.S. law [applied] to the men." Moreover, CID was told that all the Army could do was "bar individuals from military bases and ask *DynCorp* to fire them." The final summary of the CID report reads, "This investigation was terminated in that it was determined that the offence was committed by a civilian who is no longer subject to the UCMJ [Uniform Code of Military Justice], there are no violations of federal criminal statutes with which the persons can be charged, and no other Army interest exists."²⁰⁵

The case took an interesting turn when it was revealed that the Office of the Staff Judge Advocate was in fact wrong in saying that Bosnian law did not apply. When this error came to light, the investigation was turned over to the police in Zivinice, Bosnia, but local police believed they did not have the ability to arrest the *DynCorp* employees because of confusion over the interpretation of the Dayton Peace Accords.²⁰⁶ The jurisdictional debate was then rendered moot when *DynCorp* pulled the accused men out of the country, ensuring that they would never face criminal charges.²⁰⁷ In the end, despite the fact that investigators

²⁰³ Robert Capps. "Outside the Law." *salon.com*. June 26, 2002.

²⁰⁴ Singer, *Corporate Warriors*, 222.

²⁰⁵ Capps, "Outside the Law."

²⁰⁶ The Dayton Accords, short for the General Framework Agreement for Peace in Bosnia and Herzegovina, refers to the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio in November 1995. The accords were formally signed in Paris on December 14, 1995, putting an end to the three-and-a-half year long war in Bosnia, one of the armed conflicts in the former Socialist Federative Republic of Yugoslavia.

²⁰⁷ Robert Capps. "Crime Without Punishment." *salon.com*. June 27, 2002.

knew military contractors bought women as sex slaves, legal loopholes and bureaucratic confusion ensured that no one ever faced criminal charges or prosecution in either Bosnia or the United States. To this day, neither the contractors nor the U.S. government has been subject to any international legal action (though two employees who blew the whistle sued *DynCorp* for wrongful dismissal).²⁰⁸

The *DynCorp* case and the arrangements concerning jurisdiction over military contractors in Iraq establish that the legal status of PMCs can vary a great deal. While PMCs are sometimes subject in theory to the laws of the territory in which they are operating, they may also be subject to the laws of their country of origin. Usually, this distinction is unclear. More often than not, the legal system of the state in which contractors are operating is responsible for prosecuting crimes. But PMCs are almost always active in developing countries — states which lack a solid civic, military or police infrastructure. The legal systems in these states lack the capacity to hold contractors accountable. This may be the result of scarce resources, corruption, confusion over jurisdictional issues or simply a lack of will. Additionally, as in the case of Somalia, there may be no government at all in the host country. In that situation, a contractor could murder, rape, pillage and plunder with complete, legal unaccountability.²⁰⁹ The very weakness or absence of public institutions in host countries often results in the hiring of the PMC in the first place. When local authorities do attempt to take action, nothing prevents companies from pulling the offending employees out before they are prosecuted. After all, prosecutions are bad for business.

PMCs AND INTERNATIONAL LAW

The centrality of states

The status of private military companies is extremely contentious under international law. One reason is the centrality of the state in international law. Just as protections contained in states' constitutions are generally deemed prohibitions on state misconduct only, the main body of 20th century international human rights and humanitarian law was

²⁰⁸ Kathryn Bolkovac won £110,000 in damages after a U.K. tribunal found that *DynCorp Aerospace U.K. Ltd.*, a subsidiary of *DynCorp Inc.*, violated the U.K.'s whistle-blowing statute — the Public Interest Disclosure Act of 1998 — when the company fired her. *DynCorp* then agreed to settle a suit brought by Ben Johnston two days before the case went to trial in Fort Worth, Texas. The amount of Johnston's settlement is confidential.

²⁰⁹ Campbell, "Contractors on the Battlefield," 5.

drafted primarily with states in mind. Indeed, the entire structure of diplomacy and international recognition is built on the state as the cornerstone and building block of international law and international relations.²¹⁰ For this reason, states are seen as “both the primary parties to the treaties and the central bearers of rights and responsibilities.”²¹¹ Individuals can be held criminally liable in some cases, but usually only if some connection to the state is demonstrated (with the exception of genocide and crimes against humanity).²¹² The fact that international human rights law generally binds only states dramatically reduces the legal responsibilities of military contractors.²¹³

Regional treaties seeking to deter corruption are also state-centric. Though corruption and fraud have been widespread in the Iraqi contracts, governmental oversight is limited because PMC operations are out of reach of the transparency rules that would apply to government entities.²¹⁴ International law governing torture is similarly geared toward states. The U.S. government’s policy of “extraordinary rendition,” under which private contractors are used to transport terrorism suspects to countries known to practice torture, has raised concerns because while the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* prohibits governments from taking such action, its applicability to private actors is ambiguous.²¹⁵

The 1989 UN Convention Against Mercenaries

Although the UN views mercenary activity as a violation of the principles of sovereign equality, political independence and the territorial integrity of member states, the 1989 *UN Convention Against the Recruitment, Use, Financing and Training of Mercenaries* deals only with a narrow range of egregious offences, such as overthrowing a government.²¹⁶ The

²¹⁰ Isenberg, “A government in search of cover,” 7.

²¹¹ Laura A. Dickinson, “Public Law Values in a Privatized World,” *Yale Journal of International Law*, 31(383), 2006, 396-97.

²¹² *Ibid.*, 397. In general there is a great deal of uncertainty surrounding the exact relationship between governments and PMCs. In their own interests, governments (and military institutions, such as the Pentagon) often publicly distance themselves from private firms. PMCs, for their part, frequently align themselves with governments when attempting to deflect criticism about being lowly mercenaries. See also Isenberg, “A government in search of cover,” 7.

²¹³ Avant, “Mercenaries,” 26.

²¹⁴ Dickinson, “Public Law Values in a Privatized World,” 400.

²¹⁵ Article 3 of the Convention specifies: “No *State Party* shall expel, return...or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (emphasis mine). Dickinson, “Public Law Values in a Privatized World,” 388, footnotes #97 and #105.

²¹⁶ International Convention against the Recruitment, Use, Financing and Training of Mercenaries. December 4, 1989. Available at: <http://www.icrc.org/ihl.nsf/FULL/530?OpenDocument>.

convention does not cover the majority of modern PMCs' activities, as most functions performed by today's PMCs are not consistent with the traditional role of 'soldiers of fortune.'²¹⁷ The convention is also widely considered to be outdated; for example, its introduction highlights the need to guard against links between drug traffickers and mercenaries. This indicates that its creation was not motivated by the same concerns expressed by critics of today's military contractors. Ultimately, the convention does not apply to the activities of contemporary PMCs, even in cases where contractors perform combat roles that closely approximate those of traditional mercenaries. To understand the problem of the UN convention's practical applicability, one need only note that it took 12 years to get the required minimum of 22 countries to ratify the convention before it entered into force.²¹⁸ Moreover, no major power is a signatory, and only 28 states in total are party to the agreement. Of these, only New Zealand and Belgium likely have more than handful of individuals with the expertise PMCs seek.

The International Criminal Court

Technically speaking, the International Criminal Court (ICC) may have the jurisdiction to take legal action against PMC employees. The ICC has jurisdiction for a number of potential contractor crimes, though this jurisdiction applies only to individuals and not the firms they work for. The ICC's jurisdiction is also limited to crimes referred to them by states party to the conflict and crimes within the jurisdiction of these states. Nevertheless, if a state refused to investigate an individual contractor for alleged war crimes — provided the firm he/she worked for is registered within that state's jurisdiction — the ICC could potentially launch its own investigation.²¹⁹ However, U.S. opposition to the court is well known, and the Bush administration has already announced that it will not participate in UN peacekeeping missions unless the court grants immunity to all Americans, including contractors. Moreover, even if this were not the case, the ICC is not intended to preside over relatively "minor"

²¹⁷ Avant, "Mercenaries," 24.

²¹⁸ Caroline Holmqvist. "Private Security Companies: The Case for Regulation." SIPRI Policy Paper No. 9, Stockholm International Peace Research Institute, January 2005, 44.

²¹⁹ DCAF, "Backgrounder," 6.

cases, such as the *DynCorp* sex-trade crimes.²²⁰ The court's primary mandate is to prosecute individuals for genocide, war crimes and crimes against humanity.

Blurring the line between combatants and civilians

Another contentious issue concerning PMCs and international law is that the extensive involvement of military contractors in activities traditionally reserved for government soldiers blurs the crucial distinction between combatants and civilians.²²¹ As one military law analyst remarked, "Legally speaking, [military contractors] fall into the same gray area as the unlawful combatants detained at Guantánamo Bay."²²² They are not soldiers, but they are not civilians either. Under the 4th Geneva Convention, military contractors who are active in the battlefield cannot be termed "non-combatants" because they carry weapons and act on behalf of the government;²²³ however, neither are military contractors "lawful combatants" under the 3rd Geneva Convention because they do not wear regular uniforms or answer to a military command hierarchy. Furthermore, PMC personnel often do not fit the legal definition of mercenaries because the definition stipulates that mercenaries must work for a foreign government in a war zone in which their own country is not part of the fight.²²⁴

²²⁰ Capps, "Crime Without Punishment." In response to the failure of both national and international legislation to hold military contractors accountable for offences overseas, a handful of victims and their families have turned to litigation. Three pending cases, involving a variety of plaintiffs (soldiers, civilians and contractors, or their estates), target PMCs for alleged misdeeds in Iraq and Afghanistan. *McMahon et al v. Presidential Airways Inc.* is a wrongful death action centring on a helicopter crash in Afghanistan, which killed a mix of soldiers and contractors in November 2004. Two class-action lawsuits launched in U.S. courts by Abu Ghraib detainees (or their estates) — *Ibrahim v. Titan Corp. and CACI Premier Technology Inc.* (filed July 27, 2004) and *Saleh v. Titan Corp.* (filed March 21, 2005) — are rooted in the 2003-04 Abu Ghraib prisoner abuse scandal. The third case, *Richard P. Nordan et al v. Blackwater Security Consulting*, involves four *Blackwater* employees killed in Fallujah in March 2004. The families of the deceased are suing the company for fraud and wrongful death in a North Carolina court. The plaintiffs' lawyers have called for a jury trial, which, if granted, would be watched with great interest by the entire private military industry. All three cases involve, to some degree, the Government Contractor Defence (GCD), which is a judicially created doctrine rooted in courts' interpretations of the U.S. Federal Tort Claims Act. The GCD remains the primary defence employed by military contractors in the United States. It shields government contractors from liability when they build something or provide services in accordance with government specifications. As such, it has typically been applied to products liability claims (against construction contractors and weapons manufacturers). In the 1990s, however, the GCD experienced an expansion in both its scope and its asserted legal foundation. Current litigation tests this expansion in unprecedented ways. All three of these cases are important because each will help in their own way to evaluate the potential for domestic litigation to become a viable mechanism of PMC accountability. The rulings for each case, when delivered, will more fully define the framework of rights available to victims of PMC misconduct. For a detailed analysis, see Kateryna Rakowsky, "The Government Contractor Defense and Its Impact on Litigation Against Military Contractors," *Military Law Task Force*, 2005.

²²¹ Michael Byers, *War Law: Understanding International Law and Armed Conflict*, Vancouver: Douglas & McIntyre, 2005, 118-119.

²²² Singer, "Outsourcing War," 2005.

²²³ Researchers have identified a few cases where PMCs are perceived not to be acting in the interests of their home government.

²²⁴ Schreier & Caparini, "Privatising Security," 57.

Although many logistical support jobs in Iraq are held by third country nationals, a considerable share of security contractors are either American or British.

The lack of clarity concerning the status of PMC employees means that when contractors are captured in a conflict zone, their status is ultimately defined by their adversaries. International legal scholar Michael Byers asks, "What, if any, rights — beyond international human rights — [do] these individuals have if captured by opposing armies?"²²⁵ There is no clear answer to this, though at least one well-known example indicates that contractors may not receive prisoner-of-war status. In 2003, three American employees of *California Microwave Systems (CMS)*, a subsidiary of *Northrop Grumman*, were taken prisoner in Colombia when their plane crashed in rebel-held territory during an anti-narcotics surveillance mission.²²⁶ The men have been held captive ever since and have been afforded none of the protections of the Geneva Conventions. At the same time, *CMS* and the U.S. government have washed their hands of the matter, both considering the men "kidnappes."²²⁷

THE NATURE OF THE PRIVATE MILITARY INDUSTRY: ADDITIONAL BARRIERS TO ACCOUNTABILITY

Lack of permanent employees

Private military companies have a number of other features which help frustrate efforts to establish accountability in the industry. First, projects are almost never staffed with permanent employees. Rather, PMCs draw individuals from vast databases of ex-military and former law enforcement personnel.²²⁸ These databases sort individuals by experience and area of expertise, allowing firms to custom-fit each project with appropriate employees. Individuals may also appear in numerous databases, move with ease from one contract (and company) to the next and freelance when "unclaimed" (i.e., not under contract). The nature of the industry thus makes tracking individual contractors' histories difficult. It also provides plenty of opportunities for individuals who display troubling similarities to 1960s-style soldiers

²²⁵ Byers, *War Law*, 118.

²²⁶ CMS was operating under a Pentagon contract to monitor the Colombian jungle for coca fields and processing plants.

²²⁷ Singer, "Outsourcing War," 2005. As of this writing the men were still being detained.

²²⁸ To give some idea of the size these databases, the one maintained by *Blackwater* contains over 14,000 independent contractors. See Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 2, July 23, 2006.

of fortune to enter the corporate mix.²²⁹ Indeed, one concern that critics of the private military industry do not often cite is that the structure of the industry not only allows but encourages the hiring of disreputable players. With the recruiting, screening and hiring of individuals for public military roles left in private hands, employment opportunities may be afforded to individuals who were previously forced out of public military service for past offences.

Military contracting is a very results-driven industry. Employers are thus inclined to seek employees known for their effectiveness, putting former members of more notorious and ruthless military units in particular demand.²³⁰ After all, contractor databases list skills and specialties, not past human rights violations. Singer argues that, to make matters worse, "if employees do commit violations, little incentive exists for a firm to report its own employees to any legal authorities; to do so risks scaring off both clients and other prospective employees, whereas a successful cover-up or quiet release of the perpetrators carries less risk."²³¹ Of course, these employees then become free to enter into contract with another company that is unaware of their crimes. Also overlooked is the fact that because contractors know they stand an excellent chance of avoiding prosecution for misdeeds, they are not encouraged to be on their best behaviour. The point is that even a semblance of accountability would serve some purpose at this point. Even this is absent.

No quality control during "gold rush"

A second aspect of the private military industry which contributes to difficulties in creating an effective regulatory regime is low barriers to entry into the industry, especially at the bottom. PMCs are increasingly knowledge-based and have low capital bases. Once a company assembles the necessary expertise (usually technical specialists), little prevents them from beginning operations.²³² All they really need to get started is a name and logo. This problem has been dramatically highlighted by the veritable "gold rush" of demand for security contractors in Iraq. Besides the major U.S. and British companies, scores of small companies have opened operations in Iraq -- not all of them meeting a high standard of professionalism. Former British and American special forces members have expressed

²²⁹ Avant, "Mercenaries," 21. See also section titled "How PMCs differ from mercenaries" in this paper (Chapter II).

²³⁰ Ex-military personnel employed to guard Baghdad Airport include Chileans, some of whom were trained under the Pinochet regime. See Johnston, "Transnational Security Governance," 44.

²³¹ Singer, *Corporate Warriors*, 221-222.

²³² Thomas K. Adams. "The New Mercenaries and the Privatization of Conflict." *Parameters, U.S. Army War College Quarterly*, Summer 1999.

concern over smaller outfits hiring personnel with little experience with firearms and no interest in laying out the circumstances in which their employees may use them. Larger firms like *Control Risks* have also complained that many firms are unregistered and uninsured.²³³ To be fair, many PMC employees are extremely well qualified, especially those who formerly belonged to elite special forces, but the rush for profits has led some companies to cut corners in their screening procedures.²³⁴

U.S. Marine Colonel Thomas Hammes (Ret.), in an interview with PBS *Frontline* in March 2005, complained:

You have no quality control. *Blackwater's* one thing, but there were some other groups. There was an Italian security group there that just by observing them you could tell they weren't professional. They didn't have an awareness of where their muzzle was pointed... These people were simply unsafe, but they represented us and were out there with a license.²³⁵

Again, PMC advocates insist that market forces eliminate poor service providers, but this logic breaks down when demand is as enormous as it has been in Iraq. Hammes recalled, "Let's face it: we created a situation with a huge demand there... anybody who [could] start a company [was] piling into the country." He continued, "[we] began to get guys who just formed a company overnight, threw something together, had no training program, no vetting program, and they showed up in the country with these people."²³⁶

The abbreviated time frame meant that many Iraq contracts were tendered hastily, as clients and PMCs alike were denied the necessary time to make careful decisions. Iraq caused an almost overnight explosion in the industry, leaving those charged with awarding contracts without enough information about the companies submitting bids. Difficulties were exacerbated by the fact that the individuals responsible for granting the contracts often lacked experience with the industry or even with their own organizations' security needs.²³⁷

Companies can relocate to avoid countries with stringent regulations

Once in operation, PMCs can readily circumvent or evade legislation because they are truly transnational. PMCs, like transnational companies in general, do not confine their activities to within the borders of any single state. They can easily shift location to a state

²³³ Fisk and Carrell, "Britain's secret army in Iraq."

²³⁴ Singer, "Outsourcing War," 2005.

²³⁵ Hammes, Interview, PBS *Frontline*.

²³⁶ *Ibid.*

²³⁷ Isenberg, "A government in search of cover," 15.

with less or no control over their activities.²³⁸ Indeed, no compelling reason exists for such firms to establish a headquarters in any particular place. Schreier and Caparini explain: "If a nation puts too much pressure on a firm, it can simply 'shop around' for an alternative, more permissive environment in which to base itself. In fact, all the mechanisms typically used by multinationals to avoid taxation or labour and environmental regulations are available to PMCs to avoid oversight."²³⁹ The ability of PMCs to sidestep anti-mercenary legislation is confirmed by South African contractors who have worked around new regulations passed by the government in Pretoria. Despite new laws to control the export of mercenaries, South Africa has been unable to put its firms out of business. PMCs have disregarded its regulatory structure, moving underground or offshore to remain in the hunt for lucrative contracts from states and non-state actors with purchasing power.²⁴⁰ Deborah Avant points out that the results of the South African legislation are not entirely negative, as the country has at least "preserved its political processes [and provided] little opening for the interests of the private security industry to affect foreign policy decisions."²⁴¹ Still, the South African initiative to regulate, among other things, foreign military assistance, while commendable as a starting point, has resulted in the lessening rather than enhancement of public transparency into PMC activities.²⁴² The South African experience is a lesson in the ability of PMCs to easily dissolve their operations, circumventing attempts to constrain their behaviour and making individuals more difficult to trace in case of legal violations.²⁴³

Navigating the labyrinth: subsidiaries and sub-contracting

A further layer of complexity is added when companies operate several subsidiaries and sub-contract jobs many times over. In fact, keeping track of contracts is much akin to unravelling a tangled ball of string. As a result, the industry is poorly understood and efforts to investigate wrongdoing often go nowhere. Some critics have even likened the layering of contracts to a kind of pyramid scheme in which Company A enters into a security services contract with, for example, the British government, billing the client an unknown amount and

²³⁸ Holmqvist, "Private Security Companies: The Case for Regulation," 54.

²³⁹ Schreier & Caparini, "Privatising Security," 66.

²⁴⁰ Johnston, "Transnational Security Governance," 44. There is currently a huge South African contractor contingent working in Iraq. So many, in fact, that one American contractor commented, "You know you've been in Iraq too long when hearing Afrikaans at the pool is normal."

²⁴¹ Avant, "The Privatization of Security and Change in the Control of Force," 156.

²⁴² O'Brien, "PMCs, Myths and Mercenaries."

²⁴³ DCAF, "Backgrounder," 4.

contracting Company B to provide the services for less. Company C ultimately performs the services and bills Company B for a still lesser amount.²⁴⁴

The most troubling aspect of subcontracting is that executive branches of governments, in conjunction with large, politically connected PMCs, seem to be actively working to use subcontracting as a shield against wrongdoing. Large contracts are often split up precisely to avoid congressional oversight, and PMC distance themselves from responsibility through layers of subcontracts and subsidiaries. Rather than working directly for national governments, most PMCs in Iraq are hired to provide protection for prime contractor employees, or employed by other entities such as Iraqi companies or private foreign corporations seeking business opportunities in Iraq.²⁴⁵ Martha Minow writes that subcontracting “raises the question of whether such an arrangement should allow the corporation to distance itself from responsibility any more than a contracting relationship should allow the military to separate itself from the acts of its contractor’s employees.”²⁴⁶ In practice, this is precisely what goes on, leaving those striving to impose some degree of accountability with a task similar to peeling an onion. Not only are there many layers to contend with, but the cook is likely to shed a few tears in the process.

CONTRACT MANAGEMENT CHALLENGES

In order for PMCs to be held accountable, it is first necessary to know what they have done. If governments are to ensure that the contracted work not only performed, but performed without fraud, overcharging, or mismanagement, clear and consistent oversight is a must. One might say, then, that inadequate contract management is one of the most fundamental concerns relating to the privatization of military affairs. Research on public

²⁴⁴ A recent court case helped to reveal some specifics about these types of arrangements, which normally are obscured because contracts are not publicly available. According to contracts that form part of the evidence in *Richard P. Nordan et al v. Blackwater Security Consulting*, *Blackwater* paid its employees \$600 per day and charged its client, *Regency Hotel & Hospital Co.*, \$945 a day per man, for a 58 per cent markup. *Regency*, a Kuwaiti company, was a subcontractor to Cyprus-based *ESS Support Services Worldwide*. *ESS* was a subcontractor to *KBR*, a subsidiary of *Halliburton Inc*. There are no public documents to reveal how much *Regency* billed *ESS* for the security services *Blackwater* provided, nor is it known how much *ESS* charged *KBR* or how much *KBR* charged the U.S. government. See Sizemore, “The layered look,” July 28, 2006.

²⁴⁵ Isenberg, “A government in search of cover,” 6.

²⁴⁶ Minow, “Outsourcing Power,” 993.

mechanisms for overseeing PMC contracts reveals serious shortcomings in the ability of governments -- especially the U.S. government -- to keep tabs on contractors' activities.

From the late 1980s to 2000, procurement professionals, professional buyers and contract management positions were dramatically reduced in the United States as part of more general reductions in the size of government. This left a shortage of contract management professionals even before September 11, 2001, after which the amount of procurement increased by at least 50 per cent.²⁴⁷ Despite the massive increase, no effort was made by the U.S. government to hire additional staff or provide training so the people who are in place could manage the volume and type of contracts PMCs have been awarded in the past five years.²⁴⁸ At present, over 50 per cent of all existing contracting officers in the U.S. government are retirement-eligible. Moreover, no new significant recruiting has been done since the 1980s.²⁴⁹ Steven Schooner asserts, "It's been an unmitigated disaster to the extent that the United States military and the government generally has refused to invest in the required amount of contract management resources needed to get the job done...we simply don't have enough procurement professionals to responsibly spend the public's money today."²⁵⁰

When governments have an insufficient number of contracting officers, the people who are in place spend all of their time buying to meet increased demand. This leaves no one left over for managing contracts. In the United States, this shortage has contributed to the prevalence of cost-plus contracts, as there are not enough people to calculate risks in advance so that returns can be properly monitored.²⁵¹ Far from simply exacerbating the problems of multiple layers of contracts, the lack of management personnel is actually leading to the layering of contracts in the first place. Were the U.S. government to employ a sufficient number (and quality) of procurement professionals, it would be able to award smaller, more discrete contracts, and to manage them effectively. Without the necessary staff, however, there is enormous pressure to award massive contracts to a few companies and then to let them subcontract. Martha Minow writes, "the [U.S.] government has no choice at this point but to enter into larger, more complicated contracts, because they don't have

²⁴⁷ Schooner, Interview, PBS [Frontline](#).

²⁴⁸ Martha Minow's research points to "clear signs of serious problems" with oversight, dating back well before the Iraq war. See "Outsourcing Power," 1005.

²⁴⁹ Schooner, Interview, PBS [Frontline](#).

²⁵⁰ [Ibid.](#)

²⁵¹ [Ibid.](#)

enough people to manage the contracts...we're being penny wise and pound foolish by not staffing up our acquisition workforce."²⁵²

One striking example of the lack of contract management capability in the U.S. is the capital reconstruction contract for Iraq, awarded to *Bechtel/Parsons* by USAID. *Bechtel/Parsons* was charged with doing over \$1 billion of reconstruction work all over Iraq with only six government employees to manage the entire operation. As a result, discretionary decisions that should have been made by government employees were frequently left up to the company.²⁵³ Problems at the Abu Ghraib prison facility offer perhaps an even more stunning illustration of the lack of contract management capacity in the United States. Not only was there no contract officer inside the prison to manage contract personnel, there was not a representative even in Baghdad to supervise a larger group. Further still, there was not a single person in all of Iraq to perform this function.²⁵⁴ Incredibly, the U.S. government has only twice as many personnel overseeing contractors in Iraq as it had for its Balkans contracts during the 1990s, despite the fact that there are now 15 times the number of contracts in a much more challenging context.²⁵⁵

Shortcomings relate not only to personnel, but to procedures as well. Last year the U.S. military admitted to lacking a "centralized procedure" for monitoring the hundreds of millions of dollars in PMC contracts for security and reconstruction in Iraq.²⁵⁶ In 2004, the U.S. Office of the Special Inspector General for Iraq Reconstruction (SIGIR) issued a report on Coalition contracts in Iraq which documented serious problems with missing and incomplete records. The U.S. Department of Defense, it reported, lacked basic information about how many private contract employees were on the ground in Iraq, the specific tasks each was to perform, and whether or not they were in fact performing those tasks.²⁵⁷ Similarly, a recent audit of contracting practices by the Canadian Department of National

²⁵² Minow, "Outsourcing Power," 1011.

²⁵³ Schooner, Interview, PBS Frontline.

²⁵⁴ Ibid.

²⁵⁵ Singer, "Outsourcing War," 2005.

²⁵⁶ Regan, "U.S. Troops, Security Contractors Increasingly at Odds in Iraq."

²⁵⁷ Minow, "Outsourcing Power," 1009-10. The SIGIR office, a federal oversight agency, began operation in January 2004 to examine reconstruction money spent in Iraq. A huge military authorization bill passed by the U.S. Congress in October 2006 contained an obscure provision that would terminate the SIGIR office on October 1, 2007. At the time of writing, Congressional Democrats had declared their intent to reverse the closing of the SIGIR office and, moreover, to greatly increase its investigative reach. See James Glanz, "Congress Tells Auditor in Iraq to Close Office," The New York Times, November 3, 2006; and James Glanz, David Johnston and Thom Shanker, "Democrats Aim to Save Inquiry on Work in Iraq," The New York Times, November 12, 2006.

Defence (DND) showed not only frequent breaches of regulations, but also oversight and management problems. In particular, the audit found that DND was not capable of determining how many contractors it employed worldwide or how long contracts had been in effect.²⁵⁸ A February 2006 study by the U.S. Special Inspector General for Iraq Reconstruction gave perhaps the most critical account to date, indicating that things are getting worse rather than better. The report states:

The U.S. government...experienced shortcoming in accounting for personnel deployed to Iraq -- especially civilians and contractors. There was, and still is, a lack of effective control procedures at many entry and exit points for Iraq, and there is no interagency personnel tracking system. Official and contract personnel often arrived and departed with no systematic tracking of their whereabouts or activities, or in some cases, with no knowledge of their presence in the country. Shortly before its dissolution in June 2004, CPA was still unable to account for 10% of its staff in Iraq. Mechanisms to track contractors...have been left largely to the contractors' individual firms and have not been enforced.²⁵⁹

As the above quote indicates, PMCs are often left to oversee themselves. A \$293 million contract won by *Aegis Defence Services* takes this a step further. Under the contract, *Aegis* is tasked with acting as the coordinating hub for more than 50 other PMCs in Iraq. Martha Minow asks, "How well can one company monitor another in advancing governmental purposes?" She concludes, "such an arrangement is doomed if there are no clear guidelines and no sustained monitoring by the government of the oversight process itself."²⁶⁰ Adding to an already heavy reliance on PMCs for the enormous scale of work underway in Iraq, depending on contractors for the management, planning, and even supervision of other contracts raises fundamental questions about whether anyone knows just what private firms are doing in that country.²⁶¹

In sum, sizeable gaps in the legal system that governs PMC operations allow firms to escape legal accountability routinely. Jurisdictional conflicts of parent country law, virtual immunity provided to contractors by state-centric international treaties, underdeveloped police agencies in host countries and the nature of PMCs themselves all combine to allow private contractors to go unpunished for crimes committed overseas. Moreover, efforts to ensure accountability in the private military industry are often crippled by inadequate or non-existent contract management. The next chapter will detail further damage to the public

²⁵⁸ Spearin, "The Privatization of Security in Canada," 320.

²⁵⁹ Quoted in Isenberg, "A government in search of cover," 9.

²⁶⁰ Minow, "Outsourcing Power," 1010.

²⁶¹ *Ibid.*, 1004-5

interest by exploring how widespread dependency on military contractors can weaken long-term military capacity and jeopardize the success of military operations.

CHAPTER IV: IMPACT ON THE MILITARY AND MISSION

A CHANGED MILITARY?

The hiring of private firms for an increasing range of tasks previously reserved only for uniformed personnel means the military is no longer a unique profession. This in itself does not constitute a decisive objection to military outsourcing in all its forms, though a number of critics have argued that the application of armed force should remain a monopoly of the state.²⁶² This objection aside, the use of PMCs has had a wide-ranging impact on national militaries: the ranks of special forces units are being poached by private firms, the distinction between active duty and retired soldiers has become blurred, public trust in the military may be diminished, and armed services are experiencing a loss of control through contractor dependency. All told, extensive privatization may forever change the quality, character and public image of the traditional military.

Personnel retention: the lure of higher salaries

The most obvious result of more private sector opportunities, with their attendant high salaries, is a temptation for experienced soldiers (and some law enforcement officers) to retire from service in order to undertake lucrative work for private firms. Minow explains, “the day after retiring, an individual can collect his or her retired pay, which is typically 50% of an active duty salary, and at the same time return to work as a consultant in essentially the same capacity, but with a new salary. Such individuals perform the same function while receiving both their retired pay and the consultant salary.”²⁶³ Even a move to become private security contractor can be accompanied by a dramatic increase in earnings. In Iraq, ex-commandos and Special Air Service (SAS) veterans can charge \$1,000 per day for their services — seven times what their former colleagues are currently earning.²⁶⁴

Migration to the private sector is of particular concern for special forces units because their personnel have the most sought after skill sets. Now in a much weaker position to retain talented soldiers, elite force commanders in the U.S., U.K., Canada,

²⁶² See, among others, Grant, “U.S. Military Expertise For Sale.”

²⁶³ Minow, “Outsourcing Power,” 1019.

²⁶⁴ Johnston, “Transnational Security Governance,” 42.

Australia, New Zealand, among other countries, have all expressed deep concern over the exodus. The Canadian Forces special operations unit, Joint Task Force 2 (JTF-2), is facing severe retention pressures as experienced personnel are lured away to work at highly lucrative rates for British and American PMCs in Iraq.²⁶⁵ Singer spoke to one U.S. special forces officer who described the poaching of experienced troops by PMCs as being “at a tipping point.”²⁶⁶ Initially, Washington did little other than to create a special working group to explore the issue, although recently some commands have begun taking steps to combat the problem. A spokesman for the U.S. Naval Special Warfare Command says “The Navy will never compete financially with the civilian sector in sheer monetary terms.” Because of the imbalance, the U.S. Navy has begun to offer an assortment of extra incentives, including re-enlistment bonuses of up to \$90,000.²⁶⁷ The U.S. Special Operations Command, for its part, has devised a new system of salary, benefit and educational incentives.²⁶⁸ In the U.K., the Ministry of Defence is reported to have asked PMCs operating in Iraq to refrain from poaching its soldiers. British Special Forces, and in particular the SAS, have been badly hit.²⁶⁹ Chris Taylor, a *Blackwater* vice president, has denied that PMCs are poaching the ranks of national militaries. He recently told a journalist for *The Virginian-Pilot*, “It’s not true...People leave the military for a wide variety of reasons. We’re not interested in luring people away from the military...It’s an urban legend that’s been created by the media.”²⁷⁰

Damaging public trust in the military

In selling their warfighting skills for profit, military contractors effectively blur the distinction between active duty personnel and private consultants. The corporate appearance of most consulting firms, in addition to their strong connections with senior officials in the defence establishment (often life-long colleagues) and locations in national capitals and near

²⁶⁵ Spearin, “Canadian Policy: Possibilities and Pitfalls on the Road to Regulation.” *Canadian Foreign Policy*, 11(2), Winter 2004: 3.

²⁶⁶ Singer, “Outsourcing War,” 2005. The growth in intelligence contracting has also precipitated a “spy drain,” as talented officers are lured to the private sector with offers of pay increases of 50-100%. Poaching became such a problem at the CIA that former Director Porter Goss is reported to have warned several companies to stop recruiting employees in the agency cafeteria. One recently retired case officer also claimed he had been approached twice while in line for coffee. See Miller, “Spy Agencies Outsourcing to Fill Key Jobs.”

²⁶⁷ Sizemore, “Pulling Down Big Bucks,” July 25, 2006.

²⁶⁸ DCAF, “Background,” 3.

²⁶⁹ Fisk and Carrell, “Britain’s secret army in Iraq.” Hereford is, in addition to being where the SAS is based, coincidentally also home to a significant number of private military companies. See Johnston, “Transnational Security Governance,” 42.

²⁷⁰ Sizemore, “Pulling Down Big Bucks,” 7/25/2006.

military installations, adds a certain degree of respectability to the selling of military expertise. At the same time, consultants working for PMCs remain officers and soldiers despite having retired from active military service, because they continue to participate and train others in the conduct of war. In the eyes of some military officers, taking off the uniform goes beyond freeing retired soldiers to pursue career opportunities in the private sector. Doing so also removes their obligation to the codes, rules and regulations that make military service so unique. Without the traditional sanctions and restraints of formal allegiance to their country, the public is forced to rely on the conscience of profit-motivated actors to ensure an appropriate standard of conduct.²⁷¹

This argument may be taken a step further, as has been done by career soldiers who believe selling warfighting skills taints military ethics. Regarding the privatization of U.S. military assistance to foreign powers, U.S. Army Colonel Bruce Grant states: "Ultimately, the privatization of U.S. military services under direct foreign contract corrupts our military both in the eyes of society and from within the ranks."²⁷² When former officers auction off their skills on the international market for profit, some view this as a compromise of the integrity and spirit of selfless service enshrined in the 'duty, honour, country' creed. After all, uniformed soldier are supposed to be motivated by a sense of duty and allegiance to their country. Colonel Grant explains:

[The] public's faith in their military leaders would surely deteriorate when the public realizes that despite paying the military relatively well during active service and providing a generous pension, the retired military seek to cash in on their skills in foreign lands. It is hard to understand how one day the general in uniform is a selfless servant of the state motivated by love of country and dedicated to soldiers, and the day after retirement is selling his services to the highest bidder. This contradicts the military ethic of selfless service and cheapens the profession of arms in the eyes of the public.²⁷³

Citizens who adopt the cynical belief that military leaders are only in it for the money will no longer regard the military as a true servant of the state and its people. Likewise, if the public begins to accept reliance on PMCs and feel that military missions can be hired out like any commercial enterprise, the military as an institution could be fundamentally redefined within society, making public trust in the armed forces a thing of the past.²⁷⁴

²⁷¹ ibid.

²⁷² ibid.

²⁷³ ibid.

²⁷⁴ ibid.

Short vs. long-term capabilities and contractor dependency

Outsourcing military tasks to private firms is accompanied by a loss of control. Contracts with PMCs expose national militaries to “the vagaries and incentives of the global marketplace,”²⁷⁵ as companies can shift directions or go bankrupt, and multiple layers of subcontracting among firms can force the military to rely on people it would never use directly. When PMCs sub-contract in order to save money and obtain necessary resources, militaries open themselves to complications involving multiple nationalities of actors involved, as well as to disputes between private providers that nevertheless impact armed forces.²⁷⁶ The scandal surrounding *Halliburton* was in part caused by the company’s failure to pay its subcontractors on time, causing more than one to face bankruptcy and threaten to stop work that was central to the safety and effectiveness of U.S. troops in Iraq.²⁷⁷ In August 2000, *Third Ocean Marine Navigation Company*, an American PMC, effectively held hostage \$223 million worth of Canadian military equipment because the firm had not been paid by a Canadian contractor who hired it to transport the equipment home from Kosovo. The incident involved a complex mix of three states and three companies, and eventually resulted in the need for Canadian Forces (CF) personnel to board and take over *Third Ocean’s* cargo ship in international waters.²⁷⁸ These types of examples demonstrate how contractor dependency can leave states vulnerable both to commercial interests and to the interests of other states. Relying on third-country nationals through layers of subcontracting may also compromise military strength because of loyalties that shift based on sources of payment.²⁷⁹ Christopher Spearin observed: “Whereas nationality and loyalty are longstanding components of operational success, the introduction of contractors upsets this calculation.”²⁸⁰

Proponents of privatization point to PMCs’ just-in-time approach as a chief advantage of contracting out. By using private firms on an ad hoc and contingency basis, they say, states can focus on core capabilities and spend on other things only when they have to. This just-in-time attitude is in direct contrast with the traditional just-in-case posture

²⁷⁵ Spearin, “The Privatization of Security in Canada,” 315.

²⁷⁶ *Ibid.*

²⁷⁷ Minow, “Outsourcing Power,” 1011.

²⁷⁸ Spearin, “The Privatization of Security in Canada,” 315. For a complete account of the event see Rhys Dogan and Michael Pugh, “From Military to Market Imperatives: Peacekeeping and the New Public Policy,” Plymouth International Papers No. 8, International Studies Centre, University of Plymouth, July 1997: 24-25.

²⁷⁹ Minow, “Outsourcing Power,” 1020.

²⁸⁰ Spearin, “The Privatization of Security in Canada,” 316.

of the military, exhibited through such activities as mothballing and stockpiling.²⁸¹ Despite so much talk about the advantages of increased flexibility, the nature of globalized industry means resources may not be forthcoming when required because of strong competition among states for the services of PMCs. Making the paradigm shift from just-in-case to just-in-time poses potential problems for those who rely on PMCs for the timely provision of resources or transport capabilities. If required services are temporarily unavailable, the effectiveness and safety of operations may be compromised. Spearin notes that well managed companies are not likely to have available hoards of contractually uncommitted equipment and highly trained personnel. He explains:

Though reliance on contracting may be intended to enhance [military] readiness and sustainability, the risk also exists that private contractors operating in a global market and a dangerous world may, in fact, detract from that readiness and sustainability. From one angle, searching out comparative advantage via reliance on the global marketplace through outsourcing and privatization should, in theory, expose [defence departments] to high quality services and products in order to fulfill...needs. From another angle, such an approach also exposes [militaries] to the commercial marketing considerations and internal policies firms need to follow in order to survive, to compete, and to accrue profit in the global marketplace.²⁸²

Alternatively, far from not having a product or service available, a PMC might be the *only* entity to possess a capability. When a PMC enjoys a monopoly on a particular service, such as the maintenance of a specific weapons system, states are especially vulnerable to dependence through outsourcing.²⁸³ Even in the absence of a monopoly (or near monopoly), transaction costs can make it very difficult to change suppliers. Some see Washington's decision to stay with *Titan* for its intelligence and translation services — despite the company's direct involvement in the Abu Ghraib prison abuses — as evidence of dependence. Other firms implicated in allegations of overcharging have also retained their contracts (though this may equally be the result of political influence). Exposure to war profiteering is another danger of contractor dependency. Aside from diverting the public money to private coffers through overcharging and fraud, war profiteering can also jeopardize peacemaking and broader confidence in government.²⁸⁴

Relieving armed forces of the need to develop internal capacities may be to the long-term detriment of military strength. When a military relies on private actors for the

²⁸¹ *Ibid.*, 316

²⁸² *Ibid.*, 316.

²⁸³ Leander, "The Power to Construct International Security," 810.

²⁸⁴ Minow, "Outsourcing Power," 1022.

provision of important tasks, related capacities no longer need to be developed internally.²⁸⁵ It follows logically, then, that if states continue to increase their reliance on PMCs there may come a time when these states lack sufficiently trained professional soldiers.²⁸⁶ Deborah Avant observed: "If the private option provides flexibility in the short run but prevents investment in (or needed reorganization of) military forces to deal with a new range of problems, this flexibility could yield long-run costs and dependencies."²⁸⁷ In the case of privatized military training in the United States, American expertise and capacity for engagement may be weakened. Employing private contractors may help fight the "war on terrorism" in the short run, but it has the double effect of diminishing investment in public institutions. Every time Washington funnels money for training into PMCs rather than into its national forces, it encourages private rather than public expertise.²⁸⁸ As a result, contractor dependency is compounded, making it more and more difficult for a future administration to reverse the trend should they so desire.

A number of states, including Canada, now find reliance on contractors a necessity.²⁸⁹ The U.S. Army is particularly dependent upon contractors, especially in terms of ground warfare. This dependence goes beyond food, water, housing, and other basic services. Contractors in Iraq often ferry ammunition to the battle area and assist in the operation of almost every high-technology weapon used on the battlefield.²⁹⁰ Steven Schooner, among others, has spoken out against what he considers a dangerous degree of dependency in the United States, saying:

There's no question that the [U.S.] military has become overly dependent on the private sector. When I was a young Army officer, as I learned the military doctrine...the military relied on contractors on the battlefield only to the extent that they could fight without the contractors. That's simply no longer the case in the United States military. The United States military can no longer fight effectively without contractors on the battlefield, and that has to be an item of great concern both to commanders and to the public. If we are faced with a legitimate foe that could in fact compete with us in terms of competence on the battlefield...this pervasive presence...of contractors could be potentially disastrous.²⁹¹

²⁸⁵ Ibid., 1020.

²⁸⁶ Schooner, Interview, PBS Frontline.

²⁸⁷ Avant, "Privatising Military Training."

²⁸⁸ Ibid.

²⁸⁹ Spearin, "The Privatization of Security in Canada," 309.

²⁹⁰ Schooner, Interview, PBS Frontline.

²⁹¹ Ibid.

IMPACTING THE MISSION

Increased warfighter morale?

Many of those in favour of using PMCs for non-combat support services, such as logistics and base operations, argue that aside from freeing up soldiers to concentrate on warfighting, contractor-run facilities offer improved amenities which boost the morale of the combat troops, or “trigger-pullers.” This is the claim that contractors have won the “hearts and minds and stomachs” of the military, that large bases like *Anaconda*,²⁹² with its four dining halls and massive recreation centre — reminiscent of permanent bases in Germany during the Cold War — make the military a more effective fighting force. One author explained: “People are shooting at you. You’re away from home...your family...you’re probably being paid less than minimum wage. Now, in that situation, you could be living out of a tent. You could be eating freeze-dried food...you could be wearing filthy clothes.” On the other hand, with high-comfort facilities built and maintained by contractors:

...you might be sleeping with a roof over your head, getting clean laundry on a regular basis, getting a hot shower...maybe every day, getting...as many as two hot meals a day. It doesn’t take a rocket scientist to figure out that in the latter situation you’re going to be a much more effective, cohesive and rational fighting force if you’re taken care of and treated like a human being.²⁹³

Many critics are not so quick to agree — including some within the military who have described the services provided to soldiers by contractors as “misguided luxury” for a war zone. U.S. Marine Colonel Thomas Hammes (Ret.) has criticized the level of care, saying, “I frankly was stunned at the level of care...the big-screen TVs, the...truly exceptional food...in the Green Zone, we always had three different main courses, three vegetables, three kinds of ice cream, dessert — way beyond any necessity, but they could do it, so they did, because it’s just money.”²⁹⁴ One journalist remarked that she had eaten lobster at a *KBR*-run base in Mosul. When asked why soldiers are provided with such a high level of luxury, Hammes responded, “[There’s] some feeling that we have to do this because the troops won’t respond otherwise.” He added, “I don’t think that’s true...The five months I was in Somalia with the

²⁹² Camp Anaconda or “Logistics Support Area (LSA) Anaconda,” is located at Balad in the Sunni Triangle, 110 km north of Baghdad. The U.S. Air Force refers to it as “Balad Air Base.” It is one of the largest American military bases in Iraq, and is the largest base operated by Halliburton subsidiary KBR, housing some 28,000 soldiers and 8,000 civilian contractors. The base offers a host of amenities, including movie theatres, fast food courts and dance lessons.

²⁹³ Schooner, Interview, PBS [Frontline](#).

²⁹⁴ Hammes, Interview, PBS [Frontline](#).

Marines, we never really had a hot meal...There were no showers built...Nobody seemed to have a problem with that. I mean, you're in a war."²⁹⁵

More soft targets

Whether or not the added comfort contractors provide does in fact boost the morale of troops (and leaving aside the issue of the enormous financial expenditure for such amenities), the level of luxury at U.S. bases in Iraq has created a new problem for the counterinsurgency effort: more targets to defend. The more extensive the service at military bases, the more supplies required and the more convoys needed to transport these supplies. After all, most everything in Iraq must be trucked up dangerous roads at some point, meaning people must risk their lives to deliver added luxuries.²⁹⁶ The immediate effect of additional transportation is an increase in the size of the target the U.S. presence represents to insurgents. And contractor convoys are not just larger targets, they are softer targets as well. Roadside bombs, or Improvised Explosive Devices (IEDs) have accounted for more than half of all U.S. military injuries in Iraq and are by far the single greatest cause of death for U.S. service members.²⁹⁷

This problem is exacerbated by the fact that many contractors cannot adequately protect themselves because they lack the necessary cross-training. Providing security for non-combat PMC employees can thus become a job for uniformed soldiers. Only a generation ago, when military service members handled their support services, jobs like supply transport and food preparation were done by people who had all gone through basic training and could handle a weapon. At present, many support service contractors on the battlefield in Iraq are not only unarmed, but also untrained to deal with arms (and often prohibited from carrying weapons in any case).²⁹⁸ The overall result is a much larger, much more vulnerable force. If the people supplying the troops had the ability to defend themselves properly, uniformed soldiers would be spared the danger of coming to the aid of contractors. A PMC employee who is killed or otherwise put out of action because of physical limitations or incompetence (such as an inability to put on protective gear or a careless

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ ABC News, "The Danger of Roadside Bombs: Pentagon Ramps up Efforts to Deter IED Blasts." January 29, 2006.

²⁹⁸ Schooner, Interview, PBS Frontline.

shortcut through a minefield) could get soldiers killed and possibly put a mission at risk.²⁹⁹ Moreover, cross-trained logistics personnel would be useful in augmenting overall force capacity in times of need.³⁰⁰ In most armed forces, all military occupation specialists (with perhaps the exception of Chaplains) are trained to fight as infantry when required³⁰¹ (“put down that potato peeler and take this rifle”). In Iraq, the problem of soft contractor targets is worsened by the fact that the U.S. military does not have enough troops to defend their own people, let alone contractors. This further increases demand for private security providers, who are given arms-bearing work protecting contractors, political officials of the United States government and, in some cases, even U.S. military personnel.³⁰²

Outside the command structure

Military commanders have often complained that contractors operate outside the regular command structure and follow inconsistent rules of engagement (ROE). Sometimes contractors operate without any rules at all; more often, especially with regard to explicitly military contractors who perform security functions, contractors have use-of-force rules built into their contracts. Though PMCs train their people on how to follow them, these rules are not vetted by defence establishment lawyers, nor are they commonly designed to correspond to the levels of force desired by commanders in theatre.³⁰³ ROE aside, ambiguities over command can lead to disorder and ineffectiveness. A GAO report found that military officers with the U.S. deployment in the Balkans in 2000 were confused about whether they could control the actions of contractors. This uncertainty was subsequently identified as a major factor in the government’s inability to control contract costs.³⁰⁴

In Iraq, commanders know they can no longer control everyone in the battle area. Although commanders used to be able to direct all personnel from the front line to rear areas, the introduction of contractors is accompanied by the introduction of the contracting officer. Schooner asserts, “It’s quite clear that we’ve not fully resolved all of the abilities of the commander to take cognizance over and direct the behaviour of everyone in the battle

²⁹⁹ Campbell, “Contractors on the Battlefield,” 4.

³⁰⁰ DCAF, “Backgrounder,” 3.

³⁰¹ Campbell, “Contractors on the Battlefield,” 4.

³⁰² Schooner, Interview, PBS [Frontline](#).

³⁰³ Phillip Carter, “Hired Guns: What to do about military contractors run amok.” [slate.com](#) April 9, 2004.

³⁰⁴ Minow, “Outsourcing Power,” 1005.

area.”³⁰⁵ In effect, rather than “commanding” PMC personnel, a commander now “manages” these individuals through the contracting process. This greatly complicates the life of a commanding officer, and the complexity is compounded when commanders are dependent upon contractors to accomplish their mission.³⁰⁶ Colonel Hammes, once in charge of operating U.S. bases in Iraq, explained, “I know it’s not effective because I have no control over people. For instance, under our law, the contracting officer’s the only guy who can make corrections to the contract if he thinks they’re not fulfilling the contract.” Hammes continues, “I’m not allowed to tell [contractors] to do things. I have to go to the contracting officer, [who is] frankly overwhelmed and overworked trying to do the other contracts he’s working on. So maybe in a week or 10 days he’ll get to my problem.”³⁰⁷ This kind of time frame hardly seems appropriate for a war zone, and one wonders why doing things in-house would not usually be quicker and easier because it avoids incessant haggling.³⁰⁸ Finally, contracts -- written in advance of deployment to the field -- cannot possibly cover every conceivable contingency. This reduces the combat flexibility of contractors and can compromise their ability to deal with the unexpected.³⁰⁹

Poor communication and coordination

Further command and control difficulties arise when private contractors live separately, drive nonmilitary vehicles, use nonmilitary radios, and report only to their corporate bosses. Journalist Phillip Carter found that PMCs will establish relationships with local military units and governmental agencies when their contracts require it. However, this interaction rarely includes crucial details, such as precise routes and times for contractor convoys or radio frequencies and call-signs for PMC personnel. It should come as no surprise that such haphazard relations create problems when soldiers and contractors fight in close proximity to each other. For example, when a contractor convoy drives from Baghdad to Fallujah, it is not legally required to inform military commanders it is en route. Likewise, contractors are not obligated to call in reports to the military command in Iraq, leading to absurd situations like an April 2004 battle in Najaf, in which security contractors

³⁰⁵ Schooner, Interview, PBS [Frontline](#).

³⁰⁶ Campbell, “Contractors on the Battlefield,” 4.

³⁰⁷ Hammes, Interview, PBS [Frontline](#).

³⁰⁸ Isenberg, “A government in search of cover,” 4.

³⁰⁹ DCAF “Backgrounder,” 3.

held off attacks on the CPA headquarters that military officials discovered only hours later.³¹⁰ A similar incident around the same time involved security contractors escorting a CPA official into his squadron's area of operations without the military's knowledge. The contractors became involved in a firefight and had to be rescued by the army.³¹¹

In an already complex battle space that includes military forces from multiple nations, government agencies, humanitarian groups, insurgents and Iraqi civilians, private contractors introduce an added layer of complexity. Officers have complained about difficulties in identifying people on the ground. Contractors often wear a mixed bag of uniforms (even within their own team), without unit logos or nametags, and virtually every group of security contractors drives a sport utility vehicle (SUV), usually without licence plates.³¹² In many respects, this confuses members of the counterinsurgency effort more than it does insurgents. Though the similar dress of soldiers and contractors makes separating the two problematic, insurgents usually do not care to make a distinction.³¹³ U.S. military commanders, however, need to be fully aware of who is in the battle area. Colonel Hammes recalled: "There would be 10, 15, 16 different types of security uniforms with all kinds of weapons. One of the things [you do] in a firefight is you listen. If you're with Iraqi forces, they've got AK[47]s. But if you're in this firefight, an AK could be a good guy. So the confusion level was...enormous."³¹⁴

Interesting enough, complaints about poor communication have come from private contractors as well. PMCs in Iraq have often grumbled that they are not part of the tactical operations group and thus do not belong to the same communications networks as military personnel. In practice this means contractors are not receiving the same intelligence information as uniformed soldiers. This is dangerous when battlefield conditions develop at a brisk pace and large numbers of armed individuals with important tactical responsibilities do not receive the same messages from tactical leadership.³¹⁵

³¹⁰ Carter, "Hired Guns."

³¹¹ Kimberlin and Sizemore, "Blackwater: Inside America's Private Army," Part 3, July 24, 2006.

³¹² Hammes, Interview, PBS [Frontline](#).

³¹³ Johnston, "Transnational Security Governance," 45.

³¹⁴ Hammes, Interview, PBS [Frontline](#).

³¹⁵ Schooner, Interview, PBS [Frontline](#).

“Blue on white” violence

A 2005 report by the GAO identified numerous instances of “blue on white” violence since the beginning of the occupation of Iraq.³¹⁶ *Triple Canopy*, a major PMC in Iraq, has reported several friendly fire incidents with military personnel.³¹⁷ In one five-month period in early 2005 there were 20 blue on white incidents reported. In fact, GAO investigators were told that such incidents were so frequent that reports were not always filed.³¹⁸ The most serious documented incident of blue on white violence to date occurred on May 28, 2005, when U.S. Marines detained 16 military contractors (all former U.S. soldiers) for allegedly firing on a guard tower at an American base in Fallujah. The contractors, a security convoy from *Zapata Engineering*, denied the charge, saying that they had only fired into the air to encourage a stalled truck to move, but were subsequently detained by angry Marines for three days. The contractors and Marines have also offered conflicting accounts of how the contractors were treated while in custody. The contractors claim that they were abused and humiliated, one of them saying, “They treated us like insurgents, roughed us up, took photos, hazed us, called us names.”³¹⁹ The Marines have categorically denied such accusations and have since been cleared of all charges.³²⁰ Although exactly what occurred may never be disclosed, the incident nonetheless highlights ongoing tension between soldiers and civilian contractors in Iraq. A number of U.S. soldiers have made no secret of their resentment for the higher pay and better working conditions of military contractors working alongside them. Moreover, because contractors’ actions are not properly overseen, misunderstandings and disputes tend to fester, adding to the animosity.³²¹

Walking off the job

Considering the broad range of functions that PMCs now perform, including a number of “mission critical” tasks, many have questioned the wisdom of entrusting a private

³¹⁶ United States Government Accountability Office. “Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers.” Report to Congressional Committees, July 2005. The British military refers to friendly fire incidents as “blue on blue,” a term that derives from military exercises where friendly forces are “blue” and enemy forces are “red.” The addition of military contractors is accompanied by the introduction of a third “colour” of forces – “white.” See G. Regan, Backfire: A history of friendly fire from ancient warfare to the present day (London, Robson Books), 2002.

³¹⁷ Isenberg, “A government in search of cover,” 13.

³¹⁸ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 3, July 24, 2006.

³¹⁹ The detaining of the 16 *Zapata* contractors has been described as “the first blatant example of contractors being treated as criminals.” See Regan, “U.S. Troops, Security Contractors Increasingly at Odds in Iraq.”

³²⁰ Isenberg, “A government in search of cover,” 13.

³²¹ Regan, “U.S. Troops, Security Contractors Increasingly at Odds in Iraq.”

entity with important work without a guarantee that contractors will not simply refuse performance because of concerns over safety or otherwise. As one military officer points out, “when you’re a soldier or Marine, you sign an unlimited contract with the country. You’re willing to give your life. A contractor’s not saying that.”³²² Indeed, uniformed soldiers providing combat service support are trained and conditioned to carry out their orders in a combat environment. Not only do they know their fellow soldiers are depending on them to come through, but those in combat fully expect to receive the support they require. In the military, trust is built on discipline and professionalism. Without these, a mission may be jeopardized. At present, there is little a commander can do if private contractors feel unsafe or, for whatever reason, simply feel they ‘aren’t being paid enough for this’ and quit. Proponents of outsourcing will point out that PMCs are still required to perform and must replace these individuals, but the reality is a lot can happen in the interim.³²³ When contractors fail to provide services they promised, the implications for a given military effort may well be serious.

These problems are not hypothetical; in fact, there are numerous examples of companies having delayed or terminated operations because of safety or other concerns. During the 1991 Gulf War, some contractors fled from an air base in Saudi Arabia because they feared a possible chemical weapons attack. In that case, the operation was not disrupted, but the event highlighted potential weaknesses.³²⁴ In the mid-1990s, Ghurka contractors abandoned their employers in Sierra Leone when their commander was allegedly cannibalized.³²⁵ In 2001, the *Atco-Frontec Logistics Corporation* — a Canadian PMC contracted for combat and combat service support for NATO’s Stabilization Force in Bosnia — experienced a 68 per cent attrition rate among its civilian employees. Although the contractors quit for reasons related more to the terms of their contract and the conditions of employment than to any life-threatening danger, the loss rate was so high that the Canadian military was forced to make last minute postings, thus further contributing to the over-stretch

³²² Hammes, Interview, PBS *Frontline*. It should be acknowledged that some teams of security contractors may be composed of retired military officers who remain committed to the ethos of loyalty to the country and the military. Walk-offs are thus more common among low-paid employees brought in from other countries under subcontracts. See Minow, “Outsourcing Power,” 1021.

³²³ Campbell, “Contractors on the Battlefield,” 3-4.

³²⁴ Minow, “Outsourcing Power,” 1021.

³²⁵ Leander, “The Power to Construct International Security,” 809.

problem *Atco-Frontec*'s people were meant to relieve.³²⁶ In Iraq, employees of logistics firms in Iraq have refused to fulfill their contracts in crisis situations. In the summer of 2003, a senior U.S. Army logistics officer reported that troops were not receiving fresh water and food in large areas of the country because contractors were refusing to enter danger zones.³²⁷ In April 2004, after a *KBR* convoy was ambushed in Iraq, several of the firm's drivers left Iraq and many more refused to resume work until the security situation was improved. The resulting shortage of contractors left the U.S. military with dwindling stores of supplies in several locations.³²⁸

Counterinsurgency and differing perceptions of the mission

The presence of contractors on the battlefield can also jeopardize the success of military operations because PMCs and the military often have differing perceptions of their mission. As the example of Iraq demonstrates, this is especially true in the case of counterinsurgency, which presents difficult challenges because of the heightened necessity of governance and teamwork among military and civilian officials. PMCs hired to provide security guards — in particular those tasked with private security detail for important public officials — have a narrow focus: to protect the “principal.” The problem is that in ensuring the safety of the principal, contractors often have to employ very aggressive tactics. Using the example of *Blackwater's* contract to protect former CPA head Paul Bremer, Colonel Hammes explained: “Each time they went out they had to offend locals, forcing them to the side of the road, being overpowering and intimidating, at times running vehicles off the road, making enemies each time...So they were actually getting our contract exactly as we asked them to and at the same time hurting our counterinsurgency effort.”³²⁹

³²⁶ Spearin, “The Privatization of Security in Canada,” 321.

³²⁷ Hartung, “Outsourcing Is Hell.”

³²⁸ DCA,F “Backgrounder,” 3. To solve the problem of contractor desertion, some have suggested requiring PMC employees to sign a pledge or take an oath. Currently, contractors are not obligated to take orders or to follow military codes of conduct because they are bound by contract, not by oath. One suggested solution is to have contractors sign pledges to stay and not abandon the outsourced tasks and missions. However, legal experts have pointed out that enforcement of such agreements would be impossible because they would entail involuntary servitude. See Schreier & Caparini, “Privatising Security,” 58.

³²⁹ Hammes, Interview, PBS *Frontline*. In another interview Colonel Hammes elaborated: “The Iraqis perceived the armed contractors as being above the law...They felt if a U.S. soldier or Marine did something wrong, he might be held accountable for it. They believed contractors would simply fly out of the country ... they don't seem to be held responsible by any authority.” See Kimberlin and Sizemore, “Blackwater: Inside America's Private Army,” Part 3, July 24, 2006. Indeed, no contractor has ever been charged with a crime in Iraq.

Firms like *Blackwater*, motivated by the desire to win future contracts of a similar nature, have interests that are fundamentally different from those of the military. From the military's perspective, a counterinsurgency may, for example, involve the loss of an ambassador — such a loss would be regrettable, but there are of course other ambassadors. From the perspective of a private security company, the loss of an ambassador under its protection would be a catastrophe, for who would want to hire a firm that had failed to safeguard its last principal? If tasks such as protecting government officials were left to the military, soldiers could respond in a way that takes into account the larger goals of a counterinsurgency mission. As Colonel Hammes stated: "...for the military, if the primary gets killed, that's a very bad thing. There will be after-action reviews, etc., but nobody's going out of business."³³⁰

In many ways, a counterinsurgency is more difficult to fight than a traditional war. In a counterinsurgency, risk is ever present and relevant to all kinds of participants. Isolating certain individuals from risk creates a separate class of people. This is counterproductive in a counterinsurgency, where the paramount goal is to convince the population that everyone is on the same side. So, for example, by keeping certain individuals safe at any cost, one communicates that Iraqis are expected to take all the risk. This causes resentment among locals and derails efforts to encourage teamwork in a broader context. Although PMC proponents may argue that Iraq is a rare case, changing trends in the nature of violent conflict indicate that future conflicts will involve many of the same variables.

The fact that PMCs are often given very limited missions introduces an inherent tension between the jobs of contractors and the all-encompassing work of uniformed soldiers. Insurgencies must be "tied together across the board." Specific contracts, with their emphasis on efficiency, often conflict with an overall mission where commanders are concerned only with effectiveness. The example of executive protection in a counterinsurgency is illustrative of the problems that occur when soldiers and contractors have differing perceptions of what the mission is. From this perspective, a "crossover of

³³⁰ Hammes, Interview, PBS [Frontline](#).

priorities” can have an adverse effect on the war effort.³³¹ This, in turn, feeds back into the question of whether the public interest is served by military outsourcing. Colonel Hammes observed: “If you’ve decided that the sole purpose of the contract is [to] defend the ambassador, then [taxpayers] got their money’s worth. If the purpose of the contract is to further the counterinsurgency, then I’m not sure it was that good a payoff.”³³²

In sum, state militaries are weakened not only by the poaching of top-quality soldiers by PMCs, but by a loss of control caused by excessive contractor dependency. Multiple layers of subcontracting open armed services to complications involving multiple nationalities, unexpected shifts in the marketplace and disputes between private providers that nevertheless impact military effectiveness. Moreover, private contractors often blur the distinction between active duty and retired soldiers, which may in turn lead to a decline in public trust in the military. It is unclear whether additional amenities provided by contractors do in fact heighten the morale of warfighters. It is clear, however, that contractor-run supply convoys provide more soft targets for insurgents. If logistics functions remained within the ambit of uniformed troops, soldiers would be able to augment overall force capacity in times of need. Because contractors operate outside the regular military command structure, disorder and ineffectiveness are commonplace. Poor communication and coordination can also be dangerous in an already complex battlespace, and these problems have already led to friendly fire incidents. Furthermore, missions can be put in jeopardy when contractors

³³¹ *Ibid.* It is also worth noting that because states are often seen as responsible for the (mis)conduct of private firms (at least in the eyes of those most directly affected), states experiencing image problems would be wise to avoid further tarnishing of their reputation due to contractor misconduct or mismanagement. Colonel Hammes asserted: “Whether you like it or not, [contractors] represent you — period. You may think the contractors are a separate entity, but to the local population, they’re your hired guns... We are held responsible in the people’s eyes for everything they do, or fail to do.” See Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 6, July 24, 2006. The connection between lack of contractor accountability and the perception of coalition forces is not lost on Iraqis, either. Hammes says, “The Iraqis resented very much and knew quite clearly that if one of these people shot an Iraqi they were not subject to any law.” Even from a much wider perspective the actions of private contractors can be seen to tarnish a nation’s reputation internationally. *Amnesty International’s* latest annual report sharply criticized U.S. “war outsourcing” and partially blamed the behaviour of military contractors for damaging the United States’ moral standing. The executive director of *Amnesty International USA* told reporters: “War outsourcing is creating the corporate equivalent of Guantánamo Bay — a virtual rules-free zone in which perpetrators are not likely to be held accountable for breaking the law.” He continued, “Illegal behaviour of contractors... and the reluctance of the [U.S.] government to bring perpetrators to justice are tarnishing the reputation of the United States, hurting the image of American troops and contributing to anti-American sentiment.” See Alan Cowell, “Rights Group Faults U.S. for ‘War Outsourcing’,” *The New York Times*, May 23, 2006. The Abu Ghraib prison abuse scandal also brought shame and worldwide criticism to America, seen by many to confirm the worst allegations of imperialism and inhumanity leveled by terrorist propaganda. Uniformed soldiers participated in the abuses as well, and indeed the same may have occurred if no contractors had been present, but the consequences in terms of worldwide perception are all the worse when contractors come away unpunished.

³³² Hammes, Interview, PBS *Frontline*.

refuse service because of safety or otherwise, especially in light of the range of “mission critical” functions PMCs now perform. Finally, soldiers and contractors often work at cross-purposes because of differing perceptions of the mission. This is particularly dangerous in counterinsurgency because of the heightened necessity of governance and teamwork among military and civilian officials. The next chapter will examine civil-military relations from a different angle, in the process analyzing threats to democratic accountability, oversight and governmental transparency, as well as a few proposals for what might be done to safeguard the public interest.

CHAPTER V: HIDDEN MOTIVES AND OPTIONS FOR REGULATION

IMPACT ON DEMOCRACY

The biggest concerns over the growing use of PMCs relate to democratic accountability, oversight and transparency. Governmental accountability can be eroded when military privatization distances governments from messy conflicts and questionable tactics. By outsourcing tasks to private suppliers rather than deploying regular forces, executive branch officials may be able to sidestep established oversight mechanisms and carry out actions that would not gain legislative or public approval.³³³ Privatization also reduces transparency by putting information further from public reach, and use of private contractors can hide the true size of a state's deployment from its citizens, as well the number of participants killed or injured in conflicts.

This section will explore the hidden motives behind privatization in the military/security sphere. It will describe how governments lessen public concerns about the use of force by sidestepping constitutional checks on their power, conducting foreign policy by proxy and using PMCs to lower the political costs of military adventures overseas. This section will also briefly discuss how PMC-induced embarrassment can undermine policy objectives, whether private armies erode public law values and how outsourcing disengages the public from global problems. Finally, campaign donations, political connections and lobbying by PMCs will be discussed in terms of their ramifications for democratic integrity.

Avoiding checks on power

The crux of this issue is that the short-term political goals of leaders often do not coincide with the longer term interests of the state. As a result, the executive branch may look for means to subvert the safeguards put in place to keep leaders from exploiting their

³³³ Singer states that "sometimes, such freedom is beneficial: it can allow countries to fill unrecognized or unpopular strategic needs. But it also disconnects the public from its foreign policy, removing certain activities from popular oversight." See "Outsourcing War," 2005. Military expert Thomas K. Adams agrees that governments can use contractors to avoid the constraints of a democracy, claiming that employing PMCs can "help to overcome the political reluctance to become involved in situations where risks are high and there is little domestic constituency for the involvement of troops." See "The New Mercenaries and the Privatization of Conflict," 1999. I should also not that for the purposes of this paper oversight is defined as the power of the legislative branch to demand information and internal documents and to compel executive branch officials to testify at hearings.

control over the armed forces for their own narrow purposes.³³⁴ In the United States, though Congress approves the military budget, it does not hire contractors. This is done by the executive branch, and Congress has very little access to information about contracts. In fact, PMC contracts are not subject to Freedom of Information Act requests.³³⁵ As a result, the president may exploit this advantage to evade restrictions on U.S. actions. In other words, by putting contractors in the field without allowing members of Congress to see what they are being hired to do, the U.S. executive can essentially circumvent congressional checks on foreign policy. Once a contract is awarded, the oversight and control provisions of U.S. legislation (while more comprehensive than most) are inadequate. The U.S. GAO provides some oversight of the granting of contracts, but this oversight is very limited. Congress is only notified of contracts worth over \$50 million, a threshold that is widely considered too high to ensure sufficient oversight, and contracts are often split up or partially subcontracted precisely to avoid congressional oversight.³³⁶ A closer look at the privatization of U.S. military assistance to foreign countries will help to enlarge these points.

Military assistance is one of the most powerful tools leading powers can use to shape the international system according to their own national interests.³³⁷ In 1995, the U.S. government began permitting PMCs to train foreign militaries outside the auspices of official security assistance programs.³³⁸ This meant that private firms began to negotiate their own arrangements with foreign governments, all with a minimal degree of public oversight or control.³³⁹ Military assistance was previously a closely held policy instrument of government alone. The change in policy is usually justified by claims that privatized assistance is a more

³³⁴ Fredland, "Outsourcing Military Force," 212.

³³⁵ *Ibid.*

³³⁶ Holmqvist, "Private Security Companies," 51.

³³⁷ PMCs have taken on a leading role in training militaries, both in their "home" countries and internationally. In fact, military training is one of the biggest growth areas of PMCs. During the 1990s, American firms trained militaries in at least 42 countries. See Avant, "Privatising Military Training." To train foreign military or security forces is not only to prepare them to respond to existing threats, but also to effectively "teach" them what types of things should be considered threats in the first place. From this perspective, training security-providers is a highly political business that goes beyond simply helping to meet existing security demands. Considering the complexity of the political environment in which military training takes place, it seems unwise to farm out such an important function to private firms motivated first and foremost by profit, rather than by political considerations.

³³⁸ PMC services under the rubric of military assistance can include training, equipping, force design and management, professional development, concepts and doctrine, organizational and operational requirements, simulation and wargaming operations, humanitarian assistance, quick reaction military contractual support and democracy transition programs for the military forces of emerging republics. *MPRI's* services have been described more simply as "train[ing] the armies of other countries to fight wars." See Grant, "U.S. Military Expertise For Sale."

³³⁹ Grant, "U.S. Military Expertise For Sale."

cost-effective alternative. Colonel Bruce Grant, who has written more credibly on this topic than most, suggests that it may actually have been a response to what was perceived as (increasingly) stringent congressional oversight. Grant explains:

The Senate and House use legislation to delimit and guide implementation of military assistance programs. They include or exclude specific nations and designate the level of funding for each. The role of Congress is to act as a checks and balances system on the executive branch for foreign policy through lawmaking, funding, confirmation of personnel, oversight power, war power, or treaty power. [This] congressional oversight, as perceived by the executive branch, made it so cumbersome for the U.S. government to provide security assistance as a tool of foreign policy that, as a result, the United States has opted in part for privatized alternatives. Thus, the unintended consequence of increased oversight has in fact moved a critical element of foreign policy to a private, pay-as-you-go affair.³⁴⁰

The shift to privatized military assistance in the United States means that neither Congress nor the public has the ability to vet, approve, or oversee these programs. In fact, Congress would not even know how to exert such influence because the annual consolidated report on military assistance and sales does not contain information about who is conducting the training.³⁴¹ Thus, in addition to obstructing oversight and eroding accountability, use of PMCs can adversely affect transparency in government. The \$50 million threshold for notifying Congress about contracts is also a major concern in the context of military assistance. No matter how consequence-laden training contracts can be, in terms of the lethality imparted to foreign governments, most security assistance contracts not involving the sale of military hardware cost less than this.³⁴² Thus, even if Congress had the political will to try to exercise oversight, it would be severely limited in its ability to review the actions and practices of private firms.³⁴³

Now unfettered by traditional, time-tested constraints, American foreign policy happens by default, initiated and governed by a private contract between a foreign government and a PMC. This arrangement signals a fundamental change in the way military assistance is carried out. Former military officers now pass on their high-level military warfighting skills under for-profit contracts, all outside the direct supervision of the Department of Defense. Colonel Grant states:

³⁴⁰ *Ibid.*

³⁴¹ Avant, "The Privatization of Security and Change in the Control of Force," 155.

³⁴² The vast majority of *MPR*'s contracts for training foreign armies have been for amounts less than \$50 million. Grant, "U.S. Military Expertise For Sale."

³⁴³ Journalists, ordinary citizens and even competing PMCs also face constraints, including limits on otherwise available tools of disclosure. See Minow, "Outsourcing Power," 1024.

Privatized military assistance has emerged quietly without much fanfare or publicity and grown through aggressive marketing to meet demand on the international market...The U.S. government has seized this alternative as an expeditious means to accomplish policy and bypass congressionally mandated law, regulation, and budget as well as the seemingly impenetrable bureaucracy that so often slows traditional security assistance actions.³⁴⁴

Although many critics believe this change marks a disturbing trend for the future, from the perspective of executive branch decision-makers it is easy to see why privatizing military assistance is desirable. Congressional oversight and approvals can take a long time and become caught up in the politics of the moment. Privatizing the affair, then, effectively shuts out Congress while at the same time boosting the president's ability to react and instigate policy in a fast-moving international security environment.³⁴⁵ Despite this "advantage", one wonders whether the path of least resistance is the best way to conduct foreign policy in the long run.

Foreign policy by proxy

Private military companies have been used by states to intervene in third-party conflicts without being accused of interference or acts of aggression. The judicial gray zone in which PMCs operate is not an unfortunate side effect of privatization, as industry and defence establishment officials would have the public believe. The near legal vacuum is, rather, part of PMCs' very *raison d'être*. In a surprising number of instances, private firms have allowed states to free themselves from the constraints imposed by international regulations and political sensitivities. In the Balkans, private actors helped the United States subvert international norms on the neutrality of peacekeeping forces. In Sierra Leone and Rwanda, PMCs were used to circumvent international arms embargos. Elsewhere too they have been used to pour small arms into war-torn societies and to train local militias, thus increasing the destructive power of local conflicts.³⁴⁶ On the whole, when official policies, norms, practices or other constraints make it imprudent to overtly commit armed forces directly, states can still implement foreign policy through private contracting, all the while hiding their fingerprints from anyone who might object.³⁴⁷

³⁴⁴ Grant, "U.S. Military Expertise For Sale."

³⁴⁵ *Ibid.*

³⁴⁶ Olsson, "PMCs in Iraq: A force for good?," 2004.

³⁴⁷ See Grant, "U.S. Military Expertise For Sale"; Avant, "Privatising Military Training"; and Singer, "Outsourcing War."

Perhaps the best examples of foreign policy by proxy are *MPRI's* 1995 contracts with the Republic of Croatia and the Federation of Bosnia-Herzegovina. Of these, the Croatian case is most instructive. Engaged in a bloody civil war within the former Yugoslavia, a newly independent Croatia contracted training and consultation from *MPRI*, an American PMC with extremely close ties to the Pentagon and State Department. Considered to be generally incompetent before *MPRI's* arrival, the Croatian Army was transformed in just a few months into "a modern fighting force that surprised foes and observers alike."³⁴⁸ Through a series of swift, choreographed movements of combined artillery, armour and infantry, the Croatian army flanked Serb forces in August 1995.³⁴⁹ The Croatian offensive in a decisive victory that — in addition to unleashing the ethnic cleansing of the Krajina region, killing hundreds of civilians and displacing over 170,000 Serbs — ultimately brought the Serbs to the peace table and changed the map of the Balkans dramatically.³⁵⁰

The decisive Croatian victory could never have been achieved without the help of *MPRI*, nor could it have been supported directly by the U.S. government without provoking a massive outcry in the international community.³⁵¹ *MPRI's* close ties to the U.S. administration indicate that Washington unofficially promoted the operation as a way to end the war. In other words, Croatia launched its attack with the tacit approval of the United States. From Washington's perspective, this outcome was quite favourable: the Balkans map was redrawn to its liking, all without the need for American troops or money. From a more objective viewpoint, however, the episode is a distasteful case of backroom foreign policy manipulated by the U.S. government with the complicity of a private corporation.³⁵²

After the signing of the Dayton Peace Accords, the United States continued its experiments with foreign policy by proxy in the Balkans. In order to minimize the perception of U.S. military involvement and to maintain the image of impartiality for the American contingent of uniformed NATO Implementation Force (IFOR) peacekeepers in the region, the Clinton administration encouraged private companies to offer their services to Bosnia-Herzegovina. The U.S. military could not be the provider of the training because of its

³⁴⁸ Grant, "U.S. Military Expertise For Sale."

³⁴⁹ One strategic expert noted, "The entire operation bore the stamp of the minds that had orchestrated *Desert Storm*" (Grant, 1998). In fact, the Croatian offensive was called simply *Operation Storm* (the only thing absent, it seems, was the desert).

³⁵⁰ Olsson, "PMCs in Iraq: A force for good?," 2004; Grant, "U.S. Military Expertise For Sale."

³⁵¹ Olsson, "PMCs in Iraq: A force for good?,"

³⁵² Grant, "U.S. Military Expertise For Sale."

involvement in IFOR and the subsequent Stabilization Force (SFOR).³⁵³ *MPRI* was hired to provide an “equip and train program” for the Bosnians which was intended to achieve a balance of power in the region.³⁵⁴ Mohamed Sacirbey, the Bosnian foreign minister at the time, explained that his government had selected *MPRI* because it was “the next best thing to U.S. military assistance.”³⁵⁵

The case of *MPRI* in Bosnia illustrates the danger inherent in sending mixed signals to the international community. When a state is seen to be ‘speaking from both sides of its mouth,’ suspicions may be raised among allies as to the true commitment and intentions of a country which contributes troops to a multilateral stabilization force while at the same time providing military assistance to strengthen the hand of one faction — in this case, the Bosnians.³⁵⁶ In Europe, a number of allies saw Washington’s role in the *MPRI* contracts as complicating the search for a peaceful solution in the region.³⁵⁷ According to Eugene Smith, “Pragmatic concerns also have been raised that U.S. government officials could lose their neutrality in the eyes of belligerents in the region and face reprisals based on the actions of *MPRI*.”³⁵⁸

In multinational peace missions, the appearance of partiality can disturb partners and put troops at risk.³⁵⁹ In the Balkans, the United States simultaneously had active-duty soldiers enforcing a peace agreement under the pretense of impartiality as well as retired soldiers assisting Bosnia-Herzegovina to increase its share of power relative to its neighbours. The hiring of *MPRI* proved to be a reliable adjunct to U.S. policy in the region, as the firm took on tasks that the U.S. military and government could not perform.³⁶⁰ In the sense of accomplishing planned objectives, then, Washington’s foreign policy was quite successful. However, because this policy was not vetted in the constitutionally mandated political process, from the public perspective it must be considered misdirected.

³⁵³ Smith, “The New Condottieri,” 111.

³⁵⁴ Grant, “U.S. Military Expertise For Sale.”

³⁵⁵ *Ibid.* Colonel Grant also remarks that “A private firm like *MPRI* can afford to send 20 former U.S. Army colonels to Bosnia, while the U.S. Army would have to strip more than an entire combat division to muster that many.”

³⁵⁶ Detecting Washington’s influence was not difficult to do, either. Although *MPRI*’s contract was with the Bosnian government, the contract was overseen by a “Military Stabilization in the Balkans Office”, headed by a U.S. ambassador.

³⁵⁷ Smith, “The New Condottieri,” 111; David Shearer, *Private Armies and Military Intervention*. Oxford: Oxford University Press for the International Institute for Strategic Studies, 1998, 61.

³⁵⁸ Smith, “The New Condottieri,” 111.

³⁵⁹ Grant, “U.S. Military Expertise For Sale.”

³⁶⁰ Smith, “The New Condottieri,” 111.

Lowering the political costs of war

Use of private military companies by states can also impact democracy by lowering the political costs of involvement in armed conflict. This can occur in three ways: by hiding the true size of a state's deployment from its citizens, by obscuring the number of participants killed or injured ("outsourcing casualties"), and by sidestepping important political processes set up through multilateral institutions. This section relates primarily to the current conflict in Iraq, as the Bush administration has dramatically lowered the political price for its adventures in that country by shifting part of the burden of the war to private contractors.

Hiding the true size of deployment

As was seen in the Balkans, states can sometimes use PMCs to pursue their geopolitical interests without deploying forces into harm's way. This may be useful for bypassing constraints imposed by institutional oversight mechanisms, such as limits on troops posted abroad imposed by the legislature.³⁶¹ For example, the Bush administration has been able to sidestep congressional limits on the size and scope of the U.S. military's participation in Colombia's civil war by hiring private contractors.³⁶² PMCs can also aid states more generally by relieving them of the problem of increasing the size of the army. In the current context, domestic political considerations make it exceedingly difficult for the Republican administration to talk about increasing troop levels, especially as President Bush announced the end of "major combat operations" in Iraq over three years ago. Steven Schooner states, "The military would love to say that we have fewer than 100,000 troops on the ground in Iraq. But if we do get below that 100,000 number again, it will only be because we have tens of thousands of contractors supporting the military."³⁶³

In the case of Iraq, PMCs are being used in conjunction with regular troops. In this respect, they are useful as "force multipliers" when assistance from allies is not forthcoming. Only a generation ago, governments facing a threat that required more military force than it

³⁶¹ DCAF, "Backgrounder, 4. Hiding the true size of deployment mirrors a more general trend in the United States. Martha Minow explains, "Congress adopted bipartisan caps on the number of civil servants employed by the government — but did not limit the number of persons who could be employed through contracts with private companies. For nearly a decade this has allowed policymakers to hide from public view the true size of the government." See Minow, "Outsourcing Power," 1001.

³⁶² Singer, "Outsourcing War," 2005. U.S. representative Jan Schakowsky has called for an end to U.S. funding of private contractors in Colombia, citing their involvement in combat and implication in civilian massacres. See Hartung, "Outsourcing Is Hell," 2004.

³⁶³ Schooner, Interview, PBS [Frontline](#).

had available internally were left with little alternative but to ask for assistance from other countries or an international body.³⁶⁴ Now, with the availability of private firms as an instrument of foreign policy on a massive scale, states can sometimes avoid this course. The fact that contractors outnumber most state contingents in Iraq casts little doubt on the reason for their massive involvement in a war that from the beginning was internationally contested.³⁶⁵ PMCs have thus shown themselves to be particularly valuable force multipliers in illegal wars with little international approval.³⁶⁶

Without the over 20,000 contractors currently shoring up the mission in Iraq, Washington would have to deploy more of its own troops — and to do so would mean expanding the regular force or calling up more National Guard members and reservists — or to persuade its allies to boost their troop commitments. Either of these options would entail serious political compromises. Thus, the U.S. government has artificially deflated the military's involvement in the court of public opinion. This should be perceived as a particularly negative aspect of military outsourcing. As Martha Minow explained:

Use of contractors contributes to a lack of transparency in the conduct of military activities regarding...the total size of the government-sponsored effort. This puts the scale of the initiative outside of public awareness and full political discussion, obscuring choices about military needs and human implications.³⁶⁷

Outsourcing casualties

Widespread use of private contractors on the battlefield further lessens the political costs of war because official casualty counts do not include contractor fatalities, injuries or captives, and media almost never broadcast these figures. Military casualties, on the other hand, are reported on a regular basis (despite the Bush administration's success in banning pictures of returning caskets). Estimates of the number of contractors killed in Iraq vary. As of this writing, a website called the "Iraq Coalition Casualty Count" listed confirmed fatalities at 353 (complete with causes of death) and many more times wounded.³⁶⁸ In November 2005, *Knight Ridder* newspapers reported 428 contractor fatalities in Iraq with a further 3,963

³⁶⁴ Fredland, "Outsourcing Military Force," 213.

³⁶⁵ There are more South African "security consultants" (1,500) than there are Dutch troops (1,100). All told, contractors represent about 10% of the foreign military presence in Iraq. Olsson, "PMCs in Iraq: A force for good?," 2004.

³⁶⁶ One U.S. Army staff sergeant remarked, "We're trying to get more international participation here and the contractors can hire internationally." See Avant, "The Privatization of Security and Change in the Control of Force," 156.

³⁶⁷ Minow, "Outsourcing Power," 1024.

³⁶⁸ Iraq Coalition Casualty Count, webpage. Available at: <http://icasualties.org/oif/Civ.aspx>

injuries, according to U.S. Department of Labor insurance-claims statistics.³⁶⁹ A July 2006 special report in the *The Virginian-Pilot* estimated over 500 contractors killed in both Iraq and Afghanistan since the beginning of the fighting.³⁷⁰ All of these estimates admit to being incomplete and suggest that the true total is likely higher. Even a figure of 500 would be roughly equal to one-sixth of U.S. fatalities — more than any single U.S. Army division — and more than double the amount suffered by all of the United States' coalition partners combined.³⁷¹ Moreover, for all practical purposes this means the United States suffered its 2000th casualty in Iraq far sooner than the date in late October 2005 that the media focused on.³⁷²

One of the reasons that contractor casualties are so difficult to determine is that PMCs often keep the deaths quiet.³⁷³ Governments do not object to this policy, as their interest usually lies in painting the prettiest possible picture for the public of their own military involvement and the associated human cost. Critics point out that because contractor deaths are rarely reported in the media, contractors are seen as expendable by political leaders.³⁷⁴ The fact that there is no official list of contractor casualties led one journalist to label the fallen private contractor “the 21st century incarnation of the Unknown Soldier.”³⁷⁵ Even when contractor deaths are reported in the media (such as the four *Blackwater* contractors killed in Fallujah), they do not evoke the political response that casualties among military personnel do. A security contractor who had worked for *Blackwater* commented, “We’re expendable. If ten contractors die, it’s not the same as if ten soldiers die. Because people will say that we were in it for the money. And that has a completely different connotation with the American public.”³⁷⁶

On the whole, the many thousands of private contractors supplementing the U.S. mission in Iraq expose not only the Bush administration’s poor pre-invasion planning, but also the lack of transparency about the war’s human cost (to say nothing of the financial cost). The degree to which PMCs have been called upon also points to a sense of denial in

³⁶⁹ Isenberg, “A government in search of cover,” 7.

³⁷⁰ Sizemore & Kimberlin, Part 4, 7/25/2006

³⁷¹ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 4, July 25, 2006.

³⁷² Isenberg, “A government in search of cover,” 7.

³⁷³ Regan, “U.S. Troops, Security Contractors Increasingly at Odds in Iraq.”

³⁷⁴ Schooner, Interview, PBS *Frontline*.

³⁷⁵ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 4, July 25, 2006.

³⁷⁶ *Ibid.*, Part 6, July 27, 2006. He also pointed out that contractors wounded in battle do not enjoy the same respectful status as do soldiers.

Washington about whether it did, in fact, put enough American troops on the ground to get the job done. One thing senior officials in Washington are sure about is that the hiring of such an enormous private force and the casualties it has absorbed beyond the reach of public discussion has proved a handy means for offloading some of the political costs of the war.

Sidestepping multilateral institutions

A third way that PMCs can help reduce political costs for governments is by saving them the trouble of working through the complex, time-consuming processes characteristic of multilateral institutions. These processes, when used, are likely to become even more complicated in the future, as one of privatization's clearest effects is to diffuse control over security to a wider variety of actors. Though PMC advocates have suggested that private firms could help improve the functioning of the UN, it seems just as likely that PMCs will emerge as a platform that competes with the UN as an instrument of "international" force. Deborah Avant explains:

Rather than being a tool for enhancing UN operations...[PMCs] may offer tools to individual states or other actors that can accomplish goals abroad without the involvement of the UN. This could be seen as avoiding sticky political debates or taking quick action when that is required. By offering a tool that works in an array of different forums, private security may reduce the need to work through the political processes that states have set up through multilateral institutions.³⁷⁷

Eroding public law values?

Just as domestic privatization raises questions about the erosion of fundamental domestic public law values, privatization in the international sphere may endanger international public law values. These values include human rights norms, norms against corruption and waste, and democratic process values.³⁷⁸ Widespread privatization of military affairs threatens these values when accompanied by the failure of international legal mechanisms to hold contractors accountable for human rights abuses, wrongful deaths, corruption and fraud. Even when PMCs do not break the law, their services may have unintended negative consequences. For example, PMCs offering training to foreign security forces may have the effect of teaching undemocratic regimes new and better methods for

³⁷⁷ Avant, "The Privatization of Security and Change in the Control of Force," 157.

³⁷⁸ See Dickinson, "Public Law Values in a Privatized World," 385.

cracking down on political rivals and public opposition. Grant argues that “despite the rhetoric about training and integrating a disciplined military into society, most governments in developing countries see an improved military first as a way to control internal politics better and only second as a way to be more independent regionally.”³⁷⁹ Contracts to improve armies, then, involve raising states’ abilities to manage and apply violence to achieve political ends. Regardless of what PMCs may emphasize, from the recipient state’s perspective military expertise is not linked with democratization, human rights, and free economic practices. Grant insists that “despite well-intentioned instruction on primacy of civilian rule, rule of law, human rights, and democratization, building better armies around the world will not necessarily lead to stability or peace.”³⁸⁰ In the weak state context, even so-called “benign” PMC services, such as those of a policing or protective nature, can still have a potentially harmful impact on the promotion of human rights and stability.³⁸¹

A disengaged public

Public involvement in considering the risks and benefits of military operations is fundamental to democracy and to the success of policy initiatives.³⁸² Widespread privatization disconnects the public from foreign policy objectives and disengages citizens from global problems by putting information further from public reach. In the United States, outsourcing centralizes power in the executive branch and limits both the information available to Congress and the prospects for Congress to influence policy.³⁸³ Even information about procurement decisions and practices has been privatized in the United States, making it even harder for the public to monitor its own expenditures.³⁸⁴ The withholding of information impairs the public’s ability to assess whether contracts offer fair value for taxpayer money. Citizens are thus left with scarce means to verify that government-awarded contracts are somehow safeguarded from waste, fraud, or abuse of the public

³⁷⁹ Grant, “U.S. Military Expertise For Sale.”

³⁸⁰ *Ibid.*

³⁸¹ Spearin, “Canadian Policy: Possibilities and Pitfalls on the Road to Regulation,” 4.

³⁸² Avant, “Mercenaries,” 2002.

³⁸³ Avant, “The Privatization of Security and Change in the Control of Force,” 155.

³⁸⁴ The U.S. Federal Procurement Data Center used to provide online access to information about the allocation of defence contracts to private companies (searchable by the name of the firm). In 2004, this service was outsourced and citizens must now pay to gain access to the data. See Minow, “Outsourcing Power,” 1024. U.S. courts have also interpreted exemptions from the Freedom of Information Act to shield PMC records compiled for law enforcement purposes and to block the release of prices paid by the government for servicing planes to be flown by military personnel on dangerous missions. Martha Minow contends, “At stake in these rather technical cases is nothing less than the ability of citizens to know what the government is doing, and yet outsourcing veils its conduct.” See “Outsourcing Power,” 1024-25.

trust.³⁸⁵ Governmental transparency in foreign policy is further hampered when a lack of media coverage concerning contractor (as opposed to troop) deployments removes major government-inspired operations from the public awareness.³⁸⁶

The United States is not the only country whose government has hired PMCs “behind the backs” of the legislative branch and public. A similar situation appears to be developing in the U.K.. In 2006, a former Special Forces soldier asserted that Ministry of Defence and Foreign Office contracts for guarding British military bases in Iraq were “kept very quiet for political reasons.” Even some industry players have expressed concern: a senior official from U.K.-based *Olive Security* remarked, “It’s high time politicians were told exactly what we are having to do in Iraq, which is basically...doing the job British forces should be doing.”³⁸⁷

By developing relations between government and PMCs, states are able in some cases to “govern war at a distance.”³⁸⁸ Les Johnston points out that by devolving ‘rowing’ functions to the private military sector in arenas like Afghanistan, Iraq and Colombia, states are “able to ‘steer’ operations against terrorism and drugs behind the backs of the public and its representatives.”³⁸⁹ In bypassing public debate via privatization, states may also find it easier to launch aggressive wars or humanitarian interventions. The prospect of the former is obviously of grave concern, though even an accepted humanitarian operation should be disconcerting if its initiation circumvents democratic review.³⁹⁰

Campaign donations, political connections and PMC lobbying

In 2001, the ten leading private military companies spent more than \$32 million on lobbying and invested more than \$12 million in political campaign donations, mostly to Republican candidates.³⁹¹ Erik Prince, the founder of *Blackwater USA*, is well-known as a major Republican campaign contributor.³⁹² Iraq contractors *DynCorp*, *Bechtel* and *Halliburton*

³⁸⁵ *Ibid.*, 1025

³⁸⁶ Avant, “The Privatization of Security and Change in the Control of Force,” 155; Grant, “U.S. Military Expertise For Sale.”

³⁸⁷ See Johnston, “Transnational Security Governance,” 46-47.

³⁸⁸ *Ibid.*, 48.

³⁸⁹ *Ibid.*, 48.

³⁹⁰ Minow, “Outsourcing Power,” 1024.

³⁹¹ Isenberg, “A Fistful of Contractors.”

³⁹² Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 2, July 23, 2006. Prince has personally donated some \$200,000 to Republican candidates since 1998 and his sister Betsy, a former chairwoman of the Michigan Republican Party, is married to Republican politician Dick Devos. See “Blackwater’s Top Brass, [The Virginian-Pilot](#), July 24, 2006.

donated over \$2.2 million to political causes (mostly Republican) between 1999 and 2002.³⁹³ *Vinnell Corporation* (a subsidiary of a major defence contractor, *Northrop Grumman*) contributed \$8.5 million to political campaigns between 1990 and 2002. *DynCorp* chipped in \$1.2 million over the same period (both companies gave mostly to Republican candidates). With the invasion of Iraq, their stock prices jumped 23 and 60 per cent respectively.³⁹⁴ These figures hint at what several industry critics expressed concern over for years: that defence contractors, and now PMCs, are able to mobilize support for hawkish foreign policies through their financial support of political candidates.³⁹⁵

In order to further increase their influence in Washington and other centres of power, PMCs make full use of the 'revolving door,' a process whereby officials leave public service for the private sector, exploiting their old contacts to land new business. Leading companies like *DynCorp* and *MPRI* are strategically based in northern Virginia, giving them direct lobbying access to the Pentagon and enabling them to recruit from senior Pentagon staff.³⁹⁶ While examples of revolving door conduct are far too numerous to describe in complete detail, a brief look at a handful of PMCs — both British and American — is useful in illustrating the extent and character of political connections in the private military industry.

³⁹³ Minow, "Outsourcing Power," 1022.

³⁹⁴ Both *Vinnell* and *DynCorp* secured lucrative security contracts in Iraq and Afghanistan. *DynCorp's* contract, to train police and security forces in Iraq could ultimately be worth up to \$500 million. See Goodman, *The Exception to the Rulers*, 57-62.

³⁹⁵ Johnston, "Transnational Security Governance," 42. Anna Leander has drawn attention to another prospective risk of privatization in the military/security sphere: PMCs may significantly increase their capacity to shape security understandings and discourses. Firms affect security discourses most directly when they gather, select and analyze intelligence, but they have a similar impact on the understanding of security actors through their work as lobbyists, hired consultants and trainers. By influencing governments' perceptions of security threats, as well as the types of responses that are deemed appropriate, PMC can help to decide which problems are 'securitized' and, in many instances, militarized. Firms may also be able to "create" threats that did not previously exist or cause public officials to ignore serious threats that do not fit with the types of services PMCs provide. Leander argues, "When a problem is not a security problem or would be better responded to by way of diplomacy or economic aid or a re-regulation of markets, the services of PMCs are not needed. It is therefore not surprising that the firms tend more often than not to treat issues as security problems and then proceed on the assumption that what is called for is a technico-managerial solution." When security becomes more and more the business of private entities (and the legitimacy of technical, military, and managerial discourses is increased), discussions about how to ensure security in any environment become technical and economic issues about what kind of troops to deploy, what equipment they should use, and what it all will cost. Gains in power for private actors may correlate to the disempowerment of advocates of non-military security approaches to political and strategic problems. The more the security debate moves into a "restricted sphere", where the executive, military, secret services and PMCs decide how threats should be defined and mitigated, the more the voices of legislative assemblies, diplomats, media, NGOs and think tanks go unheard. In other words, the presence of those who would be expected to challenge the militarization of security may be diminished. In light of the increasingly prevalent role played by PMCs in the military-security sphere, researchers would do well to explore basic questions about the changing weight different actors carry in defining legitimate knowledge. See Anna Leander, "The Power to Construct International Security: On the significance of Private Military Companies," *Millennium: Journal of International Studies*, 33(3), June 2005, 803-826.

³⁹⁶ Johnston, "Transnational Security Governance," 42.

U.K.-based *Armor Group* recently welcomed the addition of Andrew Fulton, a former top MI6 spy whose last assignment was head of station in Washington. Described by the company simply as a simply a “former senior diplomat”, Fulton has been labeled Britain’s sixth most powerful spy. Joining the company in August 2006, his role with *Armor Group* is to develop new business opportunities in the security market. Another of the firm’s top executives, Steven Kappes, has also been through the revolving door — more than once. After leaving his position as director of operations at the CIA, Kappes became *Armor Group’s* chief operating officer. Six months later, he returned to the CIA to become the organization’s deputy director-general.³⁹⁷ U.S.-based *Blackwater* also employs its fair share of former high-ranking government officials. *Blackwater’s* vice chairman is Cofer Black, a career CIA and State Department official.³⁹⁸ While at the State Department, Black managed security for the 2004 Olympic Games in Greece; in 2003, *Blackwater* won a contract to train security teams for the games.³⁹⁹ *Blackwater’s* COO and general counsel is Joseph Schmitz, a former inspector general at the Pentagon.⁴⁰⁰ He was the senior Pentagon official responsible for investigating waste, fraud and abuse — though he is himself facing a congressional inquiry into accusations that he prevented two criminal investigations of senior Bush administration officials.⁴⁰¹ *Blackwater* has won \$505 million in publicly identifiable contracts since 2000 (most with the State Department). Two-thirds of these have been no-bid contracts.⁴⁰² Van Honeycutt, president and CEO of *Computer Sciences Corporation* — the defence contractor that owns *DynCorp* — is chair of President Bush’s National Security Telecommunications Advisory Committee (NSTAC), under the Department of Homeland Security. Ronald L. Dick, *DynCorp’s* director of information assurance strategic initiatives, is a former director of the FBI’s National Infrastructure Protection Center, part of the agency’s counterterrorism division.⁴⁰³ *Vinnell’s* lightning quick rise to the forefront of the industry has also been linked to the company’s extensive political connections. James Baker and George H.W. Bush were

³⁹⁷ Saeed Shah, “Former MI6 Spy Joins Armor Group to Hunt Down New Business,” *The Independent*, August 21, 2006.

³⁹⁸ In fact, Cofer Black was the CIA’s director of counterterrorism at the time of the 9/11 attacks.

³⁹⁹ “Blackwater’s Top Brass,” *The Virginian-Pilot*, July 24, 2006.

⁴⁰⁰ Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 2, July 23, 2006.

⁴⁰¹ “Blackwater’s Top Brass,” *The Virginian-Pilot*, July 24, 2006.

⁴⁰² Kimberlin and Sizemore, “Blackwater: Inside America’s Private Army,” Part 3, July 24, 2006. Federal regulations allow agencies to bypass competitive bidding in cases of “unusual and compelling urgency.”

⁴⁰³ Goodman, *The Exception to the Rulers*, 58-59. The immense political influence of construction and engineering giants like *Bechtel*, *Fluor Corporation*, *The Washington Group International* and *Halliburton* are well-known. Though these companies supply some military support services through subsidiaries (like *KBR*), they are mostly excluded from this discussion because they are not strictly PMCs.

both on the payroll, and Frank Carlucci was the head of the firm *BDM* when it acquired *Vinnell*. Finally, the firm *Diligence LLC* was founded by William Webster, former director of both the FBI and CIA, and has as its co-chairman Joe Allbauh, President Bush's former campaign manager.⁴⁰⁴ A full list of PMCs' political contacts would probably add another ten pages to this paper.

PMCs use their well-connected brass to lobby government officials on issues related to defence and government privatization — and lobbying efforts have sharply intensified since 2001. One study of lobbying firms registered in the U.S. as "homeland security consultants" (a category which includes PMCs) found that the number of lobbying firms increased from just two in 2001 to 543 in 2005.⁴⁰⁵ A U.S. lobbying organization, the *International Peace Operations Association*, has also been formed to promote the interests of some of the largest firms.⁴⁰⁶ Although the immorality and negative impact of lobbying on political accountability are of obvious concern, PMCs' lobbying efforts fit into the discussion here because of the way they influence interests, threats and responses. Far from merely helping to secure lucrative contracts, however, the lobbying efforts of PMCs have serious implications for security discourses. As firms pressure public authorities to adopt a version of the facts which is consistent with the firms' interests, they affect the way national interests are understood and acted upon. *MPRI's* lobbyists once managed to convince the U.S. government to change its policy toward Equatorial Guinea, a country it had long since withdrawn support for because of its close ties with Cuba and North Korea. Arguing that if *MPRI* did not get the contract a French firm would, the U.S. government effectively shifted its understanding of its national interests and its policy toward Equatorial Guinea, allowing the firm to take a contract to train the country's coastal defence forces. Sometimes this influence comes by way of a lobbying side-effect: even in cases where contracts are awarded for purely financial reasons, specific security practices can also become entrenched as policymakers are wedded to the logic of their past decisions and forced to justify them publicly.⁴⁰⁷ Lobbying groups such as *Business Executives for National Security (BENS)*, the main American group, have become all too aware that the key to success in the private military industry is the ability to influence future customers. Thus they endeavour always to

⁴⁰⁴ Leander, "The Power to Construct International Security," 816.

⁴⁰⁵ Harris, "How U.S. Merchants of Fear Sparked a \$130 bn Bonanza."

⁴⁰⁶ Johnston, "Transnational Security Governance," 42.

⁴⁰⁷ Leander, "The Power to Construct International Security," 816-17.

foster a general understanding of security which places PMCs in a very prominent position.⁴⁰⁸

OPTIONS FOR REGULATING THE PRIVATE MILITARY INDUSTRY

In order for PMCs to become constructively engaged in a broader system of security governance by state and non-state actors, questions of accountability and legitimacy must be addressed, because without legal accountability of individual contractors, many will continue to view the use of PMCs with suspicion. Caroline Holmqvist contends that “if PMCs are to take an active part in the construction of security governance they need to be viewed as legitimate actors by other state and non-state actors, as well as by the people who are the ultimate objects of the systems and services supplied.”⁴⁰⁹ Ensuring that military contractors are perceived as legitimate actors means that they must possess more than just theoretical legal accountability. Rather, the legitimacy of military contractors depends also on achieving a sufficient degree of transparency, as well as democratic standards in terms of PMCs’ operations, finances and conduct.⁴¹⁰ Likewise, PMC practices must be regulated to comply with international law and human rights norms.⁴¹¹ Although it is well beyond the scope of this paper to provide a comprehensive discussion of the potential options for regulation of PMCs, a brief tour of some issues and options is feasible.

Leaving punishment for PMC wrongdoing to the invisible hand of the market has clearly failed to prevent widespread misconduct thus far. The other extreme, an all-out ban on PMCs, is equally impractical because the trend toward privatization seems all but irreversible at this point.⁴¹² Demand for and supply of private military services is simply too

⁴⁰⁸ *Ibid.*, 817. Deborah Avant also point out that the lobbying efforts of PMCs may cause Pentagon and State Department officials, as well as members of Congress, to give undue credence because of the cachet of retired generals (a spokesperson for MPRI, himself formerly head of the Pentagon’s Defense Intelligence Agency, once remarked, “We have more generals than the Pentagon”).

⁴⁰⁸ Supervision may also be hampered when retired military officers working for PMCs are suddenly in a position to be overseen by military attaches who had formerly been their subordinates. See “Privatising Military Training,” 2002.

⁴⁰⁹ Holmqvist, . “Private Security Companies,” 43.

⁴¹⁰ *Ibid.*

⁴¹¹ Avant, “Mercenaries,” 2002.

⁴¹² Banning PMCs outright has been advocated by critics who believe regulating the industry would grant undue legitimacy to actors illegitimate by their very nature. These critics often argue either that all military functions are inherently governmental, or that national military personnel can at least be more easily held accountable for misdeeds. In place of regulation, observers at this end of the spectrum support the re-nationalization of security and military service provision.

great. A total ban would be extremely difficult, if not impossible, to enforce, and the most likely result would be the underground migration of the industry, blocking all efforts to increase transparency and accountability.⁴¹³ Moreover, any return to a complete state monopoly on the use of force would take a very long time, making alternative solutions necessary in the interim.⁴¹⁴ From this perspective, Tim Spicer's advice makes a lot of sense: "Since PMCs are here, and here to stay, surely the answer is not to moralize, restrict or criminalize their activities but to engage in a sensible dialogue and maximize the benefits of PMCs as part of the 'New World Order'."⁴¹⁵

Most of the leading players in the industry are, in fact, supportive of strengthened oversight — to a point.⁴¹⁶ Pro-regulation PMCs take this view because they see effective legislation (that which differentiates between mercenarism and PMC activity) as a gateway to heightened legitimacy.⁴¹⁷ In this view, "only by formally accepting supervision can [PMCs] break through the barrier of political and public skepticism."⁴¹⁸ Moreover, firms expect newfound legitimacy to be accompanied by new clients, as regulations would act as a barrier to entry for new competition.⁴¹⁹ Support for new regulation among firms is not unequivocal, however, and most industry people express the same two concerns. First, companies are concerned that they might be forced to release proprietary information, which they consider vital in order to compete for the most lucrative contracts. Second, and even more important to the industry, firms are worried about the consequences for one of their key selling points: speed of deployment. The commercial reality of the private military industry is that PMCs' services are often required suddenly, and contractors are expected to deploy without delay.⁴²⁰ These caveats notwithstanding, most industry players seem open to some form of regulation and supervision, provided they are given the opportunity to help shape new measures to account for the realities of a very competitive industry. Policymakers, for their part, would be wise to work with leading PMCs in developing new proposals.

⁴¹³ Holmqvist, "Private Security Companies," 42.

⁴¹⁴ Dickinson, "Public Law Values in a Privatized World," 387.

⁴¹⁵ Spicer, *An Unorthodox Soldier*, 28.

⁴¹⁶ Companies which have publicly voiced support for increased regulation compose only about one-fifth of the total number of registered firms; however, these firms control some 80 per cent of the people on the ground. See Isenberg "A government in search of cover," 14.

⁴¹⁷ O'Brien, "PMCs, Myths and Mercenaries." See also *An Unorthodox Soldier*, in which Tim Spicer remarks, "We would welcome some form of regulation, not least so that we would then know where we stand and perhaps be spared the usual wearisome moralizing" (25).

⁴¹⁸ Hastings, "We Must Fight our Instinctive Distaste for Mercenaries."

⁴¹⁹ Brooks, "Messiahs or Mercenaries?," 137.

⁴²⁰ Spicer, *An Unorthodox Soldier*, 26-28. See also Erik Prince, Interview, *The Virginian-Pilot*, July, 24, 2006.

Option 1: Bringing military contractors more formally within the normative framework of international law

A regulatory approach at the international level would basically entail expanding the coverage of public international law to apply to each new wave of non-state actors — guerrilla movements, terrorist groups, NGOs, corporations, and PMCs. This means either developing new norms (by treaty or customary international law) or interpreting any “state action” requirements contained in existing norms in new and more expansive ways to apply to non-state actors linked to the state. Advocates of an international approach have also focused on the need for courts and tribunals (both existing and newly created) to apply and interpret these norms.⁴²¹

Simply updating or amending existing international conventions by redefining the term “mercenary” to include military contractors is problematic. First, legislators would need to overcome significant definitional problems; for instance, how to distinguish between “combat” and “non-combat” activities. Moreover, banning direct participation by PMCs in combat would address only a very small percentage of private military activity. Another stumbling block to amending existing international conventions is that agreement between states on such a process can be painfully slow. Even when enacted, there remains the serious problem of enforcement.⁴²² Rather than working with existing conventions, governments might also endeavour to create a new convention which outlines minimum standards of oversight and control of PMCs. This would essentially be a voluntary scheme, but the disadvantage of lack of enforcement would be somewhat counterbalanced by the advantage of ensuring that national authorities would regulate their own PMCs. In so doing, such a scheme could remove obstacles to agreement on an international treaty that might otherwise be present if states were not free to interpret certain details of regulation on their own.⁴²³

Although the international approach is important because it leads to the articulation of norms in the international sphere, it can have only a limited effect. Legal scholar Laura Dickinson contends that even if norms are expanded to include the actions of PMCs — and

⁴²¹ Dickinson, “Public Law Values in a Privatized World,” 387.

⁴²² Holmqvist, . “Private Security Companies,” 44-45.

⁴²³ DCAF, “Backgrounder,” 7. In a similar vein, Isenberg has recommended closing some of the existing loopholes in international law by negotiating a new “Convention on the Use of Armed Non-Military Contractors by an Occupying Force.” See “A government in search of cover,” 19. It should also be noted that states are unlikely to support the creation of an international body to regulate PMCs because this would entail surrendering their traditional monopoly on military-related exports.

even if proposed courts and tribunals become fully-functioning realities — they will be unable to hold more than small fraction of contractors to account.⁴²⁴ Thus, it will not be sufficient to tweak existing international law treaties or doctrines, or even to invent new ones. Doing so can only represent a partial solution. Anyway, most experts seem to agree that national legislation more effectively guards against misdeeds by military contractors, at least in the short term.

Option 2: Harmonizing domestic legislation

At present, most of the legal instruments for dealing with PMC misconduct are national, rather than international. However, in all countries from which companies operate, laws governing their activities are weak, especially with regard to services performed abroad.⁴²⁵ Furthermore, national regulations differ from country to country, both in terms of quality and effectiveness, and in many cases are beset with loopholes. Legal gray areas abound, as extra-territoriality issues and the mingling of state and private actors complicate application. All told, it is easy to see why experts have called for national legislation to be harmonized. Doing so would, in addition to creating common standards, help the development of an eventual universal approach.⁴²⁶ Because focusing on legislation at the national level affirms the centrality of state actors within international security relations, if the leading PMC-exporting countries take responsibility for the services provided by firms based in their territory there could be considerable progress toward establishing accountability at the international level. Moreover, PMC-exporting states have an interest in regulating their own firms because PMCs are commonly considered an extension of a state's foreign policy, regardless of whether they are operating under contract with their home state.⁴²⁷

Many proposals for new national legislation centre around the idea of licencing criteria — that is, legislation that defines the types of activities for which licences are required and, perhaps, requires companies that want to take up contracts abroad to register and notify their governments about which contracts they are pursuing. This approach would allow

⁴²⁴ Dickinson writes, "Public international laws are imperfectly enforced in the best of circumstances, and any interpretational ambiguities with regard to contractors only compounds the practical difficulties." See "Public Law Values in a Privatized World," 401.

⁴²⁵ DCAF, "Backgrounder," 4. For a discussion of the shortfalls of Canadian domestic legislation and jurisdictional issues see Spearin, "Canadian Policy: Possibilities and Pitfalls on the Road to Regulation," 2004.

⁴²⁶ Isenberg "A government in search of cover," 19.

⁴²⁷ Holmqvist, "Private Security Companies," 50.

governments to intervene to prevent PMCs from taking up contracts that run counter to national interests or foreign policy. In that sense, it resembles existing criteria for the export of arms.⁴²⁸ While this idea is not without merit, it seems to be an attempt to bring in accountability at the front end, which does not address how PMCs might be punished for unlawful behaviour (short of refusal to grant future licences) or how victims of contractor crimes might be compensated.⁴²⁹ In terms of responsibility for initiating the process of domestic harmonization, cooperation among the United States and European Union seems the clearest choice. Alternatively, discussion to this end could begin among NATO member states.⁴³⁰

Option 3: The Contractual Approach

Of all the proposed measures to stimulate positive change, the least talked about strategy is probably also the one with the most promise: building accountability measures into the privatized relationship itself -- in short, the contract. Dickinson has written extensively on the public-private dynamic, and in a recent article entitled "Public Law Values in a Privatized World,"⁴³¹ she draws attention to the possibilities for extending public law values through appropriate construction of government contracts. Dickinson argues that international law scholars have largely failed to understand that contracts can be "a source of solutions" to the potential dangers of privatization.⁴³² By mastering the art and science of writing contracts, governments can find ways to include stipulations that contribute to the

⁴²⁸ *Ibid.*, 53.

⁴²⁹ Although no state has yet succeeded in developing a model law that could be used by other states as a guide to best practice, a recent document prepared by the *Geneva Centre for the Democratic Control of Armed Forces* reasons that such a law would require at least the following: (1) a definition of what constitutes a PMC, including an exhaustive list of services that qualify as combat-related; (2) the requirement that PMCs subject their activity, both domestically and internationally, to national criminal and civil liabilities; (3) provisions for regulating the contract management process, especially sub-contracting; and (4) the capacity to force PMCs to demand a certain level of employee qualifications and keep records of employee activity (i.e., who is doing what jobs where and when). See DCAF, "Background," 4.

⁴³⁰ Isenberg "A government in search of cover," 19.

⁴³¹ Dickinson, "Public Law Values in a Privatized World," 383-425.

⁴³² *Ibid.*, p. 386. International law scholars have recognized the problems inherent in applying international legal norms to non-state actors in general, but "non-state actors" is too broad a category to because a corporate PMC, for example, differs markedly from, say, a guerilla soldier whose activities do not involve a contractual relationship. See Dickinson's article for more detailed discussion of this point.

formation of standards of behaviour and performance, as well as a means for introducing some degree of public accountability.⁴³³

The primary advantage of the contractual approach is that contracts, as “the quintessential private law instrument,” can bring the public law values they are made to embody more readily within the range of domestic courts or private arbitral bodies. As a result, reliance on international public law enforcement mechanisms is reduced as the privatization relationship is, in effect, “publicized.”⁴³⁴ There are further benefits to the contractual approach. If international public law values become embedded in contracts, domestic judges will essentially be required to enforce them. This may have the double effect of internalizing international law norms. As domestic familiarity with international law principles increases among government officials, judicial systems and broader populations, resistance in general to these norms is likely to decrease. Such a development would be tantamount to expanding the reach of international law. Also, despite the occasional expression of concern over maintaining the purity of international norms, the benefits of their internalization would certainly outweigh the nuisance of local variation.⁴³⁵

The biggest potential drawback of the contractual approach is that a long list of added requirements would unduly increase the costs of privatization, both to PMCs and to the government body overseeing the contract.⁴³⁶ However, as was demonstrated by the *Custer Battles* case, improved oversight could well save governments large sums previously lost to fraud and abuse. As for added costs to PMCs, it is hard to imagine that firms would abandon attempts to secure extraordinarily lucrative contracts because of some added contract requirements. Moreover, governments — especially the U.S. government — have

⁴³³ In particular, Dickinson recommends that contracts be drafted to ensure contractor accountability in the following nine ways: (1) to explicitly extend relevant norms of public international law to private contractors; (2) to delineate training requirements; (3) to provide for enhanced monitoring both within the government and by independent third-party monitors; (4) to establish clear performance benchmarks; (5) to require accreditation; (6) to mandate self-evaluation by the contractors; (7) to provide for governmental takeover of failing contracts; (8) to include opportunities for public participation in the contract negotiation process; and (9) to enhance whistleblower protections and rights of third-party beneficiaries to enforce contractual terms. See Dickinson., 386-388. Spearin agrees that improved drafting of contracts will go a long way toward mitigating the many hazards of military outsourcing, though he points out also that some problems will remain. For example, more precise contracting arrangements will not solve the problem of contractors walking off the job. See Spearin, “The Privatization of Security in Canada,” 321.

⁴³⁴ *Ibid.*, 388.

⁴³⁵ *Ibid.*, 422.

⁴³⁶ *Ibid.*, 423.

tremendous bargaining power in the contracting process because of the shortage of competing customers that can offer billions of dollars in contract awards.⁴³⁷

International and transnational public law litigation will never be able to deal with more than a handful of offenders. By focusing on the government contract that creates the privatized relationship in the first place, a much wider net is cast (indeed this is the primary advantage of the contractual approach). As Dickinson states, "Without focusing on contracts, there may be no realistic way to impose norms of accountability on privatized foreign affairs activity at all."⁴³⁸ Thus, we ignore the contractual approach at our peril. Failure to improve the drafting of contracts risks the possibility that international law norms will simply be ignored in an increasingly privatized world.

Lack of political will

The fragmented nature of the private military industry, coupled with the diversity of its clients, means that any single regulatory instrument is unlikely to capture all of PMCs' activities. A cleverly structured network of overlapping, mutually reinforcing instruments might, however, stand some chance of capturing a substantial portion.⁴³⁹ That said, reform proposals are useless without the resolve to carry them forward. As several analysts have suggested, the biggest obstacle to doing anything to control PMCs is a lack of political will. Because most states find private firms useful for putting their own foreign and military policies into action, they are also resistant to calls for restrictions on PMCs' activities.⁴⁴⁰ Thus far, no major power (unless one includes South Africa) has taken a serious interest in developing effective anti-mercenary laws and treaties. However, it appears ludicrous for elected representatives to ignore calls for improved oversight in light of the tens of millions of dollars dispensed annually by governments for PMCs' services.⁴⁴¹

Explanations for the lack of political will are in some respects paradoxical. On the one hand, politicians are said to be unwilling to support new legislation because of an antiquated distaste for all things mercenary and a difficulty in resigning themselves to the fact that the state no longer enjoys a monopoly over the ownership and use of the means of

⁴³⁷ *Ibid.*, 423. After all, the majority of PMCs only exist because of the vast amount of public money made available for national security in the wake of the September 11 terrorist attacks.

⁴³⁸ *Ibid.*, 422.

⁴³⁹ Holmqvist, "Private Security Companies," 44.

⁴⁴⁰ Isenberg "A government in search of cover," 19.

⁴⁴¹ Hastings, "We Must Fight our Instinctive Distaste for Mercenaries."

violence.⁴⁴² Indeed, industry officials often draw attention to a so-called “institutional bias” against privatized soldiering. At the same time, however, it now seems obvious that those states which make the most extensive use of military contractors desire to block improvements in accountability because they often call upon PMCs precisely to avoid the kind of stringent measures proposed; in other words, because governments benefit from a more opaque process. By enlisting the services of private firms, governments are able to do things they would not ordinarily be able to do — back one side of a conflict while claiming neutrality, hide unpopular interventions or coup attempts, escape political fallout from battle deaths, and the like.⁴⁴³

In view of the scarcity of political will, it is appropriate to ask what sorts of changes might still be feasible. Isenberg suggests that efforts to enhance transparency, such as the auditing of PMCs, are the most that can be expected.⁴⁴⁴ Dickinson’s contractual approach, however, seems to have at least an equal chance. While acknowledging that political executives may not be very receptive, Dickinson argues, “governments are not monolithic, and there are undoubtedly many people within bureaucracies, such as contract monitors, who honestly wish to do their job and would therefore welcome (and lobby for) contractual mechanisms that increase accountability.”⁴⁴⁵ Thus, it is wrong to expect that more stringent contractual monitoring can only come about through official executive branch or legislative action. NGOs and international organizations have demonstrated considerable capacity to pressure states to make changes they initially resisted, and some contract monitoring and accreditation work could be carried out by NGOs or other groups without the need for any official action.⁴⁴⁶

⁴⁴² Spearin, “Canadian Policy: Possibilities and Pitfalls on the Road to Regulation,” 10.

⁴⁴³ In light of these obvious benefits, one wonders if claims of mercenary-phobia by governments are genuine or simply designed to disguise hidden motives.

⁴⁴⁴ Isenberg “A government in search of cover,” 19.

⁴⁴⁵ Dickinson, “Public Law Values in a Privatized World,” 388-89.

⁴⁴⁶ Dickinson also points out that even if governments never moved to adopt to the standards, in the course of evaluating and accrediting contractors groups would uncover a wealth of information about privatization. Public information of that nature could then be used to apply popular political (or economic) pressure on recalcitrant firms. It might also give citizen watchdog groups — and competing contractors — the ability to monitor the relative effectiveness of contracts, expose failings and lobby governments for improvement. Finally, advocacy work on the international stage could increase pressure for change by resulting in treaties that actually require governments to make oversight provisions mandatory in certain categories of contracts. For Dickinson, then, the problem is not state opposition to reform proposals but rather that “policymakers and scholars have not sufficiently focused on privatization or the possible accountability mechanisms that could be embodied in contracts.” See 424, 389.

Ultimately, efforts to improve regulatory control of the private military industry should originate in those states which systematically engage private military companies — in many cases the same states where a significant number of them are based.⁴⁴⁷ Any new initiative for regulation should take as its starting point the realization that these states, along with the PMCs based in their territories, must be made to see the benefit of legislative measures.⁴⁴⁸ When military contractors begin to see rewards for good behaviour and penalties for rogue conduct, we will be on the right track toward a viable solution. Contractors must of course be obliged to meet some basic standards of behaviour, but without addressing the circumstances and conditions under which PMCs may be contracted the door will be left open for abuses to continue. Thus, while policymakers would be wise to consider international regulatory instruments as a complement to new domestic legislation, any such instruments must go beyond mere lip service that entrusts corporations to conduct inquiries into the actions of their employees themselves. Though the contractual approach appears most promising, policymakers need not choose one method to the exclusion of others. Ensuring accountability in the private military industry will require a variety of approaches working in concert.

To sum up, political leaders may have hidden motives for outsourcing certain aspects of foreign and defence policy to private firms. Sometimes PMCs are contracted to avoid legislative and public oversight, sometimes they are hired to hide a state's fingerprints from those who might object to dubious strategic objectives. In Iraq, shifting part of the burden of the war to private contractors has enabled the U.S. administration to lower the political price for its adventures in that country, both domestically and internationally. Extensive lobbying, campaign contributions and political connections allow PMCs to develop new business opportunities in the security market, sometimes by mobilizing support for hawkish foreign policies. Without improved regulation of PMCs, and of the conditions under which firms may be hired, notions of constitutionality and international public law values will remain threatened. Greater transparency is imperative if citizens are to protect themselves against waste, fraud or abuse of the public trust. While a number of strategies have been proposed to this end, there is at present a lack of political will in those states which have most strongly embraced privatization as a means to augment military power.

⁴⁴⁷ Schreier and Caparini, "Privatising Security," iii.

⁴⁴⁸ Holmqvist, "Private Security Companies," 43.

CHAPTER VI: CONCLUSIONS

To formulate some conclusions, it is necessary to go back to the questions that shaped this study in the first place: Are the stated benefits of military outsourcing real? Are there unstated or "hidden" motives which actually underpin the purchase of PMCs' services by governments? Does the introduction of private conflict actors cause problems that are seldom identified or discussed? Ultimately, does widespread use of military contractors serve the public interest? In light of the evidence assembled, it is reasonable to state that while some benefits of privatization are real, most are at best conditional. Moreover, from a public interest perspective PMCs are accompanied by a range of hazards which outweigh any benefits stemming from their prominent role in the implementation of defence policy. Widespread use of private contractors does in fact challenge accountable global governance, and in some cases may exacerbate conflict. If current trends continue, PMCs could prove costly to states over the long term.

Employing private contractors may give state militaries a considerable degree of added flexibility and responsiveness in the short run. Whether or not privatization saves money remains to be seen. One thing is clear: cost savings are neither automatic nor guaranteed. Several factors raise serious doubts about whether military outsourcing gives taxpayers good value for their money. No-bid contracts break the logical chain of privatization; savings are dependent upon open competition and strict government oversight, and cost-plus contracts give firms incentives for waste, fraud and abuse. Also, standard subcontracting practices, in which a contract may pass through several firms, can drastically reduce or reverse any gains in efficiency. In addition, observers often overlook the sunk costs borne by the state for the bulk of contractors' military training. When soldiers leave the armed service to accept lucrative contracts with PMCs, firms capitalize on experience that was imparted and financed by the state. This is self-defeating from the perspective of state militaries. Also, though states can save by avoiding benefits and pension costs, one wonders whether it serves the public good to create another class of workers who lack health insurance and retirement income.

Because contracting out is almost always justified on the grounds of financial savings, the public may be unaware that there are actually two separate issues relating to cost effectiveness and flexibility. Rather than always reducing the cost of national defence by outsourcing, governments may sometimes be opting to pay more for greater flexibility, greater capacity, or better services.⁴⁴⁹ From the average citizen's perspective, this may not be such a difficult proposition to accept. If outsourcing is not cheaper but improves national or international security, governments need to demonstrate to the public exactly how security is enhanced by using private suppliers, rather than simply insisting that privatization conserves tax revenue. Further research into the costs of privatization is required, and it is imperative that investigations include oversight costs and actual (as opposed to projected) spending on long-term contracts in order to reveal privatization's true costs.

Increased privatization has made accountability more diffuse and difficult to track because it spreads the responsibility for security across a greater number of actors.⁴⁵⁰ Beyond the difficulties inherent in this diffusion, a variety of obstacles further obstruct accountability in the private military industry. While PMCs are sometimes subject to the laws of the territory in which they are operating, they may also be subject in theory to domestic criminal law and civil liability in their country of origin. Usually this distinction is unclear, and the absence of rules specifically governing PMCs has proved to be a major obstacle to enforcement in both cases. The status of PMCs under international law is similarly problematic. Human rights law generally covers only actions by states, and the UN Convention on Mercenaries deals only with a narrow range of egregious offences. In general, the problem is not, as many have argued, that PMCs are 'beyond the law,' but rather that the law cannot define what PMCs are in a consistent way, nor can it regulate the full scope of their activities. Until the purview of international law widens to include new terms and legal mechanisms to address PMCs, aggrieved parties are left to contend with the existing, grossly inadequate legal framework. Further research is thus required in order to appraise the relative utility of this framework and the legislative measures needed to boost its effectiveness.⁴⁵¹

⁴⁴⁹ Schooner, Interview, PBS *Frontline*.

⁴⁵⁰ Singer, *Corporate Warriors*, 220.

⁴⁵¹ Isenberg, "A government in search of cover," 17.

PMC mounted projects are not generally staffed with permanent employees, and individuals may move easily from one company to the next and freelance when not under contract. Disreputable players can also find their way into the corporate mix because firms are motivated by a desire to maximize profits. Start-up firms also enjoy low barriers to entry into the industry, and the transnational nature of PMCs means they need not confine their activities to within the borders of any one state. Companies often operate numerous subsidiaries, and frequent sub-contracting obstructs oversight efforts. While lawsuits brought against *Blackwater*, *Presidential Airways*, *Titan* and *CACI* may conceivably jumpstart the process of developing new accountability structures for the industry, research concerning policy alternatives remains in its early stages. For the time being, litigation is hardly the best forum for resolving issues related to human rights and the military.⁴⁵²

Problems with contract management are also widespread. In Iraq, while the private sector demonstrated its ability to scale up and adapt quickly to the situation on the ground, the Pentagon's oversight mechanisms proved incapable of matching this feat.⁴⁵³ When combined with an unprecedented level of private sector engagement, defective managerial systems — not only in the United States — leave governments with no meaningful way to ensure contractual compliance. States also remain ill-prepared to find companies in breach and unworthy of payment or contract renewal. The obvious implication is that without knowledge of whether PMCs have performed satisfactorily, officials are hard pressed to recommend that they be replaced or that responsibility for services be moved back in-house.⁴⁵⁴ Minow equates poor contract management on behalf of governments to “defaulting on [one’s] contractual role as the paying, bargaining partner.”⁴⁵⁵ Singer has also criticized governments for failing to recognize their responsibility to the public to act as smart clients. He observed: “Their failure to do so thus far has distorted the free market and caused a major shift in the military-industrial complex. Without change, the status quo will result in bad policy and bad business.”⁴⁵⁶ At the end of the day, those who hire PMCs are duty-bound to do so with a fair appreciation of the benefits — and hazards — involved. It is curious that governments which express such admiration for the free market would overlook the concept

⁴⁵² Singer, “Outsourcing War,” 2005.

⁴⁵³ Isenberg, “A government in search of cover,” 15.

⁴⁵⁴ Minow, “Outsourcing Power,” 1009.

⁴⁵⁵ *Ibid.*, 1010.

⁴⁵⁶ Singer, “Outsourcing War,” 2005.

of 'buyer beware.' As Lynch and Walsh note, "It is one of the virtues of market relationships that to purchase is not necessarily to buy immunity from the risks of incautious forethought."⁴⁵⁷

Widespread military outsourcing also threatens to change the quality, character and public image of national militaries. Poaching of quality soldiers is endemic, making the distinction between active duty and retired soldiers increasingly blurred. Public trust in the military may also be diminished. More important than these trends, however, is the danger that state militaries may be weakened by a growing dependency on private contractors for the performance of important and, in some cases, core functions. Contractor dependency goes hand in hand with a loss of control, though retaining operational reliability and control has to be of crucial importance to any military. No military should rely on contractors on the battlefield to the extent that they could not fight wars without them. The notion that private actors may suddenly decide to work for a client with deeper pockets aside, command and coordination challenges indicate that a contractor-dependent army would be wise to avoid clashing with a comparable foe which does not suffer from the same dependency.

With the advantage of hindsight, it is apparent that PMC operations in Iraq have been affected by a lack of strategic planning as much as have operations by regular U.S. troops. Companies were not given sufficient early warning before the war about the extent to which their services would be required, and coordination has been poor.⁴⁵⁸ The situation might have been improved had the PMC coordination contract awarded to *Aegis Defence Services* been envisioned before the war.⁴⁵⁹ As Isenberg observed:

The Bush administration has tried to fight a war and nation-build on the cheap. It has failed to commit the necessary number of trained and qualified personnel and failed to supply the necessary resources required for an occupation force under international law. In such a scenario failure and criminal behaviour by both private and public actors was virtually inevitable.⁴⁶⁰

Over the long term, the effect on the U.S. and other militaries who engage PMCs heavily has been a reduced investment in public institutions. Each time a portion of defence budgets is transferred to PMCs, the effect is to encourage private rather than public expertise. This compounds contractor dependency, at the same time reducing the ability of

⁴⁵⁷ Lynch and Walsh, "The Good Mercenary?," 145.

⁴⁵⁸ Isenberg, "A Fistful of Contractors," 2004.

⁴⁵⁹ Isenberg, "A government in search of cover," 15.

⁴⁶⁰ Isenberg, "A Fistful of Contractors," 2004.

future administrations to reverse the trend should they so desire. Thus, if policymakers are at all apprehensive about relinquishing public control over core capabilities, the hour is already late. Gordon L. Campbell, a U.S. Army officer, wrote: “Ethics would...seem to demand the military retain core levels of all capabilities necessary to enable it to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff.”⁴⁶¹ While his appraisal is ultimately correct, retaining all core capabilities within the military would almost certainly have the effect of reducing considerably the potential for outsourcing-related financial savings. In the end, however, military capacity — like all security matters — is a game of balancing costs and risks. “Those that weigh only dollar costs,” Campbell observed, “will undoubtedly not be the same as those who face the risks – and directly suffer the costs.” He concludes, “Defence is expensive. Ethical defence policy, in keeping with our democratic principles, is even more so.”⁴⁶²

In light of the evidence uncovered in the course of this study, an honest appraisal of the privatization of force involves challenging a convenient myth — that the hiring of private suppliers is motivated by financial concerns. Financial savings are of course unconfirmed, and a comprehensive survey of the subject reveals that privatization is more about avoiding difficult political choices than anything else. These choices concern military needs, reserve call-ups and the human consequences of war. By opting to accomplish public ends through private means, governments are attempting to have the influence they want without the political costs of sending uniformed soldiers. From the perspective of executive branch decision-makers it is easy to see why hiring private military companies is desirable. In bypassing public debate via privatization, governments can more easily pursue foreign policy objectives which lack broad public support (such as the launching of an aggressive war), or which compromise international obligations (such as the expectation of impartiality in a conflict between third parties).⁴⁶³ But this paper concerns the public interest, and clearly the short-term strategic or political goals of leaders do not always coincide with the long-term interests of society. Just as domestic privatization raises questions about the erosion of fundamental domestic public law values, privatization in the international sphere can endanger international public law values, including human rights norms, norms against

⁴⁶¹ Campbell, “Contractors on the Battlefield,” 8.

⁴⁶² Ibid.

⁴⁶³ As the fallout from some unfortunate incidents demonstrates, the actions of private contractors can also harm foreign relations and undermine policy objectives.

corruption and waste, and democratic process values. Widespread privatization of military affairs threatens these values when coupled with the failure of international legal mechanisms to hold contractors accountable for human rights abuses, wrongful deaths, corruption and fraud. Public involvement in considering the risks and benefits of military operations is fundamental to democracy and to the success of policy initiatives. Excessive privatization disconnects the public from foreign policy objectives by putting information further from public reach.⁴⁶⁴ Thus, the downside of a more prominent role for PMCs is likely to be not only a reliance on private firms for a fundamental role in foreign policy and a government progressively more focused on “military solutions,” but also a public increasingly disengaged from global problems.

Sovereign transactions

The application of military power is not comparable to any other commercial service; the stakes in warfare are far higher than in the usual corporate realm. Because the military is composed of experts in the organized application of violence, armed service is very different from any other profession. Bruce Grant, a U.S. Army Colonel, writes, “Military professionals deal in life and death matters, and the application of their craft has implications for the rise and fall of governments.”⁴⁶⁵

Transactions cost economics is helpful in explaining why public agencies like the military may be appropriate organizations for accomplishing some tasks and inappropriate for others. Particularly useful in this regard is the concept of “sovereign transactions,” defined as “transactions for which public authority is deemed necessary, loyalty to the state is fundamental, and which may have implications for the security of the state.”⁴⁶⁶ A host of economists, including Williamson and Fredland, have argued that, taking into consideration four key characteristics of transactions -- uncertainty, asset specificity, frequency and probity — public bodies are actually the most efficient organization for delivering sovereign transactions.⁴⁶⁷ To determine the best way to organize productive activity, it is first necessary to assess the trade-off between costs incurred in contracting and the inefficiencies

⁴⁶⁴ Avant, “Mercenaries,” 2002.

⁴⁶⁵ Grant, “U.S. Military Expertise For Sale.” U.S. Defense Secretary Donald Rumsfeld does not appear to have a firm grasp of this concept, as evinced by his remark in 2001: “No business I have known could survive under the policies we apply to our uniformed personnel.” See Rumsfeld, speech, 2001.

⁴⁶⁶ Fredland, “Outsourcing Military Force,” 209.

⁴⁶⁷ “Probity” is defined as “the loyalty and rectitude with which the transaction is discharged.” See Fredland, “Outsourcing Military Force,” 209.

characteristic of bureaucracies (like the military).⁴⁶⁸ There is no question that private military companies, like all parties to market transactions, offer the potential for increased efficiency because of high-powered incentives (PMCs get to keep their share of the surplus generated by the transaction). However, a proper assessment of transaction costs demonstrates that the hazards of uncertainty and probity make efficient contracting between governments and PMCs very problematic, especially when contractors are involved in combat operations. The uncertainties inherent in military situations and the probity hazard which accompanies many PMC activities are simply too great. Contracts cannot be designed to cover infinite contingencies — indeed the objective itself may even change (for instance, if another state enters the conflict) — and leaders must have full confidence in the loyalty of those carrying out assigned duties on the battlefield. Fredland contends that “without these loyalties, the state itself is threatened.” He concludes, “Fighting on behalf of the state belongs on any list of sovereign transactions.”⁴⁶⁹

Using PMCs to conduct interrogation and intelligence activities also crosses the line into work that should be the domain of the state.⁴⁷⁰ Although the most basic criteria for selecting individuals for these tasks should be whether they are properly qualified and operating within the law, most of these positions should generally be considered too sensitive to be outsourced.⁴⁷¹ Presently, contractors are doing huge amounts of “ops” work with the CIA — recruiting informants, managing the major relationships with the U.S. military and handling agents in support of frontline combat units.⁴⁷² Surely these qualify as sovereign transactions. Accordingly, senior intelligence people have expressed concern that using contractors to do important spying work carries security risks.

Conversely, the privatization of some other tasks — such as non-lethal support services — seems to be acceptable from a sovereign transactions perspective because contractual hazards are less serious.⁴⁷³ However, the further one moves down the spectrum toward participation in actual combat, the more ill-advised the use of contractors becomes. This begs the question: What functions are PMCs best used for? The simple answer seems to be mundane, repetitive, non-combat tasks clearly defined within a legal structure.

⁴⁶⁸ *Ibid.*, 209.

⁴⁶⁹ *Ibid.*, 210.

⁴⁷⁰ Minow, “Outsourcing Power,” 1014.

⁴⁷¹ Isenberg, “A government in search of cover,” 16.

⁴⁷² Miller, “Spy Agencies Outsourcing to Fill Key Jobs.”

⁴⁷³ Fredland, “Outsourcing Military Force,” 215.

Campbell has argued that “there is no doubt contractors can accomplish specific, non-combat tasks traditionally provided by the military.”⁴⁷⁴ Many military officers have expressed support for the use of contractors — with the condition that they are given a limited role with clearly defined boundaries.⁴⁷⁵ Fredland agrees that fewer contractual hazards (especially uncertainties) imply a less compelling case for the public (state military) provision of non-lethal support services as compared to combat activities.⁴⁷⁶ Also, there are far more suppliers offering non-combat services. As stated previously, the cost saving logic of privatization is broken in the absence of sufficient competition among firms. Moreover, timing is usually less crucial in the case of, say, military training, as compared to combat services, and renegotiating or negotiating a contract with a different supplier can eat up precious time. Finally, national militaries are more likely to be able to take on support roles internally if they find themselves suddenly let down by a private supplier.⁴⁷⁷ This is not the case with many high-tech weapons support or information warfare services.

Private security firms may also be acceptable as substitutes for regular forces in the carrying out of peace enforcement or humanitarian action. Certainly international organizations such as the UN and International Committee of the Red Cross (ICRC) have found them valuable in a supporting role thus far. As leading military powers continue to demonstrate an unwillingness to become involved unless vital national interests are threatened, one is inclined to accept that action by private firms, even with all their attendant concerns, is preferable to no action at all. The militaries of most strong states are also poorly structured to undertake peace operations. This is certainly true of the U.S. military, now currently sized, organized and trained to support two major theatre wars at the upper end of the operational spectrum.⁴⁷⁸ As leading powers continue to experience difficulty providing the right kind of units for peace operations, PMCs are poised to step up efforts to promote their

⁴⁷⁴ Campbell, “Contractors on the Battlefield,” 7.

⁴⁷⁵ Colonel Hammes gave the example of running a training facility for U.S. forces in Kuwait. He observed: “MPRI runs a superb training facility with retired NCOs [non-commissioned officers] — vast experience, but it’s not a combat zone. Very clearly defined regulations, rules, very clearly defined product which [it is hired to] deliver.” Support services provided to U.S. troops in Bosnia in the 1990s are another oft-cited example. Again, Bosnia was not a combat environment, and military officers continue to express concern about putting military contractors into combat zones. On the subject of contractor involvement in Iraq, Hammes stated: “You don’t need a soldier to take care of the trailers or to make sure they’re cleaned or to refill the water towers for the showers and things like that. But when you start moving him around among the population where decision-making becomes very, very important, and your [interaction] with the Iraqis becomes very important, then I think you don’t want contractors.” See Interview, PBS [Frontline](#).

⁴⁷⁶ Fredland, “Outsourcing Military Force,” 214.

⁴⁷⁷ *Ibid.*, 213.

⁴⁷⁸ Smith, “The New Condottieri,” 114.

own appropriately tailored forces. It should be noted, however, that while hiring a PMC to prevent a civil war from triggering a massive humanitarian crisis presents a tempting option, the very prospect raises a multitude of questions about legality and accountability. For example, under whose mandate would the firm operate?⁴⁷⁹ It is also important to note that there is no reason why PMCs cannot expand their catalogue of services beyond what they have already been hired to do. Industry veteran Tim Spicer has suggested: “PMCs could be employed for...a national vaccination program, AIDS awareness training and so on. PMCs have the organization and the command structures to take on such tasks; to think that PMCs can only provide military assistance is to take a narrow view.”⁴⁸⁰

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Ultimately, if one accepts that the hiring of PMCs is an all but unavoidable reality (and at this point it seems to be), and that governments must therefore accept some degree of risk by bringing contractors on board, militaries must learn to base their decisions about what to privatize not simply on what they feel they need but on a careful analysis of what they can ill afford to have beyond their control.⁴⁸¹ Any evaluation of private military service provision must also consider the potential long-term effects on military capabilities, as well as the political and foreign policy implications of privatization.⁴⁸² Clearly, cost effectiveness is not always the best — and it is certainly not the only — criterion on which to base policy.

William Hartung has spoken out in favour of a “thorough, top-to-bottom ‘policy audit’ of Pentagon privatization, with an eye toward taking back key functions into the public sphere.”⁴⁸³ The same can be said about the defence departments of other heavily marketized states, such as the U.K. and Canada. Though some observers have argued that setting parameters for the use of private contractors is straightforward,⁴⁸⁴ in reality defining what constitutes an inherently governmental function is difficult, and more research needs to

⁴⁷⁹ Hodge, “Army For Hire.”

⁴⁸⁰ Spicer, *An Unorthodox Soldier*, 229.

⁴⁸¹ Spearin, “The Privatization of Security in Canada,” 322.

⁴⁸² Avant, “Mercenaries,” 2002.

⁴⁸³ Hartung, “Outsourcing is Hell,” 2004.

⁴⁸⁴ Max Hastings, writing for *The Guardian*, declares, “Protection and logistical support, humanitarian aid in war zones, training of Whitehall-approved overseas forces — yes. Active combat roles, intelligence and African coups — no.” See “We Must Fight our Instinctive Distaste for Mercenaries,” August 2, 2006.

be done in order to clarify the divisions between categories of military- and security-related tasks.⁴⁸⁵

Most of the hazards associated with the hiring of PMCs will not diminish or disappear without action on the part of governments. It is imperative that citizens, as well as their representatives in government, develop a better understanding of the risks associated with this newly powerful force in foreign policy. Failure to do so could mean destructive consequences for both policy and democracy. Clearly there is a reason why the use of force has historically remained a monopoly of the state: allowing the private sector more than a peripheral role interferes with the public's ability to ensure governmental accountability regarding when and how armed force is applied. If a democratic government cannot secure broad public support for the deployment of national forces, it has no business sending private citizens to accomplish unpopular objectives on a for-profit basis. In the absence of legislative approval, executive branch decision-makers must either suppress their desire for a military approach or seek alternative non-military substitutes.

Even when military action receives support, states need to face up to the reality that fundamental differences often exist between private contractors and national soldiers who have taken an oath of service to their country. Even renewed efforts to improve regulatory and contractual scrutiny will not overcome this disparity.⁴⁸⁶ In the coming years, critics, advocates and policy-makers will need to pursue far-reaching and creative solutions to the problems posed by a growing role for private military companies in global security governance and warfare. Attempting to safeguard public law and democratic process values without first recognizing the need for a new approach will result in bad policy, greater imbalance between public and private capacity, and, ultimately, ongoing damage to the public interest.

⁴⁸⁵ Martha Minow, among others, has drawn attention to this problem. She states, "disagreements over precisely what an inherently governmental activity is...contribute to ambiguity over what can or should be outsourced." See "Outsourcing Power," 1015.

⁴⁸⁶ Spearin, "The Privatization of Security in Canada," 322.

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