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Filling the Void: Private Security Companies, Operational Functions, and the Devolution of
Global Security

by

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MAJOR / USAF

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

23 April 2008

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Abstract

The Long War, sparked by the terrorist attacks of September 11, 2001, revealed a tenuous international security situation. U.S. global interests are increasingly at risk and the U.S. military is the primary protector of these interests. Due to limited resources, the U.S. military is increasingly challenged to provide the level of presence and security needed to effectively deter, dissuade or defeat the enemy around the globe. Private Security Companies (PSC) are uniquely positioned to fill the growing security void, but require appropriate oversight. This paper argues that Geographic Combatant Commanders should advocate for needed legal reforms and formally include PSCs in theater-strategic and operational planning across applicable operational functions to protect U.S. interests. It first establishes a clear picture of the current security environment and then looks at the history of PSCs. Second, it draws conclusions that validate the need for PSCs and further describes how they are used across operational functions. Finally, this paper recommends legal reforms and proposes further integration of PSCs into operational functions.

INTRODUCTION

Breaking News AP Wire 3/10/2010: "New security model scores first victory." Reports from the Gulf of Guinea confirm that the Private Security Company (PSC) Sovereign Options successfully thwarted a terrorist attack on oil loading facilities by Nigerian rebels. Sovereign Options recently deployed a "defensive response team" (DRT), authorized by new U.S. legislation that clarifies PSC status under the Uniformed Code of Military Justice and international law. Provisions in the legislation also brought the DRT under the command and control of regional U.S. Special Operations Forces. The emergency legislation was rushed through Congress after the price of oil hit \$200 a barrel last month. The spike occurred when rebels successfully ambushed a Nigerian oil transfer station, killing scores of Nigerian soldiers and destroying key infrastructure. Analysts estimate that the station will remain closed for months. U.S. domestic pressure to take action was exacerbated by a military stretched thin over the continued conflicts in Iraq and Afghanistan, as well as the recent deployment of Army, Naval, and Air Forces to the Pacific theater. China's attempt to strangle the growing pro-independence movement in Taiwan with a maritime blockade has yet to be resolved. Analysts expect to see more DRTs deployed to strategic locations around the world.

This fictitious scenario as well as other fronts in The Long War demonstrates that a tenuous international security situation exists. U.S. global interests are increasingly at risk and the U.S. military is the primary protector of [these](#) interests. Due to limited resources, the U.S. military is increasingly challenged to provide the level of presence and security needed to effectively deter, dissuade or defeat the enemy around the globe. Private Security Companies (PSC) are uniquely positioned to fill the growing security void, but require appropriate oversight. This paper argues that Geographic Combatant Commanders (GCC) should advocate for needed legal reforms and formally include PSCs in theater-strategic and operational planning across applicable operational functions to protect U.S. interests.

September 11, 2001, was a crater on the timeline of human history. The terrorist attacks on the World Trade Center and the Pentagon revealed a rapidly changing global

security situation. That fateful day changed how many around the world view personal and collective security. The U.S. military continues to come to terms with this new reality.

In order to chart the way ahead, this paper first establishes a clear picture of the current security environment and then looks at the history of PSCs. Second, it draws conclusions that validate the need for PSCs and further describes how they are used across operational functions. Finally, this paper recommends legal reforms and proposes further integration of PSCs into operational functions.

AN UNCERTAIN WORLD

Global and local chaos will continue until the next wave of adaptive innovation takes hold.

-John Robb, author of *Brave New War*¹

Much is said in politics about protecting the “American way of life.” President Bush began his speech on the night of September 11, 2001, by stating, “Today, our fellow citizens, our way of life, our very freedom came under attack....”² This theme dominates his speeches even as terrorist methods continue to morph. On March 6, 2008, President Bush described how, “...a devastating attack in cyberspace would be a massive blow to our economy and way of life.”³ Of course, we no longer protect a pre-9/11 way of life. We protect the modified lifestyle to which we have adapted, at least in terms of security. The days of carrying knives with blade lengths less than five inches aboard commercial aircraft will never return. The President’s concern today is large-scale, instantaneous disruption of our post-9/11 adapted

¹ John Robb, *Brave New War: The Next Stage of Terrorism and the End of Globalization* (Hoboken, NJ: John Wiley and Sons, 2007), 187.

² White House official Web site. “Statement by the President in His Address to the Nation.” <http://www.whitehouse.gov/news/releases/2001/09/20010911-16.html> (accessed 4 April 2008).

³ U.S. Department of Homeland Defense official Web site. “President Bush Commemorates Fifth Anniversary of U.S. Department of Homeland Security.” http://www.dhs.gov/xnews/speeches/sp_1204838566072.shtm (accessed 4 April 2008).

way of life, whether in the catastrophic form of a cyber attack on our banking system or a dirty bomb in a large city.

The United States has adjusted with some success to the asymmetric terrorist threat, at least when measured against frequency of homeland terror events since 2001. Nonetheless, non-state terrorists will continue to evolve by leveraging globalization and technology, both morally neutral forces.⁴ Terrorists have targeted European cities multiple times, and it is probable they will attack the United States again. The next attack will most likely be less spectacular than 9/11, but perhaps more damaging. The terrorist decision cycle is usually quicker and less cumbersome than that of nation state defense mechanisms. To reduce this disparity, nation states must decentralize, regionalize, and reduce the footprint of their national security apparatuses. Such an effort will partially push national security execution out of public government hands and into those of private companies that can respond more quickly and effectively to time-sensitive threats.⁵

These companies have many labels such as Private Security Companies and Private Military Companies.⁶ In the context of this paper, all commercial concerns capable of employing violence and contracted by the Department of Defense (DoD) for military support outside the United States are termed Private Security Companies.

⁴ John Robb, *Brave New War*, 3.

⁵ Ibid, 4.

⁶ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge, UK: Cambridge University Press, 2005), 1.

HYBRID AND FOURTH GENERATION WARFARE

We are not simply a “private security company.” We are a turnkey solution provider for 4th generation warfare.

-Blackwater website⁷

Integrating PSCs into conventional or irregular warfare is abhorrent to some, often eliciting a visceral response that such activity is mercenary in nature. Modern warfare, however, is changing and the United States must adapt to defeat the enemy. The categories of warfare have blurred and will continue to blur in the future.⁸ The term Hybrid Warfare (HW) has emerged to explain this phenomenon. HW is the idea that state or non-state actors fight asymmetrically using a myriad of techniques including terrorism and criminal disorder.⁹ HW combines elements of conventional and irregular warfare, including diabolical asymmetric attacks aimed at civilian populations.

While the HW construct emerged in 2007, a similar idea called Fourth Generation Warfare (FGW) appeared in 1989. It describes a future security environment similar to that of today. “The distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts.”¹⁰ The FGW definition then moves beyond today’s context, at least from the United States’ vantage point: “The distinction between ‘civilian’ and ‘military’ may disappear.”¹¹ While this idea may pertain to the future nature of the Long War against non-state actors, for now nation

⁷ Blackwater official Web site. <http://www.blackwaterusa.com/> (quote no longer available) quoted in *Brave New War* by John Robb, 89.

⁸ Colin S. Gray, *Another Bloody Century: Future Warfare* (London, UK: Weidenfeld & Nicolson, 2006) quoted in Frank G. Hoffman, “Future Land Force Challenges,” Powerpoint, 30 January 2008.

⁹ Frank G. Hoffman, *Conflict in the 21st Century: The Rise of Hybrid Wars* (Arlington, VA: Potomac Institute for Policy Studies, 2007), 14.

¹⁰ William S. Lind et al., “The Changing Face of War: Into the Fourth Generation,” *Marine Corps Gazette*, October 1989, 23.

¹¹ Ibid.

states have a vested interest in preserving the traditional “military” construct as a means of maintaining the monopoly on force.

Warfighting in the HW or FGW operational environment will require U.S. planning and force employment evolution to effectively address a threat that is agile and highly adaptive. The Cold War required very few assets to ‘monitor’ the Soviet monolith poised to attack via the Fulda Gap compared to the number of forces required to finish combat operations. However, HW or FGW has inverse requirements (see Figure 1).¹² Decentralized non-state actors can attack literally anywhere on the planet and in multiple environments including cyberspace. Therefore, the level of resources required to find and monitor the potentially devastating threat increases.



Figure 1

¹² Adapted from generic Special Operations Forces briefing slide. No previous author specified. Slide modified by author.

Technology and globalization increases the enemy's return on investment. Small amounts of money can fund attacks that disrupt global systems resulting in billion-dollar losses.¹³ It is therefore imperative for the U.S. military to adapt its approach to the global threat. Creative planning must meet the decentralized threat with a more decentralized response. From a planning perspective, the use of PSCs is key to this response. But for PSCs to be effective, commanders must understand and employ them properly.

THE HISTORY OF CONTRACTORS AND TRANSFORMATION

The United States cannot go to war without contractors.

- Colonel Kevin Cunningham, Dean of the Army War College¹⁴

Most scholars agree that the 1648 Peace of Westphalia, which ended the Thirty Years' War, established the nation state as we know it and effectively ended the wide use of for-hire soldiers. The rise of the nation state allowed massive conscript armies to replace paid soldiers.¹⁵ Since then, nation states and others have used mercenaries in various forms on a limited scale from the U.S. Revolutionary War to a 2004 coup attempt in Equatorial Guinea.¹⁶

While the term 'mercenary' has many misconceived popular meanings and is applied quite liberally, Table 1 shows the strict criteria laid out in Article 47, Protocol I, the 1977 Geneva Convention.¹⁷ As one can see, it would take considerable legal effort to prove all six preconditions before applying the mercenary label. The simplest option to remain within the

¹³ John Robb, *Brave New War*, 98-99.

¹⁴ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security*, 115. Quote from Colonel Kevin Cunningham, former Dean of the Army War College.

¹⁵ John Robb, *Brave New War*, 89.

¹⁶ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York, NY: Nation Books, 2007), 362.

¹⁷ "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977," <http://www.icrc.org/ihl.nsf/WebART/470-750057?OpenDocument> (accessed 4 April 2008).

bounds of international law is to pay PSC contractors a wage not substantially in excess of the associated military force.¹⁸ The other option is to have PSC contractors join the armed forces of the country they are supporting, as seen during conflicts in Africa in the 1990s.¹⁹

Article 47 – Mercenaries
1. A mercenary shall not have the right to be a combatant or a prisoner of war. 2. A mercenary is any person who: - a) is specially recruited locally or abroad in order to fight in an armed conflict; - b) does, in fact, take a direct part in the hostilities; - c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; - d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; - e) is not a member of the armed forces of a Party to the conflict; and - f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Table 1

Critics have written scathing books about PSCs such as Blackwater and similar international companies. These books claim mercenary activity and include the word “mercenary” in their titles, even when the PSC in question clearly does not meet the Geneva Convention definition.²⁰ One can only assume that the ‘mercenary’ label is used mainly for marketing reasons. PSCs differ from mercenaries in that they are legal, public entities operating in the free market and openly affiliated with the states they contract to protect.²¹

While mercenaries (real and perceived) attract much attention, the contractor issue at large is lost in much of the discussion. International news outlets are quick to report on any incident involving PSCs and their use of force, but fail to recognize what is happening inside

¹⁸ Critics quickly point to the fact that PSC members are receiving annualized salaries that outpace their military counterparts. When healthcare and other entitlements are factored in, the comparison more easily reaches parity.

¹⁹ Sarah Percy, *Regulating the Private Security Industry* (New York, NY: Routledge for International Institute for Strategic Studies, 2006), 42.

²⁰ One such book is listed in the bibliography. *Blackwater: The Rise of the World’s Most Powerful Mercenary Army* by Jeremy Scahill.

²¹ Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003), 47.

the U.S. government (USG) on a grand scale. During Operation DESERT STORM in 1991, 9,200 contractors deployed to support the military.²² In 2006, contractor personnel numbers in support of Operation IRAQI FREEDOM reached 100,000, approaching parity with the number of deployed U.S. military personnel.²³ One analyst estimates that there are over 200 PSC-style companies operating on every continent except Antarctica.²⁴

The rise of PSCs and the capabilities they provide is logical when one realizes and understands the devolution of security. When chaos erupted after Hurricane Katrina hit New Orleans, private businesses contracted PSCs to rescue high-net-worth clientele and guard private property.²⁵ This action proved that PSCs could provide capable services in a timely and effective manner in contrast to federal, state, and local governments.²⁶ Some analysts believe this trend will continue on the regional and local levels as PSCs replace governmental law enforcement for some due to superior effectiveness and cost-saving efficiency.²⁷

History, politics, and economics have also contributed to the rise of PSCs. HW or FGW conducted by non-state, transnational terrorists makes people and property vulnerable to attack. For protection, people traditionally turn to the state. When the state is unable to protect, PSCs successfully fill the gap. The growing demand for PSC services arose from a decade of military downsizing after the Cold War ended. Nations such as the United States and Great Britain reduced the size of their armed forces and began to contract commercially for many military capabilities. The effect on Cold War client states was significant. “With the

²² Michael J. Guidry and Guy J. Willis, “Future UAV Pilots: Are Contractors the Solution?” *Air Force Journal of Logistics* 28, no. 4 (Winter 2004): 6, <http://www.af.mil/lg/Vol%2028%20No%204%20www.pdf> (accessed 5 April 2008).

²³ Renae Merle, “Census Counts 100,000 Contractors in Iraq,” *Washington Post*, December 5, 2006. www.washingtonpost.com/wp-dyn/content/article/2006/12/04/AR2006120401311.html (accessed 5 April, 2008).

²⁴ Sarah Percy, *Regulating the Private Security Industry*, 11.

²⁵ John Robb, *Brave New War*, 90.

²⁶ *Ibid*, 91.

²⁷ *Ibid*, 85.

breakdown of the bipolar system, states could no longer depend on the superpowers to restrain internal conflicts and provide external security....”²⁸ When the South African apartheid regime ended in the early 1990s, it discharged some 60,000 highly trained soldiers.²⁹ Many of these soldiers joined PSCs active in Africa as states struggled to maintain internal and external security. As more combat-ready personnel became available to meet growing demand, PSC growth rates accelerated.

On the political and economic side, most people attribute the massive growth of contractors to [Secretary of Defense](#) (SECDEF) Donald Rumsfeld and his grand ideas of “Transformation.” The idea of transforming and privatizing elements of government, [however](#), began much earlier than his most recent tenure. Some analysts point to the 1979 election of Margaret Thatcher as Transformation’s birth.³⁰ President Reagan continued the trend, promoting belief in “the superiority of the marketplace in fulfilling organizational or public needs.”³¹ The 1983 Office of Management and Budget Circular A-76 required the USG to “rely on commercial entities to provide those services that are not inherently governmental....”³² At the time, most agreed that this would not involve use of force functions, but this policy definitely began the process of DoD contracting previously non-contracted capabilities.³³

²⁸ Robert Mandel, *Armies Without States: The Privatization of Security* (Boulder, CO: Lynne Rienner Publishers, 2002), 55.

²⁹ Peter W. Singer, *Corporate Warriors*, 102.

³⁰ Ibid, 66.

³¹ Ibid.

³² Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security*, 115.

³³ As recently as March of 2008, the Air Force is in search of a contractor to help write its strategy for the next DoD Quadrennial Defense Review. See “Project on Government Oversight.” <http://www.pogo.org/index.shtml>. Even if one favors using contractors to provide a myriad of functions and capabilities, it can easily be argued that U.S. military strategy lies at the heart of our country’s survival and should therefore be developed by those who wear the uniform.

Initially, privatization addressed mainly clerical functions, but the massive increase in deployments following 9/11 necessitated outsourcing of critical military functions. Civilian gate guards became commonplace at U.S. military bases.³⁴ Thousands of civilian contractors deployed in support of Operations ENDURING FREEDOM (OEF) and IRAQI FREEDOM (OIF) to maintain everything from B-2 bombers to TOW missile systems.³⁵ “Subsequently, the use of contractors in this type of role grew further, to the point that contractors began conducting combat-type operations that included operating the Global Hawk and even serving as Global Hawk pilots.”³⁶

The line between contractor and war fighter reached an exceptionally blurry point on April 4, 2004, in Najaf, Iraq. U.S. Marine Corporal Lonnie Young found himself fighting some 2,000 Mahdi Militiamen from the rooftop of a Coalition Provisional Authority (CPA) headquarters building where he was sent to install communications equipment.³⁷ He fought for survival alongside eight Blackwater contractors hired by the Department of State (DoS) to provide security for CPA buildings and personnel.³⁸ As he trained his weapon on hostile militia firing their AK-47s, he requested permission to fire.³⁹ With no commanding officer present, a Blackwater team leader allegedly granted permission.⁴⁰ When the dust settled over three hours later, the PSC-military team had fired thousands of rounds and killed somewhere between twenty and “hundreds” of enemy fighters.⁴¹ Corporal Young performed valiantly

³⁴ Gary Emery, “Civilian Guards Tapped to Control Base Gates,” *Air Force Print News Today*, 19 May 2004, <http://www.af.mil/news/story.asp?storyID=123007764> (accessed 7 April 2008).

³⁵ Bryan D. Watson, “A Look Down the Slippery Slope: Domestic Operations, Outsourcing, and the Erosion of Military Culture,” *Air and Space Power Journal* XXII, no. 1(Spring 2008): 96. TOW stands for tube-launched, optically-tracked, wire-guided.

³⁶ *Ibid.*, 96-97.

³⁷ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, 122-129.

³⁸ *Ibid.*

³⁹ *Ibid.*, 123

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 129.

that day, as did the Blackwater employees; the communications gear was installed and the CPA headquarters was protected. While some may attribute this event to mere timing and self-defense, the use of force by military personnel standing shoulder to shoulder with PSC contractors revealed issues that must be addressed. In fact, some analysts evidence this incident to argue against the legality and need for PSCs.

ARGUING AGAINST PSCs

War is far too important to be left to private industry.

- P.W. Singer, PSC Analyst⁴²

The most common and salient arguments against contractors in the battlespace are morality, legitimacy, lack of regulation, and strategic influence. The key moral question is whether armed force should be a marketable commodity or reserved for state functionaries.⁴³ PSCs are driven by monetary profit, while the state is driven by policy objectives. Thus, inherent friction exists in the relationship and may produce negative side effects that undermine state goals. Legitimacy is ultimately tied to morality. And just because PSCs present themselves as law-abiding corporations, many analysts believe that they have no legitimate right to exist either domestically or on the world market. Their function as purveyors of violence competes directly with the roles and responsibilities of nation states.

Beyond legitimacy, lack of regulation and strategic influence are linked together. Analysts point out that from the beginning of OIF to early 2007, not a single contractor in Iraq, including all PSCs, was prosecuted for alleged crimes committed in country.⁴⁴ This fact is despite media coverage of multiple alleged contractor abuses over the last few years. Most

⁴² Peter W. Singer, *Corporate Warriors*, 242.

⁴³ Robert Mandel, *Armies Without States: The Privatization of Security*, 133. Authors haven written on this topic over the last few decades and while the point is noted, a larger discussion is beyond the scope of this paper.

⁴⁴ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, 77.

notable was the September 2007 Blackwater incident where 17 Iraqis were killed.⁴⁵ Such an event can have strategic implications in an already dangerously complex situation. Perhaps increased PSC regulation and oversight would have prevented this tragedy.

ANSWERING THE CRITICS

History books are full of privateers helping the U.S. cause in past wars such as the naval privateers who helped the United States during the Revolutionary War and the War of 1812.⁴⁶ U.S. pilots, serving as privateers overseas, saw pre-Pearl Harbor action by flying in China against the Japanese and with the British against the Germans.

The privateers of the past are similar to the PSCs of today in that they supplement needed military capabilities. The increased use of PSCs in functions once reserved solely for the military may reflect a recent decline in national sovereignty,⁴⁷ just as mercenary decline after the Thirty Years War reflected a strengthening of sovereignty. As the United States expands participation of those conducting violence on its behalf, it is imperative that it clearly define the legal structure applied to PSCs. It is only by such action that the United States can preserve legitimacy during international crises. If properly regulated, PSC capabilities can be used in morally acceptable ways to augment U.S. forces while protecting U.S. interests around the globe. Proper regulation will also help guard against negative strategic effects.

⁴⁵ Alissa J. Rubin and Paul von Zielbauer, "Blackwater Case Highlights Legal Uncertainties," The New York Times, 11 October 2007, <http://www.nytimes.com/2007/10/11/world/middleeast/11legal.html> (accessed 9 April 2008).

⁴⁶ Tyler Cowen, "To Know Contractors, Know Government," The New York Times, 28 October 2007, <http://www.nytimes.com/.../28view.html?n=Top/Reference/Times%20Topics/Subjects/P/Private%20Military%20Companies> (accessed 9 April 2008).

⁴⁷ Ibid.

ARE PSCs NECESSARY?

“States have a right under Article 51 of the United Nations Charter to arrange for their own defense.”⁴⁸ This internationally upheld tenet explains why some African countries have contracted security over the years to protect against coups. And since its inception, the United States has contracted personnel to aid in warfare. The U.S. Army in the Civil War paid European officers to serve on the battlefield.⁴⁹ The U.S. Army contracted and eventually enlisted Philippine scouts to help track down insurgents during the Spanish American War.⁵⁰ The trend continues from there. “From 1994 to 2002, the Pentagon entered into more than 3,000 contracts” to provide mainly logistical, command and control (C2), and intelligence support.⁵¹ Recent reports indicate that the DoS is about to authorize over \$1 billion to train peacekeepers and provide logistics.⁵²

PSCs are necessary for numerous reasons. [First and foremost](#), they save money in the long run. While some are shocked that PSC contractors receive as much as \$1,000 to \$2,000 per day, it is cheaper in totality due to no initial training costs and no entitlement package for each contractor. Such costs are the PSC’s responsibility.⁵³ Just as important as monetary cost, politicians are concerned about troop footprint in a theater. Throughout history, the United States has placed troop caps on operations, most recently during the opening of OEF. The

⁴⁸ Sarah Percy, *Regulating the Private Security Industry*, 50.

⁴⁹ Peter W. Singer, *Corporate Warriors*, 38.

⁵⁰ Allan D Marple, *American Mercenaries: A Historical Precedence in East Asia* (Carlisle, PA: U.S. Army War College, 1992), 6.

⁵¹ Peter Singer, “Have Guns, Will Travel,” Brookings Institute, 21 July 2003, http://www.brookings.edu/opinions/2003/0721defenseindustry_singer.aspx (accessed 7 April 2008).

⁵² Nik Ogbulie, “Security in Africa: U.S. to spend \$1bn,” Business World Intelligence Website, <http://www.businessworldintelligence.com/vol2no21/news.html> (accessed 9 April 2008).

⁵³ James Risen, “U.S.: Contractors Back from Iraq Suffer Trauma from Battle,” New York Times, 5 July 2007, <https://www.nytimes.com/2007/07/05/us/05contractors.html> (accessed 9 April 2008). There is obvious concern that contractors do not: a) have adequate training on the front side and b) do not have adequate healthcare and long-term disability protection when they return with injuries. While these issues are the responsibility of the PSCs, the U.S. military should ensure that proper protections are in place before awarding contracts to the PSCs in question.

number of deployed personnel remains an ongoing debate in OIF as well. PSCs in the battlespace do not prompt the same level of impassioned debate. Fortunately or otherwise, there are no rallies in Washington D.C. to protest the number of contractors killed in Iraq. Finally, it is impossible to grow a capability overnight in the armed forces. PSCs can fill gaps quickly by drawing from comprehensive pools of highly-trained civilians or former military personnel. Furthermore, there are some tasks, such as linguists for obscure languages, which DoD may not want to invest in for the long-term.

OPERATIONAL FUNCTIONS

Operational functions are the activities by which commanders plan, prepare, conduct, and sustain military actions across the full range of military operations. Properly executed, the functions ensure that forces are fully capable during combat operations. As mentioned earlier, the USG currently contracts components of certain operational functions as the Long War approaches the end of its first decade. Operational C2, intelligence, and logistics have the most contractual support to date. Contractors of all types are embedded within the U.S. military C2 structure to support the complicated systems that provide interoperability and connectivity. Most branches of the U.S. military also contract senior mentors (retired generals with extensive C2 experience) to advise commanders during peacetime and combat operations.⁵⁴

For logistics, contractors have a long history of providing support.⁵⁵ Almost all U.S. forward operating bases receive supplies delivered daily by civilian contractors. A steady stream of Evergreen cargo-laden 747s and other supply aircraft fly around the USCENTCOM theater daily. KBR, formally known as Kellogg, Brown and Root, is one of

⁵⁴ Personal observations of the author.

⁵⁵ Sarah Percy, *Regulating the Private Security Industry*, 12.

DoD's largest logistical contractors. KBR works extensively in the Middle East and around the world, but its military logistical effort in Kosovo is most impressive. In 1999 alone, following the arrival of U.S. and NATO troops, KBR was awarded contracts that totaled nearly \$1 billion, providing everything from mail delivery to fire fighting.⁵⁶ "So essential is their assistance, that U.S. military planners no longer even envision the possibility of a large-scale intervention taking place without [KBR] or one of its business competitors providing the logistics."⁵⁷

Numerous private contractors are now conducting operational intelligence tasks, both domestically and in theaters of combat. The *Washington Post* reported in 2007 that "the Defense Intelligence Agency is transferring 'core intelligence tasks of analysis and collection' to private contractors - up to a billion dollars worth."⁵⁸ In Iraq, contractors daily perform collection and dissemination tasks. From 2004 to 2007, the British PSC Aegis Defence Services Ltd. held the lucrative contract in the Green Zone to provide daily battlespace updates to coalition authorities.⁵⁹

Operational protection is defined as, "measures conducted in peacetime, crisis, and war aimed at preserving the effectiveness and survivability of military and nonmilitary sources of power...."⁶⁰ No one doubts that the U.S. military can protect its military sources of power (i.e., protect itself), but clarity diminishes when one attempts to define nonmilitary sources of power. Economic supremacy is at or near the top of this list. Terrorists are well

⁵⁶ Peter W. Singer, *Corporate Warriors*, 144-145.

⁵⁷ Ibid, 136-137. "Since 1992, the firm has deployed employees to Afghanistan, Albania, Bosnia, Croatia, Greece, Haiti, Hungary, Italy, Kosovo, Kuwait, Macedonia, Saudi Arabia, Somalia, Turkey, Uzbekistan, and Zaire." All of these deployments were in support of U.S. operations, 136.

⁵⁸ James Carroll, "Outsourcing U.S. Intelligence," *International Herald Tribune*, 27 August 2007, <http://www.ihf.com/articles/2007/08/27/opinion/edcarroll.php> (accessed 5 April 2008).

⁵⁹ Steve Fainaru and Alec Klein, "In Iraq, a Private Realm of Intelligence Gathering," *Washington Post*, 1 July 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/30/AR2007063001075.html> (accessed 5 April 2008).

⁶⁰ Milan Vego, *Joint Operational Warfare* (Newport, RI: Naval War College, 2007), VIII-95.

aware of this and have therefore targeted the U.S. economy.⁶¹ Several girders of economic dominance are global security and unimpeded sea and trade lines of communication (LOC).

GCCs are inherently interested in protecting key nodes of potential instability. These key nodes are located along and at the intersection of the LOCs mentioned above. Per the fictional news report that opened this paper, even small attacks on these nodes can have global implications. GCCs must balance limited resources and personnel against growing security concerns. PSCs can provide the capabilities needed to broaden the security envelope across a region. This expanded security envelope eclipses already-provided contractor services such as DoD logistics and intelligence processing, and DoS personnel and property protection. Table 2 lists the full range of PSC capabilities available.⁶²

INCORPORATE PSCs INTO OPERATIONAL PROTECTION

The first recommendation is to establish a skeleton military C2 structure made up of small teams in volatile regions such as the Gulf of Guinea using SOF or highly trained conventional forces. Planners can then plug Defensive Response Teams (DRT) into the teams based on their defensive capabilities, ranging from oil platform defense to river patrol services. A fully capable DRT contractually attached to the command of a military team will ensure unity of command and unity of effort. This structure would allow the U.S. military to spread the security net further without reducing capability. As Figure 1 illustrated earlier, HW or FGW increased the need for presence and monitoring. Professional PSCs, providing high-level expertise, have the ability to supplement U.S. presence around the world.

⁶¹ Osama bin Laden, "Full transcript of bin Laden's speech," Aljazeera.net, 30 Oct 2004, quoted in *In the Eyes of Your Enemy: An Al-Qaeda Compendium*. Strategy and Policy Department, Naval War College, 2007.

⁶² Taken from various PSC websites including DynCorp and Blackwater.

PSC and Other Contractor Capabilities by Operational Function	
Function	Capability
Operational C2	Infrastructure Systems Support Information Flow Computer Network Defense Linguists
Operational Intelligence	Intelligence Collection Intelligence Analysis Intelligence Dissemination
Operational Movement and Maneuver	Aviation Support – Personnel Movement
Operational Fires	Weapons Systems Support
Operational Logistics	Aviation, Overland and Maritime Logistical Operations Theater Re-Supply Air Operations
Operational Protection	Law Enforcement Training and Operations Weapon System Support Air Base Ground Defense Maritime Security of Ports and Harbors (Littoral Ops) Interdicting WMD Personal Protection Details Unmanned Aerial Vehicle Operations and Support Natural Resource Infrastructure Security

Table 2

Approximately 80 percent of PSC personnel have military experience, mostly SOF.⁶³ SOF forces are characterized by the following: small footprint, economy of force, expansion of choice, innovation, extreme competence, and shaping the future.⁶⁴ PSCs can draw from extensive lists of personnel and capabilities to provide the same traits. If they fall short, which is bound to happen occasionally, contractual stipulations will allow for the removal of those who do not meet standards. The Uniform Code of Military Justice (UCMJ) will be the basis of accountability and discipline, and will be discussed later.

⁶³ PMCPSC.COM official Website, “Private Military Contractors: Preserving Peace Through Protection,” <http://www.unitedpmc.com/overview.htm> (accessed 11 April 2008).

⁶⁴ Tom Sass, SOF Lecture given at the Naval War College, 2 March 2008.

DOMESTIC REGULATION AND [POLICY](#) REFORM

*To put it bluntly, the cheese industry is better regulated than the private military industry.*⁶⁵

“Military operations in support of the Global War on Terrorism increasingly require U.S. military forces to operate alongside DoD civilian employees and DoD contractor personnel who serve with or accompany our armed forces as integral parts of that unified effort.”⁶⁶ This introductory sentence in the SECDEF’s recent memo demonstrates that the trend continues towards, not away from, the use of contractors in the battlespace. It is for this reason the USG must take steps to improve the standards required to use contractors effectively. U.S. policy must guard against the weakening of U.S. sovereignty and legitimacy through unregulated PSC behavior.

The SECDEF’s memo reinforces an earlier directive, dated October 17, 2006, which gathered all DoD civilian employees and contractors under the jurisdiction of the UCMJ.⁶⁷ This much-needed action was partially in response to the perceived lack of PSC accountability under DoS purview. The memo goes on to state that, “the unique nature of this extended UCMJ jurisdiction over civilians requires sound management” over whom it is exercised.⁶⁸ It is essentially uncharted legal territory. The memo also leaves room for the federal criminal system, under the Department of Justice (DoJ), to step in as necessary if PSC contractors violate federal laws while deployed overseas.

While the directive and [SECDEF](#) memo constitute a positive step for PSC accountability, adequate oversight requires increased uniformity. Congress should legislate

⁶⁵ Peter W. Singer, “The Private Military Industry and Iraq: What Have We Learned and Where to Next?,” Geneva Centre for the Democratic Control of Armed Forces, November 2004, 14.

⁶⁶ Department of Defense, “UCMJ Jurisdiction over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” Washington DC: Department of Defense, 10 March 2008, 1.

⁶⁷ Ibid, 2.

⁶⁸ Ibid.

an amendment subset that specifically ensures future PSC contractors are solely UCMJ-responsible, consistent with the legal authority that binds U.S. military personnel. This action would remove DoJ purview. DoS can then update the status change in Status of Forces Agreements to afford the necessary protection required in host countries.⁶⁹ These measures will eliminate the incongruence that currently exists.⁷⁰

Additionally, the USG must clearly craft contracts in line with policy objectives, but leave them flexible enough to encompass combat's uncertainties. Contracts must strike a balance between tactical effectiveness and overall strategic mission accomplishment.⁷¹ Previous loopholes allowed contracted employees to operate outside the U.S. chain of command and the UCMJ.⁷² For this reason, the USG must not allow PSCs to subcontract. They will be official DoD contractors subject to the jurisdiction and chain of command discussed above. This will give DoD the authority to run appropriate background checks.

Contracts can also require all personnel be U.S. citizens, increasing but not guaranteeing U.S. loyalty. This provision also protects against the mercenary label, as paragraph 2(d) in Table 1 states that mercenaries cannot be nationals of a party to the conflict. Also, contracts can require honorable discharges with minimum thresholds of U.S.

⁶⁹ Paul Bremer's decision to grant contractors certain forms of immunity from Iraqi prosecution under Coalition Provisional Authority Order Number 17 was partly due to the lack of a SOFA agreement with a functioning Iraqi constitutional government.

⁷⁰ Controversy continues over the legality of bringing DOD contractors under the UCMJ. While most PSCs have welcomed this directive, it has not been tested in court. Doubt remains whether the Supreme Court will uphold its legitimacy. The other option is to reform the Military Extraterritorial Jurisdiction Act enforced by the Justice Department, but this discussion is beyond the scope of this paper.

⁷¹ Contracts must include language that ties contract fulfillment to overall mission effectiveness. Contracts cannot focus on performance alone. Contracts are usually written with performance in mind and extremely successful tactical actions can have counter-productive results at the operational and strategic levels. A good example of this is when PSC convoys charged to protect DoS personnel in Iraq throw full water bottles or fire warning shots at approaching vehicles on Iraqi highways as part of their escalatory defensive response. Personnel are protected and contracts fulfilled, but an unintended result may be an increasingly hostile local population.

⁷² Bryan D. Watson, "A Look Down the Slippery Slope: Domestic Operations, Outsourcing, and the Erosion of Military Culture," 98.

military service. Hopefully, Congress can enact these considerations with bipartisan support, thus garnering public support and protecting the U.S. military’s reputation. Well-crafted legislation can also limit Executive Branch power if extensive PSC use becomes necessary. Otherwise, a “contract can become a means to conduct foreign policy without congressional oversight.”⁷³

JUS IN BELLO: COMPLYING WITH INTERNATIONAL HUMANITARIAN LAW

The USG must also consider the status and regulation of PSC contractors under international law. Currently, there is confusion over the legal status of PSC [contractors](#) on the battlefield.⁷⁴ Under Article 4 of the Third Geneva Convention, there are three potential categories for PSC [contractors](#) to receive Prisoner of War (POW) status (see Table 3).⁷⁵

Article 4 – Legitimate Combatants Categories – Entitled to POW Status
1. Spontaneously organized resistance group. 2. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. 3. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions: a) that of being commanded by a person responsible for his subordinates b) that of having a fixed distinctive sign recognizable at a distance c) that of carrying arms openly d) that of conducting their operations in accordance with the laws and customs of war

Table 3

Legal scholars generally agree that PSC [contractors](#) do not fit Category One, and that Category Two does not apply because PSC contractors have not joined the military through traditional conscription or enlistment.⁷⁶ However, considerable disagreement exists with Category Three. [Louise Doswald-Beck, an international law scholar](#), argues, “that the history

⁷³ Sarah Percy, *Regulating the Private Security Industry*, 16.

⁷⁴ Ibid, 45.

⁷⁵ Ibid, 47-48.

⁷⁶ Ibid.

of this article and its predecessors clearly indicates that states wished to grant POW status to fighters who were not formally authorized by their governments.”⁷⁷ Under this reasoning, Article 4 protects PSC [contractors](#) if they follow the four conditions listed under Category Three. These conditions would require PSC [contractors](#) to operate within a clear PSC chain of command.

Beyond internal structure, however, reforms should require U.S. military forces to have C2 over PSCs with whom they operate in the field. Compliance with 3(d) will also require PSC uniforms to have clear markings, perhaps including the U.S. flag. Beyond these provisions, the USG should include legislative language that clearly delineates PSCs as either “other militias” or “members of other volunteer corps.”

These recommendations are concrete steps that go beyond industry self-regulation. While self-regulation with strict codes is adequate for other industries, proper regulation of the U.S. PSC industry will foster uniformity of oversight, discipline, and clear command and control. It will promote unity of effort, help protect against the undermining of national strategic goals, and ensure adherence to international law.

U.S. national goals must guide our military planning and decision-making. It is clear that integrating PSCs will expand the margins of the traditional profession of arms. “It is [therefore] very important that the ‘train of power’ must link authority at the center ‘with public purpose at the margin....”⁷⁸

⁷⁷ Ibid.

⁷⁸ Cullen Murphy, *Are We Rome? The Fall of an Empire and the Fate of America* (Boston, MA: Houghton Mifflin Company, 2007), 119.

POSTSCRIPT

The Department of Defense's Total Force - it's active and reserve military components, its civil servants, and its contractors - constitutes its warfighting capability and capacity.

-Quadrennial Defense Review Report, February 6, 2006⁷⁹

The Total Force has arrived and it includes PSCs. GCCs are facing a complex security environment, but they are supported by a highly mechanistic military machine with limited resources. PSCs have the potential to fill important seams as the global security situation becomes more tenuous. GCCs should therefore advocate for needed reforms and begin including PSCs in operational and theater-strategic planning to protect U.S. interests.

The convergence of a decreasingly secure world, the supply of highly trained personnel released from “transformed” militaries, and entrepreneurial privatization of military capability continues to fuel the rise of PSCs seeking USG contracts. The factors and forces contributing to this situation are strong and global in nature. It is in the United States’ national interest to exploit this situation and thus increase its competitive advantage against the enemy in a dangerous and increasingly unstable world.

⁷⁹ Department of Defense, *Quadrennial Defense Review Report*. Washington, DC: DoD, 6 February 2006, 75.

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