

OPPORTUNITIES AND RISKS FOR THE EMPLOYMENT OF PRIVATE SECURITY COMPANIES IN COMPLEX CONTINGENCIES

BY

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COMPANIES IN COMPLEX CONTINGENCIES**

by

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Topic Approved By
Captain (Retired) David W. Willmann

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This century has seen a shift from conventional forms of war and humanitarian interventions to complex contingencies. Combat, humanitarian assistance, and reconstruction operations often occur in parallel. Protection of non-combatant personnel, supplies, and facilities against terrorists, looting, and other lawlessness grows in importance while the availability of military forces cannot meet the demand for these critical, but non-core functions. To address this shortfall, the United States and other international actors have employed armed contractors, or private security companies (PSC). This has led to charges of mercenarism, loss of government monopoly of force, and undermining of the rule of law. This project uses current principles of Stability, Security, Transition, and Reconstruction and the international treaties making up the body of the Law of War to examine the advantages PSCs offer, the risks they bring, and concepts for maximizing the former while mitigating the latter. The employment of armed contractors within the bounds of the Law of War can enhance our ability to respond to complex contingencies. Exceeding these bounds or the failure to exercise appropriate oversight and accountability of armed contractors can

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OPPORTUNITIES AND RISKS FOR THE EMPLOYMENT OF PRIVATE SECURITY COMPANIES IN COMPLEX CONTINGENCIES

Private Security Companies (PSCs) are a growing and controversial addition to the increasingly complex operational environment of the 21st century. These companies provide services which challenge notions of a government's monopoly on the use of force. Their customers include emerging national governments and first world military establishments, multi-national corporations and Humanitarian Relief Organizations. Their presence is not universally understood, appreciated, or accepted. Nonetheless, PSCs are a logical and perhaps necessary development of the post-cold war world. This paper will examine role of armed contractors in support of U.S. and coalition operations in complex contingencies. Within the context of present United States policy and the international treaties making up the body of the Law of War, there is a valid role for armed contractors. The employment of these armed contractors within the bounds of the Law of War and national policy can support the fundamentals of peace operations and enhance our ability to respond to complex contingencies. Exceeding these bounds or the failure to exercise appropriate oversight and accountability of armed contractors can undermine our policies and mission success at all levels.

Definitions

There are several terms commonly used in regards to PSCs, however, the meanings behind the terms and the terms themselves are sometimes contentious, even among these contractors. This paper uses these terms as described below:

- Mercenary: The most common, and perhaps best known definition is, "a soldier hired into foreign service."¹ More important to understanding PSCs is the term as it is

used in international law. The third protocol to the Geneva Convention (1977), UN General Assembly Resolution 44/34 (1989), and the Convention of the Organization of African States (OAU) for the Elimination of Mercenarism in Africa (1985) all use the same definition: Summarized, a mercenary is a person who fights in a conflict for compensation substantially greater than that made by regular soldiers; is not a national of the state in which the conflict is fought nor a citizen of one of the parties to the conflict; and is not himself a member of the armed forces of a party to the conflict.² As one writer remarked, “Any mercenary who cannot exclude himself from the definition deserves to be shot, and his lawyer with him.”³ Nonetheless, a PSC and its employer must keep these specifications in mind to remain in compliance with international law.

- Private Military Companies (PMC): As used here, a Private Military Company is a corporation specializing in providing military skills to legitimate governments⁴. These skills include tactical combat operations, planning, training, collection and analysis of intelligence, operational support, and technical support.⁵ A company does not have to offer ALL of these services to be a PMC. It is a general category that encompasses firms that offer one or more of these services.
- Private Security Company (PSC): Most of the companies performing armed protective services prefer the term “Private Security Company.” According to the previous definition, PSCs are a subcomponent of PMC. In this paper, the term PSC will be used to refer to companies that limit themselves to protective security, advisory roles, and training⁶. PMC will refer to the broader area of contractors

providing military support functions. The focus of this paper is on Private Security Companies.

- Humanitarian Relief Organization (HRO): A group that provides or supports relief assistance to mortally endangered populations. Humanitarian Relief Organizations includes all organizations usually referred to as Non-Governmental Organizations (NGO), Private Volunteer Organizations (PVO), many International Organizations (IO), and so on.
- Complex Contingency: Large-scale peace operations conducted by a combination of military forces and nonmilitary organizations⁷.
- Fundamentals of Peace Operations. This is a partial list from Joint US Military doctrine⁸. This paper uses these elements to analyze PSC employment.
 - Flexibility and Adaptability: Forces should be able to adapt and move from
 - one activity to another on short notice
 - Restraint and Minimum Force: Apply appropriate military capability prudently, judiciously, and with discipline.
 - Civil-Military Harmonization and Cooperation: Those civil-military operations that promote the coordination, integration, and synchronization of civil and military efforts and actions to build the peace.
 - Objective/End State: Direct every military operation towards a clearly defined, decisive and obtainable objective
 - Unity of Effort: Seek unity of effort in every operation.

- Legitimacy: Sustain the willing acceptance by the people of the right of the government to govern or agency to make and carry out decisions.
- Security: the protection of civilian components of the operation.
- Current and Sufficient Intelligence.: Assessments that help the commanders or civilian decision makers decide which resources to deploy; when, how, and where to deploy them; and how to employ them in a manner that accomplishes the mission.

Current Policies

International Humanitarian Law (IHL) does not take a position on the legality of Private Security Companies, per se.⁹ Instead, it is the activities of PSC employees in international armed conflict, rather than the companies, that are addressed by international law. Most notably, this includes the 3d Geneva Convention, which defines combatants, civilians, and eligibility to for prisoner of war status¹⁰. Although there are circumstances under which PSC employees could be considered legitimate combatants under the Law of War,¹¹ U.S. policy does not promote or accommodate combatant status for PSCs or their employees¹². Instead, PSC personnel under contract to the U.S. government are considered civilians accompanying the force. As such, as long as the actions of these civilians are consistent with IHL, they have privileged status under the Geneva Conventions, which includes being treated, if captured, as Prisoners of War¹³. IHL, however, deals with the actions of states, and present or likely operations are unlikely to involve inter-state warfare. Thus, while the status of PSC personnel under

the Law of War may be important for the legitimacy of US actions and operations, it is of little practical value to PSC employees.

The policy of the United States Department of Defense limits the use of PSCs to contingency areas where the rule of law has been subverted, whether through natural disaster, war, corruption, or government collapse. The proper role of PSCs is to protect people, places, and things from criminal conduct and other unlawful violence not associated with planned combat operations.¹⁴ This activity includes, but is not limited to, protective security details for government employees, site protection of buildings and other facilities, and operational staff-work that directly support reconstruction and relief operations in a complex contingency. Pursuant to this policy, armed contractors are restricted from guarding U.S. or coalition military supply routes, military facilities, military personnel, or military property in association with major combat operations.¹⁵

Present Practice

Today, PMCs perform functions where regular military forces are not available, are not economical, or may not be suitable.¹⁶ In the first category, PMCs may be contracted to perform military services in a nation where there are no functioning regular armed forces. The host country may not have a professional force of its own or the international community may be slow or reluctant to commit its troops. Recent crises in Africa, notably in Rwanda and Sierra Leone are vivid examples. Here, PMCs may perform an operational role. This includes the training and organizational skills needed by that country to stand up its own security capability, and may involve individual PMC employees in combat operations, usually as tactical advisers, sometimes with special commissions or warrants as officers or non-commissioned officers.

The second category, where regular forces are not economical, is where we see the greatest use of PMCs today. Modern, information age, regular armed forces are so expensive to raise, equip, transport, and maintain that there are few resources left for critical, yet secondary tasks. Such tasks include logistic support, administrative duties, security, and even training the armed forces of the sending states. In these cases it may be more economical, at least in a long-term analysis, to contract out many of these functions.

Finally, regular military forces may not be suitable for a specific mission or contingency. In many disaster relief operations, in many parts of the world, the presence of uniformed military may be counterproductive to mission success. Foreign military forces may be seen as a threat to the sovereignty of the affected nation. In other cases, military protection could present the relief activity as a valid or high-payoff target for insurgents or terrorists.

Opportunities to Support Complex Contingencies

PSCs as an Economy of Force. Moving from the broader category of PMCs to that of PSCs, the effective use of these contractors enable regular armed forces to focus on combat and critical combat support functions. The most visible tasks in this economy of force role include security for civilian reconstruction efforts. This includes relief supplies or activities, development projects, and the personnel and facilities associated with them. Specific tasks include convoy escort, protective security details for key personnel, and security escort. None of these roles are traditional military missions. Instead, they are analogous to private security guards anywhere in the world, such as Brinks or

Pinkerton's in the United States. These are civilian firms providing protection for civilian efforts. What differs is the strength and likelihood of the threat to that civilian effort.

Support for Humanitarian Assistance. In peace operations, military and political success will depend on the success of HROs.¹⁷ Although HROs traditionally rely on their neutrality for their protection in hostile areas,¹⁸ some HROs recognize that they can no longer assume the goodwill of all those they seek to help. However, protection from host nation security forces or foreign armed forces, including UN peacekeeping forces, may not be available or even be desirable. In addition to making an HRO's political neutrality ambiguous, the nearby presence of regular troops can make the HRO activity into a legitimate military target. This leaves HRO managers and directors with the choice of abandoning the field or finding some other method to provide security for their workers and volunteers. As a result, an increasing number of these organizations find themselves contracting with a PSC.

Civil-Military Harmonization and Cooperation. An emerging role for PSCs is to augment civil affairs operations. There are not enough qualified civil affairs specialists available to the regular military forces. Civil Affairs is a technical skill, requiring a specific mind set, specialized training, and – in many cases – background experience that is not generally available among career soldiers. Civil-Military-Operations is not just one more tool in the infantryman's toolkit. Many Private Military Companies have demonstrated an ability to recruit former officers and non-commissioned officers from the special operations forces of NATO and other western armed forces. These personnel are trained in cultural awareness and the importance of developing personal contacts within the community. One such company conducts a very aggressive

program, focused on winning the support of the local population for reconstruction efforts in Iraq and Afghanistan. The program is entirely funded by private donors and has included providing books and school supplies, a vaccination program and other public health projects, food distribution, and coordination with humanitarian relief organizations.¹⁹

PSC liaison teams may also be useful in enabling contacts with civic leaders who not want to be associated with the military. The non-military nature of a PSC also enables HROs to effect coordination and exchange information with coalition forces through their security contractors. This avoids appearance of direct partnership with the military forces of either the host nation or intervening forces, while maintaining the advantages of cooperation. This technique has been used with success in Iraq and Afghanistan.

Flexibility and Adaptability. Perhaps the most important capability PSCs bring to the table is adaptability. Most PSCs are able to tailor themselves for the specific mission requirements, and do this rapidly, with little overhead or massive support structures. Instead of having a large staff and huge payroll, many PSCs operate as virtual companies, using a database of people with a wide variety of skills and who might be available on an “on call” basis. The same is true for equipment. These companies do not maintain a large inventory of military supplies – which may be legally restrictive in their home countries and difficult to deploy. Instead, they know where they can quickly (and legally) obtain necessary equipment, and have it delivered, usually by commercial means, shortly after their advance party arrives in country. At the end of the contract

they transfer the property to their employers or otherwise dispose of it according to the terms of their contract.

Current and Sufficient Intelligence. Direct protection, such as guards and protective security details, is the most visible, but certainly not the only function a PSC can offer to peace operations. One area that is not so visible, yet critical to the success of an HRO and the survival of their personnel is intelligence. The intelligence produced by military forces is generally not available to HROs. Even if it were, the information military intelligence produces is focused on specific military requirements and rarely meets the particular needs of the HRO. Several PSCs, however, have excellent intelligence production capabilities. Relevant intelligence could include disaster assessments, road and bridge conditions, activities of hostile faction that could affect relief efforts, weather and environmental impacts, movements and encampments of dislocated persons, profiles of key local leaders, and so on. In the end, the capabilities provided are only limited by HRO information requirements. This intelligence capability offers the potential to have a synergistic effect on HRO responsiveness and effectiveness.

Limitations

Despite their capabilities, PSCs have significant limitations when compared to regular military forces. To state the obvious, PSCs are not regular military forces. US policy prohibits PSCs from participating in direct combat operations. This would include integrating them with military forces as part of a perimeter defense. They are limited to providing personal protection to individuals under their charge and to protect specific facilities. Even within this legal restriction, PSCs are limited in the type of threat they can defend against. Generally, PSCs are limited to providing protection against what NATO

doctrine describes as a Level 1 Threat -- individual terrorists or a light infantry of less than platoon size: roughly 30 hostiles. This is consistent with the notion of PSCs providing protection against criminal and other unlawful violence. In Iraq, however, attacks against logistics convoys – most of which are criminal in nature – can exceed that size. The PSCs protecting these convoys prevail only with the timely arrival of military quick reaction forces. There have been companies in the past which were able to mount and sustain major combat operations at battle group strength, such as Executive Outcomes, a South African company that engaged in contracted combat operations on behalf of legitimate governments in Sub-Saharan Africa. However, Executive Outcomes and other such companies have since gone out of business and similar capabilities are not consistent with US policy.

Risks of employing PSCs

However useful their capabilities, PSCs also present real risk. Without understanding, and mitigating these risks, the use of PSCs can quickly move from being an enabler of relief and reconstruction to becoming a source of mission failure. Three of these risks have a direct impact on the Principles of Peace Operations described earlier.

Legitimacy. In the popular mind, PSCs are mercenaries. Recent activities of some PSCs have included scandal and sociopathic events. In Bosnia, one PSC, a division of a large US corporation, was charged with running a prostitution ring. Later, in Kosovo, the same company was charged with white slavery, to include selling pre-adolescent girls.²⁰

Less blatant violations of the laws of the host nation or the regulations of the coalition governing force may not directly harm individuals, but promote the perception of recklessness and disregard for legitimate authority. One example is the use of equipment or weapons prohibited to PSCs by the governing authority. Generally, this refers to crew served weapons such as heavy machine guns, gun trucks, or area-effect weapons such as fragmentation hand grenades, and anti-tank rockets (RPGs).²¹ PSCs in Iraq have been admonished for violations of traffic laws – and basic common sense in driving. Although speed is a Protective Security Detail's best defense, blatant disregard for other traffic and asserting right of way by pointing automatic weapons at the civilian population is not the way to promote the cause of legitimacy for the coalition and the new national government.

Past scandal aside, the very presence of PSCs can undermine the legitimacy of a nascent or struggling government. PSCs are often used as a bridge between main combat forces and the future capability of a local government to provide security, law, and order. As a result every time a PSC element is seen by the public can be a reminder of the impotence of their own government, of the inability of that government to provide basic needs. Countering this perception is critical to promoting the legitimacy of the host government.

Security. PSCs, improperly managed, present a security risk. Most PSCs hire local nationals. This offers opportunities to acquire intimate knowledge of the area and to make direct and personal contact with the local population. It is also substantially cheaper than hiring experienced personnel from Western countries. It also offers the opportunity for the enemy to plant active operatives or persons sympathetic to the

enemy cause in our security structure. In many countries, it may not be possible to conduct an effective background check of prospective employees. There may be no records from the previous (or current) government and what records exist may be suspect. A clean records check, therefore, is no guarantee of a crime-free past. Even the most thoroughly screened employees may have outside pressure put on them to provide aid and assistance to the enemy. In Iraq, five local national guards employed by the Project and Contracting Office were kidnapped and murdered. The kidnapping of the first two involved the compromise of information, and led directly to the kidnapping of at least one of the others.²²

Unity of Effort. The conditions under which PSCs are employed do not often lend themselves to unity of effort. In Iraq, each contractor under a Coalition reconstruction contract must provide for its own security.²³ In coalition operations, the various sending states may each contract with their own PSCs using different legal restrictions or mission sets. The host nation may hire PSCs for its own purposes, with different objectives and rules of engagement than those contracted by the sending states. As described above, governments are not the only employers of PSCs, adding further complexity.²⁴ PSC command, control, communications, and computers may not be compatible with military systems – nor may military commanders wish PSCs to have complete interconnectivity with military C⁴. PSCs are also commercial concerns, inherently in competition with one another. This makes them disinclined to share information that they can sell, or that could help a business competitor.

Beyond issues that directly tie to Peace Operations fundamentals, there are other risks and limitations associated PSCs. These include accountability, service and support (logistics), training and standardization, legal issues, and commercial factors.

Accountability. There is a common theme in the press and popular literature that Private Security Companies operate with immunity, unaccountable within national or international law. Even U.S. General Officers have gone on record complaining of the lack of accountability.²⁵ Many international law experts and organizations, to include the International Committee of the Red Cross disagree,²⁶ as does the U.S. Government. Department of Defense Policy maintains that all contractors accompanying the Armed Forces are subject to the Law of War and may be prosecuted under the criminal jurisdiction of the United States.²⁷ The "Military Extraterritorial Jurisdiction Act of 2000," (MEJA) empowers the U.S. government to try civilian accompanying the armed forces for acts which would be a felony if committed within the United States.²⁸ However, the perception of impunity remains, reinforced by the failure of the Department of Justice to bring any PSC employee to trial for any felony associated with a contingency operation.²⁹

Logistics. PSCs will not have the logistical support typical of Western military forces. The lean nature of PSCs, which makes them flexible and deployable, also makes them dependent on their employer for most classes of supply, including food, fuel, vehicle maintenance, casualty evacuation and major medical support. A contract can require the PSC to provide for itself in these areas, but at significant cost. Weapons and ammunition also fall under this logistical support. If a contractor will use government owned weapons the contracting officer must consider how the government will maintain

accountability for such weapons, from purchase through disposal at the end of the contract.³⁰ If the contractor will provide its own weaponry planners and contracting officers must consider how these weapons will get into and out of the country without violating national law or international treaty. The Defense Trade Controls office of the US State Department provides oversight of the process for contractors acquiring weapons, ammunition, and other combat related materiel from US sources. Some contracts allow the procurement of weapons and equipment from other countries. These other countries – to include transit states – are unlikely to have the mature processes of the US government. Corruption, politics, and policy may further interfere with delivery. A failure in logistics on the part of the PSC could lead to mission failure for the contracting organization.

Training and Standardization. PSC tactics, techniques, and procedures may not be compatible with U.S., NATO, or coalition procedures, and it is unlikely that their procedures are compatible with those of other PSCs operating in the same area. Company procedures may be, and probably will be considered proprietary information. As such, PSCs may be unwilling to share this information with other PSCs who, after all, are their commercial competitors. Industry organizations, such as the International Peace Operations Association have developed draft training standards, but these fall short of the tactics techniques and procedures that provide standardization in regular military establishments³¹. They are also voluntary, even among the member companies of the IPOA.

Commercial and Legal Considerations. PSCs are commercial entities. In, what is perhaps the most important distinction between PSCs and military organizations, they

are subject to commercial, rather than military law.³² Termination fees and loss of future contracts may be preferable to accepting continued risk in support of the present contract. Another problem may be a scrupulous insistence on the specific terms of their contract, rather than exercising the flexibility and initiative required in a combat zone. As stated above, legitimacy requires the PSC to operate in support of host nation laws. These laws could restrict or prohibit the operations you would like a PSC to perform.

Despite the earlier quote about mercenaries and their lawyers, planners should be very careful to plan for employing PSCs in ways that do not violate international law. An action that crosses that line could negate any other law or agreement enabling the operations of legitimate PSCs and lead to arrest, expulsion, or imprisonment of PSC employees. Beyond host nation and international law, there are other national laws that affect the use of PSCs. Some countries, notably South Africa, have anti-mercenary laws that include prohibitions against providing security for participants in hostilities.³³ This adds a layer of complexity to the issue. As an example, we might use a PSC to provide a protective security detail for Department of Defense officials during contingency operations. If that PSC hires a citizen of South Africa as a member of that PSD, we may be indirectly aiding in the commission of a criminal act under the laws of a recognized and sovereign State.

Risk Mitigation

Objective. In assessing the security situation that might lead to the employment of PSC or other security elements, it is essential to clearly define what success is. What is the end state? How can it be measured? What indicates that the goal has been achieved? What are the obstacles to success and what tools are available to overcome

those obstacles? Use of a PSC is only one of many possible tools. If, after considering the potential and risks, it is decided to use a PSC, define what, specifically, the PSC is to do, and to what standard. The use of PSCs, like the use of the regular military forces, must not be open ended. Very early in the planning process, planners should specifically identify when the need for PSCs will end, and then work to achieve that end.

Legitimacy. Although PSCs present a risk to legitimacy, they can also enhance legitimacy. PSCs must operate within an established and recognized rule-of-law framework. If such a framework does not already exist, the legitimate government should be encouraged and assisted in the development of laws and administrative policies covering PSCs. The strategic communications plan should work with the local government's public information system to stress that PSCs adhere to the laws of the host nation. PSCs themselves should overtly operate in accordance with those laws and agreements. Where there is a legitimate government in power, Legitimacy should include registration programs and the authority of the government to deny or revoke the operating privileges of any PSC.³⁴ When exercised, that action itself should be promoted as an act of due process, respecting the rights of corporate entities and the interests of the people of the country. The PSC Civil Affairs program described earlier is another very effective tool to lend legitimacy to PSC operations as well as the host nation government. Properly executed, these are true "hearts and minds" operations that help to local populace while helping the image of the PSC and the overall relief effort.

Security. Proper screening of PSC employees is critical for all employees, but adequate screening – or vetting – of local hires may be particularly problematic. Careful,

thorough, and professional interview techniques must supplement normal background checks. Still, even the most effective screening process is inadequate if it is not repeated at specific time throughout the term of employment. This is important to identify employees who may be subject to pressures from hostile parties.

Unity of Effort. To achieve unity of effort, mechanisms are necessary to promote cooperation and coordination among PSCs and with the military forces. These mechanisms can be built into the contracts. Contractual unity of effort provisions may include:

- Required cooperation with other PSCs, exchange of information, and the requirement to comply with the directives of the competent authorities – for example, the military command structure in a complex contingency.
- The requirement for open architecture communications and information systems, compatible with one another or that can feed information to – and receive information from – a common source. The Joint Deployment Logistics Model (JDLM) is presently employed for that purpose in Iraq.
- Standardization in tactics, techniques, and procedures.

In Iraq, the Reconstruction Operations Center and a network of contractor run regional centers enable situational awareness between PSCs and military forces and a common relevant operating picture among the various contractors. This C² network is closely integrated with military operations centers -- sometimes co-located with them. Outside of Iraq, Rear Area Combat Centers (RAOC) and Civil Military Operations Centers (CMOC) may provide this linkage and oversight.

Accountability. In a democracy, the fundamental difference between government and contractor support of any kind is the issue of accountability. The military is accountable under its own disciplinary code and to its government and people. Even regarding the military, as Stephen Ambrose wrote, “the Army couldn’t actually make you do anything – but it could make you wish you had.”³⁵ This is also true for contractors. As described earlier, there is a body of international and national law that holds individual security contractors accountable. For a commercial enterprise, the law of the market provides its own measure of accountability. However, these market forces are often not enough to hold other private sector firms accountable to their customers, and PSCs may be no better. Commercial and criminal law must be pursued to ensure the accountability and conduct of PSCs and their corporate officers – much as military law ensures the good order and discipline of a nation’s soldiery.³⁶

Industry Standards. The PSC industry is moving in the direction of self-regulation. The International Peace Operations Association (IPOA) and the British Association of Private Security Companies (BAPSC) work internationally to develop an exchange of ideas and promote common tactics, techniques and procedures for security operations. More recently, there has been a new initiative started within the PSC community to work towards Industrial Standards Organization (ISO) certification for PSCs.³⁷ The Swiss Government, in partnership with the Red Cross, is sponsoring an initiative to capture and promote “best practices” in contracting with PSCs.³⁸ In the near term, standards must be built into the contracting process. In addition to the elements listed above, such standards may include:³⁹

- A statement of contractor work history; making it clear that only companies who have only worked for legitimate governments HROs, or corporations will be considered
- Exclusion of any company that was involved in activity against a legitimate government
- An absence of criminal history for the corporation, its employees, and its sub-contractors.
- Clear statements about employee screening
- Minimum training requirements
- Training and adherence to national and international law covering the Law of War.

Program Management. Implementing and monitoring these risk controls requires effective program management. This has not always been the case.⁴⁰ The consequences of failure are not the same as for material purchases or small projects, and should be treated accordingly. The same program manager should be retained for the entire lifespan of the program, as is the standard for other significant defense programs. This Program Manager must have expertise both in program management and security operations. This continuity may not be possible in all cases, but any break in continuity interjects risks to the program.

Recommendations for future policy

The Department of Defense should continue to work for unity of effort and a common vision for the roles, capabilities, and limitations of PSCs. This includes continued support for international efforts such as the Swiss Initiative. It is even more important to work for this unity of effort in our own government. Although legal

mechanisms exist for accountability – and the legitimacy cannot exist without accountability – the Department of Justice has not brought any PSC employee to trial for crimes committed under MEJA or other applicable law. Disunity of effort between the State Department and the Defense Department extends to the operational level, but this is changing. On January 30th, 2008, a joint policy statement issued by the U.S. Department of State and the Department of Defense described how Defense and State intended to fully coordinate PSC operations in Iraq.⁴¹ In March, the first PSC employee was charged under the Uniform Code of Military Justice. These are important first steps towards mitigating the risk associated with PSCs and making effective use of the opportunities they present.

Conclusion

Private Security Companies are a logical development in the concept of “contractors on the battlefield.” They provide an economy of force to regular armed forces accomplishing security and training functions. Properly used, they are a bridge between security operations inherent to the decisive combat phase of a complex contingency and the time when the civilian government is able to resume effective domestic security operations. However, the potential of PSCs to make a positive contribution in complex contingencies depends on careful planning and effective risk management, and common understanding of PSC capabilities and limitations by military planners, Humanitarian Relief Organizations and the PSC industry.

Endnotes

¹ Merriam Webster's Collegiate College Dictionary, 10th Edition (Merriam Webster, Inc. 1997)

² Convention of the OAU for the Elimination of Mercenarism in Africa, O.A.U. Doc. CM/433/Rev. L. Annex 1 (1972), entered into force April 22, 1985. The United States is not a signatory of this or either of the other documents cited.

³ Geoffrey Best, Humanity in Warfare: The Modern History of the International Law of Armed Conflict (London: Weidenfeld and Nicholson, 1980), 328. Cited in Joanna Spear, Market Forces: The Political Economy of Private Military Companies (Oslo, Norway, Fafo 2006) 48

⁴ Lt Col Tim Spicer OBE, An Unorthodox Soldier, (Edinburgh, U.K., Mainstream Publishing Company (Edinburgh) Ltd. 1999) , p.15

⁵ Peter W. Singer, Corporate Warriors: The Rise and Ramifications of the Privatized Military Industry (International Security, Vol. 26, No. 3, Winter 2001/2002.) Mr. Singer prefers the term "Privatized Military Firm" in lieu of "Private Military Company." P.1. This definition is not universally accepted, even within the industry itself. Some writers insist that the only true PMCs are those that offer direct combat. Some other industry representatives insist that the category of PMC excludes those companies offering armed personnel or support. Few companies identify themselves as Private Military Companies, preferring names such as Military Service Providers, Security Consulting Company, Security Risk Management Company, Professional Services Company and so on. Whatever they call themselves, they still fit under the umbrella definition of Private Military Company used here.

⁶ Human Rights First, Private Security Contractors at War: Ending the Culture of Impunity, (New York, Human Rights First, 2008), 1

⁷ U.S. Defense Department, Department of Defense Dictionary of Military and Associated Terms, JP 1-02 (Washington, DC: Joint Staff, 12 April 2001, Amended 4 March 2008) 110

⁸ U.S. Defense Department, Peace Operations, JP 3-07.3 (Washington, DC: Joint Staff, 17 October 2007) I-2 – I-7

⁹ The term "International Humanitarian law" is not officially recognized by the United States as that term includes treaties and protocols to which the United States is not a party. The IHL concepts described in this paper are, however, also consistent with the corpus of the Law of War and other treaties to which the United States is a party. See, International Committee of the Red Cross, International Humanitarian Law: Answers to Your Questions, (Geneva, Switzerland, October 2002, ICRC), 4-5

¹⁰ Emanuela Girard, "The Position Under International Humanitarian Law," Collegium 36, (Autumn 2007): 29

¹¹ Emanuela-Chiara Gillard, "Business Goes to War: private/military security companies and international humanitarian law," International Review of the Red Cross 88, no. 863 (September 2008) 535

¹² U.S. Department of Defense, Guidance for Determining Workforce Mix, Department of Defense Instruction 1100.22 (Washington, DC, 7 September 2006), 14-20

¹³ Gillard, 538

¹⁴ Christopher Mayer, "United States Department of Defense Directives on the Use of PMC/PSC in Complex Contingencies," Collegium, 36 (Autumn 2007), 52

¹⁵ U.S. Department of Defense, Contractors Accompanying the Force, Department of Defense Instruction 3020.41 (Washington, DC, Department of Defense, 3 October 2005) 17. Note the restriction on "major combat operations." The current conditions in Iraq and Afghanistan are not considered by the executive branch to constitute major combat operations.

¹⁶ Mayer, 51

¹⁷ U.S. Department of Defense, Interagency, Intergovernmental Organization, and Nongovernmental Organization Coordination During Joint Operations Vol I, JP 3-08 (Washington, DC: Joint Staff, 17 March 2006), II-26

¹⁸ For background on common principles among international NGOs see, International Federation of Red Cross and Red Crescent Societies and the ICRC, "Annex VI : The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief" International Review of the Red Cross no. 310, (29 February, 1996) 55-130

¹⁹ Aegis foundation; <http://www.aegis-foundation.org/>; accessed 1 May 2008

²⁰ Peter W. Singer, Corporate Warriors: The Rise of the Privatized Military Industry (New York: Cornell University, 2003), 222, 236

²¹ Weapons Control, Coalition Provisional Authority Order Number 3 (Revised) (Amended) 31 December 2003; available from <http://www.cpa-iraq.org/regulations/20031231_CPAORD3_REV_AMD_.pdf>; internet; accessed 8 May 2008

²² Personal recollection. The author was the Chief of Staff of the Project and Contracting Office from April 2004 through January 2005. The event occurred during this time.

²³ Deborah Avant, The Market for Force: The Consequences of Privatizing Security, (Cambridge, United Kingdom: Cambridge University, 2005), 57

²⁴ Gillard, "The Position Under International Humanitarian Law," 32. Emanuela Gillard cites that 80% of all PSC contracts are with non-governmental agencies, including HROs.

²⁵ Human Rights First, 1

²⁶ Paul Seger, "Chair's Summary, Third Meeting of Governmental and Other Experts on Private Military and Security Companies, 14-16 April 2008, Montreux, Switzerland," 9 May 2008; available from <<http://www.eda.admin.ch/psc>>; Internet; accessed 9 May 2008

²⁷ U.S. Department of Defense, Department of Defense Law of War Program, Department of Defense Directive 2311.01 (Washington, DC, 9 May 2006), 5

²⁸ Military Extraterritorial Jurisdiction Act Of 2000, U.S. Code, vol. 18 secs. 3261-7 (2000)

²⁹ Human Rights First, 24

³⁰ Theoretically, such weapons could be transferred from the US Government to the host country's armed forces – or that of another friendly nation, under a security assistance program. Mr. Michael Dixon, Directing Manager, Defense Trade Controls, US State Department, interview by author, 25 July 2005, Washington, DC

³¹ <http://ipoaonline-iraq.org/archives/IPOA%20file.pdf> (current as of 25 July 2005)

³² Andrew Bearpark, "Self Regulation by the Industry," Collegium 36, (Autumn 2007): 70

³³ The Constitution of the Republic of South Africa, art. 198(b). Regulation of the Foreign Military Assistance Act, Act. no.15, 1998, Government Gazette, no.18912, (May 20, 1998)

³⁴ In Iraq, these provisions are included in CPA Memorandum 17 and CPA Order 17, published with the effect of law under the Iraqi Transitional Administrative Law (TAL).

³⁵ Steven Ambrose, *Band of Brothers: E Company, 506th Regiment, 101st Airborne from Normandy to Hitler's Eagle's Nest* (New York, Touchstone, 1999)

³⁶ Michael Cottier, "Elements for Contracting and Regulating Private Security and Military Companies," International Review of the Red Cross, 88, no. 863 (September 2006), 645

³⁷ Lt Col Tim Spicer, OBE, interview by author, 1 May 2008, Washington, DC

³⁸ Swiss Confederation, Federal Department of Foreign Affairs, "Swiss initiative on Private Military and Security Companies," 9 May 2008; available from <http://www.eda.admin.ch/psc>; Internet; accessed 9 May 2008

³⁹ DODI 3020.41 provides guidance on the essential elements of these contracts, and many of the elements cited above are included in that instruction. Cottier, "Elements for Contracting and Regulating Private Security and Military Companies," and the Swiss Initiative (*ibid*) provide further background for essential elements of sound contracting practices. DODI 3020.41, however, is currently applicable only to Department of Defense contracts. Some very high profile contracts, such as with Blackwater, are not Defense contracts but fall under the State Department.

⁴⁰ Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror*, (New York: Crown, 2006), 280

⁴¹ Gordon England and John Negroponte, "PSC Executive Meeting," briefing slides, Pentagon, Washington, DC, 30 January 2008

