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Civilian Combatants, Military Professionals? American Officer Judgments

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Civilian Combatants, Military Professionals? American Officer Judgments

GARY SCHAUB, JR

There is an undeniable trend toward the increased use of civilian contractors in conjunction with military personnel in peacetime and in war. Civilian employees of defense contractors and private military companies have become more numerous, organized, and insinuated in the American military. Should they be regarded as military professionals? To address this question, we first discuss the nature of the military profession. We then discuss the degree to which civilian contractors engaged in functions performed by the military possess the characteristics of military professionals. Finally, we discuss the results of a survey of elite field-grade officers and the ways and degrees to which they accord civilian contractors professional status.

Traditionally, membership in the military profession has been considered to be limited to the uniformed personnel employed by the state who use organized violence in order to achieve state ends. Although there is limited debate with regard to whether all military personnel are military professionals – be they officers, noncommissioned officers, career enlisted, conscripts, reservists of any rank, or national guardsmen¹ – there has been a consensus that others who utilize or manage violence in the employ of private entities are not members of the military profession. Huntington argued that ‘the officer is not a mercenary who transfers his services wherever they are best rewarded’.² ‘Clearly he does not act primarily from economic incentives. In western society the vocation of officership is not well rewarded monetarily. Nor is his behavior within his profession governed by economic rewards and punishments ... The motivations of the

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officer are a technical love for his craft and the sense of social obligation to utilize this craft for the benefit of society.³ Mercenaries 'who fight for employers other than their home state's government [and whose] motivation for fighting is economic gain' fall outside of the military profession.⁴

But what of highly trained and educated civilian employees of firms that engage in military activities on behalf of states? Is this link to the state enough to gain them entry into the military profession? Can they be excluded solely on presumptions of their lack of altruistic motivation? After all, many may still have altruistic motives for undertaking such employment in the private sector – a way to 'make a difference'.⁵ And the firms themselves may be profitable but also claim to pursue the greater good. The International Peace Operations Association, an industry group, claims that one of its primary purposes is to 'to engage in a constructive dialogue and advocacy with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development and human security'.⁶ A lack of altruistic motives seems a weak reed upon which to exclude civilian contractors from the profession of arms.

A more thorough evaluation of their professional status would examine the many facets of the military profession and assess how well the members of the private military companies meet them. Given that professions can be defined in terms of the areas of their expertise, their jurisdiction, the sources of their legitimacy, and their sense of corporateness, the following sections will examine the military profession and its relative along these criteria.

The Military Profession

Harold Lasswell, Samuel Huntington, and Morris Janowitz argued that military officers are professionals in the art of war and the management of violence.⁷ Their area of expertise is in the planning, organizing, and employment of military force. Huntington divided these into two subfields: combat and command on the one hand and 'technical support (administration, comptroller, supply) and professional support (legal, religious, medical)' on the other.⁸ Combat and command included mastery of 'an elongated spectrum of violence from subversion and guerrilla warfare at one end to strategic nuclear warfare at the other', with the traditional uses of infantry, cavalry, artillery, and surface ships in the middle.⁹ Huntington argued that officers who mastered the technical or professional support areas of military activity were members of the military but not the profession since their expertise was split between the management of violence and technical or other professional knowledge which was not unique to the military.¹⁰

This broad array of expert knowledge is organized to facilitate its practical application to problems within its jurisdiction, which generally relates to the threat and use of organized, state-sanctioned violence at the tactical, operational, and strategic level to resolve political differences. This jurisdiction of expertise is in flux at the margins as the profession expands its ambit and fends off or cedes areas to other occupations.¹¹ For instance, providing security within a society generally has been ceded to paramilitary law enforcement groups as polities mature and stabilize, but the military may be called upon to perform such tasks in the form of occupation, stability, peacekeeping, counter-terror, and counterinsurgency operations.¹²

The military profession's legitimacy is derived from three sources: the state, service to the polity, and the efficacy of its solutions to political problems. To begin, the legitimacy of the military is licensed from the civil authorities of the state. The state possesses a monopoly over the legitimate use of force and the military is the primary institution through which this monopoly is exercised externally (if not necessarily internally). For Huntington, subordination of the military to civil authority is the *sine qua non* of military professionalism. 'Society insists that the management of violence be utilized only for socially approved purposes', wrote Huntington, and the approval comes from the civil authorities of the state.¹³ In this manner, the military is only as legitimate as the state itself.

Second, the military derives legitimacy directly from its service to society. It provides security, employment, training, and indoctrination to the citizens of the state.¹⁴

Finally, legitimacy derives from the utilitarian calculus of providing solutions to problems more efficiently and effectively than others. This has been, perhaps, the primary driver of acceptance of militaries throughout history, accounting (in the American case) for the high esteem in which military men – heroes – were held after World War II and Operation 'Desert Storm' and the low esteem in which they were held during and after the Vietnam War.¹⁵ Performing its primary mission effectively constitutes the 'special social responsibility' from which the military profession derives its legitimacy.

The members of the military profession share a corporate identity defined by their shared experiences in training, education, and practice, as well as an institutional structure that controls entry, establishes and polices standards of competence, and proscribes members of the profession from practicing outside of its ambit. The structure of the military is perhaps the most important in establishing the profession's corporate identity.¹⁶ The state monopolizes the profession and controls almost all of its aspects. This includes indoctrinating members to be willing to kill or die in the

service of the state. As British General Sir John Hackett put it, 'The essential basis of the military life is the ordered application of force under unlimited liability. It is the unlimited liability which sets the man who embraces this life somewhat apart. He will be (or should be) always a citizen. So long as he serves he will never be a civilian.'¹⁷ As this implies, military professionals are on duty continuously as their behavior falls under the Uniform Code of Military Justice (UCMJ) – even after they retire from active duty (so long as they do not resign their commission and receive retirement pay). Thus the forces of the profession continue to shape their attitudes and conduct throughout their lifetime and thereby reinforce their corporate identity.

Perhaps a key test for the corporate identity of the profession is its recognition as such by its members, the public, and scholars. It is difficult to find members of the officer corps who do not consider themselves to be professionals. Indeed, the term is used to preface much that officers do, from 'professional military education' to 'professional military advice'. The public likewise considers career military personnel to be professionals.¹⁸ Turning to scholars who study the military, the premise that the officer corps (at a minimum) is a profession underlies most of the work on civil-military relations, including the research of those who argue that it is transforming into an occupation.¹⁹

One group of scholars that has not seen the military as a self-evident profession is sociologists concerned with the professions generally rather than with the military per se. As Burk argues, '[s]cholars studying the professions in the first half of the 20th century did not usually include military service in their field of inquiry', for a variety of reasons, including the belief that that the military's craft was not beneficial to society and that 'military officers lacked professional autonomy' as they were 'controlled by the state'.²⁰ This trend has continued, with the military absent from influential modern works on the professions, such as Andrew Abbott's *The System of Professions* and Eliot Friedson's *Professionalism*.²¹ Thus it can be argued that the profession of arms' status as a profession is solid – but perhaps not entirely so.

The Private Military/Security Industry/Profession

If that is the case, what of the civilian contractors who work for firms that provide a range of services to militaries, governments, and private clients that are related to the organized use of violence to resolve social or political conflicts? How does it measure up in terms of the areas of expertise, jurisdiction, sources of legitimacy, and sense of corporateness?

First consider the areas of expert knowledge that can be applied by the employees of these firms. They employ many retired military officers who retain their expert knowledge after they leave the military. Indeed, Erik Prince, the founder and sole proprietor of the company formerly known as Blackwater, suggested that the public 'think of our staff as soldiers who re-enlist'.²² He claimed that 'Every individual who has worked for Blackwater in Iraq has previously served in the US military or as a police officer. Many were highly decorated.'²³ Their access to former colleagues and employment in firms that conduct contract work for the Department of Defense allows them to remain current in their knowledge.²⁴ These firms offer a range of services that offer many of the same solutions to political problems as the military: support for those who use coercion or brute force to resolve political problems, or the application of coercion and brute force directly, at the tactical, operational, and strategic levels.

Singer provides a three-category typology of military provider firms, military consultant firms, and military support firms that provide combat, training and advising, and technical support respectively.²⁵ Volker Franke and Marc von Boemcken offer a five-category typology of armed operational combat support, armed security services, unarmed operational combat support, military- and/or security-related advice and training, and military support services.²⁶ The key point here is that by adopting a corporate structure these firms have been able to effectively recruit and retain quality personnel, have a set organizational framework within which procedures, doctrine, and innovation can be produced, and unlike individual mercenaries they can offer an array of capabilities that cover the gamut of military services beyond mere tactical support.²⁷

In terms of jurisdiction, these firms have been entrepreneurial. The entire industry arose out of conditions that permitted it to begin and thrive: the end of the Cold War and the demobilization of large numbers of persons with military skills that provided a ready labor pool, the spread of instability and poorly governed spaces provided demand for security, and a reluctance on the part of great powers and their allies to risk their own uniformed military personnel to establish stability and effective governance in these areas provided an opportunity to supply it.²⁸ These firms have proliferated and differentiated to provide the services indicated above. They have also been agile to adapt to opportunities as they arose: DynCorp took over providing personal security to Afghan President Hamid Karzai in November 2002 as American special forces turned their attention toward Iraq.²⁹ In March 2006, as US troops were bogged down in Iraq and talk of the Army 'breaking' was common, Blackwater vice chairman Cofer Black offered a brigade-sized force to intervene in trouble spots on the US

government's behalf.³⁰ In 2007, as the US Air Force and the US Army wrangled over acquisition of an intra-theater cargo plane,³¹ Blackwater subsidiary Presidential Airways flew 11,000 air missions in Afghanistan, transporting 43,000 passengers and delivering 9.5 million pounds of cargo.³² And as pirates off of the Somali coast increased their attacks on shipping in autumn 2008, Blackwater refurbished a 830-ton, 183-foot ship to provide escort services.³³ Thus these firms have applied their craft in jurisdictions where state militaries have been reluctant to engage, be it on land, sea, or in the air.

Consider the sources of legitimacy for civilian contractors working for PMFs. PMFs incorporated and/or located in Western countries, such as the United States or United Kingdom, are licensed by the state to provide their services, and are regulated (more or less) by the laws of these states.³⁴ When contracted to work for government agencies, these employees have a claim to be agents of the state, albeit an indirect one. According to a recent report by the Congressional Research Service, 'conduct that violates international obligations is attributable to a State if it is committed by the government of the State or any of its political subdivisions, or by any official, employee, or agent operating within the scope of authority of any of these governments, or under color of such authority.'³⁵ Blackwater's Prince suggests such color exists for his firm at least: 'from the beginning, [Blackwater employees] have been bound by detailed contracts that ensure intensive government direction and control. The US government sets comprehensive standards for the selection and training of security guards. Blackwater's competitively awarded contract contains dozens of pages detailing requirements for each position and specifying hour-by-hour training for each individual.'³⁶ Some private military firms do not rely entirely upon government licensing to establish their legitimacy. Many belong to industry associations such as the International Peace Operations Association that require members to agree to a code of ethics.³⁷

Finally, PMFs can claim that they offer effective solutions to problems within their jurisdiction. 'We're low-cost and fast', claimed Blackwater's Cofer Black. And they continue to win billions of dollars in US government contracts: \$85 billion for work in Iraq from 2003–2007.³⁸ Success in the marketplace implies effective solutions to problems and satisfied clients.

Finally, consider the dimension of corporateness. On the one hand, many of these employees are former members of the military and many of these are retired officers who retain their commission and theoretically could be recalled to active duty. They may belong to the service associations of their former service and feel a kinship to their active duty colleagues. Some firms quite carefully recruit, train, and even indoctrinate their

employees.³⁹ There is thus a basis to claim a corporate identity for these employees of PMFs.

On the other hand, there is a *prima facie* case to be made that the employees of this industry do not share a corporate culture and likely cannot given the diversity of firms, clients, and the eligible labor pool. 'It is estimated that some 50 private security contractors employing more than 30,000 employees are working in Iraq for an array of clients, including governments, private industry, and international organizations such as the United Nations.'⁴⁰ There are a multitude of private military firms. Many are characterized by a cadre structure with a relatively low number of full time employees and a reservoir of expertise that can be called upon on a contract basis. This structure would undermine any attempt to indoctrinate these employees or to foster a professional, corporate identity.

Huntington distinguished the professional officer corps from the noncommissioned officer or enlisted corps, whom he saw as members of a trade whose vocation is the application of violence rather than its management, and the reserves who 'only temporarily assume professional responsibility. His principal functions in society lie elsewhere. As a result, his motivations, values, and behavior frequently differ greatly from those of the career professional.'⁴¹ These observations about enlisted and reserve personnel certainly would apply to civilian contractors. Unlike the military, there is no enforced conformity in all aspects of life for civilian contractors over an extended period of time. Franke and Boemcke argue that the nature of the tasks to be performed encourages small group cohesion but not a professional identity. Instead, contractors of like background cluster together and are wary about interacting with others.⁴² Thus the structure of the industry and its limited ability to control entry and establish and enforce common standards undermines the ability of employees of private military companies to develop the corporate identity necessary to be considered a profession.

We can conclude that civilian contractors possess many of the traits of military professionals: they possess expert knowledge to manage organized violence, apply it within the military's jurisdiction, are primarily agents of the state although not directly employed by it, and gain legitimacy through provision of effective solutions to their client's problems. On the other hand, they are not uniformed agents of the state, are motivated by remuneration rather than social obligation, have divided loyalties, and a questionable corporate identity. But perhaps the key test of whether civilian contractors have a claim to the identity of 'military professional' is whether they are viewed as such by key audiences, in particular those who are clearly military professionals. In the next section, we present evidence to evaluate the claim

that US military officers view civilian contractors as kin in the profession of arms.

US Officer Views of Civilian Contractors' Professional Status

Elite officers have been the focus of research into military professionalism, be it historical or social scientific, because these officers are the custodians of the profession by virtue of their position and influence. Attendance in a resident professional military education (PME) program is a reliable institutional indicator of an officer's promise for advancement into the ranks of the elite.⁴³

From 1–16 October 2009, we surveyed the US officers attending intermediate, advanced, and senior PME in residence at Air Command and Staff College (ACSC), the School of Advanced Air and Space Studies (SAASS), and the Air War College (AWC).⁴⁴ In all, we analyze the views of 260 officers.⁴⁵ The sample consisted of 225 men and 32 women; 146 majors, 67 lieutenant colonels, and 23 colonels; 231 active duty, 12 reserve, and 3 national guardsmen; and 187 officers who had been in combat and 52 who had not. Two hundred and three served in the Air Force, 23 in the Army, 11 in the Navy, 9 in the Marine Corps, and 1 in the Coast Guard. In terms of political leanings, 174 officers identified themselves as somewhat conservative, conservative, or very conservative (66.9 percent), 51 identified themselves as moderate (19.6 percent), and 27 identified themselves as somewhat liberal, liberal, or very liberal (10.4 percent). Finally, 166 identified themselves as tending to vote Republican (63.8 percent), 25 who tend to vote Democratic (9.6 percent), 42 who considered themselves independent (16.2 percent), and 21 who expressed no preference (8.1 percent).

In addition to a series of demographic items, we asked their judgment on seven issues relating to private military firms, focusing on the degree to which officers included civilian contractors within the military profession.

We began by assessing their degree of agreement with the following question: 'There are no functions performed by military personnel that, in principle, cannot be performed by a civilian contractor.' This question was designed to tap their judgment of the boundaries of their profession as well as their permeability. Are there no tasks or functions that require skills possessed only by uniformed military professionals? We found that 221 officers, or 85 percent, disagreed with this statement. Twenty-seven, or 10.3 percent, agreed. Thus it seems clear that a clear majority of US officers believe that there are core military functions that only members of the profession can perform.

We then asked the obverse of this question: 'There are certain functions performed by military personnel that should never be performed by a civilian contractor.' We found that 243 officers – 93.5 percent – agreed and 12 – or 4.6 percent – disagreed. Thus an even greater majority held that there are core functions that should only be performed by uniformed military personnel.

We used an open-ended question to elicit the specific functions that officers believed should not be performed by civilian contractors: 130 officers availed themselves of the opportunity to elaborate on their views. Their responses involved primarily use of force issues, such as 'trigger pullers' and 'combat': 105 officers specifically mentioned these. As one put it, 'Killing people. Contractors in the killing business are not accountable for their mistakes and do not serve the greater interest of the nation.' Another wrote: 'Any job that requires them to be armed or they may be exposed to enemy fire.' A third offered: 'ALL MILITARY FUNCTIONS. THERE SHOULD NOT BE PRIVATE CONTRACTORS ON THE BATTLEFIELD.' Thus 80 percent suggested that combat, the core competency of the military profession, is no place for civilians. Other functions mentioned included command of military forces, intelligence, and acquisitions, programs, and contract management. Finally, two other officers indicated that civilian contractors should have no role in US military operations. One wrote that 'My experience [*sic*] with contractors has been decidedly negative. They have been an overall burned [*sic*] on our operations in OIF/OEF [Operations 'Iraqi Freedom' and 'Enduring Freedom']'. Thus, officers are quite clear about the exclusive functional purview of the military profession when asked directly.

We also approached the issue of professional boundaries obliquely, playing off the controversial interpretation of the Geneva Conventions by the Bush administration that personnel who engage in combat against American forces but are not members of a state's uniformed military are 'unlawful combatants'.⁴⁶ It would seem clear that civilians engaged in combat on behalf of a private employer would meet this definition and so we asked officers their degree of agreement with this statement: 'Civilian contractors performing in combat roles and employed by the enemy in a combat zone should be regarded as unlawful combatants.' We found that the officers were ambivalent about the status of civilians employed by the enemy: 48.5 percent disagreed or strongly disagreed that these civilians should be regarded as unlawful combatants (thus disagreeing with the position of the Bush administration and the Department of Defense) while 31.9 percent agreed or agreed strongly. Almost 20 percent were neutral in their views, however, perhaps in recognition of the sensitivity of the question.

Having primed our respondents to consider civilian contractors employed by the adversary in terms of lawful or unlawful combatants, we wanted to see if they would apply the principle consistently regardless of the contractor’s employer. We therefore asked their degree of agreement with the following statement: ‘Civilian contractors performing in combat roles and employed by Western governments in a combat zone should be regarded as unlawful combatants.’ We found that 24.2 percent *agreed or agreed strongly* that civilian contractors employed by Western governments should be considered *unlawful combatants*. Fifty one and a half percent disagreed or disagreed strongly and 23.8 percent expressed a neutral opinion. This suggests that many American military officers have a rather jaundiced view of Western contractors deployed in a combat role and reinforces many of the comments made in the section discussed above.

The surprisingly similar distribution of responses to these two questions – with only a 3 percent shift in views toward lawfulness when considering contractors employed by Western governments – suggests that the officers see ‘contractors’ as a stronger identity for civilians employed on the battle-field than ‘Western’ or ‘Enemy’. This also suggests that officer views are based more upon principle than utility. Indeed, if this were the case, we would find a strong correlation between their responses to these questions. The pair-wise correlation of responses to these questions was .88 – meaning that 88 percent of officers provided identical answers to these questions.⁴⁷ Thus, most individual officers are consistent in their views with regard to the legality of employing civilian contractors in combat roles on the battle-field – regardless of their employer. As can be seen in Table 1 below, there was some slight shifting of views, and not all in the direction anticipated. Indeed, two judged Western contractors to be unlawful combatants but not those employed by the enemy and two shifted their view that enemy contractors were lawful to being neutral with regard to Western contractors. On the other hand, 11 judged enemy contractor combatants to be unlawful

TABLE 1 VIEWS OF COMBATANT CONTRACTOR UNLAWFULNESS

Officers View Enemy Combatant Contractors Unlawful	Officers View Western Combatant Contractors Unlawful					
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Strongly Agree	14	2	1	1	1	19
Agree	0	45	10	9	0	64
Neutral	0	0	49	2	0	51
Disagree	0	2	2	102	0	106
Strongly Disagree	0	0	0	1	18	19
Total	14	49	62	115	19	259

but not those employed by Western governments and another 11 shifted their views from viewing enemy contractors as unlawful to being neutral about Western contractors. This is the sort of shift that we would expect to see in greater numbers if friendly and enemy identities outweighed that of military professional and civilian contractor. The fact that it does not occur in this sample is surprising.

This is hardly a ringing endorsement of the trend to collocate armed civilian contractors with military personnel on the battlefield. A number of officers utilized the open field to indicate that they believe that contractors should fall under the UCMJ or other legal framework. 'I believe that contractors need to have rules of engagement and be subject to some type of judicial punishment for improper conduct just as military members are', wrote one. Indeed, there has been significant and ongoing media coverage of the difficulties of holding civilian contractors liable for their behavior. For instance, the killing of 17 Iraqi civilians by Blackwater security guards on 16 September 2007 complicated the negotiation of the Status of Forces Agreement that would govern the presence of American military forces in Iraq from 2009 through 2011, spurred multiple investigations, resulted in passage of an amendment to the Military Extraterritorial Jurisdiction Act in the House of Representatives to cover all contractors 'employed by or otherwise accompanying the United States Armed Forces' outside of the United States,⁴⁸ and prompted the Department of Defense to issue new regulations governing the use of security contractors in Iraq.⁴⁹ Thus external events may have affected the views expressed by these officers.

Yet, the fact that a quarter of these officers regarded Western contractors employed in combat roles as unlawful combatants is not an affirmation of their inclusion in the profession of arms, one of whose key characteristics is their unique designation as the agents of the state⁵⁰ empowered to legitimately utilize violence against others. The distribution of views demonstrates the discomfort that officers must feel when considering the boundaries of their profession at a time when the US government is increasing its employment of civilian contractors in traditionally military roles.⁵¹

Finally, we baldly asked whether 'Civilian contractors performing in combat roles should be regarded as military professionals.' This question cut straight to the heart of whether these officers judged knowledge and ability to carry out this military function alone sufficient to deem a person a military professional or whether direct employment by the state in the uniformed military services – and all that this implies – was also necessary. We found that 36 percent agreed or agreed strongly that civilian contractors should be regarded as military professionals if they are in combat roles

while 53.1 percent of the officers surveyed disagreed or disagreed strongly. Fourteen percent expressed the ambivalence of neutrality in their views.

In many ways, these responses reflect the challenge that the increased use of civilian contractors by the Pentagon poses to the officer corps' professional identity. Eighty-five percent of officers disagreed with the notion that there were, in principle, no military functions that could not be performed by a civilian contractor. Ninety-three and a half percent agreed that there were functions that should never be performed by a civilian contractor and 80 percent specified combat as one of those functions when given the opportunity. Yet 36 percent judged that civilian contractors in combat roles should be regarded as military professionals. This is not what one would expect. Some of the views expressed were consistent: 12 of the officers who indicated that civilians in combat roles should be regarded as military professionals also indicated that they believed that civilians were capable of performing all military functions and two indicated that no role should be off limits to civilian contractors. Yet there were some inconsistent responses: 70 officers who indicated that civilians could not perform all military functions and 81 who indicated that some military functions should not be performed by civilians judged civilians in combat roles to be military professionals. Perhaps more interesting, 27 percent of officers who specified that civilians should not perform in combat roles when given the opportunity to indicate precisely their response considered civilians in combat roles to be military professionals. Clearly the aggregate views of these officers indicate a lack of consensus over the membership and jurisdictional boundaries of the military profession as well as their permeability.

These responses seem to indicate that for a sizable minority of officers possession of the skill to engage in combat and the permission to do so is an adequate basis for inclusion in the military profession. We investigated the hypothesis that those who were more sensitive to these skills, by either having been deployed to a combat zone or being from the combat arms, differed from those who had not or were not. Further analysis indicated that of the 186 officers who had served in a combat zone, 61 – or nearly on third – viewed civilians in combat roles as military professionals while 55 percent did not. Of the 52 who had not deployed, 27 percent viewed these civilians as military professionals and half did not. The difference in views of those who had been deployed to a combat zone and those who had not is neither practically nor statistically significant.⁵² On the other hand, 29 percent of officers in the combat arms/operations and 35 percent of those in support functions regarded contractors who perform in combat roles as military professionals and 55 percent of those in the combat arms and 52 percent in support functions did not.⁵³ These differences do not

appear practically significant but are statistically significant.⁵⁴ Thus, we can conclude that career field sensitizes officers to the question of whether combat skill alone endows civilian contractors in combat roles with professional status while deployment to a combat zone does not.

We were also interested in whether these officers saw the use of civilian contractors in combat roles as corrosive of the profession. We therefore considered two aspects in which their co-employment with military personnel could harm the profession of arms. The first way in which the use of civilian contractors would be corrosive of the military profession is if it harms the military ethos. Military ethos is centered upon the use of force and it is often equated with a 'warrior' ethos.⁵⁵ The use of civilian personnel to accomplish the core task of the military profession, the application of violence for political purposes, might undermine this aspect of the military's identity. We therefore asked officers the degree to which they agreed with the statement that 'The use of civilian contractors in combat roles is compatible with military ethos.' We found that 55.4 percent disagreed and judged civilians in combat roles to be incompatible with military ethos, 18.5 percent agreed that utilizing civilians in combat roles was compatible with military ethos, and 25.4 percent were neutral.

The second is the differential in pay. Many civilian contractors earn significantly more than military members performing the same functions. We asked the officers whether they agreed with the statement 'The difference in compensation paid to civilian contractors and military personnel performing similar duties does not lower the morale of military personnel.' We found that a majority – 173, or 66.5 percent – disagreed with this statement: they judged that military morale suffers because of the pay differential with civilian contractors. Only 30, or 11.5 percent, judged that military morale was not reduced, and 21.2 percent of officers – 55 – were neutral in their response.

Conclusions

When states send people in its employ abroad to utilize force, or support those who do, it has historically been the case that these persons have been uniformed members of the armed forces. While certain civilians have accompanied the armed forces into theaters of war, they have not been in combat roles nor considered combatants under international law.⁵⁶ The first decade of the 21st century has seen a vast increase in the use of civilian contractors in military operations. They have performed a vast array of functions, from support to combat. The sheer growth of the private military

industry and its insinuation into garrison and theater operations has necessitated a reassessment of the profession of arms.

Of particular interest is whether the employees of these firms can be considered military professionals. The preceding discussion suggested that they do possess many of the qualities of military professionals. They possess a level of expertise in the management of violence. They apply this expertise to solve problems within the military's traditional jurisdiction – warfare. They possess legitimacy derived from their status as indirect agents of the state and from their promise to provide cost-effective solutions to the problems that they are contracted to address. On the other hand, they fall short on many traits of the military profession. Many civilian contractors possess expertise in support functions that, although performed by military personnel in the past, have not been considered key areas of professional expertise. They lack the legitimacy that derives from serving only the state and its interests as defined by civil authority. Finally, they lack a general sense of corporateness, either with one another or with their kin in the uniformed services. It was this last aspect of professionalism that we assessed empirically by surveying the views of 260 elite US officers.

On the whole, we found that a vast majority of our sample of had consistent views of the functional boundaries of, and membership in, their profession vis-à-vis civilian contractors when asked directly. The vast majority indicated that there were functions that can and should only be performed by military personnel, combat in particular. But when asked if civilian contractors employed in combat roles should be regarded as military professionals, one third agreed despite 80 percent of a subset of the sample indicating that contractors should be prohibited from performing in combat roles. This indicates that their judgment of the membership and jurisdictional boundaries of the military profession is not consistent in the aggregate – a disturbing finding given that these officers are the trendsetters of their services.

Officers were individually consistent with regard to the lawfulness of civilian contractor combatants, whether employed by Western governments or the enemy. This indicates that most (88 percent) accorded 'contractors' a more powerful identity than 'ours' or 'theirs' when considering their lawfulness when performing in combat roles. The fact that 24 percent of these officers judged civilian contractors performing in combat roles to be doing so unlawfully even when employed by Western governments suggests a great degree of unease about recent trends.

Finally, clear majorities of these officers judged the pay differential with civilian contractors and their employment on the battlefield to be corrosive of military morale and ethos. Overall, we can conclude that a majority of

these officers do not view the civilian contractors as military professionals, are uncomfortable with their intrusion into the profession of arms, and are cognizant of their negative effects but that the boundaries of the profession of arms are being permeated by civilian contractors acting in combat roles.

NOTES

- 1 David R. Segal and Karin De Angelis, 'Changing Conceptions of the Military as a Profession', in Suzanne C. Nielsen and Don M. Snider (eds.), *American Civil-Military Relations: The Soldier and the State in a New Era* (Baltimore: Johns Hopkins UP 2009).
- 2 Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, (Cambridge, MA: Belknap Press of Harvard UP 1957) p.15.
- 3 Ibid.
- 4 Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell UP 2003) p.41.
- 5 Gary Schaub, Jr. and Volker Franke, 'Contractors as Military Professionals?' *Parameters* 39/4 (2009/2010) p.96.
- 6 The International Peace Operations Association website (www.ipoworld.org/eng/aboutipoa.html), accessed 10 Oct. 2009.
- 7 Harold D. Lasswell, 'The Garrison State', *American Journal of Sociology* (1941) p.455; Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (New York: The Free Press 1960), Chapter 1; and Samuel P. Huntington, 'Power, Expertise, and the Military Profession', *Daedalus* 92 (Fall 1963) p.785.
- 8 Huntington, 'Power, Expertise, and the Military Profession' (note 7) p.787.
- 9 Ibid. pp. 785 and 787.
- 10 'They belong to the officer corps in its capacity as an administrative organization of the state, but not in its capacity as a professional body', since a reservist 'only temporarily assumes professional responsibility' while enlisted personnel and noncommissioned officers 'have neither the intellectual skills nor the professional responsibility of the officer. They are specialists in the application of violence not the management of violence', (Huntington, *Soldier and the State*, note 2, pp.12, 17–18). Huntington later added 'commitment to officer-ship as a career' to his requirements to distinguish between junior officers who leave upon fulfilling their commitment upon accepting a commission and senior officers who remain, (Huntington, 'Power, Expertise, and the Military Profession', note 7, p.786). On the other hand, Gwyn Harries-Jenkins argued that 'the ambiguous professional status of enlisted personnel' is a 'dysfunctional consequence' of the distinction between the application and management of violence. Those following Huntington, 'argue that it is primarily the advanced education and training of officers, especially in post-experience courses after initial qualification, which justify such accreditation. Other studies draw attention to the importance of such variables as a sense of responsibility, a code of ethics, and a system of prestige ranking as determinants of a claim to professional status; these are linked exclusively to the officer corps. The continuing irony, however, is that evaluation of this kind ignores the existence among NCOs and enlisted personnel of a value system and normative codes, many of the elements of which replicate the principles of the set of values and norms of the officer corps.' (Gwyn Harries Jensen, 'The Concept of Military Professionalism', *Defense Analysis* 6/2 (1990) pp.121–2).
- 11 See Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Univ. of Chicago Press 1988); Nadia Schadlow and Richard A. Lacquement Jr, 'Winning Wars, Not Just Battles: Expanding the Military Profession to Incorporate Stability Operations,' in Nielsen and Snider, *American Civil-Military Relations* (note 1).
- 12 See Andrew Abbott, 'The Army and the Theory of Professions', in Lloyd J. Matthews (ed.), *The Future of the Army Profession* (New York: McGraw-Hill Primis Custom Publishing 2002) pp.525–7.

- 13 Huntington, *Soldier and the State* (note 2) p.14.
- 14 Peter D. Feaver, 'The Civil-Military Problematique: Huntington, Janowitz, and the Problem of Civilian Control', *Armed Forces and Society* 23/2 (Winter 1996) pp.155–6.
- 15 Huntington, 'Power, Expertise and the Military Profession' (note 7) pp.793–7; Paul Gronke and Peter D. Feaver, 'Uncertain Confidence: Civilian and Military Attitudes about Civil-Military Relations,' in Peter D. Feaver and Richard H. Kohn (eds.), *Soldiers and Civilians: The Civil-Military Gap and American National Security*, (Cambridge, MA: MIT Press 2001) pp.132–5.
- 16 Charles Moskos argued that 'Military service has had many institutional features. One thinks of the extended tours abroad, the fixed terms of enlistment, liability for 24-hour service availability, frequent movements of self and family, subjection to military discipline and law, and inability to resign, strike, or negotiate over working conditions. All this is above and beyond the dangers inherent in military maneuvers and combat operations.' Charles C. Moskos Jr, 'From Institution to Occupation: Trends in Military Organization', *Armed Forces and Society* 4/1 (Fall 1977) p.42.
- 17 Sir John Hackett, *The Profession of Arms* (London: The Times Publishing Co. 1963) p. 63. Hackett also argues that the military of necessity inculcates the qualities of 'courage, fortitude and loyalty' as 'in the profession of arms they are functionally indispensable. The training, the group organizations, the whole pattern of life of the professional man at arms is designed in a deliberate effort to foster them, not just because they are morally desirable in themselves, but because they contribute to military efficiency'. (pp.45–6).
- 18 Janowitz, *The Professional Soldier* (note 7) p.227; Huntington, 'Power, Expertise, and the Military Profession' (note 7) pp.792–3.
- 19 See Moskos (note 16).
- 20 James Burk, 'Expertise, Jurisdiction, and Legitimacy of the Military Profession', in Lloyd J. Matthews (ed.), *The Future of the Army Profession*, 2nd ed. (Boston: McGraw-Hill 2005) pp.44–5.
- 21 See Daniel Hughes, 'The Military is not a Profession', unpublished manuscript draft of Sept. 2008. However, Abbott refers to the Army as a 'strongly vocational profession' in Abbott, 'The Army and the Theory of the Professions' (note 11) p.529.
- 22 Erik D. Prince, 'How Blackwater Serves America', *Wall Street Journal*, 16 Dec. 2008, p.23.
- 23 Ibid.
- 24 Although their lack of access to continuing professional developmental education suggests that their professional knowledge will not advance further and may decay.
- 25 Singer, *Corporate Warriors* (note 4) pp.91–100.
- 26 Volker Franke and Marc von Boemcken, *Attitudes, Values, and Professional Self-Conceptions of Private Security Contractors in Iraq: An Exploratory Study* (Bonn: Bonn International Center for Conversion Aug. 2009) pp.7–9.
- 27 Singer, *Corporate Warriors* (note 4) pp.44–8.
- 28 Ibid. pp.49–70.
- 29 Jonathan D. Tepperman, 'Out of Service: Can Mercenaries Protect Hamid Karzai?', *New Republic*, 25 Nov. 2002.
- 30 Bill Sizemore, 'Blackwater USA Says it can Supply Forces for Conflicts', *Norfolk Virginian-Pilot*, 30 March 2006; Kelly Kennedy, 'Private Firm Pitches Army-for-Hire Plan', *Air Force Times*, 10 April 2006, p.23.
- 31 Michael Bruno, 'Air Force Calls For More F-22s, C-17s, JCA Control', *Aviation Week*, 25 Oct. 2007), available at (www.aviationweek.com/aw/generic/story_generic.jsp?channel=defense&id=news/USAF102507.xml&headline=Air%20Force%20Calls%20For%20More%20F-22s,%20C-17s,%20JCA%20Control), accessed 22 Nov. 2009.
- 32 Interview with Blackwater executive, 25 Sept. 2008.
- 33 Louis Hansen, 'Blackwater Sets Sights on Somali Pirates', *Norfolk Virginian-Pilot*, 18 Oct. 2008.
- 34 For a recent analysis of the legal status of PMFs and their employees, see Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, *CRS Report for Congress* (Washington DC: Congressional Budget Office, updated 29 Sept. 2008).

- 35 Elsea, Schwartz, and Nakamura, *Private Security Contractors in Iraq* (note 34) p. 14, note 52. Also see Chia Lehnardt, 'Private Military Companies and State Responsibility', in Simon Chesterman and Chia Lehnardt (eds.), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (New York: OUP 2007).
- 36 Prince, 'How Blackwater Serves America' (note 22) p.23.
- 37 IPOA's code of conduct can be found at <http://ipoaworld.org/eng/codeofconductv11eng.html>.
- 38 Daniel Frisk and R. Derek Trunkey, *Contractors' Support of US Operations in Iraq* (Washington DC: Congressional Budget Office Aug. 2008) p.1.
- 39 According to Blackwater Worldwide's website, 'Blackwater presently employs a wealth of experts, many of whom have previously served their country in the United States military or law enforcement. Their experience and honorable past service make them the kind of employees Blackwater Worldwide looks for – qualified, skilled, and trustworthy ... Certain prerequisites may be required of the applicant depending on the purpose of the employment, including physical fitness and psychological requirements and specific certifications. Background checks and personal and employer references are completed on all prospective employees. To ensure customer satisfaction, additional evaluation is done to ensure the candidate meets all of the customer's requirements', (www.blackwaterusa.com/human_resources/HMR_Recruit_personel.html), (www.blackwaterusa.com/human_resources/HMR_Evaluate.html), visited 11 Oct. 2008. In addition, Blackwater requires its employees and independent contractors to swear an oath to protect and defend the Constitution of the United States against all enemies, foreign and domestic – the same oath sworn by officers of the US military.
- 40 Elsea, Schwartz and Nakamura, *Private Security Contractors in Iraq* (note 34) p.3.
- 41 Huntington, *Soldier and the State* (note 2) p.17.
- 42 Franke and Boemcke, *Attitudes, Values and Professional Self-Conceptions* (note 26) pp.18–19.
- 43 Peter D. Feaver, Richard Kohn, and Lindsay P. Cohn, 'The Gap between Military and Civilian in the United States in Perspective', in Feaver and Kohn, *Soldiers and Civilians* (note 15) pp.6–7.
- 44 Sister service institutions were approached but did not grant access to their students. Therefore the sample significantly over-represents USAF officers compared to the population of officers attending PME in residence across all of the services.
- 45 Out of a population of 659, resulting in a 39.45 percent response rate.
- 46 The Military Commissions Act of 2006 (10 US Congress 948a (Section 1, Subchapter I)) Chapter 47A—Military commission: Subchapter I – General provisions: Sec. 948a. Definitions specifies: '(1) UNLAWFUL ENEMY COMBATANT. – (A) The term 'unlawful enemy combatant' means – (i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, Al-Qaeda, or associated forces); or (ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense. (B) CO- BELLIGERENT. – In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy. (2) LAWFUL ENEMY COMBATANT. – The term 'lawful enemy combatant' means a person who is – (A) a member of the regular forces of a State party engaged in hostilities against the United States; (B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or (C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.'
- 47 This relationship is statistically significant at the 0.001 level, meaning that this result could happen by chance less than 0.1 percent of the time.

- 48 House Committee of the Judiciary, 106th Congress, 2nd Session, *Military Extraterritorial Jurisdiction Act of 2000, Report 106-778, Part 1* (Washington DC: US Government Printing Office 2007) p.1. The amendment was not considered in the Senate and therefore did not become law.
- 49 August Cole, 'US Tightens Rules for Security Contractors in Iraq', *Wall Street Journal*, 19 Aug. 2008, p.14. This was a precursor to a memorandum from the Secretary of Defense to the department, 'Management of DoD Contractors and Contractor Personnel Accompanying US Armed Forces in Contingency Operations Outside the United States', issued 25 Sept. 2007.
- 50 'Under the authority of international law, contractors and other civilians working with the military are civilian non-combatants whose conduct may be attributable to the United States ... In an international armed conflict or occupation, only members of regular armed forces and paramilitary groups that come under military command and meet certain criteria (carry their weapons openly, distinguish themselves from civilians, and generally obey the laws of war) qualify as combatants... [C]ontract employees fall outside of the military chain of command', as specified in US Army Field Manual 31-220, section 1-22, (Elsea, Schwartz and Nakamura, *Private Security Contractors in Iraq*, note 34, pp.4–16).
- 51 Although Secretary Gates has proposed to convert 30,000 contractor jobs into civil service positions by 2015, (William H. McMichael, 'Gates calls for huge cuts in weapons programs', *Army Times* (8 April 2009), available at <www.armytimes.com/news/2009/04/military_defense_budgetcuts_040609w/>), accessed 28 Nov. 2009.
- 52 The p-value for the Pearson Chi-square with 4 degrees of freedom was 0.143 (2 sided).
- 53 Combat arms/operations career fields for the Army and Marines were armor, artillery, and infantry; aviator, for the Air Force; and surface/subsurface for the Navy: 146 were in these categories, 113 were not, and 1 did not respond.
- 54 The p-value for the Pearson Chi-square with 4 degrees of freedom was 0.009 (2 sided).
- 55 The US Army has codified its 'Warrior Ethos: I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade. [It] is a set of principles by which every Soldier lives. In a broader sense, the Warrior Ethos is a way of life that applies to our personal and professional lives as well. It makes us better people in general –better husbands; better wives; better sons and daughters; better brothers and sisters.' <www.army.mil/warriorethos/>, accessed 11 Oct. 2008). For the USAF, see Master Sgt Mitch Gettle, 'Air Force fosters 'warrior ethos' in all Airmen', *Air Force Print News* (21 March 2007), <www.af.mil/news/story.asp?id=123045702>, accessed 11 Oct. 2008; and Stephen J. Lorenz, 'Transforming Air Force Education for the Long War and Beyond', *Air and Space Power Journal* 21/2 (Summer 2007). For a critical evaluation, see Christopher Coker, *The Warrior Ethos: Military Culture and the War on Terror* (New York: Routledge 2007).
- 56 Louise Doswald-Beck, 'Private Military Companies under International Humanitarian Law', in Chesterman and Lehnardt, *From Mercenaries to Market* (note 35) p.117.