

## PRIVATE SECURITY CONTRACTORS: THE OTHER FORCE

BY

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USAWC STRATEGY RESEARCH PROJECT

**PRIVATE SECURITY CONTRACTORS: THE OTHER FORCE**

by

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## **ABSTRACT**

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The reality of war, in the 21<sup>st</sup> century is the presence of the other force, Private Security Contractors, (PSCs). Contractors are not only used for their skills in logistics, maintenance, intelligence and interpreters, but they are now a key component of Department of Defense's (DOD's) security operations in Iraq. Commanders now rely on Private Security Contractors (PSCs) to provide additional forces needed to secure forward operating bases, logistical convoys and also to perform protective service operations. The use of PCSs by the Department of Defense in all aspects of military operations has become vital to mission success not only in Iraq, but Afghanistan and around the world. Their extensive use has become the logical solution in bridging the gap of required forces needed to execute and win our nations wars. This paper will address key issues of Private Security Contractor operations particularly addressing their utilization, PSC legal status and issues, PSC contingency employment risk and recommendations for improving PSC oversight.



## PRIVATE SECURITY CONTRACTORS: THE OTHER FORCE

Since the end of the Cold War the privatization revolution of the United States government has become the central point of how the military and civilian governmental agencies do business.<sup>1</sup> To illustrate that point, the US Federal Government maintained the same number of full time employees in 2008 as it did in 1963, yet the federal budget has more than tripled since then. As a result, federal employees are managing three times the amount of taxpayer money and the gap in service has been filled in part by contractors.<sup>2</sup> The argument for outsourcing is that it's cheaper, provides more flexibility and in the case of the military allows greater focus on core warfighting competencies.<sup>3</sup> For government civilian agencies, privatization has become the means by which staffing and operations are accomplished in the light of limited government. This more recent phenomenon began under the Reagan administration. President Reagan emphasized that big government was inefficient, wasteful and unmanageable. Similar sentiments for the implementation of market based solutions were echoed by Presidents Carter and George H.W. Bush.<sup>4</sup> President George W. Bush's Administration, identified outsourcing as one of his five management initiatives aimed at improving government efficiency.<sup>5</sup> President Bush's policy advocates believed that outsourcing at the federal level was inherently good for the US economy in the long run even if it caused short term pain domestically.<sup>6</sup>

As the United States military fights two major wars in different geographical theaters, it could not have accomplished this without logistical and private security contractors. The requirement for contracting military assistance goes back decades to active force structure reductions following Vietnam that moved a significant numbers of

support units to the Army Reserve and National Guard structure.<sup>7</sup> Moreover, the Post cold war decisions to reduce the number of active Army divisions from 18 to 10 along with reducing the number of personnel impacted the Army's ability to fight without contract support after 1991.<sup>8</sup> The use of Private Security Contractors (PSCs) in contingency operations has become the ultimate enabler, allowing operations to happen that might have been politically impossible utilizing American military forces.<sup>9</sup>

This paper will address key issues of PSC operations and their utilization, PSC legal status and issues, PSC contingency employment risk and lastly acknowledging the extreme challenges in Iraq with recommendations for improving PSC oversight. This paper will not address private contractors conducting Police force training, governmental use of PSCs outside of Iraq, military personnel attrition to join PSCs or any other support contracting issues not related to PSCs.

#### Private Security Contractors Operations

The use of Private Security Contractors (PSCs) on the battlefield in support of United States military personnel is highly controversial and in great debate by the United States Congress. However, contractors on the battlefield is not a new phenomenon, the contracting of private enterprises to assist nations in fighting wars predates the founding of the United States. General George Washington and the Continental Army contracted private firms and individuals to support the Army with logistics. The Pinkerton Detective Agency was hired to support the Union Army with intelligence while the Confederate Army hired civilians as well to assist with logistical operations. From 1962 -1975 the United States military contracted private firms during the war in Vietnam to support American military personnel and thus the age of defense contracting was born.<sup>10</sup> In view of the fact that General Creighton Abrams did not agree

with President Johnson's decision not to mobilize the Army Reserves in support of the war in Vietnam, upon assuming duties as the Chief of Staff for the Army, GEN Abrams developed a plan to build 16 Army Divisions and link the reliance of the Reserves to the Active forces. This action would ensure that the President could not send active forces to war without mobilizing the Reserves.<sup>11</sup> By 1991 the United States military bolstered a force in excess of 700,000 personnel and could clearly meet its mission requirements with little augmentation by contract personnel. Following Operation Desert Shield/Storm military personnel numbers were reduced significantly but operational requirements either remained constant or increased. In order to meet the mission demands, the Army and most of DOD had to rely on contractors to bridge the gap. By comparison our total contractor numbers were much lower during the Gulf War; one contractor to 55 military personnel where they are now roughly 1 to 1.42 in Afghanistan and 1 to 1 in Iraq.<sup>12</sup> Note the PSC commitment as of March 2009 in figure 1.<sup>13</sup> The PSC contractor numbers follow a similar increase from post Desert Shield/Storm to current day operations.

| <b>Private Security Contractor Personnel in Iraq<sup>57</sup></b> |               |                       |                               |                                    |
|-------------------------------------------------------------------|---------------|-----------------------|-------------------------------|------------------------------------|
|                                                                   | <b>Total</b>  | <b>U.S./Coalition</b> | <b>Third Country National</b> | <b>Local/Host Country National</b> |
| Total DoD PSCs                                                    | <b>12,942</b> | 681                   | 10,596                        | 1,665                              |
| Total Department of State PSCs (WPPS/Embassy)                     | <b>3,321</b>  | 1,050 / 200           | 321 / 1,600                   | 10 / 140                           |
| <b>Private Security Contractors in Afghanistan</b>                |               |                       |                               |                                    |
|                                                                   | <b>Total</b>  | <b>U.S./Coalition</b> | <b>Third Country National</b> | <b>Local/Host Country National</b> |
| Total DoD PSCs                                                    | <b>4,373</b>  | 17                    | 29                            | 4,327                              |
| Total Department of State PSCs (WPPS/Embassy) <sup>58</sup>       | <b>689</b>    | 94 / 179              | 20 / 321                      | 5 / 70                             |

Figure 1: DOD Employment numbers of PSC

Upon the beginning of these missions, Operation Enduring Freedom (OEF) in Afghanistan and Operation Iraqi Freedom (OIF) in Iraq, it became clear that the United States military and Coalition Forces would need augmentation to assist in securing Camps and Forward Operating Bases (FOBs). The initial planning effort assumed the Coalition would topple Saddam Hussein's regime quickly and depart the country within months thereafter. The insurgency that soon followed required the coalition to establish operating bases to counter this revolt thus requiring additional Soldiers or PSC contractors. The decision was made by senior leaders to obtain PSC contractors to fill the void in order to avert what became known as the Abrams Doctrine. Senior DOD leaders and Congress knew if they increased active troops or mobilized reservist to fill this stop-gap they would have to convince the US public. Additionally by doing this they would have to admit General Shinseki was right with his higher troop level requirement that was summarily dismissed by the Secretary of Defense. To provide this much needed capability, contracting officers solicited companies that could provide the paramilitary style force in the shortest amount of time. These contracted forces became known as Private Security Companies or Contractors (PSCs). Private Security Contractor (PSC) utilization is not solely restricted to the Department of Defense (DOD). The Department of State (DOS), United States Agency for International Development (USAID), Department of Justice (DOJ), and many Coalition partners employ large numbers of security contractors.

As Operation Iraqi Freedom began in March 2003, United States forces began establishing forward operating bases (FOB) in Iraq. These FOBs required logistical support and supplies that were not resident in country but available by convoy from

Kuwait. Due to the dangers posed by armed insurgents in Iraq, all logistical convoys required armed security escorts. To assist military units, PSCs were contracted to conduct convoy security and battlefield circulation control. The military was there by able to strictly focus more on other war fighting competencies needed to sustain the battle against insurgent forces. FM 3-100.21, Contractors on the Battlefield, states contracting support must be planned and included in OPLANS/OPORDs to ensure contract support is integrated into the military planning process.<sup>14</sup> PSC contractors were not planned for during the invasion of Iraq but their importance proved to be more vital than ever expected. As the Iraqi government fell, the Office of Reconstruction and Humanitarian Assistance (ORHA) was established in January 2003 under the leadership of retired Lieutenant General Jay M. Garner.<sup>15</sup> On May 6, 2003 President Bush announced the formation of the Coalition Provisional Authority (CPA). This new office's mission was to restore conditions of security and stability, create conditions for Iraq people to freely develop their own political future, facilitate reconstruction and economic development.<sup>16</sup> The CPA was lead by Ambassador L. Paul Bremer for a period of one year until the Iraq Interim Government (IIG) was formed.<sup>17</sup> Ambassador Bremer and the CPA assumed the administration of Iraq and the mission of ORHA.<sup>18</sup> To restore legal processes Bremer authorized Memorandum 17, Registration Requirements for Private Security Companies (PSC), published on June 26, 2004. This memorandum was significant as it set the policy for PSCs operating within Iraq. Up to this point, PSCs were operating with only terms from their contracts which did not include rules for the use of force, Iraq Ministry of Interior (MOI) PSC Code of Conduct,

or graduated force response criteria. This was clearly a case where military operations and events were out in front of policy.

Memorandum 17, further detailed several requirements that PSCs were mandated to comply with for legal operation within Iraq. They include registration with the Iraq Ministry of Interior (MOI) for the following: to obtain an operating license, to post a \$25,000 operational bond, to register all weapons and vehicles, to conduct criminal background vetting of all personnel, to submit proof of liability insurance, and to submit copy's of all contracts in Iraq. PSCs also had to register with the Ministry of Trade (MOT) to obtain an Iraqi business license.<sup>19</sup> As the new Iraqi government took form and assumed the administrative mission to track PSCs for compliance, Memorandum 17 provided a sound starting point. PSCs are force multipliers and provide a valued service to the US military for as long as they are contracted. David Isenberg, an independent military analyst, says, "Contractors are neither good nor bad, they are a tool like anything else."<sup>20</sup> However because they are contractors they cannot be dealt with as a military unit would. Commanders do not have direct control because they are not government employees. PSCs and contractors in general are managed by the contracting officer and contracting officer representative (COR).<sup>21</sup> To provide additional operating guidance for PSCs, something that had been lacking at the Strategic levels, the Department of Defense published *DOD Instruction (DODI) 3020.41, October 2005, Contractor Personnel Authorized to Accompany the U.S. Armed Forces*. This instruction provides more detailed guidance to DOD contractors and military personnel on requirements when operating in a contingency environment as a US contractor. The DOD policy added support to Memorandum 17 in Iraq and provided a framework for

contractors supporting US operations in other theaters around the world. Prior to these two documents, PSCs and other DOD contractors in Iraq were operating with little guidance on their legal status, if captured by an enemy force, while supporting US contingency operations. This was spot lighted by the dreadful incident that occurred on March 31, 2004, when four Blackwater Private Security Contractors were brutally beaten, murdered and publically displayed in the streets of Fallujah, Iraq. Their bodies were burned, dragged through the streets and then hung over a bridge crossing the Euphrates River.<sup>22</sup> This singular incident caused a media frenzy and spotlighted the issue of strategic guidance and directives on US contractors operating in a contingency environment. US Central Command, (CENTCOM), subsequently published their own guidance for US Forces Iraq and US Forces Afghanistan in December 2005, *Policy and Delegation of Authority for Personal Protection and Contract Security Service Arming of DOD Civilian Personnel and Contractors for Iraq and Afghanistan*. The policy directive links the requirements of DODI 3020.41 and CPA Memorandum 17 in one reference document.<sup>23</sup> This policy remains in effect for Iraq and was modified for Afghanistan in November 2006, to authorize the senior US Forces Commander, directly subordinate to USCENTCOM, arming approval authority for non DOD weapons.<sup>24</sup> PSC Operations within the CENTCOM Area of Responsibility (AOR) continued with many of the PSCs experiencing compliance problems due to the bureaucratic Iraqi government process. The maturation of MOI and their ability to effectively monitor and regulate DOD PSCs was slow and inept. As a result, PSCs waited for months to receive MOI license approval and weapons cards. Unfortunately this affected the PSCs ability to remain in compliance with policies so Joint Contracting Command – Iraq (JCC-I) could consider

them for additional contracts. PSCs were performing security missions at forward operating bases, conducting convoy security, and performing personal protection for both military and civilian's leaders. Their Iraq operations remained vital to mission success and they worked to ensure legal compliance with Senior Commander Directives in the AOR. There were several factors that contributed to the severe need to scrutinize the tasks they were to perform. First, PSCs were already in theater performing the assigned missions, so the dynamic of compliance with MOI was much easier to avoid. It was reported that many PSCs were paying bribes to MOI officials in order to continue operations outside of the requirements of Memorandum 17. Secondly, contracting command did not have the level of personnel required to oversee the contracts and monitor all compliance requirements. Lastly, there was no staff section within Multi National Forces Iraq, between 2003 and 2007, charged with tracking PSCs and monitoring their operations in theater. These key factors contributed to the many non-compliance issues that arose.

On September 16, 2007, in Nisour Square a Blackwater convoy of four security contractors shot and killed 17 Iraqi civilians and injured over 24. This incident sparked an international outcry about the operations of PSCs in support of the United States Government (USG) operations and their reckless abandon regarding Iraqi citizens.<sup>25</sup> As a direct result of this incident two things happened: first, Multi National Forces Iraq established the Armed Contractor Oversight Directorate (ACOD) on 17 November 2007 to provide the Commander a direct arm for PSC oversight and verification of theater compliance, second, the Secretaries of the Department of Defense and Department of State signed a joint Memorandum of Agreement on 5 December 2007 that clearly

defined the authority and responsibility for accountability and operations of PSCs in Iraq.<sup>26</sup> PSCs that held contracts with DOD, DOS and USAID were now required to coordinate all of their actions through the ACOD, Coordinator of Armed Contractor Oversight (CACO) for the Department of State and the new Contractor Operations Center (CONOC). The CONOC reported to the USF-I J3 and monitored all PSC travels in Iraq and coordinated movement authorization through division areas in conjunction with medical evacuation and quick response forces (QRF). This new structure improved DOD and DOSs control of PSC movement and also assisted the PSCs with safe guarding the lives of their personnel. PSCs that did not have USG contracts were encouraged to report their moves to the CONOC also to assist them in safe operations within Iraq. The Special Inspector General for Iraq Reconstruction (SIGIR) noted also that prior to establishing this system no military entity had authority to direct PSC moves or even communicate through the battle space. The new system is effective and ensures PSC activities are consistent with operational field commander's objectives.<sup>27</sup> The road to implementing all of the federal guidance issued prior to September 2007's regrettable incident was not easy but the actions following the incident set the conditions for MOI to start enforcing Memorandum 17 with greater authority.

Joint Contracting Command Iraq (JCC-I)/Afghanistan (JCC-A), started to craft subsequent PSC contract renewals to meet the implementation guidance of Memorandum 17 and DODI 3020.41. PSCs were charged to meet theater entry requirements, conduct mandatory training, conduct weapons training and qualification and conduct security verification and criminal background checks.<sup>28</sup> To effectively implement DOD policy, compliance checks must be in place so MOI would not have to

police the countryside for contractors supporting USG contracts. The Armed Contractor Oversight Branch (ACOB), a reduced sized element that assumed the ACOD mission, worked with JCC-I and Defense Contract Management Agency (DCMA) to develop an effective joint oversight program. The teams established coordination meetings, inspection programs and periodic PSC leadership conferences to discuss theater requirements. The management of implementation guidance and compliance inspections set the course for control of PSCs operating throughout Iraq. However, even with this effort there remained challenges to sustain an effective oversight program including contractor deployment tracking, limited contract oversight personnel, and untrained Contract Officer Representatives (COR).

While JCC-I develops solicitations for contracts, PSCs, in a parallel process, orchestrate their efforts to ensure they have enough contractors in theater to fulfill statements of work. This ensures that when JCC-I is ready to award a contract the contractor has recruited, hired and processed the required personnel to fulfill the contract. According to the U.S. Government Accountability Office (GAO), DOD, DOS and USAID were to utilize the Synchronized Predeployment and Operational Tracker (SPOT) to track contractors entering and leaving the contingency area. However, the SPOT system allows contractors to enter their own information directly and does not require standardized tracking criteria for each governmental agency themselves.<sup>29</sup> SPOT report accuracy is of paramount importance. Each PSC is responsible for entering their personnel count into SPOT prior to deployment to the contract execution location. Any inaccuracies in the report can stop all actions and movement in theater. This can cause a cascading effect that hinders or stops the badging process, delays the

authorization for arming, and ultimately prevents the contractors from being able to reach the work location in country. Moreover, if the SPOT names and numbers are wrong, the PSC cannot provide the required information to MOI and MOT for their Iraqi license. The SPOT system is a mandated system by Congress, but the government has not provided enough policy instructions for proper implementation. Additionally, JCC-I did not provide the level of supervision needed in Iraq to effectively administer the SPOT program. JCC-I directly administered several hundred contracts, including PSC contracts, but only had one trained employee in country to sustain its performance. This negatively affected JCC-I's ability to expertly monitor and administer contracts in country.

Along with PSC tracking, the task of effective oversight of DOD contracted PSCs in Iraq is problematic. *DODI 3020.50, Private Security Contractors Operating in a Contingency Operation*, states that the Chief of Mission and the Geographic Combatant Commander shall make every effort to coordinate efforts and share common concerns related to PSC oversight.<sup>30</sup> This Instruction, like DODI 3020.41, was policy catching up with execution in the field. The DODI linked the efforts of OSD and DOS regarding PSC oversight for contingency operations. The ACOB from United States Forces Iraq (USF-I) and the CACO for the US Embassy met weekly to share ideas and coordinate oversight efforts of PSCs. This process provided both offices the means to share resources of personnel and transportation in order to conduct joint inspections of PSCs. However the joint relationship established between these two offices could not reach all of the outlying areas where PSCs operated in Iraq. GAO has reported several times on the long standing issue of contractor oversight and further noted in its report to Congress

that both OSD and DOS continue to have limited visibility over contractors at deployed locations. This inadequate contractor oversight precludes both agencies from reasonably assessing what is not being accomplished per the terms of the contract.<sup>31</sup> The GAO reports reviewed for this report indicate this issue has been reported to Congress since the mid 1990s when contract numbers were very low in comparison to where we are now. The ACOB conducted bi weekly meetings with DCMA and JCC-I to discuss PSC contracts but their limited number of assigned contract specialists did not lend itself to adequately conduct field oversight of the numerous contracts managed. The lack of personnel in each office to perform effective contract management limits the commands ability to provide detailed information to the Combatant Commander.

USF-I OPOD 10-01 directed all PSCs operating throughout the Iraq Joint Operational Area (IJOA), and all major subordinate commands (MSC) to ensure each PSC had a unit level sponsor and COR.<sup>32</sup> The expanding requirements and high cost associated with PSCs contracts required their vetting and approval by the J8 and USF-I, Deputy Chief of Staff (DCOS) during the Contract Review Board (CRB). Once the contract is approved and all of the requirements of Memo 17, DODI 3020.41 and DODI 3020.50 are met, the PSC could begin working under the executed contract. The sponsoring unit for the contract had to appoint a COR who had completed mandatory online training and resident certification training with the contracting officer (KO). Many units experienced difficulty maintaining the focus of the CORs due to either frequent changes of the COR or assigning CORs multiple additional duties that conflicted with COR duties. Each of these scenarios greatly degraded the effectiveness of the COR for the command and amplified the notion that the Commander's sponsoring PSC contracts

did not fully understand their responsibility or that of their appointed CORs. As a result of these problems and the shortage of personnel at DCMA and JCC-I, contracts continued to be improperly administered. The CORs were neither reporting frontline inspections of their PSCs nor were they submitting required reports on contract performance, arming authorizations and contractor indiscipline. To bridge this gap JCC-I and ACOB published USF-I FRAGO 0309 directing CORs to provide a weekly and monthly report on PSC registration and other pertinent contract information.<sup>33</sup> This FRAGO not only served as a reminder of the importance of what the CORs duties entail, but also showed the subordinate commands that maintaining situational awareness regarding sponsored PSCs was of great importance to the command group.

Of the varied PSC contracts within Iraq, most awards were granted to PSCs that could execute the required task order at the best value to the US government.<sup>34</sup> As reported by the Washington Post, the PSCs that win typically hire contractors from Kenya, Uganda and Peru to fill the majority of their ranks.<sup>35</sup> The men that come from these countries are motivated to perform by the amount of money paid to them on the contract. The money is not large by any measure, with salaries averaging \$600 to \$1000 a month,<sup>36</sup> but for a living wage in their respective countries it is considered quite large. PSC Contractors choose to employ this cheap labor to improve their profit margins but this does not seem to result in lower contract cost. During the Army War College Industry Day, I asked Mr. Michael Flanagan, Kellogg, Brown and Root (KBR), how are wages determined for Third Country National (TCN) employees and if it was fair to pay such low wages for the degree of work contracted. He indicated that most companies conduct a market survey of the country to determine the fair wage amount.

He admitted it is not a perfect science, but the rates are comparable to what a TCN would make in their own country.<sup>37</sup> The US Government must be careful about the message sent to the world when it allows PSC contractors to fill their ranks with TCNs. PSCs are acting on the behalf of the US government when executing contracts and there employment tactics are seen as endorsement by the US government. In order to remain legitimate we must display it and although I support PSC employment, I question PSC hiring and salary scales.

### Legal Status and Issues

Following the actions of Blackwater in the now infamous Nisour Square shooting of September 2007, all government contracts required PSCs to ensure their employees and sub contractors are knowledgeable and comply with host nation law, US law, US directives, policies and procedures.<sup>38</sup> Further the Secretary of Defense issued policy guidance on March 10, 2008 stating “Commanders retain authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders and otherwise address the immediate need of a situation.”<sup>39</sup> Commanders and military police have the authority under UCMJ to investigate and appropriately deal with acts of misconduct committed by anyone accompanying the US armed forces during declared war or contingency operations.<sup>40</sup> Employers of contractors who arrange for, facilitate, or allow contracted employees to leave country without authorization from the senior military commander following an incident of misconduct would also be subject to disciplinary action under the Uniformed Code of Military Justice (UCMJ) and the Military Extraterritorial Jurisdiction Act (MEJA).<sup>41</sup> With Contractors exceeding the strength numbers of military members in Iraq, it is very clear that senior commanders must know their authority regarding contract individuals and strive to maintain good order and

discipline in Iraq.<sup>42</sup> Every commander has an assigned staff judge advocate (SJA) that ensures legal operations by the military and contractors alike when on foreign soil. The SJA will coordinate across host nation and US legal channels to determine the appropriate adjudication agency for a criminal offense.

PSC personnel are required to conduct Law of Armed Conflict (LOAC) training prior to assuming duties in Iraq. PSC employers acknowledge their personnel serving in support of the US Armed Forces during contingency operations are aware their actions are subject to host nation law, U.S. law and UCMJ authority.<sup>43</sup> However when it appears misconduct constitutes a federal felony offense, the U.S. Department of Justice must be notified to determine if they will prosecute and exercise MEJA jurisdiction.<sup>44</sup> The decision whether the offense is a misdemeanor or a felony offense must be made in a timely manner so as to notify the PSC employer before the employee is terminated and released from country. If the investigation is ongoing then the PSC employer can terminate the person but the alleged offender must be administratively attached to a military command for life support until the investigation is completed.<sup>45</sup> These legal policy changes are not commonly known by commanders but SJAs are versed in these areas and are recommending these important facts be incorporated into predeployment training and mission rehearsal exercises.

### Employment Risk

DOD assumes the risk of accepting an unknown talent, with respect to PSC contractors, to perform the missions of base defense, convoy security and VIP security. This risk was accepted without the traditional analysis conducted for any military operation. DOD has not employed the number of PSC contractors at this level in any operation including Vietnam. Accepting risk to hire PSCs proved to be beneficial and

allowed the military to focus combat power in fighting the counterinsurgency. GAO reported to Congress that DOD did not plan for the current reliance they now have regarding PSCs.<sup>46</sup>

Ultimately, if there was no plan for PSC support, then the military clearly accepted an unanalyzed risk. PSCs were accepted as an option because it allowed military forces to focus on counterinsurgency.

Field Manual 3-24, Counterinsurgency, states that the basis of the conflict is a competition between counterinsurgent and insurgent where each side aims to get the people to accept its governance or authority as legitimate.<sup>47</sup> The employment of PSCs throughout Iraq posed a significant risk to legitimacy. The military cannot choose to ignore this risk in spite of (benefits) received. PSCs impact theater strategy and the execution of campaign plans. The several incidents of PSC lawlessness in Iraq could have derailed the military's accomplishments in country.

The biggest risk accepted, by not only the military but the USG, was that of authorizing contractors to use deadly force while working a USG contract. I don't state this from a position of not agreeing with the utilization of PSCs but rather to highlight the legal quandary this entire situation places on the United States. The USG accepts risk with military personnel because they are state actors but contractors are not. The U.S. has increasingly utilized contractors to perform actions where we didn't want to commit U.S. Forces. The contracting of Dyna Corp and MPRI in Columbia and Africa respectively illustrates this point. To compound this risk, over seventy-five percent of PSC employees are third country nationals (TCN). Many military analysts remain concerned with DODs use of non citizens to support American forces in the combat

zone. Allison Stranger says this is a clear conflict of interest and less than prudent when non citizens are used in this manner to support US operations.<sup>48</sup>

### Recommendations

Winning the hearts and minds of the local population in contingency operations requires PSC operations that clearly support US interest and protect the civilian population. PSC contractors must train their forces to operate within the terms of the contract and rules for the use of force (RUF). By monitoring this within the PSC and externally through oversight US values and beliefs can be maintained. The early performance of several PSC companies placed the safety of all Coalition Forces at risk as a result of reckless actions and a lack of concern for Iraqi human life. Recommend the U.S. only utilize American Soldiers for operations that interact with the populace of a foreign country outside the forward operating base (FOB). This will provide an American face to the local population and assist in building legitimacy.

Poor contract management and oversight risk contract compliance by PSCs. Lack of attention to personnel requirements for management and oversight can put the force at risk. This was a contributing factor to the incident involving Blackwater employees. DOD failed to regulate their actions for years and they abused not only the trust placed in them by DOD but also that given by Iraqi citizens. The local population, during contingency operations, is not only monitoring the actions of U.S. PSCs and military forces but also are surveying how assistance is provided to stabilize the local economy and provide a viable environment to now work and raise a family.<sup>49</sup> Risk at the strategic and operational level must be anticipated with a mitigation plan developed to counter its effects. The Commission on Wartime Contracting noted, during its April 2010 visit to Iraq, the concern of members of Congress with the poor level of oversight

provided for DOD contracts. The lack of qualified contracting officers, quality assurance representatives and contracting officer representatives greatly increase the risk of contract failure. Recommend Army Contract Command and Defense Contract Management Agency increase their authorization for military personnel to fill contract oversight positions.

PSC contractor criminal acts can generate enormous media attention and negative press for the command. Unfortunately there are several case studies within Iraq that illustrate this fact. The U.S. policy governing jurisdiction of contractor criminal acts has changed to allow UCMJ or MEJA adjudication of violations. This can be problematic when the host country wants to assume jurisdiction, as in the 2007 Blackwater shooting incident. Due to the number of PSC incidents of human rights and law violation, several PSC companies convened to establish an international code of conduct. The PSC code of conduct was signed by 58 companies on November 9, 2010 and was a direct result of the Montreux Document which was ratified by 17 nations in 2008.<sup>50</sup> Even with the Montreux document following such actions as Blackwater's shooting in Iraq, a joint legal element consisting of lawyers from the Department of Justice, Staff Judge Advocate and host nation prosecution operate at the Senior Commander level to manage all cases of criminal activity is still needed. This joint element can make timely legal recommendation to all parties involved to ensure the proper agency handles the case in a prompt manner.

Throughout the past ten years of protracted war, the U.S. government has endured countless errors in planning and oversight of contracts. As mentioned early, DOD failed to plan for the level of contractors that are presently required on the

battlefield. GAO report dated March 10, 2010 to Congress identified that DOD included in its 2008 budget, resourcing for contract support planners. Initially these positions would be filled by civilians with the goal to transition them to military personnel.<sup>51</sup> In response to the GAO, the Deputy Under Secretary of Defense for Logistics and Material Readiness established the Joint Contingency Acquisition Office to assist DOD with contract planning and oversight, review combatant command orders and integrate contractors into operational exercises. These two initiatives have not expanded to the level needed to produce positive results for DOD. Recommend that this concept receive serious senior leadership intervention in order to be successful. These contract planners can develop Annex W for contractor support of contingency operations. Contract planners integrated into the commanders staff will increase management and oversight of PSCs and reduce potential negative impacts on military operations.

As PSC support to U.S. military contingency operations will remain a constant for the foreseeable future, the question will persist on how to effectively manage the PSC contracts in country. I contend that PSC management should be accomplished by a military chain of command. I recommend the establishment of an expeditionary command to provide oversight for all PSC contracts in theater. This command should consist of contract officers, quality assurance officers and members from the staff judge advocate. The force structure should be a Joint command mixed with AC and RC personnel. The expeditionary command should have direct reporting lines to the senior commander in theater to highlight its importance. This singular reporting chain with down trace regional offices will provide the direct oversight needed to manage PSC contracts effectively.

## Conclusion

The level of success enjoyed by the military in Iraq and Afghanistan is directly linked to their integration and dependence on contractors. The utilization of PSCs as an augmentation force in security operations throughout the IJOA allowed military Commander's to concentrate the use of military personnel on warfighting competencies. However this did not come without a cost, both in dollars and in military culture dependency on contractors. The number of contractors in Iraq and Afghanistan either equals or exceeds the number of military personnel executing the war. This will not change in foreseeable future contingency operations, therefore, future policy on the utilization, management and oversight of contractors must improve. DODI 3020.50 sets a firm foundation for what is required for PSCs operating in a US contingency operation. The Montreux Document agreed to by several nations, including the United States, on September 17, 2008 sets a firm foundation that international humanitarian law and human rights law are binding to PSCs and they are legally responsible for their actions.<sup>52</sup> Including this in joint doctrine concerning PSC contracting in wartime conditions will further solidify a joint position on their use and prisoner of war status if captured by enemy forces.

The constrained use of military forces to bypass the Abrams Doctrine allowed PSC contracting to flourish. If the military is going to continue on our current path with PSCs then we must ensure oversight is done correctly, contractors are trained and proficient and our legal mechanisms are prepared to handle those that misstep with the law.

## Endnotes

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