

Under Siege: How Private Security Companies Threaten the Military Profession

by

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Abstract

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The application of Abbott's systems model of professions indicates that the inadequate force structure, which necessitated the use of private security companies (PSCs) in combat since 9-11-2001, has put the U.S. military profession at risk. The analysis indicates that PSCs performing core military tasks have weakened the U.S. military profession by claiming jurisdiction in the work place, public arena and legal system. Because jurisdiction serves as an indicator of the trust relationship between society and the military profession, this ongoing contest for jurisdiction could foretell a significant change in U.S. civil-military relations.

Under Siege: How Private Security Companies Threaten the Military Profession

The September 11th, 2012 terrorists attack on the U.S. consulate at Benghazi that killed four American Citizens caused the public and political leaders to justifiably question the military's role in prevention and the response in protecting its sovereign territory and people.¹ The fact is that private security companies now frequently secure U.S. diplomats and embassies—a function traditionally performed by the U.S. Marines until 1985—and often do so by relying on host nation labor.² The Congressional investigation of the recent embassy attacks in Benghazi and the subsequent findings provide the latest bellwether that more than a decade of conflict in the Middle East and the ongoing economic crisis have stressed the All Volunteer Force (AVF). The demands of the *Global War on Terrorism* (GWOT) necessitated compensating for an undersized and over-tasked U.S. military by outsourcing central military functions such as security—at a level without precedence. Hence, a large number of civilian actors with the authority to use lethal force on behalf of the state do so without professional military oversight and the associated accountability embedded in U.S. civil-military relations.

The robust field of contemporary research on the military profession has largely used functional models to examine and evaluate the military profession. By applying Abbott's systems model of professions, this paper argues that the use of private security companies (PSCs) in overseas combat theaters has changed the scope of the U.S. military's professional jurisdiction. Because jurisdiction serves as an indicator of the trust relationship between society and the military, this boundary shift could foretell a change in U.S. civil-military relations. After establishing the context of the problem, the paper reviews the predominant theoretical models of professions. Next, the application of Abbott's *System of Professions* indicates that PSCs are contesting the U.S. military's

jurisdiction. The paper concludes with recommendations to conduct further research on how to best steward the U.S. military profession, thus preserving effective U.S. civil-military relations.

Beyond the recent security crisis at American consulate in Benghazi, there is real risk of the U.S. military fulfilling a historical pattern of post-war decline. The end of a conflict often is marked by social fatigue with war and a desire to reap peace dividends. In the 20th century these combined pressures typically yielded a reduction in the military's budget. The reduced budget degraded forces structure and decreased the quality of the U.S. defense establishment. The full effects of such reductions frequently become apparent at the start of the next conflict, when the U.S. military is found inadequately sized, burdened with old equipment, and trapped with an ill-suited doctrine.³ Unlike in past interwar periods, contemporary actions short of war (such as regional security and "mil to mil" exchanges) as well as the need to restructure the force for other forms of conflict besides counterinsurgency will place a significant peacetime operational demand on both the U.S. military profession and institution. To save monies and reconcile these tensions, Department of Defense (DOD) leaders could continue to contract out core military functions. The cumulative effects of such sustained outsourcing of central military functions on the U.S. military profession, and by extension civil-military relations, remain unexplored. The specific inquiry is, "have the Global War on Terror (GWOT) and the adjustments required by post 1990 military downsizing changed the jurisdiction of the military profession?"

The quality of the U.S. military profession ultimately defines the nature of U.S. civil-military relations, which in turn contributes to the character of its democracy.

Therefore, identifying and understanding task overlap and competition between military and PSCs are important for two reasons. First, it adds context from which to assess the ongoing Department of Defense's (DOD) campaign to increase the professionalization of the military. Second, senior civilian and military leaders can understand how the use of PSCs affects short-term operational costs and the military profession's capabilities, responsibilities, and relationship with society in the long term.

Defining the Military Profession

Sociologists generally define a profession as an occupation based on theoretical and practical knowledge that conducts special training and self regulates its members such that it is credentialed by society with special authority.⁴ Continued fulfillment of these expectations allows society to renew the profession's authority and autonomy. In the U.S., society credentials two organizations with the authority to employ lethal force—law enforcement and the military. As such the U.S. military profession serves society by molding an institution—capable of immense destruction—that ensures the members and institution maintain: technical currency, doctrinal relevance and a culture that is subservient to the state's authority and reflects civilian values. Evolving scholarship and theories explain the processes behind this condition.

The 20th Century U.S. Military Profession

Social scientists Huntington and Janowitz separately pioneered scholarship in the military profession by connecting post-World War II view of the military with social science theories. Their work used functionalist paradigms, where “professionals were thought to be social trustees, acting in a judiciary capacity to ensure the public good,” at issue was what made the profession effective.⁵ Huntington argued that the best way to protect civil-military relations was through objective control of the military. The required

apolitical nature was to be achieved through focused education on the military art and inculcation of the military ethic to serve the state in a non-partisan fashion.⁶ In contrast, Janowitz offered that the emergence and proliferation of nuclear weapons required a constabulary force where the military professional officer “is subject to civilian control, not only because of the ‘rule of law’ and tradition, but also because of self imposed professional standards and meaningful integration with civilian values.”⁷

The military’s need to recover from the experience of the Vietnam War and its transition to the AVF placed these two models in the forefront of increased professional military education and expanded membership that grew to include noncommissioned officers (NCOs) and DOD civilian employees. Senior civilian and military leaders perceived the success of *Operation Desert Storm* in 1991 to have validated the efforts to improve the military profession. However, the ensuing changes in the “new world order” affected the military profession in new ways. Externally, the atypical missions for the military, such as those in Haiti and Somalia, resulted in an absence of consensus within the military institution on a common set of values and principles that would provide order to the growing list of essential military tasks. The internal dissent among the services as to their core competencies and roles, as well as competition for resources caused by significant fiscal constraints, led to dispersal of public support that fractured support of the military professional.⁸ This “postmodern” military period saw a blurring of its professional identity as society questioned why values within the military should be different.⁹ Understanding these changes required an expanded understanding of the military profession.

The 21st Century U.S. Military Profession

In 2012, the Secretary of Defense (SecDef) recognized the indicators of a strained military profession, and anticipating the latent detrimental effects from ten years of war, instructed the Chairman of the Joint Chiefs of Staff (CJCS) to take action. The resulting campaign encompassed all the military departments by calling for a “Rededication to the Profession of Arms” (RPA).¹⁰ The departments’ efforts are intended to improve organizational effectiveness (over efficiency) and in so doing maintain the society’s trust; thus preserving the pattern of civil-military relations enjoyed since the advent of the AVF.¹¹

The U.S. military profession is credentialed by society based on the expectation that it will discharge its duties without detailed external oversight. For the military profession, “society” represents the sum authority granted by three actors—civilian chain of command, public at large, and subordinate members—with whom a trust relationship must be maintained.¹² The RPA explicitly recognizes the importance of these three relationships, but follows service precedent and focuses activity on just one, the nurturing the profession by strengthening the trust held by subordinates. An over reliance on this traditional approach could make the RPA’s actions inadequate and consequently allow PSCs to become an alternative agent in civil-military relations. Strengthening the military profession in a post conflict, fiscally constrained environment is problematic; Agency Theory explains the tension inherent in fulfilling the three required relationships.

Feaver’s application of “Agency Theory” to U.S. civil-military relations argues that civilian leaders as the “principal” know what they want done, and the military as the “agent” interprets this policy goal (end) and acts with the required means, method, and

use of force. The degree of compliance by the military (the agent) reflects the probability of sanction from civilian leadership (the principal) as well as the degree of shared understanding and value of the outcome. As long as the outcomes are found acceptable by the principal, the agent is retained in the relationship.¹³ Historically, ethical dilemmas in this principal-agent relationship centered on dissent; how dissent would be expressed by the agent and received by the principal.¹⁴ The introduction of PSCs as another actor credentialed to apply lethal force in combat on behalf of the state has changed the structure of this relationship. The challenge now is to understand whether the structure erodes the profession of arms and by extension, could affect civil-military relations.

The U.S. Military Profession as Part of a System of Professions

Significant scholarship and fifty years of application by DOD have demonstrated the utility of developing the military profession with a functional approach. Ongoing social changes and recent events however beg the question of the adequacy of that theoretical approach. For example, the military has executed more than ten years of persistent conflict with a compounding effect of further bureaucratization of its professional culture.¹⁵ Concurrently, across the globe there is increased conflict and economic contraction that will define the future. The challenge for military and civilian leaders in this environment is to strengthen the profession of arms to ensure adequate military capacity that is responsive to the state. Recent scholarship offers that the military profession can be better understood with the application of a systems paradigm.

Abbott theorized that professions form a complex and dynamic social system in a competitive environment where they will adapt or disappear based on their relative performance of work. Each profession's ability to garner resources and control a body of knowledge and clientele determines whether they will endure. This system is influenced

not only by its own processes but also by larger social forces and other individual professions that also change commensurate to the same macro social forces.¹⁶

In contrast to the functional models of Huntington and Janowitz that assessed a profession's effectiveness, a systems model gauges the strength of a profession by the breadth, scope and social value of its work—the greater these characteristics, the larger its jurisdiction.

On few occasions new technologies create a new demand with an associated jurisdiction that will ultimately be secured by either a new or existing profession.¹⁷ More commonly, a change of professional jurisdictions results when the demand for the services provided by a profession increase faster than the governing profession can respond, then either emerging professions or other existing professions complete the work instead. The outcomes of such jurisdictional challenges are not fixed, but are heavily influenced by the type and nature of the response of the actors within the system.¹⁸ The current jurisdiction of the military profession, and the subordinate service professions, reflects its history as part of a larger system of professions.¹⁹ The systems model of professions has driven significant contemporary research on the military profession although the central premise that a democracy is best served by a military governed by a profession remained unchanged.²⁰ Thus, the significance of answering whether PSCs have encroached on the U.S. military jurisdiction remains.

The fall of the Iron Curtain in 1991 was a watershed event for the U.S. military profession as the AVF encountered two conditions for the first time: a) core task expansion as the military undertook “peace keeping” missions and, b) an American desire for a “peace dividend” that reduced the Army end strength from 780,815 to

495,000.²¹ To mitigate the shortfall in manpower the Army developed the Logistics Civilian Augmentation Program.²² The consequences of this shift remained masked until the 1990s when the demand for forces in the Balkans resulted in the Army ceding some jurisdiction for base support operations, first to the Joint Force and then to contractors in an effort to husband resources for combat operations.²³

The subsequent recognition of an inadequate force structure, as well as a desire to harness a perceived Revolution in Military Affairs, and increase DOD efficiency by introducing market competitiveness created significant environmental change.²⁴ Accordingly, Office of Management and Budget Circular 76 accelerated and expanded the scope of contractor utilization across all of DOD to increase military capability without raising end-strength.²⁵ The magnitude of the consequences that resulted from increased outsourcing became evident early in *Operation Iraqi Freedom* when the contractor to service member ratio became 1 to 10 (an increase from 1 to 50 for Desert Storm in 1991).²⁶ While the military was arguably more cost efficient, the reduced force structure proved inadequate for the military to train itself and coalition partners, or protect the force on the modern non-contiguous battlefield.

Prior to this expansion of contractor roles and duties, jurisdictional competition over military work was framed in one of three relationships. First, competition was framed as inter-service rivalry within DOD—a condition for resolution by civilian authority based the expert knowledge of each service.²⁷ Second, other scholars detail intra-state jurisdictional competition between governmental agencies—such as the Department of State (DOS).²⁸ Lastly, jurisdictional competition occurred transnationally where the U.S. military competed with other militaries to perform international

missions—such as counter terrorism training.²⁹ As the GWOT progressed additional second order effects of contracting became more apparent. A fourth competitive relationship emerged where private companies began to compete with the U.S. military for jurisdiction over its core task—the employment of lethal force. In 2004 Deborah Avant argued that,

Its [Army's] ready use of contractors for tasks that are crucial to both the development of the profession in the future and to the success of new missions (such as stabilization), however, has generated competition between the Army and private security companies over who will shape the development of the future professionals and has degraded the Army's ability to undertake successful missions on its own.³⁰

The increased use of private security and training companies in a combat zone sanctioned other agents to compete for a portion of what was previously uncontested as the U.S. military profession's sole jurisdiction. The fundamentally distinct criterion upon which society credentials these agents makes them a distinct profession.

Assessing PSCs and U.S. Military Jurisdiction Competition

Abbott's research identified that the competition for professional jurisdiction can occur in three arenas and result in five outcomes. Jurisdiction competition occurs in the arenas of legal action, public opinion or in the workplace; with each actor when and where they perceive an advantage. Because these jurisdictional conflicts can produce conflicting decisions (i.e., when the normative work place behavior does not reflected public perception or the law), final resolution takes time.³¹ During the period of jurisdiction contest, work, and task quality varies as no single profession can fully police the participants. The allocation of resources and the social need for consistent task fulfillment ultimately force resolution of competing jurisdiction claims, but this takes time and is marked by contention and task failure. For outcomes to jurisdictional competition,

Abbott identified five settlements arranged on a continuum: full jurisdiction, subordination, divided, intellectual, and advisory. An analysis of the jurisdictional competition and the settlements related to the use of PSCs can indicate the state of the U.S. military profession.

Analysis of Claims for Military Jurisdiction

During the GWOT, PSCs comprised roughly 10% of the contract workforce in Iraq and Afghanistan.³² PSC duties are limited by law to those deemed “defensive in nature” such as providing security for; sites, convoys, select personnel, and special escort.³³ While this scope of work sounds benign, defensive duties placed PSCs at critical points of U.S. counterinsurgency doctrine to secure and maintain legitimacy with the populous. On the modern battlefield the nominally weaker enemy attacks—with little cost—public officials, supply lines, and base camps in order to destroy the public’s confidence in the local and national governments’ ability to secure its population and infrastructure. In this environment U.S. contractors comprise 25% of the U.S. personnel killed in action in Iraq.³⁴ An armed security contractor was 1.5 to 4.8 times more likely to be killed in Iraq or Afghanistan than U.S. uniformed personnel.³⁵ In 2009 the International Committee of the Red Cross (ICRC) recognized the magnitude and ramifications of contractors on the battlefield and published a report that stated contract security personnel who are assigned to protect an embassy from attack would likely be considered combatants, “as would private security providers assigned to protect military supply convoys from insurgents because their purpose, although defensive in nature, would affect hostilities and could require engagement with enemy forces.”³⁶

In addition to contractors being more involved in actual combat operations than any time in U.S. history, the duration, and scope of their role is likewise without

precedent. While previous force design decisions deliberately increased the role of contractors on the battlefield to improve efficiency, Avant contends the GWOT increase “was a tool to fill the mobilization gap created by poor judgment about force requirements after 9/11.”³⁷ With the absence of a precedent to govern contractors as combatants and the absence of guidance for the U.S. to stop using PCSs, there is no reason to expect PCSs to retire from the workplace—the new battlefield—and disappear. According to Abbot, this condition where actors perform similar work in the same environment inherently invites competition in the arenas of legal, public opinion, and the workplace.³⁸

Legal Claims for PSC Jurisdiction

Allegations of abuse and war crimes by PSCs during the GWOT have led to a series of Congressional hearings, investigations, and legal measures in an attempt to establish oversight.³⁹ Contracted forces, such as PSCs, work in a contingency area and “operate under three levels of legal authority: (1) the international order of the laws and usages of war, resolutions of the United Nations Security Council, and relevant treaties; (2) U.S. law; and (3) the domestic law of the host countries.”⁴⁰ This condition allows for jurisdictional claims in three different legal systems, whose respective authorities remains largely unchallenged and without codification. Prior to the National Defense Authorization Act (NDAA) of 2007, legal precedent held that civilians acting within a combat zone during “time of war” were subject to the Uniform Code of Military Justice (UCMJ), the legal authority of the military profession.⁴¹

The changes in the 2008 NDAA required DOD, DOS, and USAID to establish a memorandum of understanding that specified the responsibility of the parent department to investigate and refer possible violations of the UCMJ or the Military

Extraterritorial Judicial Act (MEJA)—in the case of civilians.⁴² The expanded application of the MEJA to a combat zone required that the Department of Justice must be notified if a civilian employee (to include those of a PSC) is suspected of having committed a felony.⁴³ This 2008 NDAA instituted two changes. First, it removed PSCs employed in a combat zone by other governmental agencies and civilian contractors from military oversight and investigation authority. Second, it removed the military's legal authority to enforce professional standards against those PSCs it employed. By omission this division of legal jurisdiction moved some PSCs completely outside of any U.S. oversight as, "some contractor personnel who commit crimes might not fall within the statutory definitions described [above], and thus might fall outside the jurisdiction of U.S. criminal law, even though the United States is responsible for their conduct as a matter of state responsibility under international law."⁴⁴

Public Claims for PSC Jurisdiction

The websites of PSCs such as Academi (formerly Blackwater, then Xe), DynCorps and Triple Canopy illustrate PSCs open declaration of their qualifications and offer an alternative to traditional military forces. In a free market society, however, the public contests for jurisdiction are often more oblique and insidious. The highly publicized stories and detailed investigations associated with the role of PSC in Fallujah and Nisoor Square (Baghdad), Iraq are public examples of the new combat role of PSCs.⁴⁵ The acceptance of news and periodicals stories of PSC as warriors on the front lines provides a third indicator of the ongoing PSCs' public claims for jurisdiction over state sanctioned application of lethal force.⁴⁶ Lastly, and arguably most compelling, PSCs argue publically that they are more cost effective (as a result of no long term obligations to the institution or the workforce) and timely (can rapidly mobilize) than the

military.⁴⁷ PSCs publically claim immediate cost savings without a counter argument as to the long-term effects on military force structure and capabilities.⁴⁸

Because the eroded U.S. military jurisdiction has not yet produced a crisis, public efforts to restore the military profession's jurisdiction have not been compelling and thus are ineffective. For example, national security scholars Fontaine and Nagl concluded that, "Most experts agree that contracting out logistics and construction activities tends to result in significant cost savings to the government, while more skilled labor—and private security functions in particular—tends toward parity with the cost of using federal employees."⁴⁹ While these and similar findings challenge the economic rationale for PSCs, such findings do not resonate with the American public in a manner that encourages strengthening of the military profession.

The use of PSCs and the subsequent erosion of the military profession's jurisdiction resulted from the inability of the military to meet an increase in demand for operational forces—not from an attempted cost savings measure. At issue is whether to resource the military in the near term, thus avoiding the need to use PSC in the long term. The debate on the level of resourcing required by the military to protect the profession's jurisdiction over its core competency—and sustain the pattern of U.S. civil-military relations—lacks a public audience. In this instance the military may be a victim of its own success. The trust relationship between the military and the public is now so strong that tactical success is taken for granted, with little regard by society for the profession's requirements in the workplace and warzone beyond providing monies.

Workplace Claims for PSC Jurisdiction

The current military to civilian contractor ratio of 1:1 in the GWOT reflects the degree of privatization that has occurred within the military. It is accepted and expected

that civilians now perform tasks previously accomplished by uniformed personnel. This ratio reflects the increased number of non-military personnel performing security operations for the U.S. government. At the end of the Iraq troop surge in 2009, the Department of Defense (DOD) and the Department of State (DOS) employed 16,263 PSC personnel in Iraq and 5062 in Afghanistan.⁵⁰ For perspective the totals are equivalent to six Brigade Combat Teams (BCTs). With 2010 beginning the operational withdrawal of U.S. forces from both theaters of war, PSCs personnel totaled over 28,000 and represented over 10% of the total contractors employed by DOD and DOS in Iraq and Afghanistan.⁵¹ These trends indicate significant incursion by PSCs into the workplace and that the jurisdictional claim of PSCs has expanded—rather than contracted—as U.S. military involvement in a combat zone declined.

Analysis of Jurisdiction Settlements

Competition between professions forces each profession to adapt and secure its jurisdiction or become a bureaucracy and/or an occupation.⁵² A profession's failure to successfully accomplish work assigned by the client puts at risk its public legitimacy and the accompanying exclusive rights bestowed by the client.⁵³ This creates a cycle where the more bureaucratic a profession becomes the less capable it is of adapting to environmental changes. It may be unable to meet increased demand or defend its jurisdiction. Conversely, adaptation by an emerging profession or a challenger produces the means to claim a jurisdiction in legal, public, or workplace arenas.

These claims in turn produce one of five types of settlements arranged on a continuum. First, one of the actors can be awarded full jurisdiction in a zero sum gain arrangement. These are rare but most enduring. Second, one of the actors can be subordinated to the other. This typically occurs when dangerous work must be

accomplished routinely. Subordination as a form of resolution makes for a complicated work place and can invite intra-professional competition. Third, the claim could be divided among the actors with each becoming a formal profession, independently responsible to society. Midway between a formal division and subordination lies the intellectual settlement. In this manner one profession retains authority and responsibility for the abstract knowledge while competitors operate on an unrestricted basis. This produces an inherently unstable jurisdiction. The weakest and shortest-lived form of control over jurisdiction results from the fifth outcome, advisory jurisdiction. In these arrangements, one profession claims independent authority to interpret another profession's actions as its jurisdiction. For example the clergy may interpret and explain the larger meaning of medical conditions to patients.⁵⁴ Given the magnitude and scope of the aforementioned competition, it is not surprising that settlements continue to emerge in an inconclusive or contradictory manner.

Full Jurisdiction Settlements

In terms of protecting civil-military relations guaranteeing full jurisdiction to the U.S. military as the state's agent for lethal force would certainly protect the traditional structure of modern U.S. civil-military relations. Typically full jurisdiction results from a period of protracted contest but can come from an act of fiat, such as a legal decision. In the 2009 NDAA Congress expressed "that private security contractors should not perform certain functions, such as security protection of resources, in high-threat operational environments, and that DOD regulations 'should ensure that private security contractors are not authorized to perform inherently governmental functions in an area of combat operations.'"⁵⁵ This legal directive acknowledged the military had come to rely heavily on PSCs to complete its mission and required DOD to reconcile the intent of the

law with conditions on the ground. It presented a nuanced interpretation that did, “not prohibit the use of contract personnel for security, but it limits the extent to which contract personnel may be hired to guard military installations.”⁵⁶ The same legislation also specified that the “Combatant Commander has the authority to decide whether to classify security functions as commercial.”⁵⁷ In theory this caveat allows military commanders some degree of authority to protect the U.S. military’s professional jurisdiction based on their ability to define the scope of security tasks suitable for contract work.

In reality, senior commanders (the agent) met political leaders’ (the principal) expectations to “do more with less,” by resorting to PSCs. The increased use of PSCs allowed commanders to remain under theater of operation force-level caps and have sufficient combat power to achieve the mission. In Iraq and Afghanistan, the numbers of PSC personnel did not count against “force caps” or troop strength limitations, and thus minimized the public exposure as to the level of U.S. involvement.⁵⁸ Despite the intent of the legislation, senior leaders were placed in an ethical dilemma; using PSCs to meet the workplace requirements for security with reduced troop levels, or employing the U.S. military professional as the state’s sole agent of lethal force.

Subordination Settlements

The enactment of the 2008 NDAA reduced the U.S. military profession’s ability to defend its jurisdiction in two ways. First, the military does not write or execute the security contracts for the multitude of other government agencies, such as DOS, and private companies that employ PSCs in a combat zone. These agencies execute their own contracts in accordance with laws that produce conflicting settlements.

Governmental agencies do implement memorandums of agreement as to how to govern

PSCs, however this method only applies to those contracted by the U.S. government. Commercial contracts remain outside of governmental purview. The large demand for contractors during the GWOT had the compounding effect of overwhelming the work capacity of the Government's contracting officers. The military contracting professionals lacked the capacity to respond to the anticipated demand foreseen in the military reduction of the 1990s.⁵⁹ Consequently, the military's professional jurisdiction over its contracting authority is being contested concurrently with the claims against its jurisdiction over the application of lethal force.

Divided Settlements

In response to the detrimental effects caused by using contractors and to prevent fiscal waste several measures have been enacted to define when contracting work is appropriate. For example, Presidential policy letter 11-01 allows any agency or department to in-source any capability they determine is essential to performing core missions regardless of comparative costs. This policy recognized that in some instances effectiveness over efficiency is appropriate and thus allowed the military the legal authority to avoid being forced to outsource its own demise. While this type of divisional settlement was intended to break the death spiral of ever increasing outsourcing of military work, it will not protect the profession of arms from further erosion. The policy does not address the root problem of inadequate DOD capacity to meet a sudden increase in demand.

These prescriptive attempts to divide and define jurisdiction in order to protect the military profession remain subject to interpretation by the practitioners in the workplace. For example, because of the large presence of military and PSC personnel working on the same task in the same workspace, migration from one profession to the

other is not uncommon.⁶⁰ The greater the resources or legitimacy of one profession as compared to the other, then the greater the propensity for personnel to join the competing profession. In the case of the U.S. military inadequate jurisdiction division has three costs. First, member migration from the military profession to PSC creates a need to access, train, and equip a replacement. Second, there is the “brain drain” or loss of intellectual capital when trained U.S. military personnel depart their service in order to take higher-paying jobs working for a PSC.⁶¹ Third, there is a credibility cost with junior military professionals when they see that market logic trumps the message of selfless and honorable service to society.⁶²

Intellectual Settlements

The 2011 National Defense Acquisition Act (Section 833) mandated a “third-party certification processes for determining whether private security contractors adhere to standards for operational and business practices” (currently under development).⁶³ This legal action moved the authority to conduct lethal force training for combat operations outside the military’s jurisdiction and sanctioned the associated development of abstract knowledge to competing non-governmental professions. The initial migration of uniformed personnel to PSCs made for great congruence of the governing abstract knowledge however emerging personnel policies of PSCs could change this. The demand for PSCs has driven many companies to meet manpower and cost savings by employing large number of people from other nations who have no association with or training from the U.S. military profession. For example, in 2004 PSCs in Iraq employed approximately 30,000 personnel from over 30 countries.⁶⁴ Regardless of the experience or qualifications of rank and file, PSCs retain the license (by contributing to a common

industry standard) to modify, transfer and export abstract and technical knowledge without oversight from the U.S. military profession.

Advisory Jurisdiction Settlements

The military briefly reasserted its jurisdiction over PSCs in the 2008 when the National Defense Act required all DOD, DOS and Governmental agencies that employ PSC to comply with Department of Defense Instruction (DODI) 3020-50. This authorized the Combatant Commander to ensure that PSCs met all legal, training and weapons requirements in accordance with the contract and host nation law.⁶⁵ True to form this settlement was short lived. Other legal actions, such as NDAA 2011, rendered this arrangement moot as its authority became clouded by other competing sets of guidance, such as references to “an industry standard.”

Conclusion

An examination of the role of PSCs during the GWOT indicate that they are actively and passively contesting the U.S. military profession’s jurisdiction over its core task—the authority to wield lethal force as the agent of the state. The jurisdictional contest that marks this condition has occurred across all three arenas, and is most evident in the workplace, followed by legal actions and the public arena. Thus, it is not surprising that the jurisdictional settlements to date have been inconclusive and, in some cases contradictory, leaving the final outcome undetermined. The ongoing revelations of the role of PSCs in the Benghazi attacks are the latest example of this.

There are two countervailing arguments to these findings. First, that PSCs are numerically niche players whose involvement is strategically insignificant. Second, that absent resolution to safeguard the U.S. military profession, the problem is self-correcting at the end of conflict, when demand for PSCs will decrease. Accepting these

counterarguments seems ill advised for three reasons. In regards to the former, the magnitude of PSC involvement is strategically significant as are the consequences of their actions—regardless of aggregate numbers—as evident by the actions in Nisoor Square. As to the latter, the pattern of PSC involvement is not self-correcting. The decline in uniformed military involvement in Iraq and Afghanistan did not trigger a corresponding decline in PSC involvement. Moreover, the indicators of today’s problems with logistic contractors first arose in the Balkans in the 1990s, but became dormant with declining U.S. involvement only to have the same problems re-emerge exponentially larger in the GWOT. Should this pattern repeat, the new research question would be, how will the U.S. military profession respond to the next conflict?

Other research on the use of PSCs in combat zones has come to critical conclusions about cost efficiency, congruence within COIN doctrine, and organizational ethics. The corresponding recommendations included increasing military capacity to negate the need for PSCs, severely restricting PSCs to locations where rule of law prevails, and increasing congressional oversight of PSCs.⁶⁶ While valid structural recommendations, they are too narrow to nurture the U.S. military profession in a manner that secures continued effective civil-military relations. If the United States continues to use contractors to perform core military tasks as a means to save monies during the ongoing “build-down” and maintain a force structure capable of meeting sudden demand then the pattern of erosion to the military jurisdiction can be expected to continue. The resulting structural reliance on PSCs could force civilian leaders to use agents outside the U.S. military profession to complete essential missions and in doing so violate the normative pattern of U.S. civil-military relations—a condition without

precedence or safeguard. At issue here is not the military profession's jurisdiction per se, but the health of the profession.

A protected jurisdiction is the means to an end, which in this case is the military's fulfillment of the three trust relationships with: civilian leaders, the public, and members of the military. Because the four Services are subordinate to and act as the agent for civilian leaders, they cannot be solely responsible for the U.S. military profession. The challenge is aligning the principal and agent's actions in order to secure the military profession's jurisdiction. This research indicates need for more scholarship on whether the use of contractors weakens or strengthens the three trust relationships that enable the U.S. military profession's jurisdictional claim.

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