

The Privatization of Security: Lessons from Iraq

by Deborah D. Avant

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***Abstract.** Images of private forces in Iraq—killed and mutilated in Fallujah, implicated in prisoner abuse at Abu Ghraib, and shooting up civilian vehicles—have provided a dramatic illustration of the role private security companies (PSCs) now play in U.S. military operations. Though the United States' use of contractors on the battlefield is not entirely new, the increased number of contractors deployed and the use of private security forces to perform an escalating number of tasks has created a new environment that poses important trade-offs for U.S. policy and military effectiveness and for U.S. relations with other states. This article outlines the history of U.S. contractors on the battlefield, compares that with the use of private security in Iraq, discusses the benefits and risks associated with their use, and proposes some trade-offs decision-makers in the United States should consider while contemplating their use in the future.*

Civilians have provided military services in the United States since the beginning of the Republic, but the first official statement on contracting, eventually named OMB Circular A-76 (which is still in effect), did not come out until 1954.¹ Up until the beginning of World War II, most of these services were in the area of logistics support and weapons procurement. Civilians were used to supply basic rations, make uniforms, transport supplies, etc. As the U.S. arms industry began to expand, the government also turned to private suppliers for small arms, bayonets, and ramrods. The most famous of these contractors was Eli Whitney, who supplied interchangeable parts. Periodic dissatisfaction with the quality or reliability of supply led to the establishment of such things as the commissary system, and there was a general trajectory toward centralization of services such as procurement and contracting in the armed forces before World War II. However, civilians continued to be steadily used even as the conventional wisdom held that support services were becoming more centralized (see Table 1).

¹ Budget Bureau Bulletin 55-4, revised in 1959 and 1966. The thrust of this directive is that government agencies should seek to obtain products and services through the private sector except in cases of national interest. See James E. Althouse, "Contractors on the Battlefield," *Army Logistician*, Nov./Dec. 1998.

Table 1. Estimated Civilian Participation in U.S. Conflicts²

War/Conflict	Civilians	Military	Ratio
Revolution	1,500	9,000	1:6
Mexican/American	6,000	33,000	1:6
Civil War	200,000	1,000,000	1:5
World War I	85,000	2,000,000	1:20
World War II	734,000	5,400,000	1:7
Korean Conflict	156,000	393,000	1:2.5
Vietnam Conflict	70,000	359,000	1.6

Up until the Vietnam War, the primary use of the private sector in wartime was for the manufacture of weapons and logistics materials. From time to time, the United States also used private services for other tasks. For instance, during World War II, as it needed to quickly train pilots for a growing air contingent, the U.S. government hired commercial airlines to train them. During Vietnam, however, the use of civilian contractors began to change. Not only did civilians support the war effort, but contractors were deployed to the theater to provide a variety of services to the government and military. University teams funded by the Pentagon provided military and police training to the South Vietnamese Army, and Vietnamese students were brought to the United States for special training in defense. Civilian contractors to the U.S. Army provided electronics training to the SVA. Booz Allen developed a program to train Vietnamese officers. Vinnell Corporation had 5,000 people in Vietnam at the height of its involvement building military bases, repairing equipment, running military warehouses and, reportedly performing tasks the U.S. forces could not, for legal reasons or lack of resources.³

Increased Privatization of Security and the U.S. Experience in Iraq

After Vietnam, several factors accelerated the use of contractors. The development of new, sophisticated weapons systems made military personnel more reliant on contractors for technical support, causing the deployment of contractors to the theater with troops to escalate. During the first Gulf War, contractors provided operational support for TOW (tube-launched, optically tracked, wire-

² These oft-cited numbers should be taken with a grain of salt, both for their lack of sourcing and for their lack of clarity as to what civilians have done. See Col. Steven Zamparelli, “What Have We Signed up for?” in *Issues and Strategies 2000: Contractors in the Battlefield*, *Air Force Journal of Logistics*, Dec. 1999.

³ Sidney Lens, *The Military Industrial Complex* (Philadelphia: Pilgrim Press, 1970), pp. 129–30; James Collins, Jr., *The Development and Training of the South Vietnamese Army, 1950–72* (Washington, D.C.: Department of the Army, 1975), pp. 110–2; William Proxmire, *Report from the Wasteland* (New York: Praeger, 1970), pp. 9–10; William Hartung, “Mercenaries, Inc: How a U.S. Company Props up the House of Saud,” *The Progressive*, April 1996.

guided) missiles, M1A1 tanks, Bradley fighting vehicles, and the Patriot missiles. During the 2003 Iraq War, PSCs also provided operational support for the B-2 stealth bomber, the F-117 stealth fighter, Global Hawk unmanned aerial vehicle, U-2 reconnaissance aircraft, the M-1 tank, the Apache helicopter, and many navy ships. The U.S. Army's Task Force XXI Army Warfare Experiment in March 1997 relied upon 1,200 civilian contractors from 48 different vendors, all of which were in the field at the National Training Center providing advice, maintenance, and technical support.⁴

More generally, the increasing endorsement of privatization ideas and their impact on government policy via alterations to the A-76 process encouraged the military to look for additional outsourcing opportunities. The 1985 Defense Appropriation Law required the Army to establish a contingency-contract capability to support force deployment. In response, it instituted the Logistics Civil Augmentation Program (LOGCAP), which laid the groundwork for expanded deployment of contractors for logistics support.⁵ LOGCAP was relatively underused in the first few years, partly because as a decentralized system it was hard to use. By 1990 the decision was made to establish a centralized program with one umbrella contract, the first of which was awarded to Brown and Root Services (BRS, now Kellogg, Brown and Root-KBR) in August 1992. Contractors now routinely support many weapons systems in theater, and LOGCAP (along with the related Air Force Contract Augmentation Program, the Navy's Construction Capabilities Contract, and the U.S. Army, Europe's Balkans Support Contract) has become an integral part of troop supply.⁶

Finally, with the end of the Cold War, forces were shrunk by about one-third in anticipation of a safer world. At the same time, a number of emergencies and small-scale conflicts led U.S. troops to be deployed more frequently than they had been in the 1980s. This combination of a smaller number of troops and more deployments caused a constant stress on the sheer number of personnel. PSCs were often able to step in to fill the gap. Additionally, changes in technical requirements and the fact that small conflicts imposed different requirements on the U.S. military caused the deployment of contractors to provide services that the military was not well set up to provide. Contractors provided a way around these new strains on the U.S. military. As stabilization missions required international civilian police, for example, DynCorp was able to field such a force. Similarly, contractors could step in to supplant troops in training foreign militaries. All of these trends taken together

⁴ See Mark Hanna, "Task Force XXI: the Army's Digital Experiment," *Strategic Studies*, July 1997.

⁵ See Donald Trautner, "A Personal Account and Perspective of the U.S. Army Logistics Civil Augmentation Program," paper presented at the Conference of Army Historians, July 15, 2004.

⁶ U.S. Army Regulation 700-137 (December 1985) established the Logistics Civilian Augmentation Program or LOGCAP. Ibid.

mean that contract support for U.S. troops in Iraq is the largest ever, both in numbers of troops supported and in land mass (see Table 2).⁷

Table 2. Estimated Numbers of Contractors deployed to Theaters during Conflict⁸

Conflict	Contractors	Military	Ratio
Gulf War I	9,200	541,000	1:58
Bosnia	1,400	20,000	1:15
Iraq	21,000	140,000	1:6

The situation in Iraq is also a more dangerous environment than the one in which the U.S. military operated in during most of the 1990s. The level of danger changes the appearance of some privately provided services, such as the private provision of security to U.S. government facilities and personnel overseas. Providing security for buildings or people in the midst of an insurgency requires contractors to be better armed, have different equipment, and develop different strategies. These differences make “guards” look much more like soldiers. Similarly, many logistics-support functions, and even training, took on a different character as the insurgency heated up. Transport, facility security, and other seemingly mundane tasks became much more dangerous. What is new in Iraq, then, is not just the numbers of contractors, but also the job environment.

Developments in the private security industry have also affected the U.S. experience in Iraq. During the initial growth of this industry in the 1990s, many U.S. companies staffed contracts with retired military and police personnel from the

⁷ See Thomas McNaugher, “The Army and Operations Other than War, in Don M. Snider and Gayle Watkins, eds., *The Future of the Army Profession* (McGraw Hill, 2002); and U.S. General Accounting Office, *Military Operations: DOD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854 (Washington, D.C.: July 19, 2004), p. 8.

⁸ The estimates for the Gulf War and Bosnia are from Katherine Peters, “Civilians at War,” *Government Executive*, July 1996. She also lists numbers of civilians deployed (5,200 in the Gulf War and 600–800 in Bosnia), citing “Pentagon records.” George Cahlink also gives 5,200 as the number of contractors deployed in the Gulf War, but claims that in the Balkans, the number rose to 12,000 while the number of troops fell to 9,000. See George Cahlink, “Army of Contractors,” *Government Executive*, February 2002. A number of issues make it hard to gauge the exact number of contractors supporting U.S. forces. The estimate for Iraq was derived from the GAO’s report that contracts in Iraq constitute work essentially 15 times the volume of work in the Balkans. But that, too, is highly problematic. If contractors are doing different kinds of jobs, the numbers required per dollar spent may be very different. See U.S. GAO, *Military Operations: DOD’s Extensive Use of Logistics Support*, p. 44. This estimate is based on contracts with DoD, but not with the UN, the CPA, the U.S. State Department, Justice Department, U.S. AID, the interim Iraq government, or any number of NGOs and private companies. In May 2003, Representative Tom Davis (R-Va.) claimed that 8,700 contractor employees were deployed to the Middle East in support of Operation Iraqi Freedom. See *Civil Service and National Security Personnel Improvement Act: Hearing on HR 1836 Before the House Government Reform Committee*, 108th Congress 2003.

United States; other companies grew from Britain, South Africa, and elsewhere, with somewhat distinctive qualities and niches. In Iraq, the industry has demonstrated its deepening competitive and transnational nature. Big contracts have not been reserved for U.S. companies staffed with U.S. personnel; rather, a wide variety of PSCs—diverse in experience, size, age, and nationality—have all competed for and won U.S. government contracts. Established American firms such as Halliburton, DynCorp, and Kroll are joined by U.S. upstart firms like Triple Canopy and Custer Battles. Similarly, established British firms such as ArmorGroup and Control Risks Group sit side by side with new companies such as Olive Security, Global Risk Strategies, and Aegis; and PSCs from a wide array of additional countries (France, Saudi Arabia, South Africa, etc.) have also won contracts. Increasingly these PSCs recruit not only retired military and police personnel from their home country, but people with similar skills from all over the world. Erinys boasts employees from South Africa; Global Risk Strategies brought in some 500 troops from Fiji that had served in East Timor or the Middle East; and Blackwater, Triple Canopy, and others have recruited in Chile, El Salvador, and elsewhere in Latin America. Finally, many of these companies are also recruiting Iraqis or joining with upstart security companies in Iraq. Indeed, thanks to U.S. contracts, Iraq now has its own thriving private-security industry.

Benefits of Private Security

Surge and Flexibility

The use of PSCs offers many benefits. First, PSCs can provide “surge” capacity to field additional forces as the insurgency mounted without the political and bureaucratic lead time required for mobilizing (or demobilizing) military forces. They can recruit personnel quickly, offering them two to four times what they could earn at home, and field forces for (potentially) short periods of time—generally contracting their services for six months at a time or less. Once dangers pass or local forces are trained and deployed, contracts can lapse. Thus the United States can field forces quickly and without the risk of being left with too large a force once dangers have passed.

Specialized Skills

PSCs can also field forces with specialized skills. These companies recruit from databases supplemented by advertisements, making it easier to hire people with particular experience—like retired MPs, civil affairs officers, special operations forces, or former PSC team members—that closely match particular needs. Many of the PSCs such as Blackwater and Triple Canopy boast databases full of personnel with special operations backgrounds, just the kind of experience required for personal security details. If these databases run low, PSCs can recruit—in the United States or abroad—for appropriate staff. PSCs can also recruit personnel with

particular skills—in language or area expertise. For example, Titan was able to recruit translators for use in Iraqi prisons. It is much harder for national military organizations to find those kinds of specific skills and experience and deploy them to a particular arena at a particular time.

Decreased Political Costs

The government sees sending private security forces who are working for profit, of their own choice, overseas as requiring less political mobilization than sending national troops who are serving their country. In that sense, it is politically less costly to deploy contractors. Many have suggested as much in their arguments for why private forces should be considered for peacekeeping missions. For those worried that the United States and its allies would not be able to sustain a long-term commitment to nation-building in Iraq and that the more troops deployed, the harder to maintain the commitment, the use of PSCs not only can bolster security in the short-run, but can do so in a way that encourages (or does not discourage) staying power.⁹

Risks of Private Security

Along with the important benefits identified above, however, there are also significant costs and risks. These can be divided into two categories: short-term, practical problems such as cost, reliability, integration, and legal uncertainty; and longer-term political risks including those to the military profession and democratic restraint.

Practical Problems

Cost. The Iraqi experience is only the latest to suggest that PSCs are sometimes more expensive than military forces, particularly when the environment is uncertain or dangerous. The rise in cost is due to several factors. When uncertainty or danger is involved, high government officials are most interested in getting appropriate people deployed to perform crucial services. This leads them to be less concerned with cost and less likely to engender competition.¹⁰ Also, when the situation is uncertain, the government cannot specify clearly what the contractor must do. Costs mount as the situation in the field becomes clearer and requires changes in the contract. In addition, cost is increased by market pressures. In their

⁹ Doug Brooks, “Write a Cheque, End a War,” *Conflict Trends*, July 2000; Peter Singer, “Peacekeepers, Inc.,” *Policy Review*, June 2003, pp. 59-61; interviews, July 2004.

¹⁰ Indeed, in a study of Pentagon contracting from fiscal years 1998–2003, the Center for Public Integrity found that only 40% of contracts were conducted under what it terms “full and open competition.” That number falls to 36% if one deducts those full and open competitions that only attracted one bidder. See “Outsourcing the Pentagon,” Sept. 29, 2004, at www.publicintegrity.org.

recruiting, PSCs must deal with supply and demand, which can drive up prices just when the needs are the most desperate. For example, in Iraq the huge demand for security services as the insurgency mounted created a seller's market in summer 2003, when PSC personnel working in Colombia reported being offered three times their salary to move to Iraq.¹¹ Also, while insurance rates for military personnel are set, PSCs must pay a premium when they deploy personnel to risky areas. Again, in Iraq, insurance rates soared as the conflict became more dangerous. Some have estimated that Defense Department contractors in Iraq paid \$0.40 of every dollar for insurance. The CPA's Inspector General reported in March 2004 that the cost of personal security and the cost and availability of insurance was one of the key potential risk areas. Savvy contractors will ensure that additional costs incurred due to increases in risk are passed on to the government through cost-plus contracting.¹²

There is abundant anecdotal evidence about inflated salaries for private security personnel in Iraq. Some press accounts in spring 2004 put private salaries for security details at \$1,000/day or more.¹³ Widespread reporting suggested that annual salaries for retired American Special Forces personnel working for PSCs ranged from \$100,000–200,000/year. One contractor claimed to be making \$174,000 a year in Iraq, more than four times what he was making after 27 years in the service.¹⁴ Given that senior enlisted members of the Army Green Berets or Navy Seals made about \$50,000 in base pay and PSCs in Iraq and Afghanistan were paying these retirees salaries ranging from \$100,000–200,000/year, this contractor's story fit with the general story.¹⁵ Salaries for other kinds of jobs are different (and generally somewhat lower, in the \$75,000–150,000 range) but still double or more what a comparable military salary would be.

This evidence does not translate easily into claims about general cost overruns, though. Many PSCs recruit both internationally and locally (among Iraqis), both of which are less expensive than recruits from Britain or the United States. One *Economist* article suggested in Spring 2004 that Iraqis got \$150/month, third-country nationals made 10–20 times as much, and “internationals” as much as 100

¹¹ Personal email correspondence, June 2003.

¹² “Iraq Killings Likely to Increase Insurance Rates: Coverage is Becoming Biggest Cost for Foreign Civilian Contractors,” *San Diego Union Tribune*, Apr. 1, 2004; and CPA-IG Mar. 30, 2004 Report to Congress.

¹³ British newspapers in particular suggest that retired SAS make £1,000/day. See Kat Cooney, “Ex-Servicemen Cash in on War-Torn Iraq,” *Financial Times*, Apr. 12, 2004.

¹⁴ He did not specify his rank or branch but was working to provide protection for USA Environmental personnel, which were hired by the U.S. Army Corps of Engineers to get rid of captured Iraqi Army military supplies. Barry Lando, “Soldiers and Fortune,” www.tompaine.com, Apr. 16, 2004.

¹⁵ Eric Schmitt and Tom Shanker, “Big Pay Luring Military's Elite to Private Jobs,” *New York Times*, Mar. 30, 2004. In March 2005 an executive at Blackwater reported that retired American personnel working for them in Iraq were still making \$450-850/day. With weekends off and a two week unpaid vacation, that is still within the \$100,000–200,000 ballpark. See, Richard Lardner, “Senior Soldiers in Special Ops Being Lured Away,” *Tampa Tribune*, Mar. 21, 2005.

times as much.¹⁶ South Africans often pull in the high end of the range, Fijians the low end, but either way, hiring from this group is less costly than hiring Americans. Iraqis are obviously least expensive, but also often least skilled. Also, the cost of a soldier is only partly salary. Soldiers get deployment bonuses and other cash compensation, which increases their cost by an average of 30 percent. They also receive in-kind compensation, which increases their cost by another 30 percent.¹⁷

Moreover, when a task is contracted for, the contractor often has the leeway to use fewer people by providing a service in a different way than U.S. military—either Active Duty or Reserve—would. One contractor tells the story of taking over a base from U.S. soldiers. The base was being run by over 150 military personnel, but the contractor claims to have provided the same service with only 26. Even if each of the 26 were making four times the salary of military personnel, there would still be cost savings. Of course, one would want to make sure that in providing a service in a different way, the contractor really was giving the U.S. government what it wants, but flexibility to do a job differently is a crucial part of the logic for contracting in the first place.

All of this makes salary comparisons only one piece of the data required to evaluate relative cost. Salary comparisons are important, however, for morale issues as well as for retention. Countless interviews have suggested that when military personnel operate side by side with contractors doing similar jobs, the disparity in salary is detrimental to military morale. Furthermore, both the United States and Britain have reported difficulties with retention since 2003, and many in the military have attributed the problems to the opportunities offered in the private sector.¹⁸

In general, then, while the private provision of some services can promise cost savings when there is a competitive market and the right supervision, a variety of factors increase cost as environments become more dangerous. Cost savings will only occur if the contractor does a job differently, and the government should insure that the contractor's innovations fit well with U.S. security goals. Finally, the government should include the "cost" of PSCs' impact on retention into its overall assessment of cost.

¹⁶ "The Baghdad Room," *Economist*, Mar. 25, 2004.

¹⁷ Carla Tighe Murray, "Transforming In-kind Compensation and Benefits," in Cindy Williams, ed., *Filling the Ranks: Transforming the U.S. Military Personnel System* (Cambridge: MIT Press, 2004), p. 198. These calculations are much more complicated for reserve force personnel. In 2003 a captain/lieutenant with six years' service made about \$8,546 (plus retirement points) if he was not called up. Upon call-up, he would have been eligible for non-taxable basic allowance for housing (which varies by rank, location and whether he has dependents) and pay commensurate with the duty he is carrying out (for instance, if he were deployed in Iraq he would receive hazard-duty incentive pay). See Glen A. Gotz, "Restructuring Reserve Compensation," in *ibid.*, pp. 171–4.

¹⁸ "Many Elite Soldiers Leave for Better Pay," *AP*, July 21, 2004; Megan Scully and Gina Cavallaro, "Special Forces Brain Drain," *Defense News*, May 3, 2004; Brian Brady, "Hundreds of Army Officers Resign to Cash in on Iraqi Security Boom," *The Scotsman*, Apr. 25, 2004; Lardiner, "Senior Soldiers in Special Ops Being Lured Off?"; Miguel Navrot, "Airmen Offered \$150,000 Bonuses," *Albuquerque Journal*, Apr. 5, 2005; "The Baghdad Room".



A private security guard stands at the front entrance of the American Embassy building in Baghdad, June 2004. (AP Photo/Scott Nelson, Pool)

Reliability. If the government tries to minimize costs, it could forgo quality in the service provided by hiring a company that will deploy fewer personnel or personnel with fewer skills. This could cause PSCs to field personnel with substandard skills or professionalism, both of which could exacerbate the already significant worry about reliability. There is nothing compelling contractors to remain on the battlefield once bullets begin to fly. This concern has been raised time and again as the U.S. use of contractors has increased.¹⁹ In Iraq, there were periodic reports that supply was inadequate, both during the conflict and particularly as the insurgency accelerated in spring/summer 2003, because civilian contractors failed to show up. According to Lt. General Charles S. Mahan Jr., the Army's senior logistics officer, "[w]e thought we could depend on industry to perform these kinds of functions . . . [but it got] harder and harder to get [them] to go in harm's way."²⁰ There were also many reports of stress in the fielding of contractors for a variety of tasks as the insurgency mounted—the environment was suddenly more dangerous than had been anticipated and the additional dangers spurred demand for more security contractors, which further tightened the labor pool.

On the other hand, there were also reports of heroic action by contractors that went well beyond the mere fulfillment of their contracts, and over time PSCs were able to replace those who wanted to leave with others.²¹ Industry representatives and advocates of private services point to the eventual equilibrium and claim that there was no significant disruption of service. Others in the military or in Congress have argued that support services cannot be subject to any disruption whatsoever. Clearly this is something Washington must come to terms with. It should either be willing to bear the increased risk that contracted security personnel will be hard to field and/or refuse to do their work, or it should choose to deploy contractors only when the dangers that might incite such refusals are low.

Integration. Contractors also may impede integrated responses to dangerous situations. The most important concern is about rules of engagement and shared knowledge of armed movements, knowledge about both of which is crucial to missions' safety and success. In Iraq, uncertainty about these matters has troubled some active-duty military personnel. One coalition military official in Baghdad

¹⁹ Zamparelli, "What Have We Signed up for?"

²⁰ See "Outsourcing War," *Business Week*, Sept. 15, 2003; David Wood, "Some of Army's Civilian Contractors are No-Shows in Iraq," Newhouse News Service 31 July 2003; this was also referenced in a draft of what became, *On Point: the U.S. Army in Operation Iraqi Freedom* (Office of the Chief of Staff U.S. Army, Fort Leavenworth: Combat Institute Press, 2004). In the final version of the document, difficulties with logistics are mentioned but there is no mention of contractors.

²¹ See, e.g., Dana Priest, "Private Guards Repel Attack on U.S. Headquarters," *Washington Post*, Apr. 6, 2004.

asked, “What are their rules of engagement? Are they civilian or are they military? I don’t know who they are.”²²

Less dramatic but equally difficult issues have arisen around problems with supervising and changing contracts in theater. Field commanders have no direct authority over contractors, but must rely upon the contracting officer. There were far too few contracting officers in Iraq. This is noted by the 2004 GAO report but most easily understood by anecdotes such as the difficulty of getting bases for the Iraqi Army up and running, with different contractors responsible for each, and widely varying capabilities from contractor to contractor.²³ Without a contracting officer, the field commanders had no authority to get a contractor to change plans to meet new requirements. Even more worrisome was the fact that the contracting officer charged with oversight for services delivered by CACI International, Inc. interrogators at Abu Ghraib prison was back in the United States.

Furthermore, effective contracts require coordination between different departments within the U.S. government, which has not always been forthcoming. For instance, Triple Canopy could not appropriately execute its contract with the State Department to protect State Department employees in Iraq with the requisite armed personnel, because the Office of Defense Trade Controls (also at the State Department) did not issue a license to export the required weapons.²⁴ The company was forced to choose between acquiring weapons illegally in Iraq or failing to be in compliance with the terms of its contract.

A number of potential solutions have been raised to these issues. One is to increase the number of contracting officers and/or to make these officers more sensitive to operational concerns. The second is to commission or otherwise fold PSC personnel into the force. Britain has a “sponsored reserve” program that activates some employees as servicemen in operational settings, making them subject to command and control in the field.²⁵ The third is to devise more effective institutional coordination for the increasing number of armed private security personnel. The latter route is currently being pursued both in the field in Iraq and in the Pentagon given congressional guidance in the 2005 Defense Appropriation Act.²⁶

²² Thomas Catan and Stephen Fidler, “With post-war instability still a pressing concern, western companies and government agencies are awarding big contracts to ex-military personnel with expertise in providing security,” *Financial Times*, Sept. 30, 2003.

²³ See U.S. GAO, *Military Operations: DOD’s Extensive Use of Logistics Support*, p. 4. Interview, Col TX Hammes, Washington, D.C., July 8, 2004.

²⁴ Interview, Joe Mayo, Triple Canopy, Washington, D.C., Oct. 6, 2004.

²⁵ The Reserve Forces Act 1996, The British Army, at www.armedforces.co.uk. See also discussion in Vernon, “Battlefield Contractors,” p. 421.

²⁶ In response to the congressional request, the DoD issued new instructions for contractor personnel authorized to accompany U.S. the armed forces in October 2005. See DoD, “Instruction,” No. 3020.41, Oct. 3, 2005. The instruction gives much more authority over the use of contractors to the combatant commanders.

Finding the right institutional fix, however, is likely to be challenging. Increasing the number of contracting officers is costly, takes time, and may be hard to justify given increasing needs in many other areas. Any arrangement to make private personnel subject to command and control in the field has been fiercely resisted by PSCs, who feel that such a move may allow a commander to force them into offensive action, blur the public/private distinction, and potentially damage the company's reputation. Any choice will also have implications for the ethical and legal issues raised below.

Legal uncertainty. The lack of clarity surrounding the legal status of contractors poses concerns about their legal accountability. Unlike military personnel, private security personnel are not subject to the Uniformed Code of Military Justice (UCMJ) unless there is a formal declaration of war. Depending primarily on the Status of Forces Agreement (SOFA) between the United States and the country in which they are serving, contractors may be subject to the laws of the territory in which they operate. In situations where the local government is not functioning effectively, this may lead to less than satisfactory outcomes. The oft-cited example is that when DynCorp employees working for the United States or UN were implicated in prostitution rings in Bosnia, they were simply fired and never prosecuted.²⁷

Even where American contractors are subject to U.S. law, the law that applies to contractors is riddled with uncertainty. The Military Extraterritorial Jurisdiction Act (MEJA) was passed in 2000, its impetus not the prosecution of PSC personnel but a constituent complaint to Senator Jeff Sessions (R-Ala.) about an unpunished crime by a serviceperson's son on a U.S. base in Germany. It has been heralded as a tool for prosecuting PSCs because it gives U.S. federal courts legal authority over persons who commit criminal acts abroad while under contract with the U.S. government.²⁸ MEJA is relatively untested, however. Its first case, *United States v. Latasha Arnt*, only went to trial in October 2004.²⁹ Also, it only addresses criminal action, not the many command-and-control issues tackled by the UCMJ. Even on criminal issues, the legal liabilities contractors face under MEJA are quite different than those faced by the military. Contractors were implicated as ringleaders

²⁷ Patricia O'Meara Kelly, "Broken Wings," *Insight Magazine*, Apr. 29, 2002; Robert Capps, "Outside the Law," Salon.com, June 26, 2002.

²⁸ U.S. Code Title 18.II.212. For a discussion of the law's inception, see Glen Schmitt, "Closing the Gap in Criminal Jurisdiction Over Civilians Accompanying the Armed Forces Abroad – A First Person Account of the Creation of the Military Extraterritorial Jurisdiction Act of 2000," *Catholic University Law Review*, Fall 2001. The Defense Appropriations Act of 2005 extended MEJA from those under contract with the DoD to persons under contract to all government agencies. It also extended the jurisdiction of the federal anti-torture statute to include places like Guantanamo and Abu Ghraib

²⁹ Philip Carter, "MEJA Gets its First at Bat," Oct. 12, 2004, at www.intel-dump.com.

in the abuses committed at Abu Ghraib, but military police implicated in the same report were already court-martialed before contractors were even charged.³⁰

The Patriot Act passed after 9/11 gives U.S. federal courts jurisdiction over crimes involving U.S. citizens on property designated for use by the U.S. government. In 2004, a contractor working for the CIA was charged under the Patriot Act for abuse of a prisoner in Afghanistan that resulted in the prisoner's death.³¹ Like MEJA, however, the Patriot Act is new and untested; it can only be used for criminal acts and thus holds PSC personnel to different standards than those to which military personnel are held.

PSCs' unclear legal status extends to their status under international law. The Geneva Conventions stipulate three categories of persons: combatants, non-combatants, and civilians. Contractors do not fit neatly into these categories. Many are concerned that this "in-between" status may lead contractors to be denied prisoner of war status if captured by the enemy.³² Also, if seen to be taking a direct part in hostilities, contractors may be targeted by enemy forces or even tried as war criminals, given that it is unlawful for private individuals to wage war.³³ Washington has been inconsistent on this point. Despite repeated U.S. expressions of concern that captured contractors should be given POW status, in February 2003, when the FARC captured three Northrup Grumman contractors working for the U.S. military in Colombia, Washington maintained that they were hostages, not POWs.³⁴

In Iraq, another issue has been the kind of coalition support to which contractors should have access. Just one day after five Hart Group employees were involved in intense fighting and their position was overrun in Kut—the same day that eight Blackwater security personnel repelled an attack by hundreds of Iraqi insurgents on U.S. headquarters in Najaf—coalition forces did not come to their rescue, and one Hart employee bled to death on the top of a building.³⁵ Contractors working in personal security details are also concerned that without access to U.S. and coalition intelligence, they are less capable of doing their jobs and subject to undue dangers.

Thus, beyond the purely legal issues, the use of contractors in these situations has also opened an ethical dilemma about the responsibility of a

³⁰ See Seymour M. Hersh, "Torture at Abu Ghraib," *New Yorker*, May 6, 2004; and Major General Antonio M. Taguba, "Article 15-6 Investigation of the 800th Military Police Brigade," report to U.S. Central Command, March 2004.

³¹ "CIA Contractor Indicted for Assaulting Detainee Held at U.S. Base in Afghanistan," Press Release, U.S. Department of Justice, June 17, 2004.

³² Zamparelli, "What have we signed up for?" The 2005 DoD Instruction claims that contractors, so long as they are issued appropriate identification cards, are entitled to prisoner-of-war status. See DoDI 3020.41, 6.1.1.

³³ Vernon, "Battlefield Contractors."

³⁴ Kelley Beaucar Vlahos, "War on Terror in Colombia Largely Unnoticed," FoxNews.com, Sept. 29, 2003.

³⁵ Priest, "Private Guards Repel Attack"; Jamie Wilson, "Private Security firms call for more firepower in combat zone," *The Guardian*, Apr. 17, 2004.

government to those fighting for pay, not for service—especially when the lines between these two groups are not so bright.³⁶ Is it ethical for the government to have different obligations to different categories of service personnel?

Political Risks

Military profession. Contracting out commits the United States to a pattern that is hard to reverse and may undermine the public military profession. While contractors can quickly provide personnel, they lack long military experience.³⁷ Moreover, the lead time to reverse decisions to contract out is much longer than the lead time to make them in the first place. The blurring of lines between what soldiers do and what private security personnel do may reduce the pressure for military innovation. Costly changes may be unattractive and outsourcing may be seen as a way to avoid them. This could erode the fit between what the United States wants to accomplish abroad and the military’s professional capabilities. It also may undermine the military’s professional ethos. Opportunities in the private sector are already having an impact on retention, and some fear that as the military is forced to compete with the private sector, it will lose unique and important professional qualities that are crucial to successful security operations in a democratic setting.

Democratic restraint. The very flexibility that makes PSCs so beneficial also redistributes power within the United States, empowering the executive over Congress, reducing transparency, and making it easier for commercially interested actors to impact policy. In the short run, reductions in transparency may undermine the capacity to hold politicians accountable for their decisions. All of these factors taken together, though, lowers the political costs of action and enhances the likelihood of a resort to force. While lower political costs may be beneficial in individual instances, they also can reduce the restraint typical among democratic polities. Some view democratic restraint as a benefit in itself, and it has also been associated with greater mutual trust in diplomatic relations, fewer conflicts, and increased military effectiveness.³⁸ To the degree that private security options make it easier to take quick action, these benefits may decline, too.

Managing Trade-offs

There is no way to gain the flexibility of contracting without giving up some of the certainty that accompanies military forces, and the same easing of political

³⁶ The 2005 DoDI does specify some resuscitative care at military treatment facilities for contractors in emergencies where loss of life, limb, or eyesight could occur. See DoDI 3020.41, 4.8.2.

³⁷ Lt Col. Lourdes A Castillo, USAF, “Waging War With Civilians: Asking the Unanswered Questions,” *Aerospace Power Journal*, Fall 2000.

³⁸ Charles Lipson, *Reliable Partners* (Princeton University Press, 2003); Dan Reiter and Allan Stam, *Democracies at War* (Princeton University Press, 2002).

costs that makes private security attractive to those eager to take military action also allows the United States to take action that is not widely agreed upon. How the tradeoffs between these benefits and risks are managed has important implications, not only for U.S. policy and military effectiveness, but also for U.S. foreign relations and global security more generally. A U.S. policy to maximize surge, flexibility, and the political will to use force abroad with the increasing use of PSCs would threaten to erode integration, reliability, and professional capacities in the U.S. force, as well as the legal and ethical norms that surround modern military forces and the relations between modern nation-states. An attempt to minimize these risks and completely roll back the use of PSCs, though, would impose either tremendous political costs, as the United States would need to ramp up recruiting and reorganize military forces to provide the wide array of security services now provided by the private sector, or a complete rethinking of U.S. policy, to either scale back international commitments or increase cooperation with allies to share agreed-upon international burdens.³⁹

Despite hand-wringing about the need to bring private security under control, U.S. policymakers seem likely to continue to choose this tool, even if it is suboptimal, rather than scaling back action to what can be accomplished by U.S. forces alone or reinvigorating public or multilateral institutions. Transnational groups such as human rights organizations, too, eager to ease the international community's ability to intervene, also show increasing interest in private security.⁴⁰

These "consumers" should at least seek to manage the most pressing practical problems presented by private security. U.S. policymakers should take steps to evaluate costs and ease strains on reliability and integration.⁴¹ Given the nature of the industry and the location where these services are provided, steps to remedy legal uncertainties will require international cooperation. The political risks will be harder to deal with. The U.S. government needs to carefully consider the long-term implications of private security for the military's professional ethos, the accountability of elected officials, and the future of U.S. foreign relations; and all private-security consumers should be creative in imagining mechanisms through which to extend and enforce professional norms among private security personnel.

³⁹ For an argument that the latter would be a good idea, see Barry Posen, "Command of the Commons," *International Security*, Summer 2003. For a claim that the U.S. may not have the political will to do what it needs to on the global stage, see Thomas Barnett, *The Pentagon's New Map* (New York: Putnam, 2004).

⁴⁰ David Shearer, *Private Armies and Military Intervention* (Adelphi Paper 316, Oxford University Press, 1998). See also Nicholas Thompson, "Adopt-a-Peacekeeper," *Boston Globe*, Mar. 6, 2005, on Swarthmore students' Genocide Intervention Network.

⁴¹ The 2005 DoD Instruction is a modest step in this direction. See DoDI 3020.41, 4.8.2.