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Abstract—Despite their well-documented and unsavory reputation, private military security companies (PMSCs) remain critical to U.S. foreign policy. Hard-won reform has emerged concurrently with greater U.S. dependence on private military security contractors. Current American policy reflects accumulating experience but is hampered by uneven application. Iterative reform has not produced a strategic vision for PMSCs within American policy. Moreover, what satisfies the rule of law in Washington is distinct from the operational reality in conflict zones scattered around the world. Despite these obstacles, contractors and policy makers will continue to integrate a growing body of policy into the PMSC industry. The stakes involved are neither theoretical nor rhetorical, but grounded in the simple need for practicality and survival.

Introduction

Private Military Security Companies have something of an unsavory reputation in the context of U.S. national security policy; a great deal of that stigma has been well earned. In public forums and as part of official investigations, contractors have become synonymous with waste, fraud, and abuse. As late as 2011, the Commission on Wartime Contracting in Iraq and Afghanistan noted that poor planning, management

* The views expressed in this article are those of the author, and do not necessarily reflect those of the U.S. Department of State or the U.S. Government.
Yet the United States has been dependent on these companies for almost a generation and remains so today. When the Cold War concluded in the early 1990s, policy makers accepted the logic of private sector efficiencies applied to national defense. Military contractors offered the benefit of improving military combat capability—the so-called “tooth-to-tail ratio” prized by the Pentagon.

Contemporary scholarship has examined many of the existing and potential failures of private military security contractors. Numerous authors have successfully separated the modern “mercenary” from more traditional definitions of the term. Other scholars have addressed the legal implications of regulating military contractors, both as a function of individual national policies and international law. Overall, this scholarship has done more to illustrate the potential risks involving military contractors than to outline their successful contributions to U.S. power in the 21st century.

This article will challenge these characterizations. Significant reform has emerged concurrently with greater U.S. dependence on private military security companies. Many PMSCs became “self-regulating dogs of war” in order to retain market viability. The regulatory state has also adapted to policy failures. Well-publicized crimes committed by companies such as the now-defunct Blackwater periodically mobilize lawmakers to revise important components of U.S. policy. But it is at the lower echelons of the U.S. defense and security establishment that more effective reforms have appeared, particularly since the 2003 invasion of Iraq. These ongoing modifications to good practices reflect many hard-earned lessons learned over more than a decade of war in the Middle East and Southwest Asia.

The iterative process of PMSC regulation raises questions about the effectiveness of reforms. As the 2012 attack on the U.S. consulate in Benghazi proved, terrorists and other asymmetrical threats have adapted their methods to bypass improvements to U.S.
security policies and exploit ongoing vulnerabilities. In another important sense, the Benghazi attack revealed a number of ongoing deficiencies with U.S. security policies. Today, policy in the United States is far more deliberate in its regulation of PMSCs, but the question remains whether operational effectiveness has increased or whether companies merely comply with the letter of the law. At the same time, the Iraq war may have encouraged operational reforms, but the extent to which they percolated upward to enhance cooperation between policy makers and their PMSC industry counterparts remains unclear.

The change in administration — and in U.S. military activity abroad — necessitates further questions about private security's place in the future of U.S. strategy. Where the Bush administration improvised to address mistakes made in Iraq and Afghanistan, Barack Obama's policy team had the benefit of hindsight regarding PMSCs and U.S. national security abroad. Current U.S. policy appears intent on military retrenchment overseas and shifting security responsibilities from the Pentagon to the State Department. As has been the case in the past, private contractors are at the forefront of this transition, continually expanding their portfolio as security for an increasing array of U.S. activity abroad. Are contemporary PMSCs part of a larger strategic conversation that addresses threats to U.S. interests abroad and an appropriate portfolio of responses to these challenges?

Private Security in the Postmodern Era

Since the conclusion of the Cold War, accumulating threats and declining resources have defined U.S. national security policy. Following the death of the Soviet Union in 1991 was a proliferation of “sub state actors,” tribes, ethnic groups, and religious factions that followed none of the predictable rules of conventional warfare. Concurrently, the United States, like many of its former Cold War contemporaries, exploited the post-1991 “peace dividend” by shedding billions of dollars in defense commitments. Although politically popular, these reductions trimmed more than institutional fat, cutting deeply into operational muscle.

As the United States and its allies soon discovered, security remained an ongoing and expanding need throughout the 1990s. Economic opportunities flourished in the new world order. Many of these, however, were located in nations that were either crumbling (Sudan) or challenged by endemic instability (Colombia). Threatened by rising crime rates and terrorist attacks, corporations increasingly militarized their operations overseas. Bodyguards and armed vehicle escorts became a ubiquitous feature of new age capitalism. Moreover, as the victors of the Cold War celebrated, they also had to address some of its consequences. Humanitarian crises and the imperative to aid the weak and endangered ethnic minorities that reemerged from the shadow of superpower confrontation took center stage in the 1990s. Operation Provide Comfort, launched in April 1991 to assist Kurds displaced and threatened by Iraq, began a long chain of interventions in Africa, Europe, and Asia.

Private military contractors proved to be extremely useful in filling multiplying gaps between need and capability. Advocates within the Pentagon argued that contractors
were a “force multiplier,” following the fairly straightforward logic that, by delegating logistical tasks to the private sector, the U.S. military could subsequently focus upon combat operations. Explicit in this logic was the need to “transform” and “revitalize” military defense planning in ways that would conform to free market principles.6

Before the September 11th attacks on the United States, contractors primarily earned their money in support capacities. When Kellog, Brown & Root (KBR) won the first Logistics Civil Augmentation contract in 1992, it was primarily responsible for “life support” such as dining facilities and laundry service. As the 1990s proceeded, the line separating logistics from combat began to blur. When the 1st Armored Division deployed to the Balkans in 1995 as part of Task Force Eagle, it received overhead imagery from the private company AirScan.7 In January 1996, the Croat government contracted Military Professional Resources Inc. (MPRI) to conduct its Long Range Management Program, essentially allowing the company to completely reconstruct its military doctrine from old Warsaw Pact standards to those more in line with NATO and the United States.8

After the September 11th attacks, U.S. dependency on private contractors grew, but regulatory standards failed to keep pace with their rapidly expanding use. First, U.S. policy makers applied force multiplication on an enormous scale, introducing private corporations into support operations on a theater level. When the United States launched Operation Iraqi Freedom in 2003, KBR took responsibility for housing, dining facilities, bath and shower units, janitorial services, recreational facilities, water distribution, electrical work, carpentry, construction, and virtually every remaining non-combat effort in the country. Overall, the estimated value of KBR contracts for operations in Iraq and Afghanistan between 2002 and 2004 was $10.8 billion. By 2009, the total value of KBR contracts with the U.S. military exceeded $30 billion.9

A second trend was the increasingly difficult distinction between private military contractors and conventional forces. In extremely dangerous environments like Iraq and Afghanistan, civilian companies attempting to conduct military support operations and “nation building” projects (e.g., demining, restoration of electrical power, and oil refining) without protection from the host nation or the United States quickly reverted to acquiring or creating their own security forces.

U.S. regulatory standards failed to keep pace with the scale and complexity of these events. Prior to September 2001, two laws established federal authority over contractors: the Military Extraterritorial Jurisdiction Act (2000) and the Special Maritime and Territorial Jurisdiction provisions contained in the U.S. code of federal regulations.10 An additional strata of laws generally complied with existing U.S. statutes as well as international standards: the Anti-Torture Statute (18 U.S. Code, Section 2340A), the Genocide Statute (18 USC, Section 1091), the Walker Act (18 USC, Section 960),
and the War Crimes Act (18 USC, Section 2441). The primary focus of both sets of regulations was jurisdiction and punishment for crimes committed by private military contractors regardless of their combat or logistical specialty.

Although these regulations were intended to be comprehensive, they contained serious gaps. U.S. policy largely failed to comprehensively address the fundamental standards—recruiting, training, discipline, and equipment—affecting PMSCs before and during their deployment. Similarly, U.S. policy prior to September 11th and for much of the so-called “global war on terror” offered little guidance with respect to day-to-day operations. In many cases, regulatory responsibility fell to individual contract officers assigned to monitor specific tasks performed by private companies in the field. While cost containment was an important feature of the contract process, these contract officers lacked effective methods to measure performance or remediate poorly performing companies. Consequently, when the law or federal regulations did apply, it was normally for punishment of bad acts and crimes after the fact.

These gaps were the product of a larger failure to integrate private military contractors into U.S. military planning. Even though the U.S. military came to rely upon the private sector for logistical and combat support functions, it failed to effectively manage overseas operations. In fact, Defense Department control over military contractors actually atrophied in the years following the September 11th attacks. The 2007 Gansler Commission Report noted that general officers were eliminated from the contracting support field in 1998 and not replaced nine years later. Despite a rapid increase in workload as result of “contingency operations” that began with Operation Enduring Freedom in Afghanistan, inadequate staffing remained a serious problem for U.S. military operations. As will be discussed below, during the 2003 invasion of Iraq, the U.S. military was poorly prepared to either include contractors into operational plans or monitor the burgeoning numbers of companies active in the country.

Private Security and Operation Iraqi Freedom

Private military contractors were essential to Operation Iraqi Freedom. When coalition forces entered the country in March 2003, the conventional wisdom governing “rapid decisive operations” assumed that private companies freed U.S. forces to exclusively concentrate on their combat missions. The unforeseen results of poor planning, however, very quickly transformed reliance to outright dependence as stability collapsed in the aftermath of the invasion.

Coalition victory did not account for the absence of basic public services, particularly police, fire, water, and electrical power. The absence of adequate infrastructure affected both the Iraqis’ quality of life and the capability of coalition occupation forces. As it had in past deployments, the private sector filled the vacuum. By July 2007, there were 190,000 contractors of all types in Iraq, compared to 160,000 U.S. troops.

Private contracting also extended beyond infrastructure projects. In the early phases of the Iraq war, the United States relied on armed private contractors to close the gap between multiplying security threats and military capabilities on the ground. The rapid increase in PMSCs reflected the dramatic nature of the problem. Between 2003 and
2007, the number of contractors specifically assigned to security duties grew from 10,000 to almost 30,000.16

As their numbers and involvement in combat operations grew, armed contractors experienced an array of difficulties in Iraq. Some of these were rooted in basic capability. At no point in the early stages of Iraqi occupation did PMSCs possess the same numbers, training, equipment, or firepower as U.S. military units. Similarly, the processes governing the recruitment and training of contractors varied significantly across the spectrum of companies in Iraq. Some were fully vetted; others were hired with little more than a handshake.

Private military corporations in general also became media magnets during the course of the conflict in Iraq. In part, this was because of the burgeoning number of companies active in the country and the seeming novelty presented by this updated version of the traditional “mercenary.” In another more important sense, contractors drew international attention because of their own scandalous actions. When the Abu Ghraib scandal broke in 2004, individuals working for the Titan Corporation and CACI were quickly implicated for their direct involvement in prisoner abuse.17 Friendly-fire incidents between PMSCs and regular forces also made the headlines. In May 2005, contractors employed by Zapata Engineering allegedly opened fire on U.S. Marine positions in Fallujah, resulting in their arrest and expulsion from the country.18 Public criticism peaked after the September 2007 Nisoor Square incident, when Blackwater security contractors allegedly killed seventeen Iraqi civilians.19

The problems produced by poor recruiting and vetting practices, inadequate equipment, friendly fire, or illegal acts were symptoms of much larger failures in U.S. policy. As Dale Herspring and other scholars note, after September 11th the civilian and military hierarchy in charge of the global war on terror was badly divided by personality conflict and institutional rivalry.20 Until Lieutenant General David Petraeus and Ambassador Ryan Crocker restored productive relations in 2007, contractors were consigned to the periphery of planning and operations.

These well-publicized problems overshadowed early efforts to mitigate the problems of military contracting in Iraq. In June 2004, Coalition Provisional Authority (CPA) Order Number 17, “Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq” made private military security contractors accountable to CPA regulations. That same month, the CPA issued its “Rules for the Use of Force” (RUF), a policy intended to govern contractors and coalition forces alike. The new rules set basic standards for use of deadly force under three conditions: (1) self-defense; (2) defense of persons specified in the PMSC contract; and (3) the prevention of “life threatening offenses against civilians.”21

While laudable in its intent, the RUF was open to interpretation in practice. For contractors and regular U.S. units, “self-defense” lacked specificity. For example, when a PMSC guarding a fixed facility received indirect fire from insurgents, they sometimes took it upon themselves to root out the threat at its source, a process that might require moving some distance from their base of operations. These types of initiatives often occurred with the full support of the U.S. military. A 2008 Congressional Budget Office
A report noted that local military commanders had discretion with respect to application of the RUF for armed contractors.\textsuperscript{22}

By the second year of the war, in response to increasing civilian casualties at the hands of PMSCs, the U.S. military tightened the procedures for reporting and investigating contractors. The policy reiterated earlier regulations that required armed contractors to be registered and licensed while operating in Iraq. Moreover, if an Iraqi civilian came to harm as a result of a PMSC action, the new rules were much more prescriptive. They required contractors to remain at the location of the incident to provide first aid and medical evacuation. The local military commander also had to file a situation report for each incident involving a weapons discharge. All of these actions were subject to a preliminary inquiry by the military unit in charge of the contractors.

In October 2005, Headquarters, Multi-National Corps-Iraq took the issue of regulating private military contractors in the other direction. Rather than address the aftermath of bad acts committed by PMSCs, the U.S. military focused instead on regulating their daily operations. Included in the list of prohibited behavior that the U.S. command deemed “essential to fostering U.S.-host nation relations and combined operations of U.S. and friendly forces,” was entrance into a mosque without proper cause or authorization, fraternization with the local population, and the personal possession of alcohol, narcotics, or pornography.”\textsuperscript{23}

The U.S. military also took steps to ensure the physical accountability of armed contractors operating in Iraq. Between 2004 and 2007, the U.S. Army contracted Aegis Specialist Risk Management to develop a system that could track every convoy escort and security team detail run by PMSCs. Centrally controlled in Baghdad and utilizing military GPS capability, the system would have provided real-time information on the whereabouts of thousands of armed contractors throughout the country.\textsuperscript{24} Again, actual practice diverged significantly from the Army’s plans. Compliance with some early reforms was entirely voluntary. Many contractors refused to participate, citing the need to protect proprietary information critical to their businesses.\textsuperscript{25}

Above and beyond CENTCOM and MNF-I Headquarters regulations were the individual PMSC contracts. These documents established the specific terms and conditions governing services provided by armed contractors to the U.S. government. Contracts articulated allowable types of weapons and ammunition, a critical component of combat capability. All PMSCs submitted “Staff Judge Advocate (SJA) Weapons Certification Packets” consisting of eleven forms, including Department of Defense Form 2760, a self-declaration that the individual was not prohibited from possessing a firearm under the terms of 18 USC 922(g)(9): EO 9397 (Lautenburg Act).
Most contracts also required PMSCs to regularly train their personnel while on the job. The U.S. government conducted quarterly audits to ensure company employees—American nationals, foreign expatriates, so-called “third country nationals,” and local Iraqis—were qualified with their assigned weapons and understood the current rules of engagement. The SJA Arming Packet went so far as to mandate that PMSCs submit the individual’s weapons zero target as proof that his assigned weapon was properly sighted.26

An obvious flaw in individual contracts was their assumption of good faith on the part of PMSCs. An obvious flaw in individual contracts was their assumption of good faith on the part of PMSCs, a proposition that was difficult to enforce in some cases. Prior to their deployment, for example, contracts commonly required PMSCs to conduct background checks on all employees, specifically for felony convictions or instances of domestic violence. Unfortunately, many companies were unwilling to pay the cost of due diligence for adequate criminal background investigations. As a result, PMSCs sometimes provided former felons, dishonorably discharged military personnel, and other individuals ineligible to possess a firearm in the United States, with state-of-the-art weaponry.27

By 2007, the accumulation of problems involving private armed contractors—punctuated by the deaths of Iraqi civilians at Nisoor Square—prompted sweeping reforms as to how the United States regulated PMSCs. An initial attempt came in the form of the Military Extraterritorial Jurisdiction Act (MEJA)’s Expansion and Enforcement Act (H.R. 2740) that made all contractors, regardless of their contracting agency, subject to prosecution in U.S. courts. Although the measure passed overwhelmingly in the House of Representatives, the Senate never adopted it.28

Concrete change finally came with an amendment to the 2007 Defense Authorization Act. Sponsored by Senator Lindsay Graham (R-SC), the revision placed all civilian and military contractors working for the federal government under the jurisdiction of the Uniform Code of Military Justice (UCMJ). Previously, this type of jurisdiction applied only when the country had officially declared war. Graham’s measure expanded the military’s domain to include a “contingency operation” such as the deployment of U.S. forces to Afghanistan and Iraq.29

The Departments of State and Defense also agreed at the end of 2007 to jointly implement core policies for the accountability, oversight, and discipline of armed contractors.30 Some portions of this effort were relatively simple. A State-Defense memorandum created a common list of terminology relevant to military activity in combat. The document defined what constituted an “imminent threat” or “hostile intent.” Other portions of the memo addressed basic prerequisites for contractors to carry arms.31 To improve PMSC “accountability and visibility,” State and Defense also agreed to build a “mutually agreeable common database” for overseas operations.32

A final major policy change came in 2008 with the Status of Forces Agreement (SOFA) between the United States and Iraq. Though the agreement primarily established a
timetable for U.S. military withdrawal, it also banned certain PMSCs—most notably, Blackwater—from the country and subjected remaining companies to Iraqi law for violations of policy and local statutes. Consequently, contractors providing special protective services for U.S. officials lost the limited immunity previously granted by the U.S. government in exchange for their services.

As the United States began its withdrawal from Iraq, PMSC regulation became increasingly elaborate and dedicated to closing holes left open by previous policies. Existing standards regarding arming, records-keeping, and training remained in place. In addition to quarterly audits and regular review of records, the Department of Defense also obliged contractors to report on “active, non-lethal countermeasures” employed by PMSCs in the course of their regular duties. New policy considered war zones to be areas where “enhanced coordination” was necessary. While the “Geographic Combatant Commander” did have local discretion to tailor “PSC (private security company) guidelines and procedures for the operational environment in their area of responsibility,” the relative operational freedom characterizing the early stages of the war was gone. In 2008, for example, the Coalition Munitions Clearance Program required contractors to maintain a continuous video record of their activities on missions.

Unfortunately, many of the reforms initiated as the Iraq war wound down were incomplete and hampered by a lack of cooperation between State and Defense. The U.S. Commission on Wartime Contracting in Iraq and Afghanistan noted that the U.S. military and Department of State maintained a separate contract management system for acquisitions, audits, and other routine logistical functions. It was not until 2010 that the State Department included a complete drug and alcohol prohibition policy as part of its Worldwide Protective Services contract, for example. The military, in contrast, proscribed this particular behavior as early as 2004. Institutional segregation interfered with the transfer of hard-won lessons from the Pentagon to civilian hands at Foggy Bottom. As the State Department took on an increasing array of security duties, this separation created unnecessary redundancies and avoidable mistakes that would come to plague American PMSCs in Afghanistan and Libya.

Private Military Security After Iraq

The 2008 election was an important milestone with respect to U.S. security policy and PMSCs in particular. By this point in time, it was abundantly clear that the logic of private sector efficiency applied to national security had lost its sheen. When Barack Obama rejected “the false choice between securing this nation and wasting billions of taxpayer dollars,” he spoke to a new conventional wisdom that treated private military companies more as a liability to future policy than an asset.

Yet despite this sentiment, it was equally clear that PMSCs were an increasingly important feature of U.S. foreign policy after 2008. This was due, in part, to U.S. military retrenchment. While U.S. forces flowed into Afghanistan between 2009 and 2012, new law mandated force restructuring. For the Army alone, this meant reducing its combat brigades from 45 to 33 by 2017. Consequently, the United States had far
fewer conventional military units to rely upon either to reinforce diplomatic initiatives or physically protect U.S. interests abroad.

Moreover, as conventional military forces shrunk, U.S. policy makers increasingly embraced the idea of a “diplomatic surge,” first in Iraq and, later, in numerous other hot spots. Shifting U.S. policy responsibilities from the Pentagon to the State Department was in part a carry-over from the Bush administration when U.S. forces withdrew from Iraq. Under the direction of the Obama White House, however, the diplomatic surge took on much more expanded form around the world. In Afghanistan, diplomatic officials undertook a series of new responsibilities centered on nation building, which included economic development, instruction in governance and the rule of law, internal reconciliation projects, and a host of other activities. Although these enterprises were dedicated to the “soft” or “non-kinetic” use of U.S. power, they were almost always conducted in extremely dangerous areas. In contrast to previous policy that required withdrawal from dangerous locations—Pakistan, South Sudan, Yemen, and Libya among many others—it became standard practice for U.S. foreign policy to upgrade its presence in hazardous areas of the world.

PMSCs were critical to restore “lost functionality” once the U.S. military relinquished its security responsibilities to the State Department. In a July 2010 briefing to the Commission on Wartime Contracting, State Department officials pointed out fourteen separate areas of concern, activities ranging from the recovery of wounded personnel and damaged vehicles to communications, explosive ordinance removal, and “PSC inspection and accountability services.” According to an April 2010 report by Ambassador Patrick Kennedy, Under Secretary of State for Management, the Diplomatic Security Service (DSS) was, “inadequate to the extreme challenges of Iraq.” These transitional problems in Iraq foretold the difficulties awaiting the State Department on a global scale.

To meet these many shortfalls, the Obama administration resorted to military contractors. In 2009, the administration awarded $485 million to eight companies providing security for the Americans remaining in Iraq. As U.S. forces began their phased withdrawal under the 2008 Status of Forces Agreement, private security contractors took up their duties, particularly as convoy escorts and bodyguards for U.S. civilian officials. Eventually, 11,162 armed private security contractors were active throughout Iraq. Worldwide, 90 percent of the 34,000 personnel employed by the Bureau of Diplomatic Security were contractors.

The results of these efforts in Iraq and, later, Afghanistan were mixed at best. Even when the State Department did find contractors to meet operational requirements in Iraq and a growing list of dangerous locations, the acquisition process remained problematic. The 2010 Commission on Wartime Contracting report repeatedly mentions the chronic absence of contract management personnel and resources, a situation in which “inadequately staffed and resourced oversight could multiply opportunities for contractor mistakes or misconduct.” Moreover, existing law required federal agencies to accept low bids for goods and services, thus continuing the ongoing difficulties inherent with “lowest price, technically acceptable” contracts, a practice that one PMSC executive described as “a race to the bottom.”
These systemic failures were responsible for the 2009 scandal involving the ArmorGroup North America security contract for the U.S. embassy in Kabul. Of the numerous PMSCs operating in Afghanistan, only two companies offered bids that complied with the State Department’s legal requirements. Consequently, embassy security was plagued by poor training standards, improper employee documentation, and inadequate logistical support.\textsuperscript{50}

In recent years, the State Department has devoted considerable energy to fixing these problems. In 2011, it transitioned to “best value” contracts, a process that included “specific key metrics such as a bidder’s past performance, personnel staffing capacity, and training capabilities.”\textsuperscript{51} This new process levees a host of new requirements on prospective PMSCs. Individual applicants have to possess at least one year of military, police, or protective security experience. Training standards also reflect general improvements. Contractors hired as Personal Security Specialists must undergo more than 300 hours of approved government training before serving overseas.\textsuperscript{52}

While improved standards address the overall quality of PMSC hires, they have created bottlenecks interrupting the timely deployment of contractors. According to one U.S. Government Accountability Office (GAO) report, the Diplomatic Security Service planned to hire 350 personnel for overseas duty in 2010, but had to delay their dispatch overseas until they completed necessary training. A lack of experience in the growing ranks of the DSS is an additional concern. New recruits do not have adequate foreign language abilities or relevant background in security duties. In their desire to fill leadership slots, the DSS sometimes places inexperienced individuals above their normal pay grades.\textsuperscript{53}

The State Department’s most important reform is with respect to contract oversight. Rather than rely upon PMSCs to regulate themselves, individuals working as federal employees now provide that service. Hired as “Security Program Analysts” and Personal Services Contractors” they are full-time and temporary workers paid under the existing GS scale for their expertise. Operating under overlapping layers of U.S. law, federal regulations, and international agreements, they both monitor PMSCs contract compliance and formulate revisions to existing standard operating procedures.

Security Program Analysts and Personal Services Contractors serve as “accountability agents” in much the same manner as lawyers from the Judge Advocate General’s Corps who are routinely embedded in conventional combat units. While the practice is more manpower-intensive, it allows for a much more rapid response to changes in the operational environment or mission. Additionally, as federal employees, these agents have a clearly delineated place in the existing State Department hierarchy.

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Conclusions

As the Obama administration’s first term came to a close, it appeared that U.S. policy regarding PMSCs might be approaching a point of productive equilibrium. More than a decade of war in Iraq and Afghanistan produced many hard-won lessons that the United States now applies to its military contractors. PMSCs no longer exist on the periphery of U.S. regulatory policy. The old conventional wisdom that applied free market efficiencies to national security has dissipated in the wake of massive waste and public outrage. Today, the U.S. government has closed many gaps between itself and the PMSC industry. It is now directly involved in hiring, training, operations, contract oversight, and virtually every other aspect of what used to be “private” military contracting.

While current U.S. policy governing PMSCs is the product of accumulating experience, it has not, however, applied evenly to all facets of their use. PMSC operations in the field have improved to the point where contractors comply with a complex web of directives emanating from official U.S. policy and federal law. Much of this progress was the result of an unlikely coalition of PMSC operators, military commanders on the ground, and U.S. civilian officials who built a piecemeal compilation of policies that satisfied imposed priorities. Operationally, these policies serve as the boundary lines that separate good practices from potentially illegal or criminal acts.

Yet what satisfies the rule of law in Washington is distinct from the operational reality in conflict zones scattered around the world. Clearly defined policy is subject to local filters regardless of U.S. policy makers’ best intentions. The operating environment in a host nation like Libya or Yemen reflects complex circumstances. Religious or ethnic animosity and political parochialism—sometimes existing in concert—often dictate the suitability of outwardly dictated standards. Local national guards employed by PMSCs potentially suffer from the same vulnerabilities and other unanticipated circumstances. On the ground, the success or failure of U.S. policy may hinge on a local guard who cannot read.

Moreover, by definition, iterative reform has not produced a strategic vision for PMSCs within U.S. policy. The contingency environment that dominated the Iraq war encouraged a more intelligent approach to using military contractors. The sum of all these parts did not, however, generate the wisdom or the perspective necessary for the longer view. Perhaps more importantly, despite the difficulties produced by military contractors in Iraq, the U.S. government has never completely divorced itself from the imperative of cost-efficiency that attracted policy makers to PMSCs in the first place. U.S. officials have historically expected the “self-regulating dogs of war” to evolve in order to maintain their military contracts. During the course of the ensuing Iraqi occupation, PMSCs did just that, adapting their practices to U.S. reforms. In a
very important sense, their success prolonged the compartmentalization of military contractors into logistical, as opposed to strategic, planning. A senior U.S. officer stationed in Baghdad clearly articulated this segregation of purpose in 2004: “We fight the war, and they do the shit work.”\(^5\) Five years later, this relationship was largely unchanged.

When the Obama administration took charge in 2009, it chose the logic of the marketplace over a strategic vision with respect to PMSCs. Faced with an enormous domestic economic crisis at home, the new leadership sought out military retrenchment that would extract conventional U.S. forces from global hotspots. Military security companies offered the dual advantages of delegating the financial and political costs of U.S. foreign policy. Absent from this calculation was a greater sense of American interests abroad, PMSCs place in meeting them, or evolving threats to both.\(^5\) As the 2012 embassy attack in Benghazi indicated, without clear guidance from the top, ambiguity cascades as it reaches the operational level with tragic results. It would be predictable to claim that this latest scandal initiated yet another round of reform within the U.S. foreign policy establishment. Instead, the Benghazi attack has become enmeshed in partisan political bickering of the same type currently plaguing the domestic policy debate.

One saving grace in this story may be PMSCs and U.S. officials directly responsible for them. Despite the lack of clear strategic guidance, both contractors and U.S. policy makers will continue to pursue reform. Operational necessity requires not only recovery of “lost functionality,” but progressively greater levels of aptitude necessary to match the dynamic nature of security threats abroad. More broadly, contractors and their “accountability agents” will attempt to divine a means to integrate a growing body of policy into the culture of individual PMSCs and the industry itself. The stakes involved are neither theoretical nor rhetorical, but grounded in the simple need for practicality and survival. \(^7\)

— Dov Friedman served as Lead Editor for this article.

NOTES


10 See <http://www.law.cornell.edu/uscode/18/usc_sec_18_00000007----000-.html> Accessed August 12, 2011.


22 CBO, *Contractors’ Support of U.S. Operations in Iraq*, 19. It was common practice for contractors to coordinate their local activity with the military through the Force Protection Operations Center (FPOC) or a similar facility.


26 Ibid., 4–5. See also HQ, MNF-I, Approval of Request to Authorize Private Security Company Arming for TETRA Tech EC, Inc., n.d.


30 Memorandum of Agreement (MOA) Between the Department of Defense and the Department of State on USG Private Security Contractors, December 5, 2007, 1.


32 Ibid., 8.


41 Ibid.


54 GAO, Challenges Facing the Bureau of Diplomatic Security, 2, 6, 8.
