

# The Business of War: Private Military and Security Companies in Armed Conflict

by **Kenneth A. Segelhorst**

In war-torn countries around the world, thousands of rough men stand ready to do violence on behalf of those unable or unwilling. They are equipped with the most advanced military technology available: assault-rifles with holographic and laser sights, night vision goggles, body armor, and encrypted radios. They maneuver through war zones in a wide array of armored trucks, helicopter gunships, and high-speed attack boats to accomplish their missions. These grisly men with their beards, dark sunglasses, and civilian clothing give off the hint of some elite special operations unit. Only these men are not soldiers, at least not in the traditional sense. They are contract warriors—soldiers for hire, employed by a legitimate business with a new take on an age-old profession. The modern private military and security industry emerged in the aftermath of the Cold War and has grown into an extremely lucrative and competitive market. This article will examine the history behind the private military and security industry, the business model these companies use, and the benefits and issues related to employing these shadowy companies in modern conflicts.

## “Soldiers for Hire”

To fully understand modern privatized warfare, one must first have a firm understanding of its history. The employment of mercenaries for armed conflict is perhaps as old as war itself. Throughout time, there have always been individuals willing to take up arms and wage war in exchange for financial gain. The proverbial “soldier for hire” has fought for armies around the world, from the Greeks and Romans of antiquity to the T’ang and Sung dynasties of ancient China. In some instances, states have sponsored the privatization of warfare, while in other cases private entities served as employers.

The first organized mercenary companies emerged in medieval Europe. Kings and their

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military leaders realized that the feudal system was inadequate to raise, maintain, and command an efficient and effective military force. Feudal lords routinely turned to mercenaries, both foreign and domestic, to supplement their poorly trained conscripts and fulfill their military manpower requirements. Although individual mercenaries widely sold their services throughout Europe, organized bodies of mercenaries gradually emerged as the

### **The earliest known organized body of mercenaries in Europe was the Varangian Guard...**

market in Europe developed.<sup>1</sup> The earliest known organized body of mercenaries in Europe was the Varangian Guard, with Varangian meaning, “a foreigner pledged to the service of a new lord” in Old Norse.<sup>2</sup> Originally comprised of Vikings from modern day Sweden, the Varangians were elite warriors. The Varangians first sold their services to the Byzantine Empire in 839 CE, providing a modest number of paid soldiers to protect Constantinople. The Varangians quickly won favor with the Byzantine emperor, who selected Varangian mercenaries as his personal bodyguards. By 988 CE, the Varangians had developed into a formally-organized mercenary army. Known and respected as prized soldiers, the Varangian Guard provided both offensive and defensive services throughout Europe. In exchange for their services, guardsmen received salaries far exceeding those of normal soldiers, as well as an ample share of the spoils of war.<sup>3</sup>

A later example highlights some negative aspects of privatized warfare in medieval Europe. The Great Company, founded by Werner von Urslingen in 1342, was one of Europe’s first large, tightly-organized, and well-armed mercenary companies. Comprised primarily of Italian, German, and French mercenaries, the Great Company saw employment throughout

southern Europe from 1342 to 1379. At its peak strength in 1359, the company boasted over 20,000 soldiers for hire, most of them armored cavalry. With the Great Company possessing such military might, employers had difficulty controlling the organization on and off the battlefield. In battle, the Great Company’s mercenaries fought ruthlessly, ignoring the time-honored principles of chivalry and honorable conduct on the battlefield, often to the dismay of their employers. Off the battlefield, questions arose regarding the Great Company’s trustworthiness. In one instance, the Great Company turned against its employer, highlighting the question of loyalty with regard to employing mercenaries.<sup>4</sup>

Despite the potential dangers associated with mercenary groups such as the Great Company, leaders continuously turned to “free companies,” as they came to be known, as a source of military might. For nearly two centuries leading up to the Renaissance, the Italian city-states were entirely dependent on contracted companies of soldiers, known as the *condottieri*, for security and representation on the battlefield.<sup>5</sup> To prevent issues like those experienced with the Great Company, the Italian city-states developed an elaborate contractual structure and required mercenaries to live according to an established code of conduct. Contracts fell into one of three categories:

1. *Condotta a soldo disteso* was a contract between a mercenary and native-born Italian general, under whose command the *condottieri* served.
2. *Condotta a mezzo soldo* was a contract between a mercenary and an Italian ruler in which the *condottieri* only answered to his employer; under this contract, the mercenary could attack and plunder the enemy’s lands at will.
3. *Condotta in aspetto* was a contract used in

time of peace that awarded a retainer to the condottieri in return for their loyalty to the employer.

These contracts identified the mercenaries' responsibilities based on the state of war or peace and paid them accordingly. Contracts also contained archaic, non-compete clauses that prevented mercenaries from going to war against their employers for a given period of time following a contract's expiration.<sup>6</sup>

The privatization of warfare continued during Europe's colonization of the Americas and even expanded to the high seas. European powers such as England, France, and Spain issued letters of marque to the captains of privately-owned and operated vessels, authorizing them to attack and plunder enemy ships and colonies for profit.<sup>7</sup> These armed vessels, known as privateers, served as a quick and inexpensive means of expanding and projecting naval power. Countries paid these mercenaries of the high seas by allowing them to keep part or all of the vessels and cargo they captured or plundered. Like their land-based counterparts, privateers proved difficult to control. Inspired by plunder, many privateers went beyond their charge by attacking and plundering neutral or even friendly vessels. In fact, many infamous pirates, including captains Henry Morgan and William Kidd, began their careers in piracy legitimately as privateers.<sup>8</sup>

Governments were not the only entities to benefit from privatized warfare during the colonial era. As the European powers waged war for control of the New World, merchants and traders became increasingly vulnerable to attack. To help secure their assets during this period of state-sponsored piracy and raids, trade organizations such as the Dutch and British East India companies employed thousands of private security and military personnel to secure, and in some instances recapture, their interests around the world. Between 1715 and 1719, the Dutch East India Company employed 20,000 local and 5,000 European mercenaries in India alone,

as it recaptured its interests in Calcutta.<sup>9</sup> The employment of private military and security personnel by colonial trading companies marked the first widespread use of these soldiers for hire outside of government control.

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The employment of private armed forces continued well into the nineteenth century. Private, non-state-affiliated armed forces played elemental roles in several conflicts, including the Cisplatin War, the Greek Revolution, and the Crimean War.<sup>10</sup> In the latter half of the nineteenth century, nation-states began to evolve into their modern form and increasingly monopolized security as a function of the state. An increasing number of states, including the U.S., Britain, and France, passed legislation banning their citizens from participating in the conflicts of other nations.<sup>11</sup> As a result, the employment of privatized warfare largely went dormant for more than 100 years, as nation-states organized and employed standing armies to meet security objectives.

### **Post-Cold War Resurrection of Privatized Warfare**

The privatization of international security and warfare was resurrected in the 1990s, largely due to both the collapse of the Soviet Union and worldwide globalization. During the Cold War, the U.S. and Soviet Union each had armies numbering in the millions. These superpowers used their military might to support proxy states around the globe. The superpowers provided their proxies with financial and military aid, to include military advisors, training, and

equipment, to help maintain stability within these third-world countries. After the fall of the Berlin Wall and collapse of the Soviet Union in 1989, the U.S. and former Soviet Union cut military spending and significantly downsized their forces.<sup>12</sup> The superpowers' withdrawal of support to their respective proxy countries quickly resulted in a power vacuum throughout much of the third world. These once-protected, political regimes found themselves ill prepared to face emerging internal and external threats to their political power and natural resources in an increasingly turbulent and violent global environment.

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In the 1990s, modern private military and security companies (PMSCs) emerged to meet the demands of an ever-growing international market and fill the vacuum created by the superpowers' withdrawal. Due to rampant instability and armed conflict, Africa quickly emerged as the proving ground for these companies. Two companies, South Africa-based Executive Outcomes (EO) and Britain-based Sandline International, quickly emerged as the industry's frontrunners. In 1993, Angola hired EO to recapture oil facilities from rebel forces in Soyo. Later, EO provided training to Angola's military forces, helping put an end to the nation's bloody civil war.<sup>13</sup> Both EO and Sandline were involved in defeating the Revolutionary United Front in Sierra Leone. The United Nations (UN) later began contracting Sandline International and other companies to provide personnel security and military training in countries throughout Africa. Even the World Wildlife Fund hired private security

companies to protect endangered species in the Democratic Republic of the Congo.<sup>14</sup> In total, these companies participated in an estimated 65 African conflicts from 1990 to 1998.<sup>15</sup>

The expansion of privatized security and warfare during the 1990s was not confined to Africa. Intergovernmental organizations (IGOs), non-governmental organizations (NGOs), national governments, and corporations around the globe began contracting private military and security services to conduct peacekeeping, end conflicts, and protect financial assets. United States-based companies DynCorp and Military Professional Resources, Inc. (MPRI) provided military and security services throughout the Balkans and South America in support of U.S. regional objectives. In addition to its contracts in Africa, Sandline International helped end civil war in Papua New Guinea. By the end of the decade, the private military and security industry had more than doubled to an estimated \$100 billion annually.<sup>16</sup>

### **Executive Outcomes in Angola**

Executive Outcomes was the first major military company to emerge after the Cold War. The brainchild of Eeben Barlow, EO revolutionized the concept of privatized warfare, elevating the mercenary trade into an elaborate and sophisticated corporatized profession of arms, which exploited Africa's volatile political and security environments during the early 1990s to achieve substantial profits. As the industry's frontrunner, EO served as the blueprint on which numerous other PMSCs were modeled.<sup>17</sup>

Eeben Barlow joined the South African Defense Forces (SADF) as a young man in 1972. Barlow climbed steadily through the ranks fighting in South Africa's bush wars before being selected to serve as the second in command of South Africa's infamous special forces unit, 32 Battalion. South Africa hired the majority of 32 Battalion's personnel as mercenaries before officially incorporating the unit into the

SADF. The unit had a unique mix of personnel, consisting primarily of black enlisted soldiers and noncommissioned officers (NCOs) from Angola and white officers from South Africa, the United Kingdom (UK), Rhodesia, Portugal, and the U.S. Specializing in counterinsurgency warfare, 32 Battalion consistently achieved the SADF's highest kill ratios and under Barlow's leadership became one of the most famous and highly-decorated units in South African military history.<sup>18</sup>

As apartheid came to an end, so did Barlow's career in the SADF. The new government discharged thousands of soldiers as it drastically restructured the South African military. In need of employment, yet not wanting to abandon his profession as a soldier, Barlow had the innovative idea to apply his military knowledge and experience to the private sector. In 1989, Barlow secured an investment from Strategic Resources Corporation (SRC), a venture capital and holding company, and EO was born.

Barlow had no difficulty filling EO's ranks. In 1993, because of negotiations between the white Nationalist Party and Nelson Mandela's black African National Congress (ANC), the SADF deactivated over 60,000 soldiers and underwent a drastic restructuring.<sup>19</sup> Barlow quickly surrounded himself with former members of the SADF's most elite units, including 32 Battalion, 1 Reconnaissance Commando, and 44 Parachute Brigade. To entice disciplined professionals, EO offered salaries commensurate to what elite military professionals deserved. Compensation ranged from \$2,000 to \$13,000 per month based on experience and expertise, with the average enlisted soldier earning \$3,500 a month. These salaries were five to ten times higher than the dismal salaries offered by the SADF and other standing African militaries. In addition, EO offered its personnel generous life insurance benefits and full medical coverage, which helped recruit responsible family men in addition to adventurers and thrill seekers.<sup>20</sup>

The company's first contracts were relatively tame. Barlow used his connections in the South African military to help win a contract to organize and train special forces units for the newly-revamped South African military. Diamond-mining giant De Beers also awarded EO a contract to investigate thefts and provide security at its mines in South Africa. From these early contracts, EO grew to eventually offer five essential military and security-based services:

1. Strategic and tactical advice.
2. Advice and assistance in the selection and acquisition of weapons.
3. Military training for land, sea, and air warfare.
4. Peacekeeping services and pacification of hostile populations.
5. Paramilitary services to include basic and advanced security operations.

The company marketed these services as means of protecting lives and assets and bringing stability to volatile and lawless regions of the world. Although many of the services were military in nature, the term "mercenary" never entered EO's vernacular. Instead, Barlow described the company as a counterintelligence consulting firm.<sup>21</sup>

**In 1993, EO secured its first lucrative international contract...to retake a strategic oil refinery held by...rebels...**

In 1993, EO secured its first lucrative international contract after the government of Angola hired the company to retake a strategic oil refinery held by National Union for the Total Independence of Angola (UNITA) rebels in Soyo, Angola. A quickly-assembled, 28-man commando element,<sup>22</sup> equipped with state of the

art weapons and equipment infiltrated UNITA territory, engaged the rebels in a fierce yet well-contained firefight, and retook the refinery completely intact.<sup>23</sup> The Angolan president was extremely impressed and subsequently offered the company a one-year renewable contract for the sum of \$40 million to support the Angolan government in its fight against the UNITA rebels.<sup>24</sup>

With speed and efficiency on par with the world's most elite special operations forces, EO committed a force of 500 military advisors to Angola.<sup>25</sup> These advisors served in various capacities, such as supervising security of military and industrial installations and protecting them from enemy attack and conducting unilateral commando raids and intelligence operations deep within rebel-controlled territory. The majority of EO's advisors partnered with Angola's 16<sup>th</sup> Brigade. The advisors guided the brigade through an extensive combat training

### **Executive Outcome's involvement in Angola was widely viewed as a success.**

program and inserted themselves at all levels of the unit's command to help stiffen the unit's resolve and guide operations from the top down. Beyond the training role, EO advisors actively participated in combat operations, accompanying the 16<sup>th</sup> Brigade into battle to find, fix, and finish UNITA rebel forces.<sup>26</sup>

To support its operations on the ground, EO maintained its own air component. Under its subsidiary, Ibis Air, EO acquired a wide range of aircraft. To provide logistical support, Ibis Air maintained a small fleet of fixed wing transports, including at least two Hawker Siddeley Andovers and two Boeing 727s. To support combat operations, EO employed Mi-24 Hind-D helicopter gunships, Mi-8 and Mi-17 transport helicopters, L-39 ground attack aircraft,

and even MIG-23 jet fighters.<sup>27</sup> In addition to the psychological impact these aircraft had on the enemy, EO's private air force provided the company with a marked advantage over the rebels in both mobility and firepower.

After routing a large UNITA force on the outskirts of the Angolan capital in 1994, EO led the 16<sup>th</sup> Brigade on a series of highly-successful counteroffensives. The combined EO-Angolan operations drove the rebels out of major cities, captured the Cafunfo diamond mines, and reclaimed the Soyo oil fields. The UNITA rebels, unable to match EO's combat abilities, quickly sued for peace. Executive Outcomes proved so devastating to the UNITA rebels that during peace negotiations, the rebels demanded EO depart Angola as a fundamental condition of their surrender.<sup>28</sup>

Executive Outcome's involvement in Angola was widely viewed as a success. The company brought Angola's bloody civil war to an end, a task UN peacekeepers proved incapable of accomplishing. Furthermore, EO did so at a significantly lower cost than the UN peacekeeping mission, for which the international community was paying \$1 million a day during the same period, with no results.<sup>29</sup> The successful execution of EO's Angola contract served as a proof of concept for Barlow's incorporated army. The effective, efficient, and overall professional way EO conducted operations made privatized warfare a legitimate security option for many countries.<sup>30</sup>

### **Private Military and Security Contracting Post-9/11**

Although the 1990s saw the resurrection of privatized military and security services with companies like EO and Sandline International, the industry did not enter its golden era until after the terrorist attacks of September 11, 2001. The 9/11 terrorist attacks highlighted both the public and private sectors' vulnerability to international acts of terror and lawlessness. Governments

and private entities both sought ways to bolster security and protect assets at home and abroad. Where government military and police forces fell short, decisionmakers turned to the private sector to provide support. This sudden increase in demand led to the private military and security industry's unprecedented growth.

The Global War on Terrorism (GWOT), launched in response to the 9/11 terrorist attacks, served as a watershed for the privatization of security and warfare. In addition to existing overseas commitments, the wars in Afghanistan and Iraq severely stretched the U.S. military. When the Iraqi people failed to welcome U.S. forces as liberators following the 2003 invasion, sparking a long and bloody insurgency, the U.S. military quickly found itself under staffed. Then Secretary of Defense Donald Rumsfeld turned to PMSCs to fill the gap and provide services once reserved for traditional government soldiers. The U.S. government and its agencies issued contracts to these companies worth hundreds of millions of dollars to provide military and security services in the war zone.<sup>31</sup> Contractors secured Iraqi government and industrial infrastructure, trained Iraqi security forces, guarded U.S. compounds, escorted convoys, and served as bodyguards for high-ranking U.S. and Iraqi leaders. Over 20,000 private military and security contractors served alongside the U.S. military in Iraq, representing a force larger than any other allied country.<sup>32</sup>

Widespread employment of companies, such as Blackwater, Triple Canopy, Aegis, DynCorp, Erinys, Olive Group, and numerous others during the GWOT marked a definitive end to the states' monopoly on armed conflict. Private military and security contracting companies have become important international actors in the security sector. Today, these companies are providing their services in more than 110 countries around the world, and the demand continues to grow. It is not surprising to learn that the industry has enjoyed a yearly 7 percent

increase in revenue over the last decade, with an estimated annual revenue reportedly nearing \$200 billion.<sup>33</sup>

## **Corporate Armies: A Business Model for Armed Conflict**

International demand has fueled the development of more than one hundred registered PMSCs.<sup>34</sup> These companies have succeeded in applying the corporate business model to privatized security and warfare. Some of these companies, such as MPRI, Armor Group, and Vinnell, are subsidiaries of larger corporations, while other companies remain independent firms.<sup>35</sup> Many boast board members who are powerful public figures, such as former U.S. Attorney General John Ashcroft and Texas billionaire Red McCombs, who both sit on ACADEMI's board of directors. Like other modern corporations, these companies maintain websites, publish brochures, and actively market their products and services to potential clients. By maintaining a professional corporate image, they are viewed largely as legitimate businesses providing a unique and viable service.

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These unique corporate bodies offer a wide range of services to their clients. Triple Canopy, a well-known U.S.-based PMSC, offers services in two categories: mission support and integrated security. Under mission support, Triple Canopy lists logistics and supply chain management; construction, operations, and maintenance; advisory and mentoring; contingency support; intelligence; information technology and communications; and information operations as available services. Under the integrated security category, Triple Canopy advertises installation

security, critical infrastructure protection, high-threat protection, tactical training, and technical security.<sup>36</sup> Most PMSCs of comparable size advertise similar services, the descriptions of which they intentionally leave vague and open-ended, as the services they render frequently go beyond their diplomatically-crafted descriptions. In fact, a growing number of these companies are conducting activities once reserved for frontline combat troops.<sup>37</sup>

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Many of today's "contract warriors" are trained and equipped to actively participate in offensive combat operations to accomplish their clients' objectives. The lucrative contracts awarded to these companies in conjunction with the relatively small size of their forces allow them to equip their personnel with the most advanced personal weapons and equipment available. In fact, contractors are frequently better equipped than their U.S. military counterparts. This is largely due to the strict government policies that govern U.S. Department of Defense (DoD) equipment acquisitions.<sup>38</sup> Since such bureaucratic red tape does not apply to the private sector, these companies can purchase the most innovative equipment as it becomes available. Many arsenals go well beyond small arms and personal equipment. ACADEMI, Triple Canopy, and Aegis, maintain fleets of armored vehicles, fixed and rotary-wing aircraft, fast attack maritime vessels, and even armed unmanned aerial vehicles.<sup>39</sup> Some companies even operate their own research and development facilities, producing highly-marketable, military-grade equipment for domestic and foreign military sales. Due to their vast arsenals, it has become

increasingly difficult to distinguish PMSCs from first-rate special operations units by either their appearance or capabilities on the battlefield.<sup>40</sup>

## **Modus Operandi**

The majority of PMSCs operate out of the U.S., UK, and South Africa, which happen to be their principal clients.<sup>41</sup> Many maintain offices near their respective national capitals, facilitating the solicitation of lucrative government contracts. These companies normally have a small full-time staff led by former military officers from elite organizations such as U.S. Army Special Forces (SF) and Navy Sea, Air, Land (SEALs); British Special Air Service; and South African Reconnaissance Commandos.<sup>42</sup> The full-time staff negotiate contracts and maintain a database of recruits.

Like any other business, these companies must compete for market share. When a government or private entity identifies the need for their services, it can either go directly to a sole PMSC or request bids from any number of companies. If the government requests bids from numerous companies, the staff must prepare a proposal and submit it to the potential client for evaluation, negotiation, and selection. After the client selects a proposal, the client and the selected company prepare a contract. These contracts are not unlike contracts for any other service; they provide a statement of work; define success and identify the company's performance requirements. The contract also outlines responsibilities of both parties, specifically regarding personnel, logistics, and operational expenses. Although the process can be tedious when working with a government agency such as the U.S. DoD, the payoff can be substantial, with countries granting contracts to PMSCs for as much as \$831 million.<sup>43</sup>

To maintain a competitive edge, each PMSC maintains a long list of highly-trained and thoroughly-vetted applicants. During the GWOT, Blackwater reportedly maintained a database of

over 21,000 recruits, the majority of which were prior soldiers or police officers.<sup>44</sup> ACADEMI and Triple Canopy require their applicants to attend an assessment at their respective training compounds. During the assessment, they evaluate their applicants' physical fitness, marksmanship, tactical prowess, and any number of additional traits. When a company wins a contract, its staff reviews its pool of recruits to identify the best-qualified personnel based on its client's specific needs. If the contract is to provide maritime security operations, the company will likely turn to its ex-SEALs and other naval special warfare veterans. If the contract requires expertise in foreign internal defense or counterinsurgency, the company may turn to its former Green Berets, who possess regionally-specific, cultural expertise and language skills. Once the staff selects the appropriate personnel, it stages, equips, and deploys them to execute the contract. As can be expected from the private sector, these companies have streamlined this process for maximum speed and efficiency.<sup>45</sup>

### **The Benefits of Contract Warriors**

The unique nature of PMSCs offers advantages over the employment of traditional military forces. First, they can help compensate for a lack of willing or qualified soldiers. This is especially the case in third-world countries where militaries traditionally lack adequate leadership, training, and resources.<sup>46</sup> They can provide sizeable, well-trained forces to meet client demands. If the mission demands a particular skill set, they can reference its database and form highly-qualified teams tailored specifically to meet unique mission requirements. Clients frequently contract these companies to do more than provide manpower for the battlefield. Often advisers and training teams are required to help develop the clients' own armed forces and to advise senior political and military leaders. In this capacity, these companies are both invaluable force multipliers

and an economy of force.

The rapid pace at which PMSCs deploy personnel also provides a marked advantage over conventional military forces. Because they represent a private entity, the deployment of their forces is not bound by the same bureaucratic regulations as most government military forces. Whereas the deployment of government forces often requires significant political lead-time to meet legislative and judicial requirements, these companies can frequently have personnel on the ground within days of signing a contract,<sup>47</sup> which allows them to rapidly fill security gaps until conflicts can be peacefully resolved, host nation troops are ready to take over, or international peacekeeping forces are mobilized.<sup>48</sup> Many industry leaders claim their companies could have rapidly deployed to stem genocide in Rwanda, possibly saving tens of thousands of lives while the world waited for the UN to take action.<sup>49</sup>

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Another major benefit of utilizing these companies is the cost savings associated with contracting military and security personnel on an as-needed basis in lieu of maintaining a large standing force. Maintaining a standing military or security force is an extremely costly endeavor. Troops must continuously be paid, and their equipment maintained whether they are actively conducting operations or merely sitting in garrison. It is far less expensive to hire a PMSC temporarily when the need arises than to maintain a large standing military between conflicts.<sup>50</sup> This becomes more evident when considering the need for special skills or

capabilities that may be required. It is simply not cost effective to maintain a wide range of niche specialties in the event they may be needed during a future crisis when compared to the contract alternative. With PMSCs, clients can secure highly-talented and specialized personnel without the long-term economic cost associated with generating and maintaining those personnel themselves.<sup>51</sup>

**The CBO found that...the employment of contractors led to substantial savings over time.**

Using PMSCs to resolve conflicts can also save significant political capital. When a foreign government or corporation has an interest in a country, supporting the local government military or police forces may not always be an option. Organizations can hire these companies as a means of achieving their security objectives without running the risk of supporting oppressive third-world regimes that may have a history of human rights violations.<sup>52</sup> The decision to send these companies overseas, instead of government troops, as a tool of foreign policy is also less costly politically. Contractors working for these companies deploy by choice and for profit; the public does not view sending them into harm's way with the same aversion as the deployment of government troops to foreign lands.<sup>53</sup> Proprietary and contractual rights also afford a certain level of plausible deniability and commercial secrecy, helping politicians retain their political capital. Clients can shield the size, scope, and cost of their involvement from public scrutiny and, in some cases, even Congressional oversight.<sup>54</sup>

**Comparing the Cost**

During the GWOT, government watchdogs questioned the use of these companies in Iraq and Afghanistan, claiming their employment was fiscally irresponsible. In response to these

allegations, in 2008, the U.S. Congressional Budget Office (CBO) launched an investigation that examined the government's use of PMSCs from 2003 to 2007. The CBO found that although the cost of hiring military contractors was slightly greater than deploying soldiers for the same tasks and periods of time, the employment of contractors led to substantial savings over time. These savings are primarily the result of reduced personnel costs when contracting these companies.<sup>55</sup>

At first glance, personnel costs for private military and security contractors appear significantly higher than personnel costs for soldiers. Contractors in Iraq and Afghanistan frequently earned between \$500 and \$1,200 per day depending on their qualifications and responsibilities. By comparison, the average U.S. soldier earned \$140 to \$190 per day.<sup>56</sup> Looking solely at these figures, soldiers appear far more cost effective than their civilian counterparts. However, according to the CBO study, there are several additional variables to take into consideration including additional benefits, training costs, and personnel strength requirements.

Although soldiers' daily earnings appear low, this fails to account for the full range of benefits soldiers and their families received at the government's expense including free healthcare and government-funded housing. Soldiers also receive educational benefits, including tuition assistance and the Post-9/11 GI Bill. Soldiers who extend their service commitments are often eligible for sizeable bonuses, sometimes more than \$100,000. Soldiers transitioning out of the military may be entitled to disability compensation and, if they served at least 20 years, a government pension amounting to 50 percent or more of their salary paid to them for the rest of their lives. For soldiers killed in the line of duty, the government pays beneficiaries up to \$500,000 in life insurance and death gratuities. When the monetary value of these

benefits is factored into the equation, the gap between salaries closes substantially.<sup>57</sup>

When comparing the personnel costs of contractors and U.S. soldiers, one must also consider costs associated with recruiting, training, and developing personnel. The government need not spend a dime to recruit contractors; PMSCs maintain databases full of qualified personnel and actively seek out government contracts. In addition, they hire personnel based on preexisting qualifications; thus, the government receives contractors with the specialized skills and expertise it desires without having to invest the time and capital to develop or maintain them. Soldiers, on the other hand, require a significant investment as the government must spend up to several years and hundreds of thousands of dollars training and developing its soldiers before they are truly proficient and experienced in their assigned occupational specialties.

A significant cost difference between soldiers and contractors also exists regarding personnel strength requirements. The U.S. military does not deploy soldiers to combat zones indefinitely. Instead, the military rotates personnel on a regular basis, giving them the ability to return to their home stations, spend time with family, decompress, attend professional military education, and train as a unit prior to deploying to combat again. At the height of the wars in Iraq and Afghanistan, the U.S. military aimed for a 1:1 ratio of a soldier's time spent at home station to time deployed. Eventually, as the military grew, this ratio climbed to 2:1, placing two soldiers at home for every one deployed.<sup>58</sup> Under these circumstances, PMSCs provide significant cost savings. While the military must pay to maintain all its active duty personnel whether they are deployed or not, these companies only bill the government for personnel actively engaged in fulfilling the contract. The most significant savings come when the fighting ends, at which point the

government can allow the company's contract to expire. This eliminates the operating costs altogether, whereas the military must continue to budget for operating costs associated with active duty soldiers or go through a lengthy and expensive drawdown process.

When the CBO accounted for these factors, it found that the cost of these companies did not differ greatly from that of a comparable military unit performing a similar function. However, the CBO identified substantial cost savings following the conclusion of hostilities, at which point the government can allow its contracts with these companies to expire and government payments cease. This provides a significant advantage over traditional military forces, which the government must continue to fund regardless of their status.<sup>59</sup>

**Some scholars have argued that PMSCs are simply modern incorporated bands of mercenaries.**

### **The Dogs of War in the Fog of War: Issues with Privatized Warfare**

The rapid expansion and ambiguous nature of the private military and security industry in conjunction with a series of high profile incidents involving its employees have raised several questions pertaining to the industry's legitimacy and lack of transparency.

First is the question of private military and security contractors' status on the battlefield. Some scholars have argued that PMSCs are simply modern incorporated bands of mercenaries. This is significant because the internationally recognized Law of Land Warfare does not classify mercenaries as lawful combatants, and thus they are not afforded the same rights and protections as traditional soldiers. As unlawful combatants, mercenaries

may be held criminally liable for their actions on the battlefield and, if captured, are not entitled to the same protections offered to prisoners of war.

## **The unique role these contractors fill on the battlefield arguably blurs the line between soldier and civilian...**

The current standard for determining status is Additional Protocol I (Article 47) to the Geneva Conventions of 1949. Article 47 defines a mercenary as a person who meets the following criteria:

- Specially recruited locally or abroad to fight in an armed conflict.
- Takes direct part in hostilities.
- Takes part in hostilities for private gain and is promised by or on behalf of a Party to the conflict material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party.
- Neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict.
- Not a member of the armed forces of a Party to the conflict.
- Not sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

For an individual to be considered a mercenary, all the requirements must be true. For PMSCs and their employees, the point pertaining to motivation, is exceptionally difficult to prove. The motivation for many military and security contractors goes beyond financial gain. Many contractors claim their ideology, sense of patriotism, or longing for adventure as

their primary motive for participating in armed conflicts. After examination of the criteria, many international experts, including the International Committee of the Red Cross, have found that labeling legally-registered PMSCs as mercenaries is unfounded.<sup>60</sup>

If PMSC employees are not mercenaries, what are they? The unique role these contractors fill on the battlefield arguably blurs the line between soldier and civilian, which poses an important legal conundrum as the rights and protections offered to soldiers and civilians vary widely. Soldiers, as legal combatants, retain rights not afforded to civilians. Soldiers have a right to participate in hostilities; civilians do not. Soldiers also have a right to intentionally target hostile combatants and are immune from prosecution for their role in hostilities. With these rights come responsibilities. Soldiers are obligated to act in accordance to the Law of Land Warfare. Soldiers are also required to identify themselves as combatants by bearing arms openly and wearing distinct uniforms that help identify them on the battlefield. Although PMSC employees frequently bear arms openly, they routinely dress in civilian attire, extending legal ambiguity to physical confusion on the battlefield. This could put innocent civilians at risk, as it becomes increasingly difficult to distinguish between hostile combatants, who represent legitimate targets, and civilians afforded protected status.<sup>61</sup>

Beyond the legal status, the rise of the private military and security industry has also raised questions as to the industry's validity and reliability in armed conflict. The hiring of private entities to conduct military and security operations disturbs some scholars. Their concern is over the legitimacy of clients actively employing these companies. Because there is currently no international governing body, a client's legitimacy remains subjective at best. Due to proprietary rights, the industry is seldom required to disclose the identity of

its clients.<sup>62</sup> Some argue that this apparent lack of transparency allows governments and corporations to hire these companies without the public's knowledge, thus allowing them to conduct activities that voters and shareholders may find unacceptable. Others argue that national powers could use these companies as surrogates to wage proxy wars.<sup>63</sup>

Like any other business, PMSCs are organized with the intent and purpose of making a profit. Those opposed to these companies argue that their dependence on conflict to make a profit represents a conflict of interest. These scholars question their effectiveness in armed conflict and suggest they may have ulterior motives when executing their contracts.<sup>64</sup> From a business perspective, quickly resolving a conflict may not be a PMSC's most profitable course of action and, theoretically, it could secretly prolong a conflict in order to extend its contract for greater profits. However, this is unlikely due to the large number of these companies currently in the market all competing for business. If a client is not satisfied with one company's performance, it can simply hire a different company.

### **Oversight and Accountability**

Most disturbing is the apparent lack of legal clarity and oversight within the industry. Private military and security contracting companies have long operated in legal ambiguity. The nature of the international security industry results in companies frequently operating in locations where there is no effective rule of law. With international law being hazy at best, they frequently operate in legal gray areas with minimal oversight.<sup>65</sup> However, high profile incidents involving these companies in places such as Sierra Leone, Bosnia, and Iraq gained international media attention and placed pressure on lawmakers to act. Due to recent changes in the U.S. Code of Federal Regulations, American private military and security contractors are potentially subject to several sources of law and

jurisdiction.<sup>66</sup>

First, the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) placed U.S. civilian employees and contractors working in support of DoD missions under the jurisdiction of U.S. courts for felonies committed outside sovereign U.S. territory while accompanying U.S. military forces. The MEJA jurisdiction only applies to private military and security contractors working in support of DoD contracts. Contractors working for other federal departments or agencies, such as the Department of State (State), are not subject to MEJA jurisdiction.<sup>67</sup>

**Private military and security contracting companies have long operated in legal ambiguity.**

Second, in 2006, the U.S. Congress expanded the jurisdiction of the Uniform Code of Military Justice (UCMJ) to include "persons serving with or accompanying an armed force in the field."<sup>68</sup> Prior to this legislation, the UCMJ only applied to serving and retired members of the U.S. armed forces; it had no jurisdiction over ordinary DoD civilians or contractor personnel. Although the expansion of UCMJ to cover civilian employees and contractors has presented constitutional challenges regarding the standards of due process in military courts, it demonstrates the desire to hold DoD civilian employees and contractors accountable for their actions as representatives of the U.S. government.<sup>69</sup>

Finally, the Military Commissions Act of 2006 gives the U.S. government jurisdiction over war crimes committed by its citizens at home or abroad. The act states that the U.S. government will fine, imprison, or execute U.S. war criminals based on the severity of the crimes. Unlike MEJA and UCMJ, the Military Commissions Act of 2006 applies to all U.S. citizens and therefore has jurisdiction over American private military and security contractors, whether they

are executing a contract in support of a U.S. government agency, foreign government, or private entity.<sup>70</sup>

**...if increased legal oversight and regulations make maintaining a profitable business untenable, a PMSC can simply relocate its headquarters to nation-states with more relaxed regulations.**

Although these recent changes to federal law make it easier for the government to hold American military and security contractors accountable for their actions overseas, the companies for which the contractors work have developed a variety of tactics to sidestep legal and administrative actions that could impede profits. When these companies attract negative press or incur legal penalties that could affect profits, they have a variety of tools at their disposal to disappear, shed their negative image, and reemerge without penalty. Because they maintain very small full-time staffs, they can dissolve the entire company, relocate, and reopen under a new name relatively quickly and inexpensively. A company simply carries its database of recruits to its new headquarters and offers them contracts under the company's new name.<sup>71</sup> The staff of Blackwater employed this tactic, changing its name to Xe and later to ACADEMI, in response to negative attention following several highly-publicized incidents.

Another tactic these companies use to bypass public opinion and attempt to skirt regulations is to employ a shell corporation. A shell corporation serves as a vehicle for business transactions without having any significant assets or operations of its own. A PMSC can establish a shell company and compete for government contracts under the shell corporation's name. When the shell corporation wins a contract, it then subcontracts to the original company,

which then executes the contract under the shell corporation's name. Like any other industry, each private military and security contract can have numerous layers of subsidiaries and subcontracts that make transparency and accountability exceedingly difficult.<sup>72</sup>

Finally, if increased legal oversight and regulations make maintaining a profitable business untenable, a PMSC can simply relocate its headquarters to nation-states with more relaxed regulations. An increasing number have already relocated their headquarters to offshore safe havens in Singapore, Hong Kong, and the Cayman Islands. In addition to a lack of regulations governing the private military and security industry, these locations also offer attractive financial privacy and tax benefits.<sup>73</sup> International regulations and enforcement are required to ensure these companies operate respectably no matter where their corporate headquarters is located.

### **Blackwater and the Nisour Square Massacre**

In 2003, the Department of State contracted Blackwater to provide armed security services in Iraq. The \$27.7 million contract required Blackwater to provide personnel security for high-ranking State officials and host-nation diplomats, known as principals, as well as provide physical security for State compounds.<sup>74</sup> Mobile teams of Blackwater contractors routinely escorted State principals throughout the combat zone to attend meetings, check on projects, and coordinate activities with the host nation and other U.S. government agencies. Blackwater maintained a flawless record, supporting its clients on hundreds of missions without ever losing a principal. However, a 2007 incident in Baghdad, Iraq, involving Blackwater contractors, left dozens of Iraqis dead or wounded and gave the entire private military and security industry a black eye. This incident resulted in unprecedented legal action

against America's warzone contractors.

On September 16, 2007, a Blackwater element known as "Raven 23," consisting of four up-armored vehicles and 19 Blackwater contractors, was conducting a routine route reconnaissance in Baghdad, Iraq. When a car bomb exploded a few miles away in downtown Baghdad, the Blackwater team decided to establish a security perimeter at Nisour Square until it had better awareness of the situation. While stopped at Nisour Square, the element became involved in a small-arms engagement. The ensuing bloodshed left 14 Iraqis dead and another 18 wounded, including women and children. The combined U.S. -Iraqi investigation failed to corroborate the Blackwater contractors' claims that they had acted in self-defense. International pressure quickly built on the U.S. government to take legal action against the contractors.

After a series of legal debates pertaining to Stategranted immunity, legal jurisdiction, and administrative errors, four Blackwater contractors stood trial for the Nisour Square incident in a U.S. federal court in the summer of 2014. Federal prosecutors charged Nicholas Slatten, who allegedly initiated the entire incident, with first-degree murder. Paul Slough, Evan Liberty, and Dustin Heard faced charges for multiple counts of voluntary manslaughter and attempted manslaughter. In addition, all four contractors faced federal weapons charges for using military weapons while committing a felony, where a conviction carries a minimum sentence of 30 years in federal prison.<sup>75</sup>

During its opening argument, the prosecution argued that the Blackwater contractors fired without provocation and used excessive force. The prosecution claimed the contractors fired recklessly, noting that most of the victims were nowhere near the white Kia that the contractors claimed instigated the shootout. Prosecutors also noted that the shooting lasted nearly ten minutes and argued that the contractors should

have broken contact and returned to base. The prosecutor's case rested on the concept of alternative liability; the prosecution did not need to prove which contractor fired the fatal shots. Instead, federal prosecutors only needed to prove the defendants opened fire to make their case.<sup>76</sup>

### **...four Blackwater contractors stood trial for the Nisour Square incident in a U.S. federal court...**

To prove the defendants' involvement, the prosecution presented testimony from 71 witnesses, including two dozen Iraqis and nine members of Raven 23.<sup>77</sup> Multiple witnesses heard one or two initial shots, which prosecutors claimed Slatten fired with his SR-25 sniper rifle. Witnesses also testified to Slatten's deep-seated hatred of the Iraqi people and claimed Slatten bragged that he had "popped a guy's head like a grape."<sup>78</sup> Iraqi witnesses easily identified Paul Slough as a shooter based on his crew position; Slough was the only gunner in a single-turret vehicle. Witnesses reported seeing Dustin Heard fire his M-240 machine gun. Investigators also recovered shell casings from Heard's M-4 rifle at the scene of the incident. Heard's Blackwater teammates also testified to Heard saying that he had "smoked" a man with his grenade launcher.<sup>79</sup> Members of Raven 23 also testified against Evan Liberty, claiming he was overly aggressive and mean spirited. Investigators also found an empty M-4 magazine at the scene marked "Liberty" on the bottom, evidence that he opened fire that fateful day.<sup>80</sup>

The defense argued the Blackwater contractors acted in self-defense, claiming the team believed that the white Kia they first engaged was a vehicle-borne improvised explosive device. The defense also claimed that insurgents, intermingled with the civilians, engaged Raven 23's vehicles with AK-47 fire. To prove this, the defense presented photos of

small arms damage to Raven 23's command and control vehicle. The defense also cited the prosecution's lack of ballistics evidence linking the killings to the Blackwater contractors. In addition, the defense brought into question the testimony of the Iraqi witnesses, emphasizing that the Iraqis could not positively identify the shooters.

After 28 days of deliberation, the jury returned its verdict. The jury found Nicholas Slatten guilty of first-degree murder. Paul Slough was found guilty of 13 counts of manslaughter and 17 counts of attempted manslaughter. The jury found Evan Liberty guilty of eight counts of manslaughter and 12 counts of attempted manslaughter. Dustin Heard was found guilty of six counts of manslaughter and 11 counts of attempted manslaughter. The jury also found the defendants guilty of federal weapons charges.<sup>81</sup> Six months later, in April 2015, Senior U.S. District Court Judge Royce Lamberth sentenced Slatten to life in prison. The judge sentenced Slough, Liberty, and Heard each to 30 years in prison, the minimum sentence based on their convictions.<sup>82</sup>

**The Blackwater trial was a watershed case for the U.S. regulation of the private military and security industry.**

The Blackwater trial was a watershed case for the U.S. regulation of the private military and security industry. Prior to the trial, these companies largely operated within a legal gray area and rarely faced legal action. The U.S. federal court's conviction and sentencing of the four Blackwater contractors involved in the Nisour Square incident set an important precedent. American military and security contractors and their companies have undoubtedly taken notice of the court's action. The Blackwater convictions will weigh heavily

on other U.S. contractors as they consider the legal ramifications of their actions in lawless warzones overseas, possibly leading to them exercising greater restraint in the future.

### **Leashing the War Dogs: The Way Ahead for PMSC Utilization**

Private military and security companies are neither the "whores of war" Machiavelli chastised, nor are they lawless bands of incorporated mercenaries.<sup>83</sup> Most are comprised of highly-trained and honorable ex-military and law enforcement professionals that follow a self-imposed code of conduct inherited from their time in service. The private military and security industry has become an increasingly competitive and politicized market, requiring them to execute their contracts in a professional and respectable manner. Despite these factors, the private military and security industry is still in need of regulation and oversight. Although several countries, including the U.S., the UK, and South Africa, have recently taken steps to regulate these companies and their contractors, several gaps remain due to the industry's complex international nature. To regulate the private military and security industry properly requires a comprehensive, three-pronged approach consisting of self-, national, and international regulation.

### **Self-Regulation**

The private military and security industry should adopt a comprehensive regime of self-regulation. Self-regulation poses an attractive option because the industry can impose regulations on itself more quickly than can government legislation. By successfully applying policies and rules internally, the industry can potentially guide or even prevent new legislation that may negatively affect profits. Additionally, self-regulation helps legitimize the industry, thus increasing business prospects and potential profits.<sup>84</sup>

The industry took a huge step toward self-regulation in 2010, with the creation of the International Code of Conduct (ICoC) for Private Security Service Providers. The ICoC outlines the industry's obligations for ethical and legal behavior.<sup>85</sup> In 2013, the ICoC Association (ICoCA) was formed to “promote, govern, and oversee implementation of the ICoC and to promote the responsible provision of security services and respect for human rights and national and international law in accordance with the Code of Conduct.”<sup>86</sup> The ICoCA has three primary functions:

- Certification of member companies assessing whether a company's systems and policies meet the requirements of the Code of Conduct.
- Monitoring of member companies' compliance with the Code of Conduct based on established human rights methodologies, including in the field.
- Handling complaints on alleged violations of the Code of Conduct, including allegations that the member companies' grievance mechanism is not accessible, fair, or not offering effective remedies.

To perform these functions, the ICoCA includes three types of stakeholders: states and IGOs, PMSCs, and civil society organizations or NGOs. These stakeholders are represented equally on ICoCA's board of directors, providing the organization with significant transparency.<sup>87</sup>

Although the creation of ICoCA is noteworthy, it faces challenges in its attempt to regulate the industry. First, ICoCA is largely dependent on PMSCs to openly and honestly share information. Due to proprietary rights and the secretive nature of privatized warfare, full disclosure is unlikely without incentives or the threat of penalties. Second, self-regulation requires universal acknowledgement and compliance from the industry and its clients.

However, only six nations and just over a hundred PMSCs currently belong to ICoCA.<sup>88</sup> Finally, ICoCA lacks any serious means of enforcing its code of conduct. The most serious action ICoCA can take is to revoke membership. For ICoCA to prove effective at regulating the industry, national and international policies and legislation must provide a system capable of enforcing the industry's self-imposed standards.<sup>89</sup>

**The industry took a huge step toward self-regulation in 2010, with the creation of the International Code of Conduct...**

## National Regulation

Although the private military and security industry has a professional association, self-regulation and unenforceable codes of conduct may be inadequate to properly regulate an industry that primarily deals in the use of force and armed conflict. National governments must act to ensure PMSCs based in their countries operate in a professional manner at home and overseas. There are several steps national governments can take to encourage ethical business practices, provide oversight, and increase accountability.

One method is for governments to become involved in ICoCA. Governmental membership in ICoCA provides a venue for governments to observe and influence these companies around the globe. Although open to all nations, only six countries are currently members of the ICoCA: Australia, Norway, Sweden, Switzerland, the UK, and the U.S.<sup>90</sup> Nations can further utilize the ICoCA as a regulatory mechanism by making government contracts contingent on company membership in the association. This measure would not only help legitimize ICoCA, but also provide an incentive for these companies to act in accordance with the ICoC, as failure to do

so could result in loss of membership, making companies ineligible for future government contracts.<sup>91</sup>

For countries that desire greater regulation than ICoCA provides, government licensing may be the best option. Many governments, including the U.S., require individual professionals to be licensed in their trade. Governments could apply this same concept to the private military and security industry. The licensing framework should start with a thorough vetting of individual contractors, to include criminal background checks and mental health screenings, like that of law enforcement. The licensing protocol should require training and qualification in weapons, first aid, and human rights. Training should also test applicants on the ICoC and legal issues, including repercussions and penalties for illegal activities. Governments could develop a privatized certification program at minimal cost. Governments would simply need to develop standards, certify training courses, and maintain a database of licensed contractors. If military or security contractors violate the ICoC, the government could revoke their licenses.

**There are numerous gaps within the existing international legal framework pertaining to this industry.**

To regulate these companies and their activities overseas, governments can require agencies, such as the State or DoD, to review and authorize contracts with foreign governments or private entities prior to execution. This allows the government to ensure these companies are not acting in ways that conflict with the country's foreign policy or regional strategy. While ideal for national governments, the review and authorization process would likely need to navigate several layers of government bureaucracy, thus eliminating one

of main advantages of a PMSC, that of timely mobilization and deployment.

If governments make the licensing and authorization process too lengthy or tortuous, they run the risk of these companies relocating to other countries, where they will lose control and visibility over their activities. Although national governments cannot prevent companies relocating to other countries, they can influence their citizenry not to participate in unauthorized military and security activities by threatening to revoke citizenship. In the U.S., for example, personnel who join foreign militaries run the risk of losing their citizenship. To prevent losing control of these companies and American citizens becoming involved in overseas conflicts, as a last resort, the U.S. could revoke the citizenship of Americans who participate in unauthorized military and security conflicts overseas.

## **International Regulation**

Due to the private military and security industry's complex, international nature, international regulations are required to regulate the industry successfully. There are numerous gaps within the existing international legal framework pertaining to this industry. Rather than ban the sale of these services, which would likely lead to resurgence in the employment of uncontrollable individual freelance mercenaries, the legal framework should be established to regulate the industry and hold the industry accountable for violations.

Due to confusion regarding to the legal status of these companies and their individual contractors under the Geneva Conventions, the international community should amend Article 47 to more precisely define mercenaries and clearly differentiate them from private military and security contractors. The amendment should define private military and security contractors as lawful combatants, affording them the same rights and protections as traditional soldiers. The amendment should also outline responsibilities

and requirements to comply with the Law of Land Warfare and International Humanitarian Law.

Finally, to provide oversight and enforce regulations, PMSCs could be subjected to the jurisdiction of an international court. The Hague's International Criminal Court and the UN's International Court of Justice are both capable of trying private military and security contractors for violations of international law and crimes against humanity. These courts may be the best choice settling international grievances between these companies and other parties.

## Conclusion

Globalization, increased competition for resources, and the ever-present threat of international terrorism will keep military and security services in high demand well into the future. An ever-increasing demand for and dependence on PMSCs by global powers such as the U.S. and UN suggest that government entities no longer hold a monopoly on force. The ability to quickly assemble, equip, and mobilize highly trained and specialized teams to achieve sensitive military and security objectives around the world make these soldiers for hire the force of choice for a wide range of clients, including national governments, IGOs, NGOs, and international corporations. If these legitimate organizations continue relying on these companies, there is no foreseeable end to this lucrative and potentially lethal industry. With better regulation and increased transparency, these companies will prove to be an effective, efficient, and invaluable tool for enforcing order and stability in an otherwise chaotic and insecure world. **IAJ**

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