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THESIS

**OUTSOURCING SMALL WARS: EXPANDING THE ROLE
OF PRIVATE MILITARY COMPANIES IN U.S. MILITARY
OPERATIONS**

by

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September 2005

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MILITARY COMPANIES IN U.S. MILITARY OPERATIONS**

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ABSTRACT

“Outsourcing Small Wars: Expanding the Role of Private Military Companies in U.S. Military Operations” argues that, under current domestic and international laws, and current military regulations and doctrine, the U.S. Army could, with only a few uniformed personnel, employ a force consisting of predominately private military companies (PMCs) to fight a non-vital interest U.S. small war. This work identifies a historical U.S. willingness to outsource operations that are traditionally conducted by its uniformed military; categorizes outsourcing as surrogate warfare and, therefore, manageable by U.S. Army Special Forces; addresses some of the risks involved with outsourcing; and analyzes the legal environment in which PMCs operate in today’s environment. The recommendation from this thesis includes an illustration of how a Special Forces-led private military force should be organized, paying particular attention to the key components of the contract.

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EXECUTIVE SUMMARY

“Outsourcing Small Wars: Expanding the Role of Private Military Companies in U.S. Military Operations” argues that, under current domestic and international laws, and current military regulations and doctrine, the U.S. Army, with only a few uniformed personnel, could employ a force consisting of predominately private military companies (PMCs) to fight a small war for less-than-vital national interests of the United States.

This thesis illustrates the historic precedents when the United States has outsourced traditionally military functions – specifically combat. Sometimes this outsourcing precedence has taken the form of working through partisans or indigenous personnel, and, at other times, the outsourcing closely resembled what many would consider as the hiring of mercenaries. In either case, the research classifies this type of outsourcing as surrogate warfare. The use of surrogate forces falls under U.S. military doctrine as unconventional warfare (UW) and, under that same doctrine, the U.S. Army Special Forces is organized, manned, trained, and equipped to conduct UW.

There are risks involved in hiring PMCs, but those risks can be mitigated. The risk mitigations show that, if properly managed, PMCs can be trusted to perform in combat in the appropriate conflict environment. After the risks are studied, the laws involving outsourcing are analyzed. This includes international and domestic laws as well as U.S. Government contracting practices. In the recommendation portion, a Special Forces-led private military force (PMF) model is created to illustrate the viability of this concept.

In summary, hiring PMCs is a form of employing surrogate forces. Hiring surrogates is a form of UW conducted by Special Forces. The risks of hiring PMCs can be mitigated and there are no laws or military regulations forbidding the Special Forces-led PMF model. This model provides a viable option to the United States Government to engage in necessary conflicts that might otherwise be untenable given competing global troop deployments and uncertain perception of the nature of U.S. national interests involved.

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I. INTRODUCTION/BACKGROUND

Of the over 2.2 million servicemembers serving in the Total [U.S.] Force, over 364,000 are deployed today in 119 countries or at sea. Over 150,000 of these deployed servicemembers are Reserve or National Guard. We currently have approximately 150,000 US servicemembers in Iraq [and] approximately 20,000 US servicemembers in Afghanistan. – *General Richard Meyers, 2005*

The Peace of Westphalia in 1648 created the modern nation-state. Until then, various city-states, kings, landlords, emperors, and businessmen had routinely employed mercenaries to fight their battles and wars. The creation of the nation-state would have seemed to eliminate the need for mercenaries due to the establishment and rise of national armies: but that was not the case. Mercenaries, or some form thereof, continued to be present, if not dominant, during modern conflicts. However, the term mercenary no longer accurately describes all of the private contractors on the battlefield. The term private military company (PMC) is a more accurate title for those who are outsourced for war.

The term PMC came into use at the end of the Cold War. With the collapse of the Soviet Union in 1989, at least two events occurred that caused the rise of the private military industry (PMI). First, small states lost their superpower supporter in either the United States or the Soviet Union. This event allowed underlying currents to come to the forefront and small wars began to occur around the globe. Second, many countries began to scale down their militaries, which led to a surplus of military expertise in the international market (Singer, 2003).

Contemporary PMCs operate globally, and the United States Government (USG) has made extensive use of their services in the ongoing conflicts in Afghanistan and Iraq. There may be as many as 20,000 PMC employees in Iraq alone (Singer, 2003). This is equal to the total number of uniformed U.S. military personnel in all of Afghanistan. The omnipresence of PMCs seems to indicate that at least some USG leaders believe that PMCs operate as legitimate businesses. If this is truly the case, then could PMCs do more to help the U.S. military? These PMCs probably could not be mobilized to fight North Korea or Iran, but they could be used to help fight some of the small wars in which the

U.S. sometimes gets involved, so that the U.S. military's conventional forces could be held in reserve to fight major conflicts.

The concept of a PMC force to prosecute a small war is not without precedence. Excluding pre-1990 examples, e.g. the Free Companies of the Middle Ages, the quintessential outsourcing example of a modern mercenary or surrogate army is Executive Outcomes (EO).¹ In 1995, the Sierra Leone government hired EO, a South African PMC, for \$35 million to fight a small war against the insurgent organization called the Revolutionary United Front (RUF). With two hundred employees, EO routed the RUF and within twenty-one months helped bring the RUF's leadership to the negotiation table. EO lost less than twenty personnel. However, the cease-fire agreement required that EO leave Sierra Leone. Ninety-five days after EO's departure, the president of Sierra Leone was overthrown and chaos returned to the country. Soon after, approximately 17,500 United Nations (U.N.) peacekeepers were sent to restore order but were largely ineffective and 500 peacekeepers became prisoners of the RUF (Singer, 2003, pp. 112-115). This incident illustrates that EO served successfully as a surrogate force for the Sierra Leone government and that the operation, as defined by JP 1-02, could be labeled as unconventional warfare (UW). If the success of EO can be replicated, and the U.S. is willing to do so, would the EO experience serve as a possible model for the U.S. to be able to fight small wars?

The United States Armed Forces are currently heavily engaged in the two conflicts in Afghanistan and Iraq. With the commitment of these U.S. troops, as well as other routine troop deployments to areas like South Korea, the U.S. military is facing a difficult challenge in providing adequate forces to all of the "hot spots" in the world. According to General Richard Meyers, the Chairman of the Joint Chiefs of Staff, if the United States had to enter another war, the military would win the war but on an extended and unknown timeline. He specifically referred to a North Korean invasion of South Korea (Emanuel, 2005, May 3). Yet, what is unique about the Korean Peninsula is

¹ A third event, not mentioned in connection with the Cold War, that created an environment in which PMCs could flourish, was the end of apartheid in South Africa. Once the African National Congress (ANC) took power of the country, it disbanded many of the elite units of the South African Defense Force (SADF) so that these apartheid-securing units could not threaten the new regime. Several members of these decommissioned units formed EO, which fought effectively in two small wars in Angola and Sierra Leone.

that the U.S. places a high importance on the peninsula itself, which in turn positions South Korea's defense within the U.S. vital national interests. So, if a conflict erupted on the Korean peninsula, then the USG would automatically send a large amount of troops to protect it. But what if a conflict breaks out in a country where a threat to U.S. vital national interests could not readily be seen or is nonexistent? With two wars already ongoing and nuclear threats from North Korea and Iran looming, would the U.S. send troops to ostensibly less strategic countries like Sierra Leone, Liberia, Somalia, Sudan, or Rwanda if those states' governments requested help? Or what if another Rwanda-type genocide seemed inevitable, or a Somalia-scale humanitarian relief effort became necessary, would the U.S. send help? The answer is not certain but what is clear is that another U.S. troop deployment on the scale of the United Nations Somalia II (UNASOM II) mission, requiring 25,000 U.S. troops, would further stretch the U.S. military and make mission success more difficult to attain. In that regard, there might be other options to further extending the U.S. military as it exits today.

The journalist Max Boot offers the concept of creating a "Freedom Legion," similar to that of the French Foreign Legion, to serve the United States. This unit would consist of internationally recruited individuals vying for U.S. citizenship, which would be granted after a predetermined term of enlistment. It would be led by serving U.S. officers and noncommissioned officers. The creation of the legion would help with the U.S. military recruiting goals and

[t]he Freedom Legion would be the perfect unit to employ in places such as Darfur [Sudan] that are not critical security concerns but that cry out for more effective humanitarian intervention than any international organization could muster. U.S. politicians, so wary (and rightly so) of casualties among U.S. citizens, might take a more lenient attitude toward the employment of a force not made up of their constituents (Boot, 2005a).

A "Freedom Legion" is a creative option for employing the U.S. military in global crises. Another option is sending PMCs.

A. PURPOSE AND METHODOLOGY

"Outsourcing Small Wars: Expanding the Role of Private Military Companies in U.S. Military Operations" provides an alternative course of action to large-scale troop deployments to areas around the globe that are not within U.S. vital national interests.

Countries like Somalia, Liberia, Sudan, Rwanda, and Sierra Leone arguably have little influence on U.S. vital national interests, yet the United States sometimes finds itself in a situation where it might want to come to their aid, as in Somalia in 1993.² Maybe the United States' willingness to help is because it values the principles of freedom and democracy and wants other countries to have the same access to these principles, or maybe because the United States has a unique role as the sole superpower in the world and many countries in the world seem to look to the United States for help. Whatever the reason, the current demands on the U.S. military will most likely inhibit any near-term troop deployment that does involve its vital national interests. The main purpose of this thesis is to introduce an alternative course of action for providing military assistance while still classifying the operation as a U.S. military one.

Another concern this thesis addresses is minimizing the exposure of U.S. forces to hostile environments where the USG and public want to engage but are unlikely to tolerate casualties. In October 1993, in Mogadishu, Somalia, the U.S. military lost eighteen soldiers in an intensive firefight with local militia forces. Some of the fallen soldiers' bodies were desecrated, and television cameras captured the scene. In the United States, there was an emotional reaction from the public, and days later the U.S. pulled out of Somalia (Bowden, 1999). Juxtapose this situation with an incident in Fallujah, Iraq, March 2004, where four employees (all of whom were prior Special Operations Forces from the U.S. military) from BlackwaterUSA, a PMC, were killed and their bodies subsequently mutilated on public television (Ross, 2005). The U.S. public outcry was not as emotional or loud as it was during the Somali incident. There are several reasons why this was the case. One reason might be that the U.S. public is more acceptable of casualties in Iraq because of the frequency of casualties in that operation and the importance of the mission. Another reason might be because the soldiers in Somalia were sent to fight in a conflict that clearly fell outside of the definition of vital national interests, and, therefore, lacked a perceived justification for the soldiers being there at all, let alone sacrificing their lives. Yet in the Iraqi case, the ex-soldiers were contractors and seasoned veterans who knew and weighed the risks before accepting the contract.

² One could argue that these are the very type of countries in which terrorists could hide; therefore, becoming involved with these countries does, in fact, fall within U.S. vital national interests. However, this thesis assumes that, at least historically, these countries typically fall outside of U.S. vital interests.

With these two purposes in mind – reducing U.S. troop deployments to areas of less-than-vital interest, and avoiding U.S. military casualties whenever possible, this thesis will create a model of how PMCs can be used by the USG to help fight small wars. This thesis first illustrates the historic precedence for the United States to outsource. Sometimes this outsourcing precedence takes the form of working through partisans or indigenous personnel, and, at other times, the outsourcing closely resembles what many would classify as hiring mercenaries. In either case, the research classifies this type of outsourcing as surrogate warfare. The use of surrogate forces falls under U.S. military doctrine as Unconventional Warfare (UW) and, under that same doctrine, the U.S. Army Special Forces are designed to conduct UW (JP 1-02, 2004, p. 494). The next section addresses several of the risks involved with hiring PMCs and how those risks can be mitigated. The risk mitigations show that, if properly managed, PMCs can be trusted in the right environment. After the risks are addressed, then the laws involving outsourcing are analyzed. This includes international and domestic laws as well as U.S. government (USG) contracting practices. The last section of the thesis contains the recommendation of a Special Forces-led Private Military Force (PMF) model. This model illustrates how a Special Forces element would manage the organization, what the key components of the contract have to be for proper management and accountability, and an example of how the PMC would be manned given current PMCs on the market.

This project will not address several issues commonly discussed when dealing with PMCs. The retention of Special Operations Forces (SOF) will not be addressed. The hiring of PMCs by foreign states or not-state actors (e.g. corporations, terrorists, drug cartels, etc.) will not be addressed directly. Also, the argument generally involved with whether a PMC employee is a mercenary or not will be left to someone else; however, this thesis will show some differences between the PMCs and mercenaries. Finally, outsourcing could potentially mean outsourcing just about any military function; however, this thesis focuses on the “combat” and “combat enablers” aspect of outsourcing instead of, for example, purely logistical and technical outsourcing.

B. SCOPE

1. Research Questions

The initial thesis question that inspired this work is the following: How can, within existing laws and military practices, the private military industry (PMI) take on more of a role to help alleviate the current deployment tempo that the U.S. forces are facing today? To further investigate this question, the following subsequent questions are asked:

- a. Is there a way to help other countries in need of assistance without subjecting too many U.S. forces to harm?
- b. What are the risks involved in hiring a PMC?
- c. Can PMCs be trusted to help fight the U.S.'s wars?
- d. Can PMCs be regulated through current international and domestic laws?
- e. Who would manage or lead a PMC force?
- f. Does U.S. military contracting doctrine and regulations exist that could be implemented to employ a U.S. led PMC force?
- g. What is the legal status for PMCs during a conflict? Do their employees have any protections?
- h. Who is accountable for PMCs if their employees commit a human rights violation, violate the law of land warfare, or simply commit a crime?

2. Assumptions

The first assumption of this thesis is that the USG has the political will to allow a Special Forces-led PMF to operate. There is understandably considerable political risk if an operation with this force is conducted improperly or it fails. Not only is that why the Special Forces element would manage the PMF in the model, but this management is the legitimacy that demonstrates to the domestic and international community that the U.S. is taking responsibility for the operation and not leaving it to a purely private force. Of course the United States is already contracting a significant amount of PMCs, but these PMCs primarily engage in security, logistics, or advisory roles. Although these roles are also needed in the Special Forces-led PMF model, the model also allows for the PMCs to conduct offensive operations if necessary. It is this offensive capability that the USG has to accept for this model to succeed.

The second assumption of this thesis is that the U.S. will continue to follow, as closely as possible, the section of the Weinberger Doctrine which states that the U.S.

should not send troops to a conflict unless U.S. vital national interests are at stake. Some may disagree on whether the U.S. should follow this doctrine or not but nonetheless it seems to be prevalent in the USG's decision making process. One example of this is during the 1994 Rwanda genocide. The Tutsi Rwandans needed help but the U.S. choose not to intervene. This could have been because of the recent policy failure and military defeat in Somalia, October 1993, but it is probably also because Rwanda's problems did not affect U.S. vital national interests. As a result, the U.S., and many other countries did not provide forces and an estimated 800,000 Rwandans died. This thesis raises the question, although it does not directly answer it, of whether a Special Forces-led PMF force could have stopped the genocide?

The third assumption is that the USG and its citizens more readily accept the deaths of PMC employees over soldiers. Although the previously mentioned Mogadishu, Somalia vs. Fallujah, Iraq case indicates that this might be the case, there is not any research available that can definitively lead to this conclusion. However, this assumption does seem intuitive and so is used for this thesis.

The final assumption is that the U.S. may decide to use contractors even if they are not less expensive then sending U.S. troops. The cost advantage of outsourcing has not definitively been determined yet. One recent article states that a PMC employee costs approximately \$100,000 a year while a soldier in a comparable position costs \$110,000 when benefits and retirement are figured (Matthews, 2004). The cost of a PMC employee can be easily determined through his or her paycheck, but a soldier could have individually varying cost factors distinguishing him or her from another soldier in the same position. Hypothetically speaking, one soldier could be single and cost the military only his or her base pay plus benefits. Another soldier, while living in the highest cost of living area in the country, which the military compensates to some degree, could have four dependents, one of which might require serious medical attention, have had the laser eye surgery performed and braces put on. Of course, there is nothing wrong with this latter soldier, but one can see that price comparison can be difficult.

3. Definition of Terms

The following list of definitions provides the reader with a common frame of reference for how certain unique terms are used in this thesis. Initial efforts were made to draw definitions directly from official or military sources. If a definition or explanation did not exist among these sources, then academic sources had to be used.

Counterinsurgency: “Those military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency” (JP 1-02, 2004, p. 127).

Mercenary³: The term “mercenary” is not particularly useful for this thesis but must be discussed because the term is inevitably used whenever one discusses PMCs. It is an extremely abused label that some will throw towards any category of fighters who are not born in the state for which they are fighting. For example, the term “green card mercenary” refers to the 32,000 foreign soldiers who serve in the U.S. military but wear “U.S. Army” on their uniform (Heinz, 2005, May 26). This thesis will not rely on a definition of mercenary except when explaining how others view the privatization of warfare. That being stated, the most notable definition for a mercenary comes from the U.N.: A mercenary one who is recruited locally or abroad in order to fight in an armed conflict, who is motivated for the desire of private gain and that gain exceeds that paid to combatants of national forces who are party to the conflict. A mercenary is neither a member of the armed forces that are party to the conflict in which they are engaged nor sent in an official capacity by a party of the conflict (Protocol, 1977).

Military Outsourcing: “The process of contracting out to private companies tasks that used to be performed by members of the uniformed military” (Iraq: Military Outsourcing, 2004).

³ This definition is adapted from the list of attributes that qualify someone as a mercenary from Article 47 to Protocol 1 of the 1977 Addition to the 1949 Geneva Convention. Article 47 is written in its entirety in Chapter IV. Although this definition is the most internationally recognized description of a mercenary, it is not unanimously agreed upon.

Private Military Company (PMC)⁴: If the definition of mercenary seems to be a matter of opinion, the definition of a PMC is even worse. In fact, most explanations about PMCs are a comparison of how PMCs differ from mercenaries. P.W. Singer's description of PMCs is no different. In his book, *Corporate Warriors: The Rise of the Privatized Military Industry*, he states that Private Military Firms (another name for a PMCs) provide military services that are "commercial enterprise[s] first and foremost ... [that are] organized into registered businesses that trade and compete openly (for the most part) ... with a clear executive hierarchy that includes boards of directors and shareholdings ... driven by business profit rather than individual profit [like that of a mercenary] ... [and] are considered legal entities bound to their employers by recognized contracts ..." (pp. 45-47). In a later article, Singer states that PMCs "... are businesses that provide governments with professional services intricately linked to warfare; they represent, in other words, the corporate evolution of the age-old profession of mercenaries" (2005). This is a broad summary of a several page explanation for the definition of a PMC, but it should serve as a good basis for understanding how the term PMC will be used during the thesis; plus, there are not any current definitions of PMCs that conflict with Singer's.

Private Military Force (PMF): A PMF is the combination of all the necessary PMCs to accomplish a given mission.

Small War⁵: The United States Marine Corps (USMC) *Small Wars/21st Century* manual (2005)⁶ provides as close to an official definition for small wars can be found within current doctrinal manuals. The definition is the following:

Small Wars involve a wide range of military operations in conflicts involving states or nontraditional actors, generally over a protracted timeline, characterized by a combination of physical violence and non-

⁴ The definition provided seems to be consistent with most authors who write on the subject. The only detractors would probably come from the group of authors who believe that PMCs are simply synonymous with mercenaries. This will be addressed further in Chapter IV.

⁵ This is generally a non-standard term used in the military and academic community. However, as the thesis title indicates, understanding this term and agreeing on its definition is important to this work. If one combined the doctrinal definitions of counter-insurgency, unconventional war, Military Operations Other Than War (MOOTW), stability operations, and support operations (see Appendix A for the last three definitions) then one should get a flavor of what a small war consists.

⁶ Because this is a USMC definition only, the other services do not necessarily follow it.

kinetic forms of influence requiring the tightly integrated application of diplomatic, informational, economic and military means (p. 3). Small wars are most often waged between asymmetrically empowered adversaries – one larger and more capable, one smaller and less capable when measured in traditional geostrategic or conventional military terms (p. 5).

To further explain how this definition is used in the thesis, C.E. Callwell's (1996) book, *Small Wars: Their Principles & Practice*, is referenced. He adds: "That the expression 'small war' has in reality no particular connection with the scale on which any campaign may be carried out; it is simply used to denote, in default of a better, operations of regular armies against irregular, or comparatively speaking irregular, forces" (p. 21). These two definitions combined should paint a fairly clear picture of how the term "small war" will be used in this thesis; however, one might note that this is a broad definition and just about any war could fall within it. For example, the USMC manual lists the U.S. conflicts in Vietnam and Afghanistan as small wars. One might argue that these conflicts were within U.S. vital national interests and the responsibility of the U.S. military. So, to further narrow how this definition of small wars will be used, this thesis will specifically address small wars that fall outside of perceived U.S. vital national interests.⁷ Examples of these conflicts that are, or would be considered, small wars if, or when, the U.S. became involved but are probably outside of U.S. vital interest are Somalia, Liberia, Sierra Leone, and Rwanda.

Surrogate: "to put in the place of another: a: to appoint as successor, deputy, or substitute for oneself" (Merriam-Webster, 2005). As applied to this thesis, a surrogate is someone or some entity that fights instead of the U.S. military or elements thereof.

United States Army Special Forces⁸: "US Army forces organized, trained, and equipped to conduct special operations with an emphasis on unconventional warfare capabilities" (JP 1-02, 2004, p. 494).

⁷ The *Small Wars/21st Century* (2005) manual alludes with this passage to the general lack of "interests" in these small wars: "While the interests of great powers are not immediately at stake, although it is certainly possible that a small war unsuccessfully prosecuted could lead to a more serious situation where survival or vital interests do become involved ..." (p. 6).

⁸ Of interest here is that the Army's manual of definitions does not list or define the term special forces. The Joint Publication, cited here, provides this definition.

Weinberger Doctrine: In 1984, U.S. Secretary of Defense Casper Weinberger delivered a speech to the National Press Club in Washington, D.C. on how the U.S. military should be used. Figure 1 list the points that came from his speech and which later became known as the Weinberger Doctrine. This doctrine is still the referred to in 2005 as the criteria for sending U.S. troops into a conflict.

- (1) ...the United States should not commit forces to *combat* overseas unless the particular engagement or occasion is deemed vital to our national interest or that of our allies.
- (2) ...if we decide it *is* necessary to put *combat* troops into a given situation, we should do so wholeheartedly, and with the clear intention of winning.
- (3) ...if we *do* decide to commit forces to combat overseas, we should have clearly defined political and military objectives. And we should know precisely how our forces can accomplish those clearly defined objectives. And we should have and send the forces needed to do just that.
- (4) ...the relationship between our objectives and the forces we have committed – their size, composition and disposition – must be continually reassessed and adjusted if necessary.
- (5) ... before the U.S. commits combat forces abroad, there must be some reasonable assurance we will have the support of the American People and their elected representatives in Congress.
- (6) ... the commitment of U.S. forces to combat should be a last resort.

Table 1. Weinberger Doctrine. (From Weinberger, 1990, pp. 441-442).

The most significant point of the Weinberger Doctrine relative to this thesis is that the U.S. military should not be committed to a conflict “unless the vital national interests of the United States or its allies are involved.”

United States Vital National Interests: Establishing what the U.S. vital national interests are is a difficult task. There is not an official list that exists and what is considered “vital” changes with the times. The current National Security Strategy (2002) lists several interests to the U.S., but does not label the importance of those interests. However, when President George W. Bush states in the National Security Strategy that

“Defending our Nation against its enemies is the first and fundamental commitment of the Federal Government,” one can derive that this is a vital national interest. For a slightly expanded explanation of U.S. vital national interests, General Henry H. Shelton, who at the time was Chairman of the Joint Chiefs of Staff, gave a speech to the Kennedy School of Government/Harvard University on January 19, 2000, which provides a generally accepted explanation for U.S. vital national interests: “...by vital interests, I mean the big things that directly impact the survival of the Republic and our way of life – such as the safety of American citizens abroad, the security of our territory or that of our allies, and protection of our economic well being....”

Unconventional Warfare (UW):

A broad spectrum of military and paramilitary operations, normally of long duration, predominantly conducted through, with, or by indigenous or surrogate forces who are organized, trained, equipped, supported, and directed in varying degrees by an external source. It includes, but is not limited to, guerrilla warfare, subversion, sabotage, intelligence activities, and unconventional assisted recovery (JP 1-02, 2004, p. 554).

The reason this term is not used in favor of the term “small war” is because the Special Forces-led PMF model does not necessarily include subversion and sabotage. In fact, the model could be used in support of a humanitarian assistance mission, which seems to depart from the term “UW” but can fall within the scope of a “small wars” if the humanitarian assistance is provided during a conflict.

C. SURVEY OF LITERATURE

There are few books written on the subject of hiring PMCs. The most prominent book is by P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*. This is an excellent academic work that is truly relevant to the world’s current events. The book’s only deficiency is that it does not have a rival that might present conflicting opinions. It is considered by many to be the premier work in the field of military outsourcing. In fact, one finds it difficult to read a news or academic article about PMCs without Singer’s book being referenced. There are other books on the subject, most notably by Jim R. Davis and Ken Silverstein, but these books have not received the notoriety of Singer’s book.

Although there are not many books on the subject, the availability of news and academic articles is a different matter. There have been articles written on the subject of PMCs in such prominent journals as *Foreign Affairs*, *Armed Forces Journal*, and *Parameters*. Articles have also been published in news magazines like *Time*, *U.S. News and World Report*, and *Newsweek*. The *New York Times* and *Los Angeles Times* have also published several articles on PMCs.

Most of the material available on the subject of PMCs generally falls into one of two groups – those written by authors who do not favor the PMI and those by authors who do. The ones who do not favor the PMI view outsourcing, contracting, or hiring PMCs as simply euphemistic for employing mercenaries and, therefore, not a good practice. State leaders within the African Union (AU), formally known as the Organization of African Unity (OAU), generally take this stance, which is not surprising since mercenaries have a checkered history on the African Continent. When the literature from this group is published, it usually discusses the destabilizing effects of mercenaries and the mercenaries’ general lack of accountability in the international arena. The ones who favor the PMI view today’s outsourcing as something very different from the days of mercenaries. This group largely supports the use of PMCs and sees the employment of these organizations as a potentially good idea. This group is not necessarily unanimous on the subject; in fact, many of them add a caveat to their work addressing the need for more regulation of the PMI.

Both groups have a significant number of supporters that give good arguments both for and against outsourcing. One cautionary note when researching the PMI, there are some books on the market that read like exciting fictitious mercenary novels. Although the role of mercenaries is an integral part of the PMI, these “mercenary” books should not be used for more than a supplement to any research on the subject.

D. OVERVIEW OF CHAPTERS

1. Chapter II: The Precedence for U.S. Outsourcing

Chapter II serves a two-fold purpose: first, to establish an historic precedence for the U.S. to employ forces, other than the U.S. military, to fight, or help fight, a war. This precedence includes guerrilla warfare, insurgencies, the use of mercenaries, and most recently, the employment of PMCs. The second purpose is to establish that all of these

terms can fall under one heading within current U.S. military doctrine – surrogate warfare. The U.S. military has one organization suited to conduct surrogate warfare – the Special Forces.

2. Chapter III: Trusting PMCs

Chapter III addresses several of the risks involved with hiring PMCs and how those risks can be mitigated. Although all the risks associated with outsourcing are not mentioned, the most significant ones for the subject are discussed within this chapter. After analyzing the risk mitigations, one is drawn to the conclusion that PMCs can be trusted in some circumstances if the environment is right.

3. Chapter IV: Outsourcing Legalities

Chapter IV covers the international and domestic laws that govern mercenary activity. Mercenary activity is analyzed because the PMI has to operate in light of this association and mercenarism cannot be removed from the subject of PMCs. This chapter also covers USG contracting and the legal controls the United States has over contractors.

4. Chapter V: A Special Forces-led PMF Model

Chapter V contains the recommendation of this thesis. Here is where the thesis statement becomes a usable product. A model is created that has a Special Forces element managing a surrogate force, specifically, PMCs. The model addresses the “trust” concerns presented in Chapter III and operates within the legal framework described in Chapter IV.

5. Chapter VI: Conclusion

Chapter VI simply reviews and summarizes the ideas set forth in the thesis.

II. THE PRECEDENCE FOR U.S. OUTSOURCING

[King George III of England] is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. – *Declaration of Independence, 1776*

As can be seen above by a section taken from the American Declaration of Independence (1776), at least 55 of the founding fathers for the United States of America shared a negative opinion of mercenaries. This attitude could have been born out of a true dislike for those who fight wars for countries other than their own, or it could have simply been part of the propaganda needed “toward galvanizing American public opinion against the British crown” (Fawcett, 1999, p. 44). Regardless of the reason, as the U.S. grew and developed over the years as a country, its national interests grew as well. Several times since the Declaration of Independence, the U.S. has had interests somewhere other than on American soil that required supplemental troops for the U.S. forces in order to affect those interests. The United States addressed these “interest issues” the same way the British did in 1776 – the United States got some help.

This chapter is designed to serve two purposes: first, it will provide a historical context by which the United States has addressed or implemented some type of outsourcing to conduct military operations; second, it will explain how these implementations translate as surrogate warfare, which falls under the U.S. military doctrinal heading of UW and should be conducted by Special Forces. Although the intent of this chapter is not to distinguish between different labels of surrogate forces, e.g. allied forces and indigenous personnel, inevitably this evaluation occurs. Finally, one can see that the use of PMCs is simply another means of employing surrogate forces. Therefore, hiring PMCs can become just another form of UW.

The following cases are deliberately short and meant as an overview of the subject. Only the facts relevant to the discussion of outsourcing or surrogate warfare are discussed. The cases are not designed as an all inclusive list, but, instead, as varying

examples of the U.S. experience with outsourcing. Further investigation into any of the cases can be done by searching the “References” section of this thesis.

A. U.S. HISTORICAL INVOLVEMENT WITH OUTSOURCING

1. Revolutionary America

In 1776, England arranged for and sent German troops to its rebelling American Colonies to supplement their inadequate force.⁹ As a result of this arrangement, the Germans received the label as mercenaries. The Germans had to be used because King George III of England realized that he did not have the forces available to suppress a rebellion in the American Colonies, so he had to look elsewhere for forces. Not surprisingly, King George III, a descendent of the German Hanover line of monarchs, sought help from the various small German states at the time. These states had surplus armies from the Seven Years War that needed employment, so thirty thousand of them joined the British ranks for a fee (Forstchen, 1999). The opening quote to this chapter expresses how the Continental Congress thought about “mercenaries” being sent to America to fight for the British. The Germans were clearly surrogate forces, but were they really mercenaries?

Even though money exchanged hands, does that necessarily mean the Hessians deserved the label of mercenary? The German states existed as acknowledged entities with armies. One could interpret the German support as simply states supportive of the British crown providing troops for combat. The fact that these German states received financial compensation does not necessarily mean they were mercenaries. If the Continental Army truly did have reservations about “mercenaries,” then it probably would not have contracted Baron Frederick William Augustus Von Stueben, a Prussian officer, to train the army at Valley Forge (Singer, 2003, p. 33). One only needs to look at recent examples of how one country had to pay for another allied country’s support to fight a war.¹⁰

⁹ These troops have been historically labeled “Hessians.” In actuality, the Hessians made up only a portion of the German contingent, albeit the largest portion.

¹⁰ This comment is referring to the situation in Turkey during the U.S. build-up for the invasion of Iraq in 2003. Turkey sought somewhere between \$14 billion to \$25 billion from the United States, a fellow North Atlantic Treaty Organization (NATO) member, in order for the United States to use Turkey as a staging base into Iraq. Although Turkey is an ally of the United States, it still demanded financial payment for military support (Slevin, 2003, February 14).

This case is obviously not an example of U.S. outsourcing; rather it is a British example. Nonetheless, the Germans during the Revolutionary War constituted the first exposure that America, as a declared independent state, had with outsourcing. Also, the German employment illustrates the point that how surrogate forces are labeled is largely a matter of opinion and not fact. A mercenary is a surrogate soldier, but a surrogate soldier is not necessarily a mercenary.

2. China

In 1940, President Franklin D. Roosevelt maintained a posture of not getting involved with foreign wars; however, the speed of which the Japanese moved through Asia concerned him. During that time, Claire Chennault, an American from Louisiana, served as an advisor and trainer to the Chinese Air Force and a group of international mercenary fliers (who were at varying competency and quality levels). He went to Washington D.C. to get support from the USG. Roosevelt maintained his public neutrality stance but wanted to support China as long as it was done "... with utmost discretion and without creating a political uproar" (Roberts, 1999, p. 132). On April 14, 1941, the American Volunteer Group (AVG), better known as the Flying Tigers, stood up under a bogus private business and U.S. military flyers were allowed to leave the service and serve in this unit for a one year tour, then return to the U.S. military upon completion of their tour. The Flying Tigers fought for the Chinese while simultaneously serving U.S. interests.

This case shows that because of the threat of a negative domestic or international response, the U.S. found a way to help another country without sending its own troops. Since the Flying Tigers were not in the service while flying in China, some might view them as American mercenaries. However, even though they did serve as surrogate pilots for the Chinese, they clearly were not mercenaries since they were sent by the USG and supported U.S. interests in Asia.

A key word Roosevelt used to describe the mission was "discretion." The word choice suggests something different from the word "covert." The next case illustrates the difficulty of attempted large-scale covert operations.

3. Cuba

In 1961, the United States had a strong desire to remove Fidel Castro from power, but did not want the removal to be conducted by U.S. forces. So the United States found what seemed to be a viable alternative – Cuban exiles. These exiles were recruited into a fourteen hundred man invasion force named “the Brigade” by the Central Intelligence Agency (CIA) and trained in Guatemala for an impending covert invasion of Cuba. Because of the size of the Brigade and the recruiting of Cuban exiles in Florida, the press discovered and reported on the operation. Nonetheless, President John F. Kennedy’s took the position that U.S. forces would have little to no involvement with the operation and the “use of the exile brigade would make possible the toppling of Castro without actual aggression by the United States” (Janis, 1982, p. 15).

The Bay of Pigs event illustrates a large-scale example of how the U.S. has been willing to use others to prosecute vital U.S. foreign policy when U.S. forces may have served better. This case also shows how indigenous forces can summarily be labeled as mercenaries when these fighters actually fall into the category of insurgents. The reason is that although these forces were clearly surrogates for the USG, they were Cubans who were fighting for Cuba. This characteristic alone sets them apart from mercenaries. With the exception of some CIA advisors, the force actually consisted of mostly, if not solely, Cuban exiles. So, in actuality, the Brigade fought in their country to retake their country, which eliminates them from being mercenaries but clearly keeps them within the realm of a surrogate force. So, should a surrogate force have been used?

The USG wanted Castro removed from power to eliminate a Communist threat within the United States’ sphere of influence. This could easily have been considered a U.S. vital national interest at the time and probably should have had a greater U.S. military involvement. Although there were some U.S. agents among the Brigade, there were not enough of them, and the planned naval support was only limited. During the course of planning for the operation, noted Kennedy Administration historian Arthur Schlesinger Jr. noted that “somehow the idea took hold around the cabinet table that this [operation] would not much matter so long as United States soldiers did not take part in the actual fighting” (Janis, 1982, p. 20). The U.S. might have served itself better by either employing a U.S. force with limited indigenous support or fully supporting the Brigade

with the assets it needed to be victorious. In the end, the operations failed and tainted the future U.S. perception of surrogate warfare.

4. Croatia

During the breakup of Yugoslavia in the 1990's, Serbia remained too powerful and aggressive against its neighbors and former countrymen, so the U.S. wanted to offset Serbian hegemony with a balance of power. However, the U.S. could not directly support any one of the individual countries involved with the ongoing conflict because of a U.N. arms embargo against all of the countries involved.¹¹ So, in order to affect the situation in one of the new countries, the U.S. recommended that Croatia hire Military Professional Resources Incorporated (MPRI) to conduct training of their military, which also fell under the embargo. MPRI designed a long-range management program and training on “democratic principles and civil-military relations to officers previously accustomed to the Soviet model of organization” (Singer, 2003, p. 126). MPRI received a license from the State Department for this contract, and by early 1995 MPRI, was in full implementation of their contract. In August of 1995, the Croats launched an overwhelmingly successful operation named OPERATION STORM. MPRI denied any involvement with the operation but outside observers believe that the combined arms coordination was uncharacteristic for a military that had just recently formed from a militia. Also, the plan looked like a text book operation characteristic of “the U.S. Army’s *Air-Land* 2000 doctrine that the firm was expert in” (Singer, 2003, p. 127). Most outside observers believe that the company’s influence, no matter how direct, is the reason the mission succeeded (Singer, 2003).

MPRI falls into the category of surrogate forces for the USG because they were employed to serve U.S. interests when U.S. forces were not able or willing to be used. This company, by any definition, did not serve as mercenaries because its employees only served in an advisory role and did not engage in combat operations. Also, because of the training of indigenous forces, MPRI’s operations fall into the category of UW.

MPRI claims it is “distinguished by its professionalism and loyalty to U.S. foreign policy goals” (Singer, 2003, p. 119). This claim is also one of the major criticisms of

¹¹ The USG actually supported this arms embargo in the U.N. Security Council, so going directly against it would seem hypocritical.

MPRI. That criticism is that MPRI is simply an extension of the U.S. military, which some view as a way for the USG to “get around” laws, or, in the Croatian case, a U.N. arms embargo. This may be true; MPRI may be a good work-around, but nonetheless, they helped a fledgling country when no one else would or could.

5. Afghanistan

As Afghanistan relates to U.S. foreign policy, it clearly has two distinct time periods that need to be briefly addressed. The first occurred during the Soviet invasion in the 1980’s. This is when the U.S. supported the Mujahdeen by way of waging a proxy war against the Soviet Union. This was clearly the U.S. using surrogate forces to engage an enemy without becoming involved itself.

The second period that the U.S. became involved in Afghanistan was in October 2001, just after the September 11, 2001 al Qaeda attack on the United States. This is a case where the Special Forces infiltrated the sovereign nation of Afghanistan in October 2001 to train and advise the Northern Alliance in the fight against the Taliban. The Northern Alliance consisted largely of a mixture of non-Pastun minority tribes in the northern region of Afghanistan (Ricks & Loeb, 2001). The Special Forces conducted a classic UW mission with the emphasis being “by, with, and through” the indigenous population. The Northern Alliance clearly consisted of Afghan fighters fighting for a new Afghanistan, which places them in the category of indigenous forces. Again, they were also surrogate forces for the U.S. One of the main differences between the Cuban “Bay of Pigs” Brigade and the Afghan Northern Alliance is that the Brigade trained abroad and then invaded Cuba while the Northern Alliance already controlled some of the country, but had to conquer the rest. One would be hard pressed to find a description of the Northern Alliance as mercenaries for the United States. Had the Special Forces recruited, trained, and fought with, for example, Pakistani fighters not officially provided by the Pakistani government, then these soldiers most likely would have been referred to as not only surrogate forces but probably also as mercenaries.

The recent events in Afghanistan serve another purpose for this thesis, that of identifying a fraud. This is the case of Jonathan Keith ‘Jack’ Idema. Idema claims to have been working for the USG as an independent contractor, which the U.S. denies and this is a claim that has never been proven. On July 5, 2004, Idema, two other Americans and

four Afghans were arrested for running a private jail in the basement of a house in Kabul, Afghanistan (Meo, 2004). Coincidentally, at the time of his arrest, Idema was also involved with a \$130 million lawsuit claiming that he was the inspiration for George Clooney's character in the action thriller "The Peacemaker" and he was not compensated (Meo, 2004). Additionally, Idema had a lengthy arrest record before Afghanistan that ranged from assault and resisting arrest to impersonating a police officer and 55 federal wire-fraud counts. During the wire-fraud case, Idema argued that he was being prosecuted because he knew "national secrets" (Barry & Matthews, 2004). Idema's antics probably can lead most observers to realize that he most likely was not a USG contractor but rather someone who fancied himself as a "secret agent" for the United States. He was neither an indigenous soldier, surrogate for the United States, nor an employee of a recognized PMC; therefore he was most likely just a free-lance¹² bounty hunter out for the money on Osama bin Laden's head. Unfortunately, as one private contractor admitted, the Idema incident may create a negative perception of legitimate PMCs (North, 2004). Therefore, the Idema case serves as a caution for those who would employ PMCs in the future to be careful of who is available for employment.

6. Iraq¹³

The U.S. liberation of Iraq, which started in March 2003, illustrates the importance of outsourcing and the need for a viable PMI. After the initial military victory in Iraq, the United States found that it did not have enough forces to conduct all of the necessary operations needed for nation-building. Also, there was a distinct lack of coalition forces to help the United States, so the United States had to turn towards another source. Of course, that source was the PMI. Today in Iraq there are an estimated 15,000 to 20,000 contractors who work for PMCs (Singer, 2004a). PMCs account for the second largest security contribution in Iraq with the U.S. being the largest contributor (Berkowitz, 2004). These PMCs conduct nearly every operation that the military could want or need, from cooking food to guarding convoys. Although the PMCs could still be

¹² The term "free-lance" originated post-bellum to the Hundred Years War (1337-1453) when out-of-work soldiers formed "free companies" and searched for battles to fight for those who could afford their fee (Singer, 2003).

¹³ PMC examples from Iraq will be used throughout the remainder of this thesis; therefore, this section will not address them at length.

considered a type of surrogate force, like indigenous personnel, allies, or mercenaries, that does not necessarily mean these companies' operations fall into the realm of UW.

B. SPECIAL FORCES MANAGING SURROGATE FORCES

If all PMCs can be considered surrogate forces and the use of surrogates falls under the category of UW and is conducted by Special Forces, then should Special Forces manage all PMCs regardless of the environment? The answer to this question is “no.” Special Forces have a specific purpose and that purpose is to conduct UW. This thesis only argues that Special Forces should manage contractors as these contractors apply to small wars, which is close, if not synonymous, with UW.

An SFODA is designed to train and advise up to a battalion strength of indigenous forces in a UW environment (FM 3-05.20, 2001). The conditions for the Special Forces with the Northern Alliance in Afghanistan constituted a UW environment. A battalion consist of around 600 personnel, so if this figure can be directly translated to a surrogate force in the form of a PMC, then an SFODA should, by doctrine, be able to manage around 600 PMC employees. Subsequently, a Special Forces Operational Detachment – Bravo (ODB),¹⁴ supervising six SFODAs should be able to manage a private force of around 3600 personnel.

C. CONCLUSION

The six cases provided in this chapter vary from indigenous personnel to allied support to PMCs, but what all these cases have in common is that, to some degree, they all reflect a use of “surrogate forces.” How surrogate forces are labeled is as much a matter of opinion as whether an organization or person is labeled a mercenary. Nonetheless, Special Forces are uniquely suited to manage surrogate forces under the right conditions – that of a small war or UW environment.

This chapter did not cover the entire U.S. history for the employment of surrogates to fight in conflicts. There are other examples of surrogates such as the use of Montagnards and Nungs during the Vietnam War (1965-1975). Instead, this chapter described a variety of situations that indicate that a successful and effective precedence had been set for the U.S. to outsource its military and national interests in conflicts.

¹⁴ The ODB is the company headquarters for six ODAs.

III. TRUSTING PMCS

The Pentagon will be unable to exploit the capacity of the private sector if doubts persist about the efficacy and legitimacy of contractor support. In any private sector activity, people understand the marketplace and make smart decisions when there is transparency. Security services are no different. Companies providing contractor support must help build trust and confidence in their services. They must establish best practices and professional standards--measures by which their actions should be judged.
– *James Carafano, 2005*

The previous chapter discussed the U.S. historical precedence for the use of surrogate forces and categorized PMCs as a type of surrogate force. However, just because there is precedence for outsourcing does not necessarily mean that the U.S. should trust surrogate forces, in this case, PMCs. Can these PMCs be trusted as much as U.S. service members? More specifically, can the USG trust PMCs to help fight and win its nation's wars?

This chapter explores the most critical risks involved with hiring PMCs and if those risks can be mitigated. This is done to determine if PMCs can be trusted to help fight U.S. wars. Several non-U.S. examples are used to cover as many risks as possible. The framework to determine if trust can exist is derived from Piotr Sztompka's (1999) book, *Trust: A Sociological Theory*. Trust is defined as the following: the reliance on the integrity, capability, and strength of someone or something to make a bet on a future act (pp. 25-26).

A. RESPONSIVE TRUST

The type of trust that applies to the outsourcing of war, as described by Sztompka (1999), is responsive trust. The U.S. places something valuable – military operations – in the control of a PMC and trusts the PMC to conduct operations appropriately. There are several examples of this. MPRI is trusted by the United States to train part of the future military officer corps by contracting to fill desperately needed Reserve Officer Training Corps (ROTC) cadre positions at universities across the country. Kellogg, Brown, and Root (KBR) is trusted to run several base camps, which look more like small cities, in Bosnia, Afghanistan, and Iraq. In February 1995, with the insurgent group RUF within fifty miles of Freetown (the capital) and without any other nation willing to commit

troops, the Sierra Leone government hired EO to regain control of not only its diamond mines, but its country as well. Had EO failed, the country would have most likely fallen to the RUF (Singer, 2003). These examples indicate only a few situations where PMCs are being or have been trusted. The basis for this trust is not random and depends on several factors.

Sztompka (1999) identifies two grounds for trust, primary and secondary trust, which are applicable to understanding whether the U.S. can trust PMCs. Primary trust, or reflected trustworthiness, is how one estimates the trustworthiness of someone or something through the traits that the recipient possesses. The key to primary trust is in possessing a trait. Sztompka categorizes reputation, performance, and appearance under primary trust. Secondary trust, or derived trustworthiness, is the external affects that create an environment that is structurally conducive to trust. Militarily speaking, through control measures one could reasonably believe that the potential recipient of trust can, in fact, be trusted. The categories for secondary trust are accountability, pre-commitment, and trust-inducing situations (pp. 69-71).

1. Primary Trust

The first category under primary trust is reputation. A PMC's reputation is probably the single most important factor that is evaluated to determine if it is trustworthy or not. The USG has to be careful to critically research a would-be contracted PMC to ensure that the PMC has a history of accomplishing its missions, does not have a record of human rights violations, does not employ questionable or previously criminal employees, and has an established record that indicates longevity. Similar to longevity, the U.S. must ensure that the PMC in question is not merely the resurrection of a bad PMC under a different name.

Back to the Sierra Leone example: in 1995 the government hired EO based off of its established reputation in Angola of achieving a quick and resounding victory over the insurgents. The Sierra Leone government trusted EO simply based on its established record of success. The U.S. similarly trusts MPRI and KBR because of their established reputations as well. Both companies have a long and almost dependent history of loyally serving the USG. Conversely, if a company does not establish a good reputation, it might not enjoy the fruits of future, lucrative contracts. EO was hired in Sierra Leone to replace

the Gurkha Security Group (GSG) when GSG lost its commander, Bob McKenzie (an American mercenary of the Rhodesian War fame) who was captured, killed, and eaten by the RUF as a warning to other interlopers. GSG subsequently broke its contract and fled Sierra Leone (Singer, 2003, p. 112). It is reasonable to say that this company, although still in existence as of 2005, will neither receive critical nor valuable contracts again. The building blocks for a PMC's reputation are its actual performance.

Performance is the second category under primary trust. The performance of a PMC lays the foundation for its reputation. As of 2005, there are at least 60 PMCs working in Iraq (Singer, 2004). Some work for the USG and some work for other countries or companies. The significance of this is that how these PMCs perform will set the stage for their future employment. If a given PMC is accomplishing its missions within the boundaries of its contract, then the PMC will probably enjoy future contracts as well. The opposite of this is true as well. The alleged wrong-doings by some PMCs have indicated poor performance. CusterBattles is accused of overcharging the USG, Vinnell Corporation did an unsatisfactory job training the Iraqi military; and CACI International provided some of the interrogators involved with the Abu Ghraib prison torture scandal (Boot, 2005b). These mishaps have probably damaged these companies' images for sometime to come and future contracts may be awarded to their competitors. These scandals represent a less-than-professional performance and appearance that taints not only the individual PMC, but the entire PMI as well.

Appearance is the final trait that Sztompka (1999) categorizes under primary trust. A search of PMCs on the World Wide Web reveals a host of web pages that are professionally created and managed (see Appendix B for examples). Business legitimacy is gained through such efforts, a "dress for success" mentality. But also under the topic of appearance is what not to look like, and that would mean not to look like a mercenary company. Mercenarism is not only generally considered illegal in international law, but having mercenaries in the employment of a country tends to de-legitimize any cause as can be seen in the Papa New Guinea case.

In 1997, the Prime Minister Julius Chan of the Papa New Guinea government hired Sandline, a British PMC, to quell a rebellion on the island of Bougainville. Neither

the country's parliament nor its military was consulted. Both organizations unanimously rejected the idea of hiring what they considered to be mercenaries to solve a domestic problem. The military wanted the money earmarked for Sandline to go to new equipment and training. The result was that the Prime Minister was forced to resign and Sandline did not fulfill its contract (Singer, 2003, pp. 192-195). Inasmuch as the Sandline incident may not seem applicable to the U.S., the Idema case clearly is.

Reflecting back to the Idema case, he was arrested in Kabul, Afghanistan for running a private jail in the basement of his house. Upon his arrest, he claimed to be working with the consent of, if not for, the USG. The USG denied any relationship with Idema (Barry, 2004). It appears that Idema was just an opportunist (with a significant criminal record) hunting for the bounty on suspected terrorists, but his story is the exact situation with which modern-day PMCs desperately want to avoid association. Even if Idema was under contract, he most likely strayed from that contract, which would have led to pecuniary or criminal penalties anyway. Contracts are part of the accountability measures taken to control the conduct of a PMC.

2. Secondary Trust

Sztompka (1999) characterizes accountability under secondary trust. The accountability of a PMC is primarily managed through a contract, with associated contract procedures, which the USG engages. The contract will be discussed in more detail in the "Functional Substitutes for Trust" section.

Another trait under secondary trust that involves the contract is pre-commitment trust. This would occur when a PMC accepts upfront heavy penalties written into a contract if the PMC only partially completes a given mission or violates the boundaries of the contract. For the USG, this pre-commitment is probably an indicator that the PMC is confident in its abilities and probably trustworthy in its deeds. If a PMC is not willing to accept the pre-commitment conditions, then the U.S. might want to search elsewhere for outsourcing.

A trust-inducing situation is the last trait found in Sztompka's (1999) secondary trust. Translating this concept to PMCs would mean asking if the PMC will perform the same as a military unit under combat conditions? An example of this occurred in April

2004, in Najaf, Iraq, when eight Blackwater USA employees along with a few U.S. Army Military Policemen and a Marine, defended the U.S. headquarters for several hours before being relieved by the U.S. military. Blackwater USA also used its helicopters to re-supply the beleaguered warriors and medically evacuate the eventually wounded Marine. None of these missions were in the original Blackwater USA contract but were performed superbly, nonetheless (Priest, 2004). Because of this event, it can probably be assumed that the U.S. forces in the Najaf area completely trust Blackwater USA in combat.

B. PRUDENT VS. IMPRUDENT RISKS

Sztompka (1999) compares the degree of trust to the value of the stakes at hand in order to determine prudence of a risk (p. 33). To make the decision whether to hire a PMC or not largely depends on the risk tolerance of the U.S. Are the risks of hiring a PMC worth the gains? Employing PMCs allow "... the United States to pursue its geopolitical interest without deploying its own army ...” (Silverstein, 2000, p. 145). If this concept is important to the political and military leadership, then the risks are clearly worth the gains, but, of course, that does not mean that the risks cannot be mitigated through effective control measures.

Since hiring PMCs may involve risking U.S. service members’ well-being or, more importantly, their lives, it is reasonable to assume that if a PMC is hired, actions will be taken by the USG to ensure the PMC performs its intended contract. These actions take the form of some type of control measures that are integrated into the contract. Sztompka (1999) realizes the necessity of control when he advocates that effective businesses implement control measures to mitigate the possible or potential violation of trust for a future act (p. 57). Before these mitigations are addressed, one must understand some of the risks involved with hiring PMCs. By assessing the value of these risks, the U.S. can more effectively evaluate the degree of trust that must be given to hire a PMC for a particular mission.

C. ASSUMING RISKS

As discussed above, by hiring and trusting a PMC, the U.S. assumes a huge risk. If a PMC does not conduct itself appropriately or fails to accomplish the contracted mission, then the U.S. has to potentially pay the price financially, morally, and with a damaged public reputation. The following section of this chapter will describe some of the risks involved with hiring PMCs. Since hiring a PMC does not involve “blind trust”, the last section of this chapter will discuss the mitigations of those risks.

One of the major concerns with hiring a PMC is whether the PMC will stay in the combat zone if the PMC judges that the environment becomes too hazardous for the pay. As discussed in the “reputation” section of this essay, the Sierra Leone government experienced this firsthand in 1995 when they hired GSG to train and assist its army in the fight against the RUF. This case illustrates that at least one PMC is willing to break a contract if the going gets too tough, but, what does this mean to the U.S.? Perhaps nothing; there are not any examples of PMCs pulling out of Iraq, Afghanistan, or Bosnia, which are major U.S. involvements that employ PMCs. Of course, this does not mean that it could not happen to the USG.¹⁵

Another risk is the commission of human rights violations. During EO’s time in Sierra Leone, their members were accused of serious human rights violations. Some have argued that EO’s success largely relied on these violations and that if EO had to follow stricter Rules of Engagement (ROE), then they would not have been as successful (Douglas, 1999, pp. 195-196). Although EO may have committed human rights violations, the fact remains such violations are not uncommon among national forces as well, and soon after EO left Sierra Leone, the government crumbled and chaos ensued. Nigeria deployed elements of its military under the ECOMOG to bring order and stability back to Sierra Leone. During the Nigerians’ engagements, they too were also accused of human rights violations. It seems that “[m]any armed forces and governments are no

¹⁵ That being stated, Contract International Inc., a private construction company that had a contract to rebuild Iraq’s transportation systems, did prematurely pull out of Iraq in late 2004 because the company’s management believed “it was too dangerous to stay” (Dangers, 2004, December 22). However, this is a company created and employed to conduct civilian construction for civilian government employment and does not fit this thesis’ definition of a PMC.

more accountable than are PMCs” (Leander, 2003, p. 8). The mere fact that a force is contracted instead of a national military does not mean that human rights violations will or will not occur.

Yet another risk occurs when PMCs start taking over critical military functions that, if not performed, would cause considerable hardship on operations. Canada contracted a PMC to move Canadian military troops, equipment, and arms from Bosnia back to Canada. A contract dispute occurred between two of the sub-contractors and the ships refused to deliver the cargo. Subsequently, one-third of the Canadian military was held hostage at sea for two weeks until the situation was resolved (Singer, 2003, p. 160). This event could have probably been dealt with better by the Canadian government as will be described in the next section.

While PMCs focus on their economic bottom-line, just like normal businesses, the United States is concerned with accomplishing its strategic and military goals. Is there a potential conflict of interest (Singer, 2003, p. 142)? One fear is that PMCs might prolong a conflict in order to stay in business. “Moreover, the market for security is one where suppliers tend to create their demand” (Leander, 2003, p. 9). One might argue that this is a very natural business move in the open market; for example, if someone develops and markets a product, then that person wants to support or create conditions for the product to survive and grow in the economy. However, this being stated, there are not any recent cases, at least since the end of the Cold War, of a PMC “prolonging the war.” On the contrary, in Angola, President dos Santos halted the EO advance on Jonas Savimbi’s insurgent group, União Nacional para a Independência Total de Angola (UNITA), which would have, arguably, crushed the insurgents. The result was continued fighting to this day, even after Savimbi’s death. Another example is President Kabbah of Sierra Leone ordered EO not to destroy the ruminants of the RUF leadership in their mountain hideout. The result was that Kabbah was ousted within 100 days of EO’s departure. It appears that, at least recently, PMCs have been willing to end conflicts swiftly. This makes good business sense, not only because a PMC can begin to get ready for its next assignment, but, because a well written contract would reward early deadlines being met. As will be discussed, the contract is the guiding document by which to control PMCs (Singer, 2003).

These above risks are potentially lethal in nature if not mitigated in some way. Since it has already been established that “blind trust” does not have a role in trusting PMCs, the substitutes, or maybe enhancements, for trust must be acceptable to the U.S. These substitutes take the form of control measures.

D. FUNCTIONAL SUBSTITUTES FOR TRUST = CONTROL

Overgrowth of vigilance and excessive litigiousness are the two pertinent functional substitutes for trust that Sztompka (1999) identifies. Both of these factors are absorbed by a well-written contract that could be enforced by the USG. Also, the risks of hiring PMCs are mitigated in a contextual manner by the mere legitimacy of PMCs that are “slaves to the market.”

The detailed drafting of a contract and subsequent monitoring provides the essential control over outsourcing. PMCs are not “fire-and-forget” weapons and must be effectively supervised. In the 17th and 18th Centuries, mercenary forces fought under a “condatto” or contract that was created and controlled by the hiring entity (Jefferies, 2000, p. 2). The same holds true today. The regulating force for the PMC is whichever agency within the USG contracts the operation. That agency is the responsible body that writes the Statement of Work (SOW) with clear tasks and conditions to be met, i.e. a timeline and a manner in which to conduct the mission. That agency has within it the Administrative Contracting Officer (ACO) who assigns appropriate Contracting Officer Representatives (COR) to monitor the execution of the contract. If the contractor has a “failure to perform,” then two basic recourses can be taken. The first recourse, if it is a minor failure, is that the contractor can be fined or required to re-perform the failed task. The second recourse, if there is a major failure on the contractor’s part; is that the failure could result in a reduction in payment or termination for defaulting. The end result would most likely be the contractor being placed on the Debarred, Suspended, and Ineligible (DSI) list. The point for addressing the contracting issues is to demonstrate that the administrative procedures involved with controlling a PMC already exists in the USG procurement process.

“Because [PMCs] operate with little oversight, using contractors also enables the military to skirt troop limits imposed by Congress and to carry out clandestine operations without committing U.S. troops or attracting public attention” (Yeoman, 2003). Some

believe that employing PMCs are just a way to get around reporting to Congress (Johnson, 2004, p. 142). In the case of sending U.S. troops, Congress can get answers. In the case of a contracting a PMC, all that is required is a license from the Department of State (DoS), and if the contract is under \$50 million, then there is no obligation by the contracting agency to discuss or reveal the details of a contract with Congress (Silverstein, 2000, p. 167). In 2001, Aviation Development Corps worked for the CIA in South America and misidentified a plane as having cocaine traffickers onboard. Acting on this intelligence, the Peruvian Air Force shot down the plane, which was actually carrying civilians to include a U.S. missionary and her seven-month-old daughter. Under the veil of secrecy, both the CIA and DoS refused information to Congress. Rep. Jan Schakowsky (D-Ill.) criticized the incident because the PMCs do not have the same level of accountability as U.S. forces, but they are operating with U.S. consent, either tacit or explicit (Van Dongen, 2003). The way to solve this issue is to remove the “veils of secrecy” and report forthright what the CIA, Department of Defense (DoD), and/or DoS are doing with PMCs.¹⁶ Of course, covert operations will still take place, but some of the current outsourcing probably does not need to be classified in any manner. One may argue that the benefits of revealing to Congress the advantages of hiring a PMC over employing U.S. forces outweigh the tendency to hire a PMC and then playing the “secret” card when Congress wants answers.

The conflict between the economic bottom-line of a business and the goals of the U.S. can be adjusted, if not reduced, by aligning the contract rewards with the U.S. interests. The contract has to be crafted carefully by the USG agency requesting the contract and the Contracting Officer to ensure that these interests align. Another more contentious technique would be to only hire U.S.-based and operated firms. This would most likely mean that their employees are primarily ex-U.S. military who do not necessarily lose their U.S. heritage, beliefs, morals, and dedication just because they retire from or leave military service. According to Chris Bertelli, a Washington D.C. lobbyist for Blackwater USA, “There is still a deep patriotism in many of them” (Leigh, 2004, May 17). One might be able to argue that a U.S. run and manned PMC is still an

¹⁶ Congressman Price is trying to do get PMC contracts transparent to Congress. This will be discussed further in Chapter IV. See Appendix C for his proposed bill in full.

extension of the U.S. military in the sense the same people who defended the country before publicly are now simply doing it privately. MPRI is a good example of this. MPRI is uniquely staffed with ex-U.S. military flag officers who probably share the goals of the USG, sometimes to their detriment. MPRI has been accused of simply being an extension of the DoD, and this accusation has been meant as a harsh criticism (Singer, 2003, p121). In actuality, this comment might be a complement and, more significantly, a benefit to U.S. policy. The fact that MPRI seems to be well-integrated into the DoD helps to ensure its business objectives are the same as the U.S.'s goals and within the USG's timeline. Even going back to the days of the Flying Tigers, Chennault preferred the U.S. military trained pilots that replaced the previous contractor pilots: "To a man, they subscribed to the discipline and mores of the U.S. military services" (Roberts, 1999, p. 133).

The private industry argues that one simple control measure keeps them in the fight: the market. PMCs are bound by their reputations to fulfill their contract obligations or pay for the consequences with a loss of business. Today's PMCs are subsidiaries to major and established companies, i.e. Brown and Root Services to Halliburton, MPRI to L3 Communications, and Vinnell to the Carlyle Group. The "slave to the market" idea is the same argument PMCs use to counter potential future human rights violations and failure to perform critical military functions (Singer, 2003, p. 217).

Also, to prevent a critical military function failure, a contract has to be written in such a way as to invoke considerable financial penalties for such an action. However, and more importantly, the U.S. has to be willing to act, violently if necessary, if a PMC does not fulfill its contract. In the Canadian example, an appropriate use of force, i.e. direct action, could have been applied to enforce the contract obligation, and all of the contractors involved should have been placed on the DSI list to block future contracts. The DSI threat should be enough to keep even stubborn, yet established, PMCs in check because the private industry is in the profit-making business.

E. CONCLUSION

Can PMCs be trusted to help fight and win the U.S.'s wars? Partially. The U.S. can trust PMCs to do some things, but not others. For example, the U.S. can trust a PMC to guard President Hamid Karzai of Afghanistan but probably not guard President Bush. Although it is clear that the U.S. cannot fully trust a PMC to help fight its wars, the

concepts presented in Sztompka's work provide a clever analysis tool to identify where control measures can be implemented to compensate for the gaps in trust. This trust is largely based on the specific PMCs' reputations and performance, but it is not purely trust because several control measures are in place to ensure that the PMCs do their jobs. It is the responsibility of the U.S. to place effective control measures on the PMCs to ensure that the PMCs perform their jobs. Although it appears that PMCs can only be trusted to perform certain tasks and must be controlled for others. The U.S. seems to already have enough control measures currently in place to employ PMCs with a certain degree confidence that a mission will be accomplished. This should not be a disappointing finding; after all, the U.S. Military places significant control measures on its own commanders and units, so why should private companies be any different?

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IV. OUTSOURCING LEGALITIES

The U.S. government has only twice as many personnel overseeing contractors in Iraq ... as it had during the 1990's for its Balkans contracts – even though there are now 15 times more contracts and the context is much more challenging. – *Peter Singer, Corporate Warriors, 2005*

This chapter addresses the current laws and regulations governing the PMI. As discussed in the previous chapter, the free market largely regulates the PMI, but for many that is not enough. The general public wants accountability for crimes, and simply firing a person from a PMC for a crime is not sufficient action. Peter Singer (2004b) takes the position that: “Felony crimes merit harsher punishment than simply the end of a good paycheck.” This chapter addresses the current laws and regulations governing the PMI. There are no international outsourcing laws except those that apply to mercenaries. This chapter will address the concept of mercenaries from a broader international perspective, then focus on contractors as it applies to the U.S. First it may be useful to address the relationship between PMCs and mercenaries.

A. THE PMC AND MERCENARY RELATIONSHIPS

There is a debate about how PMCs and mercenaries relate to one another. One view is that PMCs are simply modern day mercenaries; another is that PMCs are a legitimized evolution of mercenaries and that these terms should not be used interchangeably. When discussing the relationship between PMCs and mercenaries, David Shearer (1998) states that PMCs can be seen as “... as an effective free-market response to a specific need no longer met by governments and international organizations; on the other, they [can also be] seen as employing modern-day mercenaries exploiting violence for private gain” (p. 9). Shearer’s quote is a valid representation of how the subject of the PMI can be interpreted in two dichotomous ways.

There is a common understanding regarding what a mercenary generally is – a person who fights for money. “In modern times, the term “mercenaries” has become a pejorative one, conjuring up an image of a hardened white soldier brutally intervening in a small, hitherto unknown African country for financial gain...” (O’Brien, 2000).

Generally, “conventional wisdom has it that mercenaries do not kill for *polis* or for political principle or for any other noble cause. They kill for, and are thus motivated by, money. For this reason, legislators confronting mercenaries cannot help but repeatedly point out his inherent evil” (Milliard, 2003, p. 33). These descriptions of mercenaries clearly portray them as a negative attribute to the PMI. However, these descriptions do not necessarily describe the modern PMC employee.

The other side of the argument states that “PMCs are not mercenaries, nor are they the ‘new mercenaries’ (as often referred to)...” because “they are organised along corporate lines (including boards of directors, share-holdings, and corporate structures), their work has a clear contractual aim and obligation to their clients...” (O’Brien, 2000). Modern PMCs differ from mercenaries of lore by incorporating into businesses instead of operating as individuals for individual profit. This may seem like an oversimplification of the differences, but this is how PMCs characterize themselves in an effort to avoid being called mercenaries.

In some cases, there may not be much difference between PMCs and mercenaries. However, no matter what view is taken on this subject, one can see that whether PMC employees are mercenaries or not, largely depend on perception. Since the premise of this thesis is that the Special Forces-led PMF can operate within the current international and domestic laws, then it is important to show that PMCs can operate without being considered mercenaries. The rest of this chapter deals with the laws governing mercenary activity and government contracting.

B. INTERNATIONAL AND NON-U.S. LAW

The laws in this section are presented to show how mercenaries fit into the international comprehension of commercial military operations. None of these laws directly affect or are applicable to the U.S. But because the U.S. has to operate in an international environment, knowledge of these laws is important. There is, however, an indirect influence of these laws on the U.S. For example, a PMC working for the U.S. hires citizens from a country which has either signed one of the U.N. conventions or has laws in its region or country to address mercenary activity. If that is the case, then these employees may be in violation of some law even if the U.S. hired PMC is not. The first

modern attempt to develop an internationally recognized definition of a mercenary is Article 47 of Additional Protocol 1 (1977) to the 1949 Geneva Convention.

1. Article 47

Article 47 of Additional Protocol 1 (1977) to the 1949 Geneva Convention is by far the most commonly referred to definition of a mercenary in the international community. However, this article does not make being a mercenary illegal in the international community. Article 47 just “deprives mercenaries of the privilege to serve as lawful combatants and the immunity to be treated as prisoners of war upon capture” (Millard, 2003, p. 35). This article is a cumulative list which means all of the attributes have to be met for a person to be labeled as a mercenary.

<ol style="list-style-type: none">1. A mercenary shall not have the right to be a combatant or a prisoner of war.2. A mercenary is any person who:<ol style="list-style-type: none">(a) Is specially recruited locally or abroad in order to fight in an armed conflict;(b) Does, in fact, take a direct part in the hostilities;(c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, 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;(d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;(e) Is not a member of the armed forces of a Party to the conflict; and(f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces

Table 2. Article 47 of Additional Protocol 1 (1977) to the 1949 Geneva Convention (From Protocol, 1977).

The U.S. is not a signatory to the amendment that contains this article. Technically, this means the U.S. does not have to follow the definition provided. What is important to the USG is if a PMC hires employees who are nationals of one of the forty-three countries that have signed to this amendment, then those individuals could be subject to various legal actions upon returning to their home country.

The reason why the U.S. has not signed to this convention is because it “...introduce[s] political factors that do not belong in international humanitarian law [and the U.S. does] not consider the provisions of article 47 to be part of current customary law” (Milliard, 2003, p. 37). Another issue with the definition is the difficulty of determining one’s motivation and relative compensation (Millard, 2003, p. 42). The following are some examples of these issues. Under section 2.(c), if a person claims to be fighting a cause related to the conflict, he is not considered to be motivated by the “... desire for private gain” Foreign soldiers who are often labeled as mercenaries by the Russians, because they fight in Chechnya, might be excluded from consideration as mercenaries under section 2.(c) (Some 200, 2004). One can circumvent section 2.(e) by temporarily being instated into a country’s regular armed forces. Tim Spicer did this in Papa New Guinea (PNG) when he had the employees of Sandline International sworn in to PNG’s police force (Spicer, 1999). The Special Forces-led PMF could also avoid being characterized as mercenaries simply because the PMCs working for the Special Forces would, in fact, be sent by the USG which would eliminate either 2.(d) or 2.(f). A problem arises when one of the PMCs hires third party nationals, and not U.S. nor indigenous forces, e.g. Fijian or Chilean. The hiring of third party nationals is not a clear cut case and is a weakness in the model which will be further discussed in Chapter VI.

The U.N. protocol categorizes mercenaries so that they do not receive the same protections provided to national armies under the 1949 Geneva Convention. Why were mercenaries excluded from such protections? It’s a good question. Some argued that “if guerillas and other classes of unconventional combatants are to be included” (Millard, 2003, p. 38) under the 1949 Geneva Convention protection, then so should mercenaries. The exclusion seemed inconsistent. However, Protocol I might have “singled out mercenaries based on a seemingly visceral reaction towards their use during two decades in post-colonial Africa” (Millard, 2003, p. 38). As stated earlier, Article 47 does not make being a mercenary a violation of international law; however, as will be discussed next, it does set the model for all subsequent definitions of mercenaries and still remains the main reference that scholars and diplomats use to define a mercenary.

2. OAU

With the African continent experiencing a preponderant share of mercenary activity, the Organization of African Unity (OAU), known today as the African Union, wanted to stop the employment of mercenaries. Consequently, in 1985, the OAU convened the Convention of the OAU for the Elimination of Mercenarism in Africa. It entered into force in 1985 with twenty-two of fifty-four African states having ratified it (Millard, 2003, p. 66).

1. A mercenary is any person who:

- a) is specially recruited locally or abroad in order to fight in an armed conflicts;
- b) does in fact take a direct part in the hostilities;
- c) is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;
- d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflicts;
- e) is not a member of the armed forces of a party to the conflict; and
- f) is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association, representative of a State or the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, practises any of the following acts:

- a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;
- b) Enlists, enrolls or tries to enrol in the said bands;
- c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

3. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 * of this Article commits an Offence considered as a crime against peace and security in Africa and shall be punished as such.

4. A mercenary is responsible both for the Crime of mercenarism and all related offences...

Table 3. Convention of the OAU for the Elimination of Mercenarism in Africa. (1985) Excerpt. (From Convention of the OAU, 1985).

This was the first effort by a political entity to criminalize mercenarism. So, generally speaking, if a person today is accused of being a mercenary in Africa, that person can be prosecuted as a criminal. While working in Africa, the U.S. must be cognizant of this convention in the event an African country attempts to use the convention to hamper U.S. operations, specifically the Special Forces-led PMF. However, similar to Article 47, there is the same type of definition problems that leads to interpretation instead of fact. Also, this regional convention had the greatest impact on the U.N.'s 1989 International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (Millard, 2003, p. 42).

3. 1989 U.N. Convention

Elements from the OAU's convention can clearly be seen in how mercenarism is considered a crime in and of itself. The U.N.'s International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) attempts to make the act of being a mercenary not only a crime in Africa, but anywhere in the world. Only twenty-four of 191 member states of the U.N. have become state parties of the Convention, which indicates that it is not favored among most of the members of the U.N. (Millard, 2003, p. 66). The International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) uses Article 47's definition for a mercenary but also makes the additions found in Table 4.

The U.S. has not signed to this convention and therefore does not abide by it. There are not any cases of this convention being used to prosecute anyone in any type of international court or tribunal, e.g. International Criminal Court (ICC). However, if the PMI continues to grow, but does so in a way that is indicative of mercenarism, then this convention may come into force and affect future PMC operations.

A mercenary is also any person who, in any other situation:

- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
 - (ii) Undermining the territorial integrity of a State;
- (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- (c) Is neither a national nor a resident of the State against which such an act is directed;
- (d) Has not been sent by a State on official duty; and
- (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

Table 4. Recruitment, Use, Financing and Training of Mercenaries additions.
(From Recruitment, 1989).

4. South African Law

Although not an internationally binding act, South Africa's Regulation of Foreign Military Assistance Act (1998) has a significant impact on the PMI because many PMC employees come from South Africa. Of course, EO was a South African company, but there is also an unknown number of South Africans working in Iraq who may be prosecuted under this Act upon their return home (SA fighters, 2004). Unlike most countries, South Africa has very specific laws governing the PMI, which fall under the Regulation of Foreign Military Assistance Act (1998). The following is an excerpt from that Act, which, as one can see, expands the definition of a mercenary.

(iii) “foreign military assistance” means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of—

(a) military assistance to a party to the armed conflict by means of—

(i) advice or training;

(ii) personnel, financial, logistical, intelligence or operational support;

(iii) personnel recruitment;

(iv) medical or para-medical services; or

(v) procurement of equipment;

(b) security services for the protection of individuals involved in armed conflict or their property;

(c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;

(d) any other action that has the result of furthering the military interests of a party to the armed conflict, but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict;

(iv) “mercenary activity” means direct participation as a combatant in armed conflict for private gain;

(1) A person who wishes to obtain the approval of an agreement or arrangement for the rendering of foreign military assistance, by virtue of an authorisation referred to in section 3(b) to render the relevant military assistance, shall submit an application to the Committee in the prescribed form and manner.

8. (1) Any person who contravenes any provision of section 2 or 3, or fails to comply with a condition with regard to any authorisation or approval granted in terms of section 4 or 5, shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.

Table 5. Regulation of Foreign Military Assistance Act (1998) Excerpt (From Regulation, 1998).

The Foreign Military Assistance Act (1998) became popular in the spring of 2005 because of the repatriation of suspected South African mercenaries. In May of 2005, 61 South Africans alleged mercenaries were released back to South Africa from a Harare, Zimbabwe prison and will be prosecuted by the South African National Prosecuting Authority for violating its anti-mercenary laws under the Foreign Military Assistance Act. The men were arrested in March 2004 for alleging plotting to overthrow the

Equatorial Guinea government. (61 to face, 2005, May 16). As of the writing of this thesis, these men were going to be prosecuted under this act.

What does the Foreign Military Assistance Act mean to the PMI? It means that PMCs have to be careful when operating in and around South Africa and, more likely, the PMCs have to be careful when employing South Africans because, based on the definition of a mercenary within the Foreign Military Assistance Act (1998), these employees could face prosecution upon their return to South Africa.

5. 1999 U.N. Convention

In an effort to gain international support against mercenarism, Mr. Enrique Bernales Ballesteros of Peru, the U.N. Special Rapporteur on Mercenary Activities, embedded an anti-mercenary text in *The Rights of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation* (1999). Mr. Ballesteros submitted that "...it is inadmissible for any State legally to authorize mercenary activities, regardless of the form they take or the objectives they serve. Even where legislation is lacking or deficient mercenarism is an international crime" (The Right of Peoples, 1999). Ballesteros went on to posit that

... unlike mercenaries such as Colonel Bob Denard or Mike Hoare in Katanga during the 1960's, today's mercenaries do not work independently. They are more likely to be recruited by private companies offering security services and military advice and assistance, in order to take part or even fight in internal or international armed conflicts Mercenaries are usually, or have been, soldiers, combatants or, more frequently, members of special units and have experience with sophisticated weapons ... (The Right of Peoples, 1999).

That means that according to the U.N., all of the PMCs operating in Iraq right now for the U.S. are mercenaries and should be considered as criminals. There should be no wonder why the U.S. has not signed on to any of the U.N.'s efforts to ban mercenaries.

C. U.S. LAWS ADDRESSING MERCENARIES

There will be international or foreign law concerns when conducting U.S. outsourcing operations. However, even when outsourcing looks like hiring mercenaries, one can readily see how legal maneuvering can cause almost any person or entity to not look like a mercenary under the official U.N. definition, which bears upon both the OAU and South African definitions.

Now it is time to see the U.S. laws associated with mercenaries. There are not any specific laws addressing mercenaries but there are some laws that restrict U.S. military aid.

The first law that addresses mercenary-type activities is the Neutrality Act of 1794 that

forbids U.S. citizens from taking part in military action against any country with which the United States is not at war. Enforcement of the act has been highly selective, however, with technical reasons usually offered for failure to prosecute. The United States has not declared war on anyone since World War II and has thus been legally neutral throughout such episodes as the Korean War, the Bay of Pigs invasion of Cuba (1961), and the Vietnam War. U.S. citizens have also often fought under the flags of other nations (Neutrality, 2001).

This old Act states that U.S. citizens cannot fight against a country with which the U.S. is not at war. However, in accordance with the Special Forces-led PMF, the U.S. would be the sponsoring state, which would make it officially involved with the conflict. Therefore, the model would not conflict with the Neutrality Act of 1794.

The next law that addresses a type of mercenary activity is the Arms Export Control Act (1968) which states

Sales of defense products, components, services, and technologies are controlled by the International Traffic in Arms Regulations (ITAR), as administered by the State Department. Defense goods and services are heavily restricted to countries the State Department deem enemy or terrorist states. In the past, these countries have included Afghanistan, China, Haiti, Iran, Iraq, Libya, and Vietnam. (Arms Export, 1968).

This act, under Title 22 of the United States Code, states that “Arms control laws currently require firms engaged in training foreign militaries or providing services to foreign militaries to register and pay a fee. The State Department’s Office of Defense Trade Controls monitors the firms for compliance with the law and current US policy” (Smith, 2002/2003). Any PMC that would serve the USG would need to be licensed by the DoS; therefore, this act only supports the Special Forces-led PMF by providing additional regulatory measures.

Finally, the U.S. Constitution provides an avenue for the privatization of force. Article I, Section 8, empowers Congress to “declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.” If the U.S. Congress issued “letters of marque and reprisal”¹⁷ to a PMC or group of PMCs, then this would be a way to monitor and further regulate PMCs (Smith, 2002/2003) while allowing these companies to operate as a legitimate force for the USG.

D. THE U.S. LEGAL CONTROL OVER PMCS

What happens to PMC employees if they commit crimes? If a PMC employee is a U.S. citizen, then one way to prosecute is through the 2000 Military Extraterritorial Jurisdiction Act (MEJA). This law allows for the U.S. to prosecute civilians who are under DoD contract if they commit crimes overseas that would normally receive more than one year imprisonment if conducted in the U.S. This can be an effective tool but is limited. The law only applies to DoD civilian contractors whose crimes would receive one year imprisonment. By definition, the DoS and CIA civilian contractors do not fall under this law.

Another possible issue with this Act is that crimes that would not constitute one year imprisonment are not accounted for in this act. A crime of this nature might be petty theft. However, a PMC whose employee conducts such lesser crimes can easily fire the employee. Although the simple firing of an employee for a crime does not seem satisfactory for a human rights violation, it is probably appropriate for petty crimes.

The final issue with the MEJA is that it does not cover foreign employees of PMC that are working for the DoD. When addressing this problem for Iraq-specific cases, Peter Singer (2004b) states that “This may require breaking new legal ground, such as testing the extraterritorial standards for civilian prosecution, requiring detention of the suspects until the Iraqi legal system gathers strength or even transferring jurisdiction to the international court.” This is an admitted weakness in the Special Forces-led PMF model. Most likely the only way to solve this issue would be to either turn the foreign employees

¹⁷ “A ‘reprisal’ means an action taken in return for some injury. A reprisal could be a seizing of property or guilty persons in retaliation for an attack and injury. It could include forced used against the perpetrators for the redress of grievances. ‘Marque’ is related to ‘marching’ and means crossing or marching across a border in order to do a reprisal. Thus a Letter of Marque and Reprisal would authorize a private person, not in the U.S. armed forces, to conduct reprisal operations outside the borders of the U.S.A” (Foldvary, 2002).

over to the government of the country in which the operation occurred, or to deport the employees back to their home country for possible, but not guaranteed, prosecution.

E. U.S. ARMY CONTRACTING PRACTICES AND REGULATIONS

1. How the U.S. Government Contracts

The following is a brief overview of how the USG contracts under the U.S. Federal Acquisition Regulation (FAR) provided by Colonel (R) Michael R. Jorgensen, former Acting Director for Contracting, Office of the Deputy Assistant Secretary of the Army (Procurement) (Personal Correspondence, 26 May 05). Outsourcing contracting begins with a need that the USG either cannot fulfill within itself or can be done better from an outside source. The agency within the USG that wants the outsourcing submits a Request for Proposal (RFP) with a requirement that usually takes the form of a Statement of Work (SOW) and describes what work needs to be done. Then the RFP is made available for bidding to prospective contractors for usually thirty days. However, depending on the requirement and time available, the USG might give the contract to a sole source contractor whereby the contract is awarded without a bidding process. Upon receipt of offers for the contract, assuming that it was not sole-sourced, the Contracting Officer (KO)¹⁸ awards the contract based on who, according to COL Jorgensen, offers “the best value solution to the customer, not necessarily the lowest price.” Next, a Contracting Officer’s Representative (COR) is assigned as the USG’s point-of-contact for the contractor. The COR is usually assigned as an additional duty to a soldier or USG civilian. The COR has to monitor the contractor’s performance on a daily basis and notify the KO if the contractor is not fulfilling the requirements of the contract. COL Jorgensen emphasized that:

The area of COR appointment/training/performance is probably that area of the contracting process most susceptible to problems. Inadequate or inappropriate COR performance can lead to costly disputes, claims, and contract terminations. The requirement for a COR ends when the contract is completed.

Frank Camm, from the Rand Corporation, stated: “...the Army’s policy is clear. The problem is that Army hasn’t done a good job of training its people to oversee contractors...” (Matthews, 2004, November).

¹⁸ Contracting officers use the initials “KO” and not “CO” because “CO” stands for Commanding Officer in the military.

2. The U.S. Government's Responsibility to Contractors

The way to determine what the USG's responsibilities are to PMCs and their employees is to generally look at the contract and read what the KO committed the USG to do. The contract will indicate what the USG expects and what it will provide to the PMC. However, personnel recovery¹⁹ is a standing commitment the USG provides to PMCs. Department of Defense Directive (DoDD) 2310.2, dated 22 December 2000, is a personnel recovery directive that states that the DoD is responsible for recovering American PMC employees. Paragraph 4.1 of the directive states:

Preserving the lives and well-being of U.S. military, DoD civilian and contract service employees placed in danger of being isolated, beleaguered, detained, captured or having to evade while participating in a U.S.-sponsored activity or mission is one of the highest priorities of the Department of Defense. The Department of Defense has a moral obligation to protect its personnel, prevent exploitation of its personnel by adversaries, and reduce the potential for captured personnel being used as leverage against the United States.

Paragraph 4.2 states: "The Department of Defense has primary responsibility for recovering U.S. personnel identified in paragraph 4.1, above, who are deployed outside the United States and its territories." U.S. PMC employees can hope for some type of recovery effort if they are captured while working for the USG; however, going back to the foreign employees of these companies, they cannot expect the U.S. to work towards their recovery. These employees should know this before they accept the job.

F. THE LEGAL FUTURE OF PMCS IN THE U.S.

There is every indicator that PMCs will be around for future military operations. One indicator is that there is a movement within the U.N. to not label PMCs as mercenaries. Since 2001, Shaista Shameem, the U.N. human rights commission's special rapporteur on the use of mercenaries,²⁰ understands that at times these organizations carry out a "vital job." She has been trying to redefine and regulate the PMI while differentiating between legitimate PMCs and what one traditionally views as a

¹⁹ Personnel Recovery means: "The aggregation of military, civil, and political efforts to recover captured, detained, evading, isolated or missing personnel from uncertain or hostile environments and denied areas" (DoDD 2310.2, 2000, p. 2).

²⁰ Shameem replaced Ballesteros, who was the one who equated PMCs to mercenaries.

mercenary, e.g. the recently released men from a Harare, Zimbabwe jail who were allegedly going to Equatorial Guinea to overthrow its government (Haynes, 2004).

The U.S. is currently taking steps to improve its handling of PMCs as well. On 12 May 2004, U.S. Representative David Price (D-NC) wrote a letter to the Government Accountability Office (GAO) requesting "...that the GAO investigate the use of Private Military Firms (PMFs) by the Department of Defense and the Coalition Provisional Authority (CPA) in Iraq" (GAO Releases Report, 2005). This request was in response to the use of contractors at Abu Ghraib Prison and the deaths and subsequent postmortem mutilations of four employees of the North Carolina based PMC, Blackwater USA, in Fallujah, Iraq.

The GAO report "Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts" (2005) found that "...insufficient surveillance occurred because surveillance is not as important to contracting officials as awarding contracts and therefore, does not receive the priority needed to ensure that surveillance occurs." The report also discovered that surveillance personnel were not trained for the task nor evaluated based off of their performance for monitoring a contract. Furthermore, those who were assigned as surveillance personnel generally received the duty as part-time and did not have adequate time to perform the duties necessary for adequate surveillance (Opportunities to Improve, 2005). Although not expressly stated in the report, the surveillance responsibility mostly falls under the COR, as stated in the previous section.

Subsequent to the GAO report, Representative Price submitted a new bill before the House on 25 June 2004 entitled "Transparency and Accountability of Security Contracting Act." This bill did not pass through Congress but was reintroduced with some modification in 2005. The bill generally required contractors to provide information about their employees, full cost accounting, casualty reporting, and hiring standards for PMCs.²¹ The general response to Representative Price's bill is best stated by Doug Brooks, head of the International Peace Operations Association (IPOA), "We support all the transparency and accountability bits that are in the bill." (Cole, 2005, May 16). For

²¹ For the complete Bill, see Appendix C.

PMCs to be members of IPOA, these companies must agree to IPOA's Code of Conduct which covers such areas as respect for human rights, transparency in their operations, accountability of employees' actions, working for legitimate clients, operating as safely as possible, conducting a screening and vetting of employees, carrying insurance, and abiding by established Rules of Engagement (IPOA Code, 2005). That means that companies like MPRI, Blackwater, and Armor Group International PLC, which are current members, must meet this organization's standards for membership.

G. CONCLUSION

This chapter has provided the current international and domestic laws and perceptions on mercenaries/PMCs. The chapter has also addressed what laws apply or do not apply to the United States. The international laws are largely irrelevant to the USG outsourcing effort because the United States has not signed to the conventions which forbid "mercenaries." However, these laws can affect the United States if it hires PMCs with employees from countries that have signed to some type of anti-mercenary law either internationally or domestically in their home country.

Current USG contracting procedures are sufficient to manage PMCs. The shortcoming of the contracting process is on emphasis, not substance. For example, if there was enough CORs, with the appropriate training, for all contracts, then many of the outsourcing concerns could be alleviated. The USG is making efforts to better synchronize PMC operations with government operations but as the current laws and contracting practices stand now, there is sufficient regulation to conduct a Special Forces-led PMF operation.

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V. A SPECIAL FORCES-LED PMF MODEL

We will not send American troops to every battle, but America will actively prepare other nations for the battles ahead President George W. Bush's speech 11 March 2002. – *Chalmers Johnson, The Sorrows of Empire, 2004*

At a symposium in Washington D.C., Erik Prince, Blackwater USA's CEO, suggested the addition of a "contractor brigade" to augment the U.S. military. "There's consternation in the DoD about increasing the permanent size of the army ... We want to add 30,000 people, and they talked about costs anywhere from \$3.6bn to \$4bn to do that. Well, by my math, that comes out to \$135,000 per soldier...We could do it certainly cheaper" (Hodge, 2005, February 10). Take Prince's idea and add Special Forces management and the Special Forces-led PMF model presented in this chapter takes shape. Before the model is discussed, an appropriate setting helps illustrate where this model could be employed. The on-going situation in Darfur, Sudan provides that setting.

A. THE SETTING

Thousands of black-Africans, also known as non-Arab Sudanese, civilians have been killed by Arab-African militias (allegedly backed by the Sudanese government). This is a response to a black rebel uprising in the region that started in early 2003 when the non-Arab rebel groups attacked government installations. The Sudanese government has not only been accused of supporting the violence against the non-Arabs but has also been accused of using its air force to attack civilian villages. During Colin L Powell's tenure as the U.S. Secretary of State, he labeled the conflict as genocide. However, the United States decided not to send troops.

The option of putting U.S. troops on the ground in Darfur was never seriously considered in administration discussions, [DoS] officials said. The U.S. combat forces are stretched thin by long deployments in Iraq and Afghanistan, and the administration has shown little appetite for deploying troops for what is sometimes called humanitarian intervention. It's just not a viable option (McManus, 2005).

The African Union did send troops. The current U.S. Secretary of State, Condoleezza Rice, stated "We want to be as active as we possibly can in support of that [AU] mission." The civilian death toll is between 60,000 and 400,000 with 2.4 million

displaced people from their homes. (McManus, 2005). What if the United States wanted to help the Darfur citizens without committing troops? One option is to hire PMCs.

According to the IPOA, in October of 2004, DoD hired two PMCs, the PAE Group and DynCorp for \$20 million, to support around 3,500 AU troops in the Darfur region of Sudan. According to the State Department, the PMCs will build camps, maintain vehicles and radios, procure office equipment, and provide transport for equipment and personnel (Simeone, 2004, October 15). Then in early 2005, the U.S. offered around \$50 million in aid, which included air transport of peacekeepers, equipment, and military advisor to the AU towards the peacekeeping effort supporting the cease-fire in the Darfur, Sudan (McManus, 2005). But what if this support did not help and the situation only got worse with time?

Now let us suppose some hypothetical events. Suppose the current situation in Darfur gets to the point where the U.N. labels it a genocide. With memories of the Rwanda genocide,²² the U.N. Security Council authorizes a Chapter VII intervention to protect the non-Arab Sudanese. Let us further suppose, the United States does not want to commit anymore troops to yet another operation, but does want to help the people of Darfur for not only humanitarian reasons but also because this area could become a sanctuary for Al Qaeda in the future if something is not done in the present. By the definition provided in Chapter I, this situation is or is becoming a “small war.” Next, the United States steps up its contribution to the intervention; it supplies a very small contingent of U.S. soldiers backed by several PMCs to not only support the operation but also to provide security for the people of Darfur. This mission would consist of providing security for medical assistance, food relief, water purification, and all other manners of aid. Also within this plan, would be a security training effort by the United States’ contribution for the victimized Darfur residents. The Special Forces-led PMF could operate in this situation.

B. THE MODEL

The Special Forces-led PMF model consists of trained Special Forces personnel acting as CORs over a group of PMCs to conduct a given operation. The design of this

²² Reigning Secretary General, Kofi Annan, was the Chief of Peace Keeping Operations for the U.N. during the Rwanda genocide.

model largely eliminates previous risks involved with hiring PMCs. It also keeps the PMCs within the applicable international/regional laws regarding mercenaries.

The reason why the U.S. Army Special Forces are chosen as the managers or contracting officer representatives of the PMF is because of the Special Forces unique capability and directive to manage surrogate forces in a UW or small war environment. Although the size of the Special Forces element would vary depending on the mission requirements, for the Darfur example, the Special Forces element could be a Special Forces Operational Detachment – Alpha (SFODA).²³ The Psychological Operations (PSYOPS) and Civil Affairs (CA) elements that generally deploy on these types of missions would be represented by member from each organization to help manage their respective PMC and/or advise the commander in their areas of expertise. Because of the sensitive and strategic nature of the operation, a Judge Advocate General (JAG) officer would need to be attached. This would bring the total U.S. uniformed military presence to fifteen personnel. Each member of the element, with the exception of the JAG, could act as the COR for one to three PMCs.²⁴ Since a SFODA is designed to manage a battalion size element of indigenous force (usually around 600 personnel), that means the total force would be around 615.²⁵

The Special Forces element would serve as the uniformed representatives of the USG. There are several reasons why elements of the U.S. military must be in charge of the PMF. The first reason is that if the United States only were to send a private force to fight a small war instead of the U.S. military, there would be a perception that the United

²³ A SFODA doctrinally consists of one commander (a Captain), one warrant officer, one team sergeant, one operations/intelligence sergeant, two NCO weapons sergeants, two NCO engineer sergeants, two NCO medical sergeants, and two NCO communications sergeants for a total of twelve men. When the ODA begins a planning sequence, their members break down into staff planning cells that loosely mirror a battalion level staff. For example, the SFODA commander simply serves as the commander, the warrant officer serves as the chief of staff, the team sergeant plans the operations, the operations/intelligence officer plans the intelligence, the medical sergeants plan the personnel and medical, the weapons sergeants help plan the operations, the engineer sergeants plan the logistics, and the communication sergeant plans the communications.

²⁴ Three is a good maximum number. The U.S. Army generally works on threes, e.g. three squads to a platoon, three platoons to a company, three companies to a battalion, and so on. Although there are exceptions to this “three” trend, it still remains a comfortable number of elements to manage.

²⁵ The actual number that would be needed for the operation would have to be determined by a mission analysis, which was not conducted for this thesis. This number is used for illustrative purposes only.

States did not care enough about the situation to send its own troops. The uniformed personnel not only serve the role as the USG representative but also show the international community that the force represents a U.S. led military effort instead of simply a hired “bunch of mercenaries” by the United States to do its undesirable work. By placing elements of the Special Forces as CORs, then the United States can honestly state that the mission is a U.S. military led operation. This would not deter the pessimists who might still claim that the United States did not care enough to send its own troops, but the fact of the matter is that the U.S. military is over-deployed as it is, but because the United States cares about Sudan’s situation, it, nonetheless, could choose (for this example) to send what support it can.

The second reason why such a force would have to be led by the U.S. military is accountability. As discussed in the Chapter III, there is a risk that PMCs could act outside the boundaries of the law or contrary to U.S. policy if left on their own. The managing Special Forces element would be present to either ensure that these violations do not occur or, if a violation does occur, it is reported and handled at the appropriate levels. The commander of the Special Forces element would also be the accountable officer for the operation, thereby eliminating chain-of-command issues. Also, because the Sudan mission would be a DoD operation, the U.S. PMC employees would clearly fall under the MEJA. The PMC employees that are local residents of Darfur would fall under Sudanese law and, as it seems to stand now; those employees who are neither Sudanese nor American would most likely fall under their country of origin’s laws or be prosecuted in an ICC.

The final reason for the U.S. military leading the PMF is that if one or more of the PMCs involved with the small war had to be fired or relieved, a U.S. military unit on the ground would be necessary for the continuity of effort. This is a unique capability with hiring a privatized force as opposed to using other national forces. If one of the AU units commits repetitive crimes or human rights violations, and shows that it is incapable of conducting the operation effectively, what would happen to the unit? Probably some investigation into the matter would occur, but it would be difficult to remove that national military force from Sudan for political reasons. However, a PMC is a business that is

expected to perform to a predetermined standard for a job and if that job is not accomplished accordingly, then, like any other business, that company can be fired.

One fear associated with this example might be that a fired PMC could choose to not leave and could try to use violence to take control of the situation. Although there are not any modern examples of PMCs turning on their employers, this is a course of action that would need to be addressed before the mission. This situation would be similar to the Canadian situation described in Chapter III. If this did happen, then the most likely solution would be to deploy U.S. troops to remove the PMC. Of course, at this point the operation would be a failure if not a complete embarrassment. To avoid this, the right PMCs would have to be hired at the outset.

The reputation of the individual PMCs is important when determining their eligibility for employment. For this model, it would be best to hire U.S. based PMCs for at least the major parts of the operation. These companies would be licensed by the DoS to conduct the operation. For cost cutting measures or local expertise, the companies would understandably hire non-U.S. personnel to fill complement their ranks. It may even be better for the companies to hire the locals of Darfur to infuse money into the local economy as well as attaining local knowledge of the environment. But the management should be American because the management would arguably be a stakeholder in U.S. foreign policy, since the United States would then be homeland to management personnel. After all, most of the U.S. PMC employees were once in the U.S. military themselves, so they probably would retain the same values and bearing that they possessed while serving. But no matter how good or bad the PMCs are, the management of them has to be done well.

The way to do this is to train the Special Forces early in the mission planning sequence as CORs. For the Darfur mission the ODA would be assigned and then immediately trained on how to be CORs. This training would teach the members of the ODA how to manage the contract and establish clear lines of responsibility from the PMCs through the ODA to the USG.

The ODA would then conduct a mission analysis to determine the task organization necessary to accomplish the operation. Upon completion of the initial

planning, the ODA would make a RFP and provide it to a KO. The KO would put the contract out for bidding or assign “sole sourcing” if the situation required it. Once all of the PMCs were arranged, the ODA could continue planning with the PMC representative.

The organization of the actual PMF would be determined during the mission planning. But with the existing PMCs found on the World Wide Web (see Appendix B), Figure 6 illustrates how a PMF could be assembled today to accomplish the mission in Darfur.

COR	Function	Possible PMC(s)
O&I Sergeant	Intelligence	AirScan Inc., CACI, Kroll, ORION, SYTEX, Titan
A Weapon Sergeant	Operations	Blackwater USA, CusterBattles, MGSI, RamOPS, SOC-SMG, TAP, Triple Canopy, WBA
A Weapon Sergeant	Training	MPRI
An Engineer Sergeant	Logistics	DynCorp, KBR, Vinnell
A Communications Sergeant	Communications	DynCorp, RamOPS
A Medical Sergeant	Medical	Blackwater USA, Triple Canopy, DynCorp
An Engineer Sergeant	Air	ICI
The PSYOPS representative	Public Relations	There are not any PMCs that specifically work on public relations; however, a reputable civilian company could do the mission.

Table 6. A Special Forces-Led PMF Model²⁶

A potential problem for this model that might occur in 2005 would be the manning of the PMF. Since there are two ongoing U.S. conflicts currently overstressing the military, so may the situation arise where PMCs could be overstretched as well. The reputable PMCs simply may not have the manpower to fill the needed slots for the Sudan mission. With 20,000 PMC employees in Iraq, PMCs may have trouble continuing to recruit quality personnel for their organizations.

The hypothetical Darfur mission would not only be humanitarian in nature; but a significant level of security would also need to be attained for the mission to be successful. After all, the U.N. or United States could send an endless amount of aid, but if security were not established, then anyone with significant enough force could take the

²⁶ None of the U.S. specific PMCs in Appendix B were left off the list due to their reputation; however, their reputation would have to be considered before contracting.

aid from the people who needed it the most. The PMF would have to establish security, at least initially, and then train some elements within Darfur to secure themselves. This would probably be done by slowly training local security personnel and gradually integrating them into the PMF. As the local force got bigger the PMF could get smaller and then eventually disappear. That means that one of the conditions for mission success would be when the citizens of Darfur could secure themselves. In other words, the PMF would have to work itself out of a job, which is counterintuitive to the business world, so the PMF would need to be regulated by the contract.

C. THE CONTRACT

A concept to understand with a contract is that “[i]t is impossible to specify a contract which will cover all eventualities” (Rubin, 1990, p. 7). If one could, that means that someone could foresee all possible contingencies, branches, alternatives, and deviations of a given operation before they occur. Although this is probably not possible, it may be possible to ensure the contract is written in such a way that the interests of the PMCs involved with the operation are aligned with that of the U.S.’s interests. Instead of creating an actual contract in this thesis for the prescribed force, this section addresses the critical aspects of the contract that needs to be in place to effectively manage the Special Forces-led PMF. The critical areas of the contract could be found in the requirement section, and terms and conditions section of the contract.

The SOW that the SFODA develops for the RFP generally becomes the requirements section of the contract. These are the detailed requirements derived from a mission analysis that the individual PMCs would have to perform in order to be considered successful for the contract. These detailed requirements might also be considered the “measures of effectiveness” section of the contract. An example of a requirement for a PMC is the following: conduct aerial re-supply and troop movements for 1000 flight hours a month with the ability to go higher depending on mission requirements. Then under the terms and conditions section of the contract, the amount for this requirement would be addressed with an agreed upon amount for additional flight hours as necessary.

In addition to the paying of the contract, the legal controls over the PMCs are found under the terms and conditions section. As stated in the previous section, since this

would be under a DoD contract then the PMC employees would be covered under the 2000 MEJA. But if that is not enough, then in the terms and conditions section of the contract, a provision could be established that prescribes that the contractors would fall under U.S. laws for American citizens or the laws of the country from which the employee originates. The second part of this requirement would be difficult at best; therefore, the non-U.S. citizens would have to understand that they might fall under the local laws, in this case – Sudan. This requirement may be too difficult for some to accept, and the PMCs would probably lose some of the potential employee pool, but it is necessary that the U.S. military maintains complete control of the PMCs.

Also under the terms and conditions section would be how the PMCs would be paid. A fear involved with hiring PMCs is that these companies might encourage a conflict to continue in order to reap the financial benefits. To avoid this possibility, a contract has to be written that encourages PMCs to end on time or early. That means that financial bonuses could be awarded upon an early success of the mission or financial penalties could be assessed for an unacceptable delay in the missions success.

The construction of the contract is a difficult task and requires long and intensive hours of analysis to derive at a detailed but flexible contract that would satisfy the PMCs' and the USG's needs. The key to the contracting process is to build in flexibility for when unforeseen circumstances arise. Unfortunately, the more flexible the contracts, the more likely the PMCs are going to require more money to conduct the operation, which to the unfamiliar observer may seem exorbitant. However, the Special Forces element would be present to ensure the USG received the appropriate value for cost.

D. CONCLUSION

The Special Forces-led PMF model can work given the right conditions. Does it accomplish what it sets out to do? This model does eliminate the need for a large U.S. troop deployment, so it accomplishes the main concern for this thesis. The reaction to PMC employees dying on this mission is yet to be seen; however, thus far, the general public seems to respond less emotionally to contractors being killed instead of soldiers.

Because the USG would hire U.S. companies to conduct a U.S. supported mission, these PMCs would easily fall out of the definition as mercenaries. So legally,

this model could operate in Darfur. The exception would be foreign, non-Sudanese, employees of the PMCs. Their role may more closely resemble that of a mercenary and would require careful planning when considering employing this type of additional personnel.

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VI. CONCLUSION

In many cases, these [PMCs] are either carrying out foreign policy directly, or at least working within acceptable boundaries. – *David Shearer, Private Armies and Military Intervention, 1998*

This thesis has argued that a Special Forces-led PMF could be an effective force multiplier for the U.S. armed forces if properly managed. How Special Forces are used as contracting officer representatives is critical. Special Forces should not be used for routine contracts, particularly in fields other than UW. Humanitarian Assistance (HA) may seem disassociated from UW, but if one were to review a history of HA actions, it is apparent that these missions are usually conducted in a UW environment, e.g. Somalia, Rwanda, and Haiti, to name but a few.

A. SUMMARY OF THE WORK

In the introductory chapter, several assumptions are put forth, the most important of which is that the U.S. will have the political will to execute a Special Forces-led PMF plan. The chapter also defines important terms for the thesis, especially “small wars.”

The second chapter provides five cases that demonstrate the USG’s historical willingness to conduct warfare through other entities or people. This is referred to as the use of surrogates and is categorized in U.S. military doctrine as unconventional warfare. Also under the same doctrine, Special Forces are the responsible body to conduct UW.

The third chapter addresses the risks involved with hiring PMCs and how to mitigate those risks. After evaluating the risk mitigations, one can see that PMCs can be trusted to conduct some operations, but probably not extremely critical operations. Control measures are the key to ensure a trusting relationship between the USG and PMCs.

The fourth chapter deals with the legal issues surrounding PMCs and mercenaries. International laws currently only deal with mercenaries and not PMCs. The USG has not signed to any of the conventions regarding the restriction of mercenary use and thus is not bound by these conventions. However, the USG must be cognizant of the affects of these conventions when conducting operations in the international community. Also, the

USG has extensive contracting procedures that cover the use of PMCs. These procedures have to be stressed and followed for the effective management of PMCs.

The fifth chapter presents a Special Forces-led PMF model set in a “small war” scenario. The current situation in Darfur, Sudan is used as the setting for the model. The model addresses the issues, risks, and concerns associated with hiring PMCs to conduct operations. It also discusses some key points within a contract that must be addressed for effective management of a PMC.

B. FURTHER RESEARCH

There are some particularly relevant concepts on the PMC topic that have not been addressed or fully developed in this thesis. This section suggests some issues for what should be further researched in the study of the PMI.

The first issue is the standardization and improvement of PMC regulation. Although this thesis argues that there are enough laws to govern a Special Forces-led PMF, most in the industry argue that more regulation is needed. For example, the Government of the United Kingdom has conducted Parliamentary-level directed research to investigate how the PMI should be regulated. The British government produced a “green paper” on the subject titled Private military companies: Options for regulation that addresses such topics as accountability, sovereignty, economic exploitation, human rights, and moral objections. The U.S. could benefit from a similar Congressional level study.

The second issue is the PMI’s attraction of skilled personnel away from the ranks of the U.S. military. Retention continues to be problematic. The allure of a PMC is obvious: ex-military personnel can work when they want to, not deal with the bureaucracy of the military, have an exciting job that uses their skills attained in the military, and receive a salary two or three times greater for doing a job they did before. Stopping this exodus from the military would be hard without regulating what jobs a departing soldier can conduct after leaving the military.

The third issue is that there should be a comparison of the cost of overseas deployment between a U.S. soldier and a PMC employee. It is too simple to compare how much a soldier earns in salary in relation to a PMC employee. The appropriate

comparison is how much each person costs the USG. The deployment cost of a PMC employee is probably fairly easy to evaluate, but the soldier can be deceptively complicated. One cannot just use basic pay for a soldier. As stated in the introduction, there are many factors that vary from soldier to soldier that can cause a considerable expense to the USG. A couple of these factors are an individual soldier's use of military medical and recreation facilities.

The fourth issue arises when one of the U.S.-contracted PMCs hires third party nationals, not U.S. nor indigenous forces. There is not a clear-cut law on how these employees are legally regulated. The following questions must be addressed: Do they fall under U.S. law? Do they fall under the country's laws in which they are operating, or do they fall under their home country's laws?

Finally, contractor billing is a significant issue for the USG. For example, Custer Battles LLC has been accused of overcharging the USG by at least \$50 million for work done in Iraq according to Robert Isakson, a former employee of that company (Hastings, 2005). It seems that an extra measure of oversight, or strict enforcement of existing oversight, will be needed to protect the USG's interests.

C. FINAL COMMENTS

The reason for this thesis is simple: alleviate the strain on the U.S. armed forces caused by overseas deployments, but still protect important U.S. national interests and provide humanitarian assistance around the world times of need. The United States feels a moral obligation to help less fortunate countries gain the freedom and democracy that the Americans cherish. However, the United States lacks the unlimited resources to help every country in the world that needs such assistance, so alternatives must be found. The Special Forces-led PMF model is an alternative. If the current operational deployment tempo of U.S. troops continues in the years ahead, the model presented in this thesis may be a viable alternative to commitment of U.S. armed forces personnel in conflicts below the threshold of high-intensity conventional war.

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APPENDIX A. DOCTRINAL DESCRIPTIONS OF SMALL WARS

The three terms below are provided to further describe the meaning of “small war” in which the Special Forces-led PMF would operate. The term “small war” does not appear in either JP 1-02 or FM 1-02 but when the terms Military Operations Other than War (MOOTW), Stability Operations, and Support Operations are combined with counter-insurgency and UW, an image can be made about the environment of a “small war” as applied to this thesis.

MOOTW: “Operations that encompass the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of other instruments of national power and occur before, during, and after the war” (JP 1-02, 2004, p.336).

Stability Operations: This is a U.S. Army/Marine only term which means the following: “Operations that promote and protect US national interests by influencing the threat, political, and information dimensions of the operational environment through a combination of peacetime developmental, cooperative activities and coercive actions in response to crisis” (FM 1-02, 2004).

Support Operations: This is also only a U.S. Army/Marine term which means the following: “Operations that employ Army forces to assist civil authorities, foreign or domestic, as they prepare for or respond to crises and relieve suffering” (FM 1-02, 2004).

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APPENDIX B. PMC WEBSITE OVERVIEW

The following is a list of PMCs that currently advertise their services on the World Wide Web. This is not an all inclusive list but, nonetheless, an attempt has been made to be as thorough as possible. Generally, to be in this appendix, the PMC has to provide combat/security services or direct combat support services. Companies that provide maintenance support for strategic lift aircraft or are involved with privatized housing for U.S. military bases are examples of PMCs that are not included in this list. Also, as the name of this appendix indicates, if a PMC does not have a website or the website could not be found, then that company was not included.

- AD Consultancy, <http://www.adconsultancy.com/>

AD Consultancy is a UK company that provides security services to include assessments, protection, and surveillance. Its security extends to aviation, maritime, and oil/gas assets as well.

- Aegis Defence Services, <http://www.aegisdef.com/>.

Aegis is a UK company that was founded in 2000 and run by Tim Spicer, founder of Sandline International and former Scots Guard. It provides risk assessment and mitigation services, intelligence training and operations, and technical support for new equipment. It was recently awarded a \$293 million "cost-plus" contract (\$92 million in the first year for a three year maximum of \$293 million) to manage private security for the Iraq Program Management Office (PMO). It was awarded by an Army transportation group in Virginia. The contract calls for 75 x 8 person executive protection teams for PMO personnel, an intelligence clearing house, and a vetting service for PMCs operating in Iraq.

- AKE Limited, <http://www.akegroup.com/>

AKE Group, founded in 1991, is a UK company that provides risk management, intelligence, and medical services.

- AirScan Inc., <http://www.airscan.com/>

AirScan is a U.S. company that provides air, ground, and maritime surveillance, but primarily focuses on airborne surveillance and aviation requirements. Its website has been in construction since 2002.

- AMA Associates Ltd, <http://www.ama-assoc.co.uk/index.htm>

AMA Associates Ltd. is a UK company that provides training and consultancy in the following: risk and crisis management, investigation, surveillance/counter-surveillance, security, counter-terrorism, hostage rescue, and executive protection. It touts extensive Special Forces expertise and seems to focus on maritime security.

- ArmorGroup, <http://www.armorgroup.com/>

ArmorGroup, whose predecessor firm was Defense Systems Limited, is a UK company that conducts global risk management services with over 8,000 employees in 40 countries. The company focuses on global security risk management, security training and services, and mine action services.

- BAE Systems, <http://www.baesystems.com/>

BAE Systems is a UK company that designs, manufactures, and supports military aircraft, surface ships, submarines, space systems, radar, avionics, C4ISR, electronic systems, and guided weapons. It specializes in systems integration, complex software and hardware development and advanced manufacturing.

- Beni Tal, <http://www.beni-tal.co.il/>

Beni Tal is an Israeli company that focuses on executive protection and weapons training. Its website is not very detailed.

- Blackwater USA, <http://www.blackwaterusa.com/>.

Blackwater USA, founded by ex-SEALs Erik Prince and CEO Gary Jackson, is comprised of five companies: Blackwater Training Center, Blackwater Target Systems, Blackwater Security Consulting, Blackwater Canine, and Blackwater Air (AWS). Blackwater USA focuses on training and security, with the emphasis on diplomatic security.

- CACI International Inc., <http://www.caci.com/>

CACI is a U.S. company that specializes in systems integration, engineering services, managed network services, and knowledge management. This company also has hired contracted interrogators to the U.S. government.

- Combat Support Associates (CSA), <http://www.csakuwait.com/>

CSA is a U.S. company that focuses on combat service support for U.S. military installations in Kuwait where its contract will expire in 2009. The company

primarily performs the duties of division and corps level military police by providing the security guards for the installations.

- Control Risks Group, <http://www.crg.com/html/index.php>

Control Risks Group is a UK company, founded in 1975 as an international business risk consultant. It also does crisis management, investigations, information security, and discreet armed protection. It claims a 375 person database with 17 offices worldwide.

- Cubic Corporation, <http://www.cubic.com/>

Cubic Corporation provides realistic live combat training systems for military forces as well as virtual training systems, constructive simulation support, force modernization, battle command training and education, electronic warfare simulators and engineering and technical support. The group also supplies tactical battlefield systems and communications electronics, including secure data links and surveillance receivers for "C4ISR" applications and search-and-rescue avionics.

- CusterBattles LLC, <http://www.custerbattles.com/>

CusterBattles is a U.S. company, founded in 2001, that provides security services/training, Threat Vulnerability Assessments (TVAs), surveillance, and emergency services, e.g. search and rescue. Its most notable contract was with the Coalition Provisional Authority (CPA) in Iraq to secure the international airport.

- Diligence LLC, <http://www.diligencellc.com/>

Diligence LLC is both a UK and U.S. company, although its website uses British spellings for words and was jointly founded by American and British intelligence officers. It focuses on global risk consulting, corporate intelligence, Threat Vulnerability Assessments (TVAs), and some security training.

- DynCorp, <http://www.dyncorp.com/>

DynCorp is a U.S. company and recent subsidiary (Dec 2004) of Veritas Capital. Computer Sciences Corporation (CSC) had owned DynCorp prior to Veritas purchase. DynCorp provides aircraft maintenance, technology, telecommunications, computer network integration, and infrastructure management, especially logistics and services. It also provides security and life support services.

- Erinys International, <http://www.erinysinternational.com/>

Erinys International provides international security services and risk consultancy that focuses on the sub-Saharan Africa and Middle East areas. It recently was awarded a \$40mil contract to guard Iraq oil installations.

- Genric UK Ltd., <http://www.genric.co.uk/>

Genric is a UK company that provides threat assessments, physical and personal security, counter-electronic surveillance, and training for evasive driving, surveillance, executive protection, and medical emergencies.

- Global Marine Security Systems Company (GMSSCO), <http://www.gmssco.com/>

GMSSCO is both a U.S. and UK company that provides security training/solutions and risk management programs for maritime needs.

- Global Risk International (GRI), <http://www.globalrisk.uk.com/>

GRI, incorporated in 1999, is a UK company that specializes in crisis management, kidnapping/extortion solutions, investigations, anti-terrorist training, and equipment procurement.

- Global Risk Strategies, <http://www.globalrsl.com/>

Global Risk Strategies is a UK company, founded by Damien Perl, a former marine, and Charlie Andrews, a former Scot Guards officer. It provides political risk management, business facilitation, and peace support operations. It has been criticized for hiring 500 Gurkha and 500 Fiji soldiers in Iraq at considerably cheaper cost than western counterparts.

- Group 4 Securicor, <http://www.group4securicor.com>

Group 4 Securicor is a UK company that began operations on 20 July 2004 by merging Group 4 Falck and Securicor. It provides security services and systems, runs prisons, and provides cash transport services. It claims 340,000 employees in over 100 countries.

- Kellogg, Brown, & Root (KBR), <http://www.halliburton.com/kbr/index.jsp>

KBR is a U.S. company that is a subsidiary of Halliburton and provides engineering, construction, operations and maintenance, logistics, and project management services. KBR runs many of the U.S. military base camps around the world.

- Hill & Associates, <http://www.hill-assoc.com/>

Hill & Associates, founded in 1992, is headquartered in Hong Kong and focuses on the business world, and, not really military environments. It provides asset protection, personal and physical security, and intelligence services.

- International Charter Incorporated (ICI), <http://www.icioregon.com/aviation.htm>.

ICI is a U.S. company that uses Russian aircraft for peacekeeping support, VIP transport, heavy lift, and relief services. It also can organize and train security forces and provide executive protection.

- International Corporate Protection (ICP), <http://www.icpgroup.ltd.uk/>

ICP is a UK company that provides corporate and personal security services, investigations, and security training.

- International Intelligence Limited, <http://www.int-int.info/>

International Intelligence Limited is a UK company that provides executive protection, surveillance, security training, and investigation. It claims a lengthy Special Air Service (SAS) database of names.

- Janusian Security Risk Management, <http://www.janusian.com/>

Janusian Security Risk Management is a UK company and subsidiary of The Risk Advisory Group that focuses on security management, identifying threats, providing means and capabilities to manage the threat, and eliminating the threat, if necessary. It has been active in Iraq since 17 April 2003.

- Kroll Associates, <http://www.krollworldwide.com/>

Kroll is a U.S. company that provides security, intelligence, and investigation services.

-Meyer Global Security, Inc. (MGSI), <http://www.meyerglobalforce.com/index.html>.

MGSI is a U.S. company that specializes in Colombia but is willing to work globally. It can provide armed marine patrol vessels, four wheel drive SUV's, sedans, armored vehicles, and helicopters. Its services focus on executive protection but can involve most any security work, e.g. convoy security. It hires ex-U.S. military Special Operations soldiers as well as having 400 Chilean Commandos on database.

-Military Professional Resources Incorporated (MPRI), <http://www.mpri.com/index.html>.

MPRI is a U.S. company that operates world-wide and focuses on training, war gaming through simulations, peacekeeping, humanitarian aid, force protection, law enforcement, and investigations. MPRI boasts a 12,500 database of ex-defense and other related personnel.

- Northbridge Services Group, <http://www.northbridgeservices.com>

Northbridge Services Group is a UK company with an ex-U.S. Army officer as its president. It offers security training, executive protection, Special Operations (SO) and Special Weapons and Tactics (SWAT) capabilities, electronic and human intelligence gathering, peace keeping and mine clearing abilities, and medical support/evacuation.

- ORION Scientific Systems (ORION), <http://www.orionsci.com/>

ORION is a U.S. company that specializes in software development for military and law enforcement use. It currently has a Social Network Analysis (SNA) program used by anti-gang units in the U.S.

- RamOPS Risk Management Group, <http://www.ramops.com/>

RamOPS is a U.S. company that conducts threat assessments, recommended precautions, and contingency planning for personnel, sites, and equipment. It provides executive protection, convoy escort, communications, information technology, and logistics support.

- Sandline International, <http://www.sandline.com/site/index.html>

Sandline International of the UK closed down operations on 16 April 2004 due to the "...general lack of governmental support for Private Military Companies willing to help end armed conflicts in places like Africa..." This company is referenced only because of its reputation.

- SECOPEX, http://www.secopex.com/index_en.htm

SECOPEX is a French company that specializes in security, intelligence, and security training missions. It also offers specific services like convoy security, base camp construction, communication architecture, logistics, and executive protection. It claims a 600 person database filled with ex-military

- Securicor Hong Kong, <http://www.securicor.com/hk.htm>

Securicor Hong Kong, founded in 1963, is a subsidiary of Securicor Asia group. It provides manned and electronic surveillance and risk management consulting.

- Special Operations Consulting – Security Management Group, <http://www.soc-smg.com/>

SOC-SMG is a U.S. security company that provides PSD, international force protection, consulting, security services, armed protection, threat management, investigation, training, and large-scale security operations.

- SYTEX, Inc., <http://www.sytexinc.com/DesktopDefault.aspx?tabid=1>

SYTEX is a U.S. company and a subsidiary of The SYTEX Group, Inc. (TSGI). It provides multidisciplinary services for program and systems management, logistics, homeland security, intelligence, engineering, operations and maintenance, computer security training, and biometrics and tagging/sensor capabilities.

- Terrorist Anticipation & Prevention (TAP), <http://www.tapinternational.com/>

TAP is a U.S. company that conducts threat and vulnerability assessments, security force evaluation, and anti-terrorism solutions. Its website is not very detailed.

- The Steele Foundation, <http://www.steelefoundation.com/>

The Steele Foundation, founded in 1989, is a U.S. company that specializes in risk management, investigation, security training, executive protection, and convoy security. It has a strong presence currently operating in Iraq.

- Titan Corporation, <http://www.titan.com/>

Titan, founded in 1981, is a U.S. company that focuses on creating, modifying, and implementing Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR) equipment. It also specializes in Information Technology (IT) research and application. Recently it has provided translators and interpreters to the U.S. government for Iraqi operations.

- TOR International, <http://www.torinternational.com/>

TOR is a UK company that provides threat assessment, satellite tracking, safety equipment supply, and security and crisis management.

- Triple Canopy, <http://www.triplecanopy.com/>

Triple Canopy, founded by ex-Delta Force operator John Peters, is a U.S. company that specializes in executive protection and site security. It claims the highest concentration of ex-“Tier One” personnel.

- UK Defence Services LTD., <http://www.ukdefence.co.uk/main.htm>

UK Defence Services is a UK company that provides security guards, investigation, canine assets, executive protection, Explosive Ordnance Disposal (EOD), and maritime security.

- Vinnell Corporation, <http://www.vinnell.com/>.

Vinnell Corporation is a U.S. company and a subsidiary of Northrop Grumman Company that operates world-wide. It offers services that range from facilities operator to logistic support to military training.

-Wade-Boyd & Associates LLC (WBA), <http://www.wade-boyd.com/>

WBA, founded in 2003 by Marvin Wade and Rick Boyd, is a U.S. company that provides Personal Security Details (PSD), K-9 bomb detection, convoy protection, personnel (child) recovery, physical security, and training.

**APPENDIX C. TRANSPARENCY AND ACCOUNTABILITY IN
SECURITY CONTRACTING ACT**

109th CONGRESS
1st Session
H. R. 2011

To require accountability for personnel performing private security functions under Federal contracts.

**IN THE HOUSE OF REPRESENTATIVES
April 28, 2005**

Mr. PRICE of North Carolina (for himself, Mr. SPRATT, Mr. SNYDER, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require accountability for personnel performing private security functions under Federal contracts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the 'Transparency and Accountability in Security Contracting Act'.

SEC. 2. REQUIREMENTS RELATING TO PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS UNDER FEDERAL CONTRACTS.

(a) Accountability Requirements for Personnel Performing Private Security Functions Under Federal Contracts-

(1) REQUIREMENT TO PROVIDE CERTAIN INFORMATION ABOUT PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS- Each covered contract shall require the contractor to provide to the contracting officer for the contract, not later than 5 days after award of the contract, the following information regarding private security functions performed under the contract:

(A) Number of persons to be used to perform such functions.

(B) A description of how such persons are trained to carry out tasks specified under the contract relating to such functions.

(C) A description of each category of activity relating to such functions required by the contract.

(2) UPDATES OF INFORMATION- The information provided under paragraph (1) shall be updated during contract performance as necessary.

(3) SAFEGUARDING INFORMATION- The head of each agency awarding a covered contract shall take such actions as are necessary to protect any information provided under paragraph (1) that is a trade secret, or commercial or financial information, from disclosure to persons outside the Government.

(4) ACCOUNTING- Each covered contract shall include the following requirements:

(A) Upon award of the contract, the contractor shall provide cost estimates of salary, benefits, insurance, materials, logistics, travel, administrative costs, and other costs of carrying out private security functions under the contract.

(B) Before contract closeout (other than closeout of a firm, fixed price contract), the contractor shall provide a report on the actual costs of carrying out private security functions under the contract, in the same categories as provided under subparagraph (A).

(5) CASUALTY REPORTING- Each covered contract shall require full reporting to the contracting officer for the contract by the contractor of all personnel casualties in carrying out the contract.

(6) OVERSIGHT- Before a covered contract is awarded, the head of the agency awarding the contract shall ensure that sufficient resources are available to enable contracting officers of the agency to perform oversight of the performance of the contract.

(7) WAIVER AUTHORITY-

(A) The head of the agency awarding a covered contract may waive a requirement of this section with respect to a contract in an emergency or exceptional situation, as determined by the head of the agency. Any such waiver shall be limited to the requirements that are impossible or impracticable to implement because of the emergency or exceptional situation. In any case in which the head of an agency waives a requirement under this section with respect to a contract, the agency head shall submit to the congressional committees listed in subparagraph (B) a report, within 30 days after the date of the waiver, that describes the contract, the waiver, the emergency or exceptional situation that justified the waiver, and a plan for bringing the contract into compliance with the waived requirements as soon as possible or an explanation of why the waiver needs to be permanent.

(B) The congressional committees referred to in subparagraph (A) are the following:

(i) The Committees on Appropriations, Armed Services, Government Reform, and International Relations of the House of Representatives.

(ii) The Committees on Appropriations, Armed Services, Homeland Security and Governmental Affairs, and Foreign Relations of the Senate.

(b) Hiring, Training, and Equipment Standards Relating to Private Security Contractors-

(1) REGULATIONS- Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall prescribe in regulations minimum standards (appropriate for each department or agency) for the persons that covered contractors may hire for the performance of private security functions under the contract, and minimum standards for the training of such persons, including the level of training and any certifications required. The standards may vary based on the duties of personnel, but must address past criminal activity, security clearance requirements, and other issues that either Secretary or the Administrator determines may lead to security or performance concerns.

(2) GUIDANCE FOR EQUIPMENT- The Secretary of Defense, the Secretary of State, and the Administrator for the United States Agency for International Development shall issue guidance (appropriate for each department or agency) on equipment used for private security functions under covered contracts with the department or agency concerned, including appropriate levels of body armor and equipment armor, and a recommended list of re-armors and weapons and armor manufacturers for complying with such guidelines.

(3) CONSULTATION WITH SECRETARY OF DEFENSE- The Secretary of State and the Administrator of the United States Agency for International Development shall consult with the Secretary of Defense in developing regulations and guidance under this subsection.

(c) Report on Cost Analysis Relating to Equipment- Not later than six months after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall submit to Congress a report containing--

(1) an analysis of the costs to the Federal Government of purchasing equipment to supply to contractors to carry out private security functions under covered contracts in comparison to the costs to the Federal Government of reimbursing contractors for equipment purchased by the contractors to carry out such functions; and

(2) such findings and recommendations as the Secretary considers appropriate.

(d) Definitions- In this section:

(1) COVERED CONTRACT- The term 'covered contract' means--

(A) a prime contract with the Department of Defense, the Department of State, or the United States Agency for International Development;

(B) a subcontract at any tier under any prime contract with a department or agency referred to in subparagraph (A); or

(C) a task order issued under a task or delivery order contract entered into by a department or agency referred to in subparagraph (A);

if the work to be performed under the contract, subcontract, or task order includes private security functions to be performed outside the United States.

(2) PRIVATE SECURITY FUNCTIONS- The term 'private security functions', with respect to a covered contract, means--

(A) any activities for which personnel are allowed to carry weapons in the performance of the contract; or

(B) the performance of any of the following:

(i) Military logistics and maintenance.

(ii) Interrogation of prisoners.

(iii) Convoy security.

(iv) Guarding vital facilities and personnel.

(v) Tactical security work.

(vi) Local force training.

(e) Effective Date- This section shall apply to covered contracts entered into on or after the date occurring 60 days after the date of the enactment of this Act.

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