

Regis University

ePublications at Regis University

Regis University Student Publications
(comprehensive collection)

Regis University Student Publications

Spring 2018

War For Sale: The Case of Blackwater Unaccountable Private Military Companies in Iraq and Afghanistan

Jennie Palmer
Regis University

Follow this and additional works at: <https://epublications.regis.edu/theses>

Recommended Citation

Palmer, Jennie, "War For Sale: The Case of Blackwater Unaccountable Private Military Companies in Iraq and Afghanistan" (2018). *Regis University Student Publications (comprehensive collection)*. 859.
<https://epublications.regis.edu/theses/859>

This Thesis - Open Access is brought to you for free and open access by the Regis University Student Publications at ePublications at Regis University. It has been accepted for inclusion in Regis University Student Publications (comprehensive collection) by an authorized administrator of ePublications at Regis University. For more information, please contact epublications@regis.edu.

**War for Sale: The Case of Blackwater
Unaccountable Private Military Companies in Iraq & Afghanistan**

**A thesis submitted to
Regis College
The Honors Program
in partial fulfillment of the requirements
for Graduation with Honors**

By

Jennie Palmer

May 2018

Approval Page
Thesis written by
Jennie Palmer

Approved by

Nate Matlock, Thesis Advisor

Dr. David Bauman, Reader

Accepted by

Dr. Catherine Kleier, Director of University Honors Program

Table of Contents

1. Human Rights are Not Optional	1
2. A Brief History of Private Military	5
3. A Look at Policy	10
4. Blackwater USA	24
5. The Way to a Just Future	35
References	45

Chapter One - Human Rights are Not Optional

I don't think people talk about war enough. The topic of armed conflict is missing from multiple spheres within our lives, from headlines to academics to Facebook newsfeeds. War is not present enough in political debates given the weight it has on our democracy and international relationships. In addition, defense takes up to sixty percent of our national budget and taxpayer dollars. The failure to have these conversations serves the purpose of allowing the federal government to carry out the war in Western Asia with little scrutiny. War inherently involves injuring and killing human beings, which means it should be a topic that takes up both moral and legal consideration throughout our lives. From citizens to policymakers, Americans must uphold these actors to a standard that does not violate the human rights of the territories we occupy. The US government has slowly been transferring power over our current wars in Iraq and Afghanistan to Private Military Companies (PMC's). This thesis argues that our current national policies do not hold these corporations accountable when they violate human rights. This sets a dangerous precedent for how nation-states ought to act within war. After looking at the history of PMC's within American wars, this paper will analyze one company, Blackwater, to showcase the way these companies interact with civilian non-combatants. Policy analysis helps to figure out how Blackwater committed these violations and avoided punishment, continuing to grow their contracts with the US government and their control over military operations.

I will be using Western Asia to refer to the area traditionally referred to as the Middle East. The familiar term is both Eurocentric and geographically incorrect. This paper focuses on contractor action within Iraq and Afghanistan, although there are other surrounding countries that exert influence on the future of the war and this term can refer to those when discussing generalities. The scope of US contractors expands beyond Western Asia. Blackwater, along with other PMC's, also have a heavy presence throughout Africa in countries like Somalia, Sudan, and South Africa. The use of PMC's is widespread throughout the world, and they all have a unique relationships with the territories they occupy and the governments that employ them.

The US is in the longest war in its history. Due to actions by the Bush administration following September 11 of 2011 along with policy decisions made by the Obama and Trump administration, the US delegated countless human and financial resources to carrying this war. A large amount of this many is spent on the private military sector. This trend of military privatization does not show signs of coming to an end. The war effort in Western Asia is a huge part of our nation's identity, policy, and international relationships. Our combat and counterinsurgency efforts within these countries are being carried out through contracts with companies that every level of service and security. These Private Security Companies (PSCs) are becoming a growing presence in the ways the US fights in wars. The presence and power of these private actors are growing. Past trends show that they will play an ever-increasing role in the U.S.'s future in Western Asia. Some of these companies, however, have a history of violating human rights while they act with disregard for rules of engagement and war

tradition. They also have financial motivations and can put these motives above concern for noncombatants. These companies conduct business with the US Department of Defense through multi-million dollar contracts. Their scope of activities expanded in recent years to include all facets of military operations, from security to logistical support to interrogation. It is the responsibility of the United States along with other states to ensure that the proper policies are in place to keep these companies in check. States must take concrete actions to verify PMC's live up to a high ethical standard. Accountability for PMC's needs to be present in cases where the companies commit crimes against humanity. The rapid, unexpected growth of PMC's means that federal policy could not keep up with the rapid expansion of the powers of these companies. Current policies are ineffective at providing oversight, training requirements, and preventing misconduct of employees. In order to maintain foreign relations and ensure human rights abroad, the US must develop and put into effect comprehensive new policies and guidelines that define what these actors can and cannot do and puts forward punitive measures for future misconduct.

As Americans, we have a responsibility to ensure that our tax dollars are going towards just causes that support human rights. The topic of war is often missing from conversations within our daily dialogue, our media and even our politics. Decision-makers carry out strategy and make final calls behind closed doors with a lack of transparency. Our war efforts within Western Asia do not have to involve excessive deaths of innocent civilians. The ultimate goal of this paper is to propose actions to take

to ensure all actors uphold the value of human rights and proportional correction actions are in place if they fail.

One chapter of this paper will focus on the American company founded as Blackwater. This company was chosen as a case study due to its especially terrible record of killing non-combatants and its growing influence over the war. The company's history includes multiple lawsuits and scandals yet the company avoided proper punishments. Insufficient oversight and a lack of cohesive policy allows PMC's to carry out egregious violations against non-combatants within foreign countries. Narrowing our research down to one company will allow us to see exactly how these companies act within the country, along with showing us how they were able to avoid penalty for a 2007 incident in Iraq where contractors killed 31 Iraqi civilians.

My claims pursue a universal view and application of human rights. The definition used comes from the Universal Declaration of Human Rights put forward by the UN in 1948. These rights give protection against slavery, torture, and unfair imprisonment. In the third article, the document declares "security of person" as a basic right (Declaration of Human Rights, Art III). Security rights ensure humans can live and exist without fear of losing their life. Iraqi and Afghan citizens should not fear death by the US military, especially within their daily lives.

This thesis will conclude with a chapter suggesting policy changes that would change the way these companies carry out their missions and create an environment where contractors feel a responsibility to carry out their missions while respecting the human rights of those they interact with. This paper hopes to create a future where

American military companies have a reputation and history of conducting themselves in an ethical manner that upholds a universal conception of human rights.

Chapter 2 - Brief History

To better frame our research and understand where we are today, we must look at the history of the relationship between the US and private actors. This chapter will focus on the role private actors and mercenaries played within America's military history. This research will help to give us an idea of what these actors traditionally looked like, along with helping us frame how these actors are playing a larger part than they historically have. After looking at the role private companies played in past wars, we will look at the role they have within our current war in Western Asia. This will help us to conceptualize what private military companies look and act like in modern warfare. It will also help us to determine what factors played into the expansion of these companies and better enable us to ensure their responsibility.

In order to better understand the history of nations and private armies, we must look to Europe's 30 Years War which was a defining event in the creation of modern nation states. The war began in 1618 in Bohemia between Protestants and Catholics (Cowley, 1996). The Protestant cause was failing the French government subsidized Swedish military aid to join the war and turn the tide in 1630. Twelve years in, the Thirty-Years-War became a struggle among the great European powers who struggled to locate and appropriate resources. The states began to heavily employ mercenaries to support their causes in what grew into a ruinous and dirty war for another eighteen years until both sides agreed to the Peace of Westphalia in 1648. The cost of this long war was

steep, with Germany losing 20% of its population and trade heavily declining throughout the area (Crowley, 1996). The use of hired troops factored into the widespread destruction and caused a lengthening of the war. These paid soldiers and military leaders had no incentives to end the war or succeed as the war's continuation translated into more money. The goals of war began to shift away from just victory and political gain as the vested interests of the actors changed. Leaders also had access to more fighters which increased the potential for continued violence. This war helped to shape what nation-states look like and set the tone for America's military history to begin over a hundred years later.

The Americans fought their War of Independence from 1775 to 1783. The British relied heavily on mercenary forces during the Revolutionary War, hiring 10,000 Native Americans and 30,000 German mercenaries to support their own troops (Underwood, 2012). Some European leaders criticized this decision as the common belief at the time was that citizen armies were superior to mercenaries. The Continental Army also employed Native Americans to aid their army, but always had a lower number of paid foreign troops than the British Regular Army (Underwood, 2012). In addition, George Washington hired European military officers to fill the gaps of expertise he recognized. The Revolutionary War set the trend for a relationship between American military and private actors.

The American government continued to employ mercenaries throughout a number of their wars. The Union Army hired mercenaries for espionage purposes during the Civil War (Anderson, 2014). In World War II, the American military paid a group of retired

pilots known as The Flying Tigers to fly missions (Anderson, 2014). By the First Gulf War in the 1990's, the ratio of US troops to private contractors stood at fifty to one (Jung, 2016). Within these wars mercenaries make up a small percentage of the total force and remained under tight control by the state. Although American military history involves the use of private actors, the new expanse of power given to PMC's is unprecedented and fundamentally different than in the past.

Private Military within Iraq and Afghanistan

Private Military Companies look fundamentally different than they did even at the beginning of our current wars. Following the September 11 attacks, the Bush administration decided to invade Afghanistan in 2001 and Iraq in 2003. The administration contracted out work to PMC's only to provide rear-area services such as food service, logistics, accounting, transportation, and a variety of other tasks that kept them off the front line. By 2006, there were an estimated 100,000 contractors in Iraq (Merle, 2006). As the US continued to expand its presence within the region, it began to contract out more serious operations and began to give more arms power and freedom to these actors.

The trend of increasing the presence of PMC's continued throughout the past decade. As of the fourth quarter of 2016, there were 25,197 contractor personnel located in Afghanistan compared to 9,800 U.S. troops, (DoD Report, 2017). This means that contractors made up around 72% of the total DoD manpower within Afghanistan at that time. Within Iraq during the same time period, contractors had a presence of 2,992 contractors alongside 4,087 U.S. troops. (DoD Report, 2017). Although this percentage is

only at 42%, contractors made up 50-70% of the total force prior to the major drawdown of US forces in 2011. For the first time, the American military does not train and directly control the majority of their military presence within the area and this lack of control now applies to armed men carrying out important operations under little scrutiny.

The US government also decreased the number of military experts and its strategic knowledge within the past years. From 2001 to 2007, the total number of defense acquisition professional within the US government decreased by 40% or more (Merle, 2007). These professionals have years of war-time experience and extended knowledge surrounding military strategies. These professionals are highly valuable and their knowledge is necessary to wage a successful war. During the course of this war, the US should look to greatly expand its military expertise rather than cutting back on valuable professionals and needed research.

Due to the lack of oversight and conflict of interests, this system is also prone to fraud, waste, and abuse. According to the Commission on Wartime Contracting in Iraq and Afghanistan, somewhere between one in six and one in three dollars spent on contractors within these two countries was lost to waste and fraud (Commission on Wartime Contracting). The lack of oversight led to financial cost as the US Department of Defense failed to track dollars once given to these companies. The government often makes payments in cash. Multiple times, the US made multi-million-dollar cash payments to PMC's during 2003 and 2004 (Engbreht, 2011). The use of cash within these transactions continues. Again failing at oversight, the relationship between the US and PMC's fostered a culture of fraud and waste of American dollars. These fiscal crimes are

related to the humanitarian crimes committed by these companies and the problem lies in lack of accountability and oversight.

Private Military Companies today look and act fundamentally different than their historical counterparts. PMCs in Iraq and Afghanistan now make up a majority of US troops and continue to expand the operations they are a part of and the power they wield.

Chapter Three - A Look at Policy

While private military power rapidly expands, the US government and international bodies are failing to enact policy to regulate this power. Some PMCs now carry out a variety of important military tasks such as armed security details and counterinsurgency efforts. These governmental bodies must identify gaps within policy and then reform policy to hold these companies accountable if commit war crimes.

As these companies operate on the other side of the globe, it complicates the traditional notion that states are responsible for regulating companies within their jurisdiction. These companies are acting and conducting business within a variety of countries, yet are doing so under the direction of and financed by the US. Even in cases where these companies commit war crimes, international institutions do not hold the states who contracted them responsible. Despite the fact the crime likely occurred due to the state's lack of thorough policy and standards, no state has been found responsible on an international level for the unlawful activities of its PSC contractors.

Policy surrounding PMC's on the International Stage

As these PMCs are private business actors, they fall outside the reach of international law, and international policy does not apply in the same way as it does to state troops. Although these companies are carrying out state missions and objectives, they are not subject to the same laws as the US soldiers they often work side by side with. Due to a number of reasons, foreign policy does not hold individual actors accountable

for their crimes nor does it hold countries accountable when their contractors carry out illegal acts. Not only are the people and corporations not reprimanded when they act unjustly, but international organization does not hold the countries which employ and fund their operations responsible. This sections points out the current international legislation that relates to PSC's and how it fails to ensure responsibility.

Although the League of Nations and United Nation were a response to war, neither put forward policy regarding the classification or treatment of mercenaries during their time of formation in 1920 and 1945 respectively. It wasn't until 1989 that the United Nations presented its first convention surrounding the use of private military by nations: The International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Along with defining for the first time on an international level what a mercenary is, this convention recognized that the use of mercenaries undermined the political sovereignty of states and self-determination of people along with the fact these companies are carrying out unlawful and fatal activities. The definition of mercenary provided includes a person recruited and motivated by personal gain (Art 3.1). The convention has 35 signatories to date agreed to conduct their military affairs entirely by state actors. This convention officially entered into force on October 20, 2001. The United States is not on the list. This document shows how international policy could address this issue, although it is vital that nations choose to cooperate.

The United Nations signed and put into effect a number of conventions on war, yet there remains a lack of policy and distinction around how PMC's fit into international relations. When discussing the rights these personnel have in combat and the activities

they can carry it out, issues arise when deciding where to place these mercenaries in the dichotomy of combatant or civilian. Both the Hague and Geneva conventions clearly prohibits civilians from direct participation in acts of war, which are acts likely to cause actual harm to enemy personnel or equipment (Guillory, 2001). The distinction between combatant and civilian is an important legal distinction at every level of military operations. As these contractors are not lawful combatants of a state, these UN conventions would delegitimize their right to perform armed security or use any deadly force.

The increased spotlight on the use of PMC's led to the forming of the Montreux Document which established good practices for PMC's on the battlefield focuses on the uses and responsibilities of these companies within armed conflict. The International Committee of the Red Cross published the document in 2008. This document specifically focuses on PMCs as they act within armed conflict, setting out 'good practices' that are 'instructive' for these companies. The document does not create legal obligations for them (ICRC, 2008). This two-part document addresses states. The first part reiterates the obligations of nations under international humanitarian law and human rights law, and the second puts forward suggestions of good practices drawn from companies' codes of conduct. Seventeen country signed the document in 2008 including the United States. An additional thirty-six countries and three international organizations signed since that year (ICRC, 2017). Although this document is important in its efforts to address the use of these companies, it creates no legal obligation nor provides an increase of accountability

for PSCs. It does further highlight that these companies act within the framework of human rights laws and that the responsibility is on states to regulate their private actors.

As stakeholders in the Montreux Document continued to meet, they decided to write an International Code of Conduct for Private Security Providers (ICoC) along with forming an oversight body named the International Code of Conduct Association (ICoCA) in reference to PMC's. The ICoCA Articles of Association state that it is responsible for certifying that a company's systems and policies meet principles and standards derived from the Code and that monitoring, auditing, and verification continues in the field (ICoCA 2013). The language provided in the Articles of Association is vague and does not specify the certification standard these companies will be held to. The articles continue by saying the responsibility of oversight is on the Association through external monitoring, reporting, and efforts to address violations of the code (ICoCA, 2013). As of August 2014, there are 708 signatory companies to the ICoC from 70 countries. There are 135 private security company members of ICoCA, along with 13 civil societies, and 6 states as of 2015. (ICoCA). These are both important efforts and do help to increase accountability, but these certifications are irregularly enforced and under regulated, along with transferring responsibility to companies to obtain these certificates. These measures do little to actually increase accountability of contractors and must be used in conjunction with state policies and incorporated into state's own accountability measures.

Many countries, including the US, consider their participation in the ICoC and ICoCA to fulfill their obligation to protect human rights. These documents and

organizations could even have the opposite effect intended as states distance themselves from their responsibilities by placing them on these associations (Macleod, 2015). States may feel their international legal obligations to protect human rights transfer to these international organization as they do provide some oversight, but the responsibility remains on the state for the actions of their contractors. States must take further policy actions to ensure their contractors do not violate human rights as they carry out their businesses. Although these organizations play important roles by increasing oversight of these companies, one should remain aware that these conventions can have the adverse effect of decreasing the responsibility states feel.

In 2012, the United Nations put into effect new *Guidelines on the Use of Armed Private Security Companies*. These guidelines apply to the global organization's agencies, funds, and programs. The guidelines consist of numerous requirements for these companies. They include the use of armed security contractors only when state actors aren't available. Companies also must have business policies in place on a variety of force management skills, and meet minimum training and oversight conditions (United Nations, 2012). According to the guidelines, companies must screen the criminal background of their armed guards, along with educating them of the company's policy on issues such as counter-terrorism, surveillance and reconnaissance, human rights law, integrity and ethical awareness. These guidelines regulate corporate contracts by an international organization rather than a state. Countries need to look to these guidelines as a model for policy at a state level.

While an improvement from the lack of previous policy, these guidelines may not be effective at holding the UN's contractors accountable. Dr. Elke Krahmann, chair of International Political Studies at Witten/Herdecke University in Germany, writes extensively on the subject of privatized war with a focus on the use of private security companies by the United Nations, The United Kingdom, NATO, and the United States. In her 2014 article, Dr. Krahmann analyzes and points to weaknesses within the UN's new guidelines and suggests improvements in order to increase the strength and accountability of these contract guidelines. Krahmann lays out six vulnerabilities of these guidelines. First, and most importantly, these guidelines only apply to armed security contractors despite widespread employment of contractors for unarmed work. Armed contractors should have to meet higher standards than unarmed contractors. It is important the UN holds all to the same basic laws and regulations that prevent violence and the potential for abuse of power.

Second, these guidelines fail to enact strict enough conditions for the use of private security guards. This may be due to the fact that states should be the one providing security services for the United Nations rather than private contractors. It is important that the UN puts in guidelines that outline what a UN private security contractor would look like from a legal viewpoint. This guideline is especially applicable on a national level as states often employ private security contractors.

Third, the new guidelines contain two flaws within their training standards. There is no requirement that these companies sign the International Code of Conduct for Private Security Service Providers (ICoC) and receive verification from the International Code of

Conduct Association (ICoCA). Secondly, there is no statement of minimum training requirements for security contractors. The ICoCa is an international body that oversees PMCs to ensure they are meeting the many requirements set forth by the ICoC. The ICoCA only monitors companies that are signatories to the code. The UN guidelines do demand training on a variety of issues from human rights law to ethics, but they leave it up to individual companies to determine the scope and content of this training. In order to ensure proper training of these individual contractors, guidelines must ensure these companies are meeting strict training requirements.

The fourth vulnerability lies in contract management and the lack of resources devoted to this task. The UN need to regulate and manage contractors throughout the entirety of their employment stages. Krahmann suggests improvements to regulation such as third-party verification of employee training and background checks, increased authority of security officers over contractors, and a substantial increase in the resources allocated to oversight and management of PMCs. This improvement would ensure contractors are held up to the same training standards as regular soldiers as well as giving the resources and power necessary to manage PMC's in real time.

The UN often measured the performance of their contractors by cost, contract completion, and business relation. The fifth weakness of the guidelines is its failure to take in impact on the local population. In order to ensure companies with a history of human rights violations are not continually contracted, the UN needs to put policy in place that bases the success of contracted operations on the companies' effect on the local population as well as cost and completion.

The last lapse within these new guidelines comes down to a lack of policy on remedial actions. With an increase in professional standards and oversight, it is likely that there will be an increase in reporting of misconduct among PMC's. The UN should have guidelines in place now to ensure just actions are taken in future cases of misconduct. The 2012 UN guidelines include three suggested actions for companies accused of misconduct. The actions include requirement of reimbursements for damage caused to the UN, the withdrawal or replacement of contractor staff, or termination of the contract (Krahmann 2014). The UN has put policy in place to address the lack of accountability for misconduct. These new policy remains incomplete and largely inapplicable due to the fact it not clearly state what actions of misconduct could justify taking these actions against a PMC.

International policy is inadequate at ensuring accountability among PMC's and requires revisiting and rewriting. Moving forward, policy recommendations at both international and state levels should work to put policy in place without the weaknesses of the UN's 2012 Guidelines.

US policy surrounding PMC's

Private military companies now consist of a large part of America's military presence within Iraq and Afghanistan. Theoretically, states are representative of their people's interests and are more likely to use violence only as a last resort and only to benefit the common good. PMC's have a large financial incentive. If the US government continues to increase use of PMC's, it must enact legislation that holds these companies up to an acceptable legal standard.

There are some members of the US government who attempted to enact stricter regulations of these companies even before our Western Asian invasion. They were met with resistance from conservative policymakers trying to loosen the restrictions in regards to PSCs. In a memo in August of 2000, the Assistant Secretary of the Army Patrick Henry attempted a clarification of policy addressing contractor support in the intelligence sector. They determined that “at the tactical level, the intelligence functions and the operational control of the Army performed by military in the operating forces is an inherently governmental function barred from private sector performance” (US DoD, 2000). The document further clarified “at the operational and strategic level, the intelligence function performed by military personnel and federal civilian employees is a non-inherently governmental function,” (US DoD, 2000). This policy began to provide general rules for what functions PSCs could perform. It began to make a distinction between control of operations at the tactical level versus at the operational and strategic level. It gave very little detail into what constituted a function at the tactical level versus at an operational level.

After the occurrence of 9/11, the government saw a huge rise in their need for intelligence support and began to broadly interpret the Army’s policy by turning to the private sector for a range of intelligence gathering activities. A 2004 memorandum from the Army’s Deputy Chief of Staff for Intelligence looked to clarify policy when it came to contractors participating in counterintelligence operations. The policy stated that the “direction and control” of counterintelligence efforts was a function of the government. The policy still left many activities open to contractors, such as linguistic translation,

intelligence analysis, data input, and the production of counterintelligence-related products (Alexander, 2004). Although this is a step forward in calling attention to the issue, the ambiguity within the memo does not provide enough clarification. There still remained many questions surrounding the operations of these mercenaries and Congress began to notice the lack of information and policy.

The House Permanent Select Committee on Intelligence voiced their concern in the 2008 Intelligence Authorization Act. The act wrote that leaders within the Intelligence Community had neither “adequate understanding of the scale and composition of the contractor workforce” nor understanding of what functions are inherently governmental (Congress 2008). Top military leaders allowed contracts to be made without knowing the number of and type of contractors surrounding the proper scope of activities appropriate for these companies. Despite resistance by the Bush administration, Congress continued drafting legislation surrounding PMC’s.

In 2009, Congress put forward the Defense Authorization Act which states that interrogation in wartime is an inherently governmental function as it “entails the exercise of substantial discretion in applying government authority and is likely to have a significant impact on the life and liberty of the individuals questioned” (Congress, 2009). Although this statement focuses on the activity of interrogation, it mentions the importance of discretion when deciding what operations should be left to the government. The act also addresses the effects actions will have on the objects of these interactions. These considerations should be applied to all operations and activities when deciding

what tasks and operations should be contracted out and which should be left under state control.

Following the UK, the US DoD adopted PSC1 as the applicable standard for their contracts. PSC1 is a Quality Management System developed by ASIS International to improve PSC industry standards. This is another example of Congress contracting out responsibility to a private organization. Independent third party Certification Bodies measure companies against these standards. PSC1 requires companies demonstrate consideration of the effect their actions will have on local populations (ASIS, 2012). PSC1 also places responsibility on companies to do their due diligences surrounding human rights in relation to clients, contractors, and supply chains (ASIS, 2012). Given the highly competitive nature of the industry, it is unlikely companies will perform this task and consider misconduct when making business decisions. Congress needs to manage these companies in order to increase control and accountability.

Congress began to realize this lack of accountability. The Coalition Provisional Authority (CPA), instituted in 2003, was the post-invasion transitional government in Iraq. It was a largely American effort to promote the development of a democratic government in Western Asia. The CPA's Memorandum 17, adopted in 2004, granted contractors immunity from the legal process of the country they worked in (CPA, 2004). The memo states that PMC's should make efforts to avoid civilian casualties and treat civilians humanely. It contains vague language in its Use of Force annex that contractors could use to justify violence against civilians. The CPA ensured that accountability for

these companies would not come under Iraqi Law and further added to the freedom these companies experience when carrying out operations.

If contractors are not beholden to the laws of host countries, the responsibility must belong to the US Justice System. An increase in concern over US contractor accountability led to the passing of the Military Extraterritorial Jurisdiction Act (MEJA) in 2000. The act extend US Federal criminal jurisdiction to civilians working overseas in support of US Department of Defense missions (Military Extraterritorial Jurisdiction Act of 2000). This act would apply only to PMC's contracted by the DoD and applies US legal standards to these companies. This act essentially allowed these companies to be prosecuted under US law.

In response, many PMC's made the assertion that MEJA does not apply to them as they are a part of the US Total Force rather than just the DoD (Elms, 2009). Some companies have also stated that as civilians, the United States Uniform Code of Military Justice (UCMJ) does not apply to them (Elms, 2009). While claiming these rules do not apply to them due to their combat status within the force, the companies simultaneously claim exemption from these rules as civilians. By the time the first contractor was prosecuted for crimes in Iraq and Afghanistan, 79 member of the US military had been court-martialed for crimes within the same two countries (Human Rights First, 2006). Policy should hold contractors to the same legal standards as their federal counterparts.

The Uniform Code of Military Justice (UCMJ), passed in 1950 with continuing amendments, is the foundation of military law. Congress established the code to apply uniformly to all military members. The code is thorough and details jurisdiction, trial

procedures, sentences and other sections pertaining to military justice. The UCMJ did include a clause on contractors at the time of drafting. The application of the code to contractors including the stipulation that the war be declared by Congress (Elms, 2009). Congress has not declared a war in 65 years so PMC's did not have to adhere to the UCMJ at the outset of the war in Western Asia.

In 2007, The Pentagon used their fiscal budget legislation to change the congressional requirement to read "declared war or a contingency operation" (Singer, 2007). This effectively applies the code to contractors as Congress carries out these operations. Although this change was important and necessary, applying the code to PMC's became problematic. The UCMJ is based around the traditional military chain of command, which PMC's often lack. In addition, a number of PMC's employees are foreign actors who cannot be subject to US court-martial procedures. Given these complication, simply applying the UCMJ broadly to include PMC's will not fulfill the US's obligation to ensure accountability among their contractors due to their inherent and apparent differences.

In 2011, the U.S. DoD made an important move by tightening internal regulations on its own use of PMCs. In an instruction titled "Operational Contract Support", the Department sets out requirements for the 'selection, accountability, training, equipping, and conduct' for personnel performing security functions for government agencies (Department of Defense, 2012). This document does work to increase the control of the US government in the training of these actors as well as adding some limits to the ways

contractors conduct themselves. It does not, however, offer a viable system that would look to enforce these requirements and ensure the cooperation of companies.

In addition to laws and memos pertaining to PMC's, the way the US measures the success of these contracts has an effect on their operations and how they interact with the civilian population. The U.S. military often measures the success of narrower contracts with a given deadline and set objective, such as security of a diplomat during a three-day visit, only by their completion. The military fails to take into consideration the effect even these shorter operations have on the local population and on international relationships. When it comes to longer contracts that entail contractors remaining on the ground for months at a time, the military judges success by the level of 'security' within the area. This can be problematic as this term is hard to measure, socially constructed, and culturally contingent. It is important that the U.S. deems the success of contracts dependent on more than just completion.

Members of Congress and the Department of Defense have tried and failed multiple times to enact policy to hold PMC's accountable to U.S. military law. Policymakers need to begin to draft and lobby for this legislation given the lack of current and applicable policy and the complexities of the industry. The U.S. failed to prosecute war crimes committed by PMC's due to gaps in domestic policy. It is on Congress to ensure the Justice System is given the political power to prosecute private war criminals when they profit at the expense of civilian lives and humanity.

Chapter Four - Blackwater USA

In order to better understand the complex relationships between US-owned PMC's and the US government, I research and analyzed the prominent private security company Blackwater. I chose this specific company due to their particularly egregious history with human rights and the lack of justice that followed a 2007 incident in downtown Baghdad. The incident, known as the Nisour Square Massacre, ended with 31 Iraqi civilians dead or injured. Blackwater's power and control of military operations within the Iraq and Afghanistan war increased in recent years. CEO and founder Erik Prince is actively looking to expand that power and increase his company's presence within Western Asia. Blackwater is studied in depth to highlight the lack of cohesive policy and show one example of policy failing at ensuring justice for PMC war criminals.

Erik Prince founded Blackwater in 1995. Prince belongs to one of Michigan's most well-known and wealthiest families. Prince's father has a long history of donating to the Republican Party on a state and federal level. Brother to current Secretary of Education Betsy DeVos, Prince is a known Christian fundamentalist. Prince donated tens of thousands to various Republicans, including \$80,000 to the RNC the month before Bush's 2000 election (Scahill, 2005). After an internship with the first Bush administration following college, Prince served in the Navy Seals from 1992 through 1996. With his inherited wealth, Prince bought 6,000 acres of land in North Carolina in 1997 which he turned into a large training facility that cost \$6.5 million. The new

company, named Blackwater, trained SWAT and law-enforcement officers on the corporation's vast private grounds. The operation was not financially solvent on its own and survived through sales from sister company Blackwater Target Systems (Prince, 2014). After working with SEAL and SWAT teams, Blackwater received its first government contract to train over 100,000 sailors after the USS *Cole* was bombed off the coast of Yemen in October of 2000 (Prince, 2011). Following the U.S. invasion in Afghanistan and Iraq, various federal departments contracted Blackwater both domestically and within the region. Prince recognized the US Department of Defense did not have the necessary manpower to protect diplomats and embassies overseas. Prince began to expand his service to include bodyguard protection and aerial surveillance, landed his first truly high-profile contract in 2003 for \$21 million to guard Ambassador Paul Bremer in Iraq for eleven months (Bennett 2007). With its nine divisions, Blackwater received over \$1 billion in U.S. government contracts between the years of 2001 and 2007 (NYT, 2007). The services stipulated within these contracts were often security details where contractors had obligations to act as combatants and encouraged to put the safety of their client and the completion of their contract above any other consideration. Since the beginning of this contractual relationship between Blackwater and the U.S. government, Blackwater is a privately held company that publishes limited information about its internal affairs. In February of 2009, Blackwater rebranded itself as "Xe Services LLC", restructured business units, added a corporate governance and ethics program, and hired independent experts to ensure compliance of their operations (Antonie, 2011). During this period, Prince announced he was stepping down as CEO and

relinquished some of his ownership rights. In 2010, a group of private investors purchased the training facility and rebranded the company as Academi with a new board of directors and management team (“Company once known as Blackwater...” 2011). Academi merged with Triple Canopy, along with a variety of other security companies, to form Constellis Holdings, Inc. which finances and manages Academi since 2014 (Prince, 2014). Despite these many attempts at rebranding, the new outlets largely refer to the company as Blackwater. Although Prince is no longer the CEO of the company, he remains the public face of the company and continues to play a part of the future of the company while making public statements for the company.

There is a history between Blackwater and lawsuits and instances of misconduct. According to the Project on Government Oversight, a nonpartisan independent watchdog, the company currently has 11 instances of misconduct (Project on Government Oversight, 2015). Five of these instances are lawsuits brought against Blackwater in relation to shooting instances. With the exception of three violations, Blackwater has not incurred any monetary penalty for these actions. The three penalized instances are firearms violations, Blackwater was illegally exporting weapons to Afghanistan, offering unauthorized training in south Sudan, and keeping unauthorized explosives on their North Carolina headquarters (Risen, 2010). Blackwater had to pay \$49.5 million in relation to these three firearms charges; most notably \$42 million in one 2010 settlement with the State Department.

In a study of American PSCs, researchers found Blackwater to have terrible records when acting within combat operations. There is data available that allows us to

evaluate how frequently PSC's and their insurgents used deadly force against each other: if contractors attacked insurgents more than receiving an attack: if they used a disproportionate amount of force, along with a number of other factors that help us see how Blackwater interacted with both insurgents and non-combatants. Among several PMC's Blackwater was the only company who killed more people than they lost during their encounters with insurgents at a ratio of 1.80:1 (Fitzsimmons, 2015). This number does not even include the large number of insurgents that Blackwater killed during a time period, including several hundred during incidents in Najaf in 2003 and Baghdad in 2007 (Kimberlin, 2007). Although these numbers center on insurgents rather than civilian human rights, these numbers still help us conceptualize Blackwater's force on the ground.

Just War Theory has been a pillar of ethics within wartime for hundreds of years. One tenant of the *jus in bello*, or the philosophy that discusses what are just actions within a war, centers around the principle of discrimination and stresses that a justice calls for combatants to distinguish between the combatants and civilians they encounter and treat them differently. Civilians are illegitimate and unacceptable targets as they pose no threat to others. This principle of discrimination helps us see how Blackwater interacts with citizens. Blackwater failed to adhere to this principle. Of the times Blackwater employed deadly force, 63 incidents were against insurgent combatants while 289 were against civilians, giving a ratio of .22:1 (Fitzsimmons, 2015). Although we must consider the scale and nature of Blackwater's operations, these are just some of the stats that show Blackwater's employees conduct their missions with an irreverence to military tradition. In encountering a suspected threat, Blackwater's first response was to fire at the threat

10% of the time without even giving a warning shot. If a contractors gave a warning shot and the threat did not react, this percentage of firing at the threat rose to 30% (Fitzsimmons, 2013). Blackwater shows a history of firing without proper warning and a propensity to escalate to deadly force. This reduces the amount of time that a suspected threat has to identify itself or show that it means no harm. Before having deadly force inflicted upon themselves, these citizens should have the right to identify themselves and show they are not looking to cause harm. In addition, Blackwater also shows a proclivity of shooting at suspected threats from a greater distance. Their mean engagement distances for first fire is 127 meters, a significantly longer distance than other PMC's (Fitzsimmons 2013). This again insufficiently allows for contractor personnel to identify whether or not the threat an insurgent or a civilian. Even if the threat is a legitimate target due to their combatant status, contracts should give proper time and allow target to prove neutral.

There are two further statistics that highlight Blackwater's lack of ethical conduct. This company shows a tendency to fire a greater number of bullets at suspected threats. Blackwater used one or less bullets 35% of the time, 2-5 bullets 40% of encounters, and the remaining 25% of the encounters were events where Blackwater personnel used over six bullets to fire at suspected threats. Seven percent of the time featured personnel firing over 50 bullets at the suspected threat (Fitzsimmons, 2015). This rapid fire response to suspected threats means that these companies are more likely to kill or seriously injure suspected threats, often going further than simply neutralizing the threat.

The actions of Blackwater personnel after they carried out these attacks is also telling of the way this company acts within Iraq and Afghanistan. Within these cases, Blackwater left the location of the incident they caused before assistance arrived 90% of the time, (Fitzsimmons 2015). Rather than remain at the location to ensure assistance arrived, these personnel were most likely to leave the location of the horror they caused. This company placed a strong emphasis on the personal initiative of their employees and emphasized the need to carry out missions with little regard to the sanctity of human life. Blackwater, along with other PSCs, place a strong emphasis on protecting their clients and little emphasis on protecting the rights of those they encounter on the ground. This profit motivation and company culture led to Blackwater personnel taking it upon themselves to engage suspected threats and quickly employ deadly force in order to ensure the success of their mission.

For the past few years, Prince pushed for the entire war effort in Iraq to transfer to the private sector and be under the control of PMC's. Prince believes he can lower the yearly cost of the Afghanistan war from \$40 million to \$10 million, but the Project on Government Oversight found that defense service contractors cost nearly three times as much as employees of the Defense Department (Shevory, 2014). The decision to privatize and industrialize America's war in Iraq and Afghanistan raises a number of moral, economic, and psychological issues and must employ thorough research and analysis. Research must identify what consequences a majority private force could have on everything from foreign relations to trade policy. Most central to this paper is the effect this could have on the local, civilian population and their rights to security.

The Incident at Nisour Square

Although it has been shown that Blackwater has a tendency and history of acting recklessly, there is one case that shows a particular negligence in both the way these contractors conducted themselves and the lack of the US government to hold these actors accountable. In 2007, a group of Blackwater contractors slaughtered 17 Iraqi civilians and injured 14 in a shooting that is known as the Incident at Nisour Square (Glanz, 2007). The incident occurred in a crowded marketplace in downtown Baghdad among dozens of civilians and pedestrians. All four of the Blackwater contractors involved were of American nationality. The contractors used machine guns and grenade launchers to fire rapidly and at random into the crowd. Although the company's defense lawyers made the argument that the insurgents ambushed the group, their extreme use of machine guns and grenades within a civilian setting still call to question the nature of these actors and their excessive use of force under US military rules of engagement (Holmes, 2017). Eyewitness reports of the incident give a relatively consistent picture of how events began and unfolded, and none of these reports feature any fire except from the contractors' side.

Blackwater's initial reply offered by officials was that their guards were responding proportionately to an attack on the streets around the square, despite accounts by others that they were the first to fire. Even if provoked, the force used as a response is excessive by normal rules of engagement, especially in such a crowded town square. The company continued to support their employees' assertions that insurgents provoked the attack and the guards only fired when a car began to closely approach them.

According to eyewitness reports, the car in question did not begin to approach Blackwater until contractors had shot the Iraqi driving in the head which resulted in the loss of control of the vehicle. Despite years of witness examinations, not one witness within the square heard or saw any gunfire coming from Iraqis. After discharging a short initial burst of bullets, the Blackwater guards began a rapid succession of gunfire into the crowd. Even as people fled both in cars and on foot, the contractors continued to use gunfire and grenades to wreak havoc. One Iraqi later counted forty bullet holes in his car (Glanz, 2007). There were also Blackwater helicopters flying above the square that day, which are visible in video taken directly after the incident. Investigators found at least one car roof had bullet holes, although Blackwater denies its helicopters discharged any weapons during that time.

The event greatly strained the diplomatic relationship between the US and Iraqi governments. The government in Baghdad was rightfully angry and sought to prosecute the contractors. The Bush Administration refused to let this happen. Due to legislation in place, these Iraqis needed to trust the U.S. criminal justice system to hold the U.S. companies accountable for the massacre. The case came to trial in 2009 by the Justice Department in *Slough v United States*. The guards involved were charged with a total fourteen counts of manslaughter, twenty counts of attempt to commit manslaughter, and one weapons violations. The case came to a halt when a federal judge threw out the lawsuit after he found fault in the prosecution's gathering of evidence. In *Slough v. United States*, the Court argued that charges needed dropping because the defendants' statements were "compelled" through threat of job loss (Jung, 2016). Using precedents

set by *Garrity v New Jersey* in 1967 and *Kastigar v. United States* in 1972, the court argued that the burden of proof was on the prosecution to prove that the testimony of public employees was free from coercion. A 1973 case extended this privilege of protection against self-incrimination to private contractors which means that legal counsel cannot threaten a defendant's employment status or imply their testimony could be used against them in a criminal proceeding, (*Lefkowitz v. Turley*, 1973). Since that time, prosecutors are required to give immunized treatment to contractors' statements and often run into legal roadblocks when attempting to acquire physical evidence of unauthorized use of force by these private employees. The defense can easily rule out prosecutorial evidence if they can prove its discovery involved knowledge of protected information. Given the nature of these companies and their work with sensitive information, it is extremely difficult for the prosecution to legally and successfully gather all the information needed to prosecute these individuals or the company that they work for. Using these precedents, federal trial judge Ricardo Urbina found the sensitive information presented by the government to the jury and dismissed all charges in 2009.

After action taken by then Vice-President Joe Biden, an appellate court freshly pursued the case in the beginning of 2011. The court overturned the initial ruling that the errors were substantial enough to rule out a prosecution. Although the US Court of Appeals acknowledged the initial error in legal analysis, this development did not address the unfair mandate on the prosecution to obtain "untainted" evidence and then further prove these statements are free of connection to coerced statements (Jung, 2016). Both sides examined graphic eye-witnesses of the event for years in court until 2014. The

prosecution finally brought convictions against the four men involved. Three of those involved, Paul Slough, Evan Liberty, and Dustin Heard received 30-year sentences for their involvement, and the jury found the three guilty of a collective total of 13 charges of voluntary manslaughter and 17 charges of attempted manslaughter. The 30-year-sentence given was the mandatory minimum for charges involving the use of machine guns in the crime of manslaughter. Meanwhile sniper Nicholas A. Slatten received a life-sentence when he charged with first-degree murder, (Woolf, 2015). According to eye-witness reports and the prosecution, Slatten fired the first shot of the encounter through a driver window. In addition to this, the prosecution also painted Mr. Slatten as a man that hated Iraqis and opened fire as part of “payback for 9/11,” (Apuzzo, 2017).

The four men were tried under title 18, section 3238 of the US code, a statute under those who commit offenses outside the jurisdiction of any state or district can be tried in the home district of the offenders or in the District of Columbia (Woolf, 2015). Despite the fact that these men were carrying out US operations and the government was paying for the operation, the prosecution still had to use a law that did not relate to nor was meant to regulate the PMC industry. Due to a lack of regulations surrounding these companies and the many gray areas of accountability, the prosecution could not find a more relevant law under which to prosecute these actors.

In 2017, a federal appeals court decided one of the charges brought against the contractors was incorrect. One of the 14 charges came from a machine-gun law intended to punish people who brought dangerous weapons with them with an intention to carry out a violent act. Given that these contractors were using government-issued weapons in

a war zone at the time of the incident, the Justice Department ultimately acquiesced and the appeals court agreed. The appeals court ordered the resentencing of three of the contractors, which could significantly reduce the length of their prison term. The court threw out the life-sentence for Mr. Slatten entirely. If the Trump administration does not try Slatten again, he will walk free.

Although this massacre was a show of criminal force never-before-seen committed by a US private military company, it is not a surprise given the nature of Blackwater's previous conduct within the region. This event was in line with the previously given statistics about Blackwater's conduct within Iraq and Afghanistan. This company's contractors maintain a disposition to fire at suspected insurgents before ensuring their combat status and firing a great number of bullets at the suspect.

Ch 5- The Way to a Just Future

There are many ethical dilemmas and questions of legitimacy surrounding the US's recent and growing use of PMC's within our current wars. Regardless of moral debate, PMC's have amassed an extreme amount of power and a large presence within Iraq and Afghanistan. I believe this power will only increase unless action is take and changes are made. Congress must act to ensure that these privately run companies act in the best interests of the American public while upholding a universal application of human rights.

This final chapter puts forward recommendations that will look to increase the accountability of these companies and the contractors they employ. Our government leaders must ensure our military carries out the political act of war with minimal innocent bloodshed. Not only would the implementation of these policies work to save lives, but they would also help the US to improve its diplomatic relationships with the countries these contractors occupy. It will also set a precedent for other countries and organizations to follow suit, as both first and third world countries are grappling with the problems that come along with military privatization. Although some of these suggestions may seem radical, it is radical changes that the US needs to implement as we have radically changed the way we participate in armed conflict.

U.S. Policy

There must be a clear and precise system put in place on a national level for ensuring responsibility and holding these actors criminally liable. Due to insufficient policy, contractors often never see any criminal charges brought against them when they commit crimes against humanity. The Nisour Square incident is one example that highlights just how PMC's have exploited this lack of policy to ensure they avoid harsh penalties. The U.S. need to enact legislation that effectively holds these private actors on the same level of legal liability as federal troops. Although distinct differences exist between contractors and federal troops exist and require consideration, policy needs to uphold both these groups to a strict and equal legal standard when it comes to their employment of deadly force. When civilians seek justice for the death of a family member, charges should not depend on the employer of the killer. These contractors often carry out the same missions as federal troops and work alongside them. We must first look to policy to take steps to ensure America's military carries out this war in a manner respectful of all humanity.

Congress must begin to recognize the responsibility they have in relation to PMC's and must pass swift and clear legislation. As stated previously, the UN's Guidelines on the Use of Armed Private Security Companies is the most comprehensive set of policy measures available (Krahman, 2014). These recommendations for US policy will take strong influence from the guidelines while attempting to recognize and address the weaknesses that are in it. In accordance with the guidelines, Congress should seek to put forward a set of rules surrounding the employment of these companies. The

government should only employ PMC's when state actors are unavailable. The US should seek to limit its use of PMC's and instead view them as a last resort rather than an alternative.

If the US does find need to contract with these companies, there should be strict rules and regulations in place surrounding the screening, training, and employment of contractors. The US Department of Defense currently uses the management system known as PSC1 by ASIS International as the standards used for its contractors (ASIS, 2014). This system is thorough but fails at accountability due to the fact it places responsibility on the companies to demonstrate they have fulfilled requirements. The adoption of this system is not enforced and the international organization has failed in the past to actually manage these companies. This is one more example of how US agencies and Congress passed on their responsibility to regulate these companies. Rather than putting in place policies that are specific to use of PMC's and work to uphold our American values in wartime, the DoD adopted a management system by another private company: ASIS International. Congress continues to distance themselves from the responsibility of accountability.

Congress and federal agencies should instead dedicate time and resources to create thorough and relevant requirements for these companies and seize back management. Although these requirements should apply to all contract work, lawmakers must pay special attention to armed contractors given the right to employ deadly force. Policies must include strict training requirements to ensure PMC employees are receiving at least the same level of training as federal troops. Although the UN Guidelines do

demand certain levels of training, they leave it up to individual companies to determine the scope and content. Congress needs to put minimum training requirements on a variety of topics that are thorough and detailed, including giving proper weight to human rights training. Congress cannot depend on companies for verification of training their employees on the moral and political implications of their actions, but need to increase governmental oversight and management to ensure regulations are being followed.

Policy must also address who is hired by these companies. These companies heavily recruit recent veterans, serving military, and law enforcement. Congress should ensure employees of these companies are screened and heavily vetted before employment. Such as in the case of Blackwater, PMCs often hire veterans with less-than-honorable discharges or with criminal backgrounds (Baker, 2010). We must ensure that U.S. contractors receive screening and do not have criminal backgrounds or a history of disrespect for authority. Agencies must consider not only the history of employees but should also take into consideration the history of companies when drawing up contracts. Agencies typically look at the services, cost, and business relations of these companies when deciding on contracts. In addition to these factors, policymakers should take into consideration past violations by these companies as well as the company's relationship with host countries. Moving forward, the US should take steps to ensure they are contracting only with reputable PMC's.

Along with taking the necessary steps to ensure the US's contractors meet minimum requirements at the outset of a contract, policy should also address how contractors interact with state troops within war. The US does have a large troop presence

within areas but the organization of these two groups are varied. The complicated relationship further problematizes how PMC's conduct business. The military places strong emphasis on hierarchy and ranking, which ensures accountability and instills a sense of responsibility. PMC's do not fit neatly into this hierarchy. Policy should also give federal officers more authority over these contractors to increase oversight and provide real-time management and control.

Perhaps most importantly, policies must offer remedial actions that respond proportionally and appropriately to war crimes and instances of misconduct. Once professional standards and oversight are increased, it is likely that reportings of misconduct will also increase. As in the case of the Incident at Nisour Square, our current policy is full of loopholes and is inadequate at holding contractors responsible when they commit war crimes, no matter how nefarious or public the crime was. Policy must hold contractors liable to US law. Comprehensive policy must also apply to all US contracted PMC's rather than one specific department or agency. These companies are using American tax dollars and carrying out American military missions. We must apply American policies to these American companies and uphold the American values of justice and equality.

Not only should policy hold those who commit the crime responsible, but it should provide real consequences for the corporations that employ these criminals. There should be financial consequences for these companies when their employees commit crimes against Iraqi and Afghan citizens. These should include remedial actions such as reimbursement for damage, withdrawal or replacement of staff, or termination of the

contract. Misconduct and criminal actions must have pecuniary consequences for these companies in order to incentivize proper behavior and prevent future incidents.

Our current legislation does not hold these contractors to the same moral and legal standards as their federal counterparts. All federal troops are beholden to the United States Uniform Code of Military Justice (UCMJ). Given the fact that PMC's do not fit into the traditional military chain of command and often have foreign actors, simply broadening the UCMJ to include these companies and their actors would be insufficient. Congress must draft new policy that is particular to PMC's, while taking into account the vast differences between federal troops and private contractors.

The above suggestions are substantial and complex. In order for proper implementation, the U.S. military must allocate a significant amount of time and resources to the drafting and implementation of policy. Given the new power these American companies have acquired in recent years, I believe these recommendations to be justified in their audacity. Congress must increase oversight and regulation of these companies to ensure adherence to new requirements. If the US plans to continue on using these companies to conduct war, the government must pass comprehensive policy.

In addition to domestic policy, the U.S. must also take international steps to increase accountability. The International Criminal Court (ICC) was established to prosecute individuals when national courts are unwilling or unable to do so. The ICC prosecutes only the worst crimes: war crimes, crimes against humanity, and genocide. The ICC only applies to citizens of signatory countries and the US is not a participant in this court that protects human rights. The US should reconsider its position and take steps

to ratify its memberships within the ICC. Membership would also ensure that contractors receive sentences even when the US justice system fails to take action. In addition, the US should require all of its contractors to sign the International Code of Conduct for Private Security Providers (ICoC). The International Code of Conduct Association (ICoCA) would then be able to monitor conduct of these Private Military Companies. Although certifications by this association are often irregularly enforced, policy should still require companies to sign onto the ICoC in order to ensure liability. The U.S. should call upon this association to more effectively monitor misconduct.

Call for Elimination

The above measures would help to ensure the United States is taking responsibility of the military companies they contract with as well as responsibility for the lives of civilians in host countries. There still remains many moral and practical questions around the legitimacy of these companies. The American government has an obligation to take full responsibility of this war and stop passing on the responsibility of this state function. The use of PMC's is an unjust and inefficient use of our defense budget.

One of the most important tasks of the federal government is to provide security for its people and protect them from outside threats. In the preamble of the Constitution, it states we formed the Union to 'to provide for the common defense'. The responsibility of protection is explicitly given to the federal government within the Constitution. While defending the Constitution in the Federalist Papers, James Madison wrote that a national army should be formed and "let it be at entirely at the devotion of the federal

government” (Madison, 1788). Our founding fathers explicitly gave this power as a whole to the Federal Government and that power comes with responsibility. Our national Congress must not outsource this responsibility to the lowest bidder, but must ensure control of the wars remain under state control. In addition to shirking this responsibility, the government is also funneling millions of taxpayer dollars to these companies that profit off of injustice. The government has failed to educate voters on the fact their money goes to money motivated companies with a history of disrespect for human life.

There are those that argue that contract hold PMC’s sufficiently accountable. These contracts do hold employees accountable, but these contracts often measure success incorrectly. A mission’s success should not be contingent solely on whether or not the mission completed the goal, but should also consider other factors. There are many factors, but we must recognize the importance of upholding these companies to an acceptable ethical standard.

One of the most worrisome problems with PMC’s is their questionable motivations at multiple levels of military operations. A job with a private company can pay up to ten or more times as much as a comparable federal soldier (Erbe, 2007). Although these men and women are deserving of high pay, this discrepancy can lead to contractors putting fiscal motivations above others. Every branch of the military requires federal soldiers to take an oath of loyalty to the US prior to serving. Training heavily stresses one’s sense of duty to their country. There is a higher potential for contractors to be motivated by money due to the difference in pay. Coupled with the fact that these contracts stress the completion of contract over anything else, contractors within Iraq and

Afghanistan are likely to have an improper and unjust focus when carrying out these missions.

At the corporate level, the issue of motivation becomes even more alarming. These companies are profiting off these wars and thus have little incentive to take constructive action to end them. An increase in conflict means an increase in profit. From a business standpoint, perpetual war is good for these companies and means a steady income. These companies already wield an influence over the future of this war and are actively looking to increase it. The United States cannot let the control of this of these wars transfer to companies that profit off of conflict and exploitation while doing so at the cost of the American taxpayer.

I also believe a working relationship with the civilian population and its government is vital to seeing an end to the war in Iraq and Afghanistan. The use of PMCs complicates and has hurt this relationship. If the US continues to fail to hold these companies accountable for war crimes, Iraqis and Afghans may be less willing to cooperate in seeking an end to the war. If the US plans to play a part in rebuilding these countries, it must earn the trust of the people and the trust of the host countries. The use of PMCs could also serve to damage the reputation of the US and hurt its global position. Especially in such deadly and high-profile cases as the Incident at Nisour Square, other key world players may view the unregulated privatization of war by the US as reckless and immoral.

Although the above recommendations offer a wide range of finally ensuring accountability, the best policy measure our government could take would be to stop the

use of PMCs altogether. The U.S. should sign the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries. If signed, this convention would prohibit the use of mercenaries and private actors by the US. Private Military Companies have little motivation to seek an end to the war and this improper balance has led to the deaths of innocent humans. In pursuit of universal human rights, American must stop the contracting of war operations and instead carry out war under national control.

It is my belief that as human beings, we have a universal responsibility to others. This responsibility does not derive from one's status or association but from the humanity inherent in every man and woman, which means our responsibility extends beyond borders. We must work to benefit not only those within our own group or nation, but to ensure our work is benefitting all of mankind. America is a powerful world player that continues to have international reach. As Americans, we must ensure we are leveraging our global power and position in a way that leaves a more humanistic future not only for our own, but also for civilians in Iraq and Afghanistan that have just as much a right to life as we do.

References

- Andreopoulos, G and Brandle, S. (2012). *Revisting the role of private military and security companies*. Criminal Justice Ethics, Routledge.
- Apuzzo, M. (2017) *In Blackwater case, court rejects a murder conviction and voids 3 sentences*. The New York Times, The New York Times Company.
- Baker, M. (2010). *Ex-Blackwater contractors had checkered military pasts*. The Associated Press.
- Barnes, D. (2013). *Should private security companies be employed for counterinsurgency operations?* Journal of Military Ethics, Routledge.
- Bjork, K and Jones, R. (2005). *Overcoming dilemmas created by the 21st century mercenaries: conceptualising the use of private security companies in Iraq*. Third World Quarterly, Routledge.
- Boessenkool, A. (2011). *Prince Quits as CEO of Blackwater-Turned-Xe*. Defense News.
- Coalition Provisional Authority. (2004, June 26). *Memorandum 17: registration requirements for private security companies (PSCs)*.
- Coalition Provisional Authority. (2004, June 26). Registration requirements for private security companies (PSC). Retrieved from http://govinfo.library.unt.edu/cpa-iraq/regulations/20040626_CPAMEMO_17_Registration_Requirements_for_Private_Security_Companies_with_Annexes.pdf
- Congress of the United States, Congressional Budget Office. (August 2008). Contractors' support of U.S. operations in Iraq. Retrieved from <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/96xx/doc9688/08-12-iraqcontractors.pdf>
- Constellis (2017). *Code of Business Ethics and Conduct*. Constellis Holding Group.
- Cowley, R. (N.D.) *Thirty Years War*. History.
- Department of Defense. (2013, October 7). Operational Contract Support Planning and Management. Retrieved from http://www.jcs.mil/Portals/36/Documents/Doctrine/concepts/jic_opcontsupport.pdf?ver=2017-12-28-162004-040
- Department of Defense. (April 2017). Contractor support of U.S. operations in the USCENTCOM area of responsibility. Retrieved from https://www.acq.osd.mil/log/ps/.CENTCOM_reports.html/5A_April2017_Final.pdf
- Department of Safety and Security, United Nations. (2012, Nov 8). Guidelines of the Use of Armed Security Services from Private Security Companies. Retrieved from

- <http://www.ohchr.org/Documents/Issues/Mercenaries/WG/StudyPMSC/GuidelinesAnnexAStatementOfWork.pdf>
- Dodaro, G. (2009). *Defense Management: Actions Needed to Overcome Long-standing Challenges with Weapons Systems Acquisition and Service Contract Management*. United States Government Accountability Office. Retrieved from <https://www.gao.gov/assets/130/121506.pdf>
- Elms, H and Phillips, R. (2009) *Private security companies and institutional legitimacy: corporate and stakeholder responsibility*. Business Ethics Quarterly.
- Erbe, B. (2007). *Blackwater pay insults the military*. U.S. News.
- Fabre, C. (2010). *In defense of mercenarism*. Cambridge University Press.
- Fitzsimmons, S. (2013). *Wheeled warriors: explaining variations in the use of violence by private security companies in Iraq*. Routledge.
- Fitzsimmons, S. (2015). *Just war theory and private security companies*. Royal Institute of International Affairs.
- Gault, M. (Writer). (2017, Aug 18). *War College* [Audio podcast]. Retrieved from <https://itunes.apple.com/us/podcast/war-college/id1023774600?mt=2>
- Glanz, J and Rubin, A. (2007). *From errant to fatal shot to hail of fire to 17 deaths*. The New York Times.
- Guillory, M. (2001). *Civilianizing the force: Is the United States crossing the Rubicon?*. The Air Force Law Review.
- H.R. 3380, 106 Cong., U.S. G.P.O. (2000) (enacted).
- Hedahl, M. *Unaccountable: The current state of private military and security companies*. Criminal Justice Ethics, Dec 2012.
- Holmes, I. (2017). *Convicted Blackwater contractors cleared of Nisour Square Massacre*. The Fifth Column.
- Jung, C. (2016). *Lawless and unpunished: private defense contractors spiraling out of control*. World in Review.
- Krahmann, E. (2014). *The UN guidelines on the use of armed guards: recommendations for improvement*. International Community Law Review.
- MacLeod, S. (2015). *Private security companies and shared responsibility: the turn to multi-stakeholder standard-setting and monitoring through self-regulation- 'plus'*. Asser Press.
- Madison, J. (1988). *Federalist Paper No. 46*. New York Daily Advertiser.
- Merle, R. (2006). *Census counts 100,000 contractors in Iraq*. Washington Post.
- Military Extraterritorial Jurisdiction Act of 2000, Pub. L. No. 114-523, 106 Stat. 2488 (2000).
- Minos, M. (2005). *Outsourcing power: how privatizing military efforts challenges accountability, professionalism, and democracy*. Boston College Law Review.

- Munkler, H. (2005). *The New Wars*. Oxford, Polity.
- O'Brien, K. (2007). *What should and should not be regulated?*, Oxford University Press, Oxford.
- Office of the Assistant Secretary of Defense for Logistics & Material Readiness. (2017). *Private security companies - standards*.
- Owen, C. (2014) *US to retry former Blackwater guard for murder in 2007 Baghdad massacre*. Stars and Stripes.
- Perrin, B. (2012). *Mind the gap: lacunae in the international legal framework governing private military and security companies*. Criminal Justice Ethics, Routledge.
- Prince, E. (2011). *Erik Prince exclusive interview*. Army Times.
- Prince, E., & Coburn, D. (2014). *Civilian warriors: The inside story of Blackwater and the unsung heroes of the War on Terror*. Portfolio Penguin.
- Project on Government Oversight. (2015). *Blackwater USA*. Retrieved January 18, 2018 from <https://www.contractormisconduct.org/contractors/123/blackwater-usa>
- Rose, P. (2009). *The founding fathers of American intelligence*. Central Intelligence Agency, Center for the Study of Intelligence.
- Scahill, J. (2005). *Blackwater Down*. The Nation, The Nation Company, Inc.
- Shah, Ra. (2014). *Beating Blackwater: Using domestic legislation to enforce the International Code of Conduct for private military companies*. Yale Law Journal.
- Shevory, K. (2014). *Old Mercenaries never die: a reform plan from an unlikely source: Blackwater founder Erik Prince*. Newsweek.
- The Montreux document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict*. (2009). Geneva: ICRC.
- U.S. Department of Defense. (2000). Intelligence Exemption Memorandum for the Assistant Deputy Chief of Staff for Intelligence. Henry, P, Assistant Secretary of the Army.
- U.S. Department of Defense. (2004). Memorandum: contractor support to army counterintelligence. Alexander K., Army Deputy Chief of Staff for Intelligence.
- UN General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris.
- Underwood, M. (2012). *Jealousies of a standing army: the use of mercenaries in the American revolution and its implications for Congress's role in regulating private military firms*. Northwestern University Law Review.
- Uniform Code of Military Justice, §§ 47-64-109 (2000).
- Voelz, G. (2010). *Contractors and intelligence: the private sector in the intelligence community*, International Journal of Intelligence.

Woolf, N. (2015). *Former Blackwater guards sentenced for massacre of unarmed Iraqi civilians*. The Guardian.