IN THE COMPANY OF SOLDIERS:

PRIVATE SECURITY COMPANIES' IMPACT ON MILITARY EFFECTIVENESS

AND THE DEMOCRATIC ADVANTAGE

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Why does privatization, a practice that is generally employed to increase efficiency and effectiveness, actually appear to decrease effectiveness when applied to the military sphere? How does security privatization affect democracies' propensities to be victorious in war? This dissertation examines these two questions simultaneously, arguing that private security companies (PSCs) increase military effectiveness in certain situations and decrease military effectiveness in others. Of primary importance to these two issues, I argue, are the following: (1) the structural integration of private security contractors into the military forces with which they are deployed; (2) the cohesiveness of the collective identities of private and national military forces deployed together; and (3) the extent to which private security companies and their personnel operate in an ethical manner, complying with international humanitarian law. The dissertation explores three different types of cases, concluding that private forces: (a) tend to decrease military effectiveness and prospects for the democratic advantage in modern cases of PSC-military co-deployment due to a combination of these structural, identity, and ethical issues; (b) often increase military effectiveness in situations in which PSCs are deployed in place of national military forces, yet decrease the chances that the methods of operational behavior are performed with due respect for established legal norms, and decrease the prospects for the democratic advantage due to their impact on states' conflict

selectivity; and (c) both increase and decrease military effectiveness in historical situations of hired forces' deployed with national militaries, and consistently put ethical force employment at risk, due to a combination of structural and identity-based factors. In developing robust theoretical and policy-relevant conclusions, the case studies blend original and existing interview data with content analysis of academic, government, industry, media, and historical documents.

BIOGRAPHICAL SKETCH

Martha "Molly" Clark Dunigan received her Ph.D. from the Government Department at Cornell University, where she specialized in International Relations and Military Studies. Her research interests focus on field coordination issues between private security forces and professional militaries, but also include global terrorism, arms control, and international regimes. She is a former Herbert Scoville Jr. Peace Fellow, as well as a former RAND Corporation Summer Associate. In 2004-05 she received a Foreign Language Area Studies fellowship to support Russian language study, and she was a 2006 recipient of a Peace Scholar Fellowship from the Cornell University Peace Studies Program. Martha's dissertation work was supported by a U.S. Institute of Peace Jennings Randolph Peace Scholar dissertation fellowship. She has accepted a position as a Research Associate in the International Security Policy Group at the RAND Corporation, where she will begin working in September 2008.

For my parents

ACKNOWLEDGMENTS

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

LIST OF ABBREVIATIONS

1AD	First Armored Division
AOR	Area of Responsibility
APC	All People's Congress
AUC	United Self-Defense Forces of Colombia
BAPSC	British Association of Private Security Companies
BRA	Bougainville Revolutionary Army
BW GPSOI	Blackwater Global Peacekeeping & Stability Operations Institute
CATT	Command, Administration, and Training Team
CF	Coalition Forces
CIA	Central Intelligence Agency
CIDG	Civilian Irregular Defense Group
COIN	Counterinsurgency
CONUS	Continental United States
CRC	CONUS Replacement Center
CRG	Control Risks Group
DoD	Department of Defense
DIA	Defense Intelligence Agency
DSB	Defense Science Board
DSL	Defence Systems Limited
DTAP	Democracy Transition Assistance Program
EO	Executive Outcomes
EODT	Explosive Ordnance Disposal Technology
FARC	Revolutionary Armed Forces of Colombia
FLN	Algerian Front for National Liberation
GAO	Government Accountability Office (Formerly the General Accounting Office)
HV	Hrvatska Vojska (Croatian Armed Forces)
ICDC	Iraqi Civil Defense Corps
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IPOA	International Peace Operations Association
IR	International Relations
ISF	Iraqi Security Forces
ITAR	International Transfer of Arms Regulations
JNA	Jugoslovenska Narodna Armija (Yugoslav People's Army)
KBR	Kellogg, Brown, & Root
KMS	Keenie Meenie Services
LN	Local National
MCM	Manual for Courts Martial
MEJA	Military Extraterritorial Jurisdiction Act
MoD	Ministry of Defense

MPRI	Military Professional Resources Incorporated
MRE	Military Readiness Exercise
NATO	North Atlantic Treaty Organization
NPR	National Public Radio
OAU	Organization of African Unity
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
OOTW	Operations Other Than War
PCO	Project Contracting Office
PKSOI	Peacekeeping & Stability Operations Institute
PMC	Private Military Company
PMF	Private Military Firm
PMSC	Private Military & Security Company
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defense Force
PNGTUC	Papua New Guinea Trade Union Congress
POW	Prisoner of War
PRT	Provincial Reconstruction Team
PSC	Private Security Company
PSD	Personal Security Detail
QRF	Quick-Reaction Force
RMA	Revolution in Military Affairs
ROC	Reconstruction Operations Center
RUF	Revolutionary United Front
SAS	Special Air Services
SIRs	Serious Incident Reports
SLPP	Sierra Leone People's Party
SMTJ	Special Maritime & Territorial Jurisdiction
SOFs	Special Operations Forces
SR	Sponsored Reserve
S&R	Stability & Reconstruction
SSTR	Stability, Security, Transition, & Reconstruction
TCN	Third-Country National
TRADOC	Training & Doctrine Command
UAV	Unmanned Aerial Vehicle
UCMJ	Uniform Code of Military Justice
UK	United Kingdom
UN	United Nations
US	United States
USCENTCOM	United States Central Command

CHAPTER 1

INTRODUCTION

As of December 31, 2007, at least 1,123 private contractors working for the

U.S. Government or U.S. companies in Iraq had been killed, according to the U.S.

Labor Department. Private contractors constituted the largest occupying force in Iraq

during this time period, outnumbering even U.S. forces, with roughly 155,000

contractors employed there as of February 2008.[1] These contractors came from

around the globe, ranging from citizens of English-speaking countries such as the

United States, United Kingdom, Australia, and New Zealand, to contractors from

countries such as Chile or Fiji that were not directly involved in the conflict (third-

country nationals, or TCNs), to local Iraqis (local nationals, or LNs). Of these,

approximately 20,000 were security contractors.[2]

Such a story would have been unimaginable thirty years earlier, when

superpower competition fueled national militaries. Not until the fall of the Soviet

Union and the corresponding "Peace Dividend" were national militaries – particularly

the U.S. military – downsized to the extent that outsourcing of non-core military tasks

would be deemed acceptable and necessary. It was during the Reagan and Thatcher

eras that the economic logic and culture of outsourcing government functions gained

prominence. Neoliberal economic thinking and government reports throughout the

1980s and 1990s on the cost-saving benefits of privatization and outsourcing led to the

development and expansion of private companies that could provide all non-core

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[1] David Ivanovich, "Contractor Deaths Up 17 Percent Across Iraq in 2007," *Houston Chronicle* February 9, 2008. Accessed April 14, 2008 at http://www.chron.com/disp/story.mpl/front/5528613.html. See also U.S. Congresswoman Jan Schakowsky, "Schakowsky Uncovers 1,001 Contractor Deaths in Iraq," Press Release (August 6, 2007). Accessed September 4, 2007 at http://www/house.gov/list/press/il09_schakowsky/pr_contractordeaths_080607.s.
[2] Steve Fainaru, "Iraq Contractors Face Growing Parallel War," *The Washington Post* (June 16, 2007), A01. Accessed January 11, 2008 at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/15/AR2007061502602.html.

military services for the troops, leaving the skilled war-fighters free to perform the actual combat tasks. These companies provided services such as weapons-system maintenance and upkeep, supply transport, cooking, cleaning, and base construction, among many others.

The industry expanded when former U.S. and U.K. military officers, particularly from the Special Forces, built upon the legacy of 1960s British and 1980s South African officers in developing the notion of the "private security company" (PSC) – a company that would provide armed bodyguards and convoy security services for various actors in high-risk areas of operation.[3] In order to distinguish themselves from less reputable private military companies that operated mainly in African states in the 1980s and early 1990s, these new private security companies are adamant that they provide only defensive services, and will not fight offensively or for non-democratic causes. The United States and its allies utilized private military firms in both the 1990-91 Iraq War and the Balkans conflicts in the mid-1990s, but the majority of the companies involved in these conflicts were employed to perform logistical functions, not security services. Notably, the United States employed many fewer contractors in these conflicts than it does in the current wars in Iraq and

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[3] Former British Special Air Services (SAS) Colonel David Stirling formed the first of the modern private military companies, WatchGuard International, in Britain in 1967. The firm employed former SAS personnel to train the militaries of the sultanates of the Persian Gulf, to provide support for their operations against rebel movements and internal dissidents, and eventually to provide Military Advisory Training Teams to clients in the Middle East, Africa, Latin America, and East Asia. WatchGuard became the model for all future private military companies, and several other British private military companies grew out of this model in the next few decades, including Kulinda Security Ltd., KAS Enterprises, KMS ("Keenie Meenie Services"), Saladin Security, and Defence Systems Ltd. (DSL). Then, in 1989, a member of the South African Defence Force – Luther Eeben Barlow – formed Executive Outcomes (EO). Executive Outcomes operated in conflicts throughout the African continent during the 1990s, most notably in Angola, Sierra Leone, the Congo, and Burundi. Executive Outcomes was disbanded in 1999, but many former EO officers went on to form their own private military firms, including Alpha 5, Stabilco, Omega Support Ltd., Panasec Corporate Dynamics, and Southern Cross Security. See Kevin O'Brien, "PMCs, Myths, and Mercenaries: The Debate on Private Military Companies," *Royal United Services Institute Journal* (February 2002). Accessed June 10, 2008 at http://www.globalpolicy.org/nations/sovereign/military/02debate.htm; "Executive Outcomes," *SourceWatch*. Accessed June 10, 2008 at http://www.sourcewatch.org/index.php?title=Executive_Outcomes.

Afghanistan. The rapid expansion of the private security industry over the past several years is unprecedented in modern times, as is the current practice in Iraq and Afghanistan of deploying private security personnel in large numbers on the ground alongside coalition forces. This is particularly true because today's private security personnel are not formally integrated into the military structure, as is the case with, for instance, French Foreign Legion troops and the French military. Thus, security contractors' position in the military chain of command is constantly in question, which, among other things, leads to a host of potential PSC-military coordination problems.

The privatizing reforms of the 1980s and 1990s that preceded this rapid expansion of the private security industry were designed to make government operations more efficient. Yet, some media and governmental reports portray such privatization, when applied to the military sphere, as having actually decreased military effectiveness. This project is therefore designed to address the puzzle of why reforms that were intended to increase performance may be serving instead to decrease it. The project expands its theoretical inquiry beyond the issue of military effectiveness, however, to examine the ramifications of security privatization for the likelihood that democracies will be victorious in their conflicts.[4] I examine the impact of private security forces on military effectiveness in three different types of situations: instances of PSC-military co-deployment, such as the current Iraq War; instances of PSC deployment in place of military deployment; and cases in which mercenary forces other than PSCs are structurally integrated into and deployed alongside the military. In using these cases to probe this puzzle, the study has two interrelated goals: (1) To compare different situations of privatized force employment

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[4] As Chapter Two elaborates, the focus on democratic advantage theory is appropriate here because democracies dominate in the hiring and supplying of PSCs today.

in order to illustrate PSCs' potential effects on military effectiveness and on the theory of the democratic advantage; and (2) To understand the different effects of structure and identity on the effectiveness of military forces composed of national armies combined with PSCs, with an eye to providing policy prescriptions for current U.S. policy.

The overarching argument put forth in the dissertation is that private security companies (PSCs) increase military effectiveness in certain situations and decrease military effectiveness in other scenarios. Of primary importance to PSCs' impact on military effectiveness, I argue, are the following: (1) the structural integration of private security contractors into the military forces with which they are deployed; (2) the cohesiveness of the collective identities of private and national military forces deployed together; and (3) the extent to which private security companies and their personnel operate in an ethical manner, complying with international humanitarian law. In exploring the three different types of cases mentioned above, the dissertation concludes that private forces: (a) tend to decrease military effectiveness and prospects for the democratic advantage in modern cases of PSC-military co-deployment due to a combination of these structural, identity, and ethical issues; (b) often increase military effectiveness in situations in which PSCs are deployed in place of national military forces, yet decrease the chances that the methods of operational behavior are performed with due respect for established legal norms, and decrease the prospects for the democratic advantage due to their impact on states' conflict selectivity; and (c) both increase and decrease military effectiveness in historical situations of mercenary forces deployed with national militaries, and consistently put ethical force employment at risk, due to a combination of structural and identity-based factors.

While it is hoped that both professional/policy and academic audiences will find these conclusions and this research to be compelling, these different audiences

will likely find different aspects of this work to be useful. Policymakers and military professionals who may take for granted that PSCs are here to stay will likely be most interested in the study's recommendations for how to use PSCs most effectively. Those who are more skeptical of the value of PSCs, however, will likely be most interested in two notable implications of the findings elaborated in the following chapters. First, this latter audience will find in the evidence outlined throughout the study a strong critique of the democratic peace hypothesis, as the forthcoming chapters indicate that PSCs can be and are indeed used by democratic policymakers to avoid accountability to the citizenry for decisions to go to war. Such an implication bodes poorly for PSCs' impact on global efforts to create and sustain a peaceful international system. Second, an audience skeptical of the value of PSCs will note that Chapter Six's prescription for greater regulatory oversight is a potentially costly recommendation that could ultimately render PSCs relatively uneconomical.

Context of Outsourcing

The turn to private military and security forces would be impossible if much of the world had not already embraced a larger ideological shift toward privatization and the outsourcing of a range of government functions, including the exercise of coercive power and violence. Governments and leaders across the globe have relied on mercenaries and other private forces to supplement or replace their own militaries throughout history. Yet, the outsourcing of violence in modern times expands beyond traditional mercenarism, and occurs according to both a logic of capacity (i.e., the need to fill the demand for forces) and a normative logic.

In many cases, governments have insufficient numbers of soldiers and/or are reluctant to institute a policy of conscription, causing leaders to look elsewhere for the forces necessary to defend the state and carry out the military elements of state policy.

As Gil Merom notes with regard to the limitations imposed on democratic leaders by having to institute a policy of conscription, ". . . those most likely and best able to check the president's war powers would not do so unless they had a personal stake . . . there is 'no representation without taxation'."[5] Hence, democratic leaders will avoid instituting a draft if at all possible, and the potential to outsource violence and military functions offers a way for such leaders to handle problems of military capacity without imposing policies of conscription. In other words, outsourcing occurs in such instances in order to bolster the capacity of existing forces. This happens, for instance, with United Nations (U.N.) peacekeeping missions, which are outsourced to small, decrepit state militaries such as the Fijian Army. As the *Fiji Times* notes:

> Since the 1970s, this impoverished and remote remnant of
> the British empire has positioned itself as a discount-soldier
> surplus store. Its best customer has been the UN
> peacekeeping operations. Today, on the post-September 11
> battlefield, Fiji is marketing for hire its 3,500 active
> soldiers, 15,000 reservists and more than 20,000
> unemployed former troops.[6]

Such outsourcing practices have a long historical trajectory. Egypt began outsourcing its war-making activities to mercenaries in 1479 B.C., substituting mercenaries for citizen armies for the next 700 years. The Egyptians actively recruited mercenaries from North Africa (the Nubians) and from tribes in the Aegean Islands and along the Anatolian Coast. Both supply and demand dictated this increase in the use of hired soldiers, as Egyptian citizens preferred to avoid the battlefield and enjoy their riches, and large numbers of poor and/or displaced tribes were simultaneously available to fight for money.[7] The Israelites, meanwhile, hired soldiers

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[5] Gil Merom, *How Democracies Lose Small Wars* (New York: Cambridge University Press, 2003), 247.
[6] "Making a Living With a Gun," *Fiji Times* (February 26, 2008). Accessed June 3, 2008 at http://www.fijitimes.com/print.aspx?id=82373.
[7] Michael Lee Lanning, *Mercenaries: Soldiers of Fortune, From Ancient Greece to Today's Private Military Companies* (New York: Ballantine Books, 2005), 3-4.

from foreign lands so that local citizens would be free to maintain the economic output necessary to support both the kingdom and the army. The Hebrews began this practice around 1250 B.C. Although David steadily decreased Israel's reliance on foreign soldiers after he assumed power around 925 B.C., Israel never completely stopped hiring mercenaries.[8]

The Roman Empire also relied upon mercenaries to bolster the capacity of its existing forces. When the effects of the Second Punic War on the Italian countryside forced small farmers to sell their land to wealthy landowners and migrate to the cities for menial jobs, poor citizens began to feel distanced from the empire, and thus reluctant to risk their lives in the military. Meanwhile, their wealthy counterparts were similarly reluctant to join the military, preferring instead to stay at home and enjoy their wealth.[9] Rome's expansion therefore outgrew its capacity to man its military with professional soldiers in the fourth century, and the empire was forced to hire mercenaries to keep up with this demand for soldiers.[10]

More recently, both mercenaries and privateers played a critical role in supplementing existing forces in the American Revolution. As explored in Chapter Three, the British government signed treaties with six German princes in 1776 for the provision of a total of almost 30,000 German soldiers to help fight the colonial uprising in America. Landgrave Frederick II of Hesse-Cassel provided the vast majority of these soldiers, and thus the entire deployed German force was commonly referred to as a Hessian force.[11] The Hessian mercenaries served as British auxiliary forces, fully integrated into the British military system.

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[8] Lanning, 2005: 9-10.
[9] Lanning, 2005: 31-32.
[10] Lanning, 2005: 32.
[11] Charles W. Ingrao, *The Hessian Mercenary State* (New York: Cambridge University Press, 1987).

On the American side of the conflict, American colonists commissioned approximately 700 ships to fight against the British. These privateers – ships licensed by the Americans to harass British vessels and confiscate their cargoes – bolstered the American sea presence considerably, fighting alongside the American Navy's 100 ships. Both Thomas Paine and General George Washington owned stock in privateers.[12] These private ships also played a large role on both the American and British sides in the War of 1812. Congress even granted legal sanction to privateers during this period. With a few extra cannon and men, therefore, any merchant vessel was easily converted into a privateer.[13]

Outsourcing under the logic of capacity has similarly occurred in Operation Iraqi Freedom and Operation Enduring Freedom in Afghanistan, primarily due to the expanding definition of what constitutes "warfare" in U.S. military and policy circles. The growing tendency to consider Stability, Security, Transition, and Reconstruction (SSTR) missions as an integral component of warfare stretches the U.S. military and coalition forces thin, causing U.S. policymakers to rely on private security companies as an ad hoc supplement to regular military forces. The practice of outsourcing violence has become so commonplace in U.S. policy that the Department of Defense (DoD) now publicly recognizes the private security industry's primacy in developing current notions of warfare. Stability, Security, Transition, and Reconstruction (SSTR) missions are now defined as a core U.S. military activity, one in which the DoD explicitly acknowledges that the private sector must play a defining role. Department of Defense Directive 3000.05 now formally includes the private sector in the emerging Pentagon policies pertaining to SSTR missions:

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[12] Alexander Tabarrok, "The Rise, Fall, and Rise Again of Privateers," *The Independent Review* XI, 4 (Spring 2007): 567.
[13] Tabarrok, 2007: 566.

It is DoD policy that stability operations are a core U.S. military mission that the Department of Defense shall be prepared to conduct and support. They shall be given priority comparable to combat operations and be explicitly addressed and integrated across all DoD activities including doctrine, organizations, training, education, exercises, materiel, leadership, personnel, facilities, and planning.[14]

This document further indictates that:

Many stability operations tasks are best performed by indigenous, foreign, or U.S. civilian professionals . . . Military-civilian teams are a critical U.S. Government stability operations tool. The Department of Defense shall continue to lead and support the development of military-civilian teams . . . Participation in such teams shall be open to . . . members of the Private Sector [including private sector individuals and for-profit companies] with relevant skills and expertise.[15]

The explicit connection drawn between the private sector and this new core mission for the U.S. military is a significant one, illustrating the key role that private contractors now play in conflicts, particularly the stability and reconstruction (S&R) operations that are beginning to be deemed a core military activity – at least in the military doctrine of strong states, and particularly in the relatively pacifist democracies of Europe – in the post-Cold War era. In this scenario, policymakers are predisposed to privatize operations that have traditionally been considered as falling under the rubric of Operations Other Than War (OOTW), in order to maintain adequate military capacity for actual war-fighting missions.

The outsourcing of violence occurs for normative reasons as well, however. As Gil Merom defines it, "normative difference" is "the distance between the position

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[14] U.S. Department of Defense Directive 3000.05, "Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations" (November 28, 2005), Section 4.1, p. 2. Accessed October 31, 2007 at http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf. Notably, DoD Direction 3000.05 represents a profound shift from the U.S. Army's Capstone Doctrine of 1905, which defined the Army's two core missions as offense and defense.

[15] U.S. Department of Defense Directive 3000.05, Sections 4.3 – 4.5.2, pp. 2-3.

of the state and that of the liberal forces (that give meaning to the term 'society')

concerning the legitimacy of the demand for sacrifice and for brutal conduct [in

conquering insurgencies]."[16] In terms relevant to this study's focus, the leaders of

democratic societies have, on occasion, outsourced violence to distance the state from

actions in warfare that may be considered illegitimate by their electorate. This

occurred, for instance, in the 1990s in Croatia, Sierra Leone, and Colombia, when the

United States and Britain hired PSCs to play military assistance roles outside of the

public view. Chapter Four explores each of these cases in greater depth.

Violence is similarly outsourced according to a normative logic in the

diamond-rich states of Africa, where diamond companies such as Endiama in Angola

hire private military companies to push artisanal diamond-miners ("garimpeiros") off

of their land. In many cases, the private military forces resort to human rights abuses

in order to carry out the company's wishes. Yet, Endiama and other such firms are

still able to claim that their diamonds are "conflict-free" and mined in accordance with

the U.N.-mandated Kimberley Process.[17]

Outsourcing a Broad Range of Government Functions

While the outsourcing of violence has been pervasive throughout history, a

broad range of government functions beyond those related to violence has been

subject to privatization in recent years. In the case of the United Kingdom, the United

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[16] Merom, 2003: 18. Merom builds upon the aforementioned notion regarding the limitations associated with policies of conscription in the context of the normative conduct of war as well: "The potential size and power of the anti-war coalition depends in large measure on the sort and number of people who are personally affected by the war – that is, the fate of the war depends on the nature and scope of military mobilization . . . In the long run, a greater reliance on conscription and reservists reduces the capacity of the state to act in the battlefield with unrestrained force, to pursue far-reaching objectives, and to win the war." Merom, 2003: 21. Logically, reliance on private forces would allow the state to act with unrestrained force, since it would not have a direct impact on the electorate.

[17] Keith Harmon Snow, "Chloe's Blood Diamond: Angola Rock Sold for $16 Million to GUESS Jeans Founder," *Global Research* (November 24, 2007). Accessed June 3, 2008 at http://www.globalresearch.ca/PrintArticle.php?articleid=7423.

States, and much of the Western world, the ideological shift leading to the privatization of government functions took place beginning in the 1980s with the Thatcher and Reagan "Revolutions." As British Prime Minister throughout the 1980s, Margaret Thatcher was devoted to the principles of free enterprise, competition, and the market economy. She was a firm believer that state-owned enterprises were inefficient and politicized, and as such, she began selling off Britain's nationalized industries in the early 1980s. Industries privatized under Thatcher included the National Freight Corporation, part of British Aerospace, Cable and Wireless, British Oil, British Rail Hotels, Associated British Ports, the British water supply, and the country's bus systems.[18] What began as a slow privatization push gained popularity by Thatcher's later terms in office, as each privatization helped to fund tax cuts, won political support from business, and further weakened the opposition Labour Party. British Airways was privatized in 1987, as were Rolls Royce, the British Airports Authority, and the government's remaining shares of British Petroleum. British Steel was privatized in 1988.[19] After Thatcher left office, privatizations that had been planned under her leadership – including the continued privatization of the electricity industry – were carried out by her successor, John Major.[20]

Meanwhile, in the early 1980s in the United States, Ronald Reagan began espousing what has since become a key tenet of conservative political philosophy: that the nation's basic needs can best be met by private enterprise.[21] Such a philosophy was in line with Reagan's overall economic plan, "Reaganomics" or "trickle-down

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[18] Earl A. Reitan, *The Thatcher Revolution: Margaret Thatcher, John Major, Tony Blair, and the Transformation of Modern Britain, 1979-2001* (Lanham, MD: Rowman & Littlefield, 2003), 37-38.
[19] Reitan, 2003: 78-79.
[20] Reitan, 2003: 135.
[21] James Carroll, "Outsourcing Intelligence," *The Boston Globe* (August 27, 2007). Accessed February 4, 2008 at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/08/27/outsourcing_intelligence/

economics," based on a theory proposed by economist David Stockman. The theory called for a hands-off approach to fiscal management and major tax cuts for the wealthy captains of industry in order to encourage them to invest and thereby stimulate the economy. The program led to excessive budget deficits, and was even denounced by Stockman himself at one point, nearly costing him his job.[22]

In keeping with the privatization pushes of the Thatcher and Reagan administrations, widespread outsourcing and privatization spread to Latin America in the late 1980s and early 1990s. In 1990, economist John Williamson – an expert on international monetary and development issues – coined the phrase "Washington Consensus" to refer to Washington-based economic institutions' political advice to Latin American countries around 1989. These policies included fiscal discipline, tax reform, interest rate liberalization, trade liberalization, liberalization of inflows of foreign direct investment, privatization, deregulation, and secure property rights. Williamson's phrase soon became a synonym for "neoliberal policies" more generally, and the idea of the "Washington Consensus" continues to be pervasive throughout Western economies.[23]

At the same time, privatization began to take hold in Eastern Europe as well, as economies there started transitioning from communism to capitalism. Eastern European privatization by necessity occurred on a much larger scale than did privatization in the West, as each Eastern European country had thousands of state enterprises to privatize (compared with tens of enterprises to privatize in Western countries). Furthermore, Eastern European privatization posed a unique challenge in

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[22] "The Reagan Years: Reaganomics," CNN.com In-Depth Specials. Accessed February 4, 2008 at http://www.cnn.com/SPECIALS/2001/reagan.years/whitehouse/reaganomics.html. See also William Greider, "The Education of David Stockman," *The Atlantic Monthly* (December 1981). Accessed March 21, 2008 at http://www.theatlantic.com/politics/budget/stockman.htm.
[23] Center for International Development at Harvard University, "Washington Consensus." Accessed April 23, 2008 at http://www.cid.harvard.edu/cidtrade/issues/washington.html.

that it occurred in states that were only beginning to develop market economies, had few markets and very little private property at first, and did not have market-oriented legal systems.[24] Because no comparable privatization has ever taken place, Eastern European countries had no precedent on which to base their privatization policies. Most of the former socialist countries began with small-scale privatization, selling off small shops, bars, restaurants, and workshops at auctions. To privatize the large state enterprises, a number of countries – Czechoslovakia, Lithuania, Mongolia, Poland, Romania, Russia, and Latvia – adopted voucher privatization programs. The principle underlying such programs is that all resident citizens above a certain age receive an equal number of vouchers that can be exchanged, within a particular time period, for shares in thousands of enterprises that are to be privatized.[25] The key lesson derived from the post-communist privatizations was that the transfer of ownership must happen as quickly and on as large a scale as possible, because the state is even less able to manage enterprises during the transition than it was before.[26] There are interesting parallels between this and the current situation of co-deploying private and national military forces in theaters such as Iraq and Afghanistan, where the transition to the large-scale use of PSCs has been rocky at best and has challenged the United States' ability to manage its forces. Chapter Five elaborates upon these cases.

Military Outsourcing in the United States

Privatization of the defense sector in the United States took on new meaning in the post-Cold War era, as military downsizing and smaller defense budgets required the Pentagon to rethink how it did business. During the 1991 Persian Gulf War, one-

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[24] Anders Aslund, *Post-Communist Economic Revolutions: How Big a Bang?* (Washington, D.C.: The Center for Strategic and International Studies, 1992), 69.
[25] Aslund, 1992: 83-84.
[26] Aslund, 1992: 87.

tenth of the people deployed were private contractors. Then-Secretary of Defense
Dick Cheney was determined to increase this ratio, and in 1993 he commissioned a
study on how to quickly privatize the military bureaucracy. Interestingly, Cheney
commissioned this study from the private sector itself, from a division of his own
future firm, Halliburton.[27] The Pentagon carefully considered Halliburton's
recommendations, later commissioning another study by the Defense Science Board
(DSB) Task Force to examine outsourcing options for the Department of Defense
(DoD). The Task Force published its findings in August 1996, citing earlier U.S.
Government policies that had relied on outsourcing to bolster its claims. For instance,
it cited a 1955 statement by the Bureau of the Budget (the predecessor of the Office of
Management and Budget): "the Federal Government will not start or carry on any
commercial activity . . . for its own use if such product or service can be procured
from private enterprise."[28] The Task Force's recommendations were completely in
line with this 1955 policy, reporting that "all DoD support services should be
contracted out to private vendors except those functions which are inherently
governmental or directly impact war-fighting capability, or for which no adequate
private sector capability exists or can be expected to be established."[29] The report
projected that the Pentagon could realize savings of thirty to forty percent of function
costs through such outsourcing practices, generating a potential total annual savings of
$7 to $12 billion by fiscal year 2002.[30]

  A follow-up report by the Government Accountability Office (GAO) in
December 1997 concluded that the Defense Science Board Task Force's estimates in

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[27] Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), xvi.
[28] Defense Science Board, *Report of the Defense Science Board Task Force on Outsourcing and Privatization* (August 1996), 3A. Accessed May 15, 2007 at
http://www.acq.osd.mil/dsb/reports/outsourcing.pdf.
[29] Defense Science Board Task Force Report, 1996: 6A.
[30] Defense Science Board Task Force Report, 1996: 6A.

this 1996 report were overstated. Agreeing that the Pentagon would be able to achieve cost savings by outsourcing certain activities, the GAO found that there were many legislative barriers to outsourcing – thus, not all logistics activities could be outsourced, as the DSB Task Force had originally argued. The GAO further reported that the DSB's cost-savings estimates were overstated by approximately $1 billion for contract administration and inventory reductions, and by approximately $1 billion more for reliability improvements. The GAO argued that correcting such overstatements would reduce the DSB's projected savings by thirty percent.[31]

This GAO report notwithstanding, Donald Rumsfeld spurred on defense privatization when he entered his post as President George W. Bush's Secretary of Defense in 2001. On September 10, 2001, Rumsfeld spoke to the Pentagon officials in charge of overseeing defense contracting, stating:

> The topic today is an adversary that poses a threat, a serious threat, to the security of the United States of America. This adversary is one of the world's last bastions of central planning. It governs by dictating five-year plans. From the capital, it attempts to impose its demands across time zones, continents, oceans, and beyond. It disrupts the defense of the United States and places the lives of men and women in uniform at risk. Perhaps this adversary sounds like the former Soviet Union, but that enemy is gone: our foes are more subtle and implacable today . . . The adversary's closer to home. It's the Pentagon bureaucracy.[32]

Rumsfeld then announced a major initiative that would shift how the Pentagon was run, replacing the old bureaucracy with a system that would make ample use of private industry. This new policy – which became known as the Rumsfeld Doctrine – would draw heavily on the private sector, with an emphasis on covert missions, greater use of

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[31] United States General Accounting Office, "Outsourcing DOD Logistics: Savings Achievable But Defense Science Board's Projections Are Overstated," Publication No. GAO/NSIAD-98-48 (Washington, D.C.: December 1997), p. 13.
[32] Quoted in Scahill, 2007: xiv.

Special Operations Forces and contractors, and highly technical weapons systems.[33] In defense of his new approach to remaking the Pentagon bureaucracy, Rumsfeld wrote, "We must promote a more entrepreneurial approach: one that encourages people to be more proactive, not reactive, and to behave less like bureaucrats and more like venture capitalists."[34]

The Rumsfeld Doctrine forms the basis of the current context of outsourcing and privatization of defense functions in the United States, a basis codified in Department of Defense Directive 3000.05 and other policies pertaining to contractors' role in warfare. The private security industry represents a relatively small fraction of this privatization, with weapons producers and logistics-support companies (such as Halliburton) comprising a much larger portion of the defense privatization activities in this country. Nonetheless, increasing reliance on the private security industry has important consequences for the U.S. military and for the militaries of other democracies that rely on private security companies, as well as for the international system of states as we know it. This study focuses on the private security industry – at least to the extent that it can be clearly distinguished from other private military firms – leaving examination of these other elements of defense privatization for future research. Several scholars working on issues related to the private security industry have developed classification schemes to categorize the various firms and services comprising the industry. Their typologies are useful in delineating the types of firms and activities that this study focuses on.

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[33] Scahill, 2007: xv.
[34] Donald H. Rumsfeld, "Transforming the Military," *Foreign Affairs* (May/June 2002).

<u>PSC Classification Schemes</u>

Peter W. Singer developed the first typology to classify the various firms providing private military and security services, the so-called "Tip of the Spear Typology." This classification scheme distinguishes firms based upon their range of services and the level of force each utilizes in performing these services, looking particularly at firms' proximity to the front lines of battle. It divides private military firms into the categories of "Military Provider Firms," "Military Consultant Firms," and "Military Support Firms."[35] Military provider firms focus on the tactical aspects of warfare, engaging in activities at "the forefront of the battlespace."[36] Military consultant firms, on the other hand, offer "strategic, operational, and/or organizational analysis" through their provision of advisory and training services "integral to the operation and restructuring of a client's forces."[37] Finally, military support firms provide non-lethal supplementary military services such as transportation, logistics, intelligence, supply, and technical support.[38]

Singer's typology is valuable in its distinction of the types of services performed by firms in the private security industry. Yet, the "Tip of the Spear" typology suffers from two shortcomings. First, in modern warfare the conception of a front line of battle is essentially irrelevant; the prevalence of terrorism and insurgent warfare in modern times means that battles are waged from civilian areas not traditionally thought to be included in the notion of the "battlefield." Thus, the "tip of the spear" terminology is somewhat misleading in the context of modern private security companies. Secondly, and more importantly, the majority of private security companies are increasingly diversifying and expanding their range of services to

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[35] Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 93.
[36] Singer, 2003: 92.
[37] Singer, 2003: 95.
[38] Singer, 2003: 97.

include services spanning across Singer's three categories. The companies do this in order to remain innovative and competitive within the industry, but it means that they are less easily classified.

For instance, Control Risks Group (CRG) expanded its services from crisis-management consulting to include armed security in order to accommodate its involvement in Operation Iraqi Freedom.[39] Olive Group has expanded over time to include close-protection security operations, a crisis consultancy, securities design and integration (using state of the art technology), a satellite tracking system, intelligence analysis and assessment, and training for private firms, military groups, and/or international organizations.[40] Blackwater Worldwide is constantly innovating, and its services span the gamut from research and development of new and improved military technologies – Blackwater is currently building an unmanned aerial vehicle (UAV), the Polar 400 Airship - to training domestic and international actors in advanced law enforcement and military techniques, special purpose canine training, intelligence, and aviation, ground, and maritime mobility and logistics work. Blackwater even appears to be branching out into humanitarian work with the newly developed Blackwater Foundation, which rescued three stranded missionary workers in Kenya in January 2008 and set up a tent city (and donated 10,000 pounds of supplies) for victims of wildfires in southern California for three months. Both of these services were performed free of charge.[41] The study at hand therefore examines private security firms that span the range of Singer's three categories. It does, however, focus mainly on Singer's "Military Provider" and "Military Consultant" firms.

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[39] Eric Westropp (Director, Control Risks Group) in interview with the author, January 23, 2007.
[40] Interview with high-level PSC official, January 24, 2007.
[41] Blackwater Foundation, "Kenya Rescue 2008." Accessed March 18, 2008 at http://www.blackwaterusa.com/foundation/Kenya_Rescue.html. Blackwater Foundation, "Blackwater Worldwide Provides Relief Within a Fire." Accessed March 18, 2008 at http://www.blackwaterusa.com/foundation/Wildfire_Victim_Relief.html.

Deborah Avant's typology better accounts for this tendency for firms to innovate and expand their services. Avant distinguishes between external (foreign) and internal (domestic) security support, and suggests three categories of services within each of these two broader geographic categories. External security support encompasses operational support, military advice and training, and logistical support, while internal security support includes armed and unarmed site security, crime prevention, and intelligence.[42] Avant's typology makes its most valuable contribution in its use of contracts rather than firms as the unit of analysis. This allows the analyst to look at a certain firm based upon its activities in a certain situation, rather than generalizing about the firm based upon outdated notions of the services it provides. The study at hand focuses on both external and internal security support contracts, looking at cases in which PSCs provide operational support, military advice and training, and site security, as well as personal security details (PSDs).

Meanwhile, Christopher Kinsey has developed a typology of private military and security companies based upon the distinction between the "object to be secured" and the "means of securing the object."[43] The object to be secured falls along a range between private and public, while the means of securing the object falls along a range between lethality and non-lethality.[44] Thus, an actor securing a public object in a very lethal manner would most closely represent a national military, while an actor securing a private object in a fairly lethal manner would most closely represent a "military provider firm" in Singer's terminology. An actor securing a public object in a relatively non-lethal manner would be representative of a conventional police force. Finally, Singer's "military consultant" or "military support" firms would exemplify an

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[42] Deborah Avant, *The Market for Force* (New York: Cambridge University Press, 2005), 16.
[43] Christopher Kinsey, *Corporate Solders and International Security: The Rise of Private Military Companies* (London: Routledge, 2006), 10.
[44] Kinsey, 2006: 10.

actor securing a private object in a non-lethal manner. Kinsey's typology is interesting in its inclusion of the public realm, for it allows us to not only distinguish between PSCs but also to distinguish PSCs from state-sanctioned methods of violence, as well as to see PSCs in the context of state-sanctioned violence.[45] In Kinsey's terminology, the study at hand focuses on both public and private objects secured in a lethal manner – as seen in the French Foreign Legion and Operation Iraqi Freedom cases, for instance – as well as private objects secured in a non-lethal manner (e.g., training and consultancy operations).

<div align="center">

"Mercenaries" vs. "Private Security Contractors":
A Comparison
</div>

How do these various members of the private security industry compare with the mercenaries of days past? Many industry critics equate the two types of actors. Most PSC personnel, however, find their association with the lawless, stateless image of a "mercenary" to be ridiculous. They cite the fact that most of them are former military, primarily former Special Operations Forces (SOFs). Hence, they do not perceive themselves as qualitatively different from professional soldiers, and certainly associate themselves more closely with the uniformed military than with the traditional image of a mercenary who will fight for any cause, given adequate compensation. Furthermore, they scorn the "mercenary" label because it is bad for business. Given that the modern PSC industry is predominantly based in democratic states, PSC personnel do not want to be perceived by the voting public as immoral, un-patriotic mercenaries – especially when the price could be the loss of a contract worth

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[45] Each of the typologies mentioned here has strengths and weaknesses, and any one may be better suited to use in certain analytical situations than would the others. The typology I develop in Chapter Five is not intended to be a competing means of classifying the private security industry, but rather to complement those outlined above.

multiple billions of U.S. defense funds, or anywhere from $500 - $1,000 per day, per individual contractor, for the duration of a particular job.

Yet, how unrealistic is the characterization of modern PSC personnel as mercenaries? According to the legal definition of mercenaries set out in Article 47.2 of Additional Protocol I to the Geneva Conventions, some private security company personnel fall closer to the realm of "mercenaries" than they might prefer, as elaborated in Chapter Six of this study.[46] Despite the fact that some PSC personnel do fit the Article 47.2 definition of a mercenary in certain situations, private security company personnel do have several important traits that distinguish them from the traditional mercenary image. Most importantly, PSC personnel are by definition backed by a corporate infrastructure designed to select them, train them, and deploy them. This corporate infrastructure similarly bids on contracts and in most cases has a professional portfolio detailing its performance on previous contracts. Furthermore, the modern industry is unique in its scale and transnational nature. Indeed, most PSCs have the capability to hire hundreds of men representing at least five or six different nationalities at a moment's notice.

Another significant trait distinguishing the modern private security industry from the traditional mercenary is that virtually all of the reputable firms openly

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[46] Article 47.2 of Additional Protocol I defines a mercenary as any person who:
  (a) is specially recruited locally and abroad in order to fight in an armed conflict
  (b) does, in fact, take a direct part in 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 rank 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.

competing for government contracts espouse a company ideology in line with the liberal ideals of the United States and its Western allies. Whether they make political campaign contributions, distribute literature aimed at shaping U.S. or other countries' foreign policies, or solemnly declare that they have no intentions to affect foreign policy, presumably none of them would accept a contract directly challenging the liberal democratic ideals of the United States – at least not at this point. One can surmise that this is primarily because a large number of the industry's contracts come from the U.S. Government. It is worth considering the counterfactual scenario in which a non-democratic power achieves superpower status and the capacity to buy the industry's services. Where, then, would the company loyalties lie? This is not to say that economic motives would necessarily overpower democratic ideological motives in such a scenario, but that the possibility exists.

Related to this second distinguishing characteristic of the modern private security industry is the fact that - while most do not - some companies do indeed make both explicit and implicit attempts to shape foreign policy. Blackwater Worldwide is a prime example of this phenomenon. Acting almost like a non-governmental organization or think tank, Blackwater maintains and widely distributes a weekly electronic newsletter titled "The Blackwater Tactical Weekly," a collection of (usually conservative-minded) newspaper articles and other media reports pertaining to the Iraq War, the War on Terrorism, and other key U.S. national security issues. Even more notable is Blackwater's Global Peacekeeping and Stability Operations Institute (BW GPSOI), which sponsored its first annual two-day symposium in Washington DC in December 2007. The symposium's theme, the "Public/Private Partnership in Peacekeeping," had as its goal to:

> . . . look at those areas where the military and
> government can use private sector expertise to
> successfully accomplish security and reconstruction

> operations. To most effectively and efficiently accomplish stability and reconstruction missions requires using the most appropriate skill sets. Frequently those skill sets reside in the private sector. To best use the taxpayer's resources may require leveraging the private sector."[47]

Whether elaborate lobbying tactics or public relations schemes to improve Blackwater's public image, these two examples illustrate Blackwater's interest in and pro-active approach to influencing U.S. foreign and military policy. Meanwhile, company founder Erik Prince acknowledged in October 2007 that Blackwater held over fifty U.S. federal contracts at that point in time. By the end of 2006, the total value of all Blackwater contracts was $1 billion.[48] The company has 450 permanent employees, and a contractor database of thousands more ready to be called into service.[49] While Blackwater is only one company and many other private security companies do not engage in the types of policy-related activities outlined above, Blackwater's size is such that its attempts to affect foreign and military policy are positioned to have an impact. Traditional notions of mercenaries do not include such direct involvement in the shaping of state policy.

The third and final trait distinguishing modern private security personnel from traditional mercenaries is the voluntary regulatory system in place in the United States, and increasingly in the United Kingdom. The International Peace Operations Association (IPOA), a trade association for the private security industry in the United States since 2001, has devised a "Code of Conduct" to which all of its members must adhere. Thirty-eight PSCs are presently IPOA members, and must monitor their

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[47] Blackwater Global Peace and Stability Operations Institute website. Accessed October 22, 2007 at http://gpsoi.org/index.html.

[48] "Blackwater by Numbers: A Statistical Index," *Mother Jones Blog* (October 3, 2007). Accessed March 21, 2008 at http://www.motherjones.com/cgi-bin/print_mojoblog.pl?url=http://www….archives/2007/10/5663_blackwater_by_numbers_a_statistical _index.html.

[49] Ken Silverstein, "Revolving Door to Blackwater Causes Alarm at CIA," *Harper's Magazine* (September 12, 2006). Accessed March 21, 2008 at http://www.harpers.org/archive/2006/09/sb-revolving-door-blackwater-1158094722.

internal operations and employees to assure that the Code of Conduct is followed. The IPOA has an open system whereby any person is free to register a complaint with the IPOA about Code violations, and the IPOA has a Standards Committee consisting of officials from several member companies who are tasked with investigating such complaints. In the event that a company is found to be in violation of the Code and refuses to take actions to remedy the situation, the company's IPOA membership is revoked.[50] The British Association of Private Security Companies (BAPSC) is similar to the IPOA, and is developing its own code.[51] Chapter Six discusses both the IPOA and BAPSC in further detail.

Overview of Hypotheses & Methods

This study employs qualitative comparative case study methods, tracing historical processes and analyzing the content of both existing and original interview data. The null hypothesis is that PSCs have no effect on democracies' military effectiveness. Two additional hypotheses and four sub-hypotheses are tested in the following chapters. The first hypothesis predicts that PSCs should cause a net increase in democracies' military effectiveness through their beneficial impact on military *responsiveness* and *quality*, by acting as force multipliers, and by utilizing their initiative and independent position to be innovative on the battlefield. Four relevant sub-hypotheses fall under this first hypothesis: one predicting that PSCs' compliance with international laws of war increases military effectiveness by supporting the war for the "hearts and minds" of the citizenry, a second predicting that PSC non-compliance with the laws of war decreases military effectiveness by

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[50] Doug Brooks (President, International Peace Operations Association), in interview with the author, April 3, 2007.
[51] Dr. Sabrina Schulz (Director of Policy, British Association of Private Security Companies), in interview with the author, January 25, 2007.

undermining the war for the "hearts and minds" of the citizenry, a third predicting that PSC compliance with the laws of war decreases military effectiveness by limiting PSCs' abilities to take on the dirty jobs necessary to defeat insurgencies, and a fourth predicting that PSCs' non-compliance with the laws of war increases military effectiveness by enabling PSCs to take on the dirty jobs necessary to defeat insurgencies. Due to the study's explicit focus on a specific type of warfare (counterinsurgency) and a specific type of state and democracy (the United States), the inclusion of these sub-hypotheses into the study's analysis is both relevant and illuminating. A second hypothesis predicts that PSCs should cause a net decrease in democracies' military effectiveness by decreasing military *integration* and *skill*. These hypotheses are tested against each other to determine their relative strengths, and are elaborated in further detail in Chapter Two.

Given these hypotheses, the study includes one independent variable, the use of PSCs by democracies, and one dependent variable – military effectiveness, measured as detailed in Chapter Two. The cases analyzed here were selected on the independent variable, to reflect different situations of PSC use by democracies. Several of the cases selected include the United States as a major actor, but this reflects the fact that the United States is a major democracy, is very involved in the global promotion of democratic ideals, and has the strongest military in the world. Thus, these cases represent hard cases where we would expect PSCs to have very little incremental effect on military effectiveness and the democratic advantage.

Plan of the Thesis

The remainder of this study proceeds as follows: the next chapter frames the problem in terms of existing International Relations theories of the state, military effectiveness, the democratic advantage, and the structure-identity dichotomy in the

social sciences, and describes the methods employed in the study in greater depth.

Chapters Three through Five examine and compare different cases of privatized force deployment. Expanding upon the project's historical context, and in an effort to generate insights regarding what is necessary to insure that mercenary forces work well with regular military forces, Chapter Three examines two historical cases in which grouped mercenary forces other than modern-day PSCs were deployed alongside the regular military: the deployment of Hessian troops alongside British forces in the American Revolution from 1776-1783, and the deployments of the French Legion with the French military in Indochina (1883-1891) and Algeria (1954-1962). Chapter Four then examines what were, until 2003, the most common scenarios of modern-day PSC deployment: situations in which PSCs are deployed in place of professional military forces. This chapter looks at the cases of Military Professional Resources Incorporated (MPRI) in Croatia, Sandline and Executive Outcomes in Sierra Leone, DynCorp in Colombia, and Sandline in Papua New Guinea. Reflecting this project's strong focus on the increasing reliance on PSCs deployed alongside the military in the field, Chapter Five examines key cases of PSC-military co-deployment – namely, the 2003-2007 portion of Operation Iraqi Freedom, and, to a lesser extent, the concurrent conflict in Afghanistan. Chapter Six reflects on the lessons drawn from the case studies in the previous three chapters and examines the current state of the private security industry's regulation, with a specific focus on regulations designed to address abuses in the field. In doing so, this chapter notes how current regulatory measures to address such abuses represent an improvement over historical regulation, as well as areas in which this regulation could and should be improved in order to insure that PSCs affect military effectiveness in a positive manner. Chapter Seven concludes the study with reflections on the implications of the modern private security industry for the future of the state as we know it, as well as

policy recommendations for how this industry can best be harnessed for an effective

military.

CHAPTER 2

DEMOCRATIC STATES, THEIR MILITARIES, & SECURITY PRIVATIZATION:
THEORETICAL CONSIDERATIONS

In conceptualizing private security companies' impact on democracies'

military effectiveness and propensity to achieve victory in warfare, I draw primarily

upon several related bodies of International Relations theory – those examining the

state as an actor in global society, those examining issues of military effectiveness,

those arguing that democracies are more likely than other types of regimes to win the

wars in which they engage, and the dichotomy between structural and identity-based

explanations in the social sciences. The following chapters explore the pressures that

the private security industry places on the state and the consequences of such

pressures, particularly with reference to democratic states' abilities to successfully and

effectively fight wars of counterinsurgency. The project thus uses the proliferation of

private military and security companies in modern democracies as a lens to provide a

particular insight into the modern state's relation to society and the economy. Yet, the

study's theoretical contributions do not fall solely within the realms of state theory,

democratic advantage theory, military effectiveness, and the structure-identity debate.

In particular, Chapter Five draws upon the professions' literature and civil-military

relations theory, as well as various conceptions of structure and identity, to develop a

comprehensive analytical framework that helps explain why PSC personnel and the

military interact in the manner that they do, and to suggest how real and potential

frictions between these two groups can best be reduced while maintaining the

beneficial impacts of each on military effectiveness. Furthermore, Chapter Six utilizes

the lessons of the literature on comparative regulation to inform this study's

recommendations of the legal and regulatory options that can reasonably be pursued

with regard to the private security industry. I outline and synthesize these theories

below, demonstrating their relevance to the topic at hand, and explain the methodology employed throughout the study.

State Transformation:
The Privatization & Transnationalization of Force Provision

Until the recent past, many analysts accepted the Weberian argument that the state enjoyed – and in fact, was defined by – a monopoly on the legitimate use of coercive force, a monopoly that is now increasingly challenged by the private security industry.[52] Max Weber emphasized that, ". . . force is certainly not the normal or only means of the state – nobody says that – but force is a means specific to the state . . . the state is a relation of men dominating men, a relation supported by means of legitimate violence."[53] Inherent in Weber's conception of the state is the notion that the state is sovereign, exercising exclusive control over a given territory.[54]

In contrast to Weber, some theorists argue that the Westphalian sovereign state is an ideal form that has never quite been replicated in reality – transnational flows have always existed to some extent. Chief among these arguments is that espoused by Stephen Krasner, who argues that:

> The term "the Westphalian system" is . . . misleading in
> suggesting that there has been agreement on the scope of
> authority that could be exercised by sovereign states.
> The positive content of sovereignty, the areas over
> which the state can legitimately command, has always
> been contested. The claim to exclusive control over a
> given territory has been challenged both in theory and in
> practice by transborder flows and interference in the

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[52] James Cockayne, "The Global Reorganization of Legitimate Violence: Military Entrepreneurs and the Private Face of International Humanitarian Law," *ICRC Review* 88, 863 (September 2006): 460-461; David Held, "Central Perspectives on the Modern State," in *States and Societies*, ed. David Held et al. (New York: New York University Press, 1983), 34-38; Paul G. Lewis, "Introduction," in *States and Societies*, ed. David Held et al. (New York: New York University Press, 1983), 413.

[53] Max Weber, "Politics as a Vocation," in *From Max Weber*, ed. H.H. Gerth and C.W. Mills (Oxford: Oxford University Press, 1972), 8.

[54] Stephen D. Krasner, "Westphalia and All That," in *Ideas and Foreign Policy*, ed. Judith Goldstein and Robert O. Keohane (Ithaca: Cornell University Press, 1993), 235.

internal affairs of states."[55]

Krasner's argument – particularly the notion of pervasive transborder flows – is certainly supported by the extensive number of kingdoms and states hiring foreign soldiers throughout history, as Chapter One outlines. State theorists taking Krasner's view of the persistence of state authority argue that the growth of the private military and security industry does not mark a drastic shift in the history of "the state." Rather, this industry is the result of the evolving material factors – namely, military technology and trade – that enabled sovereign states to become prominent in the first place. Janice Thomson, for instance, explains the rise of the state's monopoly on violence as a trend that is "distinctively modern."[56] Thomson argues that this shift occurred when:

> . . . violence was marketized, democratized, and
> internationalized through the actions of state rulers
> seeking to escape feudalism's constraints on the exercise
> of violence and intent on amassing wealth and military
> power autonomous from their subjects and other rulers.[57]

Given her argument that the sovereign state's monopoly on violence only occurred when violence was "marketized," Thomson clearly sees the sovereign state and force privatization as having been symbiotically related throughout history.

Krasner and Thomson make convincing arguments regarding the exceptionalism of true sovereignty and the prevalence of transnational flows throughout history. Many scholars, however, while admitting it is an exaggeration, still cite Weber's state monopoly on legitimate violence as a defining feature of the state. As such, various analysts studying the private security industry see it as having the potential to vastly transform the state's control of violence and coercive force.

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[55] Krasner, 1993: 236.
[56] Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns* (Princeton: Princeton University Press, 1994), 3.
[57] Thomson, 1994: 6.

Deborah Avant, for instance, concludes that force privatization should redistribute power over the control of violence both within states and between states and non-state actors.[58]

The analysis herein acknowledges that the proliferation of private military and security companies clearly represents a decline in the state's control over the provision of force. The study at hand, however, also acknowledges that states still play a key role in force provision, maintaining state militaries and providing the vast majority of the funding and contracts keeping modern PSCs profitable. The fact that corporations now act as middlemen between the state and individual soldiers-for-hire does not diminish the state's relevance to the force provision equation. This view is in line with that of Avant, who notes, "Even though states continue to be powerful players, these changes alter expectations about the way international politics works."[59]

Perhaps more significant than the private security industry's impact on the state's role in force provision are the ways in which it interacts with the internal characteristics of states, and how it subsequently impacts state-building activities and the organization of states within the international system. Charles Tilly argues that four interdependent state activities – war making, extraction (i.e., taxation), state making, and protection – were crucially significant for the formation and organization of states in Europe before the twentieth century.[60] In the modern era, however, state building activities look very different than they did in pre-twentieth century Europe,

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[58] Avant, 2005b: 7. See also Joakim Berndtsson, "Private Military Companies and the Privatisation of Violence and Security: Rethinking the Monopoly of Violence and the Role of the State," *Paper presented at the Annual Meeting of the International Studies Association* (San Diego: March 2006).

[59] Avant, 2005b: 258. See also Berndtsson, 2006.

[60] Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (New York: Cambridge University Press, 1985).

due in part to the global proliferation of PSCs and their impact on these four interdependent state activities.

For one thing, PSCs allow leaders of weak states to protect while simultaneously eliminating the need to create bureaucratic state structures to tax the citizens in order to pay the military. Avant cites Sierra Leone as an example of this phenomenon:

> Of the four other cases where security was privatized in weak states, in one – Sierra Leone – the government was so weak that it relied on PSCs for control of operations . . . Also, continued and enhanced influence from commercial miners (prominent security consumers) decreased the incentives for politicians to build democratic or capable institutions.[61]

The fact that PSCs eliminate the need to create a bureaucracy to tax the citizenry, coupled with the fact that PSCs often fulfill a greater range of functions in weak states than would the regular military, means that PSCs hinder incentives for state-building in weak states when employed directly by the leaders of such states, or by their proxies. They similarly hinder the development of the long-term institutional mechanisms necessary for a viable state to develop in the target regions of the world where strong states maintain an interventionist presence, as elaborated below.

Strong states such as the United States, meanwhile, are increasingly beginning to focus on Stability, Security, Transition, and Reconstruction (SSTR) functions in their military missions and, as Chapter One notes, PSCs play an integral role in these missions. In these situations, PSCs free the state's military forces to perform other functions, thus increasing state capacity and the state's power-projection capabilities. Avant similarly notes the existence of this phenomenon: "In strong states, privatization has often brought new security tools in ways that opened the way for a

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[61] Avant, 2005b: 255.

broader variety of functions, sometimes at increased cost and with still uncertain effects on professionalism within the military (and thus the long-term military effectiveness)."[62] In some cases, then, PSCs provide states with a greater range of options for strengthening their own state apparatus and, by extension, their systemic position. As Avant notes: "Strong states that take advantage of the market buy increased power in the form of raw capacity to protect their interests abroad."[63] Yet, the result of such heavy reliance on PSCs for these activities is that the target state in which the SSTR missions take place does not develop its own state-building capacity, and thus it remains a weak state.

Whereas Tilly's view of pre-twentieth century Europe was that "war became the normal condition of the international system of states and the normal means of defending or enhancing a position within the system," states' abilities to alter their systemic position appear to have changed, and to favor strong states to a disproportionate extent in the modern era of such heavy reliance on PSCs as opposed to regular militaries.[64] The extent and corporate organization of the modern private security industry therefore foreshadow significant consequences for the systemic organization and relative power balances of states in today's world. These observations are explored throughout this study with a particular focus on democratic states, as elaborated below.

The Democratic Advantage

Many modern PSCs are both based in democracies and predominantly hired by democracies at this point.[65] Because we live in a democracy and security privatization

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[62] Avant, 2005b: 256.
[63] Avant, 2005b: 259.
[64] Tilly, 1985: 184.
[65] The 2007 *State of the Peace and Stability Operations Industry Annual Survey* reports that North America is the base of operations for sixty-one percent of the private security industry's companies,

is an issue facing democracies today, this study focuses primarily on democratic states and examines PSCs' impact on theories specific to democracies. A prevalent strand of literature in the International Relations field focuses on the democratic peace – the observation that democracies are more selective than are autocracies in choosing their wars, and that they rarely fight one another. A subset of this literature focuses on the democratic advantage, or the argument that democracies are more often *victorious* in their wars than are other regime types. This argument originated in David Lake's empirical observation that democracies more often win the wars they fight than do nondemocracies.[66]

Two logics exist within the democratic advantage literature: one focusing on selection effects, and one focusing on military effectiveness. The selection effects argument, as espoused by Dan Reiter and Allan Stam, is based on the idea that democracies selectively involve themselves only in the wars they are likely to win. Electoral politics play a crucial role here, as the theory holds that democratic leaders will be more beholden to their domestic publics than will autocratic leaders, and will consequently be forced to be more selective with regard to the conflicts they enter. The military effectiveness argument for the democratic advantage, according to Reiter and Stam, holds that democratic militaries fight more effectively on the battlefield due to better leadership within the ranks and more independent-minded soldiers than those

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with fifty-two percent of the world's companies based in the United States. Operationally, companies have their largest presence in Iraq and Afghanistan, with seventy percent and sixty-five percent of companies operating in those countries respectively. The companies operating in these theatres are employed to a large extent by U.S. and coalition governments and companies. Over sixty-five percent of the companies surveyed similarly operate in the European Union. The private security industry also has a sizable presence in the Middle East, Central Asia, North and East Africa, and non-EU Europe. See J.J. Messner and Ylana Gracielli, *State of the Peace and Stability Operations Industry: Second Annual Survey* (2007), Peace Operations Institute, International Peace Operations Association. Accessed at http://www.ipoaonline.org.
[66] David A. Lake, "Powerful Pacifists: Democratic States and War," *The American Political Science Review* 86, 1 (March 1992): 24-37.

found in autocratic militaries.[67] In other words, democracy's emphasis on the

individual is argued to promote more independent-minded soldiers capable of

exhibiting strong initiative on the battlefield. Furthermore, Reiter and Stam argue that

leadership is stronger in democratic states' militaries than in other militaries, due to

the "need for officers in a nondemocratic state to be politically unthreatening."[68]

Reiter and Stam also look for indicators that morale is stronger in democratic

militaries than in others, although their findings do not establish morale as a

significant variable. Nonetheless, portions of the interview data examined in Chapter

Five indicate that in some – though by no means all – cases, PSC personnel may have

lower levels of patriotic motivation than do professional soldiers.[69] Because Reiter

and Stam measure morale partly in terms of patriotic motivation, these data speak

directly to their work on morale.

The democratic advantage literature has been subject to a fair amount of

criticism, particularly in terms of the military effectiveness argument. The selection

effects argument, meanwhile, is considered the strongest element of democratic

advantage theory. Even so, Michael Desch and Risa Brooks both cite inherent

weaknesses in the dataset used to develop all components of democratic advantage

theory, as well as mistakes made by democratic advantage theorists in analyzing the

data. Examining both the historical record and Reiter and Stam's methodological

approach, Desch argues that five explanations other than those based on regime type

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[67] Dan Reiter and Allan C. Stam III, "Democracy and Battlefield Military Effectiveness," *The Journal of Conflict Resolution* 42, 3 (June 1998): 271-272; Reiter and Stam, *Democracies At War* (Princeton: Princeton University Press, 2002), 27, 193.

[68] Reiter and Stam, 2002: 70.

[69] Author's interview with two anonymous high-level PSC officials, London, January 24, 2007; Author's interview with anonymous PSC operator and trainer, Washington, DC, April 26, 2007. Deborah Avant's experimental research likewise indicates that "Americans see the motivations of private security personnel as more monetary than patriotic," though Americans also feel that they and the U.S. Government are just as responsible for contractor deaths as for U.S. military deaths in Iraq. See Deborah Avant, "After Blackwater, Four Fundamental Questions About Our Democracy," *San Francisco Chronicle* (October 8, 2007). Accessed November 14, 2007 at http://www.pacificcouncil.org/pdfs/Avant_10.08.pdf.

more plausibly explain how states perform in war: (1) an advantage in military power; (2) the nature of the conflict; (3) nationalism; (4) a spurious correlation between democracy and victory; and/or (5) the degree of regime consolidation.[70] Brooks points out a number of other problems with Reiter and Stam's analysis, arguing that they do not give adequate attention to a variety of aspects of tactical activity that affect battlefield success, nor to the broader strategic and operational plans and decisions that are essential to victory. She writes, "In the end, tactical effectiveness may be only a second-order issue: Ultimately, how much does a military's tactical proficiency matter, if its strategy and operational plans doom it to defeat?"[71] Brooks also points out that Reiter and Stam conflate culture and institutions, lump together all autocratic states, fail to control for confounding variables, and code "level of democracy" in a problematic manner.[72] Another critique of this literature focuses on the causal direction of the variables in question, posing the question of whether regime type is the root cause of the unit-level factors causing victory in wars, or whether those unit-level factors actually cause regime type.[73] Each of these is a reasonable claim challenging the conceptualization of the democratic advantage.

Despite this criticism, I use the democratic advantage literature as a point of departure for this study's analysis, because its examination of military effectiveness in the specific context of democracies is highly relevant to the topic at hand. Furthermore, if the study at hand finds that PSCs have an impact on military effectiveness, then PSCs are likely to affect the argument and implications of the

[70] Michael C. Desch, "Democracy & Victory: Why Regime Type Hardly Matters," *International Security* 27, 2 (Fall 2002): 7.

[71] Risa A. Brooks, "Making Military Might: Why do States Fail and Succeed? A Review Essay," *International Security* 28, 2 (Fall 2003): 167.

[72] Brooks, 2003: 172-177.

[73] Stephen Biddle and Stephen Long, "Democracy and Military Effectiveness: A Deeper Look," *The Journal of Conflict Resolution* 48, 4 (August 2004): 525-546.

democratic advantage literature as well. Indeed, democratic advantage theorists neglect the economic dimensions of market democracies in their analyses. Some of these economic dimensions – particularly the privatization and outsourcing trends seen increasingly in democratic states over the past few decades – could adversely affect military performance and undermine some of the expectations of democratic advantage theory, or vice versa. This study thus speaks to a broader body of theory and literature than that simply focused on military power and military effectiveness.

This project examines the military effectiveness side of the democratic advantage literature in depth, but PSCs do have implications for the selection effects argument as well. For instance, Avant has examined the possibility that PSCs reduce transparency in democratic decision-making and, in the U.S. Government in particular, advantage the executive branch relative to the legislative branch, thus making it easier for democracies to become involved in conflicts.[74] She illustrates several cases in which PSCs have weakened democratic structures that cause democracies to be selective in their wars, and in doing so she shows how PSCs very plausibly can weaken the selection effects argument of democratic advantage theory. In particular, the selection effects argument of democratic advantage theory implies the expectation that the democratic advantage would be less likely in cases where PSCs are deployed in place of national military forces, because the electorate is less likely to learn of such a deployment – or to consider it to be an actual act of war-making – and thus is less likely to pressure policymakers to be selective with regard to conflict involvement. Following this logic, the selection effects argument also implies the expectation that situations of PSC-military co-deployment and private forces' integration into the regular military would hold prospects for the democratic advantage

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[74] Deborah Avant, "The Implications of Marketized Security for IR Theory: The Democratic Peace, Late State Building, and the Nature and Frequency of Conflict," *Perspectives on Politics* 4 (2006): 507-528.

similar to those of a regular military deployment. In such situations, the deployment of national military forces would attract the electorate's attention to the conflict in question, causing the public to put pressure on policymakers to be selective with regard to conflict involvement.

One potential challenge to the democratic advantage literature that emerges in this study, however, is that some of the structural constraints noted by democratic advantage theorists as being unique to democracies – in particular, the structural constraints and processes relevant to the military effectiveness and selection effects arguments of democratic advantage theory – appear to play a role in non-democratic regimes as well. This is shown in the cases examined in Chapter Three, for instance, and speaks directly to an emerging research agenda in the International Relations field.[75] Future research on this issue might further evaluate some of the cases explored here to examine the prevalence of these structural constraints in non-democracies as opposed to democracies.

Theories of Military Effectiveness

There is a substantial body of literature on military effectiveness itself, of which the democratic advantage arguments mentioned above constitute only a small portion. As Risa Brooks highlights, various different notions of what constitutes "military effectiveness" abound:

> Some studies eschew a formal definition of military
> effectiveness . . . Some political scientists analyze
> military effectiveness in terms of a military
> organization's capacity to prevail over an adversary –
> in terms of victory or defeat . . . Other scholars place
> greater weight on the degree to which military
> organizations and their personnel exhibit particular

[75] See Jessica L. Weeks, "Autocratic Audience Costs: Regime Type and Signaling Resolve," *International Organization* 62 (Winter 2008), 35-64.

attributes essential to the planning and preparation for war . . . The term *military effectiveness* is also often used by military professionals and defense officials and analysts. In this context it has a variety of different meanings. Sometimes effectiveness is used to refer to the readiness of forces to deploy to the theater of war. Sometimes it indicates a mission accomplished in a combat zone . . . Sometimes it refers to the attributes of a particular military organization and the quality of its leadership, training, and systems, and the organization's preparation for war.[76]

The realist stance on the issue of military effectiveness is the most traditional, emphasizing the relative quantity of material resources in the hands of the military institution in question.[77] A slightly more nuanced view of this perspective is found among offense-defense theorists, who illuminate the benefits of offensive versus defensive military technology.[78] Stephen Rosen expands upon traditional realist conceptions of military effectiveness when arguing for the relevance of social and cultural factors in determining a state's military power. Rosen examines the effects of social structures and social divisions, along with the degree to which a military organization divorces itself from society, on the amount of offensive and defensive military power that can be generated from a given quantity of material resources.[79] To do so, he looks at India's military over various historical periods, each of which represents an evolution in the country's social structures. Rosen's work is significant for the project at hand in its recognition of the ways that social divisions can cause unit fissures and decrease military cohesion, or what I will later refer to as *integration* in line with Risa Brooks' definition. Yet, Rosen does not employ a very nuanced or

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[76] Risa A. Brooks, "The Impact of Culture, Society, Institutions, and International Forces on Military Effectiveness," in *Creating Military Power: The Sources of Military Effectiveness,* ed. Risa Brooks and Elizabeth Stanley (Palo Alto: Stanford University Press, 2007), 7-8.

[77] John Mearsheimer, *The Tragedy of Great Power Politics* (New York: W.W. Norton & Company, 2001); Kenneth Waltz, *Theory of International Politics* (Reading, Addison-Wesley, 1979).

[78] See for instance Stephen Van Evera, *Causes of War: Power and the Roots of Conflict* (Ithaca: Cornell University Press, 2001).

[79] Stephen Peter Rosen, *Societies and Military Power: India and Its Armies* (Ithaca: Cornell University Press, 1996), ix.

detailed view of what constitutes military power, and by extension, military effectiveness – in his terms, offensive military power is "the surplus of military power, beyond what is needed to maintain domestic order, that can be projected beyond the boundaries of a country," while defensive military power is "the ability to resist foreign military invasion."[80] Rosen's conception of military power thus depends on the enemy's strength in any given situation, focuses only on territory lost and gained, and is measured in terms of relative capabilities, weapons, and equipment.

In *Military Power*, Stephen Biddle also responds to traditional realist assumptions that military power rests solely on issues of weaponry, equipment, and supplies. Biddle argues that military capability does not depend on technology alone, but on how that technology is used – what he terms "force employment." Utilizing this notion, Biddle develops a theory of military capability in terms of three "irreducible capacities": the ability to control territory, the ability to inflict and limit losses, and the ability to prevail quickly.[81] In doing so, Biddle expands beyond traditional realist conceptions of military effectiveness, yet chooses to focus only on the tactical aspects of military effectiveness.

In an earlier article, Biddle and Stephen Long speak directly to the democratic advantage literature, looking at the effects on military effectiveness of various unit-level variables including human capital, civil-military relations, and culture. In doing so, they branch out from realist conceptions of military effectiveness which are based solely on the quantity of materiel, and return to Rosen's examination of the role of culture in military power.[82] The article, however, similarly conceives of military effectiveness narrowly, in terms of victory in a particular battle or war. While their

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[80] Rosen, 1996: viii.
[81] Stephen Biddle, *Military Power: Explaining Victory and Defeat in Modern Battle* (Princeton: Princeton University Press, 2004), 193.
[82] Biddle and Long, 2004: 528.

model considers the results of the conflict, it omits any analysis of the means to achieving those results. Biddle and Long do find that the unit-level variables other than regime type are significant for military effectiveness, yet they are unable to definitively prove the direction of the causal arrow linking these unit-level variables and regime type. Thus, they leave open the question of whether a certain regime type, such as democracy, causes the particular configurations of civil-military relations, culture, and human capital essential for military effectiveness, or whether it is these variables that cause regime type. In its focus on unit-level variables and its suggestion of this causal indeterminacy, Biddle and Long's study encourages this study's focus on the effects of unit-level variables – in this case, PSCs – on military performance.

The most recent, and arguably most complete, scholarly conception of military effectiveness to date is found in a recent chapter by Risa Brooks. Brooks defines military effectiveness as "the capacity to create military power from a state's basic resources in wealth, technology, population size, and human capital," and focuses on four "crucial attributes" that militaries may or may not display: "the *integration* of military activity within and across different levels; *responsiveness* to internal constraints and the external environment; high *skill*, as measured in the motivation and basic competencies of personnel; and high *quality*, as indicated by the caliber of a state's weapons and equipment" (emphasis added).[83]

Brooks defines *integration* as "the degree to which different military activities are internally consistent and mutually reinforcing," and states:

> An integrated military is one whose activities at the
> tactical level are consistent with those at the operational
> level and also support broader strategic objectives.
> Integration also involves maintaining consistency in
> force development activities, such as procurement,
> training, and education, with strategy, operations, and

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[83] Brooks, 2007: 9-10.

tactics. Integration means the achievement of consistency within and across levels and areas of all military activity."[84]

She defines *responsiveness* as "the ability to tailor military activity to a state's own capabilities, its adversaries' capabilities, and external constraints."[85] *Skill* measures "military personnel and their units against some objective standard or benchmark in assessing their ability to achieve particular tasks and to carry out orders," and " also captures a military's capability to motivate soldiers and to ensure that they carry out orders, fight hard, and seize the initiative in combat."[86] Finally, *quality* is the military's "ability to provide itself with highly capable weapons and equipment."[87]

Brooks' categorization of military attributes is a useful and comprehensive method for disaggregating and measuring the effectiveness of particular military actions. This study adopts her definitions of *integration*, *responsiveness*, *skill*, and *quality*, taking note of the expectations implied by these criteria: that PSCs will best impact military effectiveness when integrated into a national military (for they will have the best effect on *integration* and *skill* in such cases), and that PSCs' impact may also be beneficial in situations where they are deployed in place of national forces (when they may have a positive effect on *responsiveness*, *skill*, and *quality*). In adopting these criteria, the study subsumes Reiter and Stam's notions of battlefield leadership and initiative under Brooks' *skill*, for they are essentially one and the same. Indeed, Reiter and Stam note "effective leadership consists of the ability of officers to persuade troops to execute commands, especially under fire, and to competently execute tactics and seize the initiative when opportunities present themselves."[88] This closely matches Brooks' definition of *skill*, although it should be noted that Reiter and

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[84] Brooks, 2007: 10.
[85] Brooks, 2007: 11.
[86] Brooks, 2007: 12.
[87] Brooks, 2007: 13.
[88] Reiter and Stam, 1998: 265.

Stam explicitly refer to tactical effectiveness. Such a focus is especially appropriate with regard to the issue of *skill*. Thus, this study's references to *skill* focus primarily on activities at the tactical and – to a lesser degree – the operational levels. However, this study goes beyond Brooks' definition of military effectiveness to focus on the distinction between the tactical, strategic, and operational elements of warfare. This distinction is highlighted here because a military can clearly be effective in one realm and ineffective in another – comprehensive military effectiveness requires the achievement of the goals of all three realms.

Therefore, in this study an effective military is considered to be one that displays high levels of *integration*, *responsiveness*, *skill*, and *quality*, while: (a) accomplishing its tactical goals, or the maneuvers pertaining to the most immediate battlefield goals; (b) accomplishing its strategic goals, or the broader politico-military goals equaling the sum of its tactical goals across various theaters of operation; *and* (c) accomplishing its operational goals, or the sum of the tactical goals pertaining to a particular theater of operation. This definition encompasses both the ends and means of achieving military effectiveness, yet maintains the traditional scholarly focus on military power as an indicator of military effectiveness.

Notably, Brooks' definition of military effectiveness emphasizes the military-technological aspects of warfare – particularly under the rubric of the *quality* component of military effectiveness – even as the volume in which the definition is included claims to focus on cultural and political elements of military effectiveness. This military-technological focus presupposes a certain type of warfare; namely, Type I warfare or "major war." Because the study at hand focuses in large part on Type III warfare or counterinsurgency (COIN), I test the potential for an additional variable to be considered as a component of military effectiveness – the level of PSC compliance

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with legal and ethical norms of Just War – through two sub-hypotheses subsumed under H1, as elaborated below.[89]

Underlying Determinants of PSC-Military Coordination

We now have a solid conception of what constitutes military effectiveness to guide the study, but how do we proceed when we find situations in which PSCs hinder military effectiveness? By more deeply examining the sources of coordination problems within cases of PSC-military co-deployment, we can learn how best to remedy them, and thus how best to improve PSCs' impact on military effectiveness. In order to examine the underlying sources of such problems, the analysis in Chapter Five draws upon the distinction in the social sciences between structure and identity, as well as the literatures on the professions and civil-military relations. These four distinct theoretical tools, when brought together, create a synthesis from which a policy-relevant framework of analysis can be developed.

In recent years there has been a vibrant debate within the International Relations (IR) literature regarding the relative importance of structural and identity factors in shaping international events. However, this IR debate functions mainly at the state or systemic level, giving little attention to analysis of the effects of unit-level structures and individual identities on international relations. While much is written on the effects of domestic political structures on military performance, rarely does this structural analysis come down to the structure of particular military operations. Meanwhile, individual (as opposed to state) identities are rarely seen as relevant to the occurrence of international events, with the exception of political-psychological

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[89] Norms of Just War include noncombatant immunity, military necessity, utility, and proportionality, among others. For a comprehensive analysis of the principles underlying Just War theory see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

analyses of particular leaders' identities and perceptions.[90] The introduction of a new

tactical and strategic actor – for example, private security contractors – requires

disaggregation of the relevant issues down to sub-systemic levels, using different

analytical tools than those most commonly used in International Relations scholarship.

Thus, I employ measurements of structure at the operational and intra-institutional

levels (looking at the structure of particular deployments and at military rules,

doctrine, and training), and of identity at both the collective and individual levels.[91]

The term "structure" has many meanings across numerous disciplines. Wendy

Pullan argues that "the desire to define structure in a complete or finite manner is

counterproductive . . . structure is an inclusive and open-ended theme that offers itself

to interpretation in many disciplines in the sciences, arts, and humanities."[92] In a

statement particularly significant for this project's study of structure, Pullan also notes,

"If structure intact may be considered as the normal scheme of things, that which fades

into the background when all is well and in order, it is when structure fails that we

take notice and consider its merit and significance."[93] Meanwhile, the *Random House*

Unabridged Dictionary defines structure as: "the organization of a society or other

group and the relations between its members, determining its working."[94] Other

conceptions of "structure," and particularly "social structure," include "methods of

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[90] See for example Robert Jervis, *Perception and Misperception in International Politics* (Princeton: Princeton University Press, 1976).

[91] This practice is far from unprecedented in the social sciences. The structure – identity debate applies to many levels of analysis other than that of the state and international system, as shown in sociological and psychological works incorporating these concepts at the individual and small group levels. See Henri Tajfel, "Aspects of National and Ethnic Loyalty," *Social Science Information* 9 (1970): 119-144; Henri Tajfel, *Human Groups and Social Categories* (Cambridge: Cambridge University Press, 1981); John C. Turner, "Social Categorization and the Self-Concept: A Social Cognitive Theory of Group Behavior," in *Advances in Group Processes, Vol. 2.*, ed. E.J. Lawler (Greenwich, CT: JAI Press, 1985), 77-121; John C. Turner et al., *Rediscovering the Social Group: A Self-Categorization Theory* (New York: Blackwell, 1987).

[92] Wendy Pullan, "Structuring Structure," in *Structure in Science and Art*, eds. Wendy Pullan and Harshad Bhadeshia (New York: Cambridge University Press, 2000): 8.

[93] Pullan, 2000: 6.

[94] structure. (n.d.). *Dictionary.com Unabridged (v 1.1)*. Accessed February 1, 2007 at http://dictionary.reference.com/browse/structure

interaction," "the social organization of individuals and groups," "a system organized by a characteristic pattern of relationships," and "the arrangement of components in a complex entity."[95] Of particular relevance to the International Relations sub-field is Kenneth Waltz's definition of political structures: "A domestic political structure is thus defined, first, according to the *principle by which it is ordered*; second, by specification of the *functions* of formally differentiated units; and third, by the distribution of *capabilities* across those units" (emphasis added).[96] Waltz's definition is useful in guiding this study's conception of "structure."

In the case of PSC-military coordination, one can contrast the ordering principles for the military against those for PSCs in terms of their varying levels of hierarchy, as well as analyze the ordering principles for their mutual deployment alongside one another (in terms of the chain of command over contractors). For instance, I conceive of the military as more strictly hierarchical than PSCs, which I conceive of as loosely hierarchical. Differences in pay scales also reflect the divergent ordering principles of the military versus PSCs, reflecting the fact that PSCs place different values on positions similar to military positions, and do not necessarily value particular configurations of expertise in the same order – relative to other configurations of expertise – as the military does. Furthermore, the *functions* that each group fulfills are clearly distinct from one another (at least in theory), with private security contractors only allowed to fight defensively and working primarily to guard a person or static site, not fighting offensively to secure a larger strategic goal as the military does. Finally, each group has a distinct level of *capability* associated with it, due to factors such as training and institutional support (the Reconstruction Operations Center in Iraq, for instance), as well as the quality of equipment to which each group

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[95] structure. (n.d.). *WordNet 3.0.* Princeton University. Accessed February 8, 2008 at http://dictionary.reference.com/browse/structure.
[96] Kenneth N. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979), 82.

is given access. Interestingly, in some cases PSCs have access to better equipment than do military units, which would have a beneficial impact on PSC capability relative to military capability in those cases. The multiple, continuous references in the interview data to these structural factors as causes of PSC-military coordination problems will provide support for the notion that structural factors have significant ramifications for the success of PSC-military field coordination.

Measurements of identity are similarly varied across the social sciences. Identity has not been analyzed frequently at sub-state levels within the field of International Relations, at least not in a systematic manner. As a recent work by Abdelal et al., in conjunction with the Harvard Identity Project, notes, "Despite – or perhaps because of – the sprawl of different treatments of identity in the social sciences, the concept has remained too analytically loose to be as useful a tool as the literature's early promise had suggested."[97] Abdelal et al. develop a framework for the operationalization of collective identity, arguing for a distinction between the content and level of contestation of collective identities. They further disaggregate the content of an identity into four non-mutually-exclusive types: (1) constitutive norms; (2) social purposes; (3) relational comparisons with other social categories; and (4) cognitive models.[98] Constitutive norms refer to "the formal and informal rules that define group membership," while social purposes refer to "the goals that are shared by members of a group."[99] Relational comparisons, meanwhile, refer to "defining an identity group by what it is not, i.e., the way it views other identity groups, especially

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[97] Rawi Abdelal, et al, "Identity as a Variable," *Perspectives on Politics* 4 (2006): 1.

[98] Abdelal et al., 2006: 7-16.

[99] Abdelal et al., 2006: 5-6. Note here the distinction and overlap between the types of "rules" cited in the definition of structure versus those mentioned in the definition of constitutive norms. The rules making up the structure of PSC-military co-deployments are formal, institutionalized rules defining what each type of actor is allowed to do (for instance, rules of engagement); these rules exist whether or not they are followed in practice. These structural rules in turn define actors' roles, which, when acted out repetitively over time, become the constitutive norms defining each group. The rules making up constitutive norms, then, are both formal and informal rules that are actually used in practice.

where those views about the other are a defining part of the identity." Finally, cognitive models refer to "the worldviews or understanding of political and material conditions and interests that are shaped by a particular identity."[100] In addition to the four types of content, the degree to which a group agrees on its identity (contestation) is an element of collective identity.[101] Table 2.1 below depicts these abstract structural and identity variables.

Both the civil-military relations literature and the professions literature are key to an understanding of military identities and the potential for friction between military and private security contractors' identities. First, both literatures highlight robust indicators of "constitutive norms" and "social purposes." In his renowned work on civil-military relations, Samuel Huntington suggests that a profession is a particular type of functional group with highly specialized characteristics, distinguished by its expertise, responsibility, and corporateness.[102] In the military context, "the modern officer corps is a professional body and the modern military officer is a professional man."[103] The military officer's professional expertise is "the direction, operation, and control of a human organization whose primary function is the application of violence."[104] Regarding his professional responsibilities, "The officer is not a mercenary who transfers his services wherever they are best rewarded . . . The motivations of the officer are a *technical love for his craft* and the *sense of social obligation to utilize this craft for the benefit of society*" (emphasis added).[105] This sense of social obligation clearly speaks to the military officer's social purposes,

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[100] Abdelal et al., 2006: 6.
[101] Abdelal et al., 2006: 17. While this study focuses more on identity content than levels of contestation regarding identities, it should be noted that contestation – particularly among PSC personnel – is ever-present. The variety of services that PSCs provide, as well as the various means they employ to perform these services, are both symptoms and causes of this contestation. The typology developed in Chapter Seven depicts such distinctions, illustrating why contestation occurs.
[102] Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap Press, 1959), 7-8.
[103] Huntington, 1959: 7.
[104] Huntington, 1959: 11.
[105] Huntington, 1959: 15.

Table 2.1:
Structural vs. Identity Variables

	Structural Variables	Identity Variables
PSC	**Ordering Principles**: • Loosely hierarchical • Chain of command • Order as laid out in doctrine **Functions**: • Defensive fighting to guard a person, static site, or convoy **Capability**: • Depends upon the firm in question • In general, training is not standardized & institutional support varies • Sometimes better access than military to high-tech. equipment	**Constitutive Norms**: • Previous military service and desire to maximize financial earning power • Professional jurisdiction **Social Purposes**: • Range from defending country to defending economic enterprise **Relational Comparisons**: • PSC personnel self-perceptions relative to their perceptions of military identities **Cognitive Models:** Private sector as innovative and profitable alternative to military service
Military	**Ordering Principles**: • Strictly hierarchical • Chain of command • Order as laid out in doctrine **Functions**: • Offensive and defensive fighting to secure strategic object **Capability**: • More standardized training and better institutional support than PSCs • Equipment sometimes worse than PSCs	**Constitutive Norms**: • Personal ethic of civic duty • Professional jurisdiction • Corporateness • Technical love of craft **Social Purposes**: • Aim to protect the country, using both offensive and defensive methods • Sense of social obligation to utilize craft for society's benefit **Relational Comparisons**: • Soldiers' perceptions of their own identities in relation to those of PSC personnel **Cognitive Models**: • Military as profession • Military as organization

while the love for his craft is a norm constituting his identity.   Another norm constituting the military officer's identity is *corporateness*:

> The functional imperatives of security give rise to
> complex vocational institutions which mold the officer
> corps into an autonomous social unit . . . The corporate
> structure of the officer corps includes not just the
> official bureaucracy but also societies, associations,
> schools, journals, customs, and traditions."[106]

Huntington thus gives us an idea of the constitutive norms and social purposes comprising a military professional's identity, and of its significance in the context of civil-military relations. A leading theorist on the professions, Andrew Abbott, adds to these identity characteristics when he notes that the Army is unique in that it is simultaneously a *profession* and an *organization* (cognitive models), and that it is one of the few professions to still develop lifelong *careers* for its workforce (a constitutive norm).[107]

The second contribution of these literatures - particularly the professions literature – is found in its insights on professional jurisdiction and the potential for friction to develop between different professions and professional identities. Abbott notes that societal trends are causing professions to change in one direction and organizations to change in another direction, and that the experience and ideal of a career are disappearing from the workforce in almost all professions besides the military. Therefore, he argues, the ability of formal careers to reconcile the dual demands of the military as profession and the military as organization is dwindling:

> The Army is changing like most other producing
> organizations on the one hand, and the Army is
> changing like most other professions on the other. Since

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[106] Huntington, 1959: 16.
[107] Abbott defines "career" in this context as "the idea of a single occupational skill or identity characterizing individuals for their entire working lives." Andrew Abbott, "The Army and the Theory of Professions," in *The Future of the Army Profession*, ed. Don M. Snider and Gayle L. Watkins (Boston: McGraw-Hill, 2002), 530-531.

> those trends are moving in unrelated directions, the
> result has been to put a well-nigh unbearable strain on
> the Army's longstanding attempt to be an organization
> and a profession at the same time . . . The development
> of formally patterned careers is the Army's chief
> mechanism for reconciling the demands of its dual
> nature as an organization and as a profession . . . The
> experience, and to some extent even the ideal, of career
> is disappearing from the labor force. Military officers,
> clergy, and professors are among the few holdouts.[108]

This statement clearly indicates the potential for friction to develop between identities within a particular profession, thus challenging the ability of that profession to survive, at least in its current form.

Friction can develop between the identities of different professions as well, as the professional jurisdiction arguments of the professions literature demonstrate. Abbott claims that professions are "exclusive occupational groups applying somewhat abstract knowledge to particular cases," and says that the interrelations between professions are determined by how each group controls its knowledge and skill.[109] He develops a "turf-war model" to explain competition between professions, writing of a "system of professions" in which "each profession has its activities under various kinds of jurisdiction," and in which "jurisdictional boundaries are perpetually in dispute."[110] Although Abbott later argues that the Army does not fall into this static "turf war" model, Richard Lacquement recognizes the propensity for jurisdictional competition over the core competencies traditionally associated with the professional military:

> Many responsibilities traditionally associated with the
> Army have been challenged and claimed by others.

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[108] Abbott, 2002: 530-531. Interestingly, the proliferation of PSCs that recruit senior military officers, particularly Special Operations Forces, has the potential to change the military's ability to develop long-standing career trajectories. According to Abbott's logic, this could seriously impair the military's ability to reconcile its dual roles as an organization and a profession.

[109] Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago, 1988), 8.

[110] Abbott, 1988: 2.

Moreover, laudable Army service in missions that have little to do with the use of coercive force blur public understanding of the Army's core roles, thus making it easier to challenge those core roles. Strategic leaders must recognize this dynamic context as they define the Army's appropriate roles."[111]

Deborah Avant makes a related point:

Its ready use of contractors for tasks that are crucial to both the development of the profession in the future and to the success of new missions . . . has generated competition between the Army and private security companies over who will shape the development of future professionals and has degraded the Army's ability to undertake successful missions on its own."[112]

The extent to which PSC personnel can challenge the military's jurisdiction over its core competencies – which Lacquement suggests include major combat operations (war), stability operations, strategic deterrence, and homeland security – is clearly open to question.[113] Thus, one questions the extent to which competition over professional jurisdiction contributes to PSC-military resentment and coordination problems in the field.

Abdelal et al.'s framework, along with the characteristics of military professionals which Huntington, Abbott, and Lacquement noted, guide the conceptualization of military and PSC identities used here. For instance, in this study I conceive of military identities in terms of a personal ethic of civic duty (a

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[111] Richard Lacquement, "Mapping Army Professional Expertise and Clarifying Jurisdictions of Practice," in *The Future of the Army Profession*, ed. Don M. Snider and Lloyd J. Matthews (Boston: McGraw Hill, 2005), 226. See also Abbott, 2002: 534-535.
[112] Deborah Avant, "Losing Control of the Profession Through Outsourcing?," in *The Future of the Army Profession*, ed. Don M. Snider and Lloyd J. Matthews (Boston: McGraw Hill, 2005), 272.
[113] Lacquement, 2005: 226. A related question exists regarding how such a takeover of the military's professional jurisdiction by the private military and security sector would affect U.S. civil-military relations. Theoretically, it would appear that this competition – if the end result were a decrease in military professionalism and a strengthening of the private sector's professional hold over formerly military functions - could decrease objective civilian control over the U.S. military. While this issue is not the main focus of this paper, it is worth mentioning as a theoretical consideration for future research.

constitutive norm), the aim of defending and protecting the country (a social purpose), relational comparisons in terms of how soldiers perceive their own identities in relation to the identities of PSC personnel, and cognitive models in terms of soldiers' patriotically-motivated worldviews. In contrast, I conceive of norms of previous military service and a desire to maximize financial earning power as constituting the identities of PSC personnel. The social purposes of PSC personnel encompass but are not limited to those of the military, as PSCs may be hired to guard private business installations in addition to governmental sites and targets. Thus, their social purposes range from defending the country to defending an economic enterprise. I conceive of relational comparisons in terms of how PSC personnel perceive their own identities in relation to military identities. Because most PSC personnel have military backgrounds, which I expect will have been instrumental in shaping their worldviews, I do not anticipate vast differences between PSC and military cognitive models.

If any of these identity characteristics are repetitively cited in the interview data as causes of or motivations for poor coordination between PSC personnel and soldiers in the field, such statements will support the notion that identity factors play a significant role in controlling PSC-military field coordination. Continuous references to competition over either group's professional jurisdiction will support this notion as well, as professional jurisdiction is a constitutive norm defining each group's collective identity. Analysis of interview data illustrates the relative salience of these identity characteristics versus structural factors as explanations for particular PSC-military field interactions.

PSCs' Impact on Military Effectiveness & the Democratic Advantage:
Theory & Hypothesis Development

This study now has a conception of military effectiveness to guide it, as well as an understanding of how military effectiveness fits into arguments regarding the democratic advantage, the state, civil-military relations, the professions, and the structure-identity dichotomy. As relatively new actors in the field of combat, private security companies and their personnel are likely to have some effect both on military effectiveness and, by extension, on the democratic advantage. The task at hand is to determine what these effects are, and how the relevant actors can best deal with them.

Media reports abound about friendly fire incidents between PSC personnel and the military in Iraq, about the decrease in military retention rates as senior military professionals leave the service for the private sector, and about increasing numbers of security contractors killed in Iraq.[114] These events have ramifications for military effectiveness, as do many other issues related to PSCs. On one side of the debate, scholars and PSC industry representatives argue that PSCs constitute force multipliers who are highly skilled, usually have prior military training, and serve only defensive purposes on the battlefield.[115] Such claims lead to the hypothesis that PSCs will cause

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[114] David Phinney, "Marines Jail Contractors in Iraq: Tension and Confusion Grow Amid the 'Fog of War,'" *CorpWatch* (June 7, 2005). Accessed December 13, 2005 at http://www.corpwatch.org/article?php.id=12349. John M. Broder and James Risen, "Contractor Deaths in Iraq Soar to Record," *The New York Times* (May 19, 2007). Accessed May 19, 2007 at http://www.nytimes.com/2007/05/19/world/middleeast/19contractors.html?hp=&pagewanted=print. Christopher Spearin, "Special Operations Forces a Strategic Resource: Public and Private Divides," *Parameters* (Winter 2006-07): 59-65.
[115] Doug Brooks, "Hope for the 'Hopeless Continent': Mercenaries," *Traders: Journal for the Southern African Region* 3 (July-October 2000). Derek Wright, "Point of View: PSCs Like Saito Key to Peace," *The Asahi Shimbun* (July 15, 2005). Accessed November 14, 2007 at http://ipoaonline.org/php/index.php?option=com_content&task=view&id=64&Itemid=82&date=2007-08-01. Deborah Avant, "Private Security and the Prospects for Institution Building and Democracy in Transitional States," *Paper presented at the annual meeting of the American Political Science Association, Washington, DC* (September 1, 2005). Accessed November 14, 2007 at http://www.allacademic.com/meta/p41783_index.html

a net increase in military effectiveness by augmenting both the quantity and *quality* of existing forces, by increasing the military's *responsiveness*, and by increasing *skill* through the strengthening of commanders' tactical leadership capabilities as they are relieved of non-core military tasks:

> H1: PSCs should cause a net increase in democracies'
> military effectiveness, by:
> - Increasing *responsiveness*
> - Increasing *quality* by providing highly-capable weapons and equipment and/or by acting as force multipliers
> - Increasing *skill* by strengthening commanders' leadership capabilities

If H1 is strongly supported by the data, it will indicate that the growth in PSC hiring will make those actors hiring PSCs more militarily effective. Assuming that the PSC trend continues to operate primarily amongst democracies, growth in PSC hiring will also increase the prospects for these democracies to experience the military effectiveness side of the democratic advantage. Greater PSC use will translate into more battlefield success for democracies, as long as the use of private force does not negatively impact the selection effects side of the democratic advantage to an equal or greater degree than its positive impact on military effectiveness. This in turn strengthens the arguments relating to the myriad benefits of democratic systems of government. This logic is depicted below:

| PSCs increase military effectivenes | + | PSC hiring increases (mainly among democracies) | ⇨ | More democratic states will be militarily effective | + | Democracies will experience more battlefield success, *if their conflict selectivity is not disproportionately affected* |
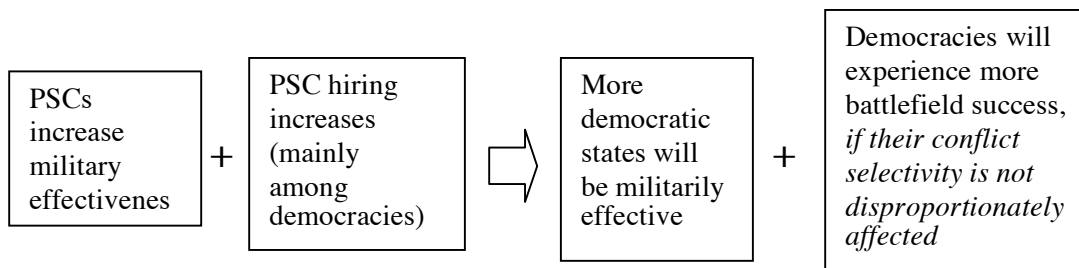
The findings presented in the following chapters show that a situation such as that depicted above is most likely when PSCs are deployed in theaters in place of the

military or when they are structurally integrated into the military alongside which they are deployed, as both of these scenarios avoid the problems of PSC-military field coordination which can effectively decrease military effectiveness. History has shown that PSCs are typically deployed instead of the military in relatively small or covert conflicts, particularly in situations where major state powers want to shape conflict outcomes without highly visible involvement. However, such situations do not necessarily involve democratic actors, or at least not only democratic actors. Furthermore, the selection effects side of the democratic advantage is more likely to be negatively impacted in situations in which PSCs substitute for national military forces. Thus, the effects of PSCs on the democratic advantage in these scenarios must be assessed on a case-by-case basis.

I derive four sub-hypotheses related to H1 from the debate surrounding the legal and ethical basis for warfare, and the opaque status of PSCs under the laws of war. Numerous reports have emerged detailing legal and ethical abuses in the field by contractors who, by and large, are not held responsible for their actions by any legal authority.[116] As illustrated by the local outrage caused by the highly publicized

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[116] The Associated Press, "Legal Avenues Against Blackwater Murky," *The New York Times* (October 3, 2007). Accessed October 3, 2007 at http://www.nytimes.com/aponline/us/AP-Blackwater-Legal.html?pagewanted=print. Alissa J. Rubin and Paul von Zielbauer, "Blackwater Case Highlights Legal Uncertainties," *The New York Times* (October 11, 2007). Accessed October 11, 2007 at http://www.nytimes.com/2007/10/11/world/middleeast/11legal.html?_r=1&hp=&oref=slogin&pagewanted=print. "Blackwater Christmas Eve Shooting and Immunity," September 12, 2007. Accessed October 14, 2007 at http://www.blackwaterblogger.com/2007/09/accountability1.html. Mark Hemingway, "Blackwater's Legal Netherworld: Private Contractors Are Subject to Military Justice – Or Are They?," *National Review Online* (September 26, 2007). Accessed September 26, 2007 at http://article.nationalreview.com/?q=MmYzMTkwMzQ2OTVhNGY2MGQzMDY0MTJiM2ExYmY3YmY=. David Stout and John M. Broder, "Report Depicts Recklessness at Blackwater," *The New York Times* (October 1, 2007). Accessed October 1, 2007 at http://www.nytimes.com/2007/10/01/washington/01cnd-blackwater.html?_r=1&hp=&oref=slogin&pagewanted=print. James Glanz and Alissa J. Rubin, "From Errand to Fatal Shot to Hail of Fire to 17 Deaths," *The New York Times* (October 3, 2007). Accessed October 3, 2007 at http://www.nytimes.com/2007/10/03/world/middleeast/03firefight.html?hp=&pagewanted=print. David Johnston and John M. Broder, "F.B.I. Says Guards Killed 14 Iraqis Without Cause," *The New York Times* (November 14, 2007). Accessed November 14, 2007 at

September 2007 incident in which Blackwater USA personnel shot and killed seventeen Iraqi civilians and wounded twenty-seven others in Baghdad's Nisour Square while guarding a diplomatic convoy, private security personnel can undermine the military's war for the "hearts and minds" of local civilians by failing to abide by the laws and norms of Just War. A strong line of argument exists which insists that compliance with the laws of war better enables militaries to fight effectively, particularly in counterinsurgencies (the so-called "hearts and minds" approach), while another line of argument states that reliance on brutality toward civilians and noncompliance with the laws of war better serves military effectiveness (the so-called "draining the sea" approach).[117] For instance, recent research by Lieutenant Colonel Isaiah Wilson III and Jason Lyall indicates that the development of on-the-ground information networks and good relations with local civilians are the keys to waging a successful counterinsurgency.[118] Others argue that brutality against civilian populations is an approach that is frequently pursued in counterinsurgency warfare and protracted wars of attrition, in an attempt to weaken the enemy quickly and end the conflict as soon as possible.[119] Interestingly for the study at hand, Gil Merom's research shows that democracies have difficulty employing the brutal tactics that, he argues, are essential to waging a successful counterinsurgency. This difficulty stems

http://www.nytimes.com/2007/11/14/world/middleeast/14blackwater.html?_r=1&hp=&pagewanted=print.

[117] See for instance Max Boot, "The Lessons of a Quagmire," *The New York Times* (November 16, 2003). Accessed February 8, 2008 at http://query.nytimes.com/gst/fullpage.html?res=9803E5DD1038F935A25752C1A9659C8B63&sec=&spon=&pagewanted=print; Max Boot, "An Iraq To-Do List: How We Can Help the Surge Succeed," *The Weekly Standard* 12, 34 (May 21, 2007). Accessed February 8, 2008 at http://www.weeklystandard.com/Utilities/printer_preview.asp?idArticle=13643&R=139501DB68; Benjamin Valentino, Paul Huth, and Dylan Balch-Lindsay, "'Draining the Sea': Mass Killing and Guerilla Warfare," *International Organization* 58 (Spring 2004): 375-407; Alexander B. Downes, "Desperate Times, Desperate Measures: The Causes of Civilian Victimization in War," *International Security* 30, 4 (Spring 2006): 152-195.

[118] LTC Isaiah Wilson III and Jason Lyall, "Rage Against the Machines: Explaining Outcomes in Counterinsurgency Warfare," *International Organization*, forthcoming.

[119] Valentino et al., 2004: 376; Downes, 2006: 155-156.

mainly from the structural constraints of democratic systems combined with the electorate's normative antipathy for brutal tactics.[120] Because there is a vigorous debate at present regarding PSCs' accountability under the laws of war, and due to this study's focus on counterinsurgency warfare, it is appropriate here to test the impact of private security contractors' compliance with legal and normative rules of ethical warfare on military effectiveness. Hence, the first sub-hypothesis, drawn from the "hearts and minds" school of thought, is as follows:

> H1a: Private security contractors' compliance with the
> laws of war increases military effectiveness by:
>   - Supporting the war for the "hearts and
>   minds" of the citizenry, and thus
>   increasing *responsiveness*

Looking at the issue in another light, from the view that IHL non-compliance is a means of hindering guerilla warfare (the "draining the sea" approach), we get a second sub-hypothesis regarding IHL compliance:

> H1b: Private security contractors' compliance with the
> laws of war decreases military effectiveness by:
>   - Limiting PSCs' ability to take on the dirty
>   jobs necessary to defeat insurgencies, thus
>   decreasing *responsiveness*.

It is, of course, necessary to test the opposing hypotheses as well. The third sub-hypothesis is therefore:

> H1c: Private security contractors' non-compliance with
> the laws of war decreases military effectiveness
> by:
>   - Undermining the war for the "hearts and minds" of the
>   citizenry, thus decreasing *responsiveness*.

And the fourth sub-hypothesis, drawn from the "draining the sea" perspective, is:

> H1d: Private security contractors' non-compliance with the
> laws of war increases military effectiveness by:

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[120] Merom, 2003: 15.

- Enabling PSCs to take on the dirty jobs necessary to defeat insurgencies, thus increasing *responsiveness*.

If H1a or H1c are supported by the data, it will indicate to governments and companies purchasing PSCs' services that they should discriminate against those firms not employing practices and rules of engagement that comply with international humanitarian law and other laws of war. Thus, the findings related to this hypothesis could have grave ramifications for the conduct of PSCs, putting certain firms at risk of losing business unless they modify their practices. If the data strongly support H1b or H1d, this will indicate to purchasers of PSC services that firms' records of compliance with International Humanitarian Law are irrelevant to contracting decisions, or even that poor records of adherence to international laws of war are desirable traits when seeking out a private security firm.[121]

In contrast to H1, reports from the field in Iraq indicate that the presence of PSCs is causing coordination problems between the military and PSCs, and among military units themselves.[122] These reports lead to another hypothesis, which holds that PSCs cause a net decrease in military effectiveness by: (a) decreasing *integration*; and (b) decreasing *skill* by hindering commanders' leadership capabilities and soldiers' motivation levels.[123]

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[121] A potential future research agenda might examine whether PSC compliance with IHL impacts military effectiveness differently in weak versus strong states. Because PSCs enable leaders of weak states to retain power despite the lack of a state infrastructure and bureaucracy, one could sensibly hypothesize that brutality and noncompliance with IHL would occur more commonly in such scenarios. Conversely, because strong states use PSCs increasingly to perform SSTR missions, it is sensible to hypothesize that IHL compliance would best serve the goals of such missions.

[122] United States Government Accountability Office, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," Publication No. GAO-05-737 (Washington, DC: July 2005); United States Government Accountability Office, "Rebuilding Iraq: Actions Still Needed to Improve Use of Private Security Providers," Publication No. GAO-06-865T (Washington, DC: June 13, 2006).

[123] These reports indicate that PSCs lower military skill by weakening officers' abilities to competently execute tactics and to seize the initiative when opportunities present themselves. Because it is impossible to separate PSC and military actions completely in situations of side-by-side deployment, both hypotheses consider PSCs to constitute at least a portion of the total deployed force in the country in question.

H2: PSCs should cause a net decrease in military effectiveness by:
- Decreasing *integration*
- Decreasing *skill*

If H2 is strongly supported by the data, it will indicate that the growth of the PSC hiring trend will make actors hiring PSCs less militarily effective. Assuming that PSCs continue to be prominent mainly amongst democracies, support for H2 will also indicate a decrease in the propensity for democracies to win the conflicts into which they enter, and a corresponding decrease in the strength of arguments touting the benefits of democracy. This logic is depicted below.
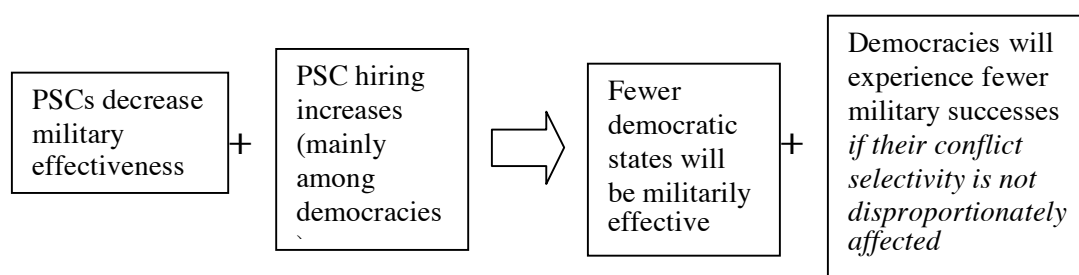
The primary mechanisms through which PSCs cause such a net decrease in military effectiveness in these situations are coordination problems with the professional military. As detailed in Chapter Five, breakdowns in communications, shortcomings in training and doctrine, and resentment are all instrumental in causing coordination problems between PSC and military personnel deployed alongside each other in the field of combat. The professional competition and other identity-related issues noted earlier in this chapter are key factors causing PSC-military resentment, while the communications, training, and doctrinal issues are all clearly structural issues. These coordination problems decrease the *integration* of the entire occupying force (comprising both professional soldiers and PSC personnel). Furthermore, by failing to communicate with military units when traveling through their area of responsibility and then requesting quick-reaction forces (QRFs) when they run into trouble with the enemy, PSCs detract from the military's ability to achieve particular

tasks and to carry out orders – thus decreasing the force's *skill* as defined above. These coordination problems occur predominantly in cases where the military and PSCs are co-deployed alongside each other in the field. Notably, doctrinal and technological improvements are being developed which may, over time, remedy these coordination issues to a large extent. This will, however, take time and consistent analysis to ensure that effective rules and systems are implemented.[124]

Finally, we must leave open the possibility that PSCs have no discernible impact on military effectiveness. The study's null hypothesis is thus as follows:

> H0: PSCs should have no discernible effect on democracies' military effectiveness. Either they do not affect military effectiveness in any manner that would show up in this study, or their positive and negative effects on military effectiveness completely offset one another.[125]

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[124] Colin M. Alberts, Gerard J. Christman, and Michael P. Dowdy, "Achieving Interoperability: Information Sharing via DoD's Extranet in Stability Operations," *Journal of International Peace Operations* 3, 2 (September-October, 2007): 10. See also Eric Schmitt and Thom Shanker, "Pentagon Sees One Authority Over Contractors," *The New York Times* (October 17, 2007). Accessed November 14, 2007 at http://www.nytimes.com/2007/10/17/washington/17blackwater.html?ei=5070&en=c257b0742b5a6103&ex=1193284800&adxnnl=1&emc=eta1&adxnnlx=1195045958-w7UnPIjzvdNLbjO6ySux3Q.

[125] There is a candidate hypothesis worth mentioning here: that democracy type impacts military effectiveness and the democratic advantage. The usefulness of including this hypothesis in the study depends upon whether there is any relevant variation in military organizations across different types of democracies, such that different democracies may be affected differently by PSCs. Although this may be a relevant hypothesis to keep in mind in the context of this topic, it is not included in this study for two reasons. First, given the dearth of cases it may be impossible at this point to test whether any variation in democracies' military organizations causes different democracies to be affected differently by PSCs. Only the United States and its coalition partners have deployed modern-day PSCs alongside the military to any sizable extent, and we would most expect to see the effects of variation in democracies' military organization in cases where the military is deployed alongside PSCs. Second, the type of democracy may not matter for the effects of PSCs on democracies and their militaries for the foreseeable future, given the current nature of warfare and the growing propensity to fight in multilateral coalitions or alliances. Indeed, as more and more democracies fight together in coalitions, the relevance of the type of democracy to the question of PSCs' effects on military effectiveness is diminished. In addition to this transnationalization of warfare, the United States' hegemonic position and ideology of democracy-promotion make it likely that any war involving democracies fought in the foreseeable future will be led by the United States. Thus, we can omit this hypothesis from the study at hand, simply noting its potential relevance in future studies of this nature.

Using these hypotheses, the analysis in the following chapters seeks to build upon several of the dominant works in the International Relations field examining private security forces and military effectiveness in the context of democracies and counterinsurgency warfare. In particular, I aim to draw from, synthesize, and expand upon the works of Deborah Avant, Risa Brooks, and Gil Merom.

The study builds upon Avant's research on how PSCs impact the state, adopting her notion of PSCs' different effects on state building in weak versus strong states to inform its conceptualization of how PSCs interact with democracies in counterinsurgency scenarios. As noted above, PSCs allow weak state leaders to outsource their violent activities in order to be able to remain in power without having to develop a state apparatus. Meanwhile, PSCs allow strong interventionist states such as the United States to outsource the operations traditionally thought of as "operations other than war," in order to maintain their military capacity for more traditional war-fighting roles. In doing so, PSCs hinder the prospects for the development of long-term viable state apparatuses in the target regions of the world where strong states have an interventionist presence.

PSCs also allow both weak and strong states to outsource violence in order to distance themselves from the normative implications of potentially unethical actions in warfare. This rationale for outsourcing violence is particularly relevant in the context of democracies fighting counterinsurgencies, which, as Merom notes, are often difficult wars for democracies to win due to the democratic electorate's unwillingness to use brutal tactics. Yet, because there is a strong argument in the International Relations and Strategic Studies fields that focuses on winning the war for the "hearts and minds" of the public as opposed to the use of these brutal tactics, this study questions whether outsourced brutality in counterinsurgency warfare or PSC compliance with international humanitarian law has a better impact on military

effectiveness. This addition of an IHL component to Brooks' otherwise comprehensive definition of military effectiveness is necessary due to her definition's apparent focus on major wars as opposed to counterinsurgencies.

In light of this synthesis, the view espoused in the following pages is that PSCs allow states to circumvent structural constraints on leaders' behavior, often at the cost of the public's normative preferences. Simultaneously, PSCs have varying effects on military effectiveness, depending on the consistency between their own structure and identity and that of the relevant military forces, as well as on whether the public learns of their deployments and the possible moral implications of such deployments.

<p style="text-align:center">Variables & Case Selection</p>

The topic of modern-day military and security privatization carries with it the problem of very few available cases, owing to the relative novelty of the security privatization trend (at least in its current form) and the inherently secretive nature of the industry and its work. This problem is compounded by the fact that the few cases that do exist show little variation in the democracies involved in them, with the United States and Britain accounting for almost all of the democratic state involvement in these cases. Yet, both the transnationalization of warfare and the United States' hegemonic position make it likely that future democratic wars will be fought in multinational coalitions that include the United States.[126] Above all, this study focuses on cases involving the United States because security privatization is a serious issue facing U.S. policymakers at present, and because the U.S. is a major democracy, a major military power, and a major innovator. Indeed, the fact that U.S. defense expenditures are greater than the next twenty-four countries combined means that the

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[126] On the issue of future wars being fought in multinational coalitions, see General Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York: Alfred A. Knopf Publishers, 2007), 303-307.

United States will likely continue to be one of the most relevant actors for the private security industry.[127] Therefore, it makes sense to examine PSCs' impact in the context of the United States. Furthermore, because the United States is a major democracy with arguably the strongest military in the world, cases relevant to this topic that involve the United States are hard cases in which we would expect PSCs to have very little incremental effect on military effectiveness and the democratic advantage.

There are three variables at play in the hypotheses elaborated above. The independent variable (IV1) for H1 and H2 is the use of private security companies in conflicts, and the dependent variable (DV1) for H1 and H2 is military effectiveness, measured as detailed above. There is a second independent variable (IV2) at play in the four sub-hypotheses (H1a, H1b, H1c, and H1d): level of PSC compliance with international laws of war.

This study categorizes the available historical and modern cases into three different "types" of cases, each selected on the first independent variable (IV1): cases in which the democratic state's military is directly involved in the conflict alongside PSCs in their current corporate form ("co-deployed"), cases in which democratic states hire PSCs to become involved in a conflict instead of the democratic state's professional military (substitution), and cases in which a mercenary force is assimilated into a regular military force (integration).[128]

In selecting cases to include in Chapter Three, I looked first at the pool of historical cases in which grouped mercenary forces were integrated into the regular military, in order to inform modern cases in which PSCs must coordinate smoothly with regular military forces. I then narrowed my pool of possible cases by looking for

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[127] Avant, 2005b: 38.

[128] As noted by King, Keohane, and Verba, "the best 'intentional' design selects observations to ensure variation in the explanatory variable (and any control variables) without regard to the values of the dependent variables." Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry* (Princeton: Princeton University Press, 1994), 140.

cases that included a normative element, and could speak to the issue of compliance with humanitarian norms of warfare. Chapter Three therefore examines the French Foreign Legion in Indochina and Algeria, and the Hessian forces fighting alongside the British in the American Revolution.

In selecting cases to include in Chapter Four, I looked first for cases in which modern PSCs were substituted for the regular military. I then narrowed that pool of possible cases by looking only at those cases in which a democratic state was involved. To further narrow down the pool of cases, I conducted preliminary research to determine how easily data and evidence could be accessed for each case, choosing to include in Chapter Four only those cases on which ample evidence existed in the public domain. While this last selection criterion leaves open the possibility of selection bias, I included four cases in Chapter Four – more than in any of the other chapters – in an effort to minimize selection bias and to see general trends across the cases. Chapter Four therefore looks at MPRI in Croatia, DynCorp in Colombia, Executive Outcomes and Sandline in Sierra Leone, and Sandline in Papua New Guinea.

Finally, in selecting my cases for Chapter Five, I looked first for cases in which modern PSCs were deployed to the same theatre but not integrated into the regular military, in a relatively high ratio of PSCs to military personnel. I also aimed to consider the most policy-relevant cases for the United States. Chapter Five therefore examines the United States' use of PSCs in both the Iraq and Afghanistan conflicts from 2003-2007.

Data Sources & Methods of Analysis

Owing to the sensitive nature of research focused on private security companies and the military, primary source data on this topic are extremely difficult to

come by. Yet, the topic of military privatization has been gaining popularity in recent years among the media and academics, and it is thus possible to glean a considerable amount of information from newspaper and magazine articles, as well as from the numerous secondary accounts being published on the subject. In addition, democratic governments (particularly in the United States and Britain) are publishing an increasing number of unclassified reports relating to military and security privatization issues. The private security industry and its trade associations also increasingly publish articles relevant to the study at hand, including some authored by government officials. This project thus relies extensively on such media, industry, government, academic, and secondary-source documents, particularly in Chapters Three and Four.

Chapter Five similarly draws on media, industry, academic, and secondary source accounts for background information, but also strongly relies on two types of interview data. The first is a set of transcripts of interviews conducted by researchers for the Government Accountability Office (GAO) in connection with its 2005 and 2006 reports on "Actions Needed to Improve the Use of Private Security Providers in Iraq." I acquired these transcripts through a written request to the GAO in October 2006. They comprise twenty-four individual and small group interviews of military personnel of all ranks, U.S. Central Command (USCENTCOM) officials, U.S. and international private security company personnel and officials, officials from the Project Contracting Office (PCO) in Iraq, and U.S. government officials. Of these, I analyzed only the GAO's interviews of PSC and military personnel who had experience fighting or working in Operation Iraqi Freedom. These included interviews with fourteen military and thirty-three PSC personnel, conducted between 2004 and 2006.

The second type of interview data that Chapter Five relies upon is a comprehensive set of thirty-two original semi-structured interviews that I conducted in

2006 and 2007 specifically for this study. These interviews include conversations with academic experts on the issue of military privatization, high-level private security company officials, private security company operators (lower-level personnel), and U.S. Army soldiers of various ranks, ranging from non-commissioned officers to colonels. The private security company personnel and professional soldiers interviewed possessed experience in various theatres, ranging from Iraq to Afghanistan, the Balkans, South America, and several regions in both Africa and Asia. I intentionally sought out several of my interviewees due to their position – for instance, I selected various high-level PSC officials in this manner – and selected the remainder of my interviewees via "snowball" sampling, in which each interviewee referred one to three other potential interviewees. Due to the relatively small number of respondents, the sample cannot be said to be representative of all military or PSC views. The interviews do, however, illustrate distinct trends among the responses. Furthermore, they reinforce many of the things seen in the GAO interview transcripts, indicating that the findings elaborated in Chapter Five are robust.

While most of these interviews were conducted in person, approximately thirty percent of the interviews – mostly on the military side – were conducted as online, asynchronous, in-depth interviews. These are semi-structured interviews conducted via e-mail, involving multiple e-mail exchanges between the interviewer and interviewee over an extended period of time. This technique has several benefits, particularly given the sensitive nature of the topic at hand in this study, and the busy schedules and geographic distance separating many of the relevant interview participants from the researcher. This method has been shown to cost considerably less to administer than in-person interviews, allowing researchers to invite the participation of geographically-dispersed samples of people, and to "democratize and internationalize research," enabling researchers "to study individuals or groups with

special characteristics or those often difficult or impossible to reach or interview face-to-face or via telephone."[129] Owing to the bureaucratic difficulties involved in attempting to attain formal U.S. military approval to interview military personnel for a study on a relatively sensitive topic, this method was found to be especially appropriate for this study. Some potential weaknesses with this method should be noted, however. For instance, it is easier in an e-mail interview for respondents to give false responses, deceiving the researcher. Furthermore, there is a related risk that e-mail interviews lack the media richness of in-person interviews, owing to both parties' inability to pick up on visual or nonverbal cues. Yet, there is evidence that "in many cases e-mail facilitates greater disclosure of personal information, offering further benefits to both the researcher and participants."[130]

I analyzed the content and discourse of both my own and the GAO's interviews, looking specifically at instances where PSC-military coordination successes and failures were mentioned, and coding the causes of these coordination successes and failures as either structural or identity-based causes. I employed a similar method in analyzing the newspaper and secondary source data relevant to Chapters Three through Five, looking for structural- and identity-based indicators that PSCs were having a positive or negative impact on military integration, responsiveness, skill, or quality. In doing so, I traced the processes through which PSCs and their historical predecessors impacted military tactics, operations, and strategy in all of the cases examined in this study. While the data do not lend themselves to a highly quantified analysis, particular answers to the interview questions used in Chapter Five are broken down into proportions in order to

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[129] Lokman I. Meho, "E-Mail Interviewing in Qualitative Research: A Methodological Discussion," *Wiley Interscience* (May 25, 2006): 2, 5. Accessed October 20, 2007 at http://www.interscience.wiley.com.
[130] N. Bowker and K. Tuffin, "Using the Online Medium for Discursive Research About People With Disabilities," *Social Science Computer Review* 22, 2 (2004): 228-241.

demonstrate the relative frequency of different responses amongst various groups of respondents. Due to the difficulty in acquiring extensive, accurate, and quantifiable data on the topic of military privatization at this juncture, primarily qualitative methods of analysis are appropriate to the types of data collected and to the purposes of the project at hand.

CHAPTER 3

HISTORICAL INSIGHTS:
MERCENARY FORCES INTEGRATED INTO NATIONAL MILITARIES

The cases examined in the next two chapters are all relatively recent cases of modern private security companies acting as middlemen between the state and individual soldiers-for-hire. As will be seen, one critically significant issue determining the degree to which modern PSCs have a beneficial impact on military effectiveness is the degree to which PSCs are required to work alongside regular military forces, and the extent to which the two groups are able to work together harmoniously. The purpose of this chapter, therefore, is to explore the question of what it would take to make PSCs and the military work together well. To that end, and in an effort to generate insights that will be explored further in the following chapters, this chapter examines two historical cases that suggest relationships between certain uses of PSCs and particular outcomes. The analysis below explores the case of the Hessian Army hired to fight for the British in the American Revolution from 1776 through 1783, and the French Foreign Legion in Indochina in 1885 and in Algeria from 1954 to 1962.

These cases were selected for several reasons. Aside from constituting examples of successful integration of mercenary and regular forces, both cases entail a grouped mercenary force analogous in many ways to a modern PSC. Furthermore, both were engaged in counterinsurgency warfare to at least some extent in the conflicts examined, fighting on the part of major powers seeking to put down rebellions in their colonies. The style of warfare seen in these two cases is therefore comparable to the other cases explored in this study. Questions of compliance with normative expectations of humanitarian conduct arise in both cases as well. They are

therefore model cases from which to extrapolate lessons relevant to the study at hand and modern situations of PSC use. Both of these cases provide unique insight into the major theoretical issues probed in this study: the impact of private security companies on military effectiveness and the democratic advantage, the impact of force privatization on the state, and the relevance of structural and identity-based factors in defining PSC-military relations. Of primary importance, though, they provide insight into the policy-relevant questions examined herein, particularly the overarching question of how best to insure that PSC deployment has a beneficial impact on military effectiveness and, by extension, the democratic advantage.

With these contributions in mind, the remainder of this chapter proceeds first with an examination of the Hessian case, followed by an exploration of the French Foreign Legion case. Finally, the chapter examines the relationship of the state to the force in question in these two cases, with the aim of comparing this relationship with the state's role in the cases explored in Chapters Four and Five. Through this analysis, it becomes clear that structurally integrating a mercenary force into the regular military is quite effective in helping the overall force to overcome its identity differences with the mercenary force, improving the prospects that the mercenaries will improve rather than harm military effectiveness. Yet, such a strategy is not foolproof, as illustrated by the Hessian case and the case of the Foreign Legion in Algeria. The chapter's overall message, therefore, is that both structural and identity variables are significant in determining a hired force's impact on overall military effectiveness. The cases herein also indicate that: (a) regular military forces may be no more likely to comply with humanitarian norms than are mercenary forces; and (b) the structural constraints argued by democratic advantage theorists to be unique to democracies – and to lead to the theorized propensity for democracies to be

disproportionately victorious in their conflicts – might, in fact, occur in some non-democracies as well.

The Hessian Army in the American Revolution, 1776-1783

On June 16, 1775, Britain sustained huge losses at the Battle of Bunker Hill while striving to put down its American colonists' rebellion. The British government subsequently began to panic regarding its military capabilities to quell the rebellion in America. Fearing that the colonists could field 50,000 militiamen against the 30,000-man British Army (half of which was otherwise engaged in Ireland), the British proposed to hire 20,000 Russian mercenaries from Catherine the Great. Catherine, however, refused to hire out any of her soldiers on grounds of principle "simply to calm a rebellion which is not supported by any foreign power."[131] The British then made an attempt to hire the Scots Brigade from the Dutch, but the States General only offered to hire it out "on condition that it should not be used outside Europe."[132] As a last resort, Britain turned to the German provinces for mercenaries. Though the first few German princes refused the British request, in the end six different German rulers sold their troops to Britain to join the approximately 16,500 British soldiers fighting in the American Revolution at that point: Frederick II, Landgrave of Hesse-Cassel sent 16,992 troops, Duke Charles I of Brunswick sent 5,723 troops, Count William (Frederick II's son) of Hesse-Hanau sent 2,422 men, Margrave Charles Alexander of Anspach-Bayreuth sent 2,353 men, Prince Frederick of Waldeck sent 1,225 troops, and Prince Frederick Augustus of Anhalt-Zerbst sent 1,160 men.[133] Because Hesse-Cassel was the largest single contributor of the Germans deployed to America, the

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[131]Anthony Mockler, *The New Mercenaries* (London: Sidgwick & Jackson, 1985), 3.
[132] Mockler, 1985: 3.
[133] Edward J. Lowell, *The Hessians* (New York: Harper and Brothers, 1884), Chapter 2. Accessed October 18, 2007 at http://www.americanrevolution.org/hessindex.html.

entire German mercenary force deployed to America were commonly referred to as "Hessians."[134] Many of the Hessian soldiers deployed to America were forcibly recruited into the Hessian army in order to fill the quota of soldiers promised to Britain. By one account, Hessian recruiters either successfully delivered the recruit to the place of deployment or shot him; desertion was *not* considered acceptable, whether or not you were caught.[135] Another account notes several instances in which deserters were brutally punished, but not killed. In his diary, Hessian officer Johann Ernst Prechtel – when listing deserters – notes, "Private Schaeffer, of the first recruit shipment was brought back to the regiment and punished by having to run the gauntlet twelve times a day for two days in a row."[136] On another occasion, Prechtel notes that on February 17, 1780, "Private Katzenwinkel, who deserted on 10 March 1778, was not punished for his desertion, but because he had used the false name Major Ernst von Reitzenstein for a time, he was made to run the gauntlet twelve times."[137]

These two characteristics of the Hessian deployment call into question whether the Hessian soldiers were motivated to fight wholeheartedly in the American Revolution. Indeed, this was a foreign conflict in which they had no personal stake, and many did not want to be there to begin with. Some analysts and historians have argued that because of their lack of personal stake in the conflict, the Hessians were "reluctant soldiers at best."[138] The discussion below demonstrates that because the Hessian troops were structurally integrated into the British military as auxiliaries, they could benefit the British force without the risk that *integration* problems between the

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[134] Michael Lee Lanning, *Mercenaries: Soldiers of Fortune, from Ancient Greece to Today's Private Military Companies* (New York: Ballantine Books, 2005), 81.
[135] Lowell, 1884: Chapter 4.
[136] Johann Ernst Prechtel, *A Hessian Officer's Diary of the American Revolution*, trans. Bruce E. Burgoyne (Bowie, MD: Heritage Books, 1994), 95.
[137] Prechtel, 1994: 46. Running the gauntlet is a form of physical punishment entailing a person being made to run through a double line of soldiers who attempt to strike him or her as he or she passes. See "Gauntlet," *Dictionary.com Unabridged (v.1.1)*, Random House, Inc. Accessed May 22, 2008 at http://dictionary.reference.com/browse/gauntlet.
[138] Lanning, 2005: 85.

Hessian and British troops would hamper the prospects for success. More beneficial than this, though, was the Hessians' impact as force-multipliers for the British military. Yet, despite these structural pre-conditions for success, identity variables – namely, the Hessian reputation for unwonted cruelty – as well as the forcible recruitment structure for these forces, led them to have an overall impact on British military effectiveness ranging from negligible to negative.

"The Most Militarized Society in All Germany"

Mercenaries were prevalent in most European conflicts in the seventeenth and eighteenth centuries, many of them employed by the Prussian Army of Frederick the Great. After the Seven Years War ended in 1763, Frederick's foreign mercenaries returned to their home, causing the German princes to realize that they had a major war-fighting force available for export. The treaty concluded between Frederick II of Hesse-Cassel and Britain on January 31, 1776 followed almost a year of negotiations between the two states, and was easily the most lucrative of the six treaties that Britain entered into with German rulers for the provision of troops. This was partly due to the fact that the British expected that quick dispatch of the Hessian forces would end the revolt in one or two campaigns, and thus agreed to pay Frederick II twice the rate per soldier agreed on by the other German rulers until at least one year beyond the end of hostilities.[139] Furthermore, the British agreed to indemnify Hesse-Cassel for the destruction suffered during its last war, backdated the treaty by two weeks in order to give Hesse-Cassel a large amount of cash up front in order to stimulate recruitment efforts, and pledged military assistance to Hesse-Cassel in case of an attack against its territory. Significantly for the military deployment, the British promised not to break

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[139] Charles W. Ingrao, *The Hessian Mercenary State* (New York: Cambridge University Press, 1987), 137.

up the Hessian forces or to commit them outside of North America, and allowed them to be led by their own Hessian commanders.[140]

Frederick II anticipated that the beneficial treaty terms would allow him to reduce the country's taxes and otherwise improve its economy by bolstering the Hessian weapons and war-provisions industries and increasing soldiers' pay.[141] Recent crop failures had aggravated the country's dual burdens of food shortages and rural overpopulation, and he hoped that this treaty could alleviate these problems. The fact that Hesse-Cassel was clearly the most heavily militarized state in Europe certainly helped to cement the deal. The country maintained a 12,000-man field army and another 12,000 militia served in garrisons; in other words, there was one soldier for every fifteen citizens, a ratio double that of Prussia's soldier to civilian ratio.[142] It was relatively easy to maintain the military at these levels, as both economic and cultural incentives kept recruitment levels high. The many rural and urban poor in Hesse-Cassel often enlisted in the army in order to avoid starvation, and military families were exempt from paying income taxes. Furthermore, Hesse-Cassel's long history of wars against the Catholics and the French had instilled in the citizenry a general sense of obligation to defend the country. A sense of enthusiasm for military life grew out of the high esteem in which military life and glory were held, and the popular mythology of military adventure passed between generations.[143] Hence, Hesse-Cassel's entire identity was so enveloped in its military presence that one traveler described it as "the most militarized society in all Germany," and another noted "before I came to Hesse I hardly knew what a military nation was."[144] This military identity stemmed from Hesse-Cassel's relationship with the outside world as

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[140] Ingrao, 1987: 137.
[141] Ingrao, 1987: 137.
[142] Ingrao, 1987: 132.
[143] Ingrao, 1987: 131-132.
[144] Ingrao, 1987: 132.

well as the previously noted domestic influences, for its military was undisputedly the country's primary export industry. Scholar Charles W. Ingrao writes:

> Though it had originally been created as a means of defending the country, the mercenary army had become an end in itself by virtue of its importance to the economy and state finances. The public welfare, which had always been associated with successful economic and fiscal policies, now became tied to the well-being of the military establishment.[145]

When the time came to recruit additional soldiers to send to America, however, public support for the maintenance of a large military were in many cases subjugated to personal concerns of losing family members overseas in a conflict in which Hesse-Cassel itself had no stake. Indeed, many deserters were more concerned with the perils of the ocean crossing and the American wilderness, as well as the inevitable separation from their families, than they were opposed to fighting a foreign war. This is not to say, however, that deserters outnumbered volunteers signing up for the American deployment. Many joined the army specifically hoping to start a new life in America, a trend that the government could do little to forestall, as it was desperate to recruit the soldiers promised to Britain. Recruiters were also successful in their efforts by recruiting – forcibly at times – non-German citizens.

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Hessian Forces' Impact on Military Effectiveness &
The Democratic Advantage
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Both identity and structural factors were relevant in determining the Hessian forces' impact on British military effectiveness. Three structural factors, all of them *ordering principles* as discussed in Chapter Two, were significant: the fact that the Hessian troops were allowed to remain in their own units under their own commanders, the fact that they were simultaneously integrated into the British military

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[145] Ingrao, 1987: 134.

as auxiliary forces, and the fact that many of the Hessians were forcibly recruited to serve in this war in which they had no personal stake. They acted as a massive force multiplier, thus increasing the *quality* of the British deployment. Furthermore, the fact that they were a structured military force and were included in the structure of the British forces themselves meant that the Hessian troops knew their position in the chain-of-command and thus did not harm the *integration* of the overall British force. Yet, their forcible recruitment meant that many were not motivated to fight to the best of their abilities, which lowered their demonstrated level of *skill*. In fact, a large proportion of the 17,313 surviving German mercenaries at the end of the war had been wounded or captured without winning a single battle in which Hessians or other Germans were pitted exclusively against Americans.[146]

The key identity factor was, as mentioned above, the Hessian military identity (a constitutive norm). Faith in this aspect of their identity likely contributed to the Hessians' few military successes in the American Revolution, such as the Battle of Long Island. Yet, another identity characteristic recognized early on by the other parties to the conflict – the Hessians' tendencies for unwonted cruelty (a relational comparison) – led them to become the subject of ridicule and to become much less feared by the other parties to the conflict.[147] Hessian soldiers' journal entries from the American Revolution provide some indication of the Hessian forces' alleged cruel tendencies. Johann Georg Zinn, auditor and regimental quartermaster of the Hesse-Cassel von Donop Regiment, noted in his journal during the Battle of Long Island in August 1776, "Another patrol from our regiment brought in many prisoners, however." The translator of Zinn's journal and an expert on Hessian forces in the Revolution, Bruce Burgoyne, notes following this statement "[Code – Many high

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[146] Mark Mayo Boatner, *Encyclopedia of the American Revolution* (New York: David McKay Inc., 1969), 425.
[147] Boatner, 1969: 424-425.

ranking individuals at this time shed their ideas of being heroes. The prisoners who

knelt and sought to surrender were beaten.]"[148] Another journal entry by Carl

Friedrich Rueffer, an ensign and later a lieutenant in the Hesse-Cassel von Mirbach

Regiment, writes of Hessian treatment of suspects in a string of arson incidents during

the Battle of Harlem Heights in September and October 1776:

> There was a great fire behind our front at twelve o'clock
> at night, which we assumed to come from New York,
> and which we found to be the case as soon as it was
> light. About 100 rebels, who had remained hidden in
> the empty houses and cellars, set the fire and even
> though the English garrison, which consisted of three
> battalions, turned out at once, two churches and 400
> houses to windward were laid in ashes. One of these
> criminals was thrown into the fire, another hung by the
> legs and burned . . . Several other suspicious persons
> were now and again thrown into the flames.[149]

The rebel forces wrote of the Hessians' cruelty in more descriptive terms. In a Letter

to the Editor published in the *New York Times* in 1819, an anonymous writer quoted a

"letter written by one John A. Gillett to his wife:"

> I was prisoner by the 27th day of August by a people
> called heshens (Hessians) and by a party called Gagers
> (Yagers or Jagers) the most Inhuman of all mortals. I
> can't give Room to picture them here; but thus much I at
> first Resolved not to be taken but by the Impertunity of
> the Seven taken with me and being surrounded on all
> sides by numbers I unhappily surrendered; would to God
> I never had then I should never (have) known their
> unmerciful cruelties; they first disarmed me they
> plundered me of all I had, watch Buckles money and
> sum clothing after which they abused me by bruising my
> flesh with the Butts of their (guns). They knocked me

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[148] Johann Georg Zinn, "Journal Entry," in *Enemy Views: The American Revolutionary War as Recorded by the Hessian Participants*, ed. and trans. Bruce E. Burgoyne (Bowie, MD: Heritage Books, Inc., 1996), 71.
[149] Carl Friedrich Rueffer, "Journal Entry," in *Enemy Views: The American Revolutionary War as Recorded by the Hessian Participants*, ed. and trans. Bruce E. Burgoyne (Bowie, MD: Heritage Books, Inc., 1996), 79-80.

down. I got up and they (kept on) beating me almost all the way to there (camp) where I got shot of them – the next thing was I was almost starved to death by them . . . After giving you a small sketch of myself and troubles, I will Endeavor to faintly lead you into the poor situation the soldiers are in, especially those taken at Long Island, where I was; in fact, there cases are deplorable and they are Real objects of pity – they are still confined and in houses where there is no fire – poor mortals, with little or no cloths, perishing with hunger . . . occasioned for want of food their natures are brook and gone, some almost loose their voices and some their hearing. They are crowded into churches and there guarded day and night. I can't paint the horrible appearance they make – it is shocking to human nature to behold them. Could I draw the curtain from before you there expose to your view a lean Jawd mortal . . . surrounded with tattered garments, Rotten Rags close beset with unwelcome vermin.[150]

Such actions likely did not contribute to British military effectiveness, as American defeats of primarily German forces handily outnumbered German victories in the American Revolution, as discussed in detail below. Of particular importance were the Hessian defeats at Trenton, Bennington, and the attempted Springfield, New Jersey raid of Knyphausen.[151]

This is not to say that the Hessians had a consistently negative impact on British military effectiveness. They were a significant force-multiplier, if nothing else. The impact of the significant number of Hessians troops is recounted by nineteenth-century historian Edward J. Lowell, who notes that a German magazine editor during this period remarked that many letters from Hessian officers printed in newspapers ascribed a great deal of the victory in the Battle of Long Island in August 1776 to themselves, and that, in view of the "well-known valor of the Hessian

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[150] R.L.S., "Letter to the Editor: Cruelty of the Hessians: A Revolutionary War Episode of Present-Day Significance," *The New York Times* (letter dated May 27, 1819; published May 29, 1819). Accessed March 13, 2008 at http://query.nytimes.com/mem/archive-free/pdf?res=9B00E2DD1238EE32A2575AC2A9639C946996D6CF. All spelling original.
[151] Boatner, 1969: 425.

soldiery, they undoubtedly deserve it," but that they understate the fact that the British and Hessians together outnumbered the Americans by a ratio of five or four to one (20,000 British and Hessians to 4,000 or 5,000 Americans).[152] It is notable that this battle occurred almost immediately following the arrival of the first dispatch of Hessians to America, and that they numbered approximately 8,000, thus substantially increasing the size of the British forces available for the Battle of Long Island.[153] Thus, these auxiliary forces clearly improved military effectiveness in certain cases.

The Hessian forces failed, however, to assist the British in outmaneuvering the Americans at all junctures. Indeed, on December 26, 1776, George Washington's army attacked the main force of 1,400 Hessians in Trenton, on the Delaware River. Washington's troops achieved a significant level of surprise, killing thirty Hessians and capturing over nine hundred Hessian prisoners, using them through the winter as free labor.[154] A week later, Washington again surprised the British and Hessian forces in Princeton, New Jersey, killing or capturing four hundred. These two battles shocked those back home in Britain, who had expected that with Hessian troops they would be able to quickly put down the colonists' rebellion.[155] The Hessians' overall impact on British military effectiveness thus appears to range from negligible to negative. Although the Hessians did act as force-multipliers and increased military effectiveness in limited instances, their relative lack of motivation and reputation for unreasonable cruelty ultimately decreased military effectiveness by reducing *skill* and *responsiveness*. Although International Humanitarian Law was not established at this point, the fact that large numbers of non-Hessian forces ridiculed the Hessians for their unwonted cruelty indicates that the normative anathema regarding unethical

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[152] Lowell, 1884: Chapter 6, quoting the editor of the *Frankfurt Magazine*.
[153] Lowell, 1884: Chapter 6.
[154] Lanning, 2005: 83.
[155] Lanning, 2005: 84.

behavior in warfare was pervasive during this time period. This case can therefore be said to also provide support for the notion underlying H1a and H1c: that ethical behavior in warfare is more likely to benefit military effectiveness than is unethical behavior, due to the impact of such behavior on the war for the "hearts and minds" of the civilian population.

Hessian Forces' Impact on The Democratic Advantage

Neither Hesse-Cassel (or any of the other German provinces) nor Britain were democracies at the time of the American Revolution. Nonetheless, the process of hiring Hessian mercenaries sheds light on decision-making relevant to democratic advantage theory. The key question is whether British officials purchased mercenary services from the Hessians for the explicit purpose of reducing domestic political opposition to the war. Such data would indicate that the Hessian forces allowed the British government to be less selective in its conflict choices, as without them, the government might have been forced by domestic political will to pull out of the war or to avoid war through compromise. This would provide evidence against democratic advantage theory, for it will indicate that there is nothing special about democracies in this regard. Indeed, the analysis below does provide a preliminary indication that some of the structural constraints argued by democratic advantage theorists to be unique to democracies may, in fact, occur in some non-democracies as well.

Britain's motives for hiring the Hessian forces are central to the analysis at hand, since its role as the hiring state is roughly analogous to the situation of modern states hiring PSCs. The parliamentary debate regarding the treaties with Germany showed that proponents of hiring the Hessian and other German forces justified doing so on grounds of necessity. On February 29, 1776, Lord North argued in Parliament that the German troops would:

> . . . be the best and fastest means of reducing America to a
> proper constitutional state of obedience, because men could
> be readier had and upon much cheaper terms in this way
> than they could possibly be recruited at home . . . and that
> the force which this measure would enable them to send to
> America would be such as, in all human probability, must
> compel that country to agree to terms of submission,
> perhaps without further effusion of blood.[156]

Even more telling is Lord Barrington, who reluctantly conceded that recruits could be "obtained on no other terms," and that while the bargain was not advantageous to Britain, it was the best possible.[157]

The notion that recruits could not be obtained in any other way – or at least, not as inexpensively and quickly – than by hiring foreign forces indicates that the ability to hire the Hessians and other German troops allowed Britain to be less selective than it might otherwise have been with regard to whether and how to continue fighting the American colonists. It is clear that hiring the Hessians alleviated the direct military burden on the British citizenry, thus making them less likely to express any criticisms about the conflict in America. If Britain had been a democracy at the time, the "selection effects" argument of the democratic advantage would tell us that hiring the Hessian troops likely caused Britain to continue the war longer than it would have otherwise. Because Britain was not a democracy, however, this case provides evidence to contradict the basic assumption of democratic advantage theory, for it indicates that *both* democracies and non-democracies can experience the processes that democratic advantage theory insists are unique to democracies.

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[156] Lowell, 1884: Chapter 3.
[157] Lowell, 1884: Chapter 3.

<u>French Foreign Legion</u>

The French king, Louis Philippe, formed the *'legion composee d'etrangers'* in March 1831 as a political expedient to cope with the dual problems posed by his desire to expand his kingdom in the face of French war-weariness following the Battle of Waterloo just sixteen years earlier, and the existence of a collection of political refugees, revolutionaries, criminals, and fugitives in his kingdom.[158] In other words, the Legion came into existence at least in part to increase the French military's capacity, and is an example of the outsourcing of violence according to a logic of capacity. The French army was otherwise occupied with the French war in North Africa, and could not be concerned with keeping the peace at home. Furthermore, King Louis Philippe was concerned about rebellion in his territories, as he had come to power directly following a rebellion that ousted his predecessor, Charles X. Recent uprisings across Europe had resulted in a flood of political refugees and army deserters into France.

The mercenary tradition was not foreign to France, which had been recruiting mercenaries from Switzerland since the imposition of the Perpetual Peace in 1516.[159] Jean Lacroix, a Belgian adventurer and lieutenant-general in the French army, therefore assembled a group of foreigners and proposed to the king that he send them to Algeria to either fight with the French army or to settle as colonists. The king did not hesitate to accept Lacroix's suggestion, issuing a decree on March 9-10, 1831 that authorized the formation of "A legion of foreigners to be known as the Foreign Legion for service *outside France*" (emphasis added).[160] Recruiting stations were then set up

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[158] Lanning, 2005: 87.
[159] Mockler, 1985: 20.
[160] Mockler, 1985: 21.

across the French provinces, and volunteers were encouraged to sign up by the promise of French citizenship at the end of their service.[161]

Legionnaire Training

The early attempts to enforce discipline in the Legion, while successful, created a legacy of extremely harsh and even cruel training methods that would last up through modern times. This *reglement* – the Legion's conditions of disicipline and training – was enforced so severely that many former legionnaires have described their commanders as sadistic.[162] Marching has been at the core of the Legion *reglement* throughout history. Foreign legionnaires were expected to be able to march up to thirty miles a day, wearing a full uniform and carrying an oversized backpack, rifle, bayonet, pick or shovel, three hundred rounds of ammunition, and wood for their fires. Aside from reports of thirty-mile marches up and down hills in the stifling African heat, former legionnaire Simon Murray – a British citizen who served in the Legion from 1960-1965 – writes of his comrades being regularly hurt and/or beaten by their commanders during training exercises: "Krueger broke Martinez's leg today while demonstrating a judo throw . . . He is now in the infirmary well plastered up, and Krueger doesn't give a damn."[163] Of another incident, in which a fellow legionnaire was caught by a commander during weapons inspection having jammed a 9mm submachine gun bullet in the breech of his 7.5 mm rifle and pointing it at another legionnaire in jest, Murray writes:

> [Crepelli] of course found the rifle and bullet and
> quickly extracted a confession from the now gibbering
> Dahms. Then as we watched in stunned shock, he
> suddenly hit Dahms with the rifle butt across the side of

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[161] Wellard, 1974: 21.
[162] Wellard, 1974: 12.
[163] Simon Murray, *Legionnaire: Five Years in the French Foreign Legion* (New York: Ballantine Books, 2006), 50-51.

the head as cold-bloodedly as a man chopping wood with an ax. And as Dahms lay half senseless on the floor, Crepelli kicked his body mercilessly, all the while cursing him with a stream of volatile Italian blasphemy. Nobody moved a muscle; we just stood frozen like gaping gargoyles, hardly daring to breathe lest the wrath of Crepelli be turned on one of us. It ended as abruptly as it had started, and Crepelli stormed from the room yelling threats of instant death to anyone unwise enough to point a loaded gun in the barracks again.[164]

The treatment doled out to deserters, once caught, was even worse. Murray recounts the story of two men from his unit who deserted, only to be caught later that day by the regular army. Murray accompanied two of his superiors to the regular army camp to pick them up:

On our arrival at the regular army camp, the two prisoners were dragged forward and Westof staggered everybody including myself by pulling out his pistol and dropping both of them to the ground by a blow to the head with the butt of his gun. Lefevres's head started to bleed like hell . . . The mixture of horror and astonishment on the faces of the French soldiers was something to see . . . We returned to Sully, and the two prisoners were paraded in front of Captain Glasser in his office . . . He beat the living daylights out of them . . . [then] they were given three hours of *la pelote*. This takes the form of the prisoner being equipped with a sack of stones on his back (the sack has wire shoulder straps), and a steel helmet on his head without the interior, and then he runs. The sergeant stands over him with a whistle and a rope's end, and according to the number of blasts on the whistle, one, two, or three, the prisoner punctuates his running by doing a forward roll, crawling on his stomach, or marching with knees bent. When there is a slow in the pace, then the rope's end comes into play . . . When they were exhausted and not an ounce of strength left in their bodies, they were made to crawl through an open sewer.[165]

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[164] Murray, 2006: 37.
[165] Murray, 2006: 51-52.

Despite the threat of such treatment, many legionnaires since the Legion's creation have deserted or attempted to desert. While desertion itself was generally considered acceptable, being caught was a disgrace and, as shown above, no sympathy was spared for the deserter once captured and brought back to the Legion.[166] Others resorted to suicide to escape their fate.[167]

As a result of both this training regimen and the severe punishment for attempted deserters, legionnaires were in many cases willing to fight to the death against incredible odds. Foreign Legion units were therefore often deployed in the tactically most dangerous positions. In this case, the legionnaires' perceived willingness to die – bolstered by multiple reports of legionnaires' superior effectiveness in the field over the course of multiple conflicts – led to the development of a brave Legion identity that, in turn, impacted future deployment and tactical decisions. The below analyses of the Legion in particular conflicts are intended to illustrate how both the Legion's identity and its structural integration with the regular French military impacted French military effectiveness and IHL compliance.

The Legion in Indochina:
The Siege of Tuyen-Kwang, 1885

The French war in Indochina officially lasted from 1883 to 1891. However, the roots of the conflict extended as far back as the 1840s, when the French had begun to search for a base in the Far East to offset the British base in Hong Kong. Over the next forty years, a combination of this fear of British colonial rivalry, the desire to tap the supposedly rich markets of China's Hunan province via Tonkin, pressure by the French Catholic Church to protect its missionaries, and the existence of several French officers ambitious to advance France's future in Indochina culminated in French naval

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[166] Murray, 2006: 34.
[167] Murray, 2006: 36.

captain Henri Riviere's storming of the Hanoi citadel in 1883, against formal orders. Riviere was killed shortly thereafter, and the Chamber of Deputies in Paris consequently voted to send 3,000 men to the Far East to support operations in Tonkin.[168]

Two battalions of the Foreign Legion were deployed to Indochina during this period, and they were used in every campaign for the eight-year duration of the conflict.[169] The Legion was thus instrumental in helping France to achieve victory in this war. A particularly vivid example of the Legion's superior fighting skills and stalwart determination is seen in the defense of the French fort at Tuyen-Kwang in Indochina. Tuyen-Kwang was a jungle fort located approximately 100 miles north of Hanoi on the Claire River. It lay in a valley surrounded by heavily forested mountains, and was therefore impractical to defend against a modern army. In January 1885, the Third and Fourth companies of the Legion joined 210 French soldiers defending the fort at Tuyen-Kwang against Black Flags (a group of pirate-like warriors led by local barons) and regular Chinese soldiers. The Black Flags and Chinese regulars were able to advance in stages by means of trenches and tunnels, some of which led right up to and inside the walls of the fort. The Legion attempted to keep the attackers pinned down in their trenches with siege guns, but the approximately 20,000 Black Flags made frequent frontal assaults on the fort. The Legion was nonetheless successful on multiple occasions in pushing them back. The siege against the fort lasted for thirty-five days, with thirty-two casualties in the French units and another 126 wounded. Yet, the French units were ultimately

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[168] Douglas Porch, *The French Foreign Legion: A Complete History of the Legendary Fighting Force* (New York: HarperCollins Publishers, 1991), 203-205.
[169] Wellard, 1974: 74.

successful, and the majority of casualties were from Legion battalions, as was typical at that time.[170]

Three battalions of the Foreign Legion remained in Indochina until World War I, as guerilla warfare continued even after the French army had suppressed most organized military opposition throughout Tonkin. Because the Legion specialized in fighting guerillas, a legacy of its history of fighting in North Africa, legionnaires were the obvious choice when selecting French units to remain in Indochina. In recognition of the Legion's unique identity in comparison to the regular French troops, British volunteer George Manington compared the Legion to the French regulars stationed in Indochina at the same time. Manington noted that the French soldiers hated the country, the army, and the expedition itself. These conscripts were "town-bred, beardless boys of from eighteen to twenty years of age, and unfortunate enough to draw a low number from the conscription urn." While these soldiers sat by their campfires talking morosely of their homes and loved ones, the legionnaires were older, more experienced, inured to danger, hardship, and disease. Manington writes that they enjoyed the lives they had chosen, and could go to meet their deaths light-heartedly.[171] Such statements reflect a legionnaire identity clearly distinct from that of the French regular military at the time, and one that had a direct impact on the Legion's abilities and effectiveness as a fighting force.

The Legion in Algeria, 1954-1962

As noted above, the French Foreign Legion was created in part to keep order in the French colony of Algeria. Consequently, the Legion was frequently deployed to Algeria over the course of its history as a fighting force. In late 1954, nationalist

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[170] Wellard, 1974: 75-79.
[171] Quoted in Wellard, 1974: 79.

Algerians started the last of Algeria's uprisings against France and, because the only political option open to the French government at this point was to keep Algeria by means of force, the Legion once again found itself fighting in Algeria.[172]

Algiers, the capital city, was particularly crucial to both the French forces and the nationalist Algerian Front for National Liberation (FLN). The FLN hoped to make Algiers the site of a decisive battle in order to discredit French rule, and therefore the FLN leadership considered the city a separate operational zone in which they proceeded to launch a relentless campaign of urban terrorism. Because Algiers was equally important to the French due to its symbolic importance as the capital city and the gravity of the nationalist threat there, the French Minister-in-Residence in Algiers gave General Jacques Massu and his 10th Paratrooper Brigade full powers to restore order in the capital in January 1957.[173] Massu and his troops were successful in this endeavor by employing a combination of massive arrests of suspected FLN members, summary executions, torture, and the resettlement of perhaps as many as one million Algerians from the territories that were considered strategic.[174]

Wellard notes that Legion paratroopers countered the terrorist tactics of the FLN in Algeria by "sealing off the Casbah, patrolling the alley night and day, keeping in touch with headquarters by walkie-talkie telephones, raiding suspect houses, paying for information, and torturing known members of the FLN."[175] Historian Douglas Porch elaborates upon the French military's use of torture in Algeria, noting, "for the paras in Algiers in 1957, torture appeared to offer a quick and effective way to break up the FLN infrastructure."[176] Porch goes on to quote the justifications provided by Massu for the use of torture by his troops:

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[172] Merom, 2003: 83.
[173] Merom, 2003: 84.
[174] Merom, 2003: 95.
[175] Wellard, 1974: 122.
[176] Porch, 1991: 585.

It is imperative that we obtain urgent operational
intelligence, upon which depended the lives of innocent
human beings, deliberately sacrificed by the FLN to gain
its objectives. Such cruelty did not inspire one with the
desire to spare those whose confessions could interrupt a
fatal course of events. Therefore, practically speaking,
if to make them 'cough up' it was necessary 'to rough
'em up a bit,' the interrogators were obliged to submit
suspects to physical pain, whose violence was graduated
to achieve the confession . . . The procedure most often
employed, beyond slaps, was electricity, by using the
generators of field radios . . . and the application of
electrodes on different points of the body.[177]

One of Massu's subordinates in Algeria, General Paul Aussaresses, wrote a similar

explanation for the use of torture in his memoir:

I don't attempt to justify my actions, but only to explain
that once a country demands that its army fight an enemy
who is using terror to compel an indifferent population to
join its ranks and provoke a repression that will in turn
outrage international public opinion, it becomes impossible
for that army to avoid using extreme measures.[178]

Massu and others argued that torture was decisive in winning the Battle of

Algiers, which did indeed turn out to be one of the largest battles of the war in Algeria.

Yet, it is ironic that Aussaresses invokes terrorism's impact on international public

opinion as a justification for the use of torture by the French in Algeria, as such

methods in reality harmed international support for the French cause. As Porch notes:

The defeat of the FLN was more apparent than real, for
the methods employed by the paras to win the battle had
probably done more than anything to discredit the cause
of *Algerie francaise* in the eyes of both French and
world opinion. For the issue upon which the swarms of

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[177] Quoted in Porch, 1991: 585-586. Note that General Massu denounced his employment of torture
and other brutal tactics in Algeria shortly before his death. See "General Jacques Massu," *The Times*
(October 29, 2002). Accessed June 13, 2008 at
http://www.timesonline.co.uk/tol/comment/obituaries/article818845.ece.
[178] General Paul Aussaresses, *The Battle of the Casbah: Terrorism and Counterterrorism in Algeria,*
1955-1957 (New York: Enigma Books, 2002), xiii.

journalists who had covered the Battle of Algiers for the world press had concentrated upon was that of torture . . . the realization that the paras were willing to sacrifice legality for expediency did much to contribute to the loss of faith in France in the war, and, because this was carried out before the world press, it also helped to undermine the French position in international opinion."[179]

Murray supports the notion that torture hindered long-term French military effectiveness in Algeria:

This type of guerilla war is won or lost by the relationship one has with the local population. Once their support is lost, then so is the war, and from then on it just becomes a matter of time . . . The French have not been very subtle in their treatment of Arabs in the towns, either. The Battle of Algiers in 1957 must have lost them many friends. There are terrible stories of French interrogation of Arab prisoners at this time. The effectiveness of torturing people to make them betray their cause cannot be disputed. But with all the good results – the 'fingering' of many *fellagha*, the betrayal and subsequent capture of many of the rebel leaders – was a steady buildup of hatred against the French, a hatred that comes from living in fear and terror. And this antagonism drew the Arabs, so often before divided among themselves, into a common cause; it made them feel the necessity of combining for survival, and it made them finally aware of their own strength. The French became the foreign intruder and the concept of nationalism was born in the Arabs, which was never there before.[180]

The use of torture certainly appears to have had a negative impact on long-term French military effectiveness in the war in Algeria, as demonstrated by Algeria's victory in the conflict and its achievement of independence in 1962. This occurred despite the short-term benefits of such interrogation methods; for instance, the French victory in the Battle of Algiers. Indeed, Gil Merom argues that the French enjoyed

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[179] Porch, 1991: 585, 589.
[180] Murray, 1978: 63-64.

clear military victory in Algeria, citing the relatively low numbers of French casualties (between 25,000 and 30,000 total, compared with an estimate of between 140,000 and 500,000 FLN casualties), the fact that the French successfully recruited many Algerians to their side of the conflict, and the fact that the FLN never managed to organize a massive popular uprising or strike.[181] Yet, France gave in to Algeria's political demands in large part because of extensive media coverage of the torture tactics used there and the resulting decline in support for the war among the French citizenry.[182] In terms of this study's examination of the effects of IHL compliance, then, the case of the French Foreign Legion in Algeria provides support for both the notion underlying the "draining the sea" approach and that underlying the "hearts and minds" school of thought, depending upon the timeframe of analysis. In the short-term, this case supports the logic of H1d, that mercenary forces' non-compliance with IHL benefits military effectiveness. In the long-term, however, the case appears to support H1c, that IHL non-compliance decreases military effectiveness.

The Algerian case raises the question of whether the regular French military units were any better at adhering to international rules and norms of ethical warfare than were legionnaires. Porch is quick to note, "This is not to say that the Legion was necessarily more savage than other French units, all of whom were liable to act in [an unethical] way."[183] Yet, he goes on to say, "That said, however, it is possible that the Legion was particularly liable to behave in a harsh and ruthless manner. This sprang in part from its tradition of unquestioned obedience to superiors and the unit's sense of racial separateness, especially its dislike of Arabs."[184] Merom, moreover, notes, "the forces assigned to Algiers – the paratroopers and Foreign Legion units – were those

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[181] Merom, 2003: 87.
[182] Merom, 2003: 145. This is an illustration of the democratic structural constraints cited by the "selection effects" argument of democratic advantage theory.
[183] Porch, 1991: 576.
[184] Porch, 1991: 576.

with the least affinity for civic values."[185] This supports the notion that there may

have been something relatively unique about the legionnaire identity – though shared

by the paratroopers from the regular military – that made Foreign Legion units more

willing to engage in torture than were other soldiers. Yet, admissions by General

Aussaresses and others in 2001 and 2002 of the regular French military's involvement

in torture, summary executions, and rape indicate with certainty that regular French

troops did indeed participate in these brutal tactics in Algeria.[186] Nonetheless,

however, it is very likely that legionnaires' compliance with IHL would benefit overall

long-term military effectiveness, as illustrated by the results of non-compliance with

IHL in the Algerian war.

The French Foreign Legion's Impact on Military Effectiveness & The Democratic Advantage

The specific identity characteristics of the French Foreign Legion noted above

are key components of the Legion's impact on French military operations. These

identity characteristics include the brutal training methods for which the French

Foreign Legion are famous, and its lack of affinity for civic values (both constitutive

norms in this context). The identity differences between legionnaires and other

professional soldiers stemmed from the earliest origins of the Legion: the fact that it

had developed such rigorous and cruel norms of training to deal with its fugitive

members, and as such, these members were much more willing to die in battle. Such

identity differences translated into different tactical, strategic, and operational roles for

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[185] Merom, 2003: 113.

[186] Aussaresses, 2001. See also Raphaelle Branche, "The French Army and Torture During the Algerian War (1954-1962)," (November 18, 2004). Accessed May 31, 2008 at http://www.mfo.ac.uk/fr/system/files/images/CR_BRANCHE.pdf; Barry James, "General's Confessions of Torture Stun France," *International Herald Tribune* (May 5, 2001). Accessed May 31, 2008 at http://www.iht.com/articles/2001/05/05/france_ed3_.php; Adam Schatz, "The Torture of Algiers," *The New York Review of Books* (November 21, 2002). Accessed June 13, 2008 at http://www.algeria-watch.de/farticle/analyse/shatz_torture.htm.

the Legion as opposed to other units. The fact that legionnaires were drawn from multiple different nationalities posed little obstacle to their cohesiveness as a fighting force, and a recruit's past and his last name were of no concern once he joined the Legion. According to Mockler, both of these traditions were extremely successful in erasing individual identities and enforcing conformity to the Legion's collective identity.[187]

Thus, as illustrated above, not only did Legion units act as force multipliers to enhance the regular French army, their unique training and resulting proficiencies in guerilla warfare and as an assault force similarly enhanced the French army's *skill* and *responsiveness* in Indochina and Algeria. Because commanders understood the implications of each unit's identity, they were able to use each in a manner that benefited military effectiveness. Meanwhile, the fact that the Legion has always been structured in an identical fashion to the regular army, and is actually part of the overall French army, has helped legionnaires and regular soldiers to overcome their identity differences such that the Legion does not hinder military *integration* when deployed with regular French army units. Thus, this case illustrates that the thorough structural integration of a mercenary force into the regular military can help overcome the identity cleavages between this force and the regular military when deployed together in the field. This case also shows that when such structural integration is successful, the mercenary force's distinctive identity characteristics can even work to the benefit of overall military effectiveness. The Legion was in large part responsible for the French victory in Indochina from 1883-1891, and for many of the military successes enjoyed by France in Algeria from 1954-1962. Yet, the Legion's use of unethical practices, such as torture – although not unique to the Legion as opposed to regular units – hindered overall military effectiveness in Algeria as described above.

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[187] Mockler, 1985: 22-23.

The French Foreign Legion's Impact on The Democratic Advantage

The dual questions of whether and how the Foreign Legion impacts the democratic advantage can be answered by referring to the rationale for the Legion's initial creation: to avoid domestic political unrest. Because France was not a democracy in 1831 when the Legion was formed, this rationale for the Legion's creation may seem at first glance to be an argument against democratic advantage theory, showing that non-democracies can be just as sensitive to public opinion as can democracies. Yet, in 1831, France was ruled by "the citizen king," brought to power by an agreement between the liberal bourgeoisie, the Republicans, and the people of Paris. King Louis-Philippe's regime was known as the "July Monarchy," a constitutional monarchy under which censorship was abolished and suffrage was nearly doubled.[188] Thus, this was an unusual monarchy resembling a democracy in several meaningful ways, and it would be unreasonable to generalize from this case to non-democracies in general. Rather, the king was sufficiently concerned with the people's will that we can examine this case to determine whether the processes relevant to the democratic advantage are apparent herein.

As noted above, Louis Philippe was quite anxious to avoid the fate of his predecessor, who had been ousted from power, and thus devised the Legion as a means of sending revolutionaries, fugitives, and other undesirable elements of the population overseas. He also did this in order to free the regular military from some of its overseas commitments in North Africa, so that it could keep order at home. Did these actions impact either the "military effectiveness" or "selection effects" arguments of the democratic advantage? One could argue that the Legion allowed

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[188] "July Monarchy," *Encyclopedia Britannica Online*. Accessed January 22, 2008 at http://www.britannica.com/eb/article-40436/France.

Louis Philippe to both maintain France's international position in the North African conflict while simultaneously maintaining order at home, whereas if the Legion had never been formed, the king would likely have had to choose between maintaining domestic order and sustaining involvement in the African conflict. In other words, the Legion may have allowed Louis Philippe to be less selective regarding where to utilize his troops, a tendency which, if mimicked by a democratic state, would make the democratic advantage less likely. Yet, the French won the nineteenth-century war in North Africa, mainly due to the Legion's superior military effectiveness, and the fact that the Legion has had a beneficial impact on military effectiveness in many cases since then makes it unlikely that the French Foreign Legion has a negative impact on France's ability to achieve the democratic advantage.

Furthermore, it is extremely unlikely that modern French leaders would send the Legion into conflict areas where it was politically unpalatable to send regular troops – with the possible exception of African deployments – because the Legion is structurally integrated into the regular French military. The public therefore associates the Legion with the regular military too closely for such actions to escape public recognition. The French Foreign Legion is therefore very unlikely to decrease France's prospects to realize the democratic advantage either in terms of the "military effectiveness" or the "selection effects" arguments.

<u>Historical Mercenary Forces: Theoretical Contributions</u>

The historical cases in this chapter contribute theoretical leverage and policy-relevant knowledge to the overall study in four ways: (1) by illustrating the significance of structural force integration for military effectiveness; (2) by illustrating a particular relationship between the state and for-profit forces; (3) by indicating that the structural constraints argued by democratic advantage theorists to be unique to

democracies may, in fact, be present in non-democracies as well; and (4) by indicating that regular military forces may be as likely as mercenary forces to violate the norms of humanitarian conduct in war. Both the French Foreign Legion up through 1965 and the Hessians in the American Revolution were somewhat irregular or auxiliary forces deployed alongside regular military forces and yet were structurally integrated into the forces with which they were deployed. These cases thus illustrate that by structuring private or for-profit forces similarly to the military, and integrating their structure into the professional military's structure, the identity cleavages between auxiliary for-profit forces and the regular military are not as apparent or potentially divisive as they are in situations where public and private forces are not structurally cohesive. Yet, as illustrated by the Hessian case and the case of the Foreign Legion in Algeria, structural integration cannot always overcome the disturbing identity characteristics of a hired force, particularly when those characteristics include unethical behavior in warfare. The lessons of these cases thus provide insight into how to ensure that modern PSCs work together well with regular military forces.

The second critically important theoretical contribution of these two cases is apparent when one considers the position of the state in these cases as opposed to its position in the cases examined in Chapters Four and Five. The state's role in the historical cases examined in this chapter is a central one; it is the seller, buyer, and creator of mercenary military services. Furthermore, the state's role in the international arena during the time period examined in the Foreign Legion and Hessian cases was also quite central. Transnational activity was apparent in the late eighteenth, the nineteenth, and the early twentieth centuries, but was much less pronounced than it has been in recent decades. The state, then, figured much more prominently in these cases, both in general and in its direct involvement in the military actions discussed here. In contrast, modern-day private security companies act as

middlemen between the sovereign or intervening state and the individual who desires to sell his military abilities for a profit. Figure 3.1 illustrates the evolution of the state's role in force provision. The next two chapters illustrate how the state's situation has shifted in the context of modern PSCs, and how the state has maintained a significant role in force provision despite these shifts.

French Foreign Legion

State <-------------------------------------Individual Soldier for Hire

Hessians in American Revolution

State ---------------------------→ State -------------------→ Individual Soldier for Hire

Modern Cases of Hiring PSCs

State (Sovereign or Third-Party) <----→ Corporation <----→Individual Soldier for Hire

Figure 3.1:[189]
Conceptual Map of the Evolution of the State's Role in Force Provision

Conclusion

As noted above, the French Foreign Legion and the Hessian troops fighting as British auxiliaries in the American Revolution were both state-organized mercenary forces, and both contributed to the military effectiveness of the regular militaries with

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[189] Note that the directions of the arrows depicted here indicate an actor seeking out another actor for employment. Thus, the Foreign Legion depiction shows that the individual approaches the state for employment, while the depiction of the Hessian case illustrates that one state approached another state about hiring a military force, and that state then recruited soldiers for that deployment. In modern cases, the arrows point both ways: the state approaches certain PSCs for particular tasks, and the companies also approach the state at times with proposals for work in a certain area. Furthermore, the individuals approach the companies when they hear of an employment opportunity, but the companies also approach particular individuals with whom they are familiar for certain jobs.

which they were deployed, primarily by acting as force multipliers. This benefit was not overshadowed by *integration* problems because, despite the identity differences between these foreign forces and the militaries with which they were deployed, they were structurally integrated into the military such that they were able to communicate and coordinate with the regular military effectively. Both cases thus indicate the importance of effectively structurally integrating modern private forces into the professional military with which they are often deployed. However, both the Hessian case and the case of the French Foreign Legion in Algeria illustrate that structural measures are not always sufficient to overcome identity-related issues detracting from the hired force's impact on military effectiveness. Clearly, both identity and structural variables must be considered when assessing a hired force's potential impact on overall military effectiveness.

Furthermore, special attention must be paid to issues of unethical behavior in warfare, as these can have a significant impact on military effectiveness and, in some instances, non-state actors such as mercenary or private forces might be more likely to perpetrate such abuses. The case of the French in Algeria, however, provides evidence that regular military forces are also prone to violations of humanitarian norms. One final insight from this chapter focuses on the state's central role in force provision in the Hessian and French Foreign Legion cases. Seeking to expand upon this chapter's insights regarding the state's evolving role in force provision, the next chapter demonstrates one way in which the state controls military forces in the context of modern private security companies, exploring cases in which the state has opted to hire private forces instead of using its own or allied states' militaries.

CHAPTER 4

TRADING PLACES:
PRIVATE FIRMS HIRED IN PLACE OF NATIONAL MILITARIES

Chapter Three examined issues facing historical private forces that were structurally integrated into the military. The cases of the French Foreign Legion and the Hessians in the American Revolution illustrate the benefits accruing to military effectiveness from the structural integration of private forces with the regular military. While instances of private forces deployed alongside national militaries are again becoming increasingly common (as explored in Chapter Five), they are by no means the only deployment scenarios for private military and security companies. Indeed, until recently these private firms were more commonly hired to train and equip struggling state militaries behind the scenes, to fulfill international objectives in place of a state military (as proxy intervening forces) in politically-sensitive areas, and/or to supplant state militaries in situations of civil war or open rebellion against a state's government.

What are the consequences of such PSC deployment scenarios for military effectiveness and the democratic advantage, and how do they compare to the other case studies that this project explores? This chapter endeavors to answer this question, focusing on a range of cases varying both in terms of the actors involved and in the purposes for which the PSC is hired: MPRI in Croatia in the mid-1990s, Executive Outcomes (EO) and Sandline in Sierra Leone from 1995-1998, DynCorp in Colombia from 1991-2005, and Sandline in Papua New Guinea in 1997. Despite this variation, all four cases reflect a deployment situation in which a PSC was used in place of a regular military force.

Analysis of these four cases illustrates that hiring private military and security firms to carry out back-door assistance roles is fairly likely to result in tactically,

strategically, and operationally effective military actions – assuming these operations are based on sound strategies in the first place – due to the beneficial impact of such deployments on *skill*, *responsiveness*, and *quality*. Yet, *integration* and PSC-military coordination may pose a problem in those situations where the state military resents being supplanted by a private security firm, as seen in the Papua New Guinea case. This resentment may be tempered by the involvement of a third party in brokering the deal to hire the PSC, as illustrated by the Croatian case. Additionally, by reducing transparency and accountability to democratic processes, such deployments may be predisposed to entail behavior at odds with international legal rules and norms of ethical warfare. Furthermore, because democratic intervening states' militaries are not involved in these conflicts to a large extent (if at all), these deployments enable democratic states to become involved in outside conflicts at a reduced risk of political discord from their domestic publics. This increases the likelihood that democracies utilizing PSCs as proxy intervening forces will be less selective about the conflicts in which they become involved, and, as such, less likely to experience the democratic advantage.[190]

The remainder of the chapter proceeds as follows: the next section examines the Croatian case, analyzing MPRI's impact on the Croatian Army's military effectiveness and the prospects for the United States – as the third party intervening to broker the business arrangement between the Croatian government and MPRI – to experience the democratic advantage. This section highlights the ethnic cleansing campaign pursued by the Croatian Army directly following the majority of its training with MPRI, questioning MPRI's impact on the legality with which force was

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[190] Because the "selection effects" argument of democratic advantage theory operates according to the same mechanism as the democratic peace hypothesis (i.e., the ability of a democratic electorate to constrain its leaders from entering into war), the fact that modern PSCs are used in such a manner poses a strong challenge to the hypothesis that the democratic peace exists in modern warfare.

employed in this case. The following section assesses the role of Executive Outcomes and Sandline in Sierra Leone, looking especially at Britain's involvement in this case and their desire for a *covert* force to supply weapons to Sierra Leone during a U.N. arms embargo – a need easily fulfilled by a PSC. The third case section analyzes the role of DynCorp in Colombia, particularly focusing on the lack of progress made under Plan Colombia and the United States' heavy reliance on contractors – as opposed to U.S. military forces – to fulfill the goals of Plan Colombia. Human rights concerns are also paramount in this case, raising questions as to DynCorp's impact on the legality and morality of operations relating to Plan Colombia. All three of these cases are examples in which PSCs are used as proxies for an intervening state's military, at the behest of the intervening state. The final section examines a somewhat different case in which an intervening state is *not* present, and in which the PSC in question never actually commenced its work because its presence in the country stimulated a coup: Sandline in Papua New Guinea (PNG). The PNG case is instructive in its demonstration of the potential consequences a government faces when it hires a PSC in lieu of receiving military assistance from a state ally. In concluding, I re-articulate the circumstances under which private security companies and their personnel may have a beneficial impact on military effectiveness when used in place of a state military, and examine the prospects for the democratic advantage under these circumstances.

<u>Democratic Use of a PSC as a Proxy Intervening Force</u>:
<u>MPRI in Croatia</u>

Military Professional Resources, Inc. (MPRI) is an Alexandria, Virginia-based firm specializing in private military and government services, primarily security sector

reform and development.[191] Founded in 1988 by former Army General Vernon Lewis
and several other retired generals, MPRI has a reputation within the private military
community for professionalism - indeed, an official at MPRI's corporate headquarters
notes that the company is reputed to be a "military organization in civilian clothing,"
although the leadership is working to ensure that this is not the company's brand
recognition, since MPRI has now diversified into many areas other than simply Army
support.[192] The firm employs dozens of retired top-ranked generals and over 10,000
former military personnel, many of them elite Special Forces.[193] MPRI has a long
history of high-paying government contracts – both from the United States and foreign
governments. It is approximately 75% dependent on Pentagon contracts, and is
currently deployed to approximately sixty countries, mostly to build "institutional
capacity" – for example, training and restructuring military forces.[194]

In March 1994, the Croatian Minister of Defense requested permission from
the U.S. government to negotiate with MPRI over the provision of training in civil-
military relations and program and budget services to the Croatian Armed Forces
(Hrvatska Vojska, or HV).[195] This action followed Croatia's declaration of
independence from Yugoslavia in June 1991, and the ensuing civil war across the

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[191] It should be noted that MPRI considers itself to be a "Government Services Company," not a "PSC,"
because it does not provide personal security through armed protection means and programs. Yet,
because it does provide extensive military advice and training – and has been said to have provided
operational planning support to the Croatian military, as detailed below – it will be considered here in
the context of PSCs.
[192] MPRI has expanded to include work in areas such as public health, law enforcement, commercial
driver training, education, logistics, and international development. Dr. Henry A. Zimon (Colonel, U.S.
Army, Retired; Strategic Plans and Programs, MPRI) in interview with the author, April 2, 2007; Esther
Schrader, "US Companies Hired to Train Foreign Armies," *The Los Angeles Times* (April 14, 2002).
Accessed January 16, 2008 at http://www.globalpolicy.org/security/peacekpg/training/pmc.htm.
[193] Leslie Wayne, "America's For-Profit Secret Army," *The New York Times* (October 13, 2002), 2.
Accessed January 16, 2008 at http://www.globalpolicy.org/security/peacekpg/training/mercenaries.htm.
[194] Dr. Henry A. Zimon (Colonel, U.S. Army, Retired; Strategic Plans and Programs, MPRI) in
interview with the author, April 2, 2007.
[195] Roger Cohen, "U.S. Cooling Ties to Croatia After Winking at Its Buildup," *The New York Times*
(October 28, 1995). Accessed January 18, 2008 at
http://query.nytimes.com/gst/fullpage.html?res=9503E5DB1F39F93BA15753C1A963958260&scp=1&
sq=US+cooling+ties+with+croatia+after+winking+at+its+buildup.

region. Washington's involvement was piecemeal throughout most parts of the conflict, and analysts have cited the lack of a well-coordinated and persistently enforced international strategy to end this conflict as contributing to the long-term destruction and loss of lives in Croatia.[196] This was partially a result of Western jubilation at the recent end of the Cold War, and the tendency to see the dissolution of Yugoslavia as a necessary transitional by-product of this geopolitical restructuring.[197] By 1994, however, Washington realized that strong leadership was needed in brokering a cease-fire in the war between the Croats and Muslims in Bosnia. Through extensive diplomatic contacts between the United States and Croatian and Bosnian Muslim representatives, Washington was able to convince Croatian President Franjo Tudjman to abandon the idea of a Croat statelet in Bosnia. In return, the U.S. negotiators promised U.S. help in hastening Croatia's economic, political, and military integration into the West.[198] The 1994 Washington Agreement thus set the stage for U.S. military aid to be provided to Croatia.

Despite Tudjman's efforts to consolidate the Croat forces into an effective military (the HV), some analysts argue that by 1994 the Croatian Armed Forces still suffered from poor leadership and an unprofessional organizational structure. Its troops were poorly disciplined and poorly supplied.[199] Others, however, point to the January 1993 Maslenica offensive in which Croatian troops launched a lightning strike across U.N. lines to capture the straits of Maslenica. This offensive was strategically quite significant - it linked central Croatia with the Dalmatian coast, as well as linking

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[196] Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Washington, D.C.: The Brookings Institution, 1995), 198.
[197] Woodward, 1995: 147-148.
[198] Laura Silber and Allan Little, *Yugoslavia: Death of a Nation* (New York: Penguin Books, 1997), 322-323.
[199] Ozren Zunec, "Civil-Military Relations in Croatia," in *Civil-Military Relations in the Soviet and Yugoslav Successor States*, ed. Constantine P. Danopoulos and Daniel Zirker (Boulder: Westview, 1996), 222; Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (New York: Cambridge University Press, 2005), 99-101.

the capital city of Zagreb with the country's second city, Split. Some say it was thus an early indicator of growing Croatian military strength and self-confidence.[200]

Regardless of whether Croatian troop strength was increasing on its own or not, the Croatian Defense Minister and MPRI President Carl Vuono signed two contracts in September 1994, arguing that MPRI's services were intended to prepare Croatian forces to participate in NATO's Partnership for Peace Program. The first contract, which began in January 1995, provided for long-range management designed to help Croatia restructure its defense department for long-term strategic capabilities. The second contract developed the Democracy Transition Assistance Program (DTAP), providing for the "military education and training of staff officers and uncommissioned officers of the Croatian army."[201] Under the DTAP, MPRI trained Croatian army officers and personnel for fourteen weeks, in eight-hour sessions five days a week. In this endeavor, MPRI used translated textbooks identical to those used at U.S. professional military academies, graduating their first officers in April 1995.[202]

Many analysts take issue with MPRI's work for the Croatian government, citing the Croatian military's "Operation Storm" in early August 1995 as proof that MPRI's military assistance stretched beyond classroom training and resulted in humanitarian atrocities. In Operation Storm, the HV quite easily recaptured the Krajina territory, which constituted twenty percent of all Croatian territory – in other words, a sizable portion of land. As journalist Esther Schrader notes, "the operation played a key role in reversing the tide of war against the Serbs and, consistent with American policy, in bringing both sides to the negotiating table."[203] The Croatian forces' tactics in this operation were reportedly strikingly similar to NATO-style

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[200] Silber and Little, 1997: 353.
[201] Avant, 2005: 102.
[202] Yves Goulet, "MPRI: Washington's Freelance Advisors," *Jane's Intelligence Review* 10, 7 (July 1998).
[203] Schrader, 2002: 5.

movements, drawing suspicion from observers of the U.S. role in bringing about the

results of Operation Storm. As Colonel Leslie of the U.N. garrison in Knin put it, "It

was a textbook operation, though not a JNA textbook. Whoever wrote that plan of

attack could have gone to any NATO staff college in North America or Western

Europe and scored an A-plus."[204] Deborah Avant, meanwhile, speculates on the

causes of using MPRI as a conduit for such military assistance, as opposed to the

professional military: "Given the awkward nature of sending U.S. military assistance

to Croatia during a U.N. arms embargo, a private contract between the Croatian

government and MPRI allowed U.S. expertise to flow to Croatia without direct U.S.

government involvement."[205] Some argue that MPRI provided doctrinal advice and

possibly scenario planning to the Croatians, while others think that MPRI allowed the

U.S. government to share satellite information with Croatia.[206] Ken Silverstein, for

instance, notes:

> A Croatian liaison officer told the local press that just
> weeks before the offensive General Vuono held a secret
> top-level meeting at Brioni Island, off the coast of
> Croatia, with General Varimar Cervenko, the architect
> of the Krajina campaign. In the five days preceding the
> attack, at least ten meetings were held between General
> Vuono and officers involved in Operation Lightning
> Storm.[207]

Meanwhile, MPRI denies any claims that it rendered military advice to Croatia,

insisting that its classes focused on the sole topics licensed in the contract, and the

Croatian government claims that its military success resulted from the government's

consolidation of power directly before Operation Storm and the Serbs' simultaneous

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[204] Quoted in Silber and Little, 1997: 357.
[205] Avant, 2005: 104.
[206] Avant, 2005: 104; Schrader, 2002: 5.
[207] Ken Silverstein, *Private Warriors* (New York: Verso, 2000), 172.

demoralization due to increasing international pressure. Retired Army Lieutenant

General Harry E. Soyster, an executive at MPRI, told a journalist in 2002:

> I can assure you if we had the capability to train an
> army in a month to turn it around that fast, I wouldn't
> be talking to you, I'd be flying you over the Riviera on
> the way to see it for yourself. If we could do that in
> Croatia, we could straighten out Afghanistan in a
> couple of months.[208]

MPRI's work in Croatia gradually expanded, including an Army Readiness

Training Program and, later, assistance in implementing the Partnership for Peace

Program's requirements after Croatia was admitted to the program in 2001. Even as

MPRI's role in Croatia was expanding, the Croatian government began paying less of

the bill for its work – Pentagon contributions to MPRI's efforts in Croatia grew from

$105,000 in 1995 to $6,000,000 in 2003.[209]

Impact on Military Effectiveness & The Democratic Advantage

Operation Storm, with its successful "lightning quick" and NATO-like tactics,

illustrates that MPRI had a beneficial effect on the tactical abilities of the Croatian

military – whether only through classroom training, or through other, more covert

assistance. In doing so, MPRI increased the Croatian Army's levels of *skill* and

responsiveness – its ability to achieve particular tasks and to carry out orders, and its

ability to tailor military activity to Croatia's capabilities, its adversaries' capabilities,

and external constraints, respectively. It also likely played a role in increasing the

Croatian military's *quality*, or its ability to provide itself with highly capable weapons

and equipment. Indeed, analysts speculate that MPRI may have given advice on

procurement and weapons acquisition to the Croatians, as Croatia spent approximately

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[208] Schrader, 2002: 5.
[209] Avant, 2005: 107.

$1 billion on Eastern European weapons during MPRI's initial training mission.[210]

Integration, moreover, was not hindered in the Croatian case, mainly due to the fact that MPRI was the only PSC involved here, and it is unlikely that the firm even provided on-the-ground operators to work side-by-side with the Croatian military during combat. Thus, the issue of PSC-military coordination problems never arose. This is a key distinction between the types of PSC deployment discussed in this chapter and those examined in Chapter Five. In fact, the Croatian military's *integration* most likely improved due to MPRI's training, as suggested by the HV's success in Operation Storm and subsequent operations.

Beyond this improvement in tactical effectiveness, MPRI arguably enhanced the Croatian Army's operational and strategic effectiveness as well. By November 1995, President Tudjman's army had recaptured all but 4% of Croatian territory, and was occupying 20% of Bosnia as well.[211] Clearly, the broader operational and strategic aims of the Croatian military had been realized. Whether this improvement is wholly attributable to MPRI is debatable, but the improvement clearly correlates with the time period in which MPRI began providing its assistance to Croatia. Furthermore, a *Washington Times* International Special Report notes that MPRI also helped Croatia to establish a military system that works in harmony with a democratic government, thus easing the military aspects of the democratic transition.[212]

While MPRI's assistance to the Croatian military certainly coincides with the military's improved tactical, strategic, and operational performance, this is not purely a success story for private military assistance to a professional military. This case illustrates the potential for private military and security firms to allow unethical

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[210] Avant, 2005: 103.
[211] Avant, 2005: 103.
[212] "A Nation Resolved to Overcome its Tough Heritage," International Special Reports, *The Washington Times*. Accessed January 16, 2008 at http://www.internationalspecialreports.com/europe/01/croatia/anationresolved.html.

behavior in warfare. In the wake of Operation Storm, the Croatian military engaged in an abhorrent ethnic cleansing campaign against the Serbs in the Krajina region. This campaign comprised the largest single forcible displacement of people in Europe since World War II, with the Croatian army attacking the road that the Serbian refugees were using to flee into neighboring Bosnia. Refugees were also forced to run through towns filled with angry Croatians who took to the streets to stone them. "The Croatian authorities had mapped out the route for refugees. An old woman died, her face swollen beyond recognition, of injuries suffered when hit by a rock."[213] Later, the Croatians burned and looted over 20,000 houses in this region owned by Serbs, killing the elderly Serbs who had failed to evacuate. A U.N. report stated "The lady was tied by fish net and a tire was put around her neck before she was set on fire. The old man was burned to death a few yards away."[214]

MPRI, while expressing regret at these incidents, simply claimed that such behavior indicated the Croatian army's need for democratic assistance and thus did not suspend their training efforts.[215] While it is impossible to conclusively determine whether regular military forces would be any less likely to allow or perpetrate violations of IHL in this case, one must consider the possibility that these regular military institutions – the U.S. military, in this case - would be under much greater public scrutiny and would crack down on such behavior, were they to become directly involved. It is therefore plausible – though by no means certain – that substitution of MPRI for U.S. forces had a negative impact on adherence to IHL in this case. As one military analyst noted, Operation Storm "was followed by massive ethnic cleansing. Now, had American troops been on the ground, we would have been held accountable

[213] Silber and Little, 1997: 359.
[214] Silber and Little, 1997: 360.
[215] Avant, 2005: 106.

for that. The fact that it was a private company made the connection a lot less clear."[216]

MPRI's beneficial impact on the Croatian forces' military effectiveness therefore coincides with MPRI's failure to ensure the Croatian forces' adherence to IHL, serving as evidence for H1d and the "draining the sea" school of thought with regard to treatment of civilians in counterinsurgency warfare. It is difficult to argue, however – in terms of the logic underlying H1d – that ethnic cleansing could ever be a necessary tactic of counterinsurgency. Furthermore, it was the Croatian Army which engaged in these IHL abuses, therefore making it difficult to conclusively place the blame for the ethnic cleansing campaign on MPRI. Stepping in during the ethnic cleansing campaign may have been interpreted as undermining the Croatian army's professional jurisdiction, and/or MPRI might have worried that its contract with the Croatian government would have been placed at risk through such intervention. This is not to say that such intervention by MPRI would not have been desirable from an ethical standpoint, only that the firm's failure to intervene does not unequivocally support H1d.

While military effectiveness in this case is generally high in terms of tactical, operational, and strategic effectiveness – through MPRI's impact on *responsiveness*, *skill*, and *quality* – the case of MPRI in Croatia bodes ill for the United States' prospects for experiencing the democratic advantage. Recall that democratic advantage theorists focus on two aspects of democratic states that make them more likely to win conflicts: their relatively high propensity to have effective militaries, and the democratic political constraints to prevent them from entering into "unwinnable" wars (the selection effects argument). When PSCs are deployed in place of the professional military to allow a democratic intervening state some influence in an

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[216] Schrader, 2002: 5.

outside conflict, the electoral checks and balances intended to prevent policymakers from involving the democracy in such an outside conflict do not function as intended. As such, the executive in the democracy in question is able to militarily influence an outside conflict in large part without the knowledge of the domestic public. This leads the democracy to become less selective about the conflicts into which it enters (or to whose parties it provides support), and subsequently, less likely to experience the "selection effects" aspect of the democratic advantage.

As noted above, the MPRI contract in the Croatian case allowed U.S. government support to flow to the Croatian military without direct U.S. government involvement in the conflict. While the extent of U.S. government support flowing to Croatia via MPRI is debatable, the U.S. government's involvement could be said to be substantial at the very least, as indicated by the above figures showing U.S. government payments to MPRI for the firm's work in Croatia. Meanwhile, Western governments turned a blind eye to the attack on Krajina in Operation Storm, with Western politicians remaining quiet. Prior to the offensive and upon his return from a trip to Washington, U.S. Ambassador to Croatia Peter Galbraith told President Tudjman that the United States would tolerate a military offensive to recapture Krajina, provided it was "short and clean."[217] Although then-U.S. Secretary of State Warren Christopher later denied that Washington had played any role in encouraging Operation Storm, he did admit that Croatian success in this operation aided the process of a broader peace settlement in the region. The idea of the United States or other democratic governments utilizing PSCs in such a manner, to bypass electoral risks on politically sensitive foreign policy issues, has even been acknowledged to be a "plausible hypothesis" by an official at MPRI.[218]

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[217] Silber and Little, 1997: 357, 360.
[218] This is also currently occurring in Lebanon, Libya, and Somalia. Given their geopolitical situations and the history of U.S. military actions in these areas, U.S. military assistance to each of these countries

<u>Executive Outcomes & Sandline in Sierra Leone</u>:
<u>Sovereign vs. Third-Party State Involvement in Hiring a PSC</u>

Britain founded Sierra Leone, one of the most tumultuous states in West

Africa, in 1787 as a homeland for freed British slaves. Britain introduced a unitary

constitution for Sierra Leone in 1951, providing for universal suffrage. The Sierra

Leone People's Party (SLPP), led by Milton Margai, won the first elections. A decade

later, in 1961, Sierra Leone gained independence, though it retained close ties with

Britain. Soon after gaining independence, the economy began to stagnate, despite

Sierra Leone's rich mineral deposits of diamonds, bauxite, and rotile (titanium

oxide).[219] In March 1967, the All-People's Congress (APC) led by Dr. Siaka Stevens

gained the majority of seats. However, a military coup prevented Stevens from taking

office, foreshadowing a pattern of military takeovers of civilian politics for the

ensuing years.[220]

On April 30, 1992, Captain Valentine Strasser and a group of soldiers seized

power in a coup, forcing President Joseph Saidu Momoh to flee to Guinea. Originally,

Strasser's government promised to return Sierra Leone to civilian rule within a year,

but in 1993 changed the date for transformation to 1996. Meanwhile, the Strasser

government was challenged by the Revolutionary United Front (RUF), which had

launched its first attacks against the Sierra Leone government in 1991. Holding

positions near Sierra Leone's diamond-mining centers, the RUF was able to threaten

the principal source of the nation's wealth, and the war with these revolutionaries

continued through 1995.

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is necessarily a politically sensitive issue. One MPRI official openly acknowledged that the firm is involved in developing largely non-military options for the U.S. government to help these countries develop their police forces, democracy, et cetera. Dr. Henry A. Zimon (Colonel, U.S. Army, Retired; Strategic Plans and Programs, MPRI) in interview with the author, April 2, 2007.

[219] Lieutenant Colonel Tim Spicer, *An Unorthodox Soldier: Peace and War and the Sandline Affair* (London: Mainstream Publishing, 2000), 189.

[220] Guy Arnold, *Mercenaries: The Scourge of the Third World* (London: MacMillan Press, 1999), 132.

Sierra Leone's history with PSCs began when President Strasser met with representatives from the South African-based private military firm Executive Outcomes in April 1995, asking the firm to intervene in the civil war in Sierra Leone.[221] Executive Outcomes' involvement in Sierra Leone was a significant precursor to Sandline's involvement, as EO achieved key tactical and strategic successes in fighting the RUF, and had multiple ties to Sandline. In fact, some critics argue that Sandline was a mere reincarnation of EO, and that each company was a member of the Branch-Heritage Group (a British-based mining company).[222] The deployment of EO fighters and trainers to Sierra Leone led to the recapture of key diamond-mining areas by August 1995. EO also helped to establish a militia of "Kamajor" fighters who were loyal to the central government, collected intelligence on rebels, and defended local towns from RUF attacks. Strasser promised to hand over power to a democratically-elected president in January 1996, but was himself ousted by a coup on January 16, 1996 and replaced by his deputy, Brigadier General Julius Maada Bio. By March 1996, EO had secured enough of the country to make possible the first free elections in Sierra Leone since 1967.[223] The country went forward with elections for a return to civilian rule, and Ahmad Tejan Kabbah became president. Bio handed power over to Kabbah, who signed a peace agreement with the RUF in November 1996. Throughout this entire period – from 1990 up through EO's departure from Sierra Leone in January 1997 – the British government took little interest in the country's military problems, even refusing the local government's request for military support in May 1991.[224] This was a clear instance in which a

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[221] William Reno, "Privatizing War in Sierra Leone," *Current History* 96, 610 (May 1997): 228.
[222] Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Oxford: Oxford University Press, 2007), 213.
[223] Reno, 1997: 228-229.
[224] Christopher Kinsey, *Corporate Solders and International Security: The Rise of Private Military Companies* (London: Routledge, 2006), 63.

sovereign nation hired a PSC of its own accord, with no interference by the international community.

Upon Executive Outcomes' exit from Sierra Leone – following a dispute regarding their contract – the firm warned Kabbah's administration that a coup would occur within ninety days without EO's presence to maintain order in the country. Sure enough, on May 25, 1997 (eighty-nine days later), Kabbah was ousted by yet another coup mounted by junior officers.[225] Kabbah fled the country and Major Johnny Paul Koroma declared himself head of state, abolishing the constitution and prohibiting the existence of political parties. The international community immediately condemned Koroma's coup, but lawlessness had spread through most of the country by June 1997.[226]

At an October 1997 meeting in Conakry, Guinea, with the foreign ministers of Cote d'Ivoire, Ghana, Guinea, Liberia, and Nigeria, Koroma agreed to restore power to Kabbah in April 1998. In return, he was promised immunity from prosecution. At this meeting, it was also promised that "foreign troops, private armies, mercenaries, and irregular troops" were to be banned from Sierra Leone, as a concession to the rebels. Meanwhile, prior to the 1997 coup, both Executive Outcomes and Sandline representatives had met with Defense Intelligence Agency (DIA) officials in Washington at a workshop on the Privatization of National Security in Sub-Saharan Africa.[227] In March 1998, the *London Observer* revealed that Britain's High Commissioner to Sierra Leone, Peter Penfold, had held talks with Sandline. The British Foreign Office admitted that this was true, but justified the talks as occurring

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[225] William Reno, "The Clinton Administration and Africa: Private Corporate Dimension," *Issue: A Journal of Opinion* 26, 2 (1998): 25-26.
[226] Arnold, 1999: 133.
[227] Reno, 1998: 26.

under "extraordinary circumstances."[228] Also in March 1998, Kabbah was restored to

power with help from Nigerian troops.[229]

Then, in May 1998, the extent of Sandline's involvement in the region began

to come to light, starting with a massive arms shipment to war-torn Sierra Leone that

Sandline arguably had made in defiance of a U.N. Security Council embargo on the

shipment of arms to any of Sierra Leone's warring factions. Security Council

Resolution 1132, paragraph 6, stated:

> [The Security Council] decides that all states shall
> prevent the sale or supply to Sierra Leone, by their
> nationals or from their territories, or using their flag
> vessels or aircraft, of petroleum products and arms and
> related materiel of all types, including weapons and
> ammunition, military vehicles and equipment,
> paramilitary equipment and spare parts for the
> aforementioned, whether or not originating in their
> territory.[230]

Due to the wording of this paragraph, specifically the reference to "Sierra Leone"

instead of to the parties involved in the conflict, much confusion arose in the aftermath

of the so-called "Sandline Affair" regarding whether the provision of arms by

Sandline was prohibited by the arms embargo.[231] Sandline had shipped approximately

1,000 AK-47 rifles, 60mm mortars, light machine guns, and ammunition to Sierra

Leone, where they were handed over to Nigerian peacekeepers, who later distributed

the weapons. The Nigerians replaced some of their own older equipment with

equipment from the Sandline shipment as well.[232]

Sandline president Timothy Spicer then made a statement directly implicating

Britain in the affair, saying that he "understood and still believed that we were acting

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[228] Arnold, 1999: 135.
[229] Reno, 1998: 26.
[230] U.N. Security Council Resolution 1132, Paragraph 6, cited in Kinsey, 2006: 75.
[231] Kinsey, 2006: 75-77.
[232] Kinsey, 2006: 79.

with the approval of Her Majesty's Government in assisting to restore President

Kabbah."[233] When further details emerged, it became clear that Sandline's military

consultants had met with Foreign Office officials, led by the Deputy Head of the

Africa Department, on at least three separate occasions.[234] At least one of these

meetings took place in the Foreign Office prior to Sandline's dispatch of arms to

Sierra Leone. Sandline's lawyers sent a letter to the British Foreign Secretary in April

1998, providing further clues as to British involvement in hiring Sandline.[235] It states,

in part:

> As you will be aware, the coup in Sierra Leone which
> removed President Kabbah was roundly condemned . . .
> and you, Sir, were widely reported as offering President
> Kabbah the full support of Her Majesty's Government in
> restoring the lawful government to power in Sierra
> Leone . . . At the suggestion of your High Commissioner
> in Freetown, Mr. Peter Penfold, President Kabbah
> asked our clients to provide [military] assistance.
> Thereafter negotiations proceeded with President
> Kabbah and . . . full briefings were given both
> personally and by telephone to representatives of Her
> Majesty's Government . . . our clients were led to
> believe that clearance was given at the Head of
> Department level . . . Our clients were assured . . . that
> the operation had the full support of Her Majesty's
> Government.[236]

This revelation proved to be an embarrassing scandal for the British government,

whose Foreign Secretary, Robin Cook, had earlier insisted that he wanted Britain to

pursue an "ethical" foreign policy.[237] In response, Cook initiated an inquiry, denying

that ministers were involved in the decision-making process that led to Sandline's

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[233] Arnold, 1999: 136; Nicholas Watt, Philip Webster, and Michael Evans, "Arms Scandal Engulfs Cook," *The Times of London* (May 9, 1998), 1-2. Accessed January 16, 2008 at http://www.times-archive.co.uk/news/pages/tim/98/05/09/timnwsnws01020.html?1621558.
[234] Arnold, 1999: 136.
[235] Watt, Webster, and Evans, 1998: 1.
[236] Arnold, 1999: 138-139.
[237] Arnold, 1999: 135.

involvement in Sierra Leone.[238] Kabbah was restored to power pursuant to the Conakry agreement, but Sandline had supplied the weapons carried by the Nigerian force supporting his return, with the knowledge and approval of high-level officials in Britain and possibly the United States.

Impact on Military Effectiveness & The Democratic Advantage

Both Executive Outcomes and Sandline were effective at promoting democracy and/or restoring the democratic regime to power in Sierra Leone, and thus both can be said to have improved the effectiveness of military components friendly to the democratic regime and outside democracies. In the case of EO, the firm improved military effectiveness by creating a militia of Kamajors loyal to the central government, and by directly fighting the RUF to restore order in Sierra Leone. EO troops thus acted as force multipliers to improve *quality* and trained Kamajors to improve *skill*, and in doing so, improved the *responsiveness* of the entire force fighting the RUF. The extent of EO's impact on military effectiveness is illustrated by the fact that another coup followed EO's departure from the country, as predicted by EO officials. Meanwhile, Sandline improved the *quality* and *skill* of the force that restored Kabbah to power by supplying it with weapons and training.

Sandline increased the potential that the aims of outside democracies involved (Britain and the United States, primarily) would be reached by improving the military effectiveness of the pro-democracy forces in this case. However, the Sierra Leone case clearly illustrates the process through which major democracies seek to utilize private military and/or security firms as proxies to intervene in conflicts against the will of the domestic public or the international community. The fact that Sierra Leone was under a U.N. arms embargo when Sandline attempted to import large quantities of

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[238] Arnold, 1999: 140.

weapons into Sierra Leone, with the knowledge and support of the British and possibly the U.S. government, illustrates that private military and security firms are sometimes used as conduits for back-door assistance in contravention of internationally-imposed restraints. The domestic backlash in Britain following the media's revelation of the British government's involvement in the "Sandline Affair" suggests that the public would not have supported the British involvement in Sierra Leone – either directly through British military assistance or indirectly through Sandline – had they been aware of it at the time. British recognition of this fact is presumably the reason that the government allowed EO to operate in Sierra Leone without any British intervention during the early years of the conflict. EO thus replaced allied military intervention in this case, and the fact that a sovereign state hired EO provided the justification for the lack of British involvement in the matter.

Force privatization may support the democratic advantage when the private firms in question bolster military effectiveness. This was seen when Executive Outcomes restored Sierra Leone to democratic rule in 1996. The Sierra Leone case, however, also illustrates that these same private firms enable democracies such as Britain to circumvent the political constraints on conflict involvement that are at the core of democratic advantage theory's "selection effects" argument. This decreases the prospects for the intervening democracies to experience the democratic advantage in such situations.

Democratic Third-Party Supply of a PSC to Fight the Drug War: DynCorp in Colombia

The case of DynCorp in Colombia illustrates another instance of relatively back-door U.S. involvement in an outside conflict through contracts with a private security firm. DynCorp was formed at President Truman's behest in 1946 for the purpose of putting surplus World War II equipment to use and to create jobs for

veterans. Today the firm is a member of the Fortune 500, the foremost private employer in the Washington DC area, and the third-largest employee-owned business in the United States.[239] DynCorp is based in Reston, Virginia and has over $1.8 billion in annual revenues, a $4.4 billion contract backlog, and over 23,000 employees worldwide. Its contracts with over thirty-seven federal agencies account for ninety-eight percent of its business.[240]

Since 1991, DynCorp has held a U.S. State Department contract worth $600 million to participate in coca eradication missions in Colombia, as well as training and drug interdiction. The majority of the firm's work in Colombia centers on the aerial herbicide fumigation program, spraying herbicides to kill the coca crops and hinder cocaine production. It also participates in air transport, reconnaissance, search and rescue, airborne medical evacuation, ferrying equipment and personnel from one country to another, and aircraft maintenance. In its work in Colombia, DynCorp operates several different types of State Department helicopters and crop dusters.

DynCorp's work in Colombia preceded, and later became part of, a larger U.S. effort to stem drug production and hinder the actions of the highly capable guerilla Revolutionary Armed Forces of Colombia (FARC) and the paramilitary United Self-Defense Forces of Colombia (AUC). This larger effort, Plan Colombia, was developed by former Colombian President Pastrana to end the Colombian government's long-standing armed conflict, eliminate drug-trafficking, and promote economic and social development. The U.S. devoted $4.5 billion to Plan Colombia between FY2000 and FY2005, mainly hoping to prevent the flow of illegal drugs into the United States and to help the Colombian government promote peace while

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[239] Ignacio Gomez, "U.S. Mercenaries in Colombia," *Colombia Journal Online* (July 16, 2000), 1. Accessed September 5, 2007 at http://www.colombiajournal.org/colombia19.htm.
[240] Colombia Project, "DynCorp in Colombia," *The Center for International Policy* (December 18, 2001). Accessed September 5, 2007 at http://www.ciponline.org/colombia/dyncorp.htm.

simultaneously contributing to South American regional security.[241] Such levels of

assistance are understandable when one considers that during the late 1990s and early

part of the twenty-first century, Colombia was the most difficult challenge facing the

United States in the Western hemisphere – and it arguably still is. In 1997-98,

Colombia replaced Peru and Bolivia as the primary source of coca production, a major

concern to U.S. policymakers due to the fact that 3.5 million Americans are addicted

to cocaine. Meanwhile, violence in Colombia has displaced over 1.5 million people,

intensifying already high levels of poverty.[242]

Despite the intervention's financial breadth, the U.S. Congress originally

capped U.S. troop levels in Colombia at 500 troops, and prohibited the presence of any

more than 300 U.S. contract personnel in the country.[243] The total number of U.S.

military personnel in Colombia nearly doubled following the passage of the 2005

Defense Department Authorization Act in the U.S. Congress, which called for 800

U.S. troops to be deployed there. This change actually decreased the ratio of U.S.

soldiers to private contractors in Colombia, however, because the legislation also

allowed President Bush to increase the number of U.S. citizens working for private

contractors in Colombia to 600.[244] The U.S. government claims that while the troop

cap has never come close to being exceeded, the contractor cap has constantly posed a

challenging obstacle. However, DynCorp and other contractors in Colombia have

ways of getting around these obstacles: in August 2001, the *Los Angeles Times*

reported that DynCorp was maintaining 335 civilians in Colombia, but only one-third

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[241] U.S. Senate Committee on Foreign Relations, "'Plan Colombia': Elements for Success," *Staff Trip Report to the Committee on Foreign Relations* (December 2005), 1-2. Accessed September 5, 2007 at http://www.access.gpo.gov/congress/senate.

[242] Gabriel Marcella, *Plan Colombia: The Strategic and Operational Imperatives* (Carlisle, PA: U.S. Army War College Strategic Studies Institute, April 2001), 1-3.

[243] T. Christian Miller, "Foreign Pilots Hired to Boost U.S. Drug War," *The Los Angeles Times* (August 18, 2001), A1.

[244] "U.S. to Double Military in Colombia," *The San Francisco Chronicle* (October 11, 2004), A4. Accessed January 21, 2008 at http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2004/10/11/MNGST974081.DTL.

of those were U.S. citizens. The remainder consisted of local nationals and third-country nationals (TCNs) from places such as Guatemala and Peru; thus, the contractor cap did not apply to them.[245]

While the U.S. military did have a small presence in Colombia, this case can be contrasted with cases of co-deployment (such as the current conflicts in Iraq and Afghanistan) in that the United States is not serving in a declared war or even an open conflict there. Rather, as of 2001, U.S. troops in Colombia were employed in training and equipping the Colombian Army, training counternarcotics staff and equipping the Colombian counternarcotics brigade headquarters, and providing design, contract, and oversight services for a variety of Colombian Army infrastructure projects to support the UN-1N, Huey-II, and UH-60 helicopter programs. The largest single category of U.S. military personnel in Colombia as of May 2001 was a group of approximately ninety Special Forces trainers, with other short-term U.S. military training teams there to work with the military and police.[246] Thus, while the U.S. military and U.S.-commissioned contractors are both present in Colombia to a (relatively) small extent, there is a low ratio of soldiers to contractor personnel, and a limited number of different private security firms operating there (with DynCorp having by far the largest number of PSC personnel in the country). The military and PSCs are each responsible for relatively distinct aspects of Plan Colombia – neither of which is supposed to entail direct war-fighting.[247] For these reasons, this case closely resembles those situations of deployment where PSCs are hired in place of

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[245] Miller, 2001: A1.

[246] U.S. Department of State, Bureau of Western Hemisphere Affairs, "Civilian Contractors and U.S. Military Personnel Supporting Plan Colombia," Fact Sheet (May 15, 2001), 3. Accessed January 10, 2008 at http://www.state.gov/p/wha/rls/fs/2001/3509.htm.

[247] It should be noted, however, that several reports suggest DynCorp personnel are indeed involved in active counterinsurgency efforts in some parts of Colombia. Silverstein notes that a 1998 article in the *Dallas Morning News* reported DynCorp's activities in Colombia to be "well beyond the stated U.S. mission of fighting drug traffickers." Silverstein, 2000: 186.

professional militaries, as opposed to the situations of PSC-military co-deployment explored in the next chapter.

Impact on Military Effectiveness & The Democratic Advantage

Because the effort to combat drug trafficking and to counter guerilla and paramilitary forces in Colombia is an extended conflict with no clear end in sight, measurements of success – in terms of military effectiveness or otherwise – are difficult to make with regard to this case. However, a 2005 Staff Report to the Senate Committee on Foreign Relations clearly illustrates the failure of Plan Colombia on several counts, including its coca eradication aspects:

> The lack of reliable evidence of well-documented progress in the war against drugs and neutralizing paramilitaries is disappointing considering the billions of dollars the U.S. Congress has appropriated to finance drug interdiction and eradication since 2000. In 2005 coca eradication broke the 136,000 hectare record and destroyed the equivalent of 160 metric tons of cocaine, and though cocaine seized in 2004 almost tripled to 325 metric tons of cocaine, and is expected to be larger for 2005, Colombia continues to provide about 90 percent of the cocaine available in the U.S., in spite of the appropriated funds being earmarked for Department of State programs in Colombia to fight drug trafficking and terrorism through Plan Colombia.[248]

While this statement indicates that DynCorp has achieved tactical success in eradicating large areas of coca crops, the mission's operational and strategic goals have apparently not been met. This is not to say that the U.S. military would be better able than DynCorp to achieve these goals, however. In fact, multiple reports on the effectiveness of coca eradication strategies, and particularly those used in Latin America, indicate that "eradication has not succeeded by any measure. Since efforts

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[248] *Staff Trip Report to the Committee on Foreign Relations* (December 2005), 3. Accessed September 5, 2007 at http://www.access.gpo.gov/congress/senate.

began in earnest in the 1970s, cultivation has consistently increased."[249] The strategies of Plan Colombia themselves, then – at least with regard to coca eradication – appear to foreclose any possibility of military effectiveness.

Aside from being ineffective, these strategies have also proven to be unethical and unpopular, putting the war for the "hearts and minds" of civilians in jeopardy: They run counter to local customs, place the environment at unnecessary risk, damage food crops, and cause medical problems.[250] In September 2001, the International Labor Rights Fund, a U.S.-based non-profit, brought a class-action lawsuit against DynCorp on behalf of 10,000 Ecuadorian peasant farmers and Amazonian Indians reportedly harmed by aerial fumigation in Colombia. The lawsuit charged DynCorp with torture, infanticide and wrongful death for its role in the aerial spraying of highly toxic pesticides in the Amazonian jungle, along the border of Ecuador and Colombia. The lawsuit's claims are based on an investigation by Accion Ecologica – one of Ecuador's largest environmental organizations – of pesticide drift from DynCorp's Colombian spraying operations. The investigation found that DynCorp had been using a modified version of Round-Up herbicide, called Round-Up Ultra. It is an indiscriminate killer, capable of poisoning not only coca fields but also vegetable crops, wildlife, forests, waterways and people. Even the manufacturer, Monsanto, warns that it should not be used near humans or water sources. The effects of Round-Up Ultra are not drastically different from Agent Orange, the defoliant used by the United States in the Vietnam War; there is thus an easy comparison to make to national forces acting with such disregard for IHL, as explored below. Notably, however, the herbicides that DynCorp uses have been made more toxic by the addition of surfactants, increasing the plant-killing power of the fumigations and also its

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[249] Phillip Coffin, "Coca Eradication," *Foreign Policy in Focus* 3, 29 (October 1998): 1.
[250] Coffin, 1998: 2.

lethality to humans. The Accion Ecologica study uncovered significant pesticide drift in the Sucumbos region of Ecuador, an area comprised of Amazonian forests and villages populated by the Quechua subsistence farmers. It concluded that the spraying had caused "harm to the health and crops of 100 percent of the population within five kilometers of the border with Colombia." More than 1,100 cases of illness have been documented, including the deaths of at least two children.[251] DynCorp moved to dismiss the case, arguing that it raised nonjusticiable questions because the action did not call U.S. foreign policy in Colombia into question. In May 2007, a U.S. district court granted DynCorp's motion to dismiss the plaintiff's claims under the Torture Victim Protection Act, but ordered that the balance of the plaintiff's claims should stand.[252]

One might consider the counterfactual of whether such crop eradication procedures would be accepted by the U.S. public if the U.S. military were practicing them on the scale seen in the Colombian case. As noted above, a comparison can be made to the U.S. military's use of Agent Orange in Vietnam.   Between 1961 and 1971, U.S. forces sprayed approximately eighty million liters (twenty-one million gallons) of Agent Orange and other herbicides on southern and central Vietnam as part of "Operation Ranch Hand," with the aim of depriving enemies of forest cover and food crops.[253] The use of Agent Orange and other chemicals (such as napalm) was particularly upsetting to Americans protesting the war, and in 1967 Bertrand Russell led a group of distinguished American academics in establishing an International War

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[251] Jeffrey St. Clair and Alexander Cockburn, "Ecuador: Farmers Fight DynCorp's Chemwar on the Amazon," CorpWatch (February 27, 2002). Accessed September 6, 2007 at http://www.corpwatch.org/article.php?id=1988.

[252] Business and Human Rights Resource Centre, "DynCorp Lawsuit (re: Colombia and Ecuador)." Accessed January 17, 2008 at http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedCases/DynCorplawsuitreColombiaEcuador.

[253] "Agent Orange: Toxic Legacy of Vietnam Still Demands Remediation," *Agence France Presse* (February 1, 2008). Accessed March 7, 2008 at http://www.commondreams.org/archive/2008/02/01/6791/print/.

Crimes Tribunal to hear evidence regarding the U.S. military's use of Agent Orange and other alleged atrocities in Vietnam. The Tribunal found that the United States was guilty of using weapons against the Vietnamese that were prohibited by international law.[254] The pressure imposed by this tribunal, combined with the 1969 scientific revelation that one of the components of Agent Orange caused birth defects in laboratory animals, led U.S. President Richard Nixon to announce a halt to the use of Agent Orange in Vietnam in December 1970. The last application of the chemical to Vietnamese territory, however, did not occur until October 1971.[255]

The mere fact that an international tribunal was convened to investigate the U.S. military's use of Agent Orange demonstrates that such military actions do not go unnoticed, and furthermore, that public knowledge of and action regarding such acts can affect a change in policy. The relative lack of public knowledge of DynCorp's coca eradication campaign in Colombia speaks to the fact that PSCs are inherently less likely than the national military to spur public outcry, and thus have more leeway to pursue unethical strategies.

All in all, the ethical implications of this coca eradication strategy may impact the ability of the U.S. and Colombian governments to achieve the goals of Plan Colombia, as eradication programs hold strong potential to foster alliances between peasant coca farmers and guerilla forces such as FARC against the Colombian government. This possibility is illustrated by the fact that, since Colombia reinvigorated widespread herbicidal eradication programs in 1995, guerilla groups have steadily expanded their areas of control and now represent a significant threat to the government. As analyst Phillip Coffin notes, "By defending impoverished

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[254] "Vietnam Protest Movement," Spartacus Educational. Accessed March 7, 2008 at http://ww.spartacus.schoolnet.co.uk/VNprotest.htm.
[255] Robert Dreyfuss, "Apocalypse Still," *Mother Jones* (January/February 2000). Accessed April 4, 2008 at http://www.motherjones.com/news/features/2000/01/orange.html.

farming communities that grow coca from what are seen as U.S. imperialist forces and goals, guerillas gain political and financial strength."[256] Such evidence, while negating H1, nonetheless supports H1a and H1c, indicating both that DynCorp's eradication efforts diminish local support and that this local support is key to military effectiveness in this case.

Thus, the coca eradication strategies tied to Plan Colombia are both ineffective and unethical. The ability of PSCs like DynCorp to circumvent Congressional caps on levels of U.S. troops and contractors in Colombia indicates that these coca eradication strategies are also dependent upon PSCs. The availability of PSCs in this case therefore allows the U.S. and Colombian governments to perpetuate this ineffective and unethical strategy, negatively impacting military effectiveness in the strategic sense. Furthermore, as of January 2007, Colombian military involvement in human rights abuses continued to go unpunished, as Plan Colombia's aim of ending military impunity had not been achieved.[257] While this is not directly related to DynCorp's mission in Colombia, U.S. efforts to end the Colombian military's impunity are surely not aided by the U.S. funding of hundreds of private security personnel, who are themselves allowed to operate with impunity in Colombia.

The details of the case outlined above make clear that the prospects for the democratic advantage are significantly challenged in this case, as demonstrated by the ability of contractors to hire third-country and local nationals to get around Congressional limits on the numbers of U.S. civilians allowed in Colombia. While the Congressionally-imposed U.S. troop limit has never been in danger, this is solely due to the fact that companies such as DynCorp (in addition to MPRI and several others) have hundreds of contractors operating in Colombia to fulfill U.S. objectives there.

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[256] Coffin, 1998: 2.
[257] "Plan Colombia and Beyond: No Progress on Impunity," *The Center for International Policy* (January 2007). Accessed January 16, 2008 at http://www.cipcol.org/?p=39.

Because of this significant contractor base, professional soldiers are simply not necessary in large quantities, a fact that allows Plan Colombia to operate below the radar of most major U.S. media markets and the average U.S. voter. Because voters are unlikely to constrain U.S. actions in Colombia, the United States is more likely to be risk-acceptant in its Colombia operations – and thus less likely to experience the democratic advantage in this case.

<u>Sovereign State Employment of a PSC in Place of Allied Military Support</u>:
<u>Sandline in Papua New Guinea</u>

The previous three cases illustrate efforts by an intervening democracy to influence events in a target state, using a PSC as a military proxy. In Croatia, the PSC in question was tasked with providing various elements of training and military organizational guidance. In Sierra Leone, Sandline supplied weapons to pro-democracy forces with the knowledge – and perceived consent – of the British government. Meanwhile, in the Colombian case, DynCorp was tasked with one distinct aspect of the political mission – coca eradication – and several related duties. The case of Sandline in Papua New Guinea differs from all three of these cases in terms of the actors involved and the reasons for employing a PSC.

Papua New Guinea is a tropical former Australian colony slightly larger than California, comprising approximately half of the island of New Guinea (off Australia's north coast) and several islands scattered across the Pacific to the northeast.[258] In the late 1980s, Papua New Guinea's (PNG's) primary export was copper, which it mined on the tiny island of Bougainville, over 800 miles away. Bougainville, displeased at this continual exploitation of its natural resources and the ensuing environmental degradation of its territory, mounted a secessionist movement

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[258] Spicer, 2000: 153. See also CIA World Factbook, "Papua New Guinea." Accessed June 4, 2008 at https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html.

against the PNG government in the late 1980s. The fighting continued for a decade, during which time 10,000 people in Papua New Guinea were killed and 35,000 were displaced – both highly significant figures for such a small country. Meanwhile the PNG Defense Forces (PNGDF) were poorly funded and ill-equipped. Neither Australia nor New Zealand would agree to provide the equipment and/or training necessary to crush the Bougainville Revolutionary Army's (BRA's) rebellion.[259]

PNG President Julius Chan turned to the British firm Sandline in desperation in 1996, asking for Sandline's help in acquiring helicopter gunships, which the PNG government considered to be war-winning weapons. This initial request evolved into a $250,000 contract for a consultancy study, a so-called "commander's estimate," of the problems in Bougainville and how Sandline could help.[260] Former British Special Air Services (SAS) Lieutenant-Colonel Timothy Spicer, Sandline's President, wrote the estimate, suggesting a combination of helicopters, training for the PNGDF Special Forces unit, an electronic surveillance capability to track the BRA and pinpoint their vital command centers in the mountainous, rugged terrain, and propaganda to win the local population over to the PNG government's side of the conflict.[261] Papua New Guinea leaders signed a contract with Sandline in January 1997 to train the PNGDF's Special Forces and to gather intelligence on the BRA, to recapture the Panguna mine in Bougainville, and to provide necessary follow-up support. The primary objective stated in the contract was "the rendering of the BRA militarily ineffective," and the maximum initial period of the contract was three months.[262] This contract was never approved by the parliament of PNG, and so was only questionably legal to begin with.

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[259] Arnold, 1999: 82.
[260] Spicer, 2000: 139.
[261] Spicer, 2000: 156, 157, 160.
[262] "Agreement for the Provision of Military Assistance Dated this 31st Day of January 1997 Between the Independent State of Papua New Guinea and Sandline International" (Sandline Contract). Accessed January 16, 2008 at http://coombs.anu.edu.au/SpecialProj/PNG/htmls/Sandline.html.

Notably, the level of firepower and the tactics envisioned by Sandline would have entailed a substantial escalation of the PNG conflict, though the ultimate goal was to demonstrate enough strength to bring the Bougainville Revolutionary Army to the negotiating table.[263]

However, Sandline's vision never came to fruition, as the overall PNGDF commander, Jerry Singirok, publicly condemned the Sandline contract and called for President Chan's resignation. This was surprising, considering that Singirok had been involved in the original negotiations to hire Sandline.[264] Though Singirok and his supporters insisted that they were not staging a coup, many reports refer to Singirok's actions as a coup.[265] Sandline's Tim Spicer was taken hostage by the PNGDF for the better part of a week in the midst of the coup. Some reports indicate that the PNGDF as a whole – or at least 1,000 of its soldiers - was resentful of its government's decision to hire Sandline and demanded that the "mercenaries" be sent home.[266]

The motives of those staging the coup, however, were clarified a few months later when an Australian journalist revealed that General Singirok was paid 31,000 British Pounds by a British arms dealer seeking involvement in Papua New Guinea.[267] Following Singirok's disgrace, President Chan fired him. His replacement, Acting Commander Colonel Jack Tuat, invited Singirok to address the PNGDF parade at Murray Barracks on March 24, 1997, hoping that this would calm the troops. Singirok, however, had the opposite effect, bellowing several times, "The Defence Force is intact!"[268] He claimed that Sandline would have destroyed the PNGDF, stating, "They are international terrorists as far as I'm concerned. They go to third

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[263] Spicer, 2000: Chapter 13.
[264] Arnold, 1999: 82.
[265] Arnold, 1999: 80.
[266] Arnold, 1999: 80.
[267] Spicer, 2000: 186-187; Sean Dorney, *The Sandline Affair: Politics and Mercenaries and the Bougainville Crisis* (Sydney: ABC Books, 1998), 314.
[268] Dorney, 1998: 313.

world countries, banana republics, they make national forces totally useless. That's what they nearly did here."[269] Resentment of Sandline is clearly evident in the former PNGDF Commander's statements, as are indicators of identity cleavages. Such cleavages are illustrated, for instance, by Singirok's relational comparison between "national forces" and PSCs as "international terrorists."

Singirok and opposition politicians subsequently leaked the details of the Sandline contract to the public, spurring violent riots and, consequently, the Chan regime's resignation in favor of an interim government. In fact, Chan and his colleagues had to flee from the parliament building in disguise, as thousands of students, unemployed citizens, civil servants, and soldiers surrounded the building.[270]

This episode demonstrated that the PNGDF was not entirely in line with the position of its civilian government regarding the Bougainville issue, and thereby resulted in negotiations between moderates on both sides of the conflict. A power-sharing arrangement was reached and the conflict came to an end after more than a decade of fighting.[271]

Impact on Military Effectiveness & The Democratic Advantage

Analyst Peter Singer cites this case as evidence that hiring private military or security firms can have a negative influence on the local military's status, thus disrupting civil-military relations.[272] This is certainly one conclusion that can be drawn from this case, but it is far from the only conclusion. In fact, given that Singirok's accepted a bribe to instigate the coup, the identity-based justification of the

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[269] Dorney, 1998: 313.
[270] "Signs of Disintegration in Papua New Guinea Security Forces," *World Socialist Web Site* (October 17, 2000). Accessed January 16, 2008 at http://wsws.org/articles/2000/oct2000/png-o17_prn.shtml.
[271] Lanning, 2005: 193.
[272] Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 197.

coup as stemming from professional competition and resentment loses some validity.

Perhaps more accurately, the case demonstrates the political backlash that can occur when relatively covert attempts to hire PSCs are publicly exposed. This case therefore shows that the electoral processes relevant to the selection effects side of the democratic advantage – in particular, the role of the domestic electorate in constraining leaders from international conflict involvement – can be affected in unexpected ways by the employment of a private force. Because the conflict had been going on for over a decade by the time that President Chan hired Sandline, Chan could not be said to have been trying to avoid domestic knowledge of his country's involvement in the Bougainville conflict. However, when the domestic public learned of Sandline's contract with their government, they were outraged at what they saw as an affront to democracy. For example, the Papua New Guinea Trade Union Congress (PNGTUC), a consortium of local trade unions, adopted a resolution in early 1997 dismissing the Chan government's decision to hire "mercenaries" as "an outright affront to the democratic cause and stability."[273] The PNGTUC was primarily concerned with the fact that Sandline had subcontracted out some of its tasks in Papua New Guinea to Executive Outcomes, which the PNGTUC associated with South Africa's former apartheid regime, repression, and possible human rights abuses in Angola.

As noted above, President Chan was forced from power by this and similar domestic political criticism of his decision to hire Sandline. We can see in this case that decisions to hire PSCs can politically backfire just as easily as can decisions to devote a state's military to an unpopular conflict; hence, the processes relevant to the "selection effects" argument of democratic advantage theory may be reversed if public

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[273]"Unions Reject Papua New Guinea's Decision to Recruit Mercenaries to End Bougainville Separatist War," *International Confederation of Free Trade Unions* (March 7, 1997). Accessed January 19, 2008 at http://www.hartford-hwp.com/archives/24/078.html.

knowledge of the use of PSCs becomes widespread. Although this conclusion is based on a slightly different logic than that found in democratic advantage theory, it nonetheless holds policy relevance for existing and future cases whereby the state hires PSCs to deploy in place of the regular military. While democratic advantage theory conceives of an electorate that chooses or approves of conflict involvement based on a concern with casualties, this conclusion predicts that if a majority of the electorate becomes aware of the PSC deployment, the entire operation may be even *less* successful – politically, at least - than if the regular military had been sent in the first place. The democratic advantage, then, is even less likely to be seen in cases where public knowledge of a PSC deployment in place of allied military assistance becomes widespread.

In terms of Sandline's impact on military effectiveness, this case points to the co-deployment issues studied in the next chapter; in particular, the difficulty in facilitating battlefield coordination between two groups having divergent identities and enmeshed in a situation of professional jurisdictional competition. One of the five goals of the Command, Administration, and Training Team (CATT) that Sandline was to supply to Papua New Guinea, as outlined in their contract, was to "establish links with the PNG defence forces."[274] Obviously, key players in the PNGDF were not open to the establishment of such links, as illustrated above by General Singirok's hostile categorization of Sandline personnel as "international terrorists." It is thus clear that the same PSC-military co-deployment problems apparent in Iraq and Afghanistan – driven by structural shortcomings in deployment scenarios and identity-based resentment – are prone to happen in situations where the government in question hires a PSC to help its own military, in place of receiving support from an allied state

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[274] Sandline Contract, 1997: 2.

military.[275] The two types of cases, while involving different actors and scenarios, share the structural and identity-based hindrances to peaceful, efficient, and effective civil-military coordination. Furthermore, the case preliminarily indicates that when PSCs are hired to supplant a relatively weak professional military in situations of revolution or civil war, they can actually decrease military effectiveness by distracting the military's attention from its core purposes, causing it to focus instead on the newfound challenge to its professional jurisdiction posed by the firm in question.

One final observation regarding military effectiveness in this case is that Sandline, had it been allowed to act, may have improved the PNGDF's military effectiveness in terms of its compliance with legal and ethical norms of Just War and International Humanitarian Law. Citing an incident in which the PNGDF mortared a Bougainville church, killing a number of the civilian congregation, Spicer himself notes that "the PNGDF soldiers needed a grip taken on them, and I had put that in my proposals as well."[276] This indicates that there is no guaranteed formula for discerning which actors are more or less likely to comply with IHL.[277] Of course, in cases like this where the military has such a questionable record of compliance with humanitarian laws and norms, such attempts by a PSC to "take a grip on them" open the possibility of further engendering resentment between the two groups and hindering PSC-military relations.

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[275] This case is also significant in demonstrating the potential effects of contracts to supplant a state's military when they are completely undertaken by that state's government, and not in conjunction with an intervening power. As suggested here, contracts to supplant the military that are completely undertaken by the government of the state in question may be more likely to generate professional competition between the PSC and the military than are instances in which such contracts are made in conjunction with an intervening state. Additional studies and further research on this phenomenon are necessary in order to draw any solid conclusions with regard to this trend, however.

[276] Spicer, 2000: 161.

[277] Yet, because Sandline was forced to pull out of PNG prior to commencing its work, it is impossible to know whether Sandline would have complied better with IHL in reality than did the PNGDF.

<u>Conclusion</u>

This chapter has analyzed a spectrum of different cases involving a PSC hired in place of the regular military; be it to replace the domestic military in a conflict abroad, or to replace allied military support in a domestic conflict. In Croatia, a third party (the United States) brokered a deal to hire MPRI to train the Croatian military, whereas in Colombia, a third party (also the United States) has devoted substantial resources over a long period of time to send both its own military and PSC personnel to assist in drug eradication efforts. In Papua New Guinea, the government hired a PSC on its own without third party involvement, and the military and opposition politicians used it as an excuse to stir up public unrest and force the government's resignation, before the PSC's work had even commenced. In Sierra Leone, British and possibly American officials approved the actions of a PSC in funneling weapons to friendly actors in contravention of a U.N. arms embargo, approval of which led to a huge scandal in Britain.

Though their facts vary, these cases – when taken as a whole – indicate that PSCs deployed in place of the regular military often bolster the tactical, operational, and/or strategic military effectiveness of the actors they are tasked with assisting, as long as the long-term strategy underlying the entire operation is sound in the first place. However, as seen in the Colombian case, non-compliance with IHL combined with an ineffective overarching strategy can undermine other aspects of military effectiveness. The Croatian case similarly suffers from issues of non-compliance with IHL, but this case appears to provide support for the "draining the sea" approach as opposed to the "hearts and minds" approach to counterinsurgency warfare, as IHL non-compliance in this case coincides with increased military effectiveness. Notably, however, it is difficult to draw a conclusive causal link between non-compliance and increased effectiveness in the Croatian case. The democratic advantage also suffers in

all four cases, as hiring PSCs in place of the regular military allows states to engage in military actions outside of the public eye. This hinders the electorate's capability to limit their government's involvement in risky conflicts and, according to the reasoning of the selection effects argument, makes it less likely that democratic governments hiring PSCs in this manner will tend to enter into "winnable" conflicts.

CHAPTER 5

BROTHERS IN ARMS?
PSCS DEPLOYED ALONGSIDE THE NATIONAL MILITARY

Governments increasingly hire private security companies to operate *alongside* the state-run professional military in theatres of combat – mainly in close-protection, convoy security, and static site security roles. The practice of placing the military and private security contractors in the same theatre of combat has led in some cases to a surprising outcome: multiple reports of hostilities, tensions, and a general lack of coordination between these forces have emerged from the field. Other reports indicate that PSC personnel act in a hostile or threatening manner towards civilians in their area of operation. Such actions, if pervasive, can have a grave impact on the overall military operation and long-term strategic goals in that region. To what extent do PSC personnel coordinate well with professional soldiers in the field and vice versa, and how does their co-deployment with the military impact overall military effectiveness? This chapter attempts to answer these questions, seeking to address also whether and how it is possible for the state, the military, or PSCs to remedy any PSC-military coordination problems through particular policy changes.

Focusing on the conflicts in Iraq and Afghanistan in the early period of the twenty-first century, this chapter seeks to improve our limited understanding of PSCs in several ways. First, it contributes original interview data to a research topic suffering from a dearth of accessible evidence, using these data to illuminate the difficulties and successes that private security firms have interacting with the professional military in conflict zones. Because PSC-military coordination problems can impact the military's levels of *integration*, *skill*, *responsiveness*, *quality*, and compliance with the legal norms of Just War, they can impact military effectiveness

and the democratic advantage. Therefore, the chapter's second contribution is in its analysis of how PSC-military co-deployment impacts military effectiveness.

Analyzing these data, and drawing upon the theoretical literature on both civil-military relations and the professions, the chapter then questions the extent to which PSC-military field interactions are caused by structural factors (such as shortcomings or incompatibilities in deployed military and PSC units' ordering principles, capabilities, and/or functions) as opposed to identity factors – the norms, social purposes, relational comparisons, and cognitive models constituting PSC and military identities, respectively. The structure-identity dichotomy is crucial to understanding the underlying causes of PSC-military coordination issues, and thus is significant for determining appropriate policy recommendations to remedy coordination problems. In performing this undertaking**,** I find that *both* structure and identity are indeed significant shapers of PSC-military interactions: when confronting weakness in the structures guiding their interactions, PSC and military personnel base their actions on actual and perceived identity-based factors. The chapter then develops a framework of analysis that demonstrates this connection between structure and identity at both the individual and collective levels, therefore contributing to the "structure versus identity" debate within the field of International Relations.

The chapter's fourth contribution is in its development of a typology of firms based upon their levels of "operational professionalism" – in other words, their pursuit of the practices most likely to have a beneficial impact on military effectiveness. The chapter concludes with an analysis of the chapter's implications for policy. In Chapter Seven, I argue for a revised set of policy recommendations based upon what can realistically be achieved.

The Problem:
PSC-Military Coordination in Iraq & Afghanistan

The U.S. Government Accountability Office (GAO) issued a revealing report in July 2005 titled *Actions Needed to Improve the Use of Private Security Providers* in Iraq. In this report, the GAO noted:

> The military and private security providers in Iraq have an evolving relationship based on cooperation and coordination of activities and the desire to work from a common operating picture. However, U.S. forces in Iraq do not have a command and control relationship with private security providers or their employees. Initially, coordination between the military and private security providers was informal. However, since the advent of the Reconstruction Operations Center in October 2004, coordination has evolved into a structured and formalized process. While contractors and the military agree that coordination has improved, some problems remain. First, private security providers continue to report incidents between themselves and the military when approaching military convoys and checkpoints. Second, military units may not have a clear understanding of the role of contractors, including private security providers, in Iraq or of the implications of having private security providers in the battle space.[278]

This passage clearly indicates that PSC-military coordination in Iraq is problematic. The GAO authored a follow-up to its 2005 report in June 2006, noting that PSC-military coordination problems still remain in Iraq. In both reports, the GAO recommended structural changes to the system of PSC-military co-deployment in Iraq, pushing specifically for a pre-deployment training program to better train both military and PSC actors to coordinate with each other in the field. The 2006 report noted improvements that had been made, focusing particularly on the development of the five regional Reconstruction Operations Centers (ROCs). The ROCs were established

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[278] United States Government Accountability Office, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," Publication No. GAO-05-737 (Washington, DC: July 2005), p. 20.

in 2004 to remedy the lack of communication and coordination between private

security forces and coalition forces by serving as information coordination hubs for

the U.S. military and private security and military companies operating in Iraq.[279]

Evidence of such improvements suggests that PSC-military coordination is the sum of

multiple dynamic processes capable of producing comprehensive change over time,

either positively or negatively, as the groups become more accustomed to working

alongside one another.

The GAO reports, as well as other media reports, would lead us to believe that

PSC-military coordination problems occur on a regular basis in co-deployment

situations such as Operation Iraqi Freedom.[280] The 2006 GAO report noted, for

instance, that "private security providers continue to enter the battle space without

coordinating with the U.S. military, putting both the military and security providers at

a greater risk for injury."[281] On the other hand, a number of PSC and military

personnel have indicated that ad hoc coordination occurs regularly between PSC and

military personnel in Iraq and Afghanistan. How pervasive are PSC-military

coordination problems in these theatres in reality, and to what extent does change over

time appear to be possible?

This study uses original interview data to answer these questions, drawing

upon interviews that I conducted between September 2006 and December 2007 with

academic experts, high-level private security company officials, private security

company operators (lower-level personnel), and U.S. Army and U.S. Air Force

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[279] United States Government Accountability Office, "Rebuilding Iraq: Actions Still Needed to Improve Use of Private Security Providers," Publication No. GAO-06-865T (Washington, DC: June 13, 2006).
[280] See for instance David Barstow, "Security Companies: Shadow Soldiers in Iraq," *The New York Times* (April 19, 2004); Eric Schmitt, "Accord Tightens Control of Security Contractors in Iraq," *The New York Times* (December 5, 2007).
[281] United States Government Accountability Office, "Rebuilding Iraq: Actions Still Needed to Improve Use of Private Security Providers – Report Highlights," Publication No. GAO-06-865T (Washington, DC: June 13, 2006), p. 1.

soldiers of various ranks, ranging from non-commissioned officers to colonels. I

conducted further interviews with one U.K. military officer and four U.K. PSC

officials, in order to research any potential differences in PSC-military relations

between the United States and the United Kingdom.[282] Because the private security

industry is so transnational in nature and U.S. and U.K. forces are often integrated

together with PSC personnel in the field, few major differences were apparent between

the responses of U.S. and U.K. interviewees. There were a few significant distinctions

noted between the two countries' PSC-military relations, however, as discussed

further below.

Altogether, fourteen military and eighteen PSC personnel were interviewed,

for a total of thirty-two respondents with direct field experience. In addition, I

interviewed numerous academic and industry experts to gain a more complete picture

of the private security industry and of the potential for viable policy options to deal

with the industry. The private security company personnel and professional soldiers

interviewed possessed experience in various theatres, ranging from Iraq to

Afghanistan, the Balkans, South America, and several regions in both Africa and Asia.

However, the vast majority of interviewees had served at least one rotation in

Operation Iraqi Freedom (OIF), and quite a few also served in Operation Enduring

Freedom (OEF) in Afghanistan.[283] Their dates of service in the two theatres relevant

to this chapter, Iraq and Afghanistan, ranged from 2002 to 2007, with some

interviewees deployed more than once to these theatres. Interviewees were either

intentionally sought out due to their position – for instance, various high-level PSC

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[282] Seventeen of the eighteen PSC interviewees were former military. Four had British military experience, one had New Zealand military experience, and the remainder had U.S. military experience.

[283] Twenty-three of the thirty-two total interviewees had OIF experience (twelve PSC and eleven military personnel), five had OEF experience (two PSC and three military personnel), and four had been deployed to both OIF and OEF (three PSC interviewees and one military interviewee).

officials were selected in this manner – or were selected via "snowball" sampling, in which each interviewee referred one to three other potential interviewees.

Due to this selection method, there was a range in respondents' levels of experience with the other group; in particular, two of the soldiers interviewed had only limited contact with PSC personnel during their deployments. However, none of the interviewees endeavored to answer any interview questions not applicable to their experience. Because the interviews were semi-structured in nature, and given the varying experiences of the interviewees, not all questions were asked of all respondents.

Of the original interviews conducted for this project, six out of eleven military respondents and fourteen out of fourteen of PSC respondents agreed that successful coordination between the military and PSC personnel in the field does occur regularly, though many noted that such coordination is often ad hoc and depends upon the personalities of those involved. A few examples include security contractors notifying the relevant military commander(s) when traveling into or through a particular area of responsibility (AOR), contractors and military personnel exchanging cell phone numbers when they know that they will be working in the same AOR, and contractors holding up U.S. or coalition flags when passing through military checkpoints.[284] "Success" in this case is conceptualized in terms of a scale of success ranging from the basics of communicating and not shooting at each other, all the way up through success in achieving the desired tactical, operational, or strategic goal.

A U.S. Air Force pilot with experience commanding a Provincial Reconstruction Team (PRT) in Afghanistan from April 2006 to April 2007 illustrated

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[284] Colonel Tim Vuono (U.S. Army), in interview with the author, October 10, 2006; Mark Lonsdale (Vice President and Director of U.S. Operations, Hart Security) in interview with the author, December 2006; John Nettles (former Army Special Forces; Trainer, Olive Security Training Center), in interview with the author, April 2007.

an instance of this higher level of success. He noted that when training the Afghan

National Police, DynCorp contractors' assistance "was invaluable in getting the

mission up and running, and in the removal of two highly corrupt police chiefs."[285]

Meanwhile, one official from the firm Explosive Ordnance Disposal Technology

(EODT) who was deployed to Iraq in 2004 highlighted the types of PSC-military

coordination practices employed by his firm:

> Always important to coordinate, but stay the hell out of
> the way. At Camp Taji we had nightly
> [U.S.Government]-EODT meetings to stay coordinated.
> At night my job was to ensure that our last Iraqi guard
> outpost was tied in with the U.S. Army's first position
> on the perimeter."[286]

PSC-military coordination at all levels in the field enables the entire force to be

more responsive to its own needs and capabilities, and to external conditions. It also

increases the entire force's level of integration. Successful coordination should

therefore increase military effectiveness through its impact on *integration* and

responsiveness, as defined in Chapter Two of this study. The fact that much of this

coordination is ad hoc, however, poses a challenge in terms of how to institutionalize

the coordination processes so that they occur more regularly. Through its focus on

both structural deficiencies and identity issues underlying the various problems of

PSC-military coordination in the field, this chapter aims to develop both structural and

identity-based recommendations that will do much to institutionalize and standardize

coordination processes.

When coordination problems do occur, they bring with them many interrelated

problems that can impact military effectiveness, including friendly fire incidents

between PSC and military personnel (so-called "blue-on-white" incidents), resentment

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[285] Interview with Lieutenant Colonel, U.S. Air Force, October 31, 2007.
[286]Colonel Tom Johnson (U.S. Army, Ret.; Ethics & Compliance Officer, EODT Technology), in interview with the author, July 7, 2007.

over PSC-military pay differentials, the military's lack of knowledge regarding PSCs' presence in their AOR, and PSCs' often negative impact on local civilians' perceptions of the entire military operation. These issues, which are discussed in detail below, occur both in Operation Iraqi Freedom and Operation Enduring Freedom.[287]

Blue-on-White Incidents

Newspaper accounts detailing events in Iraq indicate that something other than structural improvements might be necessary to remedy PSC-military coordination problems. At their most extreme, these problems are reflected by "friendly fire" or "blue-on-white" incidents in which the U.S. military fires upon PSCs working for various U.S. government agencies or other U.S. contractors (such as PSCs working as security for construction companies in Iraq), or vice versa. Reports of the Baghdad ROC indicate that the most likely blue-on-white victim is a private security company employee. Blue-on-white victims are most likely to be fired upon by coalition forces (as opposed to Iraqi Security Forces), during late-morning (10:00-11:00am). Victims are most likely to be approaching a checkpoint, or overtaking (or being overtaken by) a convoy. The number of reported blue-on-white incidents decreased significantly following the establishment of the ROC in 2004, indicating the potential for improvement over time with the creation of structural coordination mechanisms.[288] Figures 5.1-5.3 illustrate these data.[289]

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[287] It is worth noting here that for the purposes of this project, Operation Enduring Freedom does not differ significantly from the situation in Iraq, although there is a lower ratio of PSC to military personnel in Afghanistan and there are no structural measures like the ROC in place to assure smooth communications between PSC and military personnel. Both a representative of the British Association of Private Security Companies (BAPSC) and an MPRI official who served in OEF from 2003-2005 noted these differences between OIF and OEF. Hank Allen (International Business Development, MPRI), in interview with the author, April 2, 2007; Dr. Sabrina Schulz (Director of Policy, British Association of Private Security Companies), in interview with the author, January 25, 2007.

[288] Interestingly, the Reconstruction Operations Center is managed by Aegis Defence Services, Inc., a private intelligence company owned by former Sandline owner Tim Spicer, whose activities in Sierra

BLUE ON BLUE PARTICIPANTS
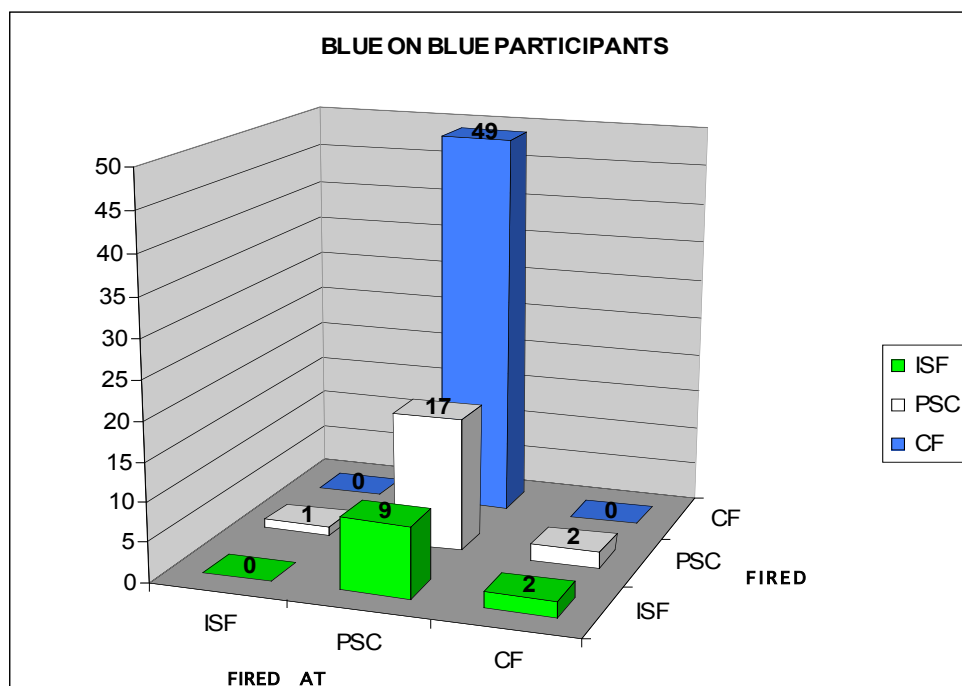
ISF = Iraqi Security Forces   CF = Coalition Forces
PSC = Private Security Companies

Figure 5.1:
Blue-on-White Incidents Involving Coalition Forces and PSC Personnel in OIF
(November 2004 – August 2006)

While these friendly fire incidents are disturbing, interview data indicates that

they are not as pervasive as some media reports make them out to be. Indeed, only six

of this project's eighteen PSC interviewees and four of the fourteen military

Leone and Papua New Guinea are discussed in detail in Chapter Four. The *Washington Post* reports that Aegis won the largest single contract for private security in Iraq – a three-year, $293 million U.S. Army contract – for its management of the ROC. Steve Fainaru and Alec Klein, "In Iraq, a Private Realm of Intelligence-Gathering," *The Washington Post* (July 1, 2007). Accessed December 18, 2007 at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/30/AR2007063001075_pf.html.
[289] The ROC Watch Officer originally produced these charts. I would like to thank Colonel Timothy Cornett of USSOUTHCOM and the Peacekeeping & Stability Operations Institute of the U.S. Army War College for providing me with access to these data, which Colonel Cornett presented at the Combat Training Center Commander's Conference at the Combined Arms Center at TRADOC on September 26-27, 2006.

interviewees were ever involved in or had firsthand knowledge of a blue-on-white incident.[290] Of course, one should consider the possibility that the figures detailing blue-on-white incidents are prone to error. An in-depth report published in January 2008 notes that significant incidents are likely to be both underreported and misreported by security contractors. Human Rights First reviewed 610 serious incident reports (SIRs) filed with the ROC between July 2004 and April 2005, finding that the vast majority of SIRs were in regard to threats perceived by contractors and

ROAD POSITION

- CHECKPOINT - APPROACH
- FOLLOWING (or overtaking)
- SLIP ROAD (joining a route)
- NOT KNOWN
- APPROACHING (Travelling opposite directions)
- CHECKPOINT - STATIONARY

27% 36% 8% 15% 10% 4%
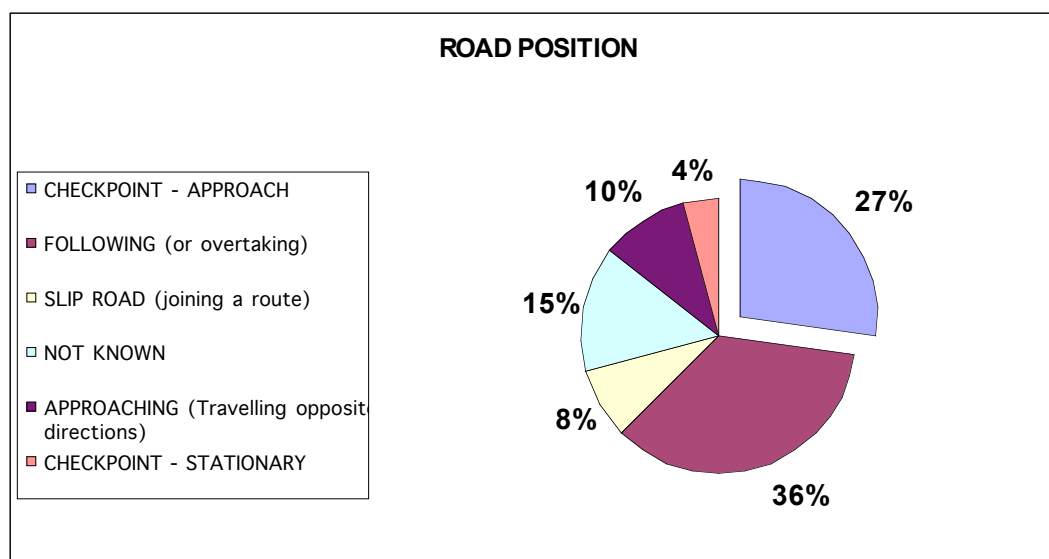
Figure 5.2:
Majority of Blue-on-White Incidents Involve
Approaching Checkpoints & Following/Overtaking Convoys
(November 2004 – August 2006)

did not touch upon contractors' conduct towards others. The report notes "Among all of these SIRs just one even suggests unwarranted weapons discharge by a security

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[290] It is difficult to grasp the frequency of blue-on-white incidents relative to other friendly fire incidents, as no centrally collected figures of friendly fire incidents between regular military forces (so-called "blue-on-blue" incidents) in Operation Iraqi Freedom exist. However, one report suggests that thirty-two blue-on-blue incidents involving British and coalition vehicles occurred in southern Iraq in 2004. See Mark Townsend, "Why Won't the US Tell Us How Matty Died?," *The Guardian*, February 4, 2007. Accessed June 10, 2008 at http://www.guardian.co.uk/2007/feb/04/iraq.military/print.

contractor."[291] Human Rights First points out that such underreporting is likely due to the fact that the self-reporting system is built for coordination and contractor protection, and not for the purpose of monitoring or investigating PSC personnel.[292]
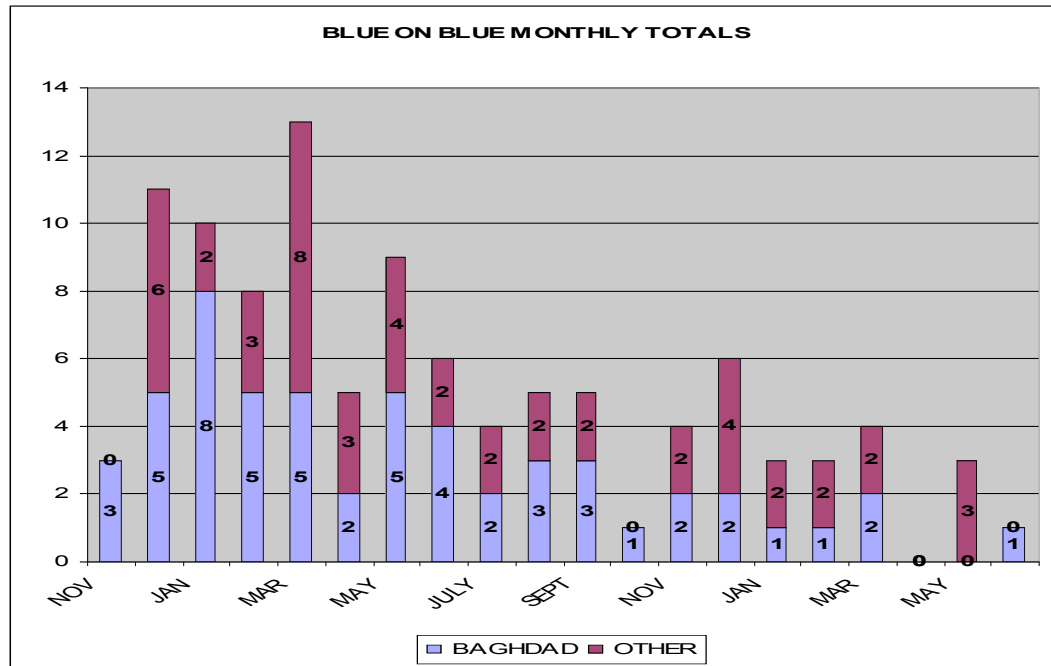
Figure 5.3:
Month-to-Month Breakdown of Blue-on-White Incidents Reported to ROC
(November 2004 - August 2006)

Furthermore, contractors have little incentive to report incidents, given that:

> The individual risks his job, and the private security
> companies themselves may be concerned that a high
> number of compromising incidents may be viewed by the
> military contracting authority as evidence of improper
> training, supervision or conduct, leading to potential
> cancellation of current contracts or a decreased chance to
> secure future contracts.[293]

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[291] Human Rights First, *Private Security Contractors at War: Ending the Culture of Impunity* (Washington, DC: Human Rights First, 2008), 13.
[292] Human Rights First report, 2008: 16.
[293] Human Rights First report, 2008: 16.

It is impossible to conclusively know the extent of underreporting. However, an EOD Technology official with extensive U.S. Army Special Forces experience and experience working as a contractor in OIF in 2004 provides some hope that improvement in PSC-military coordination is possible, noting that "Fights [between PSC personnel and the military] are less common than you would expect, but there is a structural problem – doctrine supported by training and simulations are lacking . . . much more needs to be done at the Training and Doctrine Command (TRADOC) and within the Marine Corps."[294]

The vast majority of both PSC and military interviewees agreed that most of these incidents occur because of the lack of interoperable communications devices and shortcomings in young soldiers' training regarding PSC personnel and how to deal with them. Many young reservists in particular were not accustomed to working alongside PSCs and were occasionally referred to as "trigger-happy" by their PSC counterparts. A PSC operator involved in several blue-on-white incidents while in Iraq from February 2004 to May 2005 noted:

> I personally was shot at four times by the military, but I never shot at a military person. So what's the real problem? Training on the military side. Don't just shoot at something because you don't know what it is. Simple solution we had: We requested and were issued a Marine Corps radio so we could talk to the gate before we rolled up. Problem solved . . .[295]

Whatever their cause, such incidents have an unmistakable impact on the force's integration, as they decrease the level of trust between military and PSC personnel fighting the same enemy.

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[294] Colonel Tom Johnson (U.S. Army, Ret.; Ethics & Compliance Officer, EOD Technology), in interview with the author, July 7, 2007.
[295] Interview with private security contractor employed by Triple Canopy in Iraq, April 17, 2007.

PSC-Military Pay Differentials

Both PSC and military interviewees frequently cited the high pay of PSC personnel for jobs similar to their military counterparts as a source of resentment between the two groups. In some cases, security contractors can make a soldier's annual salary in just one month. Two PSC interviewees who served in OEF in 2002 and 2003 (with one returning for one month in late 2004) noted that they were making approximately $1,000 per day while deployed, working as PSC team leaders.[296]

One colorful example of pay differentials leading to dangerous levels of resentment is seen in the Zapata Engineering incident of May 28, 2005, when sixteen employees of the U.S.-based firm Zapata Engineering were arrested for supposedly firing upon a U.S. military checkpoint watchtower in Iraq. Zapata was under contract with the U.S. Army Corps of Engineers at the time, tasked with managing a storage depot for captured ammunition in Iraq. The sixteen contractors were held in military custody for three days and, as documented in a report on National Public Radio (NPR), were harassed and treated disrespectfully by the Marines during their detention. Referring to Matt Raiche, a former Marine working for Zapata, the NPR report notes:

> While in Marine custody for three days, Raiche and
> some of the other contractors say they were abused and
> humiliated. One Marine derided the group as rich
> contractors, Raiche says, and another Marine slammed a
> contractor to a cement floor and crushed his testicles.
> Raiche says a Marine sergeant pushed him to the ground
> with a knee to his back while other Marines mocked
> him.[297]

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[296] Alan Brosnan (Director, Olive Security Training Center) and Todd Taylor (Instructor, Head of Law Enforcement Training Division, Olive Security Training Center), in interview with the author, April 10, 2007.

[297] Eric Westervelt, "Profile: Confusion in Iraq Over Alleged Incident Between Marines and Private Contractors," *National Public Radio: Morning Edition* (June 13, 2005). Accessed March 8, 2007 at http://www.npr.org.

Another report of this incident notes:

> All 16 of the Zapata convoy were imprisoned in small, six-foot by eight-foot cells, dressed in orange prison garb for three days without legal charges or legal counsel . . . Some of the security convoy said the Marines also roughed up the contractors before taking them to jail and that they were slammed down on the concrete one by one, bruising some pretty badly . . . One of the contractors, Rick Blanchard of Shelbyville, Tennessee, said a Marine put a knee to his neck and applied his full body weight as another cut his boots off and stripped him of his wedding ring and religious ornaments. Twenty or thirty other Marines laughed, he added, as a uniformed woman with a military dog snapped photographs. Taunts were made about the large salaries of private security contractors . . . The gathering crowd of Marines was saying things like 'how is that contractor money now,' said Blanchard, a Marine veteran.[298]

This treatment allegedly occurred despite the fact that some if not all of the employees were former military personnel themselves, and despite the contractors' claims of innocence with regard to firing upon the checkpoint.

The Marines dispute this account of the Zapata employees' detention, however. Marine spokesman Lieutenant Colonel David Lapan told reporters, "The contract personnel were treated professionally and appropriately the entire time they were in the custody of military personnel . . . Before they were taken to the detention facility, they were placed on the ground, flex-cuffed and searched per standard practice. They were not thrown to the ground."[299] The Zapata contractors were never charged for the alleged offense, reflecting the problems regarding contractors' legal accountability which are discussed in Chapter Six of this study.

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[298] David Phinney, "Marines Jail Contractors in Iraq: Tension and Confusion Grow Amid the 'Fog of War,'" *CorpWatch* (June 7, 2005): 3-4. Accessed December 13, 2005 at http://www.corpwatch.org/article?php.id=12349.
[299] Phinney, 2005: 4.

Such encounters – though not usually this severe in nature – underscore how sentiments of resentment or competition between the military and PSCs, particularly over issues of pay differentials, can become a major problem. Of the military and PSC respondents interviewed specifically for this project, seven of eight military respondents and fourteen of seventeen PSC respondents cited resentment between PSC and military personnel, often based upon contractors' higher wages for similar work, as a major cause of field coordination problems. As one U.S. Army Major with experience in Afghanistan from August 2003 to May 2004 noted:

> There was always resentment between my soldiers and the contractors because the contractors were making several times more money than my soldiers and doing basically the same job . . . Everybody rolls their eyes when we start to mention private security contractors. It seems that none of my colleagues have had a positive experience when interacting with them.[300]

A former Army Airborne Ranger and Special Forces officer with fifteen years of military experience, who worked for Triple Canopy in Iraq from February 2004 to May 2005, dissected the issue of PSC-military resentment:

> In my two years I learned that most of the problems between military and security contractors were ego/jealousy driven . . . Example: Two guys with the same background. One stays in the military and gets deployed to Iraq. The other gets out of the military and deploys to Iraq during the same time period as a contractor. The guy in the military is making $40,000 a year working twelve-hour shifts seven days a week while the contractor is making $240,000 a year and working four- to six-hour shifts four to six days a week. The guy in the military sleeps in a room with ten other guys while the contractor has his own trailer with air-conditioning, television, a DVD player, and a fridge. The military guy is under the control of the military, so no sex or drinking – the contractor isn't. The military

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[300] Interview with U.S. Army Major, November 26, 2007.

guy wears a uniform while the contractor wears whatever he wants. The military guy stays seven months and is forced to stay longer while the contractor can leave whenever he wants. And so on and so on.[301]

These results are bolstered by Ryan Kelty's forthcoming large-n survey findings, which show that – in the context of U.S. National Guard soldiers who recently returned to the United States after fifteen months in Iraq – negative social comparisons with contractors have direct negative impacts on perceived unit cohesion and general attitudes toward contractors. In other words, soldiers who hold an unfavorable perception of contractors' identities in relation to their own (a negative relational comparison) feel that co-deploying PSCs with the military has a negative impact on the unit's cohesiveness as a fighting force.[302]

At issue here is the fact that PSCs are increasingly infringing upon the military's professional jurisdiction and are paid more for performing the same jobs. Matt Raiche of Zapata Engineering reiterated this point, describing members of the military as: "Resentful that we made so much money, the fact that we could come home, you know, every ninety days. They didn't like that. But mainly they're mad about the money we made, four or five times the amount they make."[303] Such resentment impacts the force's *integration* and reflects issues of professional jurisdictional competition and identity cleavages based upon different social purposes and relatively hostile relational comparisons.[304] Significantly, though, there are structural differences – for instance, in pay levels and vacation time – at the root of these hostile relational comparisons. Therefore, if this resentment is strong enough to cause PSC-military coordination problems, both structural- and identity-based

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[301] Interview with private security contractor employed by Triple Canopy in Iraq, April 17, 2007.
[302] See reference to forthcoming Kelty study in Ryan Kelty, Darcy Schnack, and Keke Langkamp, "Attitudes on the Ground: What Soldiers Think About Civilian Contractors," *Paper Presented at the Annual Meeting of the International Studies Association* (San Francisco, March 2008), 10.
[303] Westervelt, 2005: 2.
[304] Rawi Abdelal, et al, "Identity as a Variable," *Perspectives on Politics* 4 (2006): 5, 6.

remedies to these coordination problems will be necessary. The connection between identity cleavages and resentment are explored further below in the discussion of identity issues.

Interestingly, however, the opinions of military personnel regarding their PSC counterparts are not entirely negative. The interview data in some instances actually indicate that increased exposure to security contractors is improving the military's perceptions of PSC personnel and their motives for working as war zone contractors. For instance, two British PSC officials noted that the PSC industry received a warmer welcome from the U.S. military than from the U.K. military precisely because the U.S. military has a longer history of working alongside contractors.[305] Furthermore, when asked whether they thought the PSC personnel with whom they had come into contact were as motivated by patriotism as they were by money, six of eleven military interviewees answered in the affirmative, as did twelve of fifteen PSC respondents. Though this level of PSC affirmation is not surprising, the military's level of agreement with them on this issue is fairly unexpected, given the military's professional incentives to frame PSC personnel as unpatriotic. A former Heavy Brigade Team Commander with OIF experience from November 2005 to November 2006 noted "Contractors were generally well-meaning patriots trying to make a living."[306] Another U.S. military major with OIF experience in 2003-2004 and again from November 2005 to November 2006 said "Money is obviously a strong incentive for contractors to work in a combat zone and separate from their families when they do not have to. I think most also have a sense of patriotic duty, since many are prior military."[307] These findings are supported by Kelty, Schnack, and Langkamp's large-n survey research, in which the researchers asked 536 U.S. Army infantry and combat

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[305] Interview with high-level British PSC officials, January 24, 2007.
[306] Interview with U.S. Army Colonel, July 12, 2007.
[307] Major Royce Edington (U.S. Army), in interview with the author, July 10, 2007.

aviation troops whether civilian contractors are less committed to the work they perform than are soldiers. Of these respondents, 27.2% "disagreed" with this notion, while another 28.2% "disagreed somewhat." This is compared with only 4.3% who "strongly agreed" that contractors are less committed to their work than are soldiers, 10.1% who "agreed," and 17.0% who "agreed somewhat."[308] Meanwhile, on the PSC side, a retired U.S. military general working as an official at DynCorp noted:

> Honestly, I believe that significant numbers of our employees are motivated by a sense of duty to our Nation. While money is a strong incentive (and most employees earn significantly more deployed than in their regular law enforcement jobs), it takes a sense of commitment and a desire to help those that can't help themselves. I see that in most of our employees."[309]

These findings speak directly to Reiter and Stam's variable of morale, discussed in Chapter Two, which they measure in terms of patriotism.[310] Based upon these findings, it would clearly be difficult to argue that PSCs impact military effectiveness negatively based on claims that they are less patriotically motivated in the field than are regular soldiers. A similar finding bolsters this conclusion, with nine of the study's fourteen military respondents and twelve of the eighteen PSC respondents saying that they do *not* believe PSC personnel are likely to abruptly abandon their posts. While it is virtually impossible to find actual data to substantiate this finding at this point in time – due to the plethora of firms operating worldwide, the lack of any comprehensive study of this issue up to this point, and the incentives for firms to cover up instances of employees abandoning their posts – it is nonetheless an interesting finding that speaks directly to a common critique of private military and

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[308] Kelty, Schnack, and Langkamp, 2008: 16.

[309] Charles "Chuck" S. Mahan Jr. (Lieutenant General, U.S. Army (Ret.), and General Manager, Law Enforcement and Security and Government Services, DynCorp International), in interview with the author, November 7, 2007.

[310] Reiter and Stam, *Democracies At War* (Princeton: Princeton University Press, 2002), 61.

security firms. For instance, Peter Singer has warned potential purchasers of PSC

services that:

> . . . while firms may have market incentives not to
> abandon their posts or jump ship for better paying
> contracts elsewhere, their employees often do not.
> Operations will thus depend on soldiers, unaccountable
> to the code of military justice, who make their own
> personal risk vs. reward analysis.[311]

All in all, the interview findings bode well for PSCs' impact on the military's

skill in terms of soldiers' motivation, as they indicate that: (a) private contractors

comprising part of a co-deployed force will likely be relatively easy to motivate for

particular tasks, since many are in the field for patriotic as well as monetary reasons;

and (b) military personnel are not likely to feel a decrease in motivation due to having

to work alongside higher-paid contractors, since many of them recognize that

contractors are, by and large, patriotically motivated. Furthermore, twelve out of the

study's fourteen military respondents and all eighteen PSC respondents said that they

believe that PSC employees are necessary force multipliers. This speaks to Brooks'

notion of *quality*, indicating that PSCs improve military effectiveness in this sense by

increasing the military's capacity. Again, the fact that such a high proportion of

military respondents answered this question in the affirmative is surprising and

particularly informative, given the motives for the military to try to defend their

professional jurisdiction by arguing that PSCs are unnecessary.

The Military's Lack of Knowledge of PSC Positions

Both military and PSC personnel have frequently cited the military's lack of

knowledge regarding PSC personnel traveling through a particular military unit's area

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[311] Peter W. Singer, "Should Humanitarians Use Private Military Services?," *Small Wars Journal*. Accessed February 11, 2008 at http://smallwarsjournal.com/documents/petersinger.pdf.

of responsibility (AOR) as a result of problematic coordination between PSC and military personnel co-deployed in the field. Both the GAO interviews and those interviews conducted specifically for this project included numerous statements regarding such a lack of knowledge.[312] Of the GAO's military interviewees, eight of the fourteen complained of not being aware of PSCs' location within their area of responsibility, which in some cases led to unnecessary danger for the troops in that AOR when having to provide assistance or a quick-reaction force (QRF) to PSCs. Again, many interviewees cited the dearth of interoperable PSC and military communications devices as an underlying structural cause of this lack of knowledge: twenty-two of the GAO's thirty-three PSC interviewees and eight of the GAO's fourteen military interviewees mentioned communications difficulties as the main cause of coordination problems. This was mainly due to the lack of interoperable radio and communications systems between the military and PSCs. These coordination and communications shortcomings can have a significant impact on the force's *integration* and *responsiveness*, as they increase the likelihood that PSC movements will catch military units off guard, thus hindering the military's ability to unify its troops' activities and to respond to the enemy. Many interviewees, however, note that these communications shortcomings regarding PSC teams' field positions have abated significantly since the establishment of the Reconstruction Operations

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[312] In writing its 2005 and 2006 reports on "Actions Needed to Improve the Use of Private Security Providers," the U.S. Government Accountability Office conducted twenty-four separate individual and small group interviews between July 2004 and March 2006. Those interviewed included private military company officials, soldiers who had experience interacting with PSC personnel in the field, representatives from U.S. Central Command (CENTCOM) and from the Project & Contracting Office (PCO) in Iraq, Pentagon officials, and various U.S. military officials. The relevant interviews – those of military and PSC personnel and officials with on-the-ground experience in the Iraq War – consisted of interviews with fourteen military personnel and officials, and interviews with thirty-three employees (holding various positions) from various PSCs. The transcripts reflect a mixture of structured and semi-structured interviewing techniques, and I obtained them in October 2006 through a written request to the GAO. All of the figures cited above are drawn from my own analysis of the GAO transcripts.

Center in Iraq. This bodes well for structural remedies to PSC-military coordination problems.

Yet, the fact that company participation in the ROC was not mandatory until recently, and that some PSCs with a significant presence in Iraq (such as Blackwater) did not participate in the ROC for several years, means that further progress in remedying these issues is necessary. A December 2007 agreement between General David Petraeus, the top U.S. military commander in Iraq, and Ryan Crocker, the American Ambassador to Baghdad, may successfully remedy these PSC-military communications and coordination issues. The agreement, resulting from policy talks following the September 2007 Nisour Square incident in which Blackwater guards killed seventeen Iraqi civilians, requires that all State Department convoys in Iraq coordinate their movements with the military's main operations center in Baghdad (the ROC), sets minimum standards for training the contractors, and establishes guidelines for armed guards to use force in self-defense. Only close examination of the agreement's effectiveness over time will tell us to what extent it successfully remedies these coordination issues. Notably, the agreement's limitation to State Department contractors leaves open a wide loophole for those PSCs employed by other governmental actors and/or other companies in Iraq, who may or may not coordinate their movements with coalition forces.[313]

The devastation that can occur due to such a failure to coordinate contractor movements was seen in Fallujah in early 2004, when four U.S. contractors working for Blackwater USA were brutally killed by insurgents. Contractor deaths such as these pose a challenge for the military. In the Fallujah case, moreover, they led to a complete overhaul of the original strategic military plan. The Blackwater deaths

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[313] Eric Schmitt and Paul von Zielbauer, "Accord Tightens Control of Security Contractors in Iraq," *The New York Times* (December 5, 2007). Accessed December 18, 2007 at http://www.nytimes.com/2007/12/05/washington/05blackwater.html?pagewanted=print.

caused U.S. policymakers to shift the military strategy and launch an offensive in Fallujah, as elaborated below.

Fallujah

In March 2004, four contractors working for Blackwater USA were ambushed while providing security for a convoy attempting to drive through the city of Fallujah. Insurgents killed the four men in a violent volley of small arms fire, and lit their vehicles and the corpses on fire. The riotous scene was soon aired on television stations across the globe, with jubilant insurgents dragging the burned and mutilated corpses of the four men to a nearby bridge and hanging them there. It is commonly acknowledged among Iraq War experts and the media that the gruesome murder and mutilation of these four Blackwater contractors served as the rallying cry and inspiration for the Marines who fought in the November 2004 battle in Fallujah.[314] Journalists Bill Sizemore and Joanne Kimberlin write that the Fallujah ambush "irrevocably altered the course of the war" in Iraq. "U.S. military commanders, who had no advance knowledge of the convoy's presence in Fallujah, were ordered by Washington to change tactics and pound the city into submission, inflaming the Iraqi insurgency to new heights."[315] Meanwhile, former Reagan-era Assistant Secretary of Defense Bing West, who authored an account of the Fallujah battle, noted in an interview that launching the offensive in Fallujah was "a decision by our top leadership against the advice of the Marines. They were not going to change their entire strategy because of a tactical error. They were overruled."[316] Whether or not

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[314] See for instance Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York: Crown Publishers, 2006), 119; Associated Press, "Blackwater Blamed for Fallujah Bloodshed," *Newser* (September 28, 2007). Accessed January 9, 2008 at http://www.newser.com/story/8370.html.
[315] Bill Sizemore and Joanne Kimberlin, "Blackwater: When Things Go Wrong," *The Virginian-Pilot* (July 26, 2006).
[316] Bing West, *No True Glory* (New York: Bantam, 2005), quoted in Sizemore and Kimberlin, 2006.

this is true, the contractors' deaths certainly served as the motivation for the Marines to roll into Fallujah just five days after the Blackwater deaths – months before November's major battle – in an operation resulting in up to 600 Iraqi deaths, many of them reportedly civilian women and children, along with seven Marine deaths, 100 wounded Marines, and only the temporary pacification of the city.[317] This operation, Operation Vigilant Resolve, followed Paul Bremer's statement that "Their deaths will not go unpunished," and the Deputy Director of Coalition Operations' statement that "It will be at a time and place of our choosing. We will hunt down the criminals. We will kill them or we will capture them, and we will pacify Fallujah."[318]

Whether the Blackwater contractors involved in this incident coordinated with the Marines surrounding Fallujah before attempting to travel through the city is unclear. Journalist Robert Young Pelton notes:

> According to one theory, the convoy intended to link up with an American-trained Iraqi Civil Defense Corps (ICDC) team on the eastern entrance to town, which would guide them through the city center, providing more firepower if anything happened. However, this would have required coordination the evening before, and there is no evidence that the marines at Camp Fallujah, or the Blackwater contractors themselves, had made this contact.[319]

A September 2007 Congressional inquiry into Blackwater's actions in Fallujah reinforces the notion that the Blackwater team did not adequately coordinate with coalition forces prior to the attack, noting that the Blackwater personnel arrived at the wrong military base the day before the attack because they did not have maps and the mission had not been sufficiently planned. The team was forced to spend the night at this base (Camp Fallujah) when, upon attempting to depart for the correct base (Camp

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[317] Roy McCarthy, "Uneasy Truce in the City of Ghosts," *The Guardian* (April 24, 2004). Accessed February 11, 2008 at http://www.guardian.co.uk/Iraq/Story/0,2763,1202163,00.html.
[318] Pelton, 2006: 138-139.
[319] Pelton, 2006: 131.

Ridgeway), they were prevented from traveling farther by a military checkpoint. At Camp Fallujah, a witness employed by contracting firm Kellogg, Brown, and Root (KBR) assessed that "the mission that they were on was hurriedly put together and that they were not prepared."[320]

It is clear that PSC-military coordination in this instance needed improvement to at least some extent, since neither the U.S. military nor coalition forces were accompanying the convoy through what was thought at the time to be a dangerous area of the country. Nor was the military involved in helping the convoy to chart out the safest course through the city, or blocking off roads for the convoy – things that the military often does for convoys when coordination occurs ahead of time. In reality, the Blackwater convoy had entered the city by bypassing a Marine checkpoint without the Marines' knowledge. The Marines first learned of the ambush from television reports detailing the contractors' gruesome murders and the desecration of their bodies.[321]

Also clear in this case is that PSC actions had an impact on military planning and, potentially, on the military's ability to wage war in accordance with its operational and strategic aims. One must consider the counterfactual scenario regarding the battle of Fallujah: what would have happened in that region, militarily speaking, if the contractors had not been attacked? Because the Marines were not planning to launch a massive offensive on Fallujah prior to the Blackwater contractors' gory deaths, and because the battle of Fallujah was a major event early on in Operation Iraqi Freedom, one may sensibly conclude that the PSC and its employees changed the military's plans significantly in this situation, thus having an

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[320] U.S. House of Representatives, Committee on Oversight and Government Reform, Majority Staff, "Private Military Contractors in Iraq: An Examination of Blackwater's Actions in Fallujah," (September 2007): 3, 11.
[321] Sizemore and Kimberlin, 2006.

impact on the military's operational and strategic effectiveness. Of course, as Robert Young Pelton notes, ". . . it can be argued that the battle for Fallujah was part of a larger plan to destroy insurgent strongholds in the Sunni Triangle."[322] The extent and direction of this impact is therefore debatable. The important point to recognize here, however, is that PSCs and their employees can and do impact military planning and the military's ability to achieve its tactical, operational, and strategic goals.

PSCs' Impact on Local Civilians' Perceptions of the Entire Military Operation

Security contractors have been shown, on multiple occasions, to negatively influence local civilians' views of the entire military operation. Contractors' impact on locals is extremely relevant to military effectiveness because locals do not distinguish between security contractors and the military in Iraq and Afghanistan. Yet, contractors have different tactical aims from those of the military, primarily the aim of protecting the "principal," or the object that they are guarding. They therefore operate differently from the military, particularly with regard to their treatment of local civilians. While the U.S. and coalition forces in OIF and OEF recognize the value of cultivating good relationships with locals – focusing largely on the "hearts and minds" approach in these two theatres – PSC personnel in many reported cases have harmed their own and the military's relations with locals.

A highly visible example of this was seen in Baghdad's Nisour Square on September 16, 2007, when Blackwater USA contractors fired upon and killed seventeen Iraqi civilians, and wounded twenty-four others, in a confusing and ultimately unjustified hail of fire exacerbated by the "fog of war." Some accounts of the incident cite Iraqi witnesses who say they saw Iraqi Security Forces opening fire from a watchtower, thus prolonging the firefight and possibly leading the Blackwater

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[322] Pelton, 2006: 119.

contractors to believe they were under attack. Iraqi officials have denied this.

Ultimately, it is virtually impossible to learn exactly what happened in Nisour Square,

given officials' failure to secure the scene directly after the massacre and the

unwillingness of all parties involved to share information with each other.[323]

While Nisour Square is an extreme example, military personnel have cited a

number of other instances in which security contractors have acted disrespectfully at

best toward locals in their AOR. For instance, a U.S. Army infantryman with

experience in Iraq from November 2005 to November 2006 noted that:

> Some commanders are thankful because they have well
> qualified security contractors operating in their AO [area
> of operation]. However, it can become the bane of a
> commander's existence if they are causing more
> problems than they are solving . . . Security contractors
> do not have to worry about the far reaching implications
> of their actions as it pertains to population perception
> and the like. All they have to do is worry about getting
> their PC (precious cargo) from point A to point B safely.
> However, the end result falls back on the Army soldier
> in that now Iraqis who have been harassed just associate
> it with Americans . . . and they do not differentiate
> between contractors and the military . . . they just know
> that an American harassed them."[324]

This statement speaks both to issues of command and control and to issues of

contractors' compliance with legal and normative rules of international humanitarian

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[323] James Glanz and Alissa J. Rubin, "From Errand to Fatal Shot to Hail of Fire to 17 Deaths," *The New York Times* (October 2, 2007). Accessed January 9, 2008 at http://www.nytimes.com/2007/10/03/world/middleeast/03firefight.html?scp=4&sq=nisour+square+blackwater. James Glanz and Alissa J. Rubin, "Blackwater Shootings 'Murder,' Iraq Says," *The New York Times* (October 8, 2007). Accessed January 9, 2007 at http://www.nytimes.com/2007/10/08/world/middleeast/08blackwater.html?scp=1&sq=nisour+square+blackwater. Richard A. Oppel Jr. and Michael R. Gordon, "U.S. Military and Iraqis Say They Are Shut Out of Inquiry," *The New York Times* (October 11, 2007). Accessed January 9, 2008 at http://www.nytimes.com/2007/10/11/world/middleeast/11blackwater.html?scp=3&sq=nisour+square+blackwater. David Johnston and John M. Broder, "FBI Says Guards Killed 14 Iraqis Without Cause," The New York Times (November 14, 2007). Accessed January 9, 2008 at http://www.nytimes.com/2007/11/14/world/middleeast/14blackwater.html?scp=10&sq=nisour+square+blackwater. Lara Logan, "Interview with Erik Prince," *60 Minutes* (October 13, 2007).
[324] Interview with U.S. Army Colonel, October 11, 2007.

law, which dictate how civilians in war zones are to be treated. Such legal issues are addressed at length in Chapter Six, but it is worth noting here that such statements provide empirical support for H1c, that PSC non-compliance with legal and ethical norms of Just War has a detrimental impact on military effectiveness. Another Major in the U.S. military with OEF experience from August 2003 to May 2004 noted:

> . . . the contractors could shoot/kill local nationals without having to deal with ROE [rules of engagement]. The contractors often boasted of how many locals they had killed. We always had to do the consequence management after these events. I don't know if these contractor killings were on legitimate Taliban/AQ [Al Qaeda] insurgents or not. We still had to deal with the aftermath   . . . it provided unneeded friction.[325]

Both of these statements illustrate how contractors can have a negative impact on overall military effectiveness by harming local perceptions of the military's mission and the legality with which it is conducted, particularly in a context in which the military has opted primarily to follow the "hearts and minds" approach to counterinsurgency warfare. Furthermore, by increasing the difficulty of the military's mission, such incidents reinforce military resentment of PSC personnel.

The military has little control over such incidents because PSC personnel are largely outside of the military chain-of-command. Of the original interviews conducted specifically for this study, only four of nine military respondents and three of ten PSC respondents thought that military commanders work well with PSCs. Meanwhile, another four of the nine military respondents thought that military commanders do *not* work well with PSCs, and six of the ten PSC respondents said that commanders' abilities to work well with PSCs vary based upon commander personalities. A contractor from New Zealand working for both Control Risks Group

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[325] Interview with U.S. Army Major, November 26, 2007.

(CRG) and BLP in Iraq from January 2004 to August 2005, and then again from October 2006 up to the time of his interview in April 2007, stated:

> It depends on who the military commander is and their attitude to PSCs. Some military commanders resented us mainly because of the money we earned in relation to them and also some PSCs were "cowboys" and very unprofessional. I personally got on well with most military commanders and providing we conformed to their rules and regulations generally there were no problems. Problems usually occurred when the military rotated their units and the new unit had different rules and regulations and their attitude to us varied.[326]

When asked specifically about the chain of command, six of this study's eight military respondents and four of the eleven PSC respondents thought that the chain of command does *not* operate smoothly with regard to security contractors in the field. The low percentage of PSC interviewees sharing this sentiment probably reflects the industry's incentives to appear as though it is under clear control in the field. The military's views on this issue may therefore more closely approximate reality. A U.S. Army Colonel and former Heavy Brigade Combat Team Commander who served in Iraq from November 2005 to November 2006 noted that security contractors "did NOT fall under my command. Normally they were attached to another command moving through the area or worked for [the U.S. State Department] . . . The main issue is that they did not have to answer to me, so I had very little leverage over them."[327] Difficulty integrating contractors into the chain of command can have a negative impact on both the military's *responsiveness* and its *integration*. They also lower the military's *skill* as it is conceived in this study, by making effective leadership more difficult.

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[326] Kevin McNeill (former New Zealand Army Infantry and Special Air Services, Personal Security Detail operator for Control Risks Group in Iraq, and Security Consultant/Trainer for Background Asia Risk Solution in the Malacca Straits; at time of interview, employed by BLP to train the Iraqi National Police), in interview with the author, April 19, 2007.

[327] Interview with U.S. Army Colonel, July 12, 2007.

<u>Overall Impact on Military Effectiveness & The Democratic Advantage</u>

As illustrated in the examples above, PSC-military co-deployment can have a significant and lasting impact on the military's ability to successfully achieve its aims. While PSCs do serve as force multipliers in Iraq and Afghanistan and thus have a beneficial impact on *quality*, they have a negative impact on *integration* through the structural and identity-based hindrances to their effective coordination with the military. These coordination problems pose further challenges for the military in terms of their effects on *responsiveness*. For instance, when a military unit is pulled away from its activities to send a quick-reaction force (QRF) to the aid of a PSC team in its AOR of which it had no previous knowledge, the ability of the soldiers in question to respond to external threats and changes in enemy capabilities is compromised. The soldiers in question are placed in a dangerous situation for which they had not planned nor prepared, to save the lives of "friendly" contractors who had not coordinated with them.

PSC-military co-deployment's impact on the military's relationship with the local population also detrimentally affects military *integration*, as well as military *quality*. Because contractors in Iraq have, in many instances, fired upon civilians and driven recklessly through civilian areas while firing shots, the locals harbor resentment toward them. Furthermore, because they associate the contractors with the U.S.-military led coalition occupying their country, many Iraqis reportedly hold the coalition forces accountable for contractors' actions. This is particularly problematic because the U.S. and coalition forces have opted to follow the "hearts and minds" approach to COIN in these theatres. Therefore, such contractor actions further spur resentment of security contractors within the military ranks, making the integration of PSC and military personnel into a cohesive occupying force less likely. Furthermore,

a strong line of argument exists which says that because the military's capacity to fight an insurgency depends so strongly on local support, locals can be seen as a type of "weapon" contributing to or taking away from the coalition's counterinsurgency activities. If one accepts this logic, then it becomes clear that the military's *quality* is compromised by contractors' alienation of the local citizenry as well.

Meanwhile, PSCs have a moderately negative impact on the military's *skill* in Iraq and Afghanistan. Although their patriotism mitigates the impact of their presence on soldiers' levels of motivation, the fact that resentment over wage differentials still exists between PSC and military personnel means that PSCs' higher pay has at least somewhat of a disheartening effect on military personnel, decreasing their motivation levels and thus their *skill*. This is illustrated by the fact that many soldiers are leaving the military in order to join the private sector.[328] Furthermore, many of the PSC and military personnel interviewed for this study thought that military commanders do not exercise effective control over PSC personnel. This level of doubt indicates that the presence of PSC personnel co-deployed alongside the military in the field likely lowers the military's *skill* by making overall effective military leadership more difficult.

Thus, the Iraq and Afghanistan cases demonstrate that PSCs can have a significantly detrimental impact on military effectiveness, providing support for H2 in situations of PSC-military co-deployment. By extension, the democratic advantage should be less likely with democracies' use of PSCs co-deployed alongside the regular military. This is because PSCs tend to diminish the very military effectiveness that, in part, defines the democratic advantage. PSCs logically do not have as much of an impact on the selection effects side of the democratic advantage in these cases of co-

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[328] See, for instance, Christopher Spearin, "Special Operations Forces a Strategic Resource: Public and Private Divides," *Parameters* (Winter 2006-2007): 58-70.

deployment as they do in Chapter Four's cases of PSC substitution for regular military forces. This is because the deployment of regular forces alongside PSCs in co-deployment situations draws the electorate's attention to the conflict, diminishing the chances that PSCs will allow policymakers to make conflict decisions outside of the public eye. Yet, contractor deaths are not included in official casualty counts for either OIF or OEF. This indicates that the use of PSCs may be enabling U.S. policymakers to continue involvement in these conflicts beyond what U.S. voters would stand for if contractor casualties were widely publicized, to the detriment of the democratic advantage.

<div align="center">Underlying Determinants of PSC-Military Coordination</div>

In the above analysis, both structural and identity issues are at the core of PSC-military coordination. As Chapter Two notes, "structure" in this study is conceived in terms of the ordering principles characterizing PSC-military co-deployments, the functions of the PSC and military units in question, and distribution of capabilities across those units. Meanwhile, identity is studied here in terms of the collective identities of both PSCs and the military, based upon Abdelal et al.'s operationalization and disaggregation of the content of collective identity into constitutive norms, social purposes, relational comparisons with other social categories, and cognitive models, or worldviews.[329] Table 5.1 reiterates the different interview responses, categorizing them in terms of identity and structure.

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[329] Abdelal et. al., 2006: 5-6. For a further explanation of these measurement rubrics, refer to Chapter Two.

Structural Issues

Of the original interviews discussed above, eight out of eight military respondents and sixteen of seventeen PSC respondents cited structural causes for coordination problems. These problems spanned the entire range of structural variables, including shortcomings and incompatibilities in PSC and military capabilities (such as lack of training and lack of interoperable communications devices), and shortcomings and incompatibilities in PSC and military ordering principles (for instance, the failure to effectively integrate contractors' into the military's chain of command).

One Army infantryman with OIF experience from November 2005 to November 2006 said, "I think most of the issues between the military and contractors are tied to incompatibility of equipment (communications, etc.)."[330] A Lieutenant Colonel in the British Army, speaking of emerging thoughts on PSC issues, acknowledged that the ROCs in Iraq are "a major step forward, but correlated pre-deployment training is still not happening because [PSCs and the military] are still not planning for joint operations together."[331] He noted that one example of the multitude of problems associated with this lack of correlated pre-deployment training and planning is that the military has no standard operating procedures in place for what the military should do if PSC personnel get attacked by insurgents in a military unit's AOR.[332] In other words, planning for PSC-military field interactions is not included in each group's stated functions, at least not to the degree necessary for effective coordination.

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[330] Interview with Lieutenant Colonel, U.S. Army, October 11, 2007.
[331] Lieutenant Colonel Chris Butler (British Army, stationed at the Development, Concepts and Doctrine Centre at MOD Shrivenham), in interview with the author, January 22, 2007.
[332] Lieutenant Colonel Chris Butler (British Army, stationed at the Development, Concepts and Doctrine Centre at MOD Shrivenham), in interview with the author, January 22, 2007.

These results closely replicate those from the interviews conducted for the 2005 and 2006 GAO reports on coordination problems between the military and PSCs in Iraq, as structural issues were the most commonly cited causes of military field coordination problems in the seventeen relevant GAO interview transcripts. Beyond the capability issues cited above, the second most common response from PSC interviewees regarding the causes of PSC-military coordination problems referred to incompatibilities in ordering principles: the lack of standard military rules, instructions, or doctrine regarding how PSCs and the military should deal with each other in the field. These responses included statements regarding PSCs' ambiguous position in the military chain of command, the ambiguity in the military's responsibility to provide assistance to PSC personnel, and ambiguity in the rules of engagement applying to PSC personnel. One-third (eleven of thirty-three) of PSC interviewees also noted the lack of pre-deployment training for the military regarding security contractors and their roles in the field. Notably, none of the PSC employees interviewed by the GAO mentioned that PSC employees should receive pre-deployment training on how to interact with the military. One-quarter (eight of thirty-three) of PSC personnel interviewed noted the lack of standard procedures for approaching military checkpoints and passing convoys as a major problem hindering PSC-military coordination, while six of the thirty-three PSC interviewees stated or implied that problems identifying PSCs as friendly forces contributed to poor PSC-military coordination.

The structural problems noted by the military differed slightly from those that PSC interviewees cited, although eight of the GAO's fourteen military interviewees similarly noted the lack of pre-deployment training as a structural weakness hindering effective military-PSC coordination. Yet, military interviewees thought that *both* groups should receive such training. Furthermore, eight of the fourteen interviewed

Table 5.1:

Structural & Identity Issues Mentioned in the Interview Data

	Structural Issues	Identity Issues
PSC	• Communication difficulties • Lack of standard doctrine for PSC-military interactions • Lack of pre-deployment training for military on PSCs • Lack of standard procedures for approaching checkpoints/convoys • Problems identifying PSCs	• Perceive military as "conventional," "slow," "inefficient," "dismissive" of PSCs, envious of PSCs' higher wages • Military commander's personality determines PSC-military relationship
Military	• Communication difficulties • Lack of standard doctrine for PSC-military interactions • Lack of pre-deployment training for *both* military and PSCs • Lack of knowledge of PSCs location / PSC failure to notify commander when in AOR • Lack of formal command & control relationship between military and PSCs • Resentment of PSC personnel due to pay differentials	• Perceive PSCs as disrespectful, ranging from "professional" to "pseudo-mercenaries" and "cowboys" • Varying PSC identities • Different operating cultures/styles • Different missions (i.e., social purposes) • Perceive most PSC personnel as at least somewhat patriotically motivated

from the military complained of a lack of knowledge regarding PSCs' location within

their AOR, which in some cases led to unnecessary danger for the troops in that AOR

when having to provide assistance or a quick-reaction-force to PSCs. Another eight of

the GAO's fourteen military interviewees noted the lack of a formal command and control relationship between the military and PSCs as a cause of coordination problems. In a related finding, six of the fourteen interviewed from the military said that they had no knowledge of any formal military rules or doctrine regarding how to interact with PSCs.

Clearly, structural shortcomings are paramount in hindering effective PSC-military field coordination. Development of rigorous, standardized training regimens for both PSCs and the military regarding how the two groups should interact in the field, development of doctrine institutionalizing the guidelines for these interactions, and placement and clarification of PSCs' position in the military chain of command are necessary structural remedies that would help prevent many of the coordination issues cited above.

In considering these data, it should be noted that there is a potential for change over time as structural improvements are instituted to better facilitate PSC-military coordination. As exposure of military personnel to PSC personnel (and vice versa) increases, and as the number of media reports about their interaction increases, policymakers are slowly instituting changes to remedy coordination problems. The 2004 development of the ROC in Iraq is an example of such a structural change, as is the new policy agreed upon by the U.S. Departments of Defense and State regarding the processes for notifying the military of State Department contractor movements throughout Iraq.[333]

Identity Issues

Convergence & Divergence Along the Four Components of Identity

The discussion earlier in this chapter of resentment based on pay differentials touches upon structural incompatibilities causing collective identity cleavages, which

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[333] Schmitt and von Zielbauer, 2007.

then lead to misunderstandings and envy. The majority of PSC-military resentment is based upon these actual or perceived identity distinctions. However, identity issues pertaining to PSC-military relations expand beyond issues of resentment caused by divergent pay scales.

As indicated in the data cited above, PSC personnel and the military have quite different constitutive norms and social purposes in a war zone. For instance, two of the GAO's military interviewees noted that differences in operational cultures and missions made it difficult for the two groups to coordinate. Not only do PSCs vary among themselves in terms of operational styles, they also differ from the military in this sense. One military interviewee noted a structural indicator of these differing operational styles, saying that the military tends to drive slowly when approaching checkpoints, whereas PSCs drive fast through them in order to avoid roadside attacks.[334] The two groups also differ rather drastically in their missions in the field: whereas the military mission is to secure the entire AOR, the PSC mission is to protect certain assets (individuals or static sites, depending upon the contract in question).

It is these different social purposes (of which the different missions are an example) and constitutive norms (of which operational culture is an example) that can lead to resentment, despite the fact that PSC and military personnel share similar cognitive models and other constitutive norms to some extent. The existence of worldviews and constitutive norms shared by the two groups stems from the fact that the majority of security contractors have previous military experience, and thus they share a common professional background and training with the military. Furthermore, the aforementioned finding that PSC personnel are motivated by patriotism in the conflicts in Iraq and Afghanistan speaks to some similarity of motivation between the

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[334] GAO interview with U.S. military personnel, May 9, 2005. Transcript acquired from the U.S. Government Accountability Office, October 2006.

two groups, assuming that the majority of military personnel are patriotically motivated as well. The two groups do, therefore, have common ground to stand upon. If this common ground were better emphasized through structural policy initiatives, the prospects for eliminating PSC-military resentment would grow substantially.

Divergent relational comparisons between the two groups, however, contribute substantially to PSC-military resentment and make it difficult to overcome coordination problems. PSCs see the military as inefficient, bureaucratic, and envious of the PSC lifestyle, while the military views security contractors as varying from "professional" to "cowboys" or "pseudo-mercenaries."[335] For instance, two different PSC respondents interviewed by the GAO mentioned their perceptions of the military mindset as being "conventional" and "dismissive of PSCs," unwilling to risk their lives for "these private security guys who are making nearly five times their salary."[336] The GAO's military interviewees, on the other hand, noted that they perceive PSCs as having little respect for applicable military rules, and that some PSCs act like "cowboys."[337] PSCs' apparent disrespect for a particular division's rules while in their AOR had a particularly strong effect on military personnel: "PSCs acted as though they had the right to do whatever they wanted and thought they were exempt from 1AD [First Armored Divison] rules. Sometimes there were confrontations between 1AD soldiers and PSCs that came to fist fights and drawing weapons."[338] Although this statement refers to events in 2004, the interviews with military personnel who served in Iraq in 2005 and 2006 indicate that improvement in PSC-military

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[335] GAO interview with U.S. military personnel, March 27, 2006. Transcript acquired from the U.S Government Accountability Office, October 2006.
[336] GAO interview with PSC personnel, August 31, 2004. Transcript acquired from the U.S. Government Accountability Office, October 2006.
[337] GAO interview with U.S. military personnel, March 27, 2006. Transcript acquired from the U.S. Government Accountability Office, October 2006.
[338] GAO interview with military official from the 1st Armored Division, U.S. Army, December 9, 2004. Transcript acquired from the U.S. Government Accountability Office, October 2006.

coordination over time has not been as complete or happened as quickly as some might have hoped.

Spectrum of PSC Identities

Related to these incompatible perceptions of each other is the possibility that PSC identities vary along a spectrum, depending upon the background, training, and experience of the men and women that each company hires, as well as upon the operating style of the company itself. For example, does the company provide uniforms and armored sports-utility vehicles for its personnel, or operate relatively undercover with indigenous cars and clothing? In the GAO interviews of military personnel, one interviewee noted that PSC identities range from "professional" to "pseudo-mercenaries," and another commented of PSCs "Some were good, but others were cowboys."[339] Although GAO's PSC interviewees did not explicitly refer to this variance among PSC identities, some interviewees did speak implicitly of key differences among companies – for instance, different company standards regarding uniforms or the use of armored versus civilian vehicles.

Interviews conducted specifically for this project with high-level British PSC officials from ArmorGroup International, Olive Group, and Control Risks Group supplement this implicit recognition of variance among PSC identities. In each of these interviews, the company official(s) in question made remarks to distinguish their company from other private military and security companies. The variance in how each official defined his company among just these three interviews is, in itself, suggestive. For instance, an official with ArmorGroup International strongly disapproves of the "private military company" or "PMC" terminology, instead

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[339] GAO interview with U.S. military personnel, March 27, 2006. Transcript acquired from the U.S Government Accountability Office, October 2006.

preferring to refer to ArmorGroup personnel as "project managers" who comprise an integral part of "national capacity." Relaying a joke shared by industry insiders regarding the debate over the "PMC" label, the same interviewee said they might as well be called "JAC" or "Just Another Contractor."[340] Meanwhile, Eric Westropp of Control Risks Group (CRG) rejects the "PMC" terminology in favor of "crisis management consultancy," explicitly distinguishing CRG from U.S. companies like Blackwater and Triple Canopy who, he says, are "more proactive" in their willingness to fire their weapons than is CRG (among other differences).[341] This variance in how PSCs identify themselves represents at least a moderate level of contestation regarding the definition of PSCs. Organizing various PSCs into a typology based upon the identity characteristics mentioned here is one way to clarify the identity differences between various companies, as elaborated below.

The Potential for Shifts in Identity

Clearly, there are a multitude of ways that identity cleavages may hinder effective PSC-military coordination in situations of co-deployment. Yet, because identities are dynamic and mutually constitutive, we would expect to see change over time in these collective identity characteristics – either positively or negatively – as PSC and military personnel become more accustomed to operating alongside one another in the field.[342] Indeed, we do see change over time in these characteristics, but it is inextricably linked to structure. Identity-related issues improve when extended

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[340] Christopher Beese (Chief Administrative Officer, ArmorGroup International) in interview with the author, January 23, 2007.
[341] Eric Westropp (Director, Control Risks Group) in interview with the author, January 23, 2007.
[342] For more on the dynamic and mutually-constitutive qualities of identities, see Peter J. Katzenstein, "Introduction," in *The Culture of National Security*, ed. Peter J. Kazenstein (New York: Columbia University Press, 1996), 5, 6, 26;   Alexander Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," in *Theory and Structure in Political Economy: An International Organization Reader*, ed. Charles Lipson and Benjamin J. Cohen (Cambridge: The MIT Press, 1999), 83, 95; Jeffrey Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, 3 (September 2001): 553-588.

exposure to each other helps in the development of ad hoc coordination mechanisms to overcome structural shortcomings in PSC-military co-deployments. On the other hand, identity-related issues worsen when extended exposure reinforces negative relational comparisons, especially if there are no structural mechanisms to bolster coordination. For instance, as noted earlier, a high-level British PSC official mentioned that his company's experiences with resentment were more acute with the British military than with the U.S. military, because the U.S. military is more accustomed to working with private security than is its British counterpart. This suggests that states that are new to the security privatization trend are likely to see more friction between PSCs and the regular military than are states with more experience co-deploying the two groups. Also indicative of the potential for identity shift over time are statements regarding variation in PSC identities, with the interviewees noting that the "old hands" were less likely to be "trigger-happy" than were new recruits.[343]

A Framework of PSC-Military Interaction:
The Interplay of Structure & Identity

Clearly, both structural and identity-based factors are at play in determining the nature and extent of PSC-military coordination in the Iraq and Afghanistan conflicts, at least during the period from mid-2004 through early 2006. Structural factors figured much more prominently in respondents' answers regarding the causes of PSC-military coordination problems. Beyond the frequent mention of structural issues, however, we can see a pattern of how the interplay of structure and identity affect PSC-military coordination. Specifically, where structural weaknesses exist, coordination becomes dependent upon individual and collective identities. In such a

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[343] GAO interview with U.S. military personnel, March 27, 2006. Transcript acquired from the U.S Government Accountability Office, October 2006.

situation, outcomes vary with the variance of these individual and collective identities. For instance, because communications between PSCs and the military are ad hoc (a structural weakness), coordination in any particular situation becomes dependent on the personalities of all involved. This is particularly true with regard to the relevant military commanders – hence individual identities are significant. Coordination also becomes dependent upon the relational comparisons and constitutive norms that each group employs in assessing the other, and thus collective identity is relevant as well.

Both the structure-identity interplay and its relationship to the various components of military effectiveness are illustrated in the framework depicted in Table 5.2. In this figure, the lower right-hand quadrant reflects the goal that policymakers from the United States and other PSC purchasing states should strive for: very few instances of structural or identity-based shortcomings in order to insure efficient and effective PSC-military coordination, so that PSCs will have a beneficial impact on military effectiveness. Unfortunately, in Iraq – and to a lesser extent in Afghanistan – the situation most closely matches that depicted in the upper left-hand quadrant of Table 5.2.

Interestingly, even if the situation reflected that depicted in the upper right-hand quadrant of the table (high levels of structural problems and low levels of identity problems), the coordination difficulties and confusion spurred by the lack of adequate coordination structures would likely breed resentment between the two groups, thus causing identity-based problems and shifting the situation into that depicted in the upper left-hand quadrant. The arrow in the upper half of the table illustrates this potentiality, which is particularly significant when considering the aforementioned finding that structural weaknesses lead PSC and military personnel to rely more strongly on identity-related factors.

In other words, structural weaknesses lead to both a greater reliance on identity-based factors, and to a greater chance for identity-related problems to emerge. Therefore, while identity issues will never disappear, military and PSC strategists should: (a) focus on remedying structural shortcomings such as deficiencies in training and doctrine; and (b) learn which types of individual and collective identities promote strong PSC-military coordination, and provide incentives for the military and PSCs (both as individual companies and collectively) to align their identities with those that promote PSC-military coordination. The practice of aligning these identities will undoubtedly require minor structural changes in order to support the norms constituting these more beneficial identities, but the overall change will be a shift in identity.

For example, let us assume that the PSCs viewed as "professional" in the military's eyes are those providing armored cars and standard uniforms to their employees, and that this practice makes it easier for these PSCs to coordinate with the military because it easily identifies the PSCs as friendly forces. Implementing the above suggestions would lead less professional PSCs to make a structural change (in the form of a rule or company standard) to abide by this norm of providing armored cars and uniforms, which, *ceteris paribus*, will eventually shift these companies' identities to be in line with the more "professional" PSCs.

Table 5.2:
Framework of Analysis

IDENTITY PROBLEMS

	HIGH	LOW
HIGH	Coordination difficulties; Low integration; Low responsiveness; Low skill; Moderate to high quality (IRAQ, AFGHANISTAN)	Confusion; Coordination difficulties; Low integration; Low responsiveness; Moderate skill; Moderate to high quality
STRUCTURAL PROBLEMS / LOW	Coordination better; Integration varies; Responsiveness varies; Low skill; High quality	Good coordination; Good integration; Good responsiveness; High skill; High quality (GOAL)

Typology of PSC "Operational Professionalism"

As seen in the above analysis, certain practices enable PSC and military personnel to engage with each other productively in the field. Taken together, these practices constitute part of the structure of PSC-military co-deployments and, for the purposes of this study, are considered indicative of the private security firm's level of *operational professionalism.* As Chapter Two notes, professions theorist Andrew Abbott defines "professions" as "exclusive occupational groups applying somewhat abstract knowledge to particular cases," and argues that interrelations between

professions are determined by how each group controls its knowledge and skill.[344] Part of this control of knowledge and skill, I argue, includes the practices relating to how PSCs and their personnel operate in the field. These practices play a large part in dictating how the military and PSC personnel interact with and view each other. They include, for instance, PSCs' use of armored vehicles and the requirement that PSC personnel wear identifiable uniforms. Other examples of these practices include PSC operational styles that correlate well with the operational style of the military units alongside which they operate – for instance, driving styles – and treating local civilians respectfully. An overarching indicator of dedication to operational professionalism is membership in a major trade association, such as the International Peace Operations Association (IPOA).

Significantly, the scope of this typology is limited to focus only upon professional activities at the operational level, dictating proper actions while in the field. Limiting the typology's scope in this way is necessary in order to clearly delineate which firms are best at implementing those structural variables that matter most for PSCs' impact on overall military effectiveness. Some firms may be considered "professional" according to other measurement rubrics – for instance, the dollar amount of contracts they are awarded – but such measurements are irrelevant to the goal of determining a set of practices that will best enable PSCs to have a beneficial impact on military effectiveness.

Some firms adopt the practices most important for operational professionalism relatively easily, while others argue that different operating styles better enable them to act effectively in the field. However, the evidence gathered from the interviews conducted for this study indicates that, in almost all cases, the use of identifiable
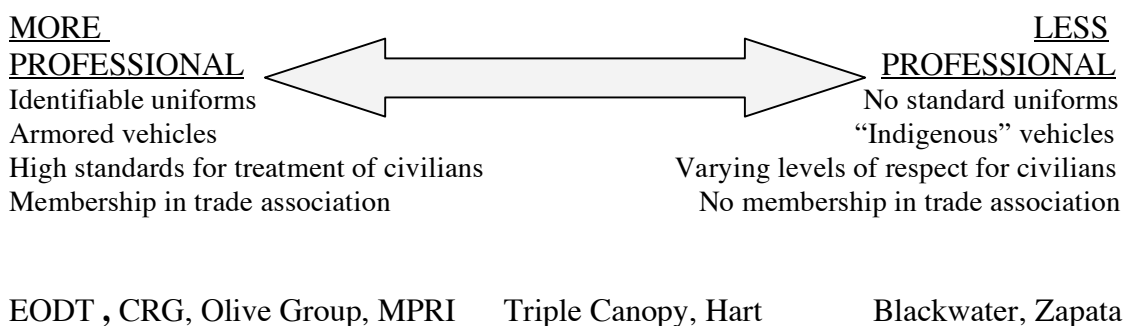
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[344] Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago, 1988), 8.

armored vehicles and uniforms better enables effective PSC-military field coordination than does the use of so-called "indigenous" vehicles and plain-clothes. Furthermore, the fact that many military and PSC interviewees noted the divergent operational styles of the two groups, and that soldiers repeatedly complained of having to manage the consequences of contractors' disrespect of local civilians and of their traditions and customs, indicate that operational styles (as dictated, for instance, by driving procedures) and treatment of local civilians are two additional areas in which a structure of common practices could improve PSCs' impact on military effectiveness.

We can therefore conceive of private security companies along a "spectrum of professionalism," with the firms that employ most of these practices at the "more professional" end of the spectrum, and the firms that employ fewer of these practices at the "less professional" end of the spectrum. Figure 7.1 depicts this typology, with several firms listed for illustrative purposes. Notably, no firm is entirely perfect in this regard, and – because the policies of each firm are likely to undergo some fluctuation as contracts and deployments change – firms are likely to move up and down the spectrum over time. Some firms, however, will implement these practices better than others at certain times, and purchasers should recognize this and award contracts accordingly. By doing so, purchasers will create market incentives for firms to employ these "professional" practices, pushing the entire industry closer to the "more professional" end of the spectrum, and increasing the prospects that PSCs will have a beneficial impact on military effectiveness. This is particularly true with regard to situations of PSC-military co-deployment, but these professional practices can also have a beneficial impact in situations where PSCs are substituting for an intervening state's military force. In many such cases, the PSC in question will still be responsible for interacting with the military of the state to which the company is deployed, and these practices will assist in that regard. Furthermore, the requirement that PSC

180

personnel act respectfully toward local civilians and local traditions and customs in order to be considered "professional" will benefit PSC and military actions in all theatres, regardless of the deployment situation.

Of course, the risk that certain individual employees will fail to abide by these practices is ever-present, and it is thus necessary that each firm establish rigorous training and vetting standards to minimize this risk among its employees. Furthermore, each firm must establish internal regulations and guidelines for dealing with employees who fail to abide by the company's standards for ethical and professional practices.

MORE PROFESSIONAL

Identifiable uniforms
Armored vehicles
High standards for treatment of civilians
Membership in trade association

LESS PROFESSIONAL

No standard uniforms
"Indigenous" vehicles
Varying levels of respect for civilians
No membership in trade association

EODT **,** CRG, Olive Group, MPRI   Triple Canopy, Hart   Blackwater, Zapata

Figure 5.4:
Typology of PSC Operational Professionalism[345]

Implications for Policy

This chapter shows the interplay between military effectiveness and structure, identity, civil-military relations, and the professions. As my analysis makes clear, structural factors and identity-based factors are equally relevant in determining the

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[345] Several private security companies are listed on this typology to illustrate the range in levels of operational professionalism across the industry. Please note that this is a rough classification of these firms, and that their positions on this spectrum may shift relative to each other in any given situation. As noted above, firms will likely change position on the spectrum of operational professionalism as their policies shift over time, and that this spectrum does not endeavor to judge firms' levels of "professionalism" beyond the factors relevant to operational professionalism that are mentioned above.

quality of PSC-military interactions and coordination in the context of the Iraq War, though they do operate differently. When structural weaknesses abound, both PSC and military actions rely on identity factors. Identity factors are simultaneously likely to be negatively affected by the coordination problems that are caused by the structural weaknesses, which breed PSC-military resentment and unfavorable relational comparisons. Thus, both structure and identity are important in the context of PSC-military relations, and both must be considered.

Related to this is the preliminary finding that military professionals may not need to worry (at least not as much as some have argued they should) about the takeover of their professional jurisdiction by contractors. In other words, there may be a limit to what you can pay someone to do; necessary actions beyond this limit would thus fall within the purview of the military. Preliminary evidence indicates that this may be the case, at least with regard to some PSCs. For instance, a high-level PSC official who asked to remain anonymous noted that there may be a limit to what PSCs could do in any particular event, with PSC employees not being as fully committed to take and accept risk as are men and women in the military. As a former military officer himself, he noted that he was personally "prepared to stand into harm's way as a serviceman, on active service, when serving [his] nation," whereas his motivation as an employee of a PSC would be "very much more conditional."[346] However, this may not be the case with PSCs who have a particular political or ideological leaning. Interviewees from one PSC, for instance, told the GAO that they were not working for a PSC for the money, that they were "doing something that they believed in and as part of their love of the United States and the democratic society for which it stands."[347] Companies sharing this ideological stance may instill a stronger sense of

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[346] Interview with high-level PSC official, January 25, 2007.
[347] GAO interview with PSC personnel, August 30, 2004. Transcript acquired from the U.S. Government Accountability Office, October 2006.

national loyalty into their personnel, essentially providing them with the sense of civic duty found within the professional military. This point has potential as an interesting issue for future research. Chapter Seven elaborates several policy recommendations relevant to improving PSCs' impact on military effectiveness in co-deployment situations.

Conclusion

As this chapter endeavors to make clear, the problems illuminated in the Zapata Engineering, Fallujah, and Nisour Square cases are not anomalous; they are pervasive issues that threaten situations of PSC-miltary co-deployment. While coordination successes also occur regularly, an examination of the data makes clear that coordination successes and failures are not mutually exclusive. In order to best harness the beneficial qualities of PSCs and minimize the potential problems associated with utilizing these firms, states must take an active role in dictating how private forces should be structured. One way for the state to increase its involvement in such a manner is through its domestic legal system, by helping to define the legal status and accountability of PSC personnel. The next chapter explores this topic in depth.

CHAPTER 6

REGULATING THE PRIVATE SECURITY INDUSTRY

As seen in Chapters Three, Four, and Five, the private security industry can –
in different deployment situations – impact military effectiveness and the democratic
advantage in a variety of ways. The industry's effects on the military and the
democratic advantage are directly related to states' abilities to hold PSCs and their
employees accountable for their actions in the field. While a plethora of existing laws
and guidelines arguably apply to private security company personnel, enforcement of
these rules is lacking, as are legal precedents. This can impact military effectiveness
in several ways. For instance, PSCs' lack of legal accountability hinders their
relationship and, by extension, local forces' relationships, with local civilians. This
has a particularly negative effect on the military's ability to effectively wage
counterinsurgencies, a type of conflict in which local support is crucial to military
success, and therefore further reduces the state's control of violence beyond the
reduction engendered by the act of security privatization itself. PSCs' lack of legal
accountability also challenges *integration*, as PSC personnel acting outside of legal
boundaries spur resentment from the military by further complicating combat
environments that are complex to begin with.[348]

Clearly, there are a multitude of reasons to more effectively regulate the
private security industry, especially as it grows and becomes a more frequent actor in
global conflicts. Recognizing this, members of the U.S. Congress have proposed a
variety of new laws to hold PSCs accountable for their actions in the field, and
international actors such as the International Committee of the Red Cross (ICRC) have
embarked on a series of workshops designed to develop better international policies to

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[348] For more on PSC-military resentment, refer to the findings in Chapter Five of this study. See also
P.W. Singer, "Can't Win With 'Em, Can't Go To War Without 'Em: Private Military Contractors and
Counterinsurgency," Policy Paper No. 4 (Brookings Institution, September 2007).

regulate the industry. Industry representatives have themselves made comments indicating that they welcome increased regulation and oversight, as it bodes well for their public image and hence for future business opportunities. For instance, Blackwater Worldwide founder Erik Prince has stated: "We absolutely want more oversight. We welcome the accountability. We want a good name for this industry because we think it plays an important role for what the U.S. policies are going forward."[349] Yet, it should be noted that increased industry regulation would bring with it an increase in costs which may, over time, make the use of PSCs uneconomical. I nonetheless recommend increased industry regulation as outlined in this chapter, in order to ensure that – as long as they remain major actors in modern warfare – PSCs benefit military operations and do not detract from military effectiveness.

This chapter outlines the status of private security contractors under existing U.S. and international laws, and suggests potential remedies for weaknesses in these laws. Given the prevalence of U.S. companies in (and U.S. government contracts for) the private security industry at present, I focus here on the U.S. case, examining how the United States can develop regulatory measures that will address PSC abuses in the field and have a beneficial impact on military effectiveness. In doing so, I employ the lessons of the literature on comparative regulation, which suggests both that more stringent and legalistic regulatory measures will have better success in the U.S.-context in the long-term, and relatedly, that they will likely be more easily accepted by the domestic public of the United States than will lax standards. Indeed, despite early observations in the literature that stringent regulatory approaches in cases of

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[349] Quoted in Lara Logan, "Blackwater Chief Welcomes Extra Oversight," *60 minutes* (October 14, 2007). Accessed October 17, 2007 at http://www.cbsnews.com/stories/2007/10/13/60minutes/main3364195_page3.shtml.

environmental regulation were no more effective than were lax approaches based largely on industry self-regulation, more recent research indicates that laxer self-regulation approaches have led to a series of regulatory failures in Europe, while stringent approaches in America have resulted in an absence of such regulatory failures.[350] Furthermore, the literature indicates that globalization is causing stringent regulatory policies to spread worldwide, and that – despite increasing business resistance to such tough regulations – political support for more stringent measures is increasing in Europe and elsewhere around the globe.[351] This literature thus highlights several factors affecting regulatory effectiveness, including the levels of public and business dissent with regard to particular regulatory policies, the influence of business over regulatory outcomes, and the ability of the state to develop effective monitoring and enforcement mechanisms for existing regulations. Despite the effects of globalization, however, a one-size-fits-all regulatory regime is not appropriate here due to variations in the political structures of different countries. Hence, this chapter focuses on developing adequate regulatory measures for the U.S. case, drawing upon several examples of regulatory measures pursued in Britain and South Africa in order to illustrate the cross-national distinctions in regulatory policies pertaining to PSCs.

The chapter's analysis makes it clear that domestic law at this point provides a suitable preliminary model for effective regulation of the industry in the United States, whereas international humanitarian law and U.K. and South African domestic law pertaining to the private security industry require substantial restructuring before they will provide effective regulatory and enforcement mechanisms. I argue below that in

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[350] David Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (Ithaca: Cornell University Press, 1986), 23-24; David Vogel, "The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe," *British Journal of Political Science* 33 (2003), 557, 577.

[351] Vogel, 2003: 557, 578; David Vogel and Robert A. Kagan, "Introduction," in David Vogel and Robert A. Kagan, eds., *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies* (Berkeley: University of California Press, 2004), 32, 36.

order to best harness PSCs' strengths and ensure that they have a beneficial impact on military and humanitarian operations worldwide, civil and criminal mechanisms for both regulation *and* enforcement must be pursued immediately and in tandem, and should take into account the prospects for industry-wide standards as a supplement to – but not a replacement for - domestic and international measures.

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Status of Modern Private Security Contractors
Under International Humanitarian Law

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Several international conventions define mercenaries and their rights and limitations under international humanitarian law (IHL). The two key questions in determining the legal status of PSC personnel under IHL are: (1) whether they qualify as "mercenaries" based upon the various IHL definitions of the term; and (2) whether they are (lawful or unlawful) "combatants," or "noncombatants," based upon the definitions of the Geneva Conventions. If found to qualify as mercenaries, lawful combatants, or unlawful combatants under IHL, PSC employees' protected status under IHL would be altered, and in some cases they could be subject to criminal prosecution.

Yet, it is unlikely that the majority of PSC personnel would qualify as mercenaries under IHL. This is because definitions of mercenaries in international law are filled with ambiguities and contradictions, making it difficult for *anyone* to qualify as a mercenary. Moreover, in most cases where certain categories of PSC personnel might qualify as mercenaries according to one of the legal definitions, the laws in question do not restrict mercenary activities to an extent sufficient to effectively regulate the behavior of PSC personnel. In the few cases where mercenary definitions are broad enough to encompass PSC activity and the laws in question impose strict penalties upon mercenaries, states have chosen not to enforce the restriction on mercenary activity.

For instance, the first mainstream IHL instrument to deal with mercenaries was Additional Protocol I of the Geneva Conventions, which entered into force in 1977. Article 47.1 of this convention dictates that mercenaries do not benefit from prisoner-of-war (POW) status if captured. Article 47.2 develops a comprehensive and frequently referenced definition of a mercenary as any person who:

(a) is specially recruited locally and abroad in order to fight in an armed conflict;
(b) does, in fact, take a direct part in 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 rank 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.[352]

Notably, *each* of these six provisions must be fulfilled in order for the person in question to qualify as a mercenary. Many analysts argue that this definition is inapplicable to modern private security contractors and is generally "unworkable" due to these six cumulative conditions.[353] Yet, there is potential for certain categories of PSC personnel to qualify as mercenaries under this definition. As discussed in Chapter One, modern private security personnel may be covered by this definition if

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[352] "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)" (Adopted on June 8, 1977, Entry into force December 7, 1979). Accessed November 20, 2007 at http://www.unhchr.ch/html/menu3/b/93.htm.
[353] See, for instance, Katherine Fallah, "Corporate Actors: The Legal Status of Mercenaries in Armed Conflict," *ICRC Review* 88, 863 (September 2006): 605; Lindsey Cameron, "Private Military Companies: Their Status Under International Humanitarian Law and Its Impact on Their Regulation," *ICRC Review* 88, 863 (September 2006): 578; Sarah V. Percy, "Mercenaries: Strong Norm, Weak Law," *International Organization* 61 (Spring 2007): 367.

they are third-country nationals (TCNs) paid substantially in excess of the regular military and shown to have taken "a direct part in hostilities." The question of what constitutes "direct participation in hostilities" is relevant to both the designation of a mercenary and to issues of combatant status, and is discussed in further detail in a separate section below.

Even if proven to qualify as "mercenaries" under the Article 47.2 definition, however, the fact that Additional Protocol I does not criminalize mercenary behavior means that these actors are only subject to the Article 47.1 restriction on POW status, and this only applies if the detaining power makes the determination that the person is a mercenary based upon this definition. Under the Geneva Conventions, mercenaries nonetheless still benefit from Article 75's broad fundamental guarantees, including the right to be treated humanely in all circumstances and the right to be protected against murder, torture, corporal punishment, and outrages upon personal dignity, as well as the right to a fair trial and due process.[354] Furthermore, Protocol I only regulates international armed conflicts; hence, its provisions in most cases do not apply to mercenaries or private security company personnel involved in civil wars or other forms of internal strife.[355] Thus, while some PSC personnel may qualify as "mercenaries" under the definition laid out in Additional Protocol I, the consequences of this designation are fairly mild and will not be overly effective in regulating the entire private security industry across the spectrum of its operations.

The so-called "mercenary-specific conventions," in contrast to Additional Protocol I, develop various definitions of the term "mercenary" and focus on criminalizing mercenary activity. While these conventions are therefore more stringent, carrying with them greater threats of punishment, the manner in which they

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[354] Fallah, 2006: 606-607.
[355] Ryan M. Scoville, "Toward An Accountability-Based Definition of 'Mercenary,'" *Georgetown Journal of International Law* 37 (2006): 549.

define a "mercenary" varies widely. For instance, Article 1 of the the 1976 Draft

Luanda Convention states that the crime of mercenarism may be committed by

individuals, groups or associations, representatives of states, and states themselves.

This provision might therefore apply to companies rather than only to individual

contractors. The relevant legal actor is guilty of mercenarism if he or she "with the

aim of opposing by armed violence a process of self-determination," does any of the

following:

> (a) organizes, finances, supplies, equips, trains,
> promotes, supports or employs in any way
> military forces consisting of or including persons
> who are not nationals of the country where they
> are going to act, for personal gain, through the
> payment of a salary or any other kind of material
> recompense; or
> (b) enlists, enrolls, or tries to enroll in said force; or
> (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 abovementioned forces.[356]

Based upon this much broader definition of what constitutes mercenary activity, many

more modern PSCs and their personnel could be found guilty of mercenary activity

under this convention than under Article 47.2 of Additional Protocol I. For instance,

any non-Iraqi company or individual providing security forces in Iraq that could be

proven to constitute "military forces" developed "with the aim of opposing by armed

violence a process of self-determination" would be found guilty of the crime of

mercenarism. Of course, most international tribunals would not likely accept the view

that PSCs operating in Iraq are doing so to oppose a process of self-determination, but

this is not to say that certain PSCs might not be found to be working against

democratic ideals of self-determination in other regions of the world in the future.

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[356] Fallah, 2006: 607-608.

Another of the mercenary-specific conventions, the Organization for African Unity's 1972 Convention for the Elimination of Mercenarism in Africa, defines mercenary activity in a manner similar to Additional Protocol I. Indeed, the OAU Convention's definition differs only from the Article 47.2 definition in terms of motivation, replacing the requirement that the person in question be motivated primarily by a desire for private gain with a requirement that he or she be promised material compensation by a Party to the conflict.[357] If found guilty of the crime of mercenarism under this convention, the person in question is also held responsible for any criminal acts committed in the course of his or her duty as a mercenary. The notion of "criminal acts" in this context presumably includes shooting at soldiers, as Article 3 of this convention dictates that mercenaries do not enjoy combatant or POW status. Article 7 requires each state Party to the convention to punish those guilty of the crime of mercenarism "by severest penalties under its laws, including capital punishment."[358] The OAU Convention is therefore slightly more open-ended in its definition of who constitutes a mercenary, as well as more severe with regard to the penalties imposed upon mercenaries, than is Additional Protocol I. Yet, the relevant state parties have not taken steps to enforce its provisions.

Meanwhile, the most recent of the mercenary-specific conventions, the International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (U.N. Convention) – which opened for signature in 1989 but did not enter into force until 2001 – defines mercenaries in a manner that makes it nearly impossible for anybody to actually qualify as a mercenary. The first part of the U.N. Convention's two-part definition of mercenary activity mimics Additional Protocol I's

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[357] OAU Convention for the Elimination of Mercenaries in Africa, O.A.U. Doc. CM/433/Rev.L, Annex 1 (1972). Accessed November 20, 2007 at
http://www1.umn.edu/humanrts/instree/mercenaryconvention.html.
[358] OAU Convention, Articles 3, 7 (1972).

definition, though it excludes the requirement that a mercenary "does, in fact, take part in the hostilities."[359] The second part of the definition is more specific, requiring that a mercenary, in any situation other than armed conflict:

> (a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
>   a. overthrowing a Government or otherwise undermining the constitutional order of a state; or
>   b. 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[360]

Ryan Scoville outlines the difficulty of finding anyone who fits this definition, arguing that the specific intent, profit-motive, and residency requirements are useless factors irrelevant to modern mercenary activity that only complicate attempts to hold mercenaries accountable to states.[361] The problems with this U.N. definition are underscored by the fact that the U.N. Convention criminalizes all mercenary activity, and yet no modern private security companies or their personnel have been held criminally liable for alleged offenses against this convention. This paradox illustrates the difficulty of enforcing existing regulations that apply to private security companies, as well as the normative question of whether modern PSC activity should be so broadly criminalized.

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[359] International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries ("UN Convention") (December 4, 1989). Accessed November 20, 2007 at http://www.icrc.org/ihl.nsf/FULL/530?OpenDocument.
[360] UN Convention, Article 1 (December 4, 1989). Accessed November 20, 2007 at http://www.icrc.org/ihl.nsf/FULL/530?OpenDocument.
[361] Scoville, 2006: 542.

Existing definitions of mercenaries under IHL are therefore insufficient to regulate PSC behavior in most instances, and a norm against their enforcement has been developed in those instances when they are potentially applicable to modern PSC personnel. Legal scholars have suggested other legal definitions of mercenaries that might, if adopted, apply to a larger number of PSC personnel than do existing international laws outlawing mercenarism. The relevant question, however, continues to be whether the states would do their part in enforcing this law, an issue that is addressed in further detail below. Two other definitional issues are also relevant to the discussion of PSC status under international humanitarian law: the combatant status of PSC personnel, and whether their actions constitute "direct participation in hostilities."

Combatant Status

As Lindsey Cameron notes:

> . . . there are three distinct reasons why it is essential to know whether PMC employees are combatants: first, so that opposing forces know whether they are legitimate military objectives and can be lawfully attacked; second, in order to know whether PMC employees may lawfully participate directly in hostilities; and the third reason, related to the second, is in order to know whether PMC employees who do participate in hostilities may be prosecuted [under IHL] for doing so.[362]

There are but two categories of individuals in an armed conflict under international law, combatants and civilians.[363] Under the Geneva Conventions, combatants, as opposed to civilians, can be the direct object of attack under IHL and are entitled to POW status. If civilians do participate directly in hostilities, they are classified as "unlawful combatants" or "unprivileged belligerents" and can become the direct

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[362] Cameron, 2006: 582.
[363] Michael N. Schmitt, "Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees," *Chicago Journal of International Law* (Winter 2005): 522.

object of attack, losing their protected status (at least while engaged in hostilities).
This can impact their legal status if captured, as well as their criminal liability.[364]
They do not benefit from POW protections, and may be punished for their actions
because they lack the "combatant privilege" to use force against belligerents.[365]
However, if the conflict in question qualifies as a non-international armed conflict
within the meaning of Common Article 3 of the Geneva Conventions, customary
international law does not make a distinction between lawful and unlawful
combatants. In such a case, contractors who had participated in hostilities and were
captured by enemy forces would be entitled to a minimum set of protections set forth
in Common Article 3. Their right to participate in hostilities in the first place would
be determined by the prevailing local law.[366]

The relevant legal doctrine that defines combatants and noncombatants is
found in Article 43.2 of Additional Protocol I of the Geneva Conventions. Article
43.2 states that "Members of the armed forces of a party to the conflict . . . are
combatants, that is to say, they have the right to participate directly in hostilities."[367] It
is therefore necessary to ascertain whether the private contractors in question have
been incorporated into the armed forces of a Party to the conflict under Article 4A(1),
which requires incorporation under the laws of the state, or whether they qualify as a
militia under Article 4A(2).[368] While PSC employees may in some cases fulfill the
first requirement by being officially incorporated into the armed forces (such as in the
case of the French Foreign Legion or the "sponsored reserves," discussed below), the

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[364] Avril McDonald, "The Legal Status of Military and Security Subcontractors," in *International Humanitarian Law and the 21st Century's Conflicts: Changes and Challenges*, ed. Roberta Arnold and Pierre-Antoine Hildbrand (Lausanne: Editions Interuniversitaires Suisses, 2005), 226-227.
[365] Schmitt, 2005: 519-520.
[366] Jennifer K. Elsea and Nina M. Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, July 11, 2007): 14.
[367] Protocol I, Article 43.2, (Adopted on June 8, 1977, Entry into force December 7, 1979). Accessed November 20, 2007 at http://www.unhchr.ch/html/menu3/b/93.htm.
[368] Cameron, 2006: 583.

plethora of different companies providing different services in combat zones likely

makes it exceedingly difficult for the enemy to distinguish between combatant PSCs

and noncombatant PSCs. In such a scenario, it is virtually impossible for the enemy to

know who can be rightfully targeted.

The second means for a group to qualify for combatant status under IHL is to

meet the requirements set out in Article 4A(2) of the Third Convention. This Article

states that the following are entitled to POW status:

> Members of other militias and members of other
> volunteer corps, including those of organized resistance
> movements, belonging to a Party to the conflict and
> operating in or outside their own territory . . . provided
> that such militias or volunteers corps, including such
> organized resistance movements, fulfill the following
> conditions:
> (a) that of being commanded by a person responsible for
>   his subordinates;
> (b) that of having a fixed distinctive sign recognizable at a distance;
> (c) that of carrying arms openly;
> (d) that of conducting their operations in accordance
>   with the laws and customs of war.[369]

Notably, this Article requires that the militia must belong to a party to the conflict, and

all four of the requirements must be met by the group *as a whole*. Furthermore, the

fact that only some PSCs mandate that their personnel wear standardized uniforms

with "fixed distinctive signs recognizable at a distance" means that each company

would have to be assessed separately to determine its employees' combatant status

under this provision. The idea that PSC personnel would be considered as "militia" is

dubious also, and they certainly are not volunteers. All in all, the majority of legal

scholars with expertise on combatant status and private security issues agree that

modern private security personnel are unlikely to be considered lawful combatants

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[369] Cameron, 2006: 584.

under existing laws.[370] They are most likely to be considered civilians, or "unlawful combatants" if found to be "directly participating in hostilities."

"Direct Participation in Hostilities"

The question of what constitutes "direct participation in hostilities" is a significant one, and is vigorously debated by analysts and legal scholars working on these issues. The *ICRC Commentary* appears to support a high threshold for direct participation, stating, "Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place."[371] The *Commentary* further describes direct participation as "acts of war which by their nature or purpose are likely to cause *actual harm* to the personnel and equipment of the enemy armed forces" (emphasis added).[372] The same document warns "there should be a clear distinction between direct participation in hostilities and participation in the war effort."[373] Yet, Michael Schmitt points out that "there is a participation continuum that runs from general support for the war effort to the conduct of combat operations," and notes that "direct participation determinations are necessarily contextual, typically requiring a case-by-case analysis."[374] Lindsey Cameron similarly argues that "Support and logistics activities conducted by civilians, such as catering and construction and maintenance of bases, are not seen as direct participation in hostilities," noting that "the theory that

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[370] See for instance Cameron, 2006: 587; Schmitt, 2005.
[371] Y. Sandoz, C. Swinarski and B. Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Dordrecht: ICRC/Martinus Nijhoff, 1987). Cited in Cameron, 2006: 588; Schmitt, 2005: 533.
[372] Sandoz, Swinarski and Zimmerman, 1987. Cited in Cameron, 2006: 588; Schmitt, 2005: 533.
[373] Cameron, 2006: 588.
[374] Schmitt, 2005: 532, 534.

individuals working in industries helpful to the overall war effort (such as those in munitions factories) are quasi-combatants has been widely discredited."[375]

IHL does not, however, allow for these civilians to engage in combat, even defensively. In fact, IHL does not distinguish between fighting to attack and fighting to defend. This fact makes it much easier to argue that PSC personnel – who are deployed for defensive purposes – do, on many occasions, directly participate in combat.[376] As Avril McDonald points out:

> It is generally and increasingly considered that there are many activities which involve a more indirect role for civilians – where the latter is one or more steps (geographically or temporally) away from the actual application of violence (which may be virtual rather than physical) and may not even consider him or herself to be a direct participant in hostilities, and which do not actually involve attacks in the literal or kinetic sense, or where the causality relationship is more indirect, yet – which are also considered as direct participation in hostilities.[377]

In other words, many examples of seemingly indirect participation in hostilities actually – in legal terms – constitute direct participation. Significantly for private security personnel, the U.S. Navy Manual states that "Direct participation may also include civilians serving as guards, intelligence agents, or lookouts on behalf of military forces."[378] Thus, certain PSC functions do fall within the purview of "direct participation in hostilities," impacting the combatant and mercenary status of the contractors performing those functions.

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[375] Cameron, 2006: 588.

[376] Protocol I, Article 49 (Adopted on June 8, 1977, Entry into force December 7, 1979). Accessed November 20, 2007 at http://www.unhchr.ch/html/menu3/b/93.htm.

[377] McDonald, 2005: 233-234.

[378] U.S. Navy/Marine Corps/Coast Guard, *The Commander's Handbook on the Law of Naval Operations* (NWP 1-14M, MCWP P5800.7, para. 11.3) (1995). http://www.cpf.navy.mil/pages/legal/NWP%201-14/NWPCH11.htm. Quoted in McDonald, 2005: 234.

<u>Prospects for International Legal Regulation of the Private Security Industry</u>

Though the above section outlines different circumstances in which current IHL applies to private security contractors, these distinctions are difficult to discern and enforce in practice. Employing the laws of international armed conflict to regulate the private security industry is an unlikely prospect, at least as these laws currently stand. For instance, POW status is not a significant issue in practice; it applies only in international armed conflicts, which are rare in modern warfare. Furthermore, as mentioned above, the Geneva Conventions do not draw distinctions between defensive and offensive operations, a fact that creates friction when attempting to apply these laws to actors defined in terms of their sole reliance on defensive capabilities.[379] The distinction between combatants and noncombatants is filled with ambiguities when applied to the category of "contractors," requiring that each be assessed on an individual basis. Finally, no international tribunal has jurisdiction to try contractors under IHL; enforcement therefore falls upon the state parties, as outlined above.

Eric Mongelard creatively explores another international regulatory option: the prospects for holding companies *civilly* liable for IHL violations. Mongelard highlights the benefits of civil liability, pointing out that a number of countries do not recognize criminal liability of "legal persons" (individuals or non-state entities) under IHL, that civil actions enable victims to obtain material compensation for their sufferings (while some legal systems do not allow for this in criminal proceedings), and that civil actions enable victims or their representatives to set a judicial inquiry in motion. He also notes that the standard for a decision in a civil trial is lower than that

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[379] "A New Legal Framework for Military Contractors?," Princeton Problem-Solving Workshop Series in Law and Security, Woodrow Wilson School of Public and International Affairs, Princeton University (June 8, 2007): 8. Accessed October 15, 2007 at http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.

in a criminal trial. Indeed, whereas the existence of reasonable doubt is necessary to prevent a guilty verdict in a criminal trial, the preponderance of evidence is the standard for a decision in a civil trial.[380] While legal precedents for such a practice are lacking, this is an option that should be further explored by the international community, particularly by those states exporting and/or purchasing PSC services.

Despite the myriad difficulties in holding contractors accountable under the international law of armed conflict, it is important to devise a means – either criminal or civil – through which contractor activities are regulated to ensure compliance with IHL, both to benefit PSCs' impact on military effectiveness and to ensure widespread respect for human rights and norms of just war. The changing nature of warfare, including the increased prevalence of intrastate conflicts involving non-state actors, suggests that the best way to apply IHL to contractors is through a recasting of IHL itself, in order to make it coalesce with changes in the international system. Convening a meeting of representatives from each of the states party to the Geneva Conventions, with the explicit purpose of devising an additional protocol or revised mercenary definition to address these issues, may be the most effective and efficient solution to the problem of holding contractors accountable to international humanitarian law. Such a protocol should, at the very least, define private military and security contractors as a separate category of war-zone actors distinct from mercenaries (or specify that existing IHL definitions of mercenaries are meant to apply to contractors and/or the firms employing them), and should clarify the combatant status of PSC personnel.

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[380] Eric Mongelard, "Corporate Civil Liability for Violations of International Humanitarian Law," *ICRC Review* 88, 863 (September 2006): 666-667.

<u>Prospects for Domestic Legal Regulation of the Private Security Industry</u>

As noted above with regard to the Draft Luanda Convention and other mercenary-specific conventions, states are expected to play a key role in enforcing international law. As Michael Cottier, Deputy Head of the Section for Human Rights and Humanitarian Law at the Swiss Department of Foreign Affairs' Directorate of International Law, notes:

> International law establishes direct as well as due diligence obligations of states. States hiring private security and military companies ("contracting states") for operations abroad must respect their international legal obligations and cannot elude them by outsourcing activities. For example, they have an obligation to ensure respect of international humanitarian law. In addition, states are responsible for violations of international law and particularly human rights and international humanitarian law committed by private contractors they hire that can be attributed to them. States on whose territory such companies operate ("territorial states") as well as states from whose territory their services are "exported" ("exporting states") must, for instance, punish grave breaches of the Geneva Conventions. Moreover, there may be circumstances in which states must take appropriate measures or exercise due diligence to prevent, punish, investigate, or redress the harm caused by the acts of private companies or their staff that impair human rights.[381]

This statement makes clear that any international regulation of PSCs must go hand in hand with domestic regulations and enforcement mechanisms in order to operate effectively. In doing so, it emphasizes the continuing relevance of the state in an era of private security company proliferation. The practice of instituting effective regulatory and enforcement mechanisms for the industry appears more likely to happen in the near future in some states rather than others. Due to the preeminence of

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[381] Michael Cottier, "Elements for Contracting and Regulating Private Security and Military Companies," *ICRC Review* 88, 863 (September 2006): 639.

U.S. private security firms in the international market, this chapter focuses on the potential for the United States to develop effective domestic regulations and enforcement mechanisms. British and South African efforts to regulate the private security industry are also outlined below, in order to illustrate the breadth in regulatory policies cross-nationally.

The United States

Despite recent outcries in U.S. and foreign media against the dearth of legislation covering private security contractors, several significant U.S. criminal laws do apply to PSC personnel in a variety of situations. These include the War Crimes Act (18 U.S.C. Section 2441), which applies if the victim or perpetrator is a U.S. citizen, and covers the crimes of torture, cruel or inhumane treatment (including degrading treatment), murder, mutilation, or maiming, intentionally causing serious bodily harm, rape, sexual assault or abuse, and hostage-taking, as well as conspiring to do any of these things; the Anti-Torture Statute (18 U.S.C. Section 2340A), which provides for federal criminal trial if the perpetrator is a U.S. citizen or is ever found in the United States; the Genocide Statute (18 U.S.C. Section 1091), which provides for criminal punishment up through the death penalty for a U.S. citizen who engages in or incites genocide anywhere in the world; the Walker Act (18 U.S.C. Section 960), which prohibits U.S.-based financing, initiation, or conduct of military action against any state with which the United States is at peace; and the Special Maritime and Territorial Jurisdiction (SMTJ), which extends federal criminal jurisdiction to U.S. nationals on the premises of U.S. diplomatic, consular, or other U.S. missions or entities, or in residences or appurtenant land used for the purposes of these missions or

entities.[382] Amazingly, as of June 2008, only one private contractor has been

prosecuted under *any* of these laws: David Passaro, who abused a detainee in

Afghanistan, was successfully prosecuted under the SMTJ.[383] In addition to these, the

International Transfer of Arms Regulations (ITAR) exists as a regulatory mechanism

that implements the Arms Export Control Act. The purpose of ITAR is thus to control

the export and import of US defense articles and defense services, through its power to

provide licenses for such articles and services.[384] Finally, two significant pieces of

legislation were recently amended to make them applicable to private security

personnel: the Uniform Code of Military Justice (UCMJ) and the Military

Extraterritorial Jurisdiction Act (MEJA). Because the UCMJ and MEJA are at the

forefront of legislative debates in the United States surrounding PSC-related

regulatory issues, the discussion here focuses primarily on the advantages and

disadvantages associated with applying either of these laws to security contractors.

Uniform Code of Military Justice (UCMJ)

The UCMJ was created in 1950 as the U.S. military's criminal code, providing

for prosecution of military personnel to be entirely administered by the military,

through the court-martial process.[385] Until recently, Article 2 of the UCMJ explained

that any military jurisdiction over civilians was limited to "in time of war, persons

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[382] "Criminal Trials of Blackwater Contractors: Chapter 8 – The Queen's Croquet-Ground," *The White Rabbit* (September 12, 2007), 2. Accessed October 14, 2007 at http://www.blackwaterblogger.com. See also "A New Legal Framework for Military Contractors?," 4. Accessed October 15, 2007 at http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.

[383] Passaro was convicted on three misdemeanor counts of simple assault and one felony count of assault resulting in bodily injury, and faces a maximum of 11.5 years in prison. See Jaime Jansen, "Federal Jury Reaches Partial Verdict in CIA Contractor Detainee Abuse Case," *JURIST Legal News and Research*, August 17, 2006. Accessed November 13, 2007 at http://jurist.law.pitt.edu/paperchase/2006/08/federal-jury-reaches-partial-verdict.php.

[384] Cottier, 2006: 653; Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (London: Routledge, 2006), 137.

[385] Robert Vainshtein, "UCMJ v. MEJA: Two Options for Regulating Contractors," *Journal of International Peace Operations* 2, 4 (January 2007): 11.

serving with or accompanying an armed force in the field."[386] U.S. Senator Lindsay

Graham inserted an amendment to the UCMJ into the 2007 Defense Authorization

Act, placing civilian contractors accompanying the armed forces in the field under

court-martial jurisdiction during times of contingency operations, in addition to times

of declared war.[387] This amendment defines a contingency operation as "a military

operation that is designated by the Secretary of Defense as an operation in which

members of the armed forces are or may become involved in military actions,

operations, or hostilities against an enemy of the United States or against an opposing

military force," among other conditions where the military may be called into

action.[388] The amendment is particularly significant given that the U.S. Congress has

not issued a formal declaration of war in several decades.

Thus, in order to convene a court-martial for a contractor, the contractor must

be serving with or accompanying the armed forces in the field, and the trial must take

place in time of war or contingency operations. There are several benefits associated

with broadening the scope of the UCMJ to apply to contractors in this manner.

Because courts-martial are convened on an ad hoc basis and can be established in

conflict environments, they provide an efficient method to try civilian contractors. On

a related note, the threat of being swiftly court-martialed and potentially imprisoned

under military auspices could deter contractors from engaging in illegal activity, if this

provision were regularly enforced.[389] Furthermore, subjecting civilian contractors to

the UCMJ could help to bring contractors under the authority and control of the

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[386] Mark Hemingway, "Blackwater's Legal Netherworld: Private Contractors are Subject to Military Justice – Or Are They?," *National Review Online* (September 26, 2007), 2. Accessed January 15, 2008 at http://article.nationalreview.com/?q=MmYzMTkwMzQ2OTVhNGY2MGQzMDY0MTJiM2ExYmY3YmY=.
[387] Note that the "civilian accompanying the force" designation is a very specific one, requiring the civilian in question to possess an official certification in order to qualify as such.
[388] Hemingway, 2007: 2.
[389] Vainshtein, 2007: 12.

military commander in their area of operation, thus helping to integrate security contractors into the military operation and bridging the culture gap between PSC and military personnel.[390]

Despite these important benefits, applying the UCMJ to PSC personnel in the present contracting system has several key disadvantages that cannot be overlooked. For one, the UCMJ would clash with the existing contracting regime, which gives contracting authorities the power over contractors. Under this regime, contractors – unlike military personnel – can simply be fired for minor infractions, rendering the UCMJ system unnecessary in some cases. The relevant question would be how to determine those cases in which the contractor should be fired as opposed to tried by court-martial. Furthermore, the U.S. government is unlikely to approve of a local commander having the authority to order a PSC or PSC employee to do anything outside of the scope of an existing contract. Increasing commander's authority through the application of the UCMJ to contractors could therefore upset the existing regulatory framework, including present governmental methods of selecting companies to perform certain services, or methods for permitting changes in existing contracts.[391] Another point requiring further clarification pertains to whether the language of the amended UCMJ applies to third-country nationals (TCNs) working for PSCs; if not, firms could evade the regulatory oversight provided by the UCMJ by simply relying more heavily on TCNs than on local nationals or U.S. citizens to comprise their workforce.[392] The UCMJ's applicability to non-Department of Defense contractors is also debatable, and is quite significant considering that the U.S. State

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[390] A New Legal Framework for Military Contractors?," 10. Accessed October 15, 2007 at http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.
[391] A New Legal Framework for Military Contractors?," 11. Accessed October 15, 2007 at http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.
[392] A New Legal Framework for Military Contractors?," 11. Accessed October 15, 2007 at http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.

Department and the U.S. Agency for International Development also employ private security contractors in conflict zones to a large extent.

Perhaps most fundamentally, while the UCMJ was amended in late 2006, the 2007 Manual for Courts Martial (MCM) offers no clarification regarding how this amendment should be implemented. The U.S. Army publication *Army Lawyer* outlines the significance of this omission:

> Subjecting contractor personnel to the UCMJ during all contingency operations appears to constitute a significant change rather than a clarification. No legislative history explains this change. Further, as there is no published guidance, it is unclear how this change will be implemented and precisely what the ramifications will be.[393]

The actual practice of prosecuting contractors under the UCMJ is therefore, at this point, more difficult to institute than was amending the legislation in the first place. Clearly, the UCMJ should be further amended in order to clarify any discrepancies in its applicability to all categories of contractors as noted above. However, the real challenge in applying it to civilian contractors is likely to be the establishment of norms of enforcement. Similar challenges exist with regard to the application of the Military Extraterritorial Jurisdiction Act to private contractors, as discussed below.

Military Extraterritorial Jurisdiction Act (MEJA)

Unlike the UCMJ, the Military Extraterritorial Jurisdiction Act (MEJA) authorizes private contractors to be tried in U.S. federal courts. The MEJA was originally passed in 2000 to target offenses committed overseas by private contractors employed by the U.S. Department of Defense. The law was revised in 2004 to extend federal criminal jurisdiction to all contractors "supporting the mission of the

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[393] Hemingway, 2007: 3.

Department of Defense."[394] Pending legislation would further extend MEJA's

jurisdiction to all contractors working in a contingency operation.[395] This legislation,

the "MEJA Expansion and Enforcement Act of 2007" (H.R. 2740), passed the House

of Representatives in early October 2007 by an overwhelming vote of 389 to 30, with

only Republicans voting against the bill.[396] To qualify for MEJA jurisdiction, an

offense must: (1) be committed by overseas contractors who are employed by the

United States or accompanying U.S. armed forces overseas; and (2) be equal to an

offense which would result in over one year of imprisonment if committed in the

United States. Federal judges and the Department of Defense are primarily

responsible for enforcing the MEJA. Federal judges are authorized to order the

removal of accused individuals from the country in question to face prosecution in the

United States, and Pentagon law enforcement officials are responsible for arresting

and transferring the accused.[397]

As with the UCMJ, there are benefits associated with reliance on the MEJA to

prosecute contractor abuses. The most significant of these is the fact that the MEJA

circumvents legal precedents from the Vietnam War era that eroded courts-martial

jurisdiction over civilians. While the U.S. Supreme Court throughout the twentieth

century restricted civilian courts-martial based on Bill of Rights concerns, the UCMJ

continued to cover contractors accompanying the force. During Vietnam, however, a

lower appeals court expanded the Supreme Court's position, arguing that deployed

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[394] A New Legal Framework for Military Contractors?," 4. Accessed October 15, 2007 at
http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf. See also
Vainshtein, 2007: 3.
[395] A New Legal Framework for Military Contractors?," 4. Accessed October 15, 2007 at
http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.
[396] David Stout, "House Bill Would Allow Prosecution of Contractors," *The New York Times* (October
4, 1007). Accessed October 4, 2007 at
http://www.nytimes.com/2007/10/04/washington/05cong.html?_r=1&hp=&oref=slogin&pagewanted=p
rint.
[397] Vainshtein, 2007: 13.

contractors were only subject to court martial during a declared war.[398] MEJA bypasses the potential enforcement difficulties related to these precedents. Because MEJA's system for prosecuting contractors operates in the civilian sphere, MEJA also avoids the aforementioned problems associated with interjecting military authority into a civilian-run contracting system.

Yet, MEJA is not without its own problems. Because it is a relatively new piece of legislation, few precedents exist on which to base future cases. Federal judges have little incentive to take initiative to investigate and try cases of alleged contractor abuses under a law that provides such uncertainty regarding the outcome. Furthermore, political will plays a large role in dictating when and how MEJA is applied: the Secretary of Defense must authorize law enforcement personnel to detain the contractor accused of wrongdoing in order for any arrest to proceed, and a federal judge must order the arrest of the contractor and his or her transfer to the United States in order for any federal trial to begin.[399] Meanwhile, both the White House and Pentagon oppose the idea of placing private contractors under the jurisdiction of civilian courts. They argue that to do so would insert civilian investigators into areas better covered under military law.[400] In contrast to this position, the private security industry – as represented by the International Peace Operations Association (IPOA), the Washington, D.C.-based trade association to which thirty-eight private military and security companies belong – has endorsed the "MEJA Expansion and Enforcement Act of 2007" (also known as the Price Amendment). IPOA released a statement in October 2007 that reads:

> IPOA has long supported effective oversight and
> accountability for the Peace and Stability Operations

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[398] "Blackwater Under UCMJ: Chapter 7 – A Mad Tea-Party," *The White Rabbit* (September 12, 2007): 3. Accessed October 14, 2007 at http://www.blackwaterblogger.com.
[399] Vainshtein, 2007: 13.
[400] Stout, 2007: 1.

Industry. We believe that H.R. 2740 provides important improvements to the Military Extraterritorial Jurisdiction Act which will enhance accountability for contractors working in support of U.S. efforts abroad.[401]

Whether the UCMJ or the MEJA is a more appropriate vehicle for prosecuting contractor abuses is clearly a hotly debated topic between policymakers, legislators, and industry insiders at this time. Again, however, determining which piece of legislation is more likely to be enforced in the majority of cases should be the most relevant consideration of this debate. Because neither piece of legislation has been applied to private security contractors in practice up to this point, it remains to be seen whether the benefits of either would outweigh its disadvantages. Yet, taking the perspective that additional oversight and investigation of contractor or other abuses in conflict zones is always desirable, MEJA is likely to be the easier of these laws to implement, the most effective in prosecuting contractor crimes, and – once it is used regularly – the most likely to prevent future contractor abuses. I recommend the development of a separate office within the U.S. Department of Justice tasked specifically with investigating and trying contractor abuses under the MEJA. Although costly, this would bypass the difficulties associated with motivating federal prosecutors to take on such cases, and help to ensure that the law is enforced. Due to the growing prevalence of outsourcing traditional governmental functions, such an office would certainly be useful, particularly if it focused on a wide spectrum of contractors operating abroad. Furthermore, the development of such an office would address the concerns emerging from the comparative regulation literature: that adequate enforcement mechanisms be developed to effectively implement the regulatory system, and that legalistic, prosecutorial regulatory policies have proven more effective in the U.S.-context over the long-term than have laxer policies focused

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[401] International Peace Operations Association, "IPOA Endorsement of H.R. 2740 'MEJA Exapnsion and Enforcement Act of 2007," Press Release (October 3, 2007).

solely on industry self-regulation. Of course, political resistance from the business community should be expected, and in the United States such resistance will likely have greater clout than in European countries, for instance.[402] Yet, because regulatory leaders such as the United States are in a position to greatly influence regulatory laggards and less-developed countries, it is crucial for U.S. lawmakers and the judiciary system to resist these business pressures.[403]

The alternative option, bringing contractors under further military authority through the UCMJ, is desirable in terms of its impact on PSC-military integration and, relatedly, military effectiveness. However, the difficulties associated with applying military authority to contractors employed by agencies and private actors other than the Pentagon makes it unlikely that this law would ever be used in a widespread manner to prosecute contractor abuses. Furthermore, bringing contractors under military jurisdiction in some ways contradicts the efficiency benefits of outsourcing those functions in the first place.

Britain

Unlike the United States, Britain has been fairly slow to institute any regulations to hold its war-zone contractors accountable for abuses of their position perpetrated in the field. This is in spite of the fact that Britain was one of the first states to field private military and security firms, following on the outsourcing trends of the Thatcher Revolution in the 1980s.[404] The delay in instituting regulations in Britain is not surprising, given that Britain has historically been lax in terms of

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[402] Vogel, 2003: 578; Vogel and Kagan, 2004: 36.
[403] Vogel and Kagan, 2004: 32, 35.
[404] Matthew Uttley, *Contractors on Deployed Military Operations: United Kingdom Policy and Doctrine* (Carlisle: U.S. Army War College Strategic Studies Institute, September 2005), 4-5.

regulatory policy, preferring instead to utilize industry self-regulation to a great extent.[405]

Yet, there has been a push since 1990 within Britain toward more stringent regulatory standards, and in 2002 the House of Commons ordered a Green Paper to evaluate the options for regulating private military companies. This paper outlined six options for regulating these firms: (1) the imposition of a ban on such firms' military activity abroad; (2) the imposition of a ban on the firms' recruitment for military activity abroad; (3) the development of a licensing regime for military services; (4) the institution of a practice of registration and notification; (5) the development of a general license for the companies themselves; and (6) industry self-regulation.[406] To date, however – aside from slight progress on the issue of industry self-regulation – none of these regulatory schemes have materialized. In line with the country's regulatory history, the British Association of Private Security Companies (BAPSC) is actively pushing for industry self-regulation. The BAPSC is calling upon the British government to establish an independent ombudsman to adjudicate on any alleged wrongdoing by employees of British PSCs. Yet, the BAPSC is relatively nascent at this point, and results of its efforts have yet to be seen.[407] Notably, there are very few successful examples of self-regulation operating on its own, without any other regulatory structures in place. Furthermore, the few examples that do exist tend to occur in corporatist systems with very few actors, making it quite unlikely that self-regulation will be successful as a standalone policy in Britain. With regard to the

[405] Vogel, 1986: 23.

[406] "Private Military Companies: Options for Regulation," *Green Paper*, Ordered by the House of Commons (February 12, 2002). Accessed January 19, 2006 at http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf.

[407] James Boxell and Jimmy Burns, "Government Delays Plan to Regulate Use of Private Armed Guards in War Zones," *The Financial Times* (October 30, 2006). Accessed November 1, 2007 at http://searchft.com/ftArticle?queryText=private+security+afghanistan&y=9&aje=true&x=10&id=061030001131&ct=0&nclick+check=1.

other options recommended in the Green Paper, ministers have been unable to agree on how to regulate the industry.[408]

Meanwhile, the "Sponsored Reserve" (SR) concept has materialized in practice in Britain to a limited degree, and – as a moderately stringent regulatory mechanism – it has the potential to affect the legal status and regulatory options for deployed British PSC personnel. The SR concept was legislated into the 1996 Reserve Forces Act (Part V), and is intended to allow the Ministry of Defense (MoD) to contract with civilians to provide services in "nonbenign areas" as trained reservists. By converting contractors to reservists on deployed operations, the military can ensure that they are fully integrated into the military chain of command. Problems with the SR concept persist, as the MoD has failed to define what constitutes a "nonbenign area," and appears to be utilizing SRs to replace rather than augment military capabilities.[409] Further clarification of the concept is also necessary, particularly with regard to whether foreign contractors (local nationals and/or third-country nationals) could become Sponsored Reservists. If not, the concept would seem to have limited utility, given the large numbers of local nationals and third-country nationals employed by the majority of private security firms in recent years. Notably, as of late 2005, only 335 Sponsored Reservists were available to the UK armed services.[410] Yet across the Atlantic, both the U.S. Air Force and U.S. Army are interested in developing this concept for their own services.[411] How the SR concept would be applied in the U.S. case remains to be seen. While it has the potential to grow and be adopted across national boundaries, the Sponsored Reserve concept is still relatively underdeveloped

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[408] Boxell and Burns, 2006: 1.
[409] Uttley, 2005: 46-47.
[410] Uttley, 2005: 48.
[411] Interview with Research Associate, RAND Corporation, June 22, 2006.

and open to criticisms regarding its underlying premise, the primary critique being that integrating contractors into the military defeats the efficiency benefits of outsourcing.

South Africa

The only government thus far to pass a law prohibiting their citizens from engaging in mercenary activities is that of South Africa. In September 1998, the South African government passed the Regulation of Foreign Military Assistance Act, prohibiting any mercenary activity – defined as direct participation by a combatant in armed conflict for personal gain – and prohibiting the rendering of military assistance, or any offer to render such assistance unless authorized by the Minister of Defense.[412] There are several key problems with this legislation. First, by incorporating the main tenets of IHL definitions of mercenary activity – particularly the terms "direct participation" and "combatant" – into its own definition, the law adopts the definitional problems inherent in the IHL treatment of "mercenaries." Second, by including a prohibition on the rendering of foreign military assistance, the law unintentionally prohibits the activities of aid agencies and other humanitarian groups working in conflict zones.[413] This, again, is primarily a definitional problem, for the Act defines "foreign military assistance" very broadly to include the following:

- Advice and training;
- Personnel, financial, logistical, intelligence, or operational support;
- Personnel recruitment;
- Medical or paramedical services;
- Procurement of equipment;
- Security services for the protection of individuals involved in armed conflict or their property;

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[412] Kinsey, 2006: 138.
[413] Kinsey, 2006: 139.

212

- Any action aimed at overthrowing a government or undermining the constitutional order, sovereignty, or territorial integrity of a state;
- Any other action that had the result of furthering the military interest of a party to the armed conflict, but not humanitarian or civilian activities at relieving the plight of civilian activities in an area of armed conflict.[414]

The fact that the South African law carries with it inherent definitional problems can be overlooked if it is proven to effectively regulate the activity that it seeks to regulate. Yet, the law's impact has thus far been minor. It has not prevented South African citizens from working for PSCs in Iraq or in other parts of Africa. Indeed, the company that spurred the country to devise the legislation in the first place, Executive Outcomes, was able to move its operations overseas in order to escape the law before ceasing their operations completely. As Christopher Kinsey notes, Executive Outcomes' ability to escape this law is indicative of the fact that domestic regulation of this transnational industry requires state governments to coordinate their efforts with other nations.[415]

Prospects for Synthesizing a Comprehensive Domestic Regulatory Policy

The United States, Britain, and South Africa have all approached the issue of domestic regulation of the private security industry from different angles, and all can learn from one another in this regard. The United States' attempts to regulate PSCs through the UCMJ and MEJA reflect ongoing policy discussions around the globe regarding the importance of improving military control and oversight over contractors, and balancing it with civilian legal options. Because these are stringent legalistic regulatory mechanisms not suffering from the definitional issues inherent in South Africa's prohibition of mercenary activity, they hold great potential for regulating the

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[414] Kinsey, 2006: 138.
[415] Kinsey, 2006: 139.

213

private security industry within the United States. Their applicability to other countries, however, depends upon the political structures and unique situations of the countries in question.

Meanwhile, Britain's "Sponsored Reserve" concept incorporates the notion of bringing PSC personnel under military control to a greater degree than is seen in the UCMJ debate, and onlookers can learn from Britain's successes and failures with this program. South Africa's outright ban on mercenary activity falls at the very stringent extreme of the regulatory spectrum, and while it has not been very effective at curbing overall PSC activity, it provides an example for other states thinking of instituting anti-mercenary legislation on their own territories. Above all, the South African case highlights the need for national governments to coordinate with each other when attempting to devise even domestic regulations for the transnational private security industry.

While all of these laws have strengths, their largest common weakness is the failure to establish mechanisms and norms of enforcement. Each of the aforementioned domestic regulatory initiatives approaches the problem of regulation from a criminal legal standpoint, as does current international law pertaining to PSCs. Other options do exist, however. For instance, there is a developing literature that examines the prospects for utilizing contract provisions to regulate contractor behavior. Michael Cottier has explored this issue in detail, outlining the possible ways in which such a process might work. Cottier notes four aspects of the contracting process that could usefully and effectively regulate contractors' actions: (1) selection criteria; (2) contract-specified obligations; (3) monitoring mechanisms; and (4) sanctions. Criteria for selecting a company for a particular contract could include a requirement that the firm possess all required authorizations, adequate procedures and standards regarding hiring, training, and vetting of employees, rulebooks and standard

operating procedures, internal oversight, compliance and sanctions mechanisms, and/or membership in a reputable trade association and adherence to its Code of Conduct.[416] Once the contract has been awarded, the contract should specifically require that the company and its employees comply with all applicable domestic and international law.[417] To enforce these requirements, the contract could mandate that the firm monitor and sanction misbehavior itself, through an internal compliance mechanism or otherwise, and should also clearly define the company's reporting obligations.[418] The contract can also provide penalties for breaches of contract, including fines, termination of the contract, and exclusion of the company from future bidding processes.[419]

The idea to use contracts as regulatory mechanisms coalesces with the fluctuating needs of the industry and those who purchase its services. It has the potential to provide ample oversight of the private security industry, and would be flexible enough to accommodate variations in deployment scenarios. When seeking to devise a comprehensive domestic regulatory system to effectively hold PSCs and their employees accountable, policymakers need to keep in mind the key issues raised through the processes that other states have gone through to develop their own regulations for this industry. These include the need to balance the military's oversight over contractors with the outsourcing goal of eliminating government oversight and bureaucratic inefficiencies, the potential for legislative loopholes to be exploited through companies' use of TCNs, and above all, the prospects for effective enforcement of any potential legislation. Utilizing contract mechanisms in the manner suggested by Michael Cottier is a good solution that may help many states find the

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[416] Cottier, 2006: 642.
[417] Cottier, 2006: 642.
[418] Cottier, 2006: 644.
[419] Cottier, 2006: 645.

"middle ground" between different regulatory schemes, and the prospect of using

contracts in this way should – at the very least – be considered as a supplement to

more standardized legal solutions. Industry-wide standards provide yet another

regulatory option that could successfully supplement – though not replace – domestic

and international regulations, as discussed below.

<u>Prospects for Regulation Through Industry-Wide Standards</u>

A historically-recognized alternative to strict legal regulation of industry

behavior is the development of a laxer regulatory system that relies primarily upon

industry self-regulation.[420] Up through the 1980s in Britain, such a system was

thought to be just as effective at regulating industry behavior as was a more legalistic

approach. This was mainly due to greater support of such a system within the

business community, and therefore less resistance to regulatory measures.[421] As noted

above, the British Association of Private Security Companies (BAPSC) is pushing for

the establishment of an independent ombudsman to adjudicate any alleged PSC

abuses, under the rubric of industry self-regulation. BAPSC leadership have argued

that:

> . . . for the industry, regulation is a vital issue for several
> reasons. Most importantly, it can enhance its
> respectability and legitimacy by putting its operations on
> a firm legal basis. In order to create new markets and in
> order to increase their individual market shares the
> companies depend heavily on their public image. This
> is particularly true for British PSCs who, unlike their
> U.S. counterparts, cannot rely on public contracts to
> remain in business. The big and respectable players in
> the British private security industry – comprising
> perhaps 15 companies – are therefore keen to introduce
> regulation which may, in the long term, outlaw most of

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[420] See Vogel, 1986.
[421] Vogel, 1986: 23-24.

the disreputable competitors that mar the image of the entire industry . . . Against this background, self-regulation has become a viable and feasible option for the British industry, at least for the time being. It can be argued that the industry understands itself better than the government and can therefore apply sanctions that are better targeted.[422]

Such arguments are not unique to Britain, as the International Peace Operations Association (IPOA) in Washington, DC makes similar arguments for self-regulation of the industry. Serving as a trade association for U.S.-based – and more recently, international – private military and security firms, the IPOA was formed in 2001 and now has thirty-eight member companies and its own ethical Code of Conduct to which its members must adhere, or else risk expulsion from the association. While the Code is open to critiques that it is vague and idealistic, it cites specific concepts from IHL for the ethical conduct of warfare, and has survived eleven revisions in order to make it as comprehensive as possible. Membership in the association is limited, as IPOA staff independently and extensively review the operating practices and contract history of each potential member to ensure that the firm in question will not tarnish IPOA's reputation as an ethics-based trade association. The IPOA Standards Committee, composed of officials from member companies and IPOA staff, is responsible for independently investigating infractions of the Code of Conduct alleged to have been committed by member companies or their personnel. The Standards Committee is also responsible for determining an appropriate course of action if the company and/or employee in question is found guilty of the alleged abuse, ranging from requiring that the company fire the employee to expelling the company from the IPOA altogether.

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[422] Andrew Bearpark and Dr. Sabrina Schulz, "The Regulation of the Private Security Industry and the Future of the Market," in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, ed. Simon Chesterman and Chia Lenhardt (Oxford: Oxford University Press, forthcoming), 13-14.

This system is effective in terms of the market incentives that it creates for compliance with the IPOA Code of Conduct, as member companies benefit from the reputational effects associated with IPOA membership. Membership in IPOA signals to potential purchasers of the companies' services that these firms are committed to ethical operating practices, and that their activities and company practices have been independently and thoroughly assessed for compliance with ethical norms. This is, quite simply, good for business – both for the supplier and the purchaser of security services. IPOA member companies thus have an incentive to comply with the Code of Conduct and remain a member of the IPOA. This is particularly true of those firms who intend to stay in business for the long-term, for whom reputation is crucial.

Furthermore, at least a few IPOA member companies appear to have internalized the norms of ethical conduct outlined in the IPOA Code of Conduct over and above what is required by IPOA membership. Such firms reflect these norms in their own company practices, making an effort to transform the industry into a model for ethical wartime practices. For instance, EOD Technology, Inc. (EODT) went above and beyond what is expected of IPOA membership when they held their own internal symposium on ethical security practices in the Fall of 2007. The event was titled the "Ethics Stand Down," and was said to be part of EODT's "continuous improvement process."[423] JJ Messner of IPOA, who attended the event, reflected that the very sponsorship of such an event, as well as the content of the panels themselves, made the EODT symposium an ideal towards which IPOA hoped all of its member companies would strive.[424] The fact that member companies demonstrate compatibility with IPOA norms of ethical conduct – whether for public-relations

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[423] Colonel Tom Johnson (U.S. Army, Ret.; Ethics & Compliance Officer, EODT Technology), in correspondence with the author, November 6, 2007.
[424] JJ Messner (Director of Programs and Operations, International Peace Operations Association), in discussion with the author, October 28, 2007.

purposes or because they actually internalize these norms – is significant, for it means that the IPOA operates through both market-oriented mechanisms and learning processes.

Yet, as noted above, recent research on comparative regulation points out that regulatory failures do occur more often under lax regulatory systems relying solely on industry self-regulation than under stringent regulatory systems.[425] Successful examples of self-regulation – outside of a more formalized regulatory system – are rare, and usually only occur in corporatist systems with few actors. Indeed, when abuses do occur, the IPOA's system reveals its flaws. For instance, when Blackwater USA was under IPOA investigation following the September 2007 Nisour Square incident, Blackwater simply announced that it was putting its IPOA membership on hold: "We have decided to take a hiatus from the [association] . . . We, like many other organizations engaged in this type of work, are pursuing other aspects and methods of industry outreach and governance."[426] Though Blackwater has received a massive amount of media attention following this incident, very little of it has mentioned the company's decision to withdraw from IPOA. Thus, the reputational effects of IPOA withdrawal, at least with regard to a firm as large and influential as Blackwater, have proven in this case to be negligible. Furthermore, the Code of Conduct and Standards Committee have no "teeth" in such situations, as there is nothing that IPOA can do to enforce the Code aside from expelling a company who refuses to abide by it – and clearly, in this case, expulsion was irrelevant.

This is not to say that industry self-regulation is impossible or undesirable, but rather that it should be pursued in combination with a legalistic regulatory approach, at

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[425] Vogel, 2003: 557, 577-578.
[426] August Cole, "Blackwater Quits Security Association," *The Wall St. Journal* (October 11, 2007). Accessed January 15, 2008 at http://online.wsj.com/article/SB119207104012555696.html?mod=googlenews_wsj.

least as far as the U.S. case is concerned. Both the BAPSC and IPOA are significant players in this process, and the system envisaged and developed by IPOA in particular might be effective with slight revision and the establishment of state structures to support it. For instance, the IPOA Standards Committee has very few resources with which to investigate alleged abuses, particularly those occurring outside of U.S. territory. If U.S. and foreign governments were to provide financial support to the IPOA and/or similar trade associations, as well as mandate that any government-held contracts for security services were only to be given to companies who were members of these trade associations, the self-regulatory schemes outlined here could be much more effective.

Conclusion

There are clearly a multitude of options for those seeking to regulate the private security industry. As this chapter notes, international and domestic criminal and civil legal mechanisms, contract mechanisms, and industry-wide standards enforced by trade associations are among the regulatory options being seriously considered at this point. While each of these possibilities has promise, effective regulation is most likely to be brought about through a combination of these mechanisms used in tandem. A comprehensive system of effective regulation would do much to remedy the detrimental impacts of the private security industry on military operations that are discussed in previous chapters of this study, particularly through its impact on PSC compliance with the legal and ethical norms and rules of Just War.[427] Furthermore, by holding PSC personnel accountable for their actions in civilian areas of combat-ridden regions, an effective regulatory system would improve local

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[427] Again, it should be noted that such a system of regulation may prove to be so costly as to ultimately render PSCs uneconomical.

220

civilians' perceptions of entire military operations, thus helping to win the "hearts and minds" that are so necessary to modern warfare. Yet, despite the obvious importance of such a system, regulations alone are not sufficient to improve PSCs' impact on military effectiveness. In drawing conclusions for this study, the next chapter elaborates additional policy recommendations.

CHAPTER 7

CONCLUSION

Summary & Synthesis of Findings

The preceding chapters have assessed the impact of private security companies on democracies' military effectiveness and on their propensity to be victorious in conflicts across various deployment situations. Chapter One places the issues at hand into the global historical and political context of mercenarism and the outsourcing of violence and other governmental functions. From this contextual setting, it becomes clear that violence has been outsourced throughout history and across the globe in order to both supplement the capacity of state militaries and to allow states to distance themselves from normatively undesirable conduct. The modern private security industry is similarly employed according to this logic of capacity and normative logic. Chapter One also outlines the study's overall goals: (1) To compare different situations of privatized force employment in order to illustrate PSCs' potential effects on military effectiveness, and, by extension, on the theory of the democratic advantage; and (2) To understand the different effects of structure and identity on the effectiveness of military forces composed of national armies combined with PSCs, with an eye to providing prescriptions for current U.S. policy.

Chapter Two places these goals in a theoretical context, drawing upon relevant tenets of state theory, democratic advantage theory, and various theories of military effectiveness. Chapter Two also elaborates upon the structure-identity debate in the social sciences, and this debate's significance for the underlying determinants of PSC-military coordination problems. Using each of these bodies of theoretical literature, the chapter develops several hypotheses that are explored throughout the remainder of the study.

Chapter Three's analysis of historical cases of private and national force integration illustrates the potential for successful coordination between private and national forces when the appropriate structural boundaries are delineated. It also, however, demonstrates the significance of *both* identity and structural variables in determining a hired force's impact on military effectiveness. Because both of these instances include infractions of the laws of war – or, in the Hessian case, the norms underlying what would later be indoctrinated in the laws of war – these cases provide insight into the question underlying the study's four sub-hypotheses: whether ethical behavior in warfare is more likely to benefit military effectiveness than is unethical behavior. The French Foreign Legion case, furthermore, raises the question of whether mercenary forces are more likely to violate IHL than are regular military forces, as it appears that the regular military was equally culpable in this case. With regard to the democratic advantage, the fact that the cases in Chapter Three do not involve democratic actors allows them to provide interesting insights into the validity of democratic advantage theory itself. The Hessian case in particular provides evidence to contradict the basic assumption of democratic advantage theory, for it indicates that both democracies and non-democracies can experience the processes that democratic advantage theory insists are unique to democracies.

Chapter Four's exploration of cases in which private security companies are deployed in place of a national military force depicts the ease with which democratic statesmen can involve their country in a foreign conflict, bypassing the electoral restraints on such involvement and thus decreasing the prospects that the state in question will enjoy the democratic advantage. On the other hand, the chapter demonstrates that when involved in a conflict in place of a national military, private security companies can often have quite a positive impact on military effectiveness by benefiting the *skill*, *responsiveness*, and *quality* of the foreign forces they are sent to

assist. This effectiveness can come at the cost of conducting the conflict in accordance with the international laws of war, however. While it is difficult to conclusively prove that national militaries would be more likely to comply with IHL in every situation, one can – at the very least – reasonably conclude that the use of private firms to carry out traditionally military tasks carries with it the risk that these tasks will not be achieved in accordance with international laws of war, due to the relative dearth of public oversight of such deployments.

In looking at the more recent situations of PSC-military co-deployment seen in Iraq and Afghanistan, Chapter Five deconstructs PSC-military coordination problems. To do so, it assesses original and existing interview data to determine the relative salience of two competing explanations for such problems: the argument that they are caused primarily by structural variables, versus the argument that they are caused primarily by identity-based variables. Chapter Five thus has two important theoretical contributions. It contributes first to the military effectiveness literature by analyzing the causes and consequences of PSC-military coordination problems when PSC and military personnel are co-deployed. The findings derived from this analysis indicate that PSC-military coordination problems, caused by a combination of structural and identity-related variables, lead PSCs to have a negative impact on the military's *integration*, *responsiveness*, and *skill* when the two groups are co-deployed in the field. Yet, by acting as (often well-equipped) force multipliers in such co-deployment situations, PSCs do have a beneficial impact on *quality*.

Chapter Five's second theoretical contribution speaks to the ongoing debate in the social sciences regarding structure versus identity, speculating that structural variables are causally prior to identity-based variables in situations of PSC-military coordination. In other words, deployed private security company and military personnel turn first to the structure guiding their interactions when determining how to

coordinate, relying upon both perceived and actual identities when structural variables to guide their interactions are lacking or are indeterminate with regard to how those interactions should proceed.

Finally, Chapter Six assesses the current state of regulation of private security companies and their personnel, as well as prospects for improvement in this regulatory system, with a particular focus on the U.S. case and regulations designed to address PSC abuses in the field. This chapter examines multiple types of regulation designed to address such abuses, including domestic versus international regulatory options, civil versus criminal regulatory options, the need for adequate enforcement mechanisms to be included in any forthcoming regulatory measures, and the prospects for industry-wide standards to operate as a supplement to domestic and international regulations. The chapter's analysis concludes that all of these different regulatory options must be pursued immediately and in tandem with regard to the private security industry. It also finds that domestic law provides a suitable preliminary model for effective regulation of the industry in the United States, whereas international humanitarian law and other countries' domestic laws will require substantial restructuring in order to provide effective regulation and enforcement.

Each of the preceding chapters contains findings that are intended to speak to audiences both supportive and critical of the value of PSCs. Those taking for granted that PSCs are here to stay are most likely interested in the findings regarding how to use PSCs most effectively, many of which are elaborated in this chapter's policy recommendations. Meanwhile, those skeptical of the value of PSCs are likely most interested in two notable implications of the findings herein: (1) the strong critique of the democratic peace hypothesis posed by the evidence indicating that PSCs can and are being used by democratic leaders to avoid accountability to the citizenry for decisions to go to war; and (2) the fact that greater regulatory oversight of PSCs, as

recommended here, is potentially so costly of a "solution" to the problems facing the private security industry at present as to render PSCs uneconomical. Both audiences hold important views regarding the private security industry, and this study therefore does not deign to choose one position over the other, seeking only to represent the facts accurately so that the reader may determine his or her own feelings regarding the inherent value of the industry. To this end, the next section highlights the study's main findings.

Overall Lessons

Five main lessons can be gleaned from the analyses of the preceding chapters, along with several related speculative findings deserving further research. First, the case studies examined in Chapters Three and Four demonstrate support for H1, indicating that private forces can have the best impact on military effectiveness in situations where they are either structurally integrated into the military force alongside which they operate, or where they are deployed in place of a national military force. This is primarily because PSCs in such deployment situations have a positive impact on *quality* while avoiding a negative impact on military *integration*. Tense PSC-military relations are avoided, either through structural mechanisms that minimize resentment between the two groups, or through the deployment of only one group to a particular combat zone.

Second, Chapter Five's analysis of the PSC-military co-deployments in Iraq and Afghanistan shows significant support for H2, indicating that co-deployment situations have a negative impact on military effectiveness. The robustness of this finding could be bolstered by further research involving cases other than OIF and OEF. This is related to the first lesson discussed above, as co-deployment situations primarily have a negative effect on *integration*. Such integration problems stem from

226

both structural and identity-based causes: among other structural gaps, a lack of adequate training pertaining specifically to PSC-military field interactions, and a doctrinal weakness in specifying and clarifying PSC personnel's position in the chain of command, play a large role in exacerbating the military's largely unfavorable perceptions of PSCs and vice versa. The tense PSC-military relations stemming from such problems impact the entire co-deployed force's *integration*, and relatedly, its *responsiveness*. Co-deployment scenarios also impact *skill* negatively, both by hindering commanders' leadership capabilities and by risking a decrease in soldiers' motivation levels when deploying them alongside much higher-paid private contractors. The fact that many soldiers see PSC personnel as patriotically motivated does speak to the possibility that PSC and military personnel are similarly motivated. However, PSCs' higher wages and dwindling military retention rates in an era when co-deployment is common are enough to make one wary and to stimulate further research on PSCs' overall impact on soldiers' motivation levels.

Third, the analyses in the preceding chapters demonstrate that PSCs have a largely negative impact on the democratic advantage across deployment scenarios. In cases of PSC-military integration, PSCs provide a rationale for policymakers to continue their conflicts beyond the timeframe that would be allowed by solely relying on regular military forces. In cases of PSC deployment in place of a regular military force, PSCs allow democratic policymakers to involve their countries in conflicts not approved by the electorate, thus making it less likely that the electorate will have any influence in "selecting" to engage only in those conflicts that the democracy is most likely to win. This has a negative impact on the selection effects side of the democratic advantage. Furthermore, such uses of PSCs – to avoid democratic accountability to the electorate – pose a serious challenge to democratic peace theory. Finally, in cases of co-deployment, PSCs act as force multipliers whose deaths do not

have to be reported in official casualty statistics, thus allowing policymakers to deceive the electorate in such a manner as to disrupt the electorate's conflict selectivity prowess. This, again, has a negative impact on the selection effects side of the democratic advantage. Although PSCs do improve democracies' military effectiveness in some cases, their negative impacts on democracies' conflict selectivity tend to counteract any positive impact that they may have on the military effectiveness side of the democratic advantage.

Fourth, as outlined above, Chapter Five's examination of the underlying reasons for PSC-military coordination problems illustrates the fact that a combination of structural and identity-based variables are at the root of poor PSC-military coordination. Drawing upon the OIF and OEF case study evidence, I speculate that structural variables are prior to identity-based variables in this regard. This finding – although speculative – is significant for policy, for it directs policymakers to first develop adequate structural mechanisms to guide PSC-military interactions, and then to devise mechanisms to encourage the development of those identity characteristics beneficial to PSC-military relations.

The case studies in Chapters Three, Four, and Five, by providing empirical support for H1a and H1c, illustrate another lesson deserving further examination: that PSC compliance with the laws of war benefits military effectiveness across the spectrum of deployment situations. This preliminary finding provides support for the "hearts and minds" approach to civilian treatment in counterinsurgency warfare. It should be noted, however, that the cases of the French Foreign Legion in Algeria and MPRI in Croatia provide limited support for the "draining the sea" approach to civilian treatment, as both provide evidence to support H1d. Yet, the case of the Foreign Legion in Algeria only appears to support the notion that IHL non-compliance increases military effectiveness in the short-term, and it is difficult to establish a clear

causal link between IHL non-compliance and military effectiveness in the Croatian case.

Finally, the fifth lesson evident in Chapters One through Six is that the state remains a prominent actor in force provision, despite the growth of the private security industry and its increasing involvement in traditional military activities. The state maintains its prominence by maintaining state militaries, providing contracts to PSCs, arranging contracts between PSCs and other states (as the United States did between MPRI and Croatia, for instance), and devising and enforcing regulations pertaining to PSCs in the field. Interview data examined in Chapter Five provide a preliminary indication that the professional jurisdiction of national militaries may not be exceedingly challenged by PSCs, as there appears to be a limit to the actions modern private security companies and their personnel will carry out for money, at least in some cases.[428] Thus, these data allow us to speculate that PSCs will not infringe upon at least some professional military functions, therefore leaving open a continuing state role in the control of national forces. Yet, as outlined in Chapter One, PSCs do appear to have a differential impact on weak versus strong states, particularly in terms of state-building activities. By hindering the development of a viable bureaucratic apparatus in weak states – whether employed directly by the leaders of those states or by stronger intervening powers – PSCs can narrow weak states' options for improving their systemic position in the long run. Simultaneously, PSCs can provide strong states that wish to intervene in regional conflicts and/or less-developed areas of the world with an expanded range of options for doing so. I speculate that PSCs therefore have significant potential to alter the systemic organization of states within the international system.

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[428] Interview with high-level PSC official, January 24, 2007.

Potential Future Research Agendas

Much potential for research on issues related to security privatization remains, beyond the issues and lessons highlighted above. As Chapter Two notes, one interesting issue for future research relates to how a takeover of the military's professional jurisdiction by the private security industry would impact civil-military relations, particularly in the United States. When considering Huntington's work, it would appear that this competition – if the end result were a decrease in military professionalism and a strengthening of the private sector's professional hold over formerly military functions - could decrease objective civilian control over the U.S. military, thus harming civil-military relations in the United States. A second line of inquiry related to this study's theoretical underpinning would examine the significance of democracy-type for decisions to hire PSCs, questioning whether other "types" of democracies besides the United States and Britain are likely to hire PSCs or supply them to their allies, and whether democracy-type affects PSCs' impact on the democratic advantage. This line of inquiry would be difficult to research at present, given the dearth of available cases. Yet, current trends seem to indicate industry expansion in the future, which is likely to increase the number of cases available for study and thus increase the value of such a research agenda.

Another relevant line of inquiry would examine PSCs' overall impact on soldiers' motivation levels, as mentioned at the beginning of this chapter. Although the interview data presented in Chapter Five touches upon this issue, an entire project devoted to the topic would provide interesting additional insight into PSCs' impact on the military's *skill*.

Tactical-level research directions would also pose fruitful avenues for future research. One such research agenda would examine the specific issue of how PSCs hiring third-country and/or local nationals impact efforts to integrate PSC and military

personnel in the field, and how they impact overall military effectiveness. A particularly interesting and relevant case of study related to this line of inquiry is the U.S. military's use of local nationals as private contractors (the so-called *Sahwa*) in the Iraq War surge at present.[429]

Finally, one might endeavor to compare the effects of contracts completely undertaken by that state's government, versus those contracts entered into in conjunction with an intervening power, on the civil-military relations of the state in which the action is taking place. As the Papua New Guinea case in Chapter Four demonstrates, contracts to supplant the military that are completely undertaken by the government of the state in question may be more likely to generate professional competition between the PSC and the military than are instances in which such contracts are made in conjunction with an intervening state. Additional studies and further research on this phenomenon are necessary in order to draw any solid conclusions with regard to this trend, however. The next section of this chapter aims to translate the study's theoretical lessons into clear policy prescriptions to help insure that future PSC hiring and deployment decisions are optimally situated to have a beneficial impact on military effectiveness.

Recommended Policy Initiatives & Improvements

As Chapter Five notes, the 2005 GAO Report on *Actions Needed to Improve the Use of Private Security Providers in Iraq* recommended that the U.S. Secretary of Defense enhance military procedures to reduce incidences of the military firing on security providers, and provide training to U.S. military forces on the role of security providers. Yet, the 2006 follow-up report found that no action had been taken on the

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[429] For more on the *Sahwa*, see Nir Rosen, "The Myth of the Surge," *Rolling Stone* Issue 1047 (March 6, 2008): 46-53.

development of a pre-deployment training program, and that PSCs continue to enter the battlespace without coordinating with the U.S. military.[430] Since then, limited attempts have been made by both PSC and military representatives to enhance military training regimens, to little avail. Both the International Peace Operations Association (IPOA) and the Peacekeeping and Stability Operations Institute (PKSOI) of the Army War College have worked on this, but the best result of their efforts has been the inclusion of a role for "contractors" into military readiness exercises (MREs).[431] Notably, such measures only partially address the problem, only educating military personnel regarding contractors' roles in the field and failing to educate PSC personnel or to provide pre-deployment opportunities for the two groups to interact outside of the "fog of war."

The 2005 and 2006 GAO reports also focus heavily on the difficulties in conducting criminal background screenings when hiring PSC personnel, and the lack of U.S. or international standards for establishing private security provider and employee qualifications.[432] While the GAO reports' recommendations are substantial and represent a step in the right direction, they fail to highlight some of the information from the interviews conducted in preparing these reports. A more comprehensive approach to reforming the nature of PSC-military interactions in Iraq (and elsewhere, potentially) would build upon the GAO recommendations while recognizing and correcting their shortcomings.

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[430] U.S. Government Accountability Office, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," Publication No. GAO-05-737 (Washington, DC: July 2005), pp. 43-44; U.S. Government Accountability Office, "Rebuilding Iraq: Actions Still Needed to Improve Use of Private Security Providers," Publication No. GAO-06-865T (Washington, DC: June 13, 2006), pp. 14-15.
[431] James Schmitt (former U.S. Army officer; 2006-2007 President of the International Peace Operations Association; Senior Vice President for Strategy, ArmorGroup North America Inc.), in interview with the author, July 18, 2007; Colonel Timothy Cornett (formerly of the Peacekeeping and Stability Operations Institute of the U.S. Army War College; currently Commander of the Standing Joint Force Headquarters, U.S. Southern Command), in correspondence with the author, January 10, 2007.
[432] U.S. Government Accountability Office, 2006: p. 15.

The establishment of a standardized pre-deployment training program for both PSC and military personnel is of primary importance, in order to teach each group their respective roles and responsibilities with regard to other actors in the battlespace. In the United States, the Continental U.S. (CONUS) Replacement Centers (CRCs) provide potential venues for such a training program – at least for U.S. citizens – as contractors, soldiers, and military civilians already come together at the CRCs for administrative processing and related tasks prior to deployment.[433] Policymakers would need to establish similar programs at other venues in or near conflict zones, in order to ensure adequate training of local nationals and third-country nationals as well. Preferably, such training programs would bring together groups of PSC and military personnel for at least a few hours to conduct a training scenario in tandem, and would include both classroom and practical training. Any PSC winning a government contract should be required to send all operators on its staff through such a program, although there should be variation in program levels to suit different "types" of contractors, given that PSCs use varying degrees of expatriates, third-country nationals, and local nationals in different security roles and positions. For instance, a static site security guard should only be required to undergo a level of training relevant to his job, while personal security detail (PSD) contractors (i.e., bodyguards) should be required to undergo a higher level of training due to the relatively higher likelihood of attack and, relatedly, the higher capability required for his job.

Furthermore, given that the GAO reports failed to take into account the question of what party would be responsible for funding such a training program, this study recommends that funding for training PSC operators be deducted directly from PSCs' government contracts, with the contracting government covering the costs of

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[433] Dr. Henry A. Zimon (Colonel, U.S. Army, Retired; Strategic Plans and Programs, MPRI) in interview with the author, April 2, 2007.

soldiers attending such trainings. Companies should also be mandated by the laws of the country in which they are based to require each of their operators to participate in a PSC-military joint training program, with the costs to be covered by the firm employing the operators. This will ensure that the appropriate training reaches those PSC personnel operating under non-governmental contracts (such as, for instance, PSC personnel guarding pipelines for an oil company in Azerbaijan). Because the passage of legislation on these issues may progress more slowly than desired, the Pentagon and other defense agencies worldwide may wish to pass rules mandating such training as an intermediate step prior to the passage of formal legislation.

Related to this notion of Pentagon-mandated rules, it is necessary to establish clear, unambiguous military doctrine to guide PSC-military interactions, including the military's responsibilities to PSCs in the field and vice versa. For instance, the doctrine should highlight the need for PSCs to report their location to the military commander when in or traveling through his/her AOR, and should clearly define the chain of command with respect to contractors on the battlefield. The doctrine should apply to all contractors on the battlefield, regardless of the companies employing them and the actors holding the contracts with those companies. This doctrine must then be integrated into the pre-deployment training programs of both the military and PSCs, so that everyone is made aware of the rules. While progress is slowly being made to institute these doctrinal changes, the pace of change needs to hasten in order to best insure that the growing numbers of PSCs accompanying military forces in modern warfare are improving – not detracting from – military effectiveness.

Third, it is crucial to the success of military operations involving PSCs to standardize communications between the two forces. Ideally, this would result in interoperable radios being distributed to all verifiable PSC teams operating in a military unit's AOR. Such a proposition is risky, however, given the nature of modern

warfare and the chance that insurgents or terrorists could penetrate PSC teams and thus intercept military communications. At the very least, it is necessary to establish an enforceable rule making it mandatory for *all* PSCs operating in Iraq to participate in the Reconstruction Operations Center (ROC). While such a rule was recently announced with regard to Operation Iraqi Freedom, the degree to which it is enforceable remains to be seen. This trend must spread beyond the boundaries of Iraq as well, with the establishment of ROCs in all other theatres where PSC-military co-deployment occurs, and a requirement that all companies and military units operating in those theatres utilize the ROC.

Fourth, national legislation should be developed to require that any contractor employed by a U.S. government agency (or subcontracted thereto) require its staff to wear standardized uniforms with identifying insignia. Many firms do require this of their employees, but others do not. While some may see this as a trivial matter, the fact that uniforms allow military personnel to distinguish contractors from insurgents is extremely relevant to the issue of "blue-on-white" incidents and to overall PSC-military communication, coordination, and trust. Having to wear standard, identifiable uniforms will also bring PSC personnel one step closer to fitting the current IHL definition of "combatant," thus helping to clarify the status of PSC personnel under the international laws of war. As Chapter Five mentions, this is a structural change that will assist all PSCs in aligning their identities with those most likely to demonstrate operational professionalism. On a related note, national legislation should be developed to mandate the use of armored vehicles, at least in all co-deployment scenarios. This will reduce the frequency of blue-on-white incidents by making contractors both more identifiable to friendly forces and less vulnerable to both enemy and friendly fire, and will better insure overall contractor safety.

Several recommendations pertaining to the regulation of the private security industry are relevant here as well, as covered in Chapter Six. The first of these deals specifically with international regulation of the industry, recommending that the states party to the Geneva Conventions convene a meeting to devise an additional protocol to the Geneva Conventions that would provide detailed guidance on how states and the international community are to regulate the private security industry. At the very least, representatives at this meeting should revise existing IHL definitions of "mercenary" to account for modern private security actors. Due to the confusion regarding PSCs' classification under international law, the broad reach of the Geneva Conventions, and the transnational nature of the private security industry, this is a necessary and useful way to begin the project of international regulation of the industry.

Second, with regard to domestic regulation of the industry in the United States, U.S. policymakers should mandate the creation of a separate office within the U.S. Department of Justice, with the specific purpose of investigating and trying war zone contractors under the Military Extraterritorial Jurisdiction Act (MEJA). The establishment of such an office would do much to remedy the problem of MEJA's minimal case history, creating norms of MEJA enforcement that would build upon each other to establish a solid base from which to regulate PSC abuses in the field.

A third viable possibility for regulating PSC behavior and preventing PSC abuses in the field exists in the form of contract provisions, which could be used in a standard manner to regulate PSC behavior across various situations. As Michael Cottier notes, contracting parties should use the selection criteria, obligations specifications, monitoring mechanisms, and sanctioning aspects of contracts and the

contracting process to regulate PSC behavior.[434] As Chapter Six mentions, using the

contracting process in this way would enable purchasers of PSC services to create

market-driven incentives for private security firms to: (a) possess all required

authorizations; (b) follow adequate procedures and standards regarding the hiring,

training, and vetting of employees; (c) possess rulebooks and follow standard

operating procedures; (d) have internal oversight mechanisms; and (e) be a member of

a reputable trade association, such as IPOA. Government oversight of companies and

government agencies purchasing PSC services would enable the standardization of

certain contract requirements across the industry and its range of services, thus

standardizing regulation of the industry through market mechanisms. Policymakers

should take immediate steps to institute such a program, although limited government

regulation of contract provisions at first may be the most efficient and effective means

of instituting such a system. A program that is established incrementally will allow

policymakers to test out particular contract provisions on a small scale, and to make

corrections to them if necessary prior to large-scale implementation.

Finally, on a related note, policymakers around the globe should allot

government funding to support PSC trade associations in their respective countries.

This will allow these trade associations to encourage the development of enforceable

industry standards without the undue financial influence of those firms that the

standards are designed to regulate. If government regulations simultaneously push

PSC purchasers toward hiring only those firms who belong to such trade associations,

the result will be the efficient and effective use of government regulations to create

market mechanisms – industry-wide standards verified and enforced by trade

associations – for the regulation of the industry and of contractor behavior.

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[434] Michael Cottier, "Elements for Contracting and Regulating Private Security and Military
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