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CANADIAN FORCES COLLEGE / COLLÈGE DES FORCES CANADIENNES
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NEW HORIZONS

To “Incorporate” War

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Table of Contents

| | |
|------------------------------------|-------|
| Abstract | 3 |
| Introduction | 4-5 |
| Legal Concerns | 6-8 |
| Cost Issues | 8-12 |
| A Case in Point: Blackwater U.S.A. | 12-16 |
| Conclusion | 16-18 |
| Bibliography | 19-20 |

Abstract

The rise of the Private Military Corporation has infused a different and often volatile element to the modern battlefield. Once viewed as mere brigands out for monetary gain, these martial contractors are now incorporated. These new corporations have proven extremely profitable even while the use of their services has proven controversial.

Today's Private Military Corporation has many positive uses and means of employment. In countries that require military advisement and assistance where local troops seek to advance peacekeeping goals, the use of Private Military Corporations is certainly a viable option. However, when vital national interests are at stake in conjunction with the presence of the uniformed national army engaged in active combat operations on foreign soil, the use of Private Military Corporation employees to provide security and advisement is unwarranted.

Introduction

Since there has been war there have been men owing no allegiance to either party to join in for the chance of monetary profit. Once referred to as mercenaries, these men, often of considerable martial skill, lent their talents to the highest bidder, and could tip the outcome of battle in favour of their employer.

The sword or gun for hire and the privatization of conflict is certainly nothing new. In 14th century Europe the Free or Great Companies of organized mercenaries offered their skills to those with the most currency. In Italy, these companies developed into the condottieri, or military contractors, that supplied armed military specialists in often-large private armies through the 17th century. The British made extensive use of military contractors in the 18th century as evidenced by the employment of the Hessians to fight in the American Revolution.¹

The contemporary mercenary has a very different and far more sophisticated disposition. With the rise of the Private Military Corporation, or Private Security Company, the modern mercenary has the look of a working professional, not of a brigand. It is widely argued if a professional Private Military Corporation employee is in fact a mercenary at all. This would appear as mere semantics, as whether one describes sophisticated guns for hire as mercenaries or not, they are nonetheless guns for hire. More importantly, these individuals also have the protections offered any corporate employee from personal financial liability. These protections are often further enhanced when in the employ of a government, and as such, legalities and the enforcement of local laws become blurred, if not impossible to enforce. International law offers

¹ Eugene B. Smith, "The New Condottieri and US policy: The Privatization of Conflict and its Implications," *Parameters* 32, no. 4 (Winter 2002/2003): 104-119.

little clarity when Private Military Corporation employees from one nation violate the laws of another while under contract.²

Despite past negative connotations regarding the employment of mercenaries or military contractors, the Private Military Corporation of today is indeed on the rise. As nations struggle financially, and national armies are increasingly difficult to raise and sustain, the Private Military Corporation is a simple alternative. At least that is how it would appear. However, in reality, the Private Military Corporation can significantly complicate the already challenging aspects of conflict. Most recent and notable are the Blackwater U.S.A. actions in Iraq in the alleged September 2007 killings of first reported eleven, and later confirmed as seventeen, Iraqi civilians by Blackwater U.S.A. employees. The perceptions in this case may be more damaging than any facts that may arise, as local Iraqis simply view this action as wanton undisciplined violence against them by Americans, not necessarily by Private Military Corporation employees.³

Today's Private Military Corporation has many positive uses and means of employment. In countries that require military advisement and assistance where local troops seek to advance peacekeeping goals, the use of Private Military Corporations is certainly a viable option. The use of larger logistical military contractors that provide vital support services to the larger national army is of separate issue and will not be addressed here. However, when vital national interests are at stake in conjunction with the presence of the uniformed national army engaged in active combat operations on foreign soil, the use of Private Military Corporation employees to provide security and advisement is unwarranted.

² Jennifer Elsea, Moshe Schwartz, and Nakamura H. Kennon, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress*, September 29, 2008: 15.

³ *Ibid.*...12-13.

Legal Concerns

One of the largest problems concerning the use of Private Military Corporations is the legality of their actions during employment. Those promoting the use of Private Military Corporations argue that international law, laws of the United States, local laws, or the Uniform Code of Military Justice provides protections for their contractors during a conflict. Using the current war in Iraq as a case in point, and according to the September 2008 Congressional Research Service Report to Congress, Private Military Corporations operate under three levels of legal authority. The first being international order of the laws and usages of war and resolutions of the United Nations Security council. The second being United States law, and the third being Iraqi law, including current Coalition Provisional Authority orders.⁴

International law grants contractors working with the military civilian non-combatant status. They are to be treated and afforded similar rights to Prisoners of War. Yet these rights could be forfeit if captured as Private Military Corporations fall outside of the military chain of command as they appear, in fact, to be combatants. Mercenaries, under international law, are not afforded Prisoner of War status or combat immunity as a uniformed soldier is. Iraqi courts, under Coalition Provisional Authority order Number 17, do not have legal jurisdiction to hold liable contractors whose conduct is related to contractual obligations. U.S. law may be applied, but the evidence requirements that are to be met are extremely difficult to provide and prove given the combat environment. The Uniform Code of Military Justice may be applied, but again, the trial by court-martial raises constitutional issues as these contractors are not in the military and the Congress has not formally declared war.⁵

⁴ *Ibid*....14

⁵ *Ibid*....14-31.

Are Private Military Corporation contractors then offered protections under the various laws? Are they legally mercenaries or corporate contractors? The fact is no one really knows. It is up for legal interpretation given any current case that might arise. No precedence appears to exist. The legal advantage of using contracted military personnel is then not clear, if in fact, seriously ambiguous. While loopholes in current U.S. laws have been closed to allow for the prosecution of military contractors, the enforcement and implementation still appears difficult and legally murky. Private Military Corporation contractors cannot then in reality rely on legal protections for their employees if captured while executing their contracts. As evidenced in the March 2004 killing and mutilation of four Blackwater U.S.A. security contractors in Fallujah, these contractors are not popularly viewed as uniform military men, but mercenaries that have no protections.⁶ Additionally, should the conduct of Private Military Corporation employees come into question, the only real and immediate response that military commanders on the ground have is to see that these contractors are re-deployed out of the combat zone. If a contractor fails to fulfill his contract there is little to no legal recourse for the military or government against the individual like there would be if a soldier failed to fulfill his orders. The military or government agency employing the military contractor must go after the corporation to receive any recompense.

The use of Private Military Corporation contractors during uniformed military combat operations further complicates for the ground commander an already very complicated situation. For not only must the ground commander concern himself with his own men and operations, but with the fallout of either captured contractors simply exercising their contract, or reckless

⁶ Barbara Barrett, "Blackwater now under intense fire; Shooting of 11 Iraqis puts scrutiny on 'mercenary' forces," *The Province*, 23 September 2007, E64.

behaviour by Private Military Corporation contractors toward the populace that the military commander is attempting to secure. Combat multipliers for the ground commander consist of elements that make his mission easier to attain. While it is true that Private Military Corporation contractors fill jobs that military men don't then have to, it appears that legally it would be far simpler, and therefore a combat multiplier to the ground commander, if the uniformed military simply manned those positions. Legally they would fall under the commander's authority and the Uniform Code of Military Justice in all they do. Increasing the size of the force, such to accommodate this end would then appear appropriate.

The Private Military Corporation contractor's legal status is ambiguous at best. Laws at different levels appear to conflict and are largely open to interpretation rather than any set precedent. Having Private Military Corporations then operate with the uniformed military in a combat zone not only complicates an already complicated situation, but may indeed detract from the mission as whole; offering distractions that the ground commander would be better off not having to deal with.

Cost Issues

One of the more prominent arguments in favour of using Private Military Corporations for security and advisor roles in combat theatre is that they are more cost effective than soldiers are. It is argued that they do not receive continued benefits and pay from the government unless they are "on contract" and working. Those in this camp attest that the government does not have to pay to train Private Military Corporation security or advisory personnel and that their companies pay for all the services the government renders them in theatre.⁷

This is simply not the case. Contractors have been noted to make as much as \$20,000 per month.⁸ The Private Military Corporation Blackwater U.S.A. cost the government \$445,000 per employee per year. However, most of their employees are not in combat zones for more than a few months at a time, while a soldier, save 15 days of charged rest and recuperation leave, is in the combat zone for 12-15 months solid. In early 2008, the Congressional Budget Office calculated the average cost per Soldier in combat theatre at \$325,000 with the average Sergeant, depending on time in service with all pay benefits, making not more than \$50,000 to \$70,000 in annual salary. At \$120,000 per year more, it is difficult to envision how Private Military Corporation security and advisory personnel are less expensive.⁹ Deborah Avant, a well published subject matter expert from The Elliott School of International Affairs at George Washington University, summarized the situation in Iraq saying “recruiters for Private Security Companies must deal with supply and demand and other market forces that can drive up prices just when the needs are most desperate.The huge demand for security services created a sellers market.”¹⁰ What must the Soldiers who are often tasked to provide convoy or fixed security for the Private Military Corporation security or advisory personnel think? Thoughts, words, and perceptions can often be decidedly negative. Soldiers, however, are professionals and duty bound to country. While words are muttered here, and comments there, they remain

⁷ Mark Cancian, “Contractors: The New Element of Military Force Structure,” *Parameters*, (Autumn 2008): 71-73.

⁸ Deborah Avant, “Think Again: Mercenaries,” *Foreign Policy*, (Jul/Aug 2004): 1-5.

⁹ Mark Cancian, “Contractors: The New Element of Military Force Structure,” *Parameters*, (Autumn 2008): 71-73.

¹⁰ Deborah Avant, “Private Security Companies,” *New Political Economy*, 10, no. 1, (Mar 2005): 127.

professional and do as orders and guidance requires. This is one of the many benefits of the uniformed force.

Private Military Corporation employees also receive many benefits from the military while in theatre. They are provided free security, Morale Welfare and Recreation services, access to Post Exchanges, base installation facility support, and a myriad of other miscellaneous services while co-located with military units on forward and contingency operating bases. To say that the government is practicing cost saving measures due to lack of training and post-employment benefits for Private Military Corporation security and advisory personnel is simply incorrect. Many of these employees are recruited direct from the military, thus the government in fact, has provided the Private Military Corporations with a free training service at taxpayer expense. Many Private Military Corporation employ retired military and law enforcement personnel, thus not having to shoulder retirement costs and benefits that are covered by the Department of Veteran Affairs or other state government agencies. All the aforementioned are very smart business practices, but certainly not cost saving for the government.¹¹

A later report from the Congressional Budget Office in August 2008 compared a single given security contract between Blackwater U.S.A. and the State Department “to the cost of an equivalent U.S. military force. The report pointed out that in peacetime there would be carrying cost for maintaining the military unit whereas a contract with a Private Security Company could be terminated.”¹² It would appear that the Congressional Budget Office re-calculated the \$120,000 previous difference in cost. However, this is assuming the contract will be terminated.

¹¹ Jennifer Elsea, Moshe Schwartz, and Nakamura H. Kennon, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” *CRS Report for Congress*, September 29, 2008: 48-50.

¹² *Ibid.*...50.

After all, the United States and its allies are in what is widely known as “the long war.” It is more likely that the terms of the contract might change, rather than a termination of that contract. Yet it must be asked, why contract a force at all when there is no cost savings in sight? The Congressional Budget Office report claimed equivalency at best.

It may be that cost has little to do with the contracting of arms. Once again, to use Iraq to comment, Avant states that “Indeed, the rationale for individual decisions to privatize by the U.S. armed forces rarely has anything to do with cost savings. Instead, Private Security Companies are a tool with which the U.S. can do more without formally increasing the size of its force.”¹³ However, increasing uniformed force size is exactly what ought to be done. However, there are political consequences to an increase in uniformed military force size in combat theatre. Thus, Private Military Corporations would appear to serve their purpose placing increased boots on the ground without increasing military force size.

However, this then brings into question the veracity of the contracting nation’s actions in the first place, as why should the number of soldiers on the ground be significant if the mission indeed requires it. A decrease in cost then, becomes the central argument for contracting arms. Yet this cost savings only produces fruit in the short term. Peter W. Singer, a National Security Fellow at the Brookings Institution in Washington, D.C., likely states this best in an interview with the *Multinational Monitor* in March 2004. Singer refers back to the Bosnia conflict stating, “the Bosnia contract was activated in 1995 and was supposed to be just one year, but it is still going today.”¹⁴ Singer brings us up to date further stating, “Likewise, we know Iraq is not

¹³ Deborah Avant, “Private Security Companies,” *New Political Economy*, 10, no. 1, (Mar 2005): 127.

¹⁴ Anonymous, “The Privatized Military: The Unmonitored, Unregulated and Unchecked Global Growth of Private Military Firms: An Interview with Peter Singer,” *Multinational Monitor*, (Mar 2004): 28.

going to be a short-term contract. The contracts in Iraq are going to last for five, maybe ten years. The result is that we don't just overpay in the short term, we overpay in the long haul.”¹⁵ His comments from 2004 appear prophetic. When there is no definite cost savings, and at a questionably best equivalency in cost, the government risks replacing combat power and capability that will likely be needed, not only in this “long war,” but also in the next.

A Case in Point: Blackwater U.S.A.

It is clear that there is a time and place for Private Military Corporations to use their skill and capability to enhance security or train local national forces. Host nations that might hire these corporations of their own will to better their nations interests within their borders, certainly have a right to do so. However, when these companies are used in conjunction with on-going combat operations by a power in a foreign country, this complicates an already complicated situation and is not recommended. Further, when these corporate forces are not well perceived by locals as adding to their security and safety, the presence of corporate advisors and security personnel can detract from the military mission of winning over the populace to secure peace. Such is the case with Blackwater U.S.A. and the on-going war in Iraq.

Founded in 1997 by former Navy Seal Erik Prince, Blackwater U.S.A. has grown into a multi-billion dollar business enterprise. For the United States State Department alone, Blackwater holds two contracts worth \$832 million to provide security services in Iraq.¹⁶ Blackwater operates in nine countries with some 2,500 military specialists in its employ and

¹⁵ *Ibid...*28

¹⁶ Khody Akhavi, “U.S.: Iraqi Prime Minister Seeks to Prosecute Blackwater Agents,” *Global Information Network*, (October 2007): 1.

holds an additional database pool of 24,000 with which it may call on. Blackwater offers training, mobility and logistics, technology innovation, and human and material resources to its clients. It boasts airpower unlike any other firm, owning a Boeing 767, a super Tuscano fighter jet, a blimp, and attack aviation rotary aircraft. It owns several subsidiaries to support its operations and trains over 40,000 people annually. With this amount of combat capability, it easy to see why, Blackwater is hired.¹⁷

From January 1, 2005 to September 12, 2007, in executing it's contract primarily to guard United States State Department diplomats in Iraq, Blackwater personnel have been in over 500 combat incidents, with 16 confirmed Iraqi casualties. In their defence, Blackwater could indeed be justified in all its actions. Simply put, when men with weapons are put into a combat zone, they are likely to be put into situations requiring the use of those weapons. However, with so many incidents, this has lead to a very negative perception of the company by Iraqi locals. Perceptions amidst an on-going insurgency, where the hearts and minds of the local populace are in the balance, prove extremely important. Yet, this perception is not held just of the company, but extended to the American effort in general due to actions by Blackwater personnel on September 16, 2007.¹⁸

As reported by the Global Information Network, "on Sept. 16....a Blackwater convoy sprayed Nisour Square with heavy machine-gun fire, killing 17 Iraqis and wounding 27 others in the process. Iraqi government officials have called the incident "deliberate murder..."¹⁹

¹⁷ Rolf Uessler, *Servants of War: Private Military Corporations and the Profit of Conflict*, Berkley: Soft Skull Press, 2008, 84-90.

¹⁸ *Ibid*...84-90.

¹⁹ Khody Akhavi, "U.S.: Iraqi Prime Minister Seeks to Prosecute Blackwater Agents," *Global Information Network*, (October 2007): 1.

Blackwater official's initial statement to the press said that the convoy in question "acted lawfully and appropriately in response to a hostile attack."²⁰ The timing of this event could not have been worse. The surge of U.S. forces was still underway. The fight in the Sunni Triangle and Baghdad was intense as the U.S. put tremendous pressure on insurgents and terrorists. The population was beginning to turn with the Sunni Awakening. This event put much effort, blood, sweat, and progress in jeopardy.

Ali al-Dabbagh, the spokesperson for the Iraqi Prime Minister Nouri al-Maliki said, "This is a deliberate crime against civilians. It should be tried in court and the victims should be compensated."²¹ In fact, the Iraqi government wanted \$8 million per family paid in recompense.²² The Iraqi government wanted to expel Blackwater from the country, and only direct intervention from then Secretary of State, Condoleezza Rice, prevented it. Matters had quickly gone from the tactical, past the operational, to the strategic level.²³

The fact that Blackwater had the number of incidents it did, is not surprising. Blackwater did their job and kept safe the persons they were contracted to do so. The issue is that they should not have been in Iraq in the first place. Private Military Corporations have worked in peacekeeping environments, but this is an active warzone. Soldiers and Marines are capable of doing the security work trusted to Blackwater in Iraq. Whether those military men are Military Police, Marine Embassy Guards, or Special Forces units, the military is capable of handling this

²⁰ *Ibid...*1

²¹ *Ibid...*1

²² *Ibid...*1

²³ Rolf Uessler, *Servants of War: Private Military Corporations and the Profit of Conflict*, Berkley: Soft Skull Press, 2008, 88.

issue. After all, as stated earlier, most Private Military Corporation specialists come out of the military in the first place.

To make matters worse, at the time of the incident on September 17, 2007, little oversight was in place over Blackwater or other Private Military Corporations. The Federal Bureau of Investigation led an inquiry that found, “There is no evidence...that the State Department sought to restrain Blackwater’s actions, raised concerns about the number of shooting incidents involving Blackwater...or detained Blackwater contractors for investigation.”²⁴ As mentioned earlier, the laws, whether international, local, or of the U.S. are not clear.

Blackwater Chief Executive Officer, Erik D. Prince, defended his firm saying “...based on everything we currently know, the Blackwater team, acted appropriately. Congress should not accept these allegations as truth until it has the facts.”²⁵ However, this is just the problem. The facts truly do not matter. Whether Blackwater acted appropriately or not, does not matter. The perception of the local populace is that Blackwater contractors committed murder. However, not simply focusing on Blackwater, local Iraqi anger and discontent extended, due to the perceptions surrounding this event, to the overall American effort. The damage is done, whether it is true or not.

It remains to be seen how this matter will be resolved in the courts and this is likely to be a prolonged landmark legal case. Had such an incident involved military men, the Uniform Code of Military Justice would have easily been implemented in a Court Martial. There is no

²⁴ Khody Akhavi, “U.S.: Iraqi Prime Minister Seeks to Prosecute Blackwater Agents,” *Global Information Network*, (October 2007): 1.

²⁵ *Ibid*...1.

grey area. Military Law would have either proven innocence or guilt in a well established format of justice.

This matter at the time cost military ground commanders credibility, further complicated an already complicated surge operation, and cost the loss of general combat effort. To make matters worse just a few days from the Blackwater incident, another Private Military Corporation, Unity Resources Group, “confirmed that one of its security convoys was involved in a shooting that killed two women along Karada Street in the Babel neighbourhood of Baghdad.”²⁶ The forward progress and momentum had to be regained and that required the blood and sweat of the uniformed military. It might be argued whether this incident would have occurred at all if it had been Soldiers or Marines guarding those State Department diplomats on that fateful convoy. Given the superior general discipline of the U.S. Military, this is surely less likely to have happened, if at all. However, should a terrible event such as this indeed occur, the military has in place the means with which to deal with it. That cannot be said for Private Military Corporations and their personnel. The case of Blackwater U.S.A. in the on-going conflict in Iraq clearly demonstrates that Private Military Corporations should not be employed in combat zones with and while the uniformed military are engaged in combat operations on foreign soil.

Conclusion

The privatization of warfare is nothing new, stretching back to ancient times. What is new is that privatization has now incorporated. With the modern protections of the corporation, Private Military Corporations or Private Security Companies have risen to prominence in the

²⁶ *Ibid...*1

global security situation. These companies have turned the once brigand picture of a mercenary, into that of a professionally trained and highly skilled martial employee. Some of these companies, such as Blackwater U.S.A., have obtained once unheard of profits ranging in the billions of dollars to provide security and tactical capability to armies at war. Moreover, therein lays the problem. Once Private Military Corporations are contracted to engage in military operations while the uniformed military of a nation is conducting combat operations, the mercenary company's goals and tactical operations often come into conflict, or are perceived as impeding the ongoing military effort. Thus is the case with Blackwater U.S.A.

Despite arguments that Private Military Corporations are more cost effective than regular military forces, it has been shown that at very best these contracted forces are at cost parity with the uniformed military or far exceed regular military force costs. These costs drain the coffers of nations at the expense of true long-term military structure and capability.

Legally Private Military Corporations operate in often-ambiguous circumstances. Not fully recognized under international law, these contracted operatives are not guaranteed or afforded protections as legal combatants. Thus, the risks to these personnel are unreasonably high while operating in a combat zone. This brings into question whether in fact they should be in a combat environment with the regular forces at all. In fact, they should not as their actions are legally suspect due to their lack of proper status. Private Military Corporation personnel are not clearly held accountable under any given authority as soldiers are under the Uniformed Code of Military Justice or similar military authority. This lack of proper legal status then leads to the perception by the local people and host nation, that these contracted personnel operate with impunity and outside of any laws or authority. As seen in the case of Blackwater U.S.A., this leads to operational and strategic issues that otherwise would not be present.

Ground commanders now must contend with contracted personal conduct, despite the fact that they do not have total authority over those contracted personnel as they do their own soldiers. The Blackwater case in the 2007 killing of 17 Iraqis clearly demonstrates the need to send these security companies out of combat theatre. Whether Blackwater agents were justified in the killings or not is inconsequential, as the perception by the local populace, of who support is critical to mission success, is one of outrage and condemnation for the company's actions. As of this writing Blackwater U.S.A., also known as Blackwater Worldwide, and again recently renamed simply Xe, is still operating unlicensed in Iraq, and by doing so raises issues of Iraqi sovereignty and national government strength.²⁷

Private Military Corporations serve a function in our society. They can assist and operate in many places in the world and may assist many nations in improving their security situation. However, these same companies have no place in a combat zone with a uniformed military that is attempting to defeat an enemy and provide security and stability. When vital national interests are at stake in conjunction with the presence of the uniformed national army engaged in active combat operations on foreign soil, the use of Private Military Corporation employees to provide security and advisement is unwarranted.

²⁷ Matthew Lee and Mike Baker, "AP Enterprise: Blackwater out of Iraq? No, not yet," Associated Press, (Apr 2009) 1.

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