



**NAVAL
POSTGRADUATE
SCHOOL**

MONTEREY, CALIFORNIA

THESIS

**PRIVATE CONTRACTING OF U.S. AIR FORCE COMBAT
CAPABILITIES IN FUTURE CONFLICTS**

by

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December 2011

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REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE December 2011	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE Private Contracting of U.S. Air Force Combat Capabilities in Future Conflicts			5. FUNDING NUMBERS	
6. AUTHOR(S) Kenneth M. Poindexter				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB Protocol number _____N/A_____.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distributions is unlimited			12b. DISTRIBUTION CODE A	
13. ABSTRACT (maximum 200 words) This thesis examines the increasing role and growing dependence on private military companies (PMCs) by the U.S. government, in particular, the U.S. Air Force (USAF). It highlights potential areas of concern when using PMCs to provide combat capabilities, and offers possible solutions for solving or mitigating these problems in future conflicts. The main argument of this thesis is that the role of PMCs has become blurred with traditional governmental functions, and that their use in future conflicts should be evaluated based on monetary, personnel, and material savings for the USAF and its abilities to balance international and domestic political needs and objectives, while accomplishing its national security mission. This thesis will answer the following questions: How does the USAF use PMCs in aspects of control, oversight, and accountability during conflicts, and what are the main challenges for the USAF concerning contracting PMCs to provide combat capability?				
14. SUBJECT TERMS Inherently governmental functions, private military companies, United States Air Force, combat capabilities, contractors.			15. NUMBER OF PAGES 63	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UU	

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. Z39-18

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**PRIVATE CONTRACTING OF U.S. AIR FORCE COMBAT CAPABILITIES
IN FUTURE CONFLICTS**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

This thesis examines the increasing role and growing dependence on private military companies (PMCs) by the U.S. government, in particular, the U.S. Air Force (USAF). It highlights potential areas of concern when using PMCs to provide combat capabilities, and offers possible solutions for solving or mitigating these problems in future conflicts. The main argument of this thesis is that the role of PMCs has become blurred with traditional governmental functions, and that their use in future conflicts should be evaluated based on monetary, personnel, and material savings for the USAF and its abilities to balance international and domestic political needs and objectives, while accomplishing its national security mission.

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LIST OF ACRONYMS AND ABBREVIATIONS

AVG	American Volunteer Group
CENTCOM	Central Command
CIA	Central Intelligence Agency
COTS	Commercial of the Shelf
DoD	Department of Defense
DoS	Department of State
FAIR	Federal Activities Inventory Reform Act
IGF	Inherently Governmental Functions
MEJA	Military Extraterritorial Jurisdiction Act
NDAA	National Defense Authorization Act
NGO	Non-Governmental Organization
OMB	Office of Management and Budget
PMC	Private Military Company
POW	Prisoner of War
RPA	Remotely Piloted Aircraft
SIGIR	Special Inspector General for Iraq Reconstruction
SOC	Special Operations Company
UCMJ	Uniform Code of Military Justice
USAF	United States Air Force

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ACKNOWLEDGMENTS

I would like to make a special thank you to my wife, Ainslie, for all the long hours researching this thesis that she made available to me. Without her support, this project could not have been accomplished. I would also like to thank Professors Thomas Bruneau and Robert Looney for all of their guidance, suggestions and vectoring that they provided me over the content and direction of this thesis.

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I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

While it is clear that the United States has the most sophisticated and technologically advanced military in the world, it is also clear that it is dependent on Private Military Companies (PMCs) to cover many insufficiencies in its abilities to wage war. The role of the use of PMCs by the USAF is still in the initial trial phases and they have yet to be accepted as players in air operations and combat capability. Today PMCs are used in operations at home and abroad to augment power for Homeland Defense and support Homeland Security missions to achieve policy goals. But, what is the future role of PMCs with regard to providing combat capability to the United States Air Force (USAF), and to what extent could PMCs provide combat support to augment the required capability necessary for the USAF to carry out its mission?

B. IMPORTANCE OF RESEARCH

At a time when the USAF is the smallest it has been in terms of personnel in 50 years, facing ever-growing budget shortfalls and project cost overruns, it will continue to look for ways of saving money. Since the Persian Gulf War, when the vast majority of all combat capability was military, every operation has increased the use of PMCs to accomplish its mission, and it is clear that this trend will continue as long as the USAF continues to downsize and operations become more costly.¹

A pressing issue is trying to persuade a military community that has historically been the sole combat provider of the U.S. government to accept an outside company stepping in to provide a capability. The USAF has resisted allowing anyone other than commissioned officers to fly Remotely Piloted Aircraft (RPA), while sister services allow

¹ Congressional Budget Office, "Contractors' Support of U.S. Operations in Iraq," August 2008. Table 2, 13.

enlisted personnel to operate their RPA. What is the likelihood that the USAF will allow the last few remaining piloted missions to be handed over to a PMC?

C. PROBLEMS AND HYPOTHESES

The concept of using PMCs to conduct combat missions while under contract of the USAF raises far-reaching questions of what is considered actual combat operations by the USAF, who has the right to conduct those operations, as well as legal and political concerns. These stem from the viewpoints of military and governmental leaders that the U.S. military is stretched too thin in current combat operations and must be augmented by contractors to provide the services necessary to sustain these operations due to either a lack in training of military personnel or its inability to provide enough manpower to accomplish or support an operation. My views are that the use of PMCs could lead to interfering with a state's sovereign right to use force and agreements governing the uses and treatment of military personnel during armed engagements.

A secondary issue involves the use of PMCs in providing "inherent government functions" related to military actions and operations in support of U.S. policy and interest abroad. This is not to say that PMCs have not firmly established their place in logistical support and engineering roles during military operations, but will there be an opportunity for them to provide combat capabilities in future conflicts? I anticipate that this will, in fact, be the case in future low-intensity conflicts due to continued manpower, procurement, and budgetary cutbacks facing the U.S. military. This combat capability would provide a much-needed low cost force multiplier in accomplishing U.S. objectives. These cost restraints are due to the initial and recurring expense of training pilots and ensuring their proficiency, the development cost of new advanced fighters and bombers that are designed for a peer adversary and are not useful or cost-effective against trans-national terrorist organizations or non-state actors, and because there could be political ramifications that limit the use of next-generation aircraft in low intensity/regional conflicts. It is in using PMCs to conduct combat operations that the U.S. government must make the case that it is both moral and legal to contract out a combat capability as

long as it is completely supported and controlled by the sourcing government and any issues or consequences that might arise are fully accepted by the contracting agency or firm.

The policies and opinions of leaders must be reflected in the laws passed by our government to allow for this type of action to commence in a combat area lest we be seen by the rest of the world as a callous nation who uses mercenaries to accomplish our goals.

My hypothesis is that the USAF will evolve to allow the usage of PMCs to provide capabilities that it is unable or unwilling to support. The inability to provide support could be due to a number of reasons from a deficiency of airframe capability to provide a mission set to the cost associated with providing an organic asset to meet mission requirements. This may include, but not be limited to, intelligence, surveillance and reconnaissance gathering, close air support of ground forces, and actual engagement of hostile forces. The USAF is already examining the feasibility and cost estimates of contracting out a portion of its aerial re-fueling capability to private companies.

I anticipate that the USAF will continue to focus on a state-sponsored threat from a near or peer competitor that will shape its acquisitions into next-generation fighters and bombers. The necessity to maintain air superiority and supremacy in combat areas will absorb the vast majority of monetary resources. Because of this, there will be opportunity for contracting out low-intensity combat operations in situations where the USAF has air supremacy, as well as in missions such as close air support and surgical and single strikes.

D. METHODS AND SOURCES

This thesis will be a structured, focused comparison of case studies of PMCs that have been used and contracted out by the U.S. federal government, namely the Department of Defense (DoD), the Department of State (DoS), and the Central Intelligence Agency (CIA). This will include all of the military services that have used or currently use PMCs to support operations both at home in the United States and abroad. Additionally, the historical and international use of PMCs and the outcomes and issues identified by sovereign states employing PMCs forces will be analyzed. Government

documents will be the primary sources for this research. Secondary sources will include articles and books written by leading experts in the field.

The historical aspect of contracting forces to support U.S. military missions will also be examined to demonstrate an increasing trend and need for the continued use and expansion of PMCs in current and future USAF operations.

E. THESIS OVERVIEW

Chapter I of this thesis will pose the major research question and importance of the work and will discuss problems, and methods and sources. Chapter II will focus on the PMC and sovereign state functions of monopoly of war, legal recourses, and possible damage to political standing. Chapter III will provide background on the usage of PMCs by the U.S. government and military. Chapter IV will discuss the incentives and challenges of outsourcing military roles to PMCs. Chapter V will present the conclusion, summary of findings, and any recommendations on how PMCs can be utilized in future USAF combat operations.

II. PRIVATE MILITARY COMPANIES AND SOVEREIGN STATE FUNCTIONS

A. TODAY'S PRIVATE MILITARY COMPANY

The PMC of today faces unique and complex challenges in operating in the current business environment. PMC employees face certain limitations on the requirements and expectations in the performance of their contracts. These expectations are even more stringent for a government contract, due to its oversight and accountability requirements. Today's PMCs are incorporated businesses run by executives and traded on the world stock markets, which offers them legitimacy and distinguishes them from mercenaries. It is important to note that the hiring of a PMC should not be equated to the employment of a mercenary. To make this point more clear, mercenaries are defined as follows by the UN Mercenary Convention.²

1. A mercenary is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) 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;
 - (c) is not a member of the armed forces of a party to the conflict; and
 - (d) 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.
2. A mercenary is also any person who, in any other situation:
 - (a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence;

² A/RES/44/34 72nd plenary meeting 4 December 1989 (UN Mercenary Convention). <http://www.un.org/documents/ga/res/44/a44r034.htm> (accessed August 13, 2011).

- (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.

Nevertheless, PMCs are profit-driven entities that deal in complex currency contracts and stock sales to promote shareholder value. As is most often the case, PMCs are an incorporated entity; therefore, they would not meet the definition of a mercenary as per the United Nations definition. However, this does not in any way mean they can be considered “lawful combatants” under the Third Geneva Convention. It is this status that gives a nation’s armed forces the ability to conduct warfare and still maintain a good standing in the international community. The Third Geneva Convention (“Relative to the Treatment of Prisoners of War”) ensures the humane treatment of enemy prisoners of war and holds the opposing state responsible for their capture and not troops or individuals of that state. This is supported by the fact that national militaries are a direct extension of the political will of the government.

Any forces not part of the national government cannot claim treatment as combatants under the Geneva Convention if captured. PMC employees are not part of the national government; if captured, they are classified however the capturing state government wishes. These prisoners, from spies to common criminals, are not afforded the same rights as enemy prisoners of war and are at the whim of the capturing state. How do we define the combat role of a PMC if its employees are not afforded the same treatment as troops from a state’s military?

As one executive notes, PMCs are “structured organizations with professional and corporate hierarchies We cover the full spectrum-training, logistics, support, operational support, post-conflict resolution.”³ Employees of today’s PMCs are highly trained and often have military or paramilitary backgrounds giving them specialized abilities desired by governments who lack the funding to provide the necessary skills and training. These people often come from a state that has reduced its military and are not willing to reintegrate into civilian life. Instead, they transition to fields that require specific talents and offer a desirable salary.

Ordinary soldiers are not the only ones who have been left jobless. It is believed that up to 70 percent of the former Soviet KGB agents have joined the defense, and PMC industry’s ranks.⁴ As Sinclair Dinnen notes, “The current revival in private military security is broadly consistent with the prevailing orthodoxy of economic rationalism, with its emphasis on ‘downsizing’ government and large-scale privatization.”⁵ Many state powers are contracting out and privatizing key military services. Great Britain has contracted out its aircraft support units, tank transport units, and aerial re-fueling fleet.

Previously, all of these elements had been provided solely by the military and played vital roles in conflicts such as the 1999 Kosovo campaign.⁶ One source states that “Iceland is set to give a private army contractor the green light in what critics are calling the most ambitious move by a corporation to perform tasks once reserved for national militaries.”⁷

³ Timothy Spicer, founder of Sandline and now chief executive officer of SCI, quoted in Andrew Gilligan, “Inside Lt. Col. Spicer’s New Model Army,” *Sunday Telegraph*, November 22, 1998. <http://web.archive.org/web/20070519032042/http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1998/11/22/narmy22.html> (accessed November 5, 2011).

⁴ Peter Lock, “Military Downsizing and Growth in the Security Industry in Sub-Saharan Africa.” *Strategic Analysis*, Vol. 22, Issue 9, 1998, 1417.

⁵ Sinclair Dinnen, “Trading in Security: Private Security Contractors in Papua New Guinea,” in Dinnen, Ron May, and Anthony J. Regan, eds., *Challenging the State: The Sandline Affair in Papua New Guinea* (Canberra: National Centre for Development Studies, 1997), p. 11, quoted in Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security*. *International Security*, Vol. 26, No. 3, Winter, 2001–2002, 198.

⁶ Simon Sheppard, “Soldiers for Hire,” *Contemporary Review*, August 1999, http://www.findarticles.com/m2242/1603_275/55683933/pl/article.jhtml (accessed November 5, 2011).

⁷ “Cash-strapped Iceland to host “private army” – and Russian jet,” *RT*, August 31, 2010, srt.com/Politics/2010-08-31/iceland-army-russian-jets.html?fullstory (accessed August 13, 2011).

Moves by governments such as these lend support to the idea that private contracting of military missions is on the rise and could possibly be accepted by the rest of the world's governments.

B. STATE'S MONOPOLY ON WAR (INHERENTLY GOVERNMENT FUNCTIONS)

The Peace of Westphalia in 1648 defined many aspects of the ways people were governed and how the state used its powers. Sovereign governments of each state were reorganized to have exclusive control over its lands, people, and agents abroad and the government took responsibility of warlike acts by its citizens or agents.

Government functions and powers are never static and are in constant need of review. Nowhere is this more evident than in inherently governmental functions. The term "inherently" alone indicates that these roles are strictly reserved for, and used by, the federal government. However, this is not always the case. In fact, it is rarely the case when it comes to conducting combat operations. The world is witnessing the gradual breakdown of the state's monopoly over forms of violence. By defining state's rights when it comes to the use of force and inherently governmental functions, PMCs can be integrated into a government's plan for policy implementation. This would erase any issues of accountability or oversight that might arise in the use of PMCs to achieve governmental goals, while supporting the military.

This raises the following questions: What are the roles of government when it comes to providing combat capabilities and are those roles strictly limited to the government? Do the rights of governments in conducting warfare extend to employing contractors to execute the monopoly of force, or are they strictly "inherently governmental functions" as prescribed?

1. Defining Inherently Governmental Functions

The phrase "inherently governmental functions (IGF)" is a convoluted idea of perceived powers and rights that can only be used by a government.

These powers and sovereign functions have become blurred in recent years and all realized they needed to be redefined. An attempt at defining IGFs was by the Federal Activities Inventory Reform Act of 1998 (FAIR).

The FAIR defines “inherently governmental function” as one that is so intimately related to the public interest as to require performance by federal government employees.⁸ This was disregarded in an Office of Federal Procurement Policy memo that directed agencies to change the definition of IGFs under Office of Management and Budget OMB Circular A-76 in 2003. This redefining of the outsourcing of government roles and responsibility created confusion and situations in which private contractors could be in a position to carry out IGFs. This confusion ultimately led to a policy letter from the White House that called for the Director of the OMB to issue a policy letter that provided guidance to Executive Departments and agencies on circumstances when work must be reserved for performance by federal government employees.⁹

The Obama Administration’s Final Policy Letter issued on Inherently Governmental and Critical Functions by the OMB on September 12, 2011.¹⁰ This policy letter states that combat is an inherently governmental function, but also that “federal employees perform and/or manage critical functions to the extent necessary for the agency to operate effectively and maintain control of its mission and operations.”¹¹ The agencies are also to determine which activities can be carried out by contractors that are not critical to the agencies mission. The door it seems has neither been opened, nor shut on contractors, but left to each agency to decide critical functions and activities that will be carried out by federal employees and which to contract out.

⁸ Federal Activities Inventory Reform Act of 1998, October 1, 1998. Public Law 105–270 105th Congress. Sec 5: http://www.whitehouse.gov/omb/procurement_fairact/ (accessed August 13, 2011).

⁹ Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting March 4, 2009, Office of the Press Secretary: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/ (accessed August 13, 2011).

¹⁰ Office of Management and Budget, Office of Federal Procurement Policy, Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, Performance of Inherently Governmental and Critical Functions, 76 Fed. Reg. 56227 (Sept. 12, 2011).

¹¹ *Ibid.*, 3, 63.

This very legislation, it seems may allow contractors to provide functions that might be viewed as reserved for the federal government, but not listed by the responsible agency as a critical or inherently governmental function. Can contractors provide security in low, or no threat locations, possibly facing the use of arms in carrying out their contract? Today, it is critical to define the roles that PMCs will play in supporting the U.S. military or achieving objectives of the U.S. government, and how they will accomplish those roles.

The Presidential Memorandum on Government Contracting, issued on March 4, 2009, directs the OMB to clarify when governmental outsourcing of services is and is not appropriate, consistent with section 321 of the National Defense Authorization Act (NDAA) for FY 2009.

Section 321 requires the OMB to

- (i) create a single definition for the term “inherently governmental function” that addresses any deficiencies in the existing definitions and reasonably applies to all agencies;
- (ii) establish criteria to be used by agencies to identify “critical” functions and positions that should only be performed by federal employees; and
- (iii) provide guidance to improve internal agency management of functions that are inherently governmental or critical.

This directive prompted the OMB to issue a final policy letter¹² that stated the definition of “inherently governmental functions” would be in accordance with the FAIR act.

To answer how the FAIR definition affects and applies to providing combat capabilities of sovereign state governments, namely the ability of direct combat action involving conventional forces, we will focus on Sec. 5. (2) (B) ii, which states that:

an inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to determine, protect, and advance United States economic, political,

¹² Office of Management and Budget, Office of Federal Procurement Policy, Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, Performance of Inherently Governmental and Critical Functions, 76Fed. Reg. 56227 (Sept. 12, 2011).

territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise.

By clarifying the definition and setting up tests to ascertain whether a function is inherently governmental, this policy is an attempt to balance the ability between contractors and federal employees of the United States government to protect the public interest, thus conducting combat operations. The final policy letter also includes in its illustrative list of inherently governmental functions (1) all combat; (2) security operations in certain situations connected with combat or potential combat.¹³ When governments are no longer able to provide combat capabilities and private contractors are employed to achieve this function, then there could possibly be a merging of authority once considered inherently governmental. These might then be perceived to be merely directed by governments but carried out by an organization or PMC. If this happens, would a government be able to maintain its authority, or would these rights be transferred to a corporation?

2. Monopoly on War

War has been fought between neighbors, tribes, royalty, different cultures, and, in some cases, civilizations. This thesis is concerned only with the current state of war, fighting between governments.

Since the Vietnam War, and especially since the end of the Cold War, the U.S. government has outsourced larger portions of its military support operations to private contractors as seen in Table 1.

¹³ Office of Management and Budget, Office of Federal Procurement Policy, Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, 76 Fed. Reg. 56227 (Sept. 12, 2011).

Table 1. Presence of Contractor Personnel During U.S. Military Operations¹⁴

Conflict	Contractor (Thousands)	Military (Thousands)	Estimated Ratio of Contractor to Military Personnel^a
Revolutionary War	2	9	1 to 6
War of 1812	n.a.	38	n.a.
Mexican-American War	6	33	1 to 6
Civil War	200	1000	1 to 5
Spanish-American War	n.a.	35	n.a.
World War I	85	2000	1 to 24
World War II	734	5400	1 to 7
Korea	156	393	1 to 2.5
Vietnam	70	359	1 to 5
Gulf War	9 ^b	500	1 to 55 ^b
Balkans	20	20	1 to 1
Iraq Theater as of Early 2008^c	190	200	1 to 1

¹⁴ Source: Congressional Budget Office based on data from William W. Epley, “Civilian Support of Field Armies,” *Army Logistician*, vol. 22(November/December 1990), pp. 30–35; Steven J. Zamparelli, “Contractors on the Battlefield: What Have We Signed Up For?” *Air Force Journal of Logistics*, vol. 23, no. 3 (Fall 1999), pp. 10–19; Department of Defense, Report on DoD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel During Contingency Operations (October 2007), p. 12.

Note: n.a. = not available.

a. For some conflicts, the estimated number of contractor personnel includes civilians employed by the U.S. government. However, because most civilians present during military operations are contractor personnel, the inclusion of government civilians should not significantly affect the calculated ratio of contractor personnel to military personnel.

b. The government of Saudi Arabia provided significant amounts of products and services during Operations Desert Shield and Desert Storm. Personnel associated with those provisions are not included in the data or the ratio.

c. For this study, the Congressional Budget Office considers the following countries to be part of the Iraq theater: Iraq, Bahrain, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Turkey, and the United Arab Emirates.

The planning and execution phases of military operations have become dependent upon such companies to provide the bulk of all logistics and support needed by the U.S. military, and has only increased during the current conflicts.¹⁵ The trend will only continue into the conflict realm, if the agency performing an activity no longer considers the activity a mission essential function to be carried out solely by government employees. When an activity is not combat, defined as mission essential, or listed as a reserved inherently governmental function, then is it possible to contract out conflict operations? It is possible to predict how the United States Air Force will conduct future combat operations by examining combat operations procedures of both the CIA and Department of Defense. Before addressing these questions, it is first necessary to determine who has the right to wage war. Is it a government's right to decide and be responsible for engaging in combat, or can governments simply decide to go to war and employ private forces to achieve its combat goals?

The current general assumption is that warfare is conducted by militaries that are extensions of a sovereign nation's government. This, however, is far from the truth, as warfare has been conducted by private personnel and entities for centuries. As Jeffrey Herbst notes, "The private provision of violence was a routine aspect of international relations before the twentieth century."¹⁶ Since World War II, governments have been more than willing to outsource or hire a PMC in order to strengthen, resume, or acquire the state monopoly.

C. LEGAL BASIS FOR USE OF PMCS IN COMBAT ROLES

With any contractual business model, fulfilling the contract is paramount to gauging the effectiveness of the principal-agent relationship.¹⁷

¹⁵ Congressional Budget Office, "Contractors' Support of U.S. Operations in Iraq," August 2008. Table 2, 13.

¹⁶ Jeffery Herbst, "The Regulation of Private Security Forces," in Greg Mills and John Stremlau, eds., *The Privatisation of Security in Africa* (Pretoria: South Africa Institute of International Affairs, 1999), 117.

¹⁷ Peter D. Feaver, *Armed Servants: Agency, Oversight and Civil Military Relations* (Cambridge: Harvard University Press, 2003).

If a country or entity has the ability to control a PMC, then there is no need to worry about the sovereignty of that state. If a states government is in control of its institutions and financial resources, then the chance of a PMC risking the ability of the government to function and act appropriately is relatively small and inconsequential.

This also reinforces the idea that if a PMC is not fulfilling its requirements, it should be terminated without any adverse effect to the government. Laws, either national or international, could be the source for regulating PMCs' actions and behavior. When dealing with the relationship between the USAF and a contractor, the legal basis of both the USAF as an institution and the U.S. government as a whole gives latitude in hiring, firing, and oversight of the actions and performance of the contractor. The investigational and legal powers of the U.S. government allow for the recoupment of funds, or concessions, in contract services provided. As incorporated businesses, PMCs are subject to litigation in the U.S. judicial system, as well as internationally if they are based outside of the United States. One of the most vivid examples of abuses by contractors was that of Abu Graib. The final report concluded that the use of contractors as translators and interrogators was a key part of the problem.¹⁸ Congress has since mandated that interrogation is an inherently governmental function that the DoD may not outsource.¹⁹ Is the DoD the only agency subject to this restriction? Are other government organizations such as the DoS and the CIA exempt? How does a government control contractors and ensure that their actions do not undermine national interest and policies?

The *Washington Post* has reported on contractors that have been fighting their own battles with their own weapons, helicopters, and intelligence networks.²⁰ When operations first began in Iraq and Afghanistan, contractors were not held to the laws of

¹⁸ Peter W. Singer, "The Contract the Military Needs to Break" *The Washington Post*, September 12, 2004. http://www.brookings.edu/opinions/2004/0912defenseindustry_singer.aspx (accessed August 10, 2011).

¹⁹ P.L. 110-417, sec 1057 (2009).

²⁰ Dana Priest, and Mary Pat Flaherty "Under Fire, Security Firms Form and Alliance" *Washington Post*, April 8, 2004. <http://www.washingtonpost.com/ac2/wpdyn?pagename=article&contentId=A59516-2004Apr7¬Found=true> (accessed August 28, 2010).

these countries, much less to those of the U.S. military, namely the Uniform Code of Military Justice (UCMJ). Most of these contractors were hired using a Department of the Interior contract and not a DoD contract.²¹ The lack of accountability coupled with oversight issues and flaws in reporting incidents up the chain of command gives credibility to the claim that contractors operate differently than government employees. For reasons of military necessity, discussions about consequences and accountability are ambiguous, if not outright ignored.

PMCs are not necessarily concerned with what is in the government's best interest. Their principal concern is their profit margin. Once hired, a PMC has the same responsibility of judgments and actions placed upon it as originally assigned to a state. This is to ensure that any repercussions from actions by a PMC are absorbed by the contracting government. A PMC's decisions and actions are reflections of the hiring state. When the numerous distractions to the difficulties in conducting security and combat operations are factored in, monitoring becomes much more complicated. PMCs prefer to operate autonomously and will act however is best for their bottom line. The rise of PMCs indicates that governments no longer have exclusivity in the use of force to execute foreign policy and military might, which may give PMCs more leverage in evading state policy restrictions.

Civilian control over a military vies with the military's need for autonomy to properly perform their duties.²² Once the military is given a mission or role, it then executes that function in a manner that is in line with what is desired by the civilian leaders in charge. To properly perform its tasks, the military needs to be directed with clear and achievable goals by the elected leaders. If the goals are opaque or misdirected then the military functions as best as to be expected and my assume roles not otherwise filled by other governmental agencies.

²¹ Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," CRS Report for Congress (RL 32419), updated August 25, 2008: 7–9.

²² Kenneth W. Kemp and Charles Hudlin, "Civilian Supremacy over the Military: Its Nature and Limits," *Armed Forces and Society*, vol. 19, no. 1 (Fall 1992), 7–26.

The use of PMCs can upset and supplant the military's core functions. Sometimes the need for political or military expediency trumps the views of a state's legislation. In the case of the United States, the congressional mandated end-strength of each of the military services has been augmented by hundreds of thousands of contractors in roles that had previously been performed solely by the military. This creates undue pressure on the military to function with organizations or PMCs that may not have the same restrictions placed upon them as to the extent the military does. Resulting friction in operations trying to achieve national goals between the civilian leaders who approved the use of PMCs that operate on a bottom line and with full autonomy, and the military that falls under civilian control and oversight, results in a evident struggle for autonomy and power under governments.

Using PMCs relieves the political cost of having mobilized the National Guard or Reserve forces and place service members in the line of fire. Does the Executive Branch gain too much power and autonomy from the Legislative Branch by doing this? And, is there a risk of having a private-military operation that would be against the expressed wishes of Congress? PMCs cloud the ability of a democratic government to operate freely. The intent of a democracy is transparency and accountability, both of which can be significantly reduced when PMCs place controls over policy further from the electors. However, "most states find PMCs useful for implementing their own foreign and military policies and oppose efforts to restrict, let alone prohibit them."²³

There is therefore a need to regulate PMCs so the transition from public forces to private ones is more easily accepted. The 2007 NDAA²⁴ placed contractors and others who accompany the U.S. military into contingencies under the UCMJ, which effectively put them under the same laws as military personnel. It gives legal status to hold businesses that have expanded in a void to operate around, if not above, the law accountable for their actions while contracted by the DoD. Officers in the field now have

²³ David Isenberg, *A Fistful of Contractors: The case for a Pragmatic Assessment of Private Military Companies in Iraq*. Washington D.C. and London: British and American Security Information Council. 2004.

²⁴ H.R. 5122: John Warner National Defense Authorization Act for Fiscal Year 2007 109th Congress: 2005–2006.

means at their disposal to deal with contractor crimes and effective ways to handle disciplinary issues relating to contractors. This gives the military greater accountability over the behavior of contractors instead of ignoring infractions or depending on civilian courts thousands of miles away and prosecutors with no authority to dispose of witnesses or claim legal jurisdiction.

Historically, U.S. courts have not wanted civilians to be subject to military law. However, in order to integrate contractors into the order of battle, having all armed forces under one chain of command is the military necessity. In times of war, military commanders have had broad powers over civilians or accompanying forces on the battlefield. The inclusion of contingency operations has now expanded military jurisdiction over those civilians. However, will it also include all agencies, civilians, and third country nationals? It makes sense to have all those involved in a U.S. military mission fall under the UCMJ, even if they are contracted by another federal agency.

The key here is that the DoD now has the ability to enforce the rule of law instead of merely reporting and releasing a contractor to his firm. This authority may also provide for the treatment of civilians if captured while performing military functions. Legal protections and proceedings can be enacted against any contractor that commits a felony under the UCMJ.

If the American government is willing to prosecute civilians under the UCMJ, then perhaps other countries will follow suit, which may lead to a U.N. charter regarding issues such as the treatment of POWs. This would help clarify any actions taken by a contractor and provide legal recourse now missing in today's combat operations. Leveling the rights and accountability between military and PMC personnel will open the door for governments to use contractors in place of troops to conduct missions that were once inherently governmental. If this becomes commonplace, the link between PMCs and governments will become cemented and the role of government will become oversight versus executor as the bulk of operations falls to the PMCs.

Governments must define their roles and account for their actions if they want to maintain integrity in the world's eyes. If necessary, they must adopt laws to ensure the

proper use of PMCs in operations involving combat and defense of national interest lest they remain vulnerable to the contract and those fulfilling it.

D. POSSIBLE DAMAGE TO UNITED STATES' POLITICAL STANDING

While the United States is capable of going it alone on any military operation to include winning a war, the recent administrations of Presidents George H. W. Bush, William J. Clinton, George W. Bush, and Barack Obama, have relied on the international community for support and legitimacy in military functions other than war. From the Gulf War to the current conflicts, the United States has enlisted the help of other governments in an attempt to legitimize its actions. Building coalitions in military operations, or relying on the North Atlantic Treaty Organization's support, legitimacy is at stake if the world's view is going to be that the United States is engaging in combat operations utilizing a contractor and not holding it accountable for its actions. It is my view that nations do not see the use of contractors as anything but an extension of the U.S. government or military. Therefore, the United States should have control and accountability of those contractors when operating in foreign countries.

While it has occurred that a contractor or sub-contractor has acted out of the limits of their contract and caused political difficulties for the United States, the likelihood of permanent damage to the standing of the government in the eyes of the world is small. As a transparent democracy, our political leaders are held accountable for their actions, and the United States does its best to abide by the treaties and agreements to which it is a signatory. There are ways a government can take action in international courts against the United States for any wrong doings. Institutions such as the World Trade Organization, International War Crimes Tribunal, and the United Nations allow for this to happen. However, this has been difficult in the case of PMCs as the laws both internationally and domestically have been lacking.

In the beginning of the Iraq invasion, PMCs were not accountable to any Iraq laws. "Under the Coalition Provincial Government order number 17, as revised June 27,

2004, contractors are exempt from Iraqi laws for acts related to their contracts.”²⁵ Only after events such as the one that occurred on September 16, 2007, in which Blackwater military contractors allegedly shot and killed 17 Iraqi civilians in Nisour Square, Bagdad, did the U.S. government try to reign in the control and accountability of its PMCs by placing them under the Military Extraterritorial Jurisdiction Act (MEJA) of 2000.²⁶

While MEJA was a start, it provided little ability to prosecute a PMC for an infraction or crime. The 2007 Defense Bill²⁷ provided the first real ability to address the accountability of PMCs’ actions while in a security or combat role. This bill places anyone who accompanies the U.S. military into contingency operations or war under the UCMJ; however, it only affects those contracted under the DoD. While all agencies are not covered, it is a start making contractors in conflict situations accountable for their actions. It is still not clear if this will cover any sub-contractors, third country, or local nationals.

Another statute covering actions overseas is the War Crimes Act of 1996, as amended by the Military Commissions Act of 2006. That act provides that “whoever, whether inside or outside the United States, commits a war crime . . . shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.”²⁸ The law applies to members of the U.S. armed forces as well as to any U.S. citizen, regardless of his or her employment. It would not apply to contractor personnel who are not U.S. citizens.

E. INTERNATIONAL LAWS

The international community has minimal authority to prosecute PMCs as those employed by the U.S. government are predominantly U.S. companies. Further adding to

²⁵ Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” CRS Report for Congress (RL 32419), updated September 29, 2008: 14.

²⁶ P.L. 106–523, sec 1 (2000).

²⁷ H.R. 5122: John Warner National Defense Authorization Act for Fiscal Year 2007 109th Congress: 2005–2006

²⁸ 18 U.S.C. § 2441.

this is the fact that the United States is a permanent member of the United Nations Security Council and can veto any measure it wishes, and refuse to be a signatory on particular conventions that might be applicable, such as the United Nations Mercenary Convention.²⁹ As it is not held accountable to international laws, the U.S. government is at risk of alienating its partners and supporters when using contractors to fill vital military roles. This raises several important questions. Does the United States care what the international community thinks about its use of contractors in a combat role and the way it accounts for them, or is it trying to convince other governments to act similarly?

Is it against any international laws, beliefs, or norms to use PMCs to perform tasks that have previously been considered inherently governmental? Or, as long as the PMCs are held accountable for their actions, does it matter what roles they occupy? While this paper does not address these questions, they will have a profound impact on how the U.S. government uses PMCs in any future support and combat roles.

²⁹ 72nd plenary meeting on 4 December 1989, resolution 44/34, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

III. UNITED STATES' USE OF PMCS AS COMBAT POWER

The modernization of the U.S. military has left many holes that need to be filled by specialist and service providers. Ongoing war-games and military exercises have revealed that the U.S. Army of the future will not be able to sustain itself or its operations without huge levels of technical and logistical support from private firms.³⁰ Interestingly, James Adams states that:

The U.S. army has concluded that in the future it will require contract personnel, even in the close fight area, to keep its most modern systems functioning. This applies especially to information-related systems. Information-warfare, in fact, may well become dominated by mercenaries.³¹

KBR, a former subsidiary of Halliburton, originally focused on domestic construction projects, but has since found that military support and engineering are also profitable, having augmented U.S. forces in Africa, the Balkans, and now the Middle East with billions of dollars in contracts. This includes supply operations (such as food, water, fuel, etc.), field operations (such as laundry, sanitary, waste management, morale activities, etc.), and other operations (such as engineering, construction and also support to communication networks). Valerie Grasso notes that “The costs of these contracts would be a maximum of \$5 billion per year and the lifetime maximum cost of the contracts would be \$150 billion.”³² Some PMCs already provide battlefield capabilities to the U.S. government. In modern warfare, it is appropriate to examine how the U.S. government utilized combat power through the use of PMCs in World War II and afterwards.

³⁰ James Adams, *The Next World War*, p. 113; and Steven J. Zamparelli, “Contractors on the Battlefield: What Have We Signed Up For?” *U.S. Air War College Research Report*, March 1999, <http://www.au.af.mil/au/database/research/air999/awc/99-254.htm> (accessed August 10, 2011).

³¹ Thomas Adams, “The New Mercenaries and the Privatization of Conflict,” *Parameters* 29, no. 2 (summer 1999): 115.

³² Valerie Grasso, “Defense Logistical Support Contracts in Iraq and Afghanistan: Issues for Congress,” *Congressional Research Service*, September 20, 2010.

The U.S. military is also employing contractors and federal civilians to provide law enforcement and security at bases in America as well as the Middle East. All of these employees are armed and must qualify for their positions the same as any member of the U.S. military branch they are replacing. In the Central Command (CENTCOM) area of responsibility, contractors fulfill their contract and are not held to the same level of scrutiny as they would be in the continental U.S. where the protection of resources critical to the U.S. government and national security is considered paramount.

The PMCs provide for the entry control and base security response for all breaches. They are the first responders and initial on-scene controllers. For example, the Special Operations Company (SOC) was contracted to provide base security at Contingency Operating Base Speicher, Iraq in 2008. The SOC utilized Ugandan nationals to provide perimeter and tower security for the installation of approximately 14,000 U.S. military and civilian personnel.

In this instance, if attacked at an installation in the United States or abroad, the contractors would act as the first line of defense, delaying force, or, if necessary and as available, a counterattack option to retake an asset or area. The old sayings that “a good offense is a good defense” and “defenses win championships” show that no matter what the contractors are employed for, they will undoubtedly face circumstances where they must act in the offensive. Whether they are recapturing a resource the U.S. government deems critical to national interest and security or are in the employment of the U.S. military, PMCs may eventually have to utilize the use of force in conducting their mission.

A. USAF EMPLOYMENT

It is clear that the government is outsourcing military and state roles involving support and logistics. According to the Government Accounting Office report (GAO-11-580), the U.S. government had \$367 billion in contracts for operations in the DoD including Iraq and Afghanistan for FY2010.³³ PMCs have already augmented the U.S. military in combat operations, training, and the entire spectrum of combat support. It is current policy to have civilians and contractors perform jobs that traditionally had been filled by military personnel but have been deemed not appropriate for today's military members due to the high demand of combat operations. It is unclear, however, if the USAF will follow this trend when dealing with combat operations.

It already has numerous contracts that provide support for infrastructure, as well as net-centric security, privatized housing, in-flight refueling, and maintenance and support for numerous airframes in its inventory. Additionally, the USAF supports hiring contractors to fly and maintain the Global Hawk and predators unmanned aerial vehicle platforms, and provide intelligence, surveillance, and reconnaissance of combat operations. What will limit the scope of future operations such as close air support and combat sorties? There has not been enough research and analysis conducted in this area to begin to answer the questions on combat and cost effectiveness, much less those addressing how to organize and provide command and control of the operators. The term "inherently governmental functions" has the potential to address some of the command and control issues faced by the USAF. An "inherently governmental function" is one that, as a matter of law and policy, must be performed by federal government employees and cannot be contracted out because it is "intimately related to the public interest." The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role is not likely to be contracted out.

³³ U.S. Government Accountability Office. "Contingency Contracting Observations on Actions Needed to Address Systemic Challenges," GAO Report to Congress (GAO 11-580) (Washington, DC: GAO, April, 2011), Highlights section, 1.

However, as stated in a White House memorandum, “the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined.”³⁴

In April 2009, Defense Secretary Robert Gates announced “that the military would shift more funding towards intelligence and personnel, rather than hardware only suitable for fighting major wars like the F-22,”³⁵ specifically stating “that it is too expensive and does not have sufficient multi-mission capability for current military operations.”³⁶ With the cost of both pilots and manned aircraft constantly escalating, it would be easy to see why the USAF might look at outsourcing some of its combat operations in conflicts where its best and priciest resources serve no purpose other than to spot a combatant with an AK-47 and drop a 500-lb smart bomb on him. As the cost of training a new fighter and bomber pilot exceeds \$1 million, it is not a steep climb to the next step of sourcing out this role.

Why invest in an officer who will never climb into the cockpit of an operational fighter or bomber? The advantages of using PMCs in the USAF are almost too numerous to list: savings in manpower, cost, maintenance, and infrastructure. The disadvantages are also just as numerous: command and control, operations are no longer in the hands of U.S. military personnel, and treaty protections. All of this raises a very important question. Will these capabilities be there when you need them? The USAF has some hard decisions to make about what its combat composition will look like in the future.

³⁴ The White House, Office of the Press Secretary, “Government Contracting: Memorandum for the Heads of Executive Departments and Agencies,” March 4, 2009, available at http://www.tdgovernmentalsolutions.biz/blog/wp-content/uploads/2009/10/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject_-Go.pdf.

³⁵ Kristina Sherry. “Senate votes to stop making more F-22 Raptor fighter jets” *Los Angeles Times*, July 22, 2009.

³⁶ Robert Gates. “Economic Club of Chicago speech by R. Gates on July 16, 2009,” defenselink.mil.

IV. ECONOMIC BASIS FOR OUTSOURCING MILITARY ROLES

A. THE INCENTIVES OF STATES

Many states, including the U.S. government, are looking for ways to limit their costs and risks while operating in conflict zones. One way to relieve the budget constraints states continue to face is to reign in defense spending. The reduction in spending while still maintaining capability is paramount to the U.S. military, and it is now seeking relief from the global marketplace to extend across the spectrum of military operations. After years of war, there are several thoughts on the validity of the methods used that allegedly reduce defense spending, or, more realistically, limit the size of the military. The goal of the U.S. military is to protect the U.S. national interest, not to be as cost efficient as a private company. Any other line of thought is detrimental to the ability of the military to accomplish its missions.

1. Monetary Savings of States

After determining what the threats are to a government, how much money a government has is perhaps the single largest determining factor in the size and scope of a defense budget. Since the collapse of the Soviet Union, the U.S. government has been looking for its peace dividend to materialize in the form of savings on the defense budget. By trying to realize and obtain this dividend, the ideal that privatization and free market forces of competitiveness would save money influences most aspects of defense spending and planning. While this makes sense cursorily, it has never been realized because the inefficiencies of government operations can be passed on to the taxpayer, while in the private sector of outsourcing this is not allowed to happen.

The conventional wisdom is that instead of maintaining a large standing military and thus incurring personnel cost and regular substantial budget outlays, any duties not inherently governmental would be contracted, or outsourced to the private sector to reap the cost benefits. A PMC would be hired as needed and then released after the fulfillment of the contract.

Deborah Kidwell states, “Supporting regular forces with PMCs has the potential to be cost effective, to be politically expedient, and to enhance military effectiveness and national security.”³⁷ Contractors cost the government far less than maintaining the same in-house ability because there are no reoccurring personnel expenses in recruiting, training, retention or health care. By logically following this trend, it is easy to envision a growing dependence on contractors to perform any and all missions, thus relieving the U.S. military of some of its previous responsibilities. It has become readily apparent that the U.S. military cannot operate without contractors. From the level of Commercial Off-the-Shelf (COTS) technology that requires specialized training and knowledge to operate and maintain, to the lack of ability of the U.S. military to transport or support itself once involved in hostilities, it has become clear that contractors are an ingrained part of the military in both political and operational form.

All of this concludes with the Commission on Wartime Contracting identifying that up to \$60 billion in contracts have been lost over the last 10 years in Iraq and Afghanistan due to lax oversight, fraud, poor execution, and corruption.³⁸ This is in addition to the \$206 billion that is estimated to be awarded for contracts in the theater of operations alone, not including normal contracting operations for the rest of U.S. military and government. The FY 2010 NDAA approved \$680 billion for the total defense bill with \$124.8 billion toward military personnel and \$130 billion for operations in Iraq and Afghanistan.³⁹ With the amount of money spent on contractors, is there any savings to be found over the last 10 years from the wars in these two countries?

While there may not be any overall savings, there are some areas where the private industry may be able to perform operations for the U.S military on a short-term basis that will reflect cost benefits.

³⁷ Deborah C. Kidwell, “Public War, Private Fight? The United States and Private Military Companies,” *Combat Studies Institute Press*, 2005, p. 3. available at <http://www.cgsc.edu/carl/download/csipubs/kidwell.pdf> (accessed 6 October 2011).

³⁸ Commission on Wartime Contracting in Iraq and Afghanistan. “Transforming Wartime Contracting Controlling costs, reducing risks,” final report to congress August 2011, 5.

³⁹ Public Law No: 111–84. October 28, 2009

In the case of close air support, a definite combat role of the U.S. military, it can be argued that the cost of maintaining, training, and operating in the CENTCOM area of operations has cost huge amounts of dollars. This is due to the fact that the initial training cost of a pilot and the delivery method (jet aircraft) (roughly \$2.6 million),⁴⁰ and the price of munitions (\$268.50 per Mk82 500lb bomb),⁴¹ far outweigh the cost of a bullet at 24 cents which is equally effective at performing the task of eliminating enemy troops or insurgents. The question is, how can economies of scale be used here to save money?

The elimination of the threat is the objective during combat operations. Accomplishing that with the least amount of cost is a secondary driver. Eliminating the need for a fighter pilot to perform the mission as well as the cost of dropping a 500lb bomb on personnel armed with AK-47s in favor of allowing contracted pilots using less expensive airframes and munitions to perform the mission will result in a significant cost savings. Of course, this would not be permissible in all instances, but it would be ideal for the current conflicts in Afghanistan and Iraq where the threat to aircraft is minimal.

A private pilot flying a prop driven aircraft such as the OV-10 used in Vietnam costs a few thousand dollars per hour. This is significantly more cost-effective than a fighter or bomber providing the same capability at \$40,000 + per hour.⁴² The question remains. Would the U.S. government, and, in turn, the USAF give up the ability to directly control a close air support capability, or would they be willing to relinquish that control to a contractor when the nature of the conflict would allow for it? Either way the savings may appear too lucrative to the bean counters and the decision may be made for the USAF. Having the opportunity to contract out insurgent and security missions while maintaining the same ability in-house, albeit reduced, for a peer competitor, may be the only way to save this function for the USAF.

⁴⁰ Michael Hoffman, "UAV pilot career field could save \$1.5B," *Air Force Times*, March 1, 2009, http://www.airforcetimes.com/news/2009/03/airforce_uav_audit_030109/ (accessed 29 Sept 2010).

⁴¹ Federation of American Scientists. <http://www.fas.org/man/DoD-101/sys/dumb/mk82.htm> (accessed 29 Sept 2011).

⁴² "Combat Props Get Some Respect," *Strategy Page*, September 17, 2009, <http://www.strategypage.com/default.asp> (accessed 29 Sept 2011).

2. Personnel Savings by States Using PMCs

The idea of hiring personnel as needed to accomplish missions is often cited as a leading reason to outsource. Using contractors, a government can instantaneously obtain the level of knowledge required to perform operations without the training, maintenance, and carrying cost of maintaining those same skills. Developing the same experience and skill levels often takes weeks, if not months to years, and can cost millions of dollars depending on the requirement.

The size and end strength of the military is mandated by Congress and, therefore, is tracked and audited by congressional oversight and laws. PMCs, on the other hand, must only adhere to the cost of the service they are performing, and their hired number of personnel is of little concern to Congress. They can supply an enormous amount of manpower to accomplish missions for which the military may not have the personnel. The savings of personnel in uniform by contracting out is not readily evident in Iraq and Afghanistan, as the ratio of contractors to uniformed military in 2009 was 1.1 to 1.⁴³ This has shifted slightly in the last two years due to surges in Iraq and Afghanistan that have changed the ratio to a more equal 1 to 1. While many experts agree that contracting out does have the potential to save money on a short-term basis, the cost of hiring and maintaining a technical expert over the long term far exceeds the cost of a military member providing the same service. The actual fighting is being performed by fewer individuals, but the support for those personnel is ever increasing, being filled by civilian technical experts not maintained by the military.

The real cost of personnel cannot and should not be viewed as a one-to-one replacement of a military member with a contractor, since one military member can perform numerous different positions and abilities; instead, a contractor can and only fills one duty position.

A military member can be a computer expert one day, provide security on another, and escort or food service the next. A contractor would never perform duties not

⁴³ Commission on Wartime Contracting in Iraq and Afghanistan. "At What Cost? Contingency Contracting Iraq and Afghanistan Interim Report," Washington, DC: June 2009: 21.

in his contract. As such, does it really make sense to hire multiple contractors to perform the same work that could be accomplished by one military member? Is the argument that hiring contractors results in personnel savings truly valid?

3. Equipment Savings of States

An additional factor that influences the savings of personnel and money is the cost to develop and maintain material and equipment necessary for combat operations. If those functions are contracted out, the dissolution of the requirements to maintain the equipment base has the potential to save the military a significant amount of money. The way the U.S. military conducts combat operations has become very dependent on technology. More often than not, that technology is only available from COTS suppliers and developers. This makes the military more dependent on contractors to maintain and operate equipment that the military has not developed much less been trained to operate. This is a solid argument for contractors to own equipment that would then be leased by the military to accomplish combat operations. Many contractors already have their own tools and gear that they use to service military equipment, which reduces the government cost of research and development, procurement, and maintaining supplies and accountability. The cost to operate and maintain a jet fighter compared to a propeller driven airframe is immense, especially if the effects of a combat capability, such as close air support, in a conflict zone are the same.

There have been numerous cost analyses done on the amount of money required to maintain a capability and all the knowledge and personnel necessary to keep that function available at all times. The question is: is that combat capability relevant in the conflicts of today and tomorrow? If the answer is no, then the government should contract that capability out if it wants to save money. If it is relevant, then the government must continue to incur that cost for the sake of national security.

B. THE CHALLENGES OF PMCS

While it is evident that there are advantages to utilizing PMCs, it can be argued that there are disadvantages as well. These range from management and control aspects to the oversight and accountability of PMCs and their actions.

The continued debate over the pay of contractors versus military personnel, and the subcontracting of work to un-vetted local or Third World Country nationals that seem to perform most of the work, continues to be a topic of discussion for policy makers, defense officials, and military commanders.

1. Management of PMCs

Any economic benefits derived from the hiring of PMCs are not an area of expertise for the modern military officer in general. Thomas C Bruneau points out that “as the contractors are not under the direct control of the commander, but are necessary to the success of his plan or strategy, the absence of coordination or an interagency process is especially significant and even dangerous.”⁴⁴ The 2006 Quadrennial Defense Review stipulates that contractors are part of the total force, but does not provide for a way to integrate them.

DoD’s reliance on contractors presents several broader management challenges, including determining which functions and activities should be contracted out; developing a total workforce strategy to address the appropriate mix, roles, and responsibilities of contractor, civilian, and military personnel; and ensuring the appropriate oversight, including addressing risks, ethnic concerns, and surveillance needs.⁴⁵

As stated in the previous sections, there are numerous ways in which the federal government can save or waste money when it comes to PMCs.

Fraud, waste, and abuse, the accountability and transparency of PMCs versus law, and existing accountability and oversight requirements are major factors that can lead to the success or failure of cost savings associated with contracting out military functions. Comptroller General David Walker states,

DoD’s primary challenges have been to provide effective management and oversight, including failure to follow planning guidance, an inadequate number of contract oversight personnel, failure to systematically capture

⁴⁴ Thomas C, Bruneau, *Patriots for Profit: Contractors in the Military in U.S. National Security* (Stanford CA: Stanford University Press, 2011), 136.

⁴⁵ U.S. Government Accountability Office. “High Risk Series: An Update,” GAO Report to Congress (GAO 09–271) (Washington, DC: GAO, January 2009), Highlights section, [no page number].

and distribute lessons learned, and a lack of comprehensive training for military commanders and contract oversight personnel.⁴⁶

The often dysfunctional or loose arrangements between PMCs and the U.S. military have the potential to lead to operational failures, lack of command and control on the battlefield, and may interfere with the ability of the services to operate in a joint manner. Without unity of command there appear only to be dysfunctional chains of command between PMCs and the military. Lack of effective management by a government can lead to any number of damaging outcomes, from troops not receiving needed support to the waste of monetary assets. Secretary of Defense Robert Gates acknowledged this fact when he testified that contractor usage occurred:

Without any supervision or without any coherent strategy on how we were going to do it and without conscious decisions about what we will allow contractors to do and what we won't allow contractors to do... We have not thought holistically or coherently about the use of contractors, particularly when it comes to combat environments of combat training.⁴⁷

The main issue is the apparent lack of planning that has gone into determining what exactly the DoD will need from contractors, how they will be managed, and what the strategic use of contractors will and should be in meeting U.S. military goals and objectives. The experience of contracting personnel and coordinating the contracts between the services has been called into question with the premise that the DoD has not adequately planned for the use of contractors.⁴⁸ If the U.S. government is going to continue to utilize contractors to provide support, especially in combat operations, clear operational guidelines for the use and objectives of the contractors must be defined and codified between the services. If this is not done, the reactive response that contractors are currently used for will continue to inhibit the ability of the U.S. government to

⁴⁶ U.S. Government Accountability Office, "Further Actions Needed to Establish and Implement a Framework for Successful Financial and Business Management Transformation Contract Management," (GAO-04-551T), March 23, 2004. Highlights section, [no page number].

⁴⁷ U.S. Congress, Senate Committee on Armed Services, To receive Testimony on the Challenges Facing the Department of Defense, 110th Cong., 2nd sess., January 27, 2009. (accessed 29 Sept 2011).

⁴⁸ U.S. Government Accountability Office, "Contract Management: DoD Developed Draft Guidance for Operational Contract Support but Has Not Met All Legislative Requirements," (GOA-09-114R), November 20, 2008. 1.

achieve its goals and national strategies and the current relationship between the military and contractors in CENTCOM providing combat training and security will be tumultuous at best.

One of the largest concerns with contractors in general, specifically those that provide a combat capability, is the extent to which they will voluntarily accomplish the mission they are tasked to do. It is common for contractors to walk off the job for any number of reasons, not the least of which is preservation of their own lives. Convoys into Iraq ground to a halt when “KBR and other contractor truck drivers quit their job or refused to cross the border from Kuwait into Iraq when one of the KBR convoys was ambushed in April 2004.”⁴⁹ One fear is what might happen to combat operations if the contractors were to stop providing support to the mission. Peter Singer argues, “For U.S. military commanders, an added worry of terrorist targeting or the potential use of weapons of mass destruction is that their forces are more reliant than ever on the surge capacity of support firms.”⁵⁰ But Zamparelli states, “legally contractors cannot be compelled to go into harms way, even when under contract, unless there is a formal declaration of war.”⁵¹ The only consequences they may face are termination or reassignment to another base or contract.

PMCs are not prosecuted when their personnel refuse to work or complete a mission. In light of the fact that complete functions of supply, maintenance, and weapon systems have become totally dependent upon the contractor force, it is possible that the cogs of the machine will seize or break if even a small portion of PMC employees chose to leave. While any entity can contract out a PMC, it is the institutions of a state government that have the most to lose by accepting the principal-agent relationship. The loss of direct control as a result of privatization carries risks even for strong states. How

⁴⁹ Dina Rasor, “Contractors Say They Will Stay Despite Lack of Immunity: Want to Bet Our Soldiers’ Lives On It,” *Huffington Post*, December 12, 2007. http://www.huffingtonpost.com/dina-rasor/contractors-say-they-will_b_76474.html, (accessed, 2 December 2011).

⁵⁰ Peter. W. Singer, “Corporate Warriors: The Rise of the Privatized Military Industry and its Ramifications for International Security,” *International Security* 26, no. 3 (Winter, 2001), 186–220, <http://www.jstor.org/stable/3092094>.

⁵¹ Col Steven J. Zamparelli, “Contractors on the Battlefield: What Have We Signed Up For?” *Air Force Journal of Logistics* 23, no. 3 (Fall 1999), 13.

is a government to utilize a PMC to accomplish a combat capability, furthering national interest and goals, if there is no guarantee that the contractor will fulfill their agreement?

A thought that has repeatedly resurfaced is the idea that PMCs will misrepresent themselves in order to acquire or continue a contract. Peter Feaver states that:

The very act of hiring creates perverse incentives for the agent to misrepresent itself, which thereby creates the chances that the principal will hire a lout: it is hard to verify the true type and a lout has a great incentive to appear even more attractive than a good worker.⁵²

This line of thinking suggests that PMCs' main goals are obtaining and extending contracts in order to maximize profit. Support was given by the Senate Armed Services Committee when it issued a report that found evidence that U.S.-funded prime contractors supported the Taliban by sub-contracting to warlords.⁵³ The fact that the U.S. government is paying contractors who, in turn, pay our very enemies is not lost on the world opinion. It is this very notion that enrages other governments and people who continue to foster a distrust of the U.S. government and its policies, specifically the way it goes about trying to achieve those policies in foreign nations.

It can be argued that PMCs in fact conduct themselves in a professional manner when it comes to contract fulfillment lest they lose out on future contract extensions or expanded requirements. This is important because the PMCs must act responsibly in accomplishing their mission or face termination.

If they do not fulfill their obligations, the chances of them being hired by a responsible government or agency in the future is slim; however, the need for immediacy, talent, and experience often takes precedence over past reliability.

In the Ethiopia-Eritrea conflict, the Ethiopians essentially contracted a fully equipped air force from the Russian aeronautics firm Sukhoi. This air force consisted of Su-27 jet fighter planes, pilots, and ground staff. Some observers contend that this

⁵² Peter D. Feaver, *Armed Servants: Agency, Oversight and Civil Military Relations* (Cambridge: Harvard University Press, 2003), 73.

⁵³ Senate Armed Services Committee, "Inquiry into the role and Oversight of Private Security Contractors in Afghanistan," October 7, 2010. Executive Summary, [no page number].

private military force from Russia failed to fully engage the opposing side and fully commit to the war. It is rumored that they rarely engaged Eritrea's air force, which itself was under suspicion of having hired Russian and Ukrainian pilots.⁵⁴

Another continuing concern for the use of contractors is the amount of pay they receive compared to a military member performing the same duty. An active duty military member performing the same mission as a PMC employee may earn up to four times less. The DoD has no strategy to deal with contractors that are paid above what government workers receive for the same services provided, while trying to justify the outsourcing claim in which saving money is the main proponent. The few remaining factors that make traditional retention in the military achievable have recently become targets to reduce the overall budget deficit. This has the potential to cause retention issues in the active duty force and recreate the hollow force of the 1990s not just in equipment, but in human capital and knowledge, two of last remaining strengths of the U.S. military. Why would anyone want to commit to years of uncertainty, force reductions, stagnant promotions, lower morale, and substandard equipment when they could earn four times as much as a government employee, quit whenever they wanted, take a more lucrative position on the same contract, and only travel to a conflict if they so wished

2. Current Command and Control

Thomas C. Bruneau states that:

There is no organization within DoD that collects information on contractors or the services that they provide. This means that senior leaders and military commanders cannot develop a complete picture of the extent to which they rely on contractors to support their operations, and therefore have no basis for which to integrate them into any overall plan or strategy.⁵⁵

The GAO's John Needham raised the same issues of control in a GAO report:

⁵⁴ Kevin Whitelaw, "The Russians Are Coming," *U.S. News and World Report*, March 15, 1999, p. 46; and Adams, "*The New Mercenaries and the Privatization of Conflict*" (accessed 10 Sept 2010).

⁵⁵ Thomas C. Bruneau, *Patriots for Profit: Contractors in the Military in U.S. National Security*, (Stanford CA: Stanford University Press, 2011), 141.

In addition to the risk of paying more than necessary for the work that it needs, is the risk of loss of government control over and accountability for mission-related policy and program decisions when contractors provide services that closely support inherently governmental functions, which require discretion in applying government authority of value judgments in making decisions for the government. The closer contract services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work.⁵⁶

PMCs already make up a significant portion of the total defense and security force. They are involved in operations alongside active and reserve forces and, most importantly, have assumed a number of the missions that previously were the exclusive responsibility of uniformed military personnel.⁵⁷ Several Federal agencies including Special Inspector General for Iraq Reconstruction (SIGIR) define a PMC in terms of the following four functions:

1. Static Security: protect fixed or static sites such as housing areas, reconstruction work sites, and governmental buildings
2. Convoy Security: protect convoys traveling in Iraq
- 3 Security escorts: protect individuals traveling in unsecured areas in Iraq and,
4. Personal security details: provide protective security to high-ranking individuals.⁵⁸

Thomas Bruneau states:

It must be noted that these four functions, which are within the roles and missions related to fighting wars, internal wars, and peace operations, require that the contractors be armed. This means that they can either respond to hostilities, or, if they perceive an imminent threat, they can preempt it by initiating the use of force.⁵⁹

⁵⁶ John K. Needham, "DoD Can Improve Its Management and Oversight by Tracking Data on Contractor Personnel and Taking Additional Actions," GAO-09-616T, April 28, 2009. 3.

⁵⁷ "The Spectrum of Roles and Missions of the Armed Forces," in Thomas C Bruneau and Scott D Tollefson, eds., *Who Guards the Guardians and How: Democratic Civil-Military Relations* (Austin: University of Texas Press, 2006), 122-142.

⁵⁸ List was drawn specifically on Elsea et al., "Private Security Contractors in Iraq," 3.

⁵⁹ Thomas C, Bruneau, *Patriots for Profit: Contractors in the Military in U.S. National Security* (Stanford CA: Stanford University Press, 2011), 117.

The State Department had a need for the protection of DoS personnel in Afghanistan and asked the DoD for support. The DoD refused, citing a lack of sufficient resources. “The military provides security to contractors and government civilians only if they deploy with the combat force or directly support the military’s mission.”

As a result, the use of contractors to provide security has increased—a well-publicized and controversial aspect of the contractor support in Iraq.”⁶⁰

The DoS, as well as any other governmental agency including Non-Governmental Organizations (NGOs), had no other option but to contract PMCs to provide protection of their personnel and operations since the DoD was unable to perform the requirement. Additionally, the current state of affairs between the military and contractors in CENTCOM providing combat training and security is turbulent at best.

C. HISTORICAL STATE RELIABILITY (MILITARY DESERTION)

While arguing that PMCs’ record for completing contracts is suspect, the same cannot be said of the U.S. military and its desertion rates. “With the fiscal year ending Sept. 30, 1,061 soldiers had been dropped from the Army’s rolls because of desertion. That was a decline of more than a third from the total for 2010.”⁶¹

As with any conflict, the desertion rate of the military will change as situations at home and in conflict zones worsens or improves based on popular support, opinion, political rhetoric, and lethality.

In comparison to the desertion rates of 5 percent during the Vietnam-era conscripted army, the rates during the current conflicts have remained low with an average of 10 deserters per 1000. There is currently no way to compare this to the right to refuse to work afforded a PMC employee, but the current state of the economy as well as the fact that the military is made up of an all-volunteer force most likely plays a role in the low rate of desertion when compared to Vietnam. However, this does not directly

⁶⁰ Thomas C. Bruneau, *Patriots for Profit: Contractors in the Military in U.S. National Security* (Stanford CA: Stanford University Press, 2011), 122.

⁶¹ Sig Christenson “Army desertions drop as economy fizzles” *San Antonio Express*, September 24, 2011. <http://www.mysanantonio.com/news/military/article/Army-desertions-drop-as-economy-fizzles-2186627.php#ixzz1ZqvcUjuE> (accessed Oct 4 2011).

translate over into prosecution of deserters as, “from 2002 through 2006, the average annual rate of Army prosecutions of desertion tripled compared with the five-year period from 1997 to 2001, to roughly 6 percent of deserters, from 2 percent, Army data shows.”⁶² As such, there is no data with which to compare to military desertion rates during the current conflicts.

Here, I can only surmise that the personnel who volunteer to perform the contracts know what is required of them and, as most of the assignments are of such short duration compared to a military enlistment, there are relatively low refusal rates. After all, the personnel who volunteer for these posts are usually unafraid to protect themselves and their clients as the pay is so good.

⁶² Paul von Zielbauer, “Army Is Cracking Down on Deserters,” *New York Times*, April 9, 2007.

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V. CONCLUSION

A. SUMMARY OF FINDINGS

While the idea of competition and outsourcing to reduce costs works in numerous business models, the same principles do not apply to a government's needs during a military operation. While it is true that hiring contractors to perform certain missions or operations at specific times can save money; those savings may disappear when the contracts extend over a long period of time.

Thus far, the only recognized way to save money using PMCs in military operations is to use them to initially augment military forces. The PMC contract should be discontinued once the military has had sufficient time to expand and train the number of personnel needed for an operation. Upon the completion of the operation, the military can then return to its pre-conflict size and scope of responsibilities. Paying a contractor over four times as much as a federal employee to perform the same function over the length of time of the Iraq and Afghanistan conflicts does not appear to have any cost savings benefits, either in personnel or monetarily. However, it has cost political capitol support in the Middle East.

It must be understood that certain functions performed by military personnel occurring over extended time periods will be less cost-effective overall than a PMC performing the same functions. Once air supremacy and superiority have been established over a territory, and there is no more direct air combat or threat from anti-air defenses, it does not make sense to continue using next generation fighters to provide close air support or intelligence, surveillance, and reconnaissance. The cost of training and maintaining a military member to pilot a jet fighter is enormous compared to a private pilot and company providing its own airframe and munitions. These functions could be contracted out to save training, maintenance, and carrying cost associated with the military model.

The current methods of accounting for and providing oversight of PMCs do little when compared to the rigorous methods and requirements placed upon the military for the same purposes of accountability. The lack of integration of PMCs into the operations of the military, forecasting for their use, and any budgeted funds that have been proven saved in the current model of contracting to support military operations in CENTCOM have gone largely unrealized, or, have for the most part been ignored.

B. RECOMMENDATIONS

1. The U.S. government must review its political motives when committing the military to combat operations. Either the correct amount of military force must be used initially to accomplish the mission or a repeat of the current conflicts will occur. The U.S. government must review, if not make a legal framework for, the command and control, accountability, and oversight of the use of PMCs in direct combat and support operations. This must apply to not only the DoD but to all agencies. The determination must be made for the use of PMCs in combat versus security and protection operations, and if and when to use them during what might be considered inherently governmental functions. Laws and bi-lateral agreements, etc., must be made to meet the transparency and accountability requirements of a democracy and be able to withstand international scrutiny and rebuke from foreign governments and NGOs.

2. The U.S. military must decide how, to what extent, and when it will utilize PMCs to execute its missions. The evolution of this employment must be made throughout the DoD, and not independently by each service for its own needs. The military must further define the mission of each service and the core capabilities that they must retain in response to current and future threats.

3. The USAF must determine what combat roles it must maintain in-house and which can be outsourced while still meeting its core capabilities for fostering U.S. policies and security. It must either establish lower cost in-house combat operation capabilities in the Active Duty, Reserve, and National Guard Forces that would eliminate the need for PMCs or accept them as a part of the current and future force structure and contingency response framework.

These capabilities must be examined on a onetime, as well as a reoccurring basis, of short to long time periods, with a cost benefits rationale attached. The use of PMCs in such roles must be weighed against the need to accomplish political and military goals.

4. The U.S. military must not always be placed on the same level as private businesses with regards to cost effectiveness by the public or elected officials. It cannot assume cost cutting and free market measures to reduce cost and operating expenses in the short-term as this will risk significantly reduce capabilities in the long-term.

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