

Blackwater: The Role of Private Security Firms in U.S. Foreign Policy

Abstract:

Private security firms such as Blackwater Worldwide play an increasingly important, visible and controversial part in the conduct of US foreign and military policy, especially in active combat zones such as Afghanistan and Iraq. In providing physical protection for US diplomats and other government officials, their personnel are often involved in violent and even deadly interactions with local populations. The size of the contingents and the scope of their duties raise questions about the possible over-reliance of the US government on private contractors to perform essentially military functions. Some observers worry that US military recruitment and retention are made more difficult by the presence of these firms that lure young men from military service by promising both higher pay and less supervision. Moreover, despite the quite consequential nature of these paramilitary duties, the companies and their personnel are not subject to local laws or (so far) US military or civilian systems of justice. Their nebulous legal status has led many to label them as mercenaries; private military forces operating outside effective governmental control and without accountability to domestic or international law. Some critics charge that its close ties to the Republican Party and the Bush administration have given Blackwater undue access to the lucrative and often "no-bid" contracts that make it the largest of the State Department's security contractors. Due to several recent and highly publicized incidents entailing the use of deadly force in Iraq by Blackwater employees, their activities have become of immediate concern for US policymakers. Recent and ongoing investigations by the State Department are the basis for recommended changes in government supervision of Blackwater and other private security personnel in Iraq and elsewhere. The company's founder Erik Prince has been called to testify before numerous Congressional committees, and legislation recently passed by the House would place the firm's personnel under the jurisdiction of US courts, even though the Bush administration objects. This paper investigates all of these aspects of Blackwater's operations--and by extension that of other private security firms--and relates their activities to domestic and international law. It evaluates public knowledge about and perceptions of their activities, and concludes with an overall assessment of the costs and benefits for US foreign policy of using private contractors in security roles. It also assesses the implications of growing importance of private military forces in relation to democratic accountability and state sovereignty.

What is Blackwater?¹

Blackwater Worldwide (until October 2007 known as Blackwater USA) is a private corporation owned by the Prince Group, which is headquartered in McLean, Virginia. The company website depicts the business as organized into 4 major functional areas: Advanced Training, Mobility & Logistics, Technology Innovation, Human and Material Resources. Blackwater also owns two domestic subsidiaries: Aviation Worldwide Services (AWS), and Presidential Airways. Blackwater also owns Greystone, Ltd, an international marketing arm registered in Barbados.

The company's main base of operations is located on over 7,000 acres near Moyock, in Camden and Currituck counties North Carolina, in the northeastern corner of the state very near the Virginia line. A much smaller facility (60 acres) is now open and under development west of Chicago near Mount Carroll, Illinois. The North Carolina facilities

¹ See the company's website <http://www.blackwaterusa.com/>

include indoor and outdoor shooting ranges, on and off-road driving tracks, simulated threat environments, a lake, bunkhouses, a dining hall, lounge and conference rooms, and a pro shop.

Through its five divisions², Blackwater offers a variety of services and products³, including firearms training (pistol, shotgun, carbine), driving, self-defense, protective services and languages. Some of the weapons courses are open to public enrolment⁴, with more specialized offerings for law enforcement and military personnel⁵. The company designs and support training customized programs for law enforcement and homeland security personnel. It has a K-9 program, training dogs to detect narcotics and explosives in military, law enforcement and commercial applications.⁶

Blackwater is also involved in equipment design and manufacturing, most notably its Grizzly Armored Personnel Carrier (APC) designed for urban warfare⁷, and the Polar 400, a Remotely Piloted Airship Vehicle (RPAV) to provide unmanned aerial support and surveillance for ground operations and/or port security.⁸ The company also designs and produces the McArthur, a 183-foot "multi-purpose maritime vessel designed to support military and law enforcement training, peacekeeping, and stability operations worldwide."⁹ The company's Research and Development division also provides portable antennae and other mission support communications equipment.¹⁰ Through its subsidiary Raven Group Development (initially created in 1997 to construct the Moyock facilities), Blackwater offers construction management services in the US and overseas.¹¹ The company also offers shipping services, storage and supply chain management services, promising to deliver valuable material, equipment, and even personnel in a secure and timely manner.¹²

Who Is Blackwater?

Blackwater has approximately 500 permanent staff, and at any given time employs another 1400 as independent contractors, most of which (about 1000) are currently working in Iraq and Afghanistan.¹³ These contractors perform a wide variety of duties,

² Blackwater website. <http://www.blackwaterusa.com/about/> "Blackwater USA consists of five separate business units: Blackwater Training Center (the largest private firearms and tactical training center in the U. S.), Blackwater Target Systems, Blackwater Security Consulting, Blackwater Canine, and Raven Development Group. We also have relationships with our strategic partners, Aviation Worldwide Services and Greystone Ltd."

³ Blackwater website. Training Courses Catalog. <http://www.blackwaterusa.com/images/pdf/Course%20cat.pdf>

⁴ Blackwater website. http://www.blackwaterusa.com/courses/AT_NC_courses.html

⁵ Blackwater website. http://www.blackwaterusa.com/courses/AT_NC_LEMIL.html

⁶ Blackwater website. http://www.blackwaterusa.com/human_resources/HMR_canines.html

⁷ Blackwater website. http://www.blackwaterusa.com/tech_inno/TI_armored_ground.html

⁸ Blackwater website. http://www.blackwaterusa.com/tech_inno/TI_aerial_vehicles.html

⁹ Blackwater website. http://www.blackwaterusa.com/tech_inno/TI_maritime_platforms.html

¹⁰ Blackwater website. http://www.blackwaterusa.com/tech_inno/TI_mission_support.html

¹¹ Blackwater website. http://www.blackwaterusa.com/mobility_logistics/ML_construc_mngmt.html

¹² Blackwater website. http://www.blackwaterusa.com/mobility_logistics/ML_mob_log_overview.html

¹³ Robert O'Harrow, Jr, and Dana Hedgpeth. "Building Blackwater." *Washington Post*. 13 October 2007. http://www.washingtonpost.com/wp-dyn/content/article/2007/10/12/AR2007101202487_pf.html

including providing physical protection for diplomats and their facilities, shepherding ground convoys of equipment, or transporting diplomatic, military (or other unidentified) personnel from one place to another in the Middle Eastern and central Asian theaters of conflict. In addition to those contractors on the ground in Iraq and elsewhere in the world, the company maintains a database of contacts for potential hire if and when circumstances demand a rapid increase in personnel. A very large percentage of the people working for Blackwater—either in management or as contractors—have a military background. Companies such as Blackwater can easily find willing employees because “the military industry offers recently retired personnel a relatively easy, even natural, transition stage into private life.”¹⁴ As Blackwater has emerged as among the emerging industry’s leading firms, the company has no trouble recruiting potential contractors, many of them who gladly pay thousands of dollars for the privilege of several long weeks of arduous training in the Great Dismal Swamp.¹⁵ Most would-be contractors evidently reckon that the investment will pay off in the form of relatively short stints (especially as compared to current military deployments) on duty in Iraq or elsewhere that—depending on the skills they bring to specific assignments—can bring in hundreds of dollars per day. With potential reward, however, comes considerable risk: “The trainees accept that they have chosen a profession that offers no health insurance, no paid vacations and plenty of chances to die.”¹⁶

Since its founding in December 1996, Blackwater has grown from a small enterprise offering firearms and martial training—mainly for weekend warriors—into of the most important and controversial firms offering protective and military support services to clients private and public worldwide.¹⁷ The company’s annual revenues now total at least \$600 million, 90% from contracts with the US government, especially the State Department, the Department of Defense (and the individual armed services), the CIA and other intelligence agencies. The company’s most important client and source of revenue is the State Department, as Blackwater has landed lucrative, high-profile contracts to provide physical protection for US diplomats overseas, especially in Iraq. Most notable among these was guarding L. Paul Bremer III, the top State Department official in Baghdad and head of the Coalition Provisional Authority (CPA) in Iraq. The company has attracted considerable attention in the press and among the public in the US and around the world as its contractors have been involved in some of the most disturbing episodes of the Iraq War. Its phenomenal success and recent (if unwanted)

¹⁴ Singer, *Corporate Warriors*, p. 76.

¹⁵ Kimberlin and Sizemore. Part 1. *A New Breed of Warrior*. The authors describe the facilities, personnel and training undergone by recruits, one of which observed: “I got out of the military to do this,” Pogue says. “Yes, the money is better, but it’s more than that. With a company like this, I can serve my country and still control my destiny.”

¹⁶ Kimberlin and Sizemore interviewed one young man who acknowledged the stakes: Billiott figures it’s too late to look back now anyway. “I sold my truck and put everything in storage,” he says. “If I don’t make it here, I’m screwed.”

¹⁷ “At first, its founders envisioned a training center serving a 50-50 split of military and civilians. *SET YOUR SIGHTS ON ADVENTURE*, an early billboard screamed in fluorescent green letters, aimed at weekend warriors seeking fun with guns.” Joanne Kimberlin and Bill Sizemore. “Blackwater: Inside America’s Private Army.” *The Virginian-Pilot*. July 2006. (6 part series). <http://hamptonroads.com/node/66331> In addition to the series of articles, the website for the piece contains a video of a firearms training session, an email interview with Blackwater founder Erik Prince, biographical profiles of the company’s leadership, and a brief timeline of the company’s history 1996-2006. The series was one of three finalists for the 2007 Pulitzer Prize for Explanatory Reporting.

notoriety are the twin consequences of convergent developments in many arenas; the post-Cold War and post-9/11 security environment, the trend toward privatization and outsourcing of government functions, and the way in which the Bush administration has waged the war on terror. Whether lauded as patriots loyally serving the American national interest or vilified as mercenaries seeking to profit from conflict and chaos, Blackwater has provoked an intense debate on the role of private forces in warfare, the democratic accountability of US foreign policy, and the sovereignty of the state in the 21st century.

What's in a name (or acronym)? Mercenaries (PSCs, PMFs, PSFs) and the role of the private warrior.

In an interview with Lara Logan on the CBS show *60 Minutes* at the company's headquarters, Blackwater founder Erik Prince distinguished categorically between mercenary forces and the services provided by Blackwater, saying "I'm an American working for America." Anything we do is to support US policy. You know, the definition of a mercenary is a professional that works in the pay of a foreign army. I'm an American working for America."¹⁸ The fact that Prince is at such pains to challenge the characterization of his firm and its work as "mercenary" highlights the word's pejorative connotations. Indeed, an effective definition of the term is not easily found, even among its most distinguished students. What emerges instead is a welter of contending labels with their accompanying acronyms presented to but not actually clarifying the conceptual muddle. Such labels include (but are not limited to): Private Military Companies (PMCs), Private (or privatized) Military Firms (PMFs), Private Security Contractors (PSCs), and Private Security Firms (PSFs). Each emphasizes somewhat different aspects of the firms' activities while at the same time seeking to appear objective in describing the phenomenon.

Acknowledging the problematic definition of the mercenary and its application to modern-day entities such as Blackwater, Peter Singer observes: "No clear consensus has been reached on how to define mercenaries."¹⁹ Singer stops just short of providing his own definition, but lists several characteristics that "distinguish modern-day mercenaries from other combatants and military organizations."²⁰ They are non-resident, independent contractors fighting only for and committed to no cause other than economic gain. These "soldiers of fortune" are recruited and hired, often surreptitiously, to provide temporary and ad hoc services, and only loosely organized into fighting units. Regarding whether firms such as Blackwater should be so labeled, Deborah Avant sidesteps the quagmire: "Because efforts to catalogue activity as "mercenary" often refer to quite different phenomena with different implications for institutions of violence, I will avoid it altogether."²¹

¹⁸ CBS News. "Blackwater Chief Welcomes Extra Oversight." *60 Minutes*. 14 October 2007. <http://www.cbsnews.com/stories/2007/10/13/60minutes/main3364195.shtml>

¹⁹ Peter W. Singer. *Corporate Warriors: The Rise of the Privatized Military Industry*. (Cornell Studies in Security Affairs). Cornell University Press, 2003, p.40. The updated 2008 version of the book contains a postscript examining the how well his research and conclusions have stood up to the developments of the Iraq war, including the Baghdad incident of September 2007.

²⁰ Singer, *Corporate Warriors*, Table 3.1, p.43.

²¹ Deborah D. Avant. *The Market For Force: The Consequences of Privatizing Security*. Cambridge University Press, 2005, p. 23.

Sarah Percy addresses the definitional issue in a seemingly more straightforward way: "We can define a mercenary as a fighter who engages in combat without a cause, for financial gain, and without being under the control of a state or other legitimate authority."²² Her approach has the additional virtue of recognizing explicitly that there is an inevitably negative connotation associated with both the theory and practice of private war-making. She argues that there exists a pervasive, longstanding and still influential ethical viewpoint regarding military activity by private actors: "For as long as there have been mercenaries, there has been a norm against mercenary use."²³ Because this norm still exerts a powerful pull on ideas about and reactions to the use of private force in warfare, today's companies (such as Blackwater) try hard to avoid the label. "It is hard to understand why the private military industry has been seen as so objectionable, given its relative successes, without understanding that PMCs, like mercenaries, are believed to be *inherently* objectionable, not matter what they do."²⁴

However, in describing today's firms, Percy clouds the picture by introducing categorical elements that do not stand up well to contact with the real-world activities of entities such as Blackwater.²⁵ In her analysis, Percy differentiates between PMCs (Private Military Companies) and Private Security Companies (PSCs); PSCs are "similar to PMCs in that they are organized companies offering military services, like military advice and training, and the guarding of facilities and individuals, but insist they do not engage in combat."²⁶ She asserts that "PSCs are under a much tighter degree of control, usually by their home state."²⁷ However, in circumstances of irregular warfare or insurgency where sorting out civilians from combatants (actual or potential) is a practical impossibility, this distinction means little.²⁸ As Lehnardt notes: "Contractors guarding reconstruction projects or escorting supply convoys through hostile territory are as much in the battlefield as US troops."²⁹ Categorizing the firms as passive vs. active, or offensive vs. defensive yields no analytical or theoretical benefit either, according to Singer. He proposes instead the "tip of the spear" typology, which categorizes firms based on the

²²Sarah Percy. *Mercenaries: The History of a Norm in International Relations*. Oxford University Press, 2007, p. 58.

²³ Percy, p. 1. "The norm against mercenary use has two components. First, mercenaries are considered to be immoral because they use force outside legitimate, authoritative control."... Second, mercenaries are considered to be morally problematic because they fight wars for selfish, financial reasons as opposed to fighting for some larger conception of the common good." (1).

²⁴ Percy, p. 9.

²⁵ Percy p. 59 uses a matrix (Figure 2.1 *Spectrum of private violence*, p.59) in relating the two major dimensions in her discussion of the perception of private actors in their use of force: Degree of attachment to a cause, and Legitimate control. In this model, Private Security Companies (PSCs) do somewhat better than Private Military Companies (PMC)s in both dimensions because PSCs do not engage in combat. PMCs rank comparatively low in both dimensions, especially degree of attachment.

²⁶ Percy, p. 61.

²⁷ Percy, p. 63. Percy claims that this difference "enables us to distinguish clearly between a PSC and a PMC."

²⁸ Avant notes that "The distinction between PMCs and PSCs is hard to maintain, though, given the variety of services that any given company may provide and the increasing blur between traditional military and other security tasks in today's wars."(p.1, footnote 3).

²⁹ Chia Lehnardt. "Private military companies and state responsibility." pp. 139-157 in *From Mercenaries to Market. The Rise and Regulation of Private Military Companies*. Simon Chesterman and Chia Lehnardt (eds). Oxford University Press, 2007, p. 148.

proximity of their operations to the actual fighting.³⁰ Regarding Blackwater's presence in Iraq, at what point the protection of diplomats becomes combat is very problematic and much disputed—witness the incident of 16 September 2007 in Nisoor Square, Baghdad discussed in detail below.

With respect to the relationship between PSCs and states regarding control of and responsibility for their actions, Percy argues that "PSCs are more under the direction of the sovereign state than other variants of private force, and if there are weaknesses in that direction they are the decision and responsibility of the state rather than problems inherent with PSCs."³¹ Here again, though, as a practical matter, "it is difficult to establish whether the activities in which PMCs are actually engaged correspond to the exercise of governmental authority."³² So while it may well be that governments share responsibility with the firms with which they contract for military services, the firms often find themselves the primary recipient of media scrutiny and public criticism if and when their use of force goes awry. Therefore, if a private firm (whatever acronym might be applied to it) becomes perceived as "mercenary" in its activities, it can expect to suffer derision that might be quite costly to its reputation and business prospects because it may well have crossed a crucial normative threshold shaping both official and public perceptions of PSCs. As Percy aptly notes, "There is close relationship between the definition of the term 'mercenary' and the nature of the proscriptive norm against mercenary use."³³

Some analysts reject out of hand the mercenary label as applied to today's private purveyors of protective and military services: "Legitimate PMCs do not constitute mercenaries under any of the existing legal (national or international) or otherwise established definitions today—themselves deeply problematic".³⁴ Other observers—even those such as Michael Lee Lanning who are favorably disposed to the role of private military forces—concern themselves little with labels or acronyms. Of greater relevance in this perspective is the function actually performed by the firms, and the way in which that the job is carried out. Not shying away from the "M" word, Lanning distinguishes firms that are active on the battlefield from defense contractors that merely provide military hardware or build roads, airfields or other military infrastructure. "Private military companies that do meet the definition of mercenaries are those that provide direct support to combat operations by either providing the warriors themselves or by performing duties that free others to fight."³⁵ In the current context, therefore, Lanning sees a bright future for private military companies, at least as long as they

³⁰ Singer, *Corporate Warriors* p. 91. "Using this concept, military organizations break down into three broad types of units linked to their location in the battle space: those that operate within the general theater, those in the theater of war, and those in the actual area of operations, that is, the tactical battlefield." This framework yields three sectors within the industry: *Military Provider Firms*, *Military Consultant Firms*, and *Military Support Firms*. (91). Figure 6.1 (92) depicts the theater concept and Figure 6.2 (93) his typology.

³¹ Percy, p. 61.

³² Lehnardt, p. 147.

³³ Percy, p. 49.

³⁴ Kevin A O'Brien. "What should and what should not be regulated." p. 29-48 in *From Mercenaries to Market. The Rise and Regulation of Private Military Companies*. Simon Chesterman and Chia Lehnardt (eds). Oxford University Press, 2007, p. 31.

³⁵ Michael Lee Lanning. *Mercenaries: Soldiers of Fortune, From Ancient Greece to Today's Private Military Companies*. Presidio Press, 2005. Lanning is a Lt. Colonel US Army (ret.).

operate profitably and “avoid any hint of scandal that might draw comparisons to the mercenaries of the past.”³⁶

Back to the Future: Private Warriors in Historical Context.

A major question surrounding the recent and rapid emergence of firms such as Blackwater in the conduct of warfare is whether or to what degree their presence and prominence represents a break with past practice. Indeed, at least some of the controversy surrounding Blackwater and its counterparts stems from the perception that they present some virulent new species of rapacious corporate war-profiteers, or are at best a throwback to some long bygone era of marauding, pillaging opportunists. Either way, the inviolable role of the state as the only legitimate entity to sanction and control the application of organized violence seems suddenly and existentially challenged by the rise of the new breed of private warriors.³⁷

Despite the gravity of the issues raised, however, the perception of these developments as unprecedented is not only inaccurate but potentially misleading in the current controversy. We might be mistakenly prepared to either accept or reject the role of private enterprise in war-making because we erroneously see it as a radical or even truly novel circumstance. The reality of warfare has never been so simple that it can be understood purely in terms of a private/public dichotomy, nor does the participation of private actors in it preclude effective public oversight and accountability of the use of force. As Peter Singer notes:

“Our general assumption of warfare is that it is engaged in by public militaries fighting for the common cause. This is an idealization. Throughout history the participants in war were often for-profit private entities loyal to no one government. In fact, the monopoly of the state over violence is the exception in world history, rather than the rule.”³⁸

Historically, private military forces have taken innumerable forms and played myriad roles, existing and persisting alongside (and even within) government controlled militaries, even into the 20th century. “There is no record of the first mercenary, but the profession was born the first time three conditions were met: one; a war to fight; two, someone or a group willing to pay for a substitute; three, a fighter or group of them willing to hire out to do the fighting.”³⁹ In this view, as Singer notes private purveyors of violence and its means should be thought of as complementary, not antithetical to state-sponsored forces.

³⁶ Lanning, p. 233.

³⁷ “The use of mercenaries raises questions about the nature of the state and to what extent the state needs to monopolize force or the control of force, and questions about the type of force states choose to employ.” Percy, p.4.

³⁸ Singer, *Corporate Warriors* p. 19. Singer also observes (p. 39): “From a broad view, the state’s monopoly of both domestic and international violence was a historical anomaly. Thus, in the future, we should not expect that organized violence would only be located in the public realm.”(39).

³⁹ Lanning, p. 2. Concerning the long history of mercenaries in warfare, Lanning notes (p. 10): “Regardless of the ruler, the state of the economy, the perceived threat, a man could always find a job if was willing to accept the dangers and hardships of military life.”

"At numerous stages in history, governments did not possess anything approaching a monopoly on force. Instead, rulers were often reliant on the supply of military services from business enterprises. Private actors, such as free companies, contracted units, military entrepreneurs, and charter companies played key roles in state-building and often served government interests."⁴⁰

So, what factors account for the dramatic (re)emergence of private military forces in recent years? Convincing analysis focuses on the interaction of several recent developments that have created a geopolitical and ideological context conducive to the resurgence. Singer argues that ending of the Cold War generated conditions (as in past eras of drastic political realignment) on both its supply and demand sides that greatly stimulate the market for private force.⁴¹ "The privatized military industry is not just a flashback to historic private military agents. Nor is there any one simple cause behind its emergence. Instead, it is distinctly representative of the changed global security and business environments at the start of the twenty-first century."⁴² In this context, the reemergence of private actors in war-making is part and parcel of more general trends toward eroding state control over violence.⁴³ "Facilitated by the opening of the world economy and the new stateless zones, the rapid change in the global security paradigm also led to the emergence of new conflict groups, not bound to any one state."⁴⁴

Regarding the demand side of the market for private force, security has been privatized in recent years because public authorities are either unwilling (former superpowers) or unable (failing states) to provide it in large areas of the planet. The very nature of armed conflict and warfare itself is changing; ..."many military functions are being transferred to civilian specialists. As the civilian role in warfare is expanded, it becomes increasingly difficult to draw a precise line between military and non-military occupations."⁴⁵ So, at one end of the spectrum, even the most competent states turn over some military functions to private actors—for example, the technological sophistication of many US weapons systems requires civilian specialists to operate and maintain them. At the other end, weak, inept or corrupt states increasingly rely on private actors to protect and maintain access to their vulnerable sources of revenue (minerals, oil); "both involve the monopoly of war being taken away from public professionals."⁴⁶

⁴⁰ Singer, *Corporate Warriors* p. 39.

⁴¹ "Private military organizations particularly thrived in periods of systemic transition.".... In short, much of privatized military history is reminiscent of the post-Cold War world today." Singer, *Corporate Warriors* p. 20.

⁴² Singer, *Corporate Warriors* p. 49.

⁴³ O'Brien notes (p. 33): "In discussing this 'privatization of war' (alternately known as the 'privatization of violence'), the environment in which they operate is key to appreciating their evolution. Within the relationship between sovereignty and security, the disintegration of Westphalian notions of state sovereignty—including their allied Weberian notion of the 'monopoly of violence' of the state—and the effects that this has on security and war cannot be underestimated when looking at conflict resolution and post-conflict reconstruction."

⁴⁴ Singer, *Corporate Warriors* p. 51.

⁴⁵ Singer, *Corporate Warriors* p. 63.

⁴⁶ Singer, *Corporate Warriors* p. 64.

On the supply side, ironically, the downsizing of military forces since the end of the Cold War has created a pool of labor that might find fruitful employment on either side of the market for private force. As former soldiers (either professional or conscripts) or simply young men that might have been soldiers seek opportunity—"the private military labor pool for both conflict groups and private firms broadened and cheapened."⁴⁷ The availability of weaponry has been affected in a similar fashion; powerful and sophisticated armaments that formerly were under the exclusive control of state military forces now find their way to willing customers around the world at bargain-basement prices. The privatization of military force is also part and parcel of larger trends toward downsizing and outsourcing in both the public and private sectors. Security is being privatized in the domestic realm too; witness the growth in private services in protecting both commercial and residential properties in the US and elsewhere in the developed world.

Corporations as Warfighters:

In what important respects do the current providers of private force differ from those in past eras, and what consequences can we thus expect to see regarding their actual role in the conduct of warfare? Observers are practically unanimous in their estimation that the private military industry has undergone fundamental and even qualitative change in just the past fifteen or 20 years. Loosely knit groups of soldiers-of-fortune have been replaced by formal business entities that seek to serve what they see as a legitimate and growing market. "These organizations are more business-like, motivated, funded, and governed, largely through a network of corporate fronts—than any such entities have since before the rise of in dominance of the nation-state."⁴⁸ As with all corporations, these entities are concerned primarily with sales, revenues, profits, and with carving out market share in a dynamic economic sector.

"The newest wave of private military agents are commercial enterprises first and foremost. They are hierarchically organized into registered businesses that trade and compete openly (for the most part) and are vertically integrated into the wider global marketplace. They target market niches by offering packaged services covering a wide variety of skill sets."⁴⁹

The firms that comprise the industry anticipate (probably justifiably) continued market expansion, as the client base expands from contracts with the military and diplomatic arms of governments to include multinational corporations, non-governmental organizations and perhaps even the United Nations.

In the aftermath of the Cold War and the 'return of history' to sub-Saharan Africa and the Balkans, modern mercenary firms played crucial roles in establishing the old profession on its new corporate footings.⁵⁰ But the private military firms of the 21st

⁴⁷ Singer, *Corporate Warriors* p. 53.

⁴⁸ O'Brien, p. 33.

⁴⁹ Singer, *Corporate Warriors* p. 45.

⁵⁰ Singer begins his book *Corporate Warriors* by describing how in 1995 the South African-based PMF Executive Outcomes crushed the rebel forces (RUF) in Sierra Leone, saving the government and sparing the population from further atrocities. At that very same time training by another PMF--U.S.-based Military

century differ even from those that had defined the industry just a decade ago. As an example, Military Professional Resources Incorporated (MPRI) is treated by Singer, Lanning and others as a crucial step in the evolution of private war-making in modern times. It replaced the now discredited "soldier for hire" model represented by Executive Outcomes and Sandline in favor of the contractor approach in marketing the services of PMCs, and thus "refined the concept and shown the world the future of the mercenary."⁵¹ MPRI was founded by retired US Army officers and initially contracted only with the DoD to provide weapons systems training for soldiers, but in the 1990s expanded its customer base to include foreign governments and militaries, such as Croatia, Bosnia and Bulgaria. MPRI also worked closely with the State Department to create training programs and institutes for governments and their military establishments in Africa and Asia. In 2000, MPRI was purchased by L3 Corporation, a publicly-traded defense contractor: "Now everyone can own a piece of the modern mercenary company."⁵²

By all accounts, the Iraq War has elevated the role of private military firms far above what even the most enthusiastic of its participants and supporters would have imagined just five years ago.⁵³ Making a virtue of necessity, the American government and its coalition allies have embraced the private firms as practically equal partners in the venture of conquest and occupation, and thus conferred a degree of legitimacy on the practice of private war-fighting.⁵⁴ "If nothing else, the American experience in Iraq has changed the idiom. It was in Iraq that the word "contractors" became a far more acceptable synonym for what they really were, mercenaries. To the governments that hired them, the distinction was important."⁵⁵

The Story of Blackwater: Genesis, Founding and Early History⁵⁶

Observers of Blackwater agree that in order to understand the company's very reason for being and its subsequent success one must delve into the background of its founder Erik Prince. Born 6 June, 1969, Erik is the youngest child (he has 3 older sisters) of

Professional Resources Incorporated (MPRI)--had so well prepared the Croatian military forces that they routed their Serbian adversaries and then broke their grip in Bosnia, effectively ending the nightmare of ethnic cleansing. Singer also describes the crucial role played by a private company (Texas-based Brown and Root) in supporting U.S. military and peacekeeping efforts in Kosovo in 1999, and provides these examples to illustrate the importance of private contractors in military operations in the post-Cold War era.

⁵¹ Lanning, p. 196.

⁵² Lanning, p. 204.

⁵³ A thorough and relatively recent summary of the situation in Iraq relative to the contractors and their roles can be found in Congressional Research Service (CRS). "Private Security Contractors in Iraq: Background, Legal Status and Other Issues." *CRS Report for Congress*. Order Number RL32419. 11 July 2007. <http://www.fas.org/sgp/crs/natsec/RL32419.pdf>

⁵⁴ "One of the broader goals of the neo-mercenary rebranding campaign has been acceptance as legitimate forces in the country's national defense and security apparatuses." Scahill Chapter Ten. *Mr. Prince Goes to Washington*. P. 164.

⁵⁵ Fred Rosen. *Contract Warriors*. Penguin Books, 2005, p.31.

⁵⁶ This section relies on several sources: Joanne Kimberlin and Bill Sizemore. "Blackwater: Inside America's Private Army." *The Virginian-Pilot*. July 2006. (6 part series). <http://hamptonroads.com/node/66331>; Robert O'Harrow, Jr, and Dana Hedgpeth. "Building Blackwater." *Washington Post*. 13 October 2007. http://www.washingtonpost.com/wp-dyn/content/article/2007/10/12/AR2007101202487_pf.html; Jeremy Scahill. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. Nation Books, 2007; Evan Thomas (et al.). "The Man Behind Blackwater." *Newsweek*. 22 October 2007. <http://www.newsweek.com/id/43361>.

Edgar and Elsa Prince of Holland, Michigan.⁵⁷ Edgar Prince founded the Prince Corporation, an automotive supply firm whose most successful products included interior accessories such as lighted mirror visors and digital compasses. As Scahill notes, their staunch Calvinist Dutch Reform beliefs and enthusiasm for applying their wealth in the political arena endeared them to social conservatives such as Gary Bauer. The elder Prince provided much of the funding for Bauer and James Dobson to establish the Family Research Council in 1988, and Prince remained influential within the organization and larger movement until he died of a massive heart attack (as had his own father) 2 March 1995 at age 63.⁵⁸

After three semesters in the Naval Academy, Erik attended Hillsdale College in Michigan, where he served on the local volunteer fire department and worked on the presidential campaign of Pat Buchanan. Then in 1992 he went to Officer Candidate School and became a Navy SEAL, but had to give up his career to return to Michigan following his father's death to sort out his family's business and personal affairs. The company was sold in July 1996 to Johnson Controls for \$1.35 billion. Although Erik Prince became a Roman Catholic, he continued to actively support evangelical Protestant causes, educational institutions and organizations, notable among them Prison Fellowship, founded by Charles Colson.⁵⁹

In the months following his father's death, Erik Prince began serious pursuit of a business opportunity for which many in the SEAL community had long perceived a need. Former and current members who wanted to hone their martial and firearms skills lacked an appropriate venue. "By the time Al Clark, Erik Prince, and a handful of others began serious planning for what would become Blackwater in the mid-1990s, the military had been downsizing for years, and training facilities were the some of the casualties of that trend."⁶⁰ With his piece of the family fortune, Prince was uniquely positioned to provide the \$1 million initial financial backing for the venture. Prince and Clark founded Blackwater 26 December 1996, 3 months after Prince's discharge from active duty as a SEAL. Regarding the decision of Clark and Prince to locate their facility at the edge of the Great Dismal Swamp, "The two began scouting for a location, settling on northeastern North Carolina because it offered ample land relatively close to three major military centers: Hampton Roads, Washington and Fort Bragg, N.C."⁶¹ The choice of a name for the company came from the peat-tinged water in the region. Following frustrated attempts to get approval for the planned shooting range from Currituck County, NC groundbreaking took place in June 1997 in neighboring Camden County. "Blackwater is now easily Camden County's biggest taxpayer and employer, with a

⁵⁷ Regarding the elder's Prince's influence over his home town, Thomas notes: "While other fading Michigan auto towns were being hollowed out by strip malls and Wal-Mart, Prince Senior restored Holland's downtown to its Victorian charm. Today, seven bronze footsteps cast from Ed Prince's shoes lead to a statue of children singing while nearby bronze musicians play instruments. "We Will Always Hear Your Footsteps" reads the engraved memorial to the patriarchal Prince."

⁵⁸ Scahill, Chapter One. *The Little Prince*.

⁵⁹ Scahill, Chapter One. These connections, according to Scahill, place Prince squarely in the social and political camp of what Damon Linkler has dubbed the "theocons".

⁶⁰ Scahill. Chapter Two. Blackwater Begins. Scahill (p. 29) portrays Al Clark, a former firearms and tactical operations trainer for the Navy Seals, as the idea man behind Blackwater, with Erik Prince as the financier.

⁶¹ Kimberlin and Sizemore. Part 2. *Profitable Patriotism*.

compound half the size of Manhattan and 450 permanent employees – not counting its database of more than 14,000 independent contractors.”⁶²

The company’s firearms training programs drew not only SEALs from nearby Norfolk Naval Station, but also federal, state and local law enforcement personnel seeking state-of-the-art yet discreet facilities complete with a lodge, dormitories, classrooms, dining hall and lounge. Scahill describes how the company capitalized on the concern for school security following the April 1999 Columbine shooting incident, as SWAT teams honed their skills in the mock 15,000 square foot “R U Ready High” school, which was designed, constructed and ready for use in September 1999.⁶³ In February 2000, Blackwater was awarded the coveted right to contract with the federal government for five years by listing its services with the General Services Administration. This status allowed Blackwater to purvey its services in a standardized fashion to all interested agencies without submitting separate bids. Scahill notes that by the time the contract came up for extension, “Blackwater has already been paid \$111 million under the schedule.”⁶⁴

Al Clark left Blackwater in 2000, ironically just at the time that the company was poised for a rapid expansion in demand for its services.⁶⁵ “The company landed a five-year contract with the US Navy to provide firearms training to 50,000 sailors, and since then has gotten almost all of its business from the US government.”⁶⁶ The company would get a much greater boost from Osama Bin Laden, as the “post 9/11 environment provided Erik Prince and his Blackwater colleagues with a blank canvas on which to paint a profitable future for the company, seemingly limited only by imagination and personnel.”⁶⁷ Following the 9/11 attacks, many federal government agencies would sense the urgent need for their people to develop martial and firearms skills, and Blackwater gladly provided the training. The company responded to business opportunity in January 2002 by founding Blackwater Security Consulting, which landed a lucrative contract with the CIA to train its security personnel to (among other things) guard its new station in Kabul.⁶⁸

Landing the Big One: The Bremer Contract

⁶² Kimberlin and Sizemore. Part 2. *Profitable Patriotism*.

⁶³ Scahill, Chapter Two.

⁶⁴ Scahill, Chapter Two, p. 38

⁶⁵ Kimberlin and Sizemore, Part 2. *Profitable Patriotism*. “The turning point for Blackwater came with the October 2000 suicide bombing of the Norfolk-based Cole. The al-Qaida terrorist attack, in the port of Aden, Yemen, killed 17 sailors. The Navy now perceived deficiencies in the preparation of its sailors for missions that might well involve combat, and contracted with Blackwater in the amount of \$35.7 million. ‘Osama bin Laden turned Blackwater into what it is today,’ Clark said.

⁶⁶ Kimberlin and Sizemore, Part 2. *Profitable Patriotism*. As Erik Prince recalls (O’Harrow and Hedgpeth) “It was our first big-volume, predictable customer. “It conferred legitimacy. . . . At that point, we became a government contractor.”

⁶⁷ Scahill, Chapter Two, pp. 41-42.

⁶⁸ Scahill Chapter Two, p.48 notes that Prince himself accompanied Jamie Smith and other Blackwater employees to Afghanistan, and even became so enamored of their work that Prince himself sought employment with the agency.

The Iraq war opened up new contracting opportunities on a massive scale for Blackwater and other firms prepared to offer security services to the US government.⁶⁹ "U.S. government agencies coming in to rebuild the shattered country expected a benign environment. Instead, they found a cauldron of violence. As insurgent attacks steadily escalated, millions of dollars were diverted from reconstruction to security, opening up a huge new market for the private military industry."⁷⁰ Blackwater was well-positioned to outmaneuver the competition: "The company's work for the CIA and the military and Prince's political and military connections would provide Blackwater with important leverage in wooing what would become its largest confirmed client, the State Department."⁷¹ But this was no typical assignment; for both players the stakes could not have been higher. "Strapped with a GSA schedule and deep political and religious connections, Prince snagged a high-profile contract in Iraq that would position his men as the private bodyguards for the Bush administration's top man in Baghdad, Ambassador L. Paul Bremer III."⁷²

Bremer replaced Jay Garner in May 2003, and became both Director of Reconstruction and Humanitarian Assistance and head of the Coalition Provisional Authority. The Bremer contract would mean not only a qualitative shift in the company's fortunes, but also place Erik Prince and his corporation in a uniquely influential position regarding the implementation of US foreign policy in Iraq and beyond. "The Bremer contract had officially elevated Blackwater to a status as a sort of Praetorian Guard in the war on terror—a designation that would open many doors in the world of private military contracting."⁷³ From this point forward, the actions of the company's personnel—its owners, managers and contractors—would be to an important extent definitive of both the substance and perception of US policy in occupied Iraq. According to Scahill: "The Bremer contract meant that Prince would be at the helm of an elite private force deployed on the front lines of a war long sought by many of the forces that make up the theoclon movement."⁷⁴

Initially the Blackwater teams protecting Bremer were relatively small, consisting of about three dozen men, K-9 units, several armored vehicles (Suburbans and Humvees) and 3 helicopters to transport him around Baghdad and Iraq as needed. But with the DoD unable or unwilling to provide security for the large diplomatic footprint, it quickly became clear that the CPA occupation would require a massive presence of private forces.⁷⁵ Blackwater and the other firms ramped up their operations quickly. During

⁶⁹ Scahill notes Chapter Two, p. 47: "Iraq was a pivotal coming-of-age moment for mercenaries, and Blackwater would soon emerge as the industry trendsetter."

⁷⁰ Kimberlin & Sizemore. Part 3. *On the Front Lines*.

⁷¹ Scahill, Chapter Two, p. 46. Kimberlin and Sizemore put it this way (Part 3): "In August 2003, Blackwater was awarded a \$21 million no-bid contract to guard Bremer, and U.S. agencies have been tapping the Blackwater well ever since."

⁷² Scahill, Chapter Two, p. 47. Scahill characterizes Bremer as "a diehard free-marketeer who, like Prince, had converted to Catholicism and passionately embraced the neoconservative agenda of using American military might remake the world according to US interests—all in the name of democracy."

⁷³ Scahill, Chapter Four. *Guarding Bush's Man in Baghdad*. pp. 71-72.

⁷⁴ Scahill, Chapter Two, p. 47.

⁷⁵ Karen DeYoung. "State Department Struggles to Oversee Private Army." *Washington Post*. 21 October 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/20/AR2007102001325.html> DeYoung notes that "as the United States prepared to return sovereignty to the Iraqis and the State

Bremer's 13-month tenure in Iraq, private security firms and their personnel from all over the world began pouring in Baghdad, Iraq and the entire was theater in support of all aspects of the coalition occupation. "When Bremer left Iraq in June 2004, there were more than twenty thousand private soldiers inside the country's borders and Iraq had become known as a "Wild West" with no sheriff."⁷⁶ Describing the situation in mid-2005, Peter Singer noted:

More than 60 firms currently employ more than 20,000 private personnel there to carry out military functions (these figures do not include the thousands more that provide nonmilitary reconstruction and oil services) —roughly the same number as are provided by all of the United States' coalition partners combined. President George W. Bush's "coalition of the willing" might thus be more aptly described as the "coalition of the billing."⁷⁷

For Blackwater, the Bremer contract in Iraq was undoubtedly far more valuable than its incredibly lucrative price tag." It was prestigious and an invaluable marketing tool to win more clients and high-value government contracts."⁷⁸ In June 2004 the State Department further rewarded the company by contracting with it and other companies to provide protection for US diplomats working in hardship posts around the globe under its Worldwide Personal Protective Service (WPPS) program. "For Blackwater, the WPPS contract was a milestone that solidified the company's role as the preferred mercenary firm of the U.S. government, the elite private guard for the administration's war on terror."⁷⁹ And Blackwater was far from alone in reaping the bonanza; Aegis Defense Services--Tom Spicer's reincarnation of the discredited British mercenary firm Sandline--was in May 2004 awarded a contract in excess of \$290 million by the CPA to not only provide protective services, but also to oversee the activities of the other private military and security firms operating in Iraq.

As the CPA's reliance on Blackwater and other private contractors became so glaring, Bremer, the Bush administration and the other coalition partner governments sought to provide an important degree of stability and predictability to their otherwise chaotic business environment. This is the (infamous) Order 17 signed 27 June 2004. "One of Bremer's last official acts was to issue a decree immunizing Blackwater and other contractors from prosecution for any potential crimes committed in Iraq."⁸⁰

The near complete independence of the contractors from any constraining legal framework would become arguably the single most prominent and problematic feature

Department began planning an embassy in Baghdad, Rumsfeld lost a bid to retain control over the full U.S. effort, including billions of dollars in reconstruction funds. A new executive order, signed in January 2004, gave State authority over all but military operations. Rumsfeld's revenge, at least in the view of many State officials, was to withdraw all but minimal assistance for diplomatic security."

⁷⁶ Scahill, Chapter 4. p. 76-77.

⁷⁷ Peter W. Singer. "Outsourcing War." *Foreign Affairs*. March/April 2005.

<http://www.foreignaffairs.org/20050301faessay84211/p-w-singer/outsourcing-war.html>

⁷⁸ Scahill, Chapter 10, p. 164.

⁷⁹ Scahill, Chapter 10, p. 166.

⁸⁰ Scahill, Chapter 10, p. 163.

of their role in the Iraq War. The personnel of Blackwater and the other firms would increasingly be seen by other major players in the conflict—even the coalition military forces and especially the Iraqi population—as acting with latitude and discretion that amounted to impunity. “The Coalition Provisional Authority made that a reality when it passed a resolution that mercenaries would not be subject to Iraqi law, nor would they be subject to American law, making them effectively impervious to prosecution.”⁸¹

With Blackwater now occupying the central position in a massive private force supporting and indeed enabling⁸² the military occupation of Iraq, the company would find itself embroiled in a series of incidents that would have grave impact upon both the the company and its employer, the United States government. Even as the company was winning new multimillion dollar contracts and hiring hundreds of new contractors (from both the US and other countries), major trouble—including lawsuits, intense media scrutiny and even Congressional hearings—would intrude upon the company’s leaders. Given the scope and scale of Blackwater’s role in Iraq (and Afghanistan), these problems would necessarily implicate the political and military leaders behind the policy of privatized warfare. The deep and mutual involvement of these private and public actors in the context of military occupation and violent insurgency in Iraq would create a complex and ambiguous symbiosis from which neither party could readily extricate itself.

The Fallujah Massacre⁸³

During 2004, private contractors took on more numerous and varied responsibilities in the CPA’s occupation of Iraq even as the security situation in the country became increasingly unstable. It was under these dangerous circumstances that Blackwater would find itself in the vortex of a situation that would thrust the company into the public spotlight and alter the very conduct of the war itself. The city of Fallujah west of Baghdad—like many in the Sunni regions of the country—was a center of violent resistance to the occupation⁸⁴ and the scene of intense and frequent conflict. The occupation of the city by US troops in April 2003 created much tension with the residents, and throughout early 2004 frictions had boiled over into protests that left locals killed by American fire. On 24 March 2004, the First Marine Expeditionary force had taken over Fallujah from the 82nd Airborne Division, and begun an aggressive pacification effort against insurgents in the city. On 31 March 2004 into this cauldron

⁸¹ Rosen, p. 32.

⁸² “Contrary to conspiracy theories, the private military industry is not the so-called “decider,” plotting out wars behind the scenes like *Manchurian Global*. But, it has become the ultimate enabler, allowing operations to happen that might be otherwise politically impossible.”

Peter W. Singer. “Can’t Win With “Em, Can’t Go to War Without “Em: Private Military Contractors and Counterinsurgency.” Policy Paper No. 4, September 2007. Brookings Institution. <http://www.brookings.edu/~media/Files/rc/papers/2007/0927militarycontractors/0927militarycontractors.pdf>, p. 3.

⁸³ An excellent account of the incident is found in Jay Price and Joseph Neff. “The Bridge”. *The News and Observer*. October/November 2005. (7 part series). http://www.newsobserver.com/nation_world/bridge/. The series profiles each of the four contractors killed, discusses how they became employed with Blackwater, and describes the incident in graphic detail.

⁸⁴ Scahill recalls in Chapter Three *Fallujah Before Blackwater* (p. 51) that the city was the site of a tragedy during the 1991 Gulf war when allied aircraft fired a guided missile at a bridge over the Euphrates and mistakenly struck a residential area and market, killing over 100 people and wounding others...“it was remembered in Iraq as a massacre and would shape the way Fallujans later viewed the invading U.S. forces under the command of yet another President Bush.”

rode 4 Blackwater contractors: Wes Batalona, Scott Helvenston, Mike Teague and Jerry Zovko. The men were not guarding a high-profile diplomat (as their elite military training might suggest) but instead had been assigned on subcontract to escort a convoy of empty trucks going to pick up kitchen equipment. With 2 men each in SUVs⁸⁵, the convoy set out from the US military base where they had spent the night before and drove straight into town. At an interchange, the convoy was joined by a pre-arranged escort of Iraqi civil defense personnel, which led it toward the city center. There, an ambush was sprung and all four contractors were shot and killed. A mob then burned, mutilated, dragged and hung their bodies from a bridge over the Euphrates river. Within hours, the images that had been snapped and filmed by the participants and onlookers were circulating on television and the internet, well before the relatives of the victims could be notified. "It was the lynching seen around the world."⁸⁶ Scahill observes:

It was the Mogadishu moment of the Iraq War, but with two key differences: the murdered men were not U.S. military, they were mercenaries; and unlike Somalia in 1993, the United States would not withdraw. Instead, the deaths of these four Blackwater soldiers would spark a violent U.S. siege, ushering in a period of unprecedented resistance to the occupation almost a year to the day after the fall of Baghdad.⁸⁷

The highly publicized incident would affect events on the ground in Iraq, and also cause a dramatic shift in the business environment for Blackwater and its ilk. Kimberlin and Sizemore note:

The Fallujah ambush had profound consequences on two fronts: In Iraq, it irrevocably altered the course of the war. U.S. military commanders, who had no advance knowledge of the convoy's presence in Fallujah, were ordered by Washington to change tactics and pound the city into submission, inflaming the Iraqi insurgency to new heights. Back home, families of the four victims are suing Blackwater for damages. The outcome could be costly for the company. It also has implications for the entire private military industry if it sets a precedent for holding companies legally responsible when their contractors die on the battlefield.⁸⁸

Distraught over the loss of their loved ones and deeply disappointed with the company's curt refusal to provide details of the mission⁸⁹, the families of the 4 murdered

⁸⁵ Price and Neff note (Chapter 6): "The Blackwater SUVs had reinforced bumpers but no armor. Such vehicles are typical for "nongovernmental organizations" around the globe, because they handle the crude roads of the Third World better than cars. In Iraq -- where few locals can afford fancy transportation -- westerners have dubbed shiny new SUVs "bullet magnets."

⁸⁶ Kimberlin and Sizemore, Part 4.

⁸⁷ Scahill, Chapter 6. *The Ambush*. pp. 103-104.

⁸⁸ Kimberlin and Sizemore, Part 4.

⁸⁹ The families' perspectives on these issue are summarized in their prepared statement to Congress. House of Representatives. Committee on Oversight and Government Reform. "Testimony of Kathryn Helvenston-Wettengel, Rhonda Teague, Donna Zovko and Kristal Batalona." 7 February 2007. <http://oversight.house.gov/documents/20070207112354-05553.pdf>

contractors decided in January 2005 to file suit against Blackwater.⁹⁰ Filed in North Carolina state court as *Nordan vs. Blackwater*,⁹¹ the wrongful death suit claimed that the company failed to provide the contractors with adequate protection in their jobs; specifically that each of the teams protecting the convoy should have had a third member armed with a heavy machine gun in the rear of the vehicles, which themselves should have been better armored.⁹² The company disputed not only its liability by claiming that the contractors had signed waivers indicating their full awareness of the risks and dangers, but successfully challenged the jurisdiction of the state courts, saying that the case should be removed to the federal court system. Once there, Blackwater argued that no court should have jurisdiction over its personnel because their work for the executive branch of the federal government during a war.⁹³ However, both the US district court and the 4th Circuit Court of Appeals rejected that argument, and allowed the state trial to go forward.

Blackwater then brought in heavy legal guns in the person of Kenneth Starr⁹⁴, who asked the Supreme Court to grant a stay in the case while the company prepared its formal petition for a writ of certiorari. Chief Justice John Roberts rejected Starr's request for a stay in October 2006, and in February 2007 the writ of cert was denied by the full court. Even though the case was returned to state court, in May 2007 a federal court granted Blackwater's motion of December 2006 to have the case submitted to mandatory arbitration because the original contracts require it.⁹⁵ That same process would also be used to decide the merits of Blackwater's \$10 million suit against Richard Nordan, the administrator of the families' estates in whose name the original case had

⁹⁰ An excellent summary of the early phase of the case can be found in Christopher Pudelski "High Court asked to Explore Contractor Liability for Deaths in Iraq." *Law.com*. 22 February 2007. <http://www.law.com/jsp/article.jsp?id=1172052182813>

⁹¹ The filing itself can be found on the website of the families of the contractors. <http://blackwatervictims.com/pdfs/Complaint%20File%20Stamped.pdf>

⁹² Additional background and detail concerning the dispute over the preparations for and conduct of the mission can be found in Brian Bennett. "Victims of An Outsourced War." *Time*. 15 March 2007. <http://www.time.com/time/magazine/article/0,9171,1599682,00.html?iid=sphere-inline-sidebar>

⁹³ In his Chapter Thirteen *The Whores of War*, Scahill recounts the series of events in the Summer and Fall of 2004 that led the families to sue Blackwater 5 January 2005. "From the start, the Blackwater lawsuit was viewed as a precedent-setting case on the role of and legal framework governing private forces in U.S. war zones." (234). He also discusses Blackwater's "Total Force" argument, which asserts (among other things) that the Blackwater contractors in the convoy were carrying out a "classic military function", and therefore that no court should and could not hear or rule upon the case because it would be intruding upon the Executives' power to deploy military forces.

⁹⁴ Jeremy Scahill and Garrett Ordower. "From Whitewater to Blackwater." *The Nation*. Posted 26 October 2006 (web only). http://www.thenation.com/doc/20061113/whitewater_to_blackwater. The authors describe Starr's personal connection to and professional involvement in the Nordan case.

⁹⁵ Bill Sizemore. "Suit Against Blackwater moves to arbitration." *Virginian-Pilot*. 20 May 2007. <http://hamptonroads.com/node/269051>. "The judge agreed with Blackwater's contention that the lawsuit is barred by the employment contract that the four Fallujah victims signed - an 18-page document in which they gave up a list of rights, including the right to sue the company. The contract says any dispute with Blackwater must be resolved by binding arbitration under the rules of the American Arbitration Association, a private nonprofit organization that facilitates non judicial settlement of disputes."

been filed.⁹⁶ The move to arbitration is being fought in court by Nordan and the families.⁹⁷

In a recent development, in late January 2008 Blackwater filed a \$30 million malpractice suit in D.C. superior Court against Wiley Rein, a law firm that had represented Blackwater in 2005. The suit claims that the firm had done a very poor job in seeking to have the case moved from state court; among the Wiley Rein lawyers named in the suit as inept are current White House counsel Fred Fielding and Margaret Ryan, judge for US Court of Appeals for the Armed Forces.⁹⁸ But even as Blackwater found itself ensnared in this incredibly complex wrangle, yet another dramatic and deadly event was creating its own legal and public relations quagmire for the company.

Flight 61⁹⁹

On 27 November 2004, a twin-engine cargo plane carrying 3 US soldiers and 3 civilian crew members from Bagram airbase in Afghanistan to Farah 450 miles away crashed in a box canyon at about 14,000 ft. elevation, killing all on board. 5 of the six on board died immediately; one of the soldiers--Harley Miller--survived for several hours before succumbing to his injuries. The flight was operated by Presidential Airways, a subsidiary of the Prince Group created in April 2003 it had bought Aviation Worldwide Systems. In September 2004 Presidential Airways had won a \$35 million contract with the USAF to undertake flights within Afghanistan, and also into Pakistan and Uzbekistan.

The US military investigation of the crash found fault with airline for using pilots without substantial in-country flight experience,¹⁰⁰ and said that both Presidential and military itself did a poor job of tracking flights. The NTSB also inquired into the crash because the airline operated under an FAA certificate, and the Afghan government requested help in the investigation of the crash.¹⁰¹ The NTSB report criticized the pilots on many

⁹⁶ AP. "Blackwater Wants \$10 million from lawyer for dead workers." *News & Observer*. 21 January 2007. <http://www.newsobserver.com/167/story/534665.html>. "The \$10 million is a scare tactic," said Katy Helvenston, mother of Scott Helvenston, one of the dead Blackwater employees. "I'm not concerned about that at all because the whole thing's a farce. It's just another excuse to delay."

⁹⁷ In his Chapter Thirteen *The Whores of War* Scahill discusses the impact of the Fallujah incident and its legal aftermath for the families of the four men killed. Scahill recounts an interesting anecdote regarding Scott Helvenston, one of the four murdered contractors. Baxter Troutman, a Republican State Representative in Florida organized an event in May 2004 to recognize soldiers from the area that had been killed in the line of duty. Both the First Lady and Florida Governor Jeb Bush were to attend, and Helvenston's friends asked that his name be read from the podium. Scahill recalls that (as originally reported in the Washington Post) this request was denied because, as Troutman said: "This was for the servicemen and women who are not there by choice; to me, that makes a difference. "If I am an employee of a company and don't like what I am being subjected to, then I can come back home."(213).

⁹⁸ Attila Berry and Joe Palazzolo. "Blackwater Hits Wiley Rein With \$30 million malpractice suit." *Legal Times*. 25 January 2008. <http://www.law.com/jsp/article.jsp?id=1201169145676>

⁹⁹ Among the most compelling of the many accounts of this incident are: Rick Anderson. "Welcome Aboard Blackwater Airlines." *Seattle Weekly*. 14 November 2007. <http://www.seattleweekly.com/2007-11-14/news/welcome-aboard-blackwater-airlines.php?page=full>

Del Quentin Wilber. "A Crash Echoes, From War Zone to Washington." *Washington Post*. 17 October 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/16/AR2007101602001.html>

¹⁰⁰ "Taken together, the weather, visual flight rules, threat of enemy fire, light turboprop aircraft with varying cargo and passenger loads, and extreme elevations made for a difficult combination even for experienced pilots." Scahill Chapter Fourteen *The Crash of Blackwater 61*, p. 240.

¹⁰¹ Transcripts of both reports along with other documentation and testimony related to the incident can be found at House of Representatives. Committee on Oversight and Government Reform. "The Crash of Blackwater Flight 61." 2 October 2007. <http://oversight.house.gov/story.asp?ID=1512>. That documentation includes the prepared statement, testimony, and responses to questions by Erik Prince.

counts, including their not following a clearly defined route, and faulted both the airline and military for lax oversight of flights. To reach its conclusions, the NTSB relied on the findings of the military investigation, and information taken from flight logs and the plane's voice recorders, but sent no investigators to Afghanistan.

In June 2005, the families of the dead soldiers sued Presidential in federal court for negligence.¹⁰² For its part, Presidential disputes the report's findings and questions the jurisdiction of the NTSB in the case, and argues that the flight was a military mission for which the company cannot be held liable. In seeking to have the suit dismissed company used arguments similar to those in the Fallujah case, asserting that the courts had not jurisdiction in what was essentially a "political question" because Blackwater's work was part of a larger military operation. As Scahill describes, in September 2006 the court rejected this argument, saying that contractors must perform duties in a responsible fashion, including refusal to carry out missions if they are deemed too dangerous. Nor did Judge John Antoon accept Blackwater's contentions that since the military personnel killed were on a mission for the Air Force in a combat zone, the Feres doctrine of sovereign immunity should apply. "In other words, Antoon determined that though the Pentagon might have referred to private military contractors as part of its "Total Force", that did not change Blackwater's status as a for-profit private company responsible for its actions."¹⁰³

If Blackwater was hoping that its employer would spring to its defense, the company was to be disappointed. During an interview with Time magazine in October 2007, Erik Prince expressed his displeasure with the Bush Administration's unwillingness to become involved in the case.

"After the President has said that, as Commander-in-Chief, he is ultimately responsible for contractors on the battlefield it is disappointing that his Administration has been unwilling to make that interest clear before the courts," Erik Prince, Blackwater's chairman, told TIME after a Tuesday deadline passed for comments on the case. "And this is happening even as our professionals risk their lives every day in support of vital U.S. priorities, while Congress and several federal agencies publicly discuss the issues at stake in this particular lawsuit."¹⁰⁴

Prince and other principals of private military contractors have reason to be concerned, especially since in October 2007, the US Court of Appeals for the 11th Circuit rejected

¹⁰² In his Chapter Fourteen *The Crash of Blackwater 61* Scahill argues (p.238) that the crash itself and the resulting deaths were, "for all practical purposes, a minor tragedy in what had become—at least in the eyes of the media—a secondary, if not forgotten, war in Afghanistan. But the crash would nonetheless become a serious legal problem for Blackwater, for this time, unlike in Fallujah, there was a paper trail."

¹⁰³ Scahill, Chapter 14, p. 252.

¹⁰⁴ Adam Zagorin. "Blackwater's Florida Court Woes." *Time*. 7 November 2007. <http://www.time.com/time/nation/article/0,8599,1681434,00.html>

Blackwater's request to have the case thrown out.¹⁰⁵ No resolution has yet been reached in the case.

The Green Zone¹⁰⁶

On 24 December 2006, a Blackwater contractor was involved in a deadly altercation with an Iraqi member of the security detail of one of the country's two Vice-Presidents. The off-duty and drunken contractor had just left a Christmas party in the Green Zone when he encountered the security guard. During the confrontation, he shot the security guard three times, and he died the next day. After investigating the issue, Blackwater fired the employee and sent him straight back to the United States. "They made him pay his own airfare home and forfeit his \$3,000 Christmas bonus. Mr. Prince said that Blackwater paid \$20,000 in compensation to the victim's family, correcting earlier accounts that had put the sum at \$15,000."¹⁰⁷ Predictably, the Iraqi government was outraged and unable to understand how anyone involved in such a killing would not be held accountable to some authority.¹⁰⁸ Although the company and the State Department had kept the identity of the perpetrator confidential, eventually it became public knowledge that he is Andrew J. Moonen, an Army ex-paratrooper now living in the Seattle area.¹⁰⁹ Moonen had served in for three years in the Army's 82nd Airborne Division, including a deployment in Iraq. Interestingly, his conduct and firing did not dissuade another US government contractor—Combat Support Associates—from hiring Moonen and returning him to the war theater, where he worked in Kuwait from February to August of 2007.¹¹⁰

¹⁰⁵ "If they lose a lawsuit, that is going to open the floodgates," said Scott L. Silliman, a law professor at Duke University who has tracked other suits against contractors. "Once the military contractors appear vulnerable to litigation, the suits are going to come from all over the place." Del Quentin Wilber. "A Crash Echoes, From War Zone to Washington." *Washington Post*. 17 October 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/16/AR2007101602001.html>

¹⁰⁶ As with the other incidents discussed, the House Committee on Oversight and Government Reform has conducted an investigation and held hearings, and the website is a very useful resource. House of Representatives. Committee on Oversight and Government Reform. "Hearing on Private Security Contracting in Iraq and Afghanistan." 2 October 2007. <http://oversight.house.gov/story.asp?ID=1509>. The webpage contains links to documents, witness testimony, a preliminary transcript, and a video of the hearing.

¹⁰⁷ John M. Broder. "Ex-Paratrooper is Suspect in a Blackwater Killing." *New York Times*. 4 October 2007. <http://www.nytimes.com/2007/10/04/world/middleeast/04contractor.html>

¹⁰⁸ According to Bill Sizemore's account: "After one of his personal bodyguards was shot to death by a Blackwater USA security contractor last Christmas Eve, Iraqi Vice President Adil Abdul-Mahdi assured the U.S. ambassador that he was trying to keep the incident out of the public eye. Nevertheless, Abdul-Mahdi told the ambassador, he hoped the contractor would be brought to justice because Iraqis would not understand how a foreigner could kill an Iraqi and be spirited back home a free man." Bill Sizemore. "Blackwater Supports Inquiry into Fatal Shooting." *Virginian-Pilot*, 25 July 2007. <http://hamptonroads.com/node/300791>. To put the incident in context for Americans, Peter Singer observes: "Imagine the same thing happening in the U.S., an Iraqi embassy guard, drunk at a Christmas party in D.C., shooting a Secret Service agent guarding Vice President Cheney, and you can see some potential for how the firm's Christmas tidings were not a happy one for U.S. efforts at winning hearts and minds. Peter W. Singer. "Can't Win With 'Em, Can't Go to War Without 'Em: Private Military Contractors and Counterinsurgency." *Policy Paper No. 4*, September 2007. Brookings Institution, p.8. <http://www.brookings.edu/~media/Files/rc/papers/2007/0927militarycontractors/0927militarycontractors.pdf>

¹⁰⁹ Broder, Ex-Paratrooper..."

¹¹⁰ CNN. "Contractor involved in Iraq shooting got job in Kuwait." 4 October 2007. <http://www.cnn.com/2007/POLITICS/10/04/blackwater.contractor/index.html>

He has hired a lawyer in case the ongoing investigation might result in charges being filed. So far, none have been.

Nisoor Square

While both the Fallujah massacre and Flight 61 have created major legal problems and public relations challenges for Blackwater and the US government agencies that hire its services, these incidents pale in comparison to the events in Baghdad of Sunday 16 September 2007. Few events (apart from the Presidential primaries, Britney Spears and Eliot Spitzer) have received a comparable degree of media coverage in recent months, and none has launched so many Congressional inquiries. Given its scale and the intensity of the scrutiny it has justifiably received, this incident promises to bring fundamental changes in the not only the fortunes of Blackwater as a company, but the entire private military industry. It is likely that the practice of the US and other governments outsourcing protective services and other military function will now be called into ever more serious question by legislatures and publics who increasingly perceive the practice to violate basic principles of democratic government and state sovereignty.

A major aspect that distinguishes this incident from the others discussed above is that the very nature of the actual event itself is still very much in dispute. Despite occurring in broad daylight in a public square, in the immediate aftermath of the chaos, accounts of what had actually happened varied wildly. These differing versions became the basis for misunderstanding, speculation and rumor greatly complicated the effort to establish the facts. For several days, it was not known with any precision the number of people killed by Blackwater personnel in Nisoor Square (alternate spellings used in media accounts include Nisour, Nusoor), much less who they were or why the violence occurred.¹¹¹ Even after two weeks many very important details were still just coming to light, and these revelations only compounded the sense of mistrust and acrimony on all sides.¹¹² While the death toll estimates eventually stabilized at 17 Iraqis, as time passed the stories of exactly when who had done what were at such variance as to be mutually unintelligible. Overall, as more details emerged, the perception that Blackwater was to blame became more widespread and entrenched.¹¹³ The incident caused the International Peace Operations Association (IPOA) to begin an investigation of Blackwater as a member, which evidently precipitated the company's withdrawal from the organization.¹¹⁴ Investigation by the FBI¹¹⁵ and other federal law enforcement officials led to the creation of a federal grand jury to compel testimony of Blackwater

¹¹¹ An example is seen in this quotation from an article in the *New York Times*. "The shooting took place in Baghdad on Sunday, but the details were still unclear, and American officials stopped short of saying whether the Blackwater guards in the diplomatic motorcade had caused any of the deaths. Bombs were going off in the area at the time, and shots were fired at the convoy, American officials said. "There was a firefight," said Sean McCormack, the principal State Department spokesman. "We believe some innocent life was lost. Nobody wants to see that. But I can't tell you who was responsible for that." Sabrina Tavernese. "U.S. Contractor Banned By Iraq Over Shootings. 18 September 2007. <http://www.nytimes.com/2007/09/18/world/middleeast/18iraq.html>

¹¹² James Glanz and Alissa J. Rubin. "From Errand to Fatal Shot To Hail of Fire to 17 Deaths." *New York Times*. 3 October 2007. <http://www.nytimes.com/2007/10/03/world/middleeast/03firefight.html>

¹¹³ John Broder and James Risen. "Blackwater Tops Firms in Iraq In Shooting Rate." *New York Times*. 27 October 2007. This article also contains a video (3:20 in length) narrated by John Broder on the role of Blackwater in providing security to US diplomats in Iraq. <http://www.nytimes.com/2007/09/27/world/middleeast/27contractor.html>

personnel and others connected to the incident.¹¹⁶ Federal investigators have returned to Iraq in late February 2008 to gather more evidence and conduct additional interviews with Iraqis who, unlike the Americans involved—cannot be made to testify before the grand jury.¹¹⁷ At this juncture, it is unclear if and when any charges might be filed against anyone involved, but the incident continues to generate controversy and even damage careers.

In response to growing controversy, the State Department made changes to its policies regarding its oversight of Blackwater personnel, including sending monitors along on their missions, installing cameras in vehicles and retaining records of all radio communications between the company and its employers.¹¹⁸ Yet these moves did nothing to quell the controversy even as the company and the US government worked unsuccessfully behind the scenes to mollify the families of the victims. The first high-profile casualty of the controversy within the State Department was Ambassador Richard Griffin, the State Department's head of diplomatic security, who submitted his resignation to the Secretary of State in late October 2007.¹¹⁹ Despite the resignation, some observers are concerned that blame is being misdirected solely to the company instead of the State Department, which defines the terms of Blackwater's operations.

But the issue isn't an overly aggressive contractor. It's the State Department's zero tolerance for casualties of its employees in Iraq. Such an approach makes tragedies such as the September episode more common – and it marginalizes the lives of innocent Iraqis who just might

¹¹⁴ A statement regarding Blackwater's status and decision can be found at the IPOA website. http://ipoaonline.org/php/index.php?option=com_content&task=view&id=156&Itemid=80, which says in part: "In recent weeks, IPOA was actively engaged with senior management at Blackwater USA, both through our Standards Committee and our Executive Committee, to ensure that they were fully compliant with the IPOA Code of Conduct. On October 8, 2007 the IPOA Executive Committee authorized the Standards Committee to initiate an independent review process of Blackwater USA to ascertain whether Blackwater USA's processes and procedures were fully sufficient to ensure compliance with the IPOA Code of Conduct."

¹¹⁵ The investigation was complicated and perhaps fatally compromised by the fact that the truck involved was repaired by Blackwater almost immediately following the incident, making impossible the forensic verification of its claims that it was hit by hostile fire. Lara Jakes Jordan and Matt Apuzzo. "FBI finds Blackwater Truck Patched." *Associated Press*. 12 January 2008. <http://ap.google.com/article/ALeqM5g8j2u56IMqRcZhCnXxakvpIEJ3-QD8U4E4E01>

¹¹⁶ Steve Fainaru and Carol D. Leonnig. "Grand Jury to Probe Shootings By Guards." *Washington Post*. 20 November 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/19/AR2007111901942.html> The authors note that "the U.S. government's ability to prosecute remains hampered by the lack of clarity over what laws may apply. For instance, contractors were immunized from Iraqi laws under a June 2004 order signed by the U.S. occupation authority. That ruling remains in effect." For a profile of one of the Blackwater contractors involved in the incident, see Ginger Thompson. "From Texas to Iraq, and center of Blackwater Case." *New York Times*. 19 January 2008. <http://www.nytimes.com/2008/01/19/us/19slough.html?ref=world>

¹¹⁷ Matt Apuzzo and Lara Jakes Jordan. "Blackwater Inquiry Turns to Baghdad." *Associated Press*. 21 February 2008. <http://ap.google.com/article/ALeqM5i1mAj-JcxOopICiL4Ikh7xUYsGtwD8UUJ6880>

¹¹⁸ John M. Broder. "State Department Sets News Rules for Blackwater in Iraq." *International Herald Tribune*. 2 October 2007. <http://www.iht.com/articles/2007/10/06/africa/6contract.php>

¹¹⁹ CNN. "U.S. security official quits; Iraqi says shooting victims offered cash". 24 October 2007. <http://www.cnn.com/2007/POLITICS/10/24/iraq.blackwater/index.html>

be in the wrong place at the wrong time. Placing so many diplomats and civil servants on nation-building assignments in the middle of a civil war has a high price – perhaps too high, as officials at State have finally started to acknowledge. The US government appears to tolerate a certain number of casualties from the all-volunteer military. But civilian employees are a different story. Images of dead diplomats being dragged through Iraqi streets or videotaped beheadings of civil servants, it's assumed, would undermine already tenuous public support of the war.¹²⁰

As intensive media coverage of the matter continued unabated, a major controversy erupted concerning whether the State Department investigators had granted some form of immunity to Blackwater personnel in exchange for their statements regarding the event.¹²¹ The revelation provoked a strong reaction within Congress, especially from the Henry Waxman, chairman of the same House committee already conducting investigations of previous incidents involving Blackwater.¹²² Howard (Cookie) Krongard, Inspector General (IG) of the State Department found himself caught up in the spreading Blackwater issue, and was eventually forced to resign his post. Already the subject of Congressional investigation regarding his actions in connection to the construction of the new embassy in Baghdad, Krongard was caught in a highly embarrassing exchange during a 14 November 2007 Congressional hearing.¹²³ At first explicitly denying under oath that his own brother Alvin (Buzzy) had recently been appointed to the Blackwater board of directors, Krongard was confronted with documented evidence to the contrary, which he then verified by cell phone conversations with his brother during a break. Two days later, Prince accepted Buzzy's

¹²⁰ R. J. Hillhouse. "Don't Blame Blackwater." *Christian Science Monitor*. 2 November 2007. <http://www.csmonitor.com/2007/1102/p09s01-coop.html?page=1>. Hillhouse goes on to observe: "Contractors need to be held accountable to the same standards and legal codes as federal employees are. Otherwise it becomes too easy for the government to outsource its own responsibility, then absolve the contractor when it gets caught."

¹²¹ The possible legal implications of this are examined in Byron L. Warnken. "Blackwater, Garrity and Immunity: What Does It All Mean?" *Jurist Forum*. 12 November 2007. <http://jurist.law.pitt.edu/forumy/2007/11/blackwater-garrity-and-immunity-what.php>

¹²² Adam Zagorin and Brian Bennett. "House Probes Blackwater Immunity." *Time*. 30 October 2007. <http://www.time.com/time/politics/article/0,8599,1678033,00.html>. Those investigations found evidence that the State Department had not provided timely and accurate information about other incidents of violence by Blackwater contractors. Karen DeYoung. "Other Killings by Blackwater Staff Detailed." *Washington Post*. 2 October 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/01/AR2007100100882.html>

¹²³ House of Representatives. Committee on Oversight and Government Reform. "Assessing the State Department Inspector General." 14 November 2007. Webpage contains links to documents, witness testimony, a preliminary transcript, and a video of the hearing. <http://oversight.house.gov/story.asp?ID=1630>

resignation from the Blackwater board.¹²⁴ Confronted by this obvious conflict of interest, Krongard announced his resignation Friday 7 December 2007 as State Department IG.¹²⁵

As if Congressional inquires, FBI investigations and a federal grand jury were not enough fall out from the Nisoor Square incident, the Center for Constitutional Rights, a civil rights law firm, filed a suit in US court on behalf of the families of Iraqis killed in the square.¹²⁶ Scahill notes that the attorneys involved are interested in the case not only for its own sake, but through the litigation process are also seeking to reveal and document a larger pattern of behavior by Blackwater in Iraq.¹²⁷ And it is this same pattern that concerns officials of the Iraqi government as they negotiate a new agreement with US officials to determine (among many other things) the status of American personnel in Iraq.¹²⁸

The Use of Force by Private Actors: Democracy, Accountability and State Sovereignty

The case of Blackwater as a prominent and especially controversial actor in the private military industry opens many important practical, theoretical and even philosophical questions. Deborah Avant observes: "The emergence of PMCs and PSCs relates to

¹²⁴ The presence of high-profile former CIA officials at Blackwater is nothing new. Ken Silverstein. "Revolving Door to Blackwater cause alarm at CIA". *Harpers Magazine*. 12 September 2006. <http://www.harpers.org/archive/2006/09/sb-revolving-door-blackwater-1158094722>. Scahill traces the career of Cofer Black in the CIA and his growing stature within the intelligence community, especially following his role in the capture of Carlos the Jackal in Khartoum in 1994. Black served as head of the CIA's Counter-Terrorism Center from 1999, and his most important self-proclaimed mission was penetrating Al Qaeda with hopes of capturing or killing Osama bin Laden. Following 9/11, Black oversaw the CIA's role in the invasion of Afghanistan and the overthrow of the Taliban, and (according to Scahill) enthusiastically managed the CIA's extraordinary rendition program. He left the CIA in May 2002, and then was appointed by George Bush as coordinator of counterterrorism efforts with the rank of Ambassador at large in the State Department. Following controversy concerning both the methodology and conclusions of his role in the overly optimistic publication *Patterns of Global Terrorism* in 2003, and with Osama Bin Laden still at large, in November 2004 Black resigned from the State Department. On 4 February 2005, Blackwater announced that Black had been hired as its vice-chairman. According to Scahill (p.279), "For Blackwater, hiring Cofer Black was an unbelievable score. In marketing terms, it would be almost impossible to rival." He goes on to note (pp.279-280) that "Few other Americans had their hands as deeply in the inner workings of U.S. covert operations in the post 9/11 world as Cofer Black. He soon would be acting as a godfather of sorts to the mercenary community as it refined its branding campaign."

¹²⁵ AP. "Inspector General Quits at State Department." *Associated Press*. 7 December 2007. <http://www.msnbc.msn.com/id/22150299/>

¹²⁶ The case is *Atban, et al. v. Blackwater USA, et al.* Center for Constitutional Rights. Current Cases. <http://ccrjustice.org/current-cases>. The CCR and other firms subsequently filed an additional suit on behalf of another man killed in a separate, earlier incident. Reuters. "Blackwater Accused of Another Civilian Killing in New LawsUIT, According to Legal Team for Family of Slain Baghdad Man." Reuters. 19 December 2007. <http://www.reuters.com/article/pressRelease/idUS212169+19-Dec-2007+PRN20071219>

¹²⁷ "Attorney Burke says this case is bigger than the four plaintiffs she is representing. "We are going to get at the internal corporate files, the e-mails, the memos to expose the corporate culture that is leading to all this death and destruction in Iraq," Burke says. "What these Iraqi families are doing is a civil service to all Iraqis because they don't want anyone else to be killed by Blackwater." Jeremy Scahill. "Iraqis Sue Blackwater for Baghdad Killings." *The Nation*. 11 October 2007 (web only). <http://www.thenation.com/doc/20071029/scahill>

¹²⁸ AFP. "Blackwater Key to US-Iraq talks: Ambassador." *Agence-France Presse*. 5 February 2008. <http://afp.google.com/article/ALeqM5ilUNEQogSdbXqib2VsaUTIQZOF4w> "The status and role of private security firms like Blackwater in Iraq is central to upcoming talks between Washington and Baghdad, Iraqi ambassador to the US Samir Sumaidaie said Tuesday. The future of such private security companies 'is one of the prime concerns that the Iraqis will put on the table', he told reporters in Washington. 'We want them to be accountable. Our position is that we want them to be accountable under Iraqi law.'"

enduring questions about the role of the state in the control of violence, specifically whether these firms “affect the ability to contain the use of force within political processes and social norms.”¹²⁹ Many observers wonder or even fear that modern society is dangerously near losing the laboriously achieved capacity to manage and regulate organized violence via the sovereign state. Regarding the principle and practice of governmental control of military forces, Singer notes that “since states started to replace rule by kings and princes in the 1600s, military services have been kept in the political realm under the control of the public sector.”¹³⁰ This concern relates not only to the legitimacy of states as such, but also as a means for humans to mediate and moderate violence among them. “The monopoly of states to control violence is a consequence of the realization that governance through states is the most effective means to place limits on the use of force.”¹³¹ From this perspective, this loss of institutionalized control over violence would be doubly damaging in that many states allow or even require a substantial degree of public input into governmental decisions to use force. Therefore, privatization undermines not only the state’s favored position as the sole legitimate mechanism of organized violence, but popular control over what is arguably the state’s most important function is eroded.

In the context of the Iraq war, the roles played by Blackwater and other contractors would inevitably result in the use of force by private actors operating outside of the painstakingly established, state-controlled, democratically accountable military structure. “The use of privatized policy agents circumvents time-tested congressional and public reviews that are integral to the democratic system of checks and balances in government.”¹³² David Isenberg argues (like many) that because the United States went to war in Iraq with too few forces for effective control of the country once Saddam’s government had been toppled, the coalition Provisional Authority (CPA) was compelled to rely on private contractors to provide security.¹³³ The position of the Bush administration and the CPA was that these contractors part of the “total force” of the US occupation, and thus not subject to the laws and regulations of the Iraqi government. However, it soon became apparent that the CPA lacked a comprehensive capability to oversee the activities of the dozens of firms and thousands of personnel. Oversight of the private security companies was diffused throughout the DoD and other government agencies the responsibility for regulating all contractors, with ineffective coordination and a marked lack of attention to the specific circumstances of the security firms. Ironically, therefore, the CPA and the DoD were caught unprepared to regulate and control the capabilities that they so sorely needed. “One of the benefits of involving the private sector is that it can scale up and adapt faster than the regular military; a problem confronted in Iraq, however, was that the Pentagon’s oversight mechanisms could not be scaled up quickly enough to keep pace.”¹³⁴

¹²⁹ Avant, p. 3.

¹³⁰ Singer, *Corporate Warriors*, p.8

¹³¹ Lehnardt, p. 157.

¹³² Singer, *Corporate Warriors*, pp. 212-213.

¹³³ David Isenberg. “A government in search of cover: Private military companies in Iraq.” pp. 82-93 in *From Mercenaries to Market. The Rise and Regulation of Private Military Companies*. Simon Chesterman and Chia Lehnardt (eds). Oxford University Press, 2007.

¹³⁴ Isenberg, p. 91.

Regarding oversight of private military firms by the governments that hire them, in his Chapter 10 *Contractual Dilemmas*, Peter Singer observes: "For governments, the public good and the good of the firm are not identical. Firms may claim they only act in their client's best interest, and that their staff (in some cases primarily retired military officials), are highly trustworthy. But the locus of judgments about military action has changed, as well has the underlying motives. Here the agents enact decisions crucial to the security of the principal."¹³⁵ Therefore, the contractual arrangements and especially the monitoring of performance by the principal are crucial to the effectiveness and efficiency of the arrangement. Not surprisingly, the principal (client) is at a substantial disadvantage to the PMF regarding the definition and measurement of contractual performance. The client, unwilling to or perhaps incapable of providing the service on their own, is dependent on the contractor. Singer argues that under battlefield exigencies, the client cannot readily renegotiate terms or switch providers, while the contractor enjoys substantial leverage in defining the terms of service and can more readily withdraw from the arrangement if conditions warrant.¹³⁶

The legal scholar Paul Verkuil agrees that privatization of government functions—even in the name of efficiency--often results in a loss of accountability for those policies.¹³⁷ Regarding the very substantial and numerous functions performed in the Iraq war and occupation by private military contractors such as Blackwater, Verkuil notes that "the United States went to war with a level of force that made private contractors necessary."¹³⁸ As to Blackwater's claim that it merely provides protection and thus acts only defensively, Verkuil observes: "Once the decision is made to permit the private military to enter the battlefield, combat support services devolve into combat services."¹³⁹ Inevitably, he argues, this reliance entailed contractor's performing functions normally and properly reserved for uniformed military, such as interrogations and operations involving the use of offensive force.

Many observers of the US occupation in Iraq wonder if the heavy reliance on private contracts was not merely a necessary but unintended consequence of underestimating the scale and duration of the task, nor a poorly implemented effort to save money through outsourcing. Instead, they see a deliberate attempt—in the case by the Bush administration and the CPA--to avoid the political responsibility and accountability that the use of uniformed military forces would have entailed. Lehnardt sees the logic this was: "If PMCs are a convenient tool to pursue foreign policy ends without the appearance of state involvement, the incentive for states to use PMCs to circumvent international obligations—or to save the costs of abiding by them—is apparent."¹⁴⁰ James Cockayne speculates that the absence of effective monitoring of PMCs by states means that "national executives may in fact see other benefits in PMC extra-territorial conduct being little-known at home. They may, in other words, see benefits in relying on

¹³⁵ Singer, *Corporate Warriors*, p. 151.

¹³⁶ Singer, *Corporate Warriors*, p. 151.

¹³⁷ Paul R. Verkuil. *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What We Can Do About it*. Cambridge University Press, 2007. Verkuil develops this theme applying political theory and case law to specific policy areas, including foreign and military policy.

¹³⁸ Verkuil, p. 29.

¹³⁹ Verkuil, p. 27.

¹⁴⁰ Lehnardt, p. 140.

the outsourcing of military tasks to private agents to reduce the control that other stakeholders—including democratic electorates—have over them.”¹⁴¹ Singer makes the same point: “Hiring private military firms as a substitute for official action gives a cover of plausible deniability that official forces now lack”, and observes that government officials may find them especially convenient in especially dangerous or potentially controversial situations.¹⁴²

What is To Be Done?

Given the increasing publicity concerning the actions of its personnel and the controversy over role of the company in the conduct of US foreign and military policy, what measures can be expected that might regulate Blackwater (and other PMCs) or bring it under some form of political control?

Cockayne and others look to legal action, especially private litigation, to eventually produce effective regulation of PMCs and their conduct. He argues that lawsuits and verdicts against PMCs could lead their shareholders and insurers to press for more effective supervision, perhaps in the form of an independent regulatory body sponsored by the industry itself. Others hope that recently passed legislation will resolve many of the legal issues by placing PMCs and their personnel under the same legal framework that already governs contractors for the military forces of the United States. Sponsored by Congressman David Price, Democrat representing North Carolina’s 4th legislative district (my own), HR 2740 extends the Military Extraterritorial Jurisdiction Act (MEJA) of 2000 to cover firms such as Blackwater.¹⁴³ The law would allow prosecution in US federal courts of illegal acts committed overseas by contractors, and seeks to fill a serious gap in US law regulating the conduct of Americans working in foreign combat zones.¹⁴⁴ The measure won enthusiastic support from the industry trade group, the International Peace Operations Association (IPOA), which in its press release noted:

IPOA has long supported effective oversight and accountability for the Peace and Stability Operations Industry. We believe that H.R. 2740 provides important

¹⁴¹ James Cockayne. “Make or Buy? Principal-agent theory and the regulation of PMCs.” pp. 196-216 in *From Mercenaries to Market. The Rise and Regulation of Private Military Companies*. Simon Chesterman and Chia Lehnardt (eds). Oxford University Press, 2007. p. 206. Cockayne further observes (p. 212): “Outsourcing foreign military and security assistance activities to PMCs thus risks lowering a corporate veil over matters that were previously subject to public scrutiny: what was political and public becomes economic and private, with the result that the costs of military operations can be more easily externalized.”

¹⁴² Singer, *Corporate Warriors*, p. 209. He goes on to note (p. 210): “Hence, the activities of PMCs often coincide with borderline situations in which official policy involvement is politically difficult.”... For example, if lives are lost or the mission fails, the political ramifications are muted when the policy agent is private, rather than public forces.”

¹⁴³ Congressman David Price. “House Passes Price Contractor Bill.” 4 October 2007. http://price.house.gov/list/press/nc04_price/100407.shtml

¹⁴⁴ Marcia Coyle. “Problems With Iraq Contractors Present Legal Puzzle.” *The National Law Journal*. 26 October 2007. <http://www.law.com/jsp/article.jsp?id=1193303020578>. Coyle interviews Iraq war veteran and international law attorney Philip Carter regarding the complexity of the issue: “McKenna's Carter compares the three key legal regimes that could provide criminal jurisdiction in private security contractor crimes to a Venn diagram of three circles that barely touch. The three are the Uniform Code of Military Justice (UCMJ), the Special Maritime and Territorial Jurisdiction (SMTJ) and the Military Extraterritorial Jurisdiction Act (MEJA). ‘Blackwater happened exactly on the seam of those three jurisdictional vehicles,’ Carter said.”

improvements to the Military Extraterritorial Jurisdiction Act which will enhance accountability for contractors working in support of U.S. efforts abroad. The contractor force has been an invaluable element providing capacity, expertise and cost effectiveness in support of U.S. diplomatic and military efforts throughout the world. Effective legal structures are necessary to ensure ethical operations in the field, and are not just valued by clients and local populations, but are also viewed as being in the long-term interest of our industry. IPOA member companies fully understand the importance that effective legal accountability brings to the larger mission as well as to their commercial and ethical reputations.¹⁴⁵

These sentiments were echoed by industry representatives at a recent trade conference in Dubai, who expressed support for US legislation rather than merely subjecting the companies to Iraqi law:

There is no other country in the world today where PSCs operate immune from local laws ... I'm certain that will change," said Timothy Mills, head of the American Chamber of Commerce of Iraq and a lawyer representing private security companies (PSCs) and the Iraqi government. ... "There have been no criminal prosecutions of ... a PSC employee or company in the United States ... It does speak to the need for reform in this area."¹⁴⁶

For its part, the Bush Administration was markedly less supportive, citing six specific objections to the proposed legislation, including the role of the FBI in investigating contractor misconduct and the 'burdens' that would be placed on DoD.¹⁴⁷ Currently, the legislation is stalled in the Senate, where Barack Obama has introduced a bill similar to Price's legislation, but it has yet to see action by committee. Perhaps predictably, the status of Blackwater and other PMCs in Iraq has become an issue in the Democratic presidential primary. Sensing that Obama's stated position in favor of regulation instead of elimination of contractors in the war zone might leave him vulnerable to criticism, Hillary Clinton issued a statement advocating that the company be banned from further work.¹⁴⁸ Some question not only her actual commitment to that position, but also fear that simply eliminating contractors from the war theater is not feasible. As David Isenberg observes regarding the controversy: "All realistic observers, even critical ones, of private military contractors know their use is not going away. So the issue is about regulating their use, not ending it."¹⁴⁹

¹⁴⁵ International Peace Operations Association. "IPOA formally endorses H.R. 2740." *IPOA Press Release*. 2 October 2007.

http://www.ipoaonline.org/php/index.php?option=com_content&task=view&id=155&Itemid=80

¹⁴⁶ Lin Noueihed. "Foreign Guards in Iraq work in Legal Grey Area." *Reuters*. 17 February 2008. <http://www.reuters.com/article/topNews/idUSL1769899820080217>

¹⁴⁷ Executive Office of the President. Office of Management and Budget. "Statement of Administration Policy: H.R. 2740—MEJA Expansion and Enforcement Act of 2007." <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr2740sap-h.pdf>

¹⁴⁸ Noah Shachtman. "Clinton, Obama Tussle Over Blackwater." *DangerRoom*. 29 February 2008. <http://blog.wired.com/defense/2008/02/just-as-blackwa.html>. See also Jeremy Scahill. "Obama's Mercenary Position." *The Nation*. Posted 27 February 2008. <http://www.thenation.com/doc/20080317/scahill>

¹⁴⁹ David Isenberg. "Dogs of War: Round Laws, Square Holes." *UPI*. 7 March 2008. http://www.upi.com/International_Security/Emerging_Threats/Analysis/2008/03/07/dogs_of_war_round_laws_square_holes/2633/print_view/

In the meantime, the company's troubles with Congress only continue to grow. Representative Henry Waxman, Democrat of California and Chairman of the House Committee on Oversight and Government Reform, has requested that the IRS investigate Blackwater's tax filings. Waxman claims that the company's position that its contractors are not employees is not only inaccurate but deliberately misleading, and that therefore Blackwater should have paid tens of millions of dollars in withholding taxes. Waxman has also asked the Small Business Administration to investigate Blackwater's winning over \$144 million contracts set aside for small businesses and erroneously awarded based on Blackwater's faulty claim that it has few permanent employees and hires contractors. And Waxman is asking the Labor Department to investigate what he sees as contradictory claims by Blackwater regarding the status of its workforce:

"When the issue is whether Blackwater can be held liable for the wrongful death of Blackwater guards, Blackwater argues that the guards are 'employees' and can recover only through the workers compensation system," Waxman wrote. "But when the issue is whether Blackwater must pay or withhold Social Security, Medicaid or other taxes for the guards, whether Blackwater is eligible for small business preferences in contracting, or whether Blackwater must comply with anti-discrimination rules, Blackwater calls these same guards 'independent contractors.' " ¹⁵⁰

Whatever the course of any eventual investigations or the outcome on the ongoing litigation, it is clear that Blackwater is squarely in the middle of a contentious and divisive debate about its very nature. The company's legal and public relations strategy so far has accomplished little except to intensify the controversy, and thus raise the stakes in political and legal battles that are potentially devastating to its current standing and future prospects as a major government contractor. Despite ongoing efforts to burnish its image¹⁵¹, Blackwater's relationship with the both the Congress and the public had grown increasingly contentious. If the past pattern is a reliable indication, we can only expect that trend to continue.

¹⁵⁰ Joseph Neff. "Blackwater Faces More Scrutiny." *News and Observer*. 11 March 2007.

<http://www.newsobserver.com/news/story/993728.html>. Neff provides links to Waxman's letters and other materials at his blog. "Blackwater Current." *News and Observer*. <http://blogs.newsobserver.com/blackwater/>

¹⁵¹ For example, the firm has its own parachute team that does jumps at public events around the country, complete with the Blackwater flag. See the Blackwater website, <http://www.blackwaterusa.com/parachute/aerial.asp>. Even the Blackwater logo has undergone recent modification. Paul Von Zielbauer. "Blackwater softens its logo from macho to corporate." *New York Times*. 22 October 2007.

http://www.nytimes.com/2007/10/22/business/media/22logo.html?_r=3&oref=slogin&oref=slogin&oref=slogin