

HEROES OR MERCENARIES?

Blackwater, Private Security Companies, and the U.S. Military

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In March 2004, four former American soldiers employed by the private security firm Blackwater USA were escorting delivery trucks through Fallujah, Iraq, when their vehicles were attacked. The Americans were killed, their bodies burned, mutilated, and then suspended from a bridge at the edge of town. The incident brought attention to the increase in the use of Private Military and Security Contractors (PMSCs) in military conflict zones. Over the next several years business for Blackwater and other PMSCs in Iraq boomed. At the same time public debate intensified over the appropriate role of PMSCs in military conflicts. The debates would come to a head following a 2007 incident in which Blackwater security contractors were implicated in firing on unarmed civilians in Baghdad, causing 17 deaths.

This case uses two widely publicized events in the Iraq war involving Blackwater USA to consider how private military contractors have influenced and have been influenced by changes in the organization and perceived mission of the U.S. Armed Forces.

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Introduction

The transport of kitchen equipment can be a routine task even in a war zone, if that transport occurs safely behind the battle line. As four men escorting trucks loaded with such equipment found out in early 2004 in Fallujah, Iraq, however, modern warfare is characterized by a blurring of the lines of engagement and the inability to clearly distinguish friend from foe. The men were killed, apparently in a planned attack, and images of their mutilated and burned bodies appeared for weeks in the media. The four men worked for Blackwater USA, a private military and security company (PMSC) that provides training and protection services for military and civilian customers. The four were among the 25,000 estimated personal security contractors working in Iraq for the Department of Defense, the State Department, and various government agencies and private firms.

In 2007, Blackwater personnel were involved in a second widely reported incident. Guards escorting a diplomatic convoy reportedly shot into a crowd in the streets of Iraq without provocation, killing 17. The international uproar that ensued brought into sharp focus the dramatic increase in the use of private military contractors in battle zones. This case study draws on these two incidents to examine the use of private service contractors in war zones and the organizational and institutional challenges this poses to military and civilian government leaders. It also considers how private military contractors have influenced and have been influenced by changes in the perceived mission of the U.S. armed forces.

Organizing the U.S. Military

The modern U.S. military is designed to serve a consultative function, offering advice and opinion to the executive and legislative branches which hold the power to declare and finance war. This particular structuring of civil-military relations explicitly addresses the tension that arises from the need to maintain “a military strong enough to do anything the civilians ask them to do [while ensuring] a military subordinate enough to do only what civilians authorize them to do.”¹ Political scientist Peter Feaver notes,

The military can say we need such and such level of armaments to have a certain probability of being able to defend successfully against our enemies, but only the civilian can say what probability of success society is willing to pay for. The military can describe in some detail the nature of the threat posed by a particular enemy, but only the civilian can decide whether to feel threatened and so how or even whether to respond. The military quantifies the risk, the civilian judges it.²

The modern U.S. military framework emerged from the National Security Act of 1947 which merged the previous cabinet-level Departments of War and of the Navy into a single Department of Defense (DoD). The DoD is headed by a civilian member of the cabinet, the Secretary of Defense. Donald Rumsfeld served as the Secretary of Defense in the early 2000s. The President of the United States and Secretary of Defense are the head and second-in-command of the military, respectively, and they are advised by a six-member Joint Chiefs of Staff comprised of the heads of each DoD service branch.

The contemporary model of military organization assumes that the legitimate use of force is only exercised by nation-states, that the military is subservient to civilian decision-making, and that the soldier engaged in warfare

1 Feaver, Peter D. 1996. “The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control.” *Armed Forces & Society* 23: 149-178. Page 149.

2 Ibid. Page 154.

is driven primarily by a sense of duty and honor, not wages or the opportunity to pillage.³ This sense of duty to the mission and to the nation is widely considered as one of the strengths of military organization, creating a strong identification with the organization and making soldiers willing to kill and to be killed. Economists and psychologists have pointed to military training and the strong identity it creates as a model for other organizations. Such training shapes soldiers “so [that] they will think of themselves, above all else, as officers in the U.S. Army. They will feel bad about themselves—they will lose utility—if they fall short of the ideals of such an officer.”⁴

In addition to inculcating a deep sense of duty, scholars argue that the existence of citizen-armies serves as a check on the propensity of the military (and civilian decision-makers) to engage in conflicts. Citizens will likely be more cognizant of the negative outcomes of war and more critical of engagement in conflict if they are potential combatants or know or are related to individuals who may serve and die in these conflicts.⁵

Old Wars and New Wars

From the end of WWII through the late 1980s, U.S. military strategy was defined by the Cold War and an objective of strategic deterrence, with a large standing army positioned in critical geographic areas around the world. With the collapse of the Soviet Union in the early 1990s, the U.S. Armed Forces reevaluated the need for a large globally-deployed force. Between 1988 and 1998, 97 military bases were closed, and the active duty force dropped from 2.1 million to 1.4 million.

At the same time that U.S. forces have been downsized, however, expectations and demands on the military have arguably increased. The Army, for example, has been called on to monitor the Mexican border and to engage in disaster relief operations. Throughout the mid- and late 1990s, U.S. forces were deployed to new missions in the Persian Gulf, Somalia, Haiti, and the Balkans. Pressure on forces increased exponentially with the advent of the “Global War on Terror” following the bombings of New York’s World Trade Center in 2001. While some claim that the downsizing has created a more efficient force, others argue that the armed forces’ jurisdiction has been expanded too much in contrast to reductions in its resources.^{6, 7}

Changes in the nature of the threat to national security suggest to some that there has been a qualitative shift in the practice of warfare. The “old wars” that occurred between nations driven by ideological and political motives and carried out along identifiable front lines of conflict have been replaced by “new wars,” characterized by numerous low-level conflicts with no clearly delineated front line of combat and an inability to draw a clear distinction

3 Historically speaking, the model of a mass army of citizen soldiers controlled by the state is a fairly new development. Prior to the 16th century, armed conflict often occurred between armies hired by local and regional warlords and large landowners. The individual mercenary plied his trade as any other craftsman, trading a specialized set of skills and equipment for a price. The change from a mercenary to a citizen army was prompted both by the rise of the nation-state as the model of political organization and by technological changes, in particular advancements in firearms that made a mass army consisting of large numbers of relatively untrained fighters more effective than small bands of highly trained fighters. Maintaining a national standing army was also more cost-effective than repeatedly disbanding and reforming forces when needed. For a history of private actors in warfare, see Chapter 2, pages, 19-39 in Singer, P.W. 2003. *Corporate Warriors: The Rise of the Privatized Military Industry*. 2003. Ithaca and London: Cornell University Press.

4 Akerlof, George A., and Rachel E. Kranton. 2005. “Identity and the Economics of Organizations.” *Journal of Economic Perspectives* 19(1): 9-32. Page 11.

5 Percy, Sarah. 2007. “Morality and Regulation.” Pps. 10-28 in *From Mercenaries to Market: The Rise and Regulation of Private Companies*. Edited by Simon Chesterman and Chia Lehnardt. Oxford: Oxford University Press.

6 Bruner, Edward F. *Military Forces: What is the Appropriate Size for the United States?* CSR Report for Congress. Order Code RS21754. Page 1. Accessed 7/10/2010 from: <http://www.fas.org/man/crs/RS21754.pdf>

7 Snider, Don M. and Gayle L. Watkins. 2000. “The Future of Army Professionalism: A Need for Renewal and Redefinition.” *Parameters, Autumn*: 5-20.

between civilians and combatants.⁸ Contemporary warfare may demand a new kind of military—one with the “strategic agility” to rapidly assess situations and deploy equipment and highly-trained personnel. But with the standing army leaner and demand for forces in low-level conflicts up, troops are likely to receive less training before deployment than previously. The result, say critics, is that “the army [has become] increasingly unable to accomplish professional tasks, meet its own professional standards, and acquire adequate resources to accomplish the tasks expected of it now while simultaneously preparing for the future.”⁹

One means to modernize and reform the military has been to adopt management strategies from the business world. Trends in business management have worked themselves into the nomenclature of military operations, with leaders prompted to adopt a less hierarchical structure, to employ teams that make decisions independently on the ground, and to be connected through “network-centric” warfare.¹⁰ The active, entrepreneurial business corporation has been contrasted to the stodgy, slow, and passive military organization. A 1996 DoD report titled “Improving the Combat Edge Through Outsourcing” noted the following:

Like the best companies and organizations in the U.S., the DoD has embarked on a systematic and vigorous effort to reduce the cost and improve the performance of its support activities through outsourcing, privatization, and competition.¹¹

The downsizing that took place through the reduction of forces and base closures in the late 1980s and 1990s fit within the corporate-management meme. And the shortages of highly trained troops could be rectified by following the strategy of corporate America—outsourcing. By outsourcing the logistical “tail” the military could free-up more military personnel to concentrate on the armed forces’ “core competency”: fighting. While outsourcing work to the private sector was not a new phenomenon, the types of contracting and the extent to which private contractors would be employed set the stage for active debates on their use in battle zones.

Military Contracting

Dating from the American Revolution, private contractors have routinely provided transportation and skilled and unskilled labor to the military. Congress passed legislation to guide military procurement in 1798, making these contracts subject to competitive bidding.¹² In 1955, the Eisenhower administration encouraged federal agencies to rely on the private sector as a means to use resources more efficiently and to limit the expansion of government. The Office of Management and Budget (OMB) provided written guidance in Circular A-76 in 1966, which

8 In a 2010 review article, Cello identifies the following as characteristics of the “new war”: the erosion of the state’s monopoly on the use of force; a new political economy of war, where new wars are driven by primarily economic rather than ideological aspirations; asymmetry among opponents, where more than two opponents can engage in not only military skirmishes, but also a psychological battle to exhaust the enemy in prolonged conflicts; emergence of primarily identity-based wars, with conflict grounded in ethnic, racial and religious antagonisms; and the emergence of terrorism as a strategy of politics and of war. Cello, Patrick A. 2010. “In Search of New Wars: The Debate about a Transformation of War.” *European Journal of International Relations* 16:297-309. See also Kaldor, M. 1999. *New and Old Wars: Organized Violence in a Global Era*. Stanford: Stanford University Press. For criticisms of the distinction between “old” and “new” wars, see Kalyvas, SN. 2001. “‘New’ and ‘Old’ Civil Wars. A Valid Distinction?” *World Politics* 54: 99-118.

9 Snider, Don M. and Gayle L. Watkins. 2000. “The Future of Army Professionalism: A Need for Renewal and Redefinition.” *Parameters*, Autumn: 5-20.

10 Cebrowski, Arhtur K., John J. Garstka. 1998 “Network-Centric Warfare: Its Origin and Future.” *U.S. Naval Institute Proceedings* 124(1): 28-35. “The organizing principle of network-centric warfare has its antecedent in the dynamics of growth and competition that have emerged in the modern economy. The new dynamics of competition are based on increasing returns on investment, competition within and between ecosystems, and competition based on time.” Also see Dandeker, Chrisopher. 1994. “New Times for the Military: Some Sociological Remarks on the Changing Role and Structure of the Armed Forces of the Advanced Societies.” *British Journal of Sociology* 45(4): 637-654.

11 Section reproduced in Stanger, Allison. 2009. *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy*. New Haven and London: Yale University Press. Page 86.

12 Kidwell, Deborah. 2003. *Private War, Public Fight? The United States and Private Military Companies*. Fort Leavenworth, Kansas: Combat Studies Institute Press. Page 11. Accessed on July 6, 2010 at <http://www.cgsc.edu/carl/download/csipubs/kidwell.pdf>.

institutionalized a system of public/private competition for military products and services.¹³ Competition was encouraged among the armed forces and between the armed forces and private companies.¹⁴ In supplements to this circular, OMB clarified that jobs that were “inherently governmental” because they were “intimately related to the public interest” and should not be outsourced to the private sector.¹⁵

The relative proportion of private contract personnel compared to members of the armed forces steadily increased over the next three decades. Private contractors’ share of all defense-related jobs rose from 36% in 1972 to 50% in 2000. Rapid growth occurred between 2002 and 2005 when the number of DoD contract employees increased from 3.4 to 5.2 million. As has been pointed out by both opponents and supporters of contracting, no proportional increase was made in the number of DoD personnel charged with overseeing contracts.¹⁶

Three broad categories of private force can be distinguished: (1) mercenaries, individual soldiers who fight for a state other than their own or for a non-state entity for financial gain; (2) combat PMSCs, companies with corporate structures that provide military services, including combat for payment; and (3) non-combat PMSCs, corporate organizations that provide military services that stop short of combat for payment. There are currently no combat PMSCs that operate openly in the international market.¹⁷ The remainder of this case study limits its scope to a consideration of non-combat PMSCs.

PMSCs provide a range of functions that have traditionally been performed by the military or police, including the protection of diplomatic, military, business, and humanitarian personnel in conflict zones, the provision of detention services; military training; counterinsurgency; intelligence operations; and training of indigenous security forces.¹⁸ Contractors are increasingly employed in technical support, responding to the need for highly trained experts to install, maintain, troubleshoot, and operate complex weapons and intelligence systems.^{19,20} The number of

13 Isenberg, David. 2007. “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 Companies*. Edited by Simon Chesterman and Chia Lehnardt. Oxford: Oxford University Press.

14 Some studies indicate it is competition that produces savings and not outsourcing, and this competition can be achieved through competition among the armed services or units within one branch. See Trunkey, Derek, Robert Trost, & Christopher M. Snyder. 1996. *Analysis of DOD’s Commercial Activities Program*. CRM 96-63. Alexandria, VA: Center for Naval Analyses.

15 Congressional Budget Office. 2008. *Contractors’ Support of U.S. Operations in Iraq*. Accessed June 1, 2010 at <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>

16 This document is widely referred to as The Gansler Report. *Urgent Reform Required: Army Expeditionary Contracting*. 2007. Report of the Commission on Army Acquisition and Program management in Expeditionary Operations. Downloadable at: http://www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf. See also, Stanger, Allison. 2009. *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy*. New Haven and London: Yale University Press. Pages 87-89. Also see the July, 2010, *The Washington Post* series, *Top Secret America*: <http://projects.washingtonpost.com/top-secret-america/articles/>

17 Percy, Sarah. 2007. “Morality and Regulation.” Pps. 10-28 in *From Mercenaries to Market: The Rise and Regulation of Private Companies*. Edited by Simon Chesterman and Chia Lehnardt. Oxford: Oxford University Press. Percy notes that Blackwater may be the emerging exception, as it has recently suggested that it could provide peacekeeping services to the UN or other international organizations, and peacekeeping could involve actions resembling combat.

18 Cockayne, James. 2009. *Beyond Market Forces: Regulating the Global Security Industry*. New York: International Peace Institute. Pages 16-17.

19 One indication of the degree of legitimacy afforded PSMCs are the industry associations that have developed, the largest being The British Association of Private Security Associations and the U.S. International Peace Operations Association (IPAO). IPAO was founded in Sept 2001 and began issuing annual reports in 2007. In 2009, while keeping the IPAO name, it began referring to itself as the Association of the Stability Operations Industry. IPAO has a code of conduct and a list of member organizations which include such PMSC giants as Dyncorp and Triple Canopy. Blackwater USA withdrew from the IPAO after the latter initiated an independent review into whether the company’s processes and procedures were in accordance with IPAO’s Code of Conduct. It is important to note that the code and nominal monitoring of member organizations carries no legal weight. See: Elsea, Jennifer K., Moshe Schwartz, and Kennon H. Nakamura. 2008. “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues.” *Congressional Research Service*. August 25, 2008.

20 Landler, Mark, and Mark Mazzetti. 2009. “U.S. Still Using Security Firm it Broke With.” *The New York Times* (August 22, 2009). See also: Markusen, Ann R. 2003. *The Case Against Privatizing National Security*.” *Governance* 16(4): 471-501. Kidwell, Deborah. 2003. *Private War, Public Fight? The United States and Private Military Companies*. Fort Leavenworth, Kansas: Combat Studies Institute Press. Accessed on July 6, 2010 at <http://www.cgsc.edu/carl/download/csipubs/kidwell.pdf>.

contracted personnel increased exponentially from the first Gulf War in 1991 through 2007. In 1991, the ratio of private contractors to military personnel in Gulf conflicts was 1:60. By 2003, the proportion had shifted to one out of three.²¹ By 2007, the number of private contractors in Iraq was approximately equal to the number of troops.²²

From a cost standpoint, contractors may make a good deal of sense. A 2008 Congressional Budget Office report indicated that the cost of a private security contract, like those provided by Blackwater, are comparable to those of a U.S. military unit performing similar functions, but they offer the advantage that during peacetime the contract would not have to be renewed.²³ Supporters of the increased use of contracting note that contractors increase the military's total force capability while freeing up uniformed personnel for combat missions. Contractors can also be hired more quickly than can new soldiers. And because many, if not most, PMSC employees have previously served in the military, contracted individuals can provide highly-trained individuals who already have expertise in specialized fields. Because of these advantages supporters point to the U.S. military's use of contractors as providing a competitive strategic edge over adversaries. The availability of global transport, information management, and marketing technologies has also facilitated the use of PMSCs.²⁴

Critics note that cost estimates do not reflect differences in quality and effectiveness that may distinguish private from military operations, nor do estimates include the additional costs of managing the contract and supervising contract personnel. Also not included are the substantial political costs that may result when a contracted task goes wrong (as the 2007 Nisoor Square incident exemplified, see below). Contractor personnel are potentially subject to a number of laws and jurisdictions, but there have been few tests in courts of how those laws apply to contractors. Military and social science scholars also point to the damage that outsourcing can inflict on the identity of the citizen-soldier, including the weakening identification between military service and a sense of duty. Finally, scholars note the potential for subversion of the civilian legislative authority over the funding of military engagement. Through contracting, the military (with approval from the executive branch) can contract military operations without the explicit approval of Congress.²⁵ An additional complication is the uncertain legal status of contractors. This status is most uncertain for PMSC employees who work for the U.S. State Department and other non-military entities.²⁶

PMSCs in Iraq

Between 2003 and 2007, spending on private security and law enforcement contractors in Iraq increased from \$1 billion to \$4 billion annually, with an estimated 80% of this type of contract held by the State Department.²⁷ In

21 Scahill, Isenberg, D. 2007. "A Government in Search of Cover: Private Military Companies in Iraq." In Chesterman, S. and Lehnardt, C. Eds, *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*. Oxford: Oxford University Press. Page 147.

22 Schwartz, Moshe. 2009. *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*. Congressional Research Service. Accessed July 1, 2010 at: www.fas.org/sgp/crs/natsec/R40764.pdf.

23 Congressional Budget Office. 2008. *Contractors' Support of U.S. Operations in Iraq*. Accessed June 1, 2010 at <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>. U.S. GAO. 2010. *Warfighter Support: A Cost Comparison of Using State Department Employees versus Contractors for Security Services in Iraq*. March 4, 2010. GAO-10-266R.

24 Avant, D. *The Market for Force: The Consequences for Privatizing Security*. Cambridge: Cambridge University Press. Cockayne, James. 2009. *Beyond Market Forces: Regulating the Global Security Industry*. New York: International Peace Institute. Cutler, A. Claire. 2010. "The Legitimacy of Private Transnational Governance: Experts and the Transnational Market for Force." *Socio-Economic Review*, 8: 157-185.

25 Avant, Deborah. 2004. "The Privatization of Security and Change in the Control of Force." *International Studies Perspectives* 5: 153-157. See also: Singer, P.W. 2003. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, NY: Cornell University Press.

26 Complicating the matter, it is often difficult to trace lines of accountability between the contracted employee and the entity that directs the employee. Many security employees are subcontracted, adding layers that make accountability for actions difficult to trace. See Stanger, Allison. 2009. *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy*. New Haven and London: Yale University Press. Page 104.

27 Raghavan, Sudarsan, and Thomas E. Ricks. "Private Security Puts Diplomats, Military at Odds." *The Washington Post* (September 26, 2007). Schwartz, Moshe. 2009. *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*. Congressional Research Service. Accessed July 1, 2010 at: www.fas.org/sgp/crs/natsec/R40764.pdf.

2007, 80% of the private security personnel employed by the State Department worked for Blackwater. Security tasks included guarding the movement of diplomats and other State Department personnel and the protection of fixed facilities. Much of this security work had formerly been provided by the U.S. Marine Corps.²⁸

Because the DoD does not oversee the State Department's security contracts, and thus DoD rules for licensing, oversight, and incident reports (required when weapons are discharged) do not apply to State Department contract employees, the legal status of these employees has been particularly uncertain. To provide protection to contractors, Paul Bremer, who headed the Coalition Provisional Authority and as such was the top civilian administrator in Iraq from 2003-2004, issued Order 17 in April 2004. The order gave immunity to security companies and their employees for violations of Iraqi law. In one sense, this provided the same types of protection to PMSC employees as those held by soldiers (e.g., protections afforded military combatants). PMSC employees, however, are not required to follow military rules and laws which hold soldiers to account for their actions.

Blackwater USA

Erik Prince and Al Clark, two former Navy SEALs, founded Blackwater USA in 1992. Prince financed the operation and continued as CEO until resigning in March 2010. Prince and Clark hoped to take advantage of a shortage in military, police, and private security training facilities, a shortage partially attributable to declines in defense spending and base closures.

By 1998, Blackwater had a 9,000 square-foot lodge with conference space, classrooms, and training areas situated on 7,000 acres in rural northeastern North Carolina. After the Columbine High School shooting in Littleton, Colorado, Blackwater added a 15,000 square foot mock school for police SWAT team training. While steadily gaining customers from both the private and public sectors, the company saw a major boost in demand for training following the September, 2001, World Trade Center attacks. In 2002, the company added a security consulting unit to provide private protection for buildings and individuals, both civilian and military. Over time Blackwater's additional capabilities came to include a private fleet of more than twenty aircraft, including helicopter gunships and surveillance blimps.²⁹

A general statement of the company's overall mission is given on Blackwater's (renamed Xe Services in 2010) main web page:

As a professional organization operating in the defense, training, logistics, retail and intelligence spaces, Xe Services, LLC, prides itself on providing our customers with world-class performance. We are the quiet and dedicated professionals serving the government, commercial and civilian markets.³⁰

The company also notes that in over 40,000 completed missions it has not experienced "a single loss of life or serious injury to our clients, [although] 35 brave professionals of our own have lost their lives protecting the liberty of others."

28 Total contract spending from U.S. government agencies to contractors working in Iraq between 2003 and 2007 totaled \$63 billion. Of the total, \$54 billion derived from the Department of Defense, with the remainder from the Department of State, USAID, and other agencies. Between \$6 and \$10 billion was used to contract security personnel to protect individuals, buildings, and materials in transport. In 2007, an estimated 25,000 employees of private security contractors were in Iraq working for the U.S. military, U.S. and Iraqi governments, and other governments, businesses, and non-governmental organizations. Congressional Budget Office. 2008. *Contractors' Support of U.S. Operations in Iraq*. Accessed June 1, 2010 at <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>. Broder, John M. & David Rohde. 2007. "State Department Use of Contractors Leaps in 4 Years." *The New York Times* (October 24, 2007).

29 The emergence of Blackwater is chronicled in numerous press reports and two books: Scahill, Jeremy. 2007. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. New York: Nation Books. Collins, Suzanne. 2009. *Masters of War: Blackwater USA's Erik Prince and the Business of War*. New York: Harper.

30 This text is drawn from the company's current website, which reflects Blackwater's name change to Xe Services. <http://www.xecompany.com>.

By 2007, Blackwater had 2,300 employees deployed in nine countries and a database of 21,000 former Special Forces troops, soldiers, and retired law enforcement agents from which it could draw for its training and security contracts. Former CIA and Pentagon officials also populated the management ranks at Blackwater headquarters. Robert Richer became the firm's Vice President of Intelligence after resigning his position as Associate Deputy Director of Operations at the CIA in the fall of 2005. That same year J. Cofer Black, a 28-year veteran of the Central Intelligence Agency and former Director of the CIA's Counterterrorist Center, became the company's Vice Chairman.

Blackwater's work in Iraq began in mid-2003, with a \$27 million no-bid contract to guard Paul Bremmer, the State Department official charged with administering the Iraqi reconstruction after the 2003 invasion.³¹ Blackwater supplied 36 "personal protection" specialists, two K-9 teams, and three helicopters with pilots. A year later, the State Department expanded the contract to \$100 million.³² By 2007, Blackwater employed 845 of the 1,100 private security contractor personnel who worked for the State Department in Iraq.³³ By this time Blackwater had also successfully negotiated contracts for work in Afghanistan. Its contract to supply personal security to American diplomats in Afghanistan runs from 2006-2011 and is valued at \$210 million.³⁴

Crisis in Fallujah—March 31, 2004

On the morning of March 31, 2004, four Blackwater security contractors in two jeeps were escorting a delivery truck of kitchen equipment from one military base to another. All four men were American and former soldiers. As they drove through the center of the city of Fallujah, they ran into a road block that had been created earlier in the day by explosions set by Iraqi mujahedeen. The men were assailed by grenades and gunfire, their vehicles and bodies burned, and their mutilated remains hung from a nearby bridge. Images of that scene played on TV stations throughout the Muslim and Western world over subsequent weeks.

In the days following the attack, Paul Bremer, head of the Coalition Provisional Authority charged with overseeing reconstruction after the invasion, reportedly told Lt. Gen. Ricardo Sanchez, the commander of U.S. forces in Iraq, "We've got to react to this outrage or the enemy will conclude we're irresolute."³⁵ While local Marine commanders wanted to treat the killings as a law enforcement issue and work to apprehend the particular attackers, Secretary of Defense Rumsfeld pushed to attack the city.³⁶ The siege of Fallujah began on April 4, 2004. The mission was ultimately aborted when U.S. troops met strong resistance. A second siege and then capture of the city took place in November of that year.

Blackwater found itself subject to intense scrutiny in the weeks following the incident, with most of the assessments positive rather than critical. Early reports described the men as "civilians," with sympathy directed toward the families. To deal with the increased publicity, Blackwater hired the D.C. lobbying firm Alexander Strategy Group. Within a few weeks Erik Prince met with senior members of the Senate Armed Services Committee, including Senator John Warner, the committee's chairman.³⁷ Blackwater also released the following statement to the press:

31 Urgency is the reason most often sighted when government contracts are awarded under non-competitive (no-bid) conditions.

32 Broder, John M. and David Rohde. 2007. "State Department Use of Contractors Leaps in 4 Years." *The New York Times* (October 24, 2007).

33 Ibid.

34 Landler, Mark and Mark Mazzetti. 2009. "U.S. Still Using Security Firm it Broke With." *The New York Times* (August 22, 2009).

35 Scahill, Jeremy. 2007. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. New York: Nation Books. Page 107.

36 Ibid. Pages 113-114.

37 Warner later said that he considered private military companies as "our silent [partners] in this struggle." Ibid. Page 153.

The graphic images of the unprovoked attack and subsequent heinous mistreatment of our friends exhibits the extraordinary conditions under which we voluntarily work to bring freedom and democracy to the Iraqi people.³⁸

At the time Blackwater was generally perceived to be simply doing its job in Iraq, and its four lost employees regarded as an unfortunate byproduct of working in a highly dangerous situation. A congressional report which summarized the findings of hearings on the incident, however, found troubling lapses in company oversight and forthrightness:

The details of the events leading to the incident are disturbing, revealing an unprepared and disorderly organization operating in a hostile environment. Mistake apparently compounded mistake... Blackwater took on the Fallujah mission before its contract officially began, and after being warned by its predecessor [the prior delivery company] that it was too dangerous. It sent its team on the mission without properly armored vehicles and machine guns. And it cut the standard mission team by two members, thus depriving them of rear gunners. Blackwater took all of these actions before sending the team into an area known to be an insurgent stronghold. These actions raise serious questions about the consequences of engaging private, for-profit entities in essentially military operations in a war zone. Blackwater also consistently delayed and erected impediments to the Committees' (Committee on Oversight and Government Reform, U.S. House of Representatives) investigation, using tactics such as erroneously claiming that documents relating to the Fallujah incident were classified, seeking to have the Defense Department retroactively classify previously unclassified documents, and asserting questionable legal privileges."³⁹

Some of the relatives of the four men killed in the 2004 incident have tried to bring civil suits against Blackwater, claiming that the company was negligent in the protection of employees. Blackwater has responded that its guards were "performing a classic military function—providing an armed escort for a supply convoy under orders to reach an Army base—with an authorization from the Office of the Secretary of Defense." Based on this, Blackwater argued it could not be held responsible for the deaths. "Any other result would amount to judicial intrusion into the President's ability to deploy a Total Force that includes contractors."⁴⁰

Crisis in Nisoor Square, Baghdad, September 16, 2007

On September 16, 2007, Blackwater security guards were escorting a convoy of U.S. State Department vehicles through Baghdad. Blackwater guards recalled in interviews after the incident that they were threatened by and fired on a vehicle that failed to stop as the convoy was entering a traffic circle. An Iraqi investigation into the shooting concluded that a Blackwater guard shot without provocation into a car that did not stop quickly enough, killing the driver, a passenger, and a baby. More shots were fired, and a total of 17 Iraqis were killed.

In the days after the incident Prime Minister Nuri Kamal al-Maliki stated that the shooting of civilians in Nisoor Square posed "a challenge to the sovereignty of Iraq." The Iraqi cabinet quickly drafted legislation that would

38 Gilmore, Gerry J. 2004. "U.S. Firm Mourns Slain Employees." *American Forces Press Service*. (April 2, 2004). Accessed June 15, 2010 at <http://www.defense.gov/news/newsarticle.aspx?id=26932>

39 U.S. House of Representatives, Committee on Oversight and Government Reform. Prepared for Chairman Henry A. Waxman. "Private Military Contractors in Iraq: An Examination of Blackwater's Actions in Fallujah." September 2007. Accessed June 21, 2010: <http://www.c-span.org/pdf/blackwater100207.pdf>.

40 Blackwater appellate brief, filed October 31, 2005, from page 233 in Scahill, Jeremy. 2007. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. New York: Nation Books. Collins, Suzanne. 2009.

overturn Order 17 and . Blackwater’s license to operate in Iraq was revoked.^{41, 42} Blackwater resumed guarding U.S. envoys, however, a few days after the Nisoor event because the company was relied upon so heavily for personnel and facility security.⁴³

Following the shooting and political uproar U.S. military officials were reported to have pressed State Department officials to assert more control over Blackwater. “This is a nightmare,” said a senior U.S. military official... This is going to hurt us badly. It may be worse than Abu Ghraib, and it comes at a time when we’re trying to have an impact for the long term.” Another U.S. military official noted:

“This is a big mess that I don’t think anyone has their hands around yet. It’s not necessarily a bad thing these guys are being held accountable. Iraqis hate them, the troops don’t particularly care for them, and they tend to have a know-it-all attitude, which means they rarely listen to anyone—even the folks that patrol the ground on a daily basis.”⁴⁴

The guards involved in the shooting were flown out of the country. Subsequent U.S. investigations into the incident confirmed that the Blackwater employees were at fault, and five were charged with manslaughter. Those charges were dismissed in December 2009, by a federal judge who cited misuse of the employees’ statements, a violation of their constitutional rights. The U.S. Justice Department is appealing this ruling.⁴⁵

Post-script

In June, 2009, Xe Services (formerly Blackwater USA) was put up for sale by owner and CEO Erik Prince.⁴⁶ In the same month, Xe won two new contracts in Afghanistan: \$100 million to guard CIA facilities and \$120 million to guard American consulates.⁴⁷

Private Military and Security Companies continue to work in Iraq, and their proportional share in Afghanistan is even larger—as of the end of 2009, contractors made up 62% of the Department of Defense workforce there. PMSCs are considered integral parts of the military force. As noted in the 2008 National Defense Strategy Quadrennial Defense Review (described as a “high-level strategy document that supports the Administration’s National Security Strategy”), contractors are considered an element of the military’s Total Force:

“The Total Force distributes and balances skills across each of its constituent elements: the Active Component, the Reserve Component, the civilian workforce, and the private sector and contractor base.”⁴⁸

41 Rubin, Alissa J. and Andrew E. Kramer. 2007. “Iraqi Premier Says Blackwater Shootings Challenge His Nation’s Sovereignty.” *The New York Times*. (September 24, 2007).

42 These demands by the Iraqis following the Nisoor square incident were folded into negotiations and eventual provisions in the Status of Force Agreement negotiated from October 2007 to October 2008 and described in the Post-Script section of this case.

43 Kramer, Andrew E. 2007. “Blackwater Resumes Guarding U.S. Envoys in Iraq.” *The New York Times* (September 22, 2007).

44 Raghavan, Sudarsan, and Thomas E. Ricks. “Private Security Puts Diplomats, Military at Odds.” *The Washington Post* (September 26, 2007). Also see CSR report, page 13: Elsea, Jennifer K., Moshe Schwartz, and Kennon H. Nakamura. 2008. “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues.” *Congressional Research Service*. August 25, 2008.

45 Shadid, Anthony. 2010. “Biden Says U.S. Will Appeal Blackwater Case Dismissal.” (January 24, 2010). *The New York Times*. In a separate inquiry in April 2010, five former senior executives at Blackwater were charged with weapons violations and making false statements—this was with regard to weapons held at Blackwater’s NC headquarters. [period correct there?] Risen, James, and Mark Mazzetti. 2010. “U.S. Indicts 5 Blackwater Ex-Officials.” *The New York Times* (April 16, 2010). The Justice Department has also opened an inquiry into whether Blackwater officials sought to bribe Iraqi government officials in order to continue to operate in Iraq after the 2007 shooting.

46 Risen, James. 2010. “Founder Puts Blackwater Security Firm Up for Sale.” *The New York Times* (June 8, 2010).

47 Ackerman, Spencer. 2010. “What Would it Take to Get Xe Fired.” *The Economist*. (June 24, 2010).

48 Department of Defense, National Defense Strategy, June 2008 page 19, as quoted in Schwartz, Moshe. 2009. *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*. Congressional Research Service. Accessed July 1, 2010 at: www.fas.org/sgp/crs/natsec/R40764.pdf. Page 19.

A number of government review committees were established after the shootings. Findings by the most well-known of these, the Gansler Commission Report, cited numerous instances of corrupt activity related to contracting, most involving bribery. The report strongly recommended better support for the military acquisition process (of which outside contracting is a component), stating that an area critical to future success was to “increase the stature, quantity, and career development for contracting personnel.”⁴⁹ The findings of the commission led then Secretary of the Army Pete Geren to note, “Contracting and procurement must be an Army core competency.”⁵⁰ Subsequent to the recommendation, in October 2008, the Army Contracting Command was established as a major subordinate command of the U.S. Army Material Command.⁵¹

The General Accounting Office made similar recommendations in a report dated September 2007, calling for the State Department and the Department of Defense to strengthen the oversight and coordination of PMSC’s in Iraq. A 2008 update indicated that the DoD and the Department of State had increased the number of personnel in Iraq assigned to provide oversight, but that the increase came at the expense of staffing elsewhere—it happened by shifting existing oversight personnel from other locations in Iraq. A second key recommendation encouraged greater coordination of PMSC movements in Iraq. In response, daily briefings were initiated among the DoD, the State Dept, the Iraqi government, and the PMSC community.⁵² To increase the flow of information on contracted personnel between the DoD and Department of State, the two signed a memorandum of agreement to “jointly develop policies and procedures for vetting, training, and using [PMSC] personnel.” In addition, movements of PMSC personnel were to be provided in advance to the appropriate military commanders.⁵³

Changes have also been made in laws and in the application of existing laws to PMSCs. These laws hold contractor employees accountable for their actions in Iraq, including accountability to U.S. criminal laws, the Military Extraterritorial Jurisdiction Act, and the Uniform Code of Military Justice.⁵⁴ In late 2008 the U.S. and Iraq signed a Status of Forces Agreement (SOFA)—a type of executive agreement between countries that establishes the framework under which armed forces are to operate within a foreign country. SOFA’s are typically peacetime documents that address the legal protection U.S. personnel have when operating in a foreign country. SOFAs are not legally binding and can be canceled by either party to the agreement at any time.⁵⁵ The SOFA between the U.S. and Iraq designated that Iraq maintains exclusive criminal and civil jurisdiction over U.S. contractors and their employees. However, as defined in the agreement, this only applies to contractors that are operating under a contract/subcontract with or for the United States Armed Forces. Therefore, U.S. contractors operating in Iraq under contract to other U.S. departments or agencies are not necessarily subject to the terms of the SOFA.⁵⁶ The legal status and rules that apply to PMSCs are further complicated by the fact that private security personnel under contract with the State Department who are assigned to protect embassy personnel would likely be considered

49 Commission on Army Acquisition and Program Management in Expeditionary Operations. *Urgent Reform Required: Army Expeditionary Contracting*. (October 31, 2007). This report is also widely known as The Gansler Commission Report.

50 “Army Accepts Gansler Commission Report on Contracting; Commits to Action.” Downloaded July 9, 2010 at the following: <http://www.army.mil/newsreleases/2007/11/01/5901-army-accepts-gansler-commission-report-on-contracting-commits-to-action/> News release

51 Schwartz, Moshe. 2009. *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*. Congressional Research Service. Accessed July 1, 2010 at: www.fas.org/sgp/crs/natsec/R40764.pdf.

52 U.S. GAO. 2008. “*Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions are Needed to Sustain Improvements*.” July 31, 2008. GAO-08-966.

53 U.S. GAO. 2008. “*Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions are Needed to Sustain Improvements*.” July 31, 2008. GAO-08-966.

54 Ibid.

55 Ibid.

56 Mason, R. Chuck. 2009. *U.S. Withdrawal/Status of Forces Agreement: Issues for Congressional Oversight*. Congressional Research Service. Accessed 7/10/2010 at : <http://www.fas.org/sgp/crs/natsec/R40011.pdf> Also see: <http://topics.nytimes.com/topics/news/international/countriesandterritories/iraq/status-of-forces-agreement/index.html>

combatants, as would private security providers assigned to protect military supply convoys from insurgents. As enemy combatants, Iraqi law would not apply to actions of the contracted personnel.⁵⁷

At the international level, a 2006 joint initiative was undertaken between the International Committee for the Red Cross and the government of Switzerland to consider and provide guidance for the monitoring and regulation of international PMSCs. The resulting Montreux Document, finalized in September 2008 and subsequently signed by 34 countries, has two main parts. The first part outlines obligations of different actors under international humanitarian law and human rights law. The second part provides 73 “best practices” formulated as recommendations for nation-states. A Global Code of Conduct for the security industry is also under development. While provisions in the document can increase understanding and facilitate national regulation of PSMCs, no provisions in the document are legally binding.⁵⁸

⁵⁷ Elsea, Jennifer K. 2009. *Private Security Contractors in Iraq and Afghanistan: Legal Issues*. Congressional Research Service. R40991. Page 8. Accessed June 6, 2010: <http://fpc.state.gov/documents/organization/135010.pdf>. See also: U.S. Congressional Budget Office. 2008. *Contractors' Support of U.S. Operations in Iraq*. Accessed June 6, 2010: <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>

⁵⁸ Cockayne, James. 2009. “Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document.” *Journal of Conflict & Security Law* 13 (3): 401-428. Also see: <http://www.business-humanrights.org/ConflictPeacePortal/Specialinitiatives/Montreuxdocument>

Appendix A

Timeline of Events, from the founding of Blackwater to the Nisoor Square Shooting

December 1996 Blackwater is founded by Erik Prince, heir to a fortune earned by his father in the auto-parts business. Over the next few years, the company builds its customer base by providing training in firearms, personal security, and counterterrorism.

October 2000 Al-Qaida bombers attack the USS Cole in Yemen, killing 17 sailors. Shortly afterward, Blackwater receives its first big federal contract, training sailors in counterterrorism.

2001 Blackwater's federal contracts total \$736,906.

September 11, 2001 Terrorist attacks in New York and Washington, DC.

2002 Blackwater's federal contracts total \$3.4 million.

2002 Blackwater Security Consulting is founded, moving the company into the private security business.

2003 Blackwater's federal contracts total \$25 million.

March 20, 2003 The U.S. invades Iraq.

2004 Blackwater's federal contracts total \$48 million.

March 2004 Iraqi insurgents kill four Blackwater contractors in Fallujah, Iraq. Their bodies are set afire and dragged through the streets before being hanged from a bridge over the Euphrates River. The incident was one of the factors leading to the first Battle of Fallujah in April, in which the American military tried unsuccessfully to capture the city.

June 2004 Coalitional Provisional Authority Chief Executive Paul Bremer issues Order 17, making private contractors immune from Iraqi law.

January 2005 Families of the four contractors killed in Fallujah file a wrongful death suit against Blackwater, claiming the company failed to provide the force protection it had promised to its client. Blackwater counter-sued, saying the Blackwater employees had signed away their right to take legal action against the company.

2005 Blackwater's federal contracts total \$352 million.

2006 Blackwater's federal contracts total \$593 million.

2007 Blackwater's federal contracts total \$1 billion.

February 2007 The House Committee on Oversight and Government Reform holds hearings on the use of private contractors in Iraq, including testimony from Blackwater and the families of the Blackwater employees killed in Fallujah.

September 2007 Blackwater guards on a State Department convoy open fire in Nisoor Square in Baghdad, killing 17 Iraqis.

Sources: “Timeline: Blackwater and Security Regulations,” National Public Radio, Accessed on June 29, 2010, at: <http://www.npr.org/templates/story/story.php?storyId=17269881> and “Making a Killing: A Blackwater Timeline,” *Mother Jones*, October 9, 2007. Accessed on June 29, 2010 at: <http://motherjones.com/mojo/2007/10/making-killing-blackwater-timeline>