

Iraq: America's Private Armies

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Corporate Warriors: The Rise of the Privatized Military Industry

by P.W. Singer

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As the ragtag killers of the Revolutionary United Front (RUF) advanced on Freetown in the spring of 1995, the government of Sierra Leone took a desperate measure. The rebels had cut a violent swath across the country, enlisting child soldiers and leaving thousands with amputated limbs or dead in their wake. Sierra Leone's government was too hobbled by its own corruption to effectively resist; its military was largely ceremonial; and the United Nations, the United Kingdom, and the United States had all refused to intervene. Catastrophe seemed inevitable, until the government approached a South African security firm called Executive Outcomes. For a hefty fee, Executive Outcomes agreed to rout the RUF and reestablish government control in the country's fertile diamond regions, a task which it proceeded to accomplish, using its own private army and helicopter gunships, in a little under two weeks.

This unusual operation is a striking example of a recent and powerful entity, the private military firm (PMF), in action. Executive Outcomes went out of business in 1998, but in the decade since it was hired by Sierra Leone, military firms have flourished in America and abroad, becoming a \$100 billion industry. While many of these firms initially found work in the disintegrating states of Africa, it is in Iraq that the private military industry has truly come into its own. The raid on the home of Ahmed Chalabi was overseen by armed civilians who work for DynCorp; two Americans suspected of committing abuses in Abu Ghraib prison were civilian contractors employed to assist interrogations; the four armed Americans murdered in Falluja in March worked for Blackwater USA. Paul Bremer, the chief American administrator in Iraq, was guarded during his tenure not by military personnel but by a team of heavily armed commandos in civilian clothes, who also happened to work for Blackwater. Headline by headline, a picture has begun to take shape over the last year: our military is being swiftly privatized before our eyes.

Today well over 20,000 civilian contractors support Coalition forces in Iraq, and according to a May 4 letter to the House Armed Services Committee from Secretary of Defense Donald Rumsfeld, that number was expected to increase after the June 28 handover of power to the Iraqis. The contractors are as various in their duties as members

of the military itself: they perform tasks as banal as preparing meals and operating supply trucks, as dangerous as conducting armed raids and driving the first car in a convoy through hostile territory, and as sensitive as interrogating prisoners.

While most Americans believe that the second-biggest military contributor to the war in Iraq is Great Britain, that distinction is in fact held by the private military industry. In a seismic geopolitical development whose implications have thus far gone largely unexplored, the state appears to have relinquished its monopoly on the lethal use of force. Civilian contractors in Iraq have become a shadow army—one which is largely unregulated and unpoliced, and operates beyond the reach of the law. In June of last year, P.W. Singer, a fellow at the Brookings Institution, published *Corporate Warriors*, a prescient, cogent, and lavishly researched work that explores this industry, and the extent to which it may change the way the United States fights war and keeps peace in the twenty-first century.

The roots of the private military industry lie in mercenary warfare, a practice as old as war itself. Singer points out that Alexander the Great managed an army primarily composed of hired soldiers, and that the Carthaginian empire depended on mercenaries. The very term "freelance" was invented by warriors who hired themselves out in the early part of the Hundred Years' War. Max Weber famously suggested that a monopoly on the legitimate use of physical force was the defining characteristic of a state, but Singer argues that in this regard the period from the Treaty of Westphalia in 1648 through the end of the cold war represents a historical anomaly; that the business of war has often been conducted not by standing national armies, but by soldiers for hire; and that in the future, "we should not expect that organized violence would only be located in the public realm."

PPrivate military firms as we know them today represent a significant departure from the mercenaries of old, however. Most of the PMFs currently in Iraq did not exist a decade ago, and many have rapidly increased in size to satisfy growing demand even in the last eighteen months.^[1] But these organizations are legal, public entities, with slick Web sites and lobbyists on Capitol Hill. Many of the PMFs are the stepchildren of the broader trends of post-cold war globalization. The large-scale downsizing of the military in countries like Britain and the United States during the 1990s produced a surplus of unemployed soldiers and meant that when these great powers did want to deploy troops, they would not necessarily have the appropriate numbers of skilled personnel on hand. The downsizing of the Soviet military created a glut of light and heavy weaponry for sale on the open market. The profusion of low-intensity conflicts in the third world produced a demand for skilled military intervention—a demand which, in light of the diminished tolerance for foreign entanglements on the part of the US and the UN, often went unmet by the international community.

Singer also locates the growth of PMFs in the recent trends toward privatization and outsourcing. By 1998, the rate of global privatization was roughly doubling each year. At the same time, military hardware was becoming more complex, and requiring technicians with more precise skills. Just as prisons, public transit, and other traditionally public

institutions began, in the name of greater efficiency and reduced costs, to be privatized in the 1990s, it seemed possible to privatize large parts of the military as well. As a result many different types of private military firms arose, and Singer provides a taxonomy that differentiates between "active" firms, whose employees are actually armed and in combat areas, and "passive" firms, who simply provide logistical support.

This distinction is a crucial one in light of the accusations that PMFs are effectively glorified mercenary companies, but it is blurred considerably by the many PMFs that engage in the "passive" task of training troops in foreign countries. Singer presents detailed case studies of three firms: Executive Outcomes, which served as an actual provider of military muscle; MPRI, a Virginia company, founded in 1987, that trains armies and "consults" on military matters; and Texas-based Kellogg, Brown & Root, a huge "military support firm" and Halliburton subsidiary, which builds bases and other infrastructural elements in connection with military deployments, and has gross revenues of close to \$6 billion a year. Singer is aware that Kellogg, Brown & Root employees resist comparisons with more traditionally mercenary firms like Executive Outcomes, but he argues persuasively that all PMFs, whether active or passive, share certain organizational characteristics, and are driven by the same market-based incentives.

Rumsfeld's May 4 letter is particularly illuminating in light of Singer's taxonomy of PMFs. For the last six months, commentators and politicians have tended to claim that the number of civilian contractors in Iraq was "roughly 20,000." This widely reported number would seem to cover the full array of contractors, from M-16 toting guards working for Blackwater to Kellogg, Brown & Root subcontractors serving food at a base. But according to Rumsfeld's letter, there are 20,000 contractors working just for private security companies in Iraq, which is to say, 20,000 contractors who are armed. That could put the total number of PMF employees at 30,000, or higher.

One obvious rationale for this high number of armed civilians in what continues to resemble a war zone is the desire on the part of the Pentagon to maintain order and security without recourse to a draft. The 135,000 uniformed American troops currently deployed in Iraq are exhausted and overextended, ready to rotate home. Buttressing these numbers with thousands of contractors defers a painful political decision: whether to significantly reduce the number of troops in the region, or impose some form of mandatory conscription. Armed private security contractors go some way toward relieving the troops in securing postwar Iraq. And those who merely work in passive jobs for firms supporting the military free up more soldiers to fight. According to a 2000 article in the *Military Law Review* by Major Joseph R. Perlak, a judge advocate with the US Marine Corps,

civilian contractors function as an "effective force multiplier." This means they are hired to provide services that will free a "trigger puller" to fight, or they provide technical expertise to the force, thereby assisting the force in waging war or enforcing peace.

The need for trigger pullers notwithstanding, there are also major drawbacks, from a military point of view, to working so closely in a combat environment with civilian

contractors. To begin with, contractors are paid as much as three or four times what soldiers earn, sometimes to perform the same work. If the military is attempting to reduce attrition and encourage soldiers to extend their tours, it cannot help that many of the civilian contractors are former soldiers beckoned by the lucrative offers of PMFs. Moreover, while contractors are not accountable to military leaders, those leaders feel understandably responsible for the contractors. In March of this year, Lieutenant General James T. Conway, commander of the First Marine Expeditionary Force in Falluja, had a plan to establish military control over the city. But on March 31 four Blackwater contractors made the rash decision, on their way to Baghdad, to take a shortcut through Falluja. After they were brutally killed, political pressure was such that two battalions of Marines were sent into the city prematurely, killing hundreds of combatants and civilians, only to pull out again, defeated.^[2]

How one feels about PMFs may depend somewhat on how one feels about the work they do. The profit-driven motive of these companies means that they will serve a variety of masters, some of them more worthy than others. Thus those who bemoan the presence of a military contractor like MPRI in Iraq must remember that MPRI was instrumental to America's effort to keep the peace in Bosnia. By the same token, those who might praise DynCorp for its work in the former Yugoslavia must reconcile that praise with the knowledge that DynCorp has been involved in clandestine counterinsurgency operations in Colombia. PMFs allow states to project military force even in situations where doing so would be politically unpalatable, and while it may be comforting to think that a nation's public must always be the ultimate arbiter of whether that nation should project force abroad, an isolationist public will often refuse to sanction intervention even in the face of the direst humanitarian crises. One fascinating passage in *Corporate Warriors* describes an internal document, drafted by Executive Outcomes in 1994, which outlined a plan to intervene in Rwanda that would have been swifter, cheaper, and more effective than the abysmally inadequate gestures of the United Nations.

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More shocking than the revelation, in the Taguba Report on abuses at Abu Ghraib, that contractors in civilian clothes roamed freely in the prison, answering to no one and effectively outside the chain of command, is the fact that neither of the two contractors declared in the report to be "either directly or indirectly responsible for the abuses" has been indicted for any crimes. It has recently emerged that in an astonishing lapse on the part of American legislators, the actions of the tens of thousands of contractors in Iraq are not governed by any comprehensive body of criminal law.^[3]

American soldiers are subject to the Uniform Code of Military Justice (UCMJ), a body of rules and regulations that parallels American civilian law, with its own court-martial system for enforcement. Contractors, however, are not subject to the UCMJ. In 2000 Congress attempted to correct this with the Military Extraterritorial Jurisdiction Act, which effectively extends federal US law to people "employed by or accompanying the armed forces outside the United States." But this extension applies only to contractors hired by the Department of Defense. When Stephen Stefanowicz, a civilian interpreter

employed by the CACI Corporation, was implicated in the Taguba Report, the Pentagon struggled to locate the contract that placed CACI interpreters in the prison in the first place. Initially it seemed that the Department of Defense was unable to locate the contract because, remarkably, neither the Coalition Provisional Authority nor the Pentagon had a single register keeping track of all the various contracts and subcontracts in Iraq. It would later emerge, however, that the reason the Defense Department couldn't find the contract was that it had not made one. CACI's services had been retained by the National Business Center of the US Department of the Interior. Under what authority the Department of the Interior was in a position to authorize "interrogation support" in American-run prisons in Iraq remains unclear.

What is clear is that the Military Extraterritorial Jurisdiction Act does not apply to Stephen Stefanowicz, or to John B. Israel, the other implicated contractor who worked for SOS, a subcontractor of the Titan Corporation. It might appear that if military and American law was not to apply to many of the civilian contractors in Iraq, Iraqi law, such as it is, could provide a substitute. But in June 2003, in a proclamation known as Order 17, Paul Bremer granted broad immunity from local prosecution to civilian contractors working in the country. A year later, as the symbolic handover of sovereignty to the Iraqis approached, American officials made it clear that they wished to extend contractors' immunity past June 30. Iraq's interim prime minister, Ayad Allawi, replied that continued blanket immunity for contractors seemed excessively broad. But on Sunday, June 27, as one of his last acts in office, Bremer signed a revised version of Order 17, which extended contractors' immunity until a transitional Iraqi government is elected in January. That this quiet move significantly undermined Iraqi sovereignty went largely unremarked by the press.

Abu Ghraib was not the first indication that contractors were insufficiently accountable. In the late 1990s, Virginia-based DynCorp won a large contract to maintain American planes and helicopters in Bosnia. Several DynCorp employees became involved in local prostitution rings, in collusion with the Serbian mafia. According to depositions before a recent trial, DynCorp employees purchased illegal weapons and passports on the open market, and bought women, some allegedly as young as twelve years old, to work as personal sex slaves. The site supervisor of DynCorp's operation in Bosnia videotaped himself raping a prostitute. Tipped off to these activities, American military police conducted a sting at DynCorp's hangar at Comanche base in Bosnia, and several employees, including the site supervisor, were eventually dismissed and sent home. But criminal charges were never brought against any of the implicated employees, and the two DynCorp whistle-blowers who reported the incidents to the Army's Criminal Investigation Division were ultimately fired.^[4] Last year the United States granted DynCorp a contract, potentially worth hundreds of millions of dollars, to "re-establish police, justice and prison functions in post-conflict Iraq."

The strongest push for greater regulation and control of contractors has come from within the military itself. At a Joint Services Conference on Professional Ethics in 2000, Gordon L. Campbell of the Army Combined Support Command declared that the present legal vacuum created an environment where civilians are untouchable despite commission of

what would be serious crimes within the US.... A contractor, there to support the US national interest, could murder, rape, pillage and plunder with complete legal unaccountability.

In March 2002, the then Army secretary, Thomas White, wrote a memo warning the Pentagon that there was inadequate control of contractors. In June 2003, Congress's General Accounting Office released a study that drew on extensive interviews with military personnel, and pointed to the inadequate management and oversight of contractors.

In response to the revelations about abuses in Abu Ghraib, John Ashcroft announced that the Justice Department had jurisdiction to prosecute those civilian contractors who committed crimes in Iraq. But the pronouncement seemed cosmetic: when asked how the Justice Department would go about investigating crimes in Iraq, Ashcroft said that he would not send FBI agents to the scene, but would allow the Pentagon to conduct its own investigation. Standards of evidence are different in civilian and military courts, however, and it is not certain that Pentagon investigators have the expertise to build a strong case before a civilian jury.

Nevertheless, on June 17 Ashcroft announced that David A. Passaro, an independent contractor working for the CIA, had been indicted by a grand jury for kicking and beating a detainee to death at a military base in Afghanistan last year. Passaro was prosecuted under the "Special Maritime and Territorial Jurisdiction" section of the United States Criminal Code, which holds that American law applies with respect to a national of the United States when that national is on the premises of American diplomatic, consular, or military facilities. As an ad hoc solution to the legal problem, this tactic holds some promise, particularly in light of the fact that it could be brought to bear against Stefanowicz and Israel for crimes in Abu Ghraib. But this is hardly a comprehensive solution. What happens when contractors wander outside the fence?

One reassuring development is a bill introduced soon after the Abu Ghraib revelations, by Representative Marty Meehan, a Democrat from Massachusetts. Meehan's proposed Contractor Accountability Act would extend the reach of the Military Extraterritorial Jurisdiction Act to include not just civilians working on Department of Defense contracts, but all contractors and subcontractors of government entities supporting missions of the armed forces overseas.

A particularly urgent reason for more comprehensive legislation covering contractors is that some of the characters who have popped up in Iraq are particularly unsavory. Singer points out that a key asset of many private military firms is "a carefully managed database of former military personnel," which is to say, freelancers. Try though they might to maintain a reputation for businesslike discipline, PMFs still draw from the ranks of ex-soldiers and commandos, some of whom have questionable pasts. The firms traditionally flocked to troubled countries with rich natural resources, and Singer documents instances in which diamond concessions served as deferred payment for services rendered.

The combination of high salaries and lucrative contracts with the lack of oversight and legal accountability have created in Iraq a Wild West-style frontier that will inevitably draw many more prospectors and profiteers. To take one example: during the early years of PMF involvement in Africa, a major scandal arose involving a company called Sandline International. Under the direction of its founder, a former British soldier named Tim Spicer, Sandline supplied thirty tons of arms to the exiled President Ahmad Tejan Kabbah of Sierra Leone in 1998, in direct contravention of a UN embargo.

In a particularly memorable formulation, Robin Cook, Britain's then foreign secretary, characterized the kind of dubious persons in the PMF trade, describing the financier who arranged the arms deal in exchange for diamond concessions as "an Indian businessman, traveling on the passport of a dead Serb, awaiting extradition from Canada for alleged embezzlement from a bank in Thailand." Spicer was ultimately investigated and reprimanded by the Foreign Office, and this April, Sandline closed its doors. But Spicer has reemerged with a new business, Aegis Defence Services, in time for the bonanza in Iraq, and in June he was awarded a \$293 million contract to coordinate security after the changeover.

This kind of second act is not at all uncommon in the world of the private military firm. When Executive Outcomes became politically unpopular in South Africa, and the government began to pass national laws to control PMFs, the company simply dissolved and reconstituted itself as several smaller companies in other countries. At the level of its organizational DNA, a private military firm has more in common with that other nonstate actor that flourished in the post-cold war environment—al-Qaeda—than it does with the United States military.

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Stretching back as far as Saint Augustine, the *jus in bello* principles of just war theory have hinged on an elemental distinction between soldier and civilian. In the modern era, the laws of war, as enshrined in the Geneva Conventions, rely on a similar typology. Lawful combatants, as defined by the Third Geneva Convention, are afforded prisoner-of-war status if captured. Noncombatant civilians, as described in the Fourth Geneva Convention, are accorded a separate series of protections. The most alarming feature of the rapid emergence of the private military industry is that it creates a third class of people on the battlefield, who are neither soldiers nor civilians. Of course, the current administration has not shied from creating novel legal categories to suit its needs, and when he introduced the Contractor Accountability Act, Representative Meehan raised a sinister possibility: that the legal ambiguity of contractors is precisely what makes them attractive. "We don't know whether the Pentagon is using civilian contractors simply because they want to disguise the size of the war," Meehan declared, "or because they are deliberately avoiding accountability."

But the trouble with legal ambiguity is that it works both ways, as the detainees at Guantánamo Bay well know. The 20,000 armed civilians working without military uniform in Iraq bear a dangerous resemblance to that third legal category that was

debated by the Supreme Court last month: unlawful combatants. Thus it is in the contractors' interests as much as anyone else's, that their status be concluded and codified, lest they are captured and forced to pay the price for their ambiguous identity.

Each war tells us a little about the way the next will be fought. During the Gulf War, the ratio of civilian contractors to enlisted personnel was 1 to 60. At the outset of the current Iraq engagement that ratio was 1 to 10— and the number of contractors has increased dramatically since. The Pentagon is planning to cut a further 200,000 people from the armed personnel rosters in the near future, and anticipates that private contractors will take over these traditionally military duties. Meanwhile Halliburton processes several hundred workers bound for Iraq through its Houston training center each week. It is clear that civilian contractors will be a significant feature in America's military landscape in the twenty-first century. Only by learning about this vast and rapidly expanding industry will citizens and lawmakers develop some measure of oversight and control over the shadow army. To that end *Corporate Warriors* is a bold first step.

Notes

[1] There are exceptions, however. Kellogg, Brown & Root, which has played an active role in Iraq, was founded in 1919.

[2] See Joshua Hammer, "Cowboy Up," *The New Republic*, May 24, 2004.

[3] While the issue of legal coverage of contractors is not addressed at adequate length in *Corporate Warriors*, Singer has sought to remedy this omission since. See P.W. Singer, "War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law," *Columbia Journal of Trans-national Law*, Vol. 12 (2004), p. 251.

[4] For a full account of the DynCorp case, see Robert Capps, "Outside the Law," Salon.com, June 26, 2002.