

Blackwater vs. bin Laden

PMSC involvement in American Counter-Terrorism

Working Draft

David Perry

dperry2@connect.carleton.ca

Prepared for the Canadian Political Science Association Annual Convention

June 2010, Montreal

The author would like to acknowledge the funding support of the Centre for Security and Defence Studies of the Norman Paterson School of International Affairs, Carleton University.

Since the end of the Cold War, non-state actors have taken an increasingly active role in world conflict. While private actors have been present on battlefields throughout history, contemporary Private Military and Security Companies (PMSCs) represent the corporate evolution of the profession of mercenaries. Today, these multinational corporations offer services intricately linked to warfare.¹ Since 9/11, these companies and their contractor employees have played an increasingly important role in executing all aspects of American national security strategy. Despite this reality, the majority of the literature on this subject has focused primarily on PMSC support of US military operations in Iraq.² While the Bush Administration attempted to link the Iraq war with Al-Qaeda, and thus the wider Global War on Terrorism (GWOT), this link is contested.³ Thus, by focusing extensively on military operations in Iraq, the current literature on the use of PMSCs by the American Government does not adequately address the use of PMSCs in support of the primary national security priority of the United States (US) since 9/11: counter-terrorism.⁴ This omission is somewhat ironic, for some authors contend that PMSC involvement in Afghanistan supporting the Central Intelligence Agency (CIA) and its initial post-9/11 counter-terrorism activities precipitated the booming PMSC market in Iraq.⁵ More importantly, since private actors currently play a larger role than public state agents in several aspects of American counter-terrorism efforts, this omission fundamentally misrepresents the nature of contemporary counter-terrorism.

This paper attempts to fill this gap in the literature by exploring the expanding role of private actors in contemporary American counter-terrorism strategy. Broadly stated, the paper asks: "What role do commercial actors play in current American counter-terrorism efforts?" In answering this question, it aims to broaden the strategic studies literature beyond its state centric framework by exploring the role of private means in fulfilling states' strategic ends. Second, it attempts to supplement the literature on counter-terrorism by exploring the relationship between public and private actors in combating Islamist terrorism. In doing so, it draws upon the literature on PMSC involvement in Iraq to highlight aspects of PMSC involvement in wider US counter-terrorism efforts that warrant further scrutiny.

While a state's counter-terrorism strategy can involve a number of different activities, this paper will concentrate on two identified by Byman as particularly relevant: (i) direct actions

¹ Sarah Percy, *Mercenaries* (Oxford: Oxford University Press, 2007), Deborah Avant, *The Market for Force* (New York: Cambridge University Press, 2005), P. W. Singer, *Corporate Warriors* (Ithaca: Cornell University Press, 2003), Janice Thomson, *Mercenaries, Pirates, and Sovereigns* (Princeton, N.J.: Princeton University Press, 1994)

² David Isenberg, *Shadow Force* (New York: Praeger, 2008), T. Christian Miller, *Blood Money* (New York: Little, Brown and Company, 2006)

³ Brian C. Schmidt and Michael C. Williams, "The Bush Doctrine and the Iraq War," *Security Studies* 17, no. 2 (April 2008): 191-220.

⁴ United States of America, *The National Security Strategy of the United States of America* (Washington, D.C.: 2006), , United States of America, *The National Security Strategy of the United States of America* (Washington, D.C.: 2002),

⁵ Jeremy Scahill, *Blackwater* (New York: Nation Books, 2007), Robert Young Pelton, *Licensed to Kill* (New York: Crown Publishers, 2006)

against terrorist groups and (ii) improving defences against terrorism.⁶ The paper therefore examines the role of PMSCs in supporting contemporary US counter-terrorism operations in Afghanistan and Pakistan as well as US homeland security initiatives. In the former case, the paper examines PMSC support of American military operations in Afghanistan, as well as its support for covert military and intelligence operations in Pakistan's border region. Regarding homeland security, the focus is chiefly on the role of PMSCs in supporting the US Intelligence Community and the Department of Homeland Security (DHS). Overall, the paper argues that the current conduct of American counter-terrorism relies heavily the private sector and this reliance is problematic.

A Strategic Mismatch

The role of PMSCs has until recently largely been overlooked in the strategic studies literature. Betts conceptualizes strategic studies as the link between security studies, defined as everything bearing on the safety of a polity, and military science, defined as the technology, organization and tactics that combine to win battles. Occupying the middle ground, strategic studies, in his view, focuses on "how political ends and military means interact under social, economic, and other constraints."⁷ This understanding of strategy is largely state-centric. Paret, for instance, stresses that strategy relates to "the development, intellectual mastery, and utilization of all of the *state's* resources."⁸ Similarly, Freedman posits that grand strategy should be depicted as "the point at which the full resources of the *state* – economic, social and political as well as military – are mobilized to deal with external challenges."⁹ This type of analysis reflects a preoccupation within strategic studies on inter-state competition and the balance of power within the global system.¹⁰

Coletta, on the other hand, argues that the contemporary security environment demands an understanding of strategic studies that draws more heavily on comparative defence studies. In his view, strategic studies should focus primarily on how "individual societies prepare to counter internal and external threats."¹¹ This view is more commensurate with the role PMSCs increasingly play in fulfilling states' strategic ends. As Stanger notes, America now relies extensively on PMSCs to conduct most aspects of statecraft, including defence, diplomacy, development, and homeland security.¹² Thus, this paper aims to build on Colletta's understanding of strategy as a wider societal, rather than merely state, response to threats. As this paper demonstrates, with respect to American counter-terrorism initiatives particularly, statist conceptions of strategy are outdated because the means used to achieve state ends now include a mix of public and private actors.

⁶ Daniel L. Byman, "US Counter-Terrorism Options," *Survival* 49 (Autumn 2007): 121-150.

⁷ Richard K. Betts, "Should Strategic Studies Survive?" *World Politics* 50, no. 1 (October 1997): 9.

⁸ Peter Paret, ed. *Makers of Modern Strategy*, (Princeton: Princeton University Press, 1986), 3. Emphasis added.

⁹ Lawrence Freedman, "Terrorism as a Strategy," *Government and Opposition* 42, no. 3 (2007): 326.

¹⁰ Damon Coletta, "Unipolarity, Globalization, and the War on Terror," *International Studies Review* 9 (2007): 385-406.

¹¹ *Ibid.*: 395.

¹² Allison Stanger, *One Nation Under Contract* (New Haven: Yale University Press, 2009)

Problematic PMSCs

PMSCs have proven themselves an indispensable part of American military operations in Iraq. Without the presence of hundreds of thousands of contractors, the US government simply would not have been able to conduct the war, for lack of both manpower, and expertise.¹³ Despite the significant benefits they provide, in Iraq, their use has presented a number of challenges. First, the addition of another actor into an already complex battle space has proven difficult to coordinate. Coalition war efforts inherently face problems related to the interoperability of forces, but these challenges have been exacerbated by the use of PMSCs. Contractors often lack the proper equipment to communicate with military units, and frequently work under layers of subcontracting that make it difficult to determine who is working within a given area of operations. As a result, in incidents such as the 2004 mutilation of four Blackwater USA contractors in Fallujah, military units have been unaware that contractors are operating in their battle space.¹⁴ Even worse, until 2009, the US military did not attempt to track the number of contractors its employs in Iraq.¹⁵

Second, contractors reduce the level of transparency associated with military operations. While a number of restrictions exist surrounding the level of information available regarding military forces, these restrictions are far greater for PMSCs. This is a result of several factors. First, formal restrictions exist related to their contracts, which are frequently not subject to the *Freedom of Information Act*, and are therefore largely shielded from public view.¹⁶ Second, even where no formal restrictions apply, the government has often chosen not to release information regarding contractors, with the non-disclosure of contractor casualties a case in point.¹⁷ Third, contractors have received far less media coverage than comparable military forces, thus reducing the amount of publically available information on their activities.¹⁸ Finally, a further lack of transparency exists in the omission of contractors from national policy documents which largely fail to account for their role in conducting policy.

Third, the use of contractors concentrates national security powers within the executive branch and greatly reduces Congressional oversight. Whereas Congress has authority over the deployment of military forces, and the armed forces' size and budget, it maintains no such control over contractors. Thus, for example, while Congress played an active role in debating the surge of 20,000 extra troops to Iraq in 2007, it was effectively silent while the number of contractors skyrocketed to approximately 190,000 that same year.¹⁹ While Congress has increasingly attempted to assert control over contracted forces since 2007, its initiatives have been far more successful at governing contractors working in Iraq than in other aspects of the GWOT.

¹³ Peter Singer, *Can't Win with 'Em, Can't can't Go to War without 'Em* (Washington, DC: Brookings Institute, 2007).

¹⁴ Ibid. The company has since been renamed Xe. For the sake of simplicity, the paper refers to it as Blackwater.

¹⁵ Commission on Wartime Contracting in Iraq and Afghanistan, *At what Cost? Interim Report to Congress* (Washington, D.C.: United States Congress, 2009),

¹⁶ P. W. Singer, "Corporate Warriors," *International Security* 26, no. 3 (Winter 2001): 186-220.

¹⁷ Steven L. Schooner, "Why Contractor Fatalities Matter," *Parameters* 38, no. Autumn (2008): 78-91.

¹⁸ Deborah Avant and Lee Sigelman, "What does Private Security Mean for Democracy?" *Security Studies* (forthcoming)

¹⁹ Ibid.

These problems are not merely restricted to military operations, however. In its report on the failures within the US national security establishment leading up to September 11 Al-Qaeda attacks, the 9/11 Commission offered a list of recommendations to improve American national security. Of these, three are relevant to the current discussion: i) the need for improved intelligence sharing and cooperation; (ii) the need for better unity of effort amongst various branches of the national security apparatus; and (iii) the need for improved Congressional oversight.²⁰ As this paper demonstrates, the use of contractors thus has the potential to further exacerbate existing problems with American counter-terrorism.

American Counter-Terrorism

Terrorism became an issue of strategic importance to the United States following the 1983 bombing of the Marine barracks and embassy in Beirut. It was not until the terrorist attacks of September 11, 2001, however, that American policy makers began to view terrorism as a “strategic challenge to the very survival of the Republic.”²¹ Since that time, Islamist terrorism, and Al-Qaeda in particular have been defined as the preeminent threat to American security.²² To address this threat, US counter-terrorism strategy encompasses five lines of operation. First, over the long term, it seeks to advance democracy as an antidote to terrorist ideology. In the immediate term, it focuses on: (ii) preventing terrorist attacks; (iii) denying terrorists and rogue allies Weapons of Mass Destruction; (iv) denying terrorists the support and sanctuary of rogue states; and (v) denying terrorists a national base from which to operate.²³ This paper focuses on the first and fourth component of US counter-terrorism strategy, homeland security efforts and US counter-terrorism activities in Afghanistan and Pakistan.

Counter-Insurgency and Counter-Terrorism in Afghanistan and Pakistan

US military operations in Afghanistan were initiated in 2001 as a campaign to kill or capture Al-Qaeda members and Osama Bin Laden in particular. Following the overthrow of the Taliban regime in Afghanistan, however, Al-Qaeda operatives were able to seek sanctuary in Pakistan’s Federally Administered Tribal Areas (FATA) and North West Frontier Province (NWFP). From this secure base, Al-Qaeda reconstituted itself following the invasion and resumed its terrorist activities. According to Hoffman, “virtually every major terrorist attack or plot of the past five years has emanated from al-Qaeda’s reconstituted sanctuary in Pakistan’s FATA or NWFP.”²⁴ Recognizing this reality, in announcing a new strategy for Afghanistan and Pakistan, President Obama stated “we have a clear and focused goal: to disrupt, dismantle and

²⁰ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (2004), [database on-line]; available from <http://govinfo.library.unt.edu/911/report/index.htm>.

²¹ Yonah Alexander, "United States," in *Counterterrorism Strategies* (Virginia: Potomac Books, 2006), 11.

²² United States of America, *The National Security Strategy of the United States of America*, United States of America, *The National Security Strategy of the United States of America*

²³ United States of America, *National Strategy for Combating Terrorism* (Washington, D.C.: 2006),

²⁴ Bruce Hoffman, "A Counterterrorism Strategy for the Obama Administration," *Terrorism and Political Violence* 21, no. 3 (2009): 362.

defeat al Qaeda in Pakistan and Afghanistan, and to prevent their return to either country in the future.”²⁵

While Afghanistan and Pakistan now comprise a single theatre of operations, two separate strategies operate in parallel to combat terrorism. The first, involves “systematically destroying and weakening enemy capabilities.”²⁶ The second is directed towards reestablishing security in Afghanistan as a means of curtailing the threat posed by Al-Qaeda in both Afghanistan and Pakistan. As argued by Hoffman and Jones, “Defending Afghanistan will not eradicate a terrorist network based in Pakistan, but failing to defend Afghanistan will almost certainly give that terrorist movement new momentum and greater freedom of action.”²⁷ Thus, under President Obama, the United States is implementing a counter-insurgency operation in Afghanistan aimed at stopping the cycle of terrorist recruitment and regeneration.²⁸

Counter-Insurgency in Afghanistan

The American military relies on PMSCs for a wide range of services, disaggregated by Avant into four categories: logistics; armed operational support; unarmed operational support; and training.²⁹ Contracts of each type currently support American troops in Afghanistan. DynCorp and Fluor are responsible for providing logistics for American bases under the Army’s multi-billion dollar LOGCAP contract.³⁰ Thousands of local Afghans are employed as armed guards for US military facilities and the American war effort depends on convoys of chartered Pakistani trucks to resupply their bases.³¹ Finally, DynCorp and others have been hired to train the Afghan National Army and Police.³²

Although the use of contractors to support the US military increased steadily under the Bush Administration, the number of American contractors in Afghanistan has been augmented dramatically since President Obama took office.³³ By the fall of 2009, the Department of Defense (DOD) alone employed over 104,000 contractors in Afghanistan, a figure that represents more than 60% of the DOD workforce in the country.³⁴ Furthermore, the ratio of contractors to troops in Afghanistan is now approximately 1.6:1, greatly exceeding the 1.1:1 ratio in Iraq. Thus, the Congressional Research Service predicts that the Obama administration’s surge of 30,000 additional US military forces into Afghanistan will be accompanied by an increase of up

²⁵ Barack Obama, *Remarks by the President on a New Strategy for Afghanistan and Pakistan* (Washington, D.C.: White House, 2009)

²⁶ Hoffman, *A Counterterrorism Strategy for the Obama Administration*, 369.

²⁷ Bruce Hoffman and Seth G. Jones, "Cell Phones in the Hindu Kush," *The National Interest* 96 (July/August 2008): 50.

²⁸ Ibid.

²⁹ Avant, *The Market for Force*

³⁰ August Cole, "DynCorp, Fluor Win Army Jobs," *The Wall Street Journal Asia*, July 10 2009,

³¹ Joshua Partlow, "Congested Border Crossing may Affect U.S. Buildup in Afghanistan," *Washington Post*, January 19 2010, p. A06. , Moshe Schwartz, *The Department of Defense’s use of Private Security Contractors in Iraq and Afghanistan* Congressional Research Service, 2009),

³² Ellen Nakashima, "Amid Reviews, DynCorp Bolsters Ethics Practices," *Washington Post*, July 27 2009,

³³ Marcus Baram, "Cost of Private Contractors in Afghanistan Climbs to \$1 Billion, as their Numbers Multiply," *The Huffington Post*, December 17 2009,

³⁴ Moshe Schwartz, *Department of Defense Contractors in Iraq and Afghanistan* Congressional Research Service, 2009),

to 56,000 additional contractors.³⁵ The majority of this influx will be required to expand existing ISAF and American operating bases, including the Kandahar and Bagram airbases. Both bases have operated at capacity for years, and require substantial upgrades to accommodate the influx of troops under the surge.³⁶

Despite their significant contribution to the US war effort, however, the heavy reliance on PMSCs in Afghanistan has been problematic. Following revelations of contracting abuse, and in particular after the September 2007 Nissour Square shooting of Iraqi civilians by Blackwater USA employees, Congress has taken a much greater role in monitoring contracting. At least eight separate Congressional committees have held hearings inquiring into wartime contracting practices, including the bipartisan investigation of the Commission on Wartime Contracting (CWC). As a result, American contracting in Afghanistan occurs under an increasingly stringent Congressional oversight regime for PMSCs supporting military forces. Despite these developments, however, improvements in Afghanistan have lagged those in Iraq. Thus, Congressional oversight continues to be marginal regarding the use of contractors in wider American counter-terrorism activities, as several examples demonstrate.

Congressional oversight of Iraq contracting was greatly facilitated by the creation of a Special Inspector General for Iraq Reconstruction in 2004, which launched hundreds of audits exposing significant problems with contract procedures in Iraq. In Afghanistan, however, a Special Inspector General for Afghan Reconstruction was only established in 2008, and concerns have been expressed that the Afghan variant has not lived up to the same standards as its Iraqi counterpart.³⁷ Similarly, while the Congressional Budget Office has analyzed contractor support of US operations in Iraq, it has not conducted a similar investigation of those operating in Afghanistan.³⁸ Since the contractor presence in Afghanistan is much higher than in Iraq, both in absolute numbers, and as a percentage of coalition forces, this lack of inquiry has significantly restricted both publicly available information and Congressional oversight of private support for the GWOT.

Perhaps reflecting the less stringent Afghan oversight, a number of initiatives mandated by Congress to improve contracting procedures in Iraq have not been effectively implemented in Afghanistan. Following the Nissour Square incident, the State Department and DOD took steps to bring armed PMSCs under greater control, most notably by developing a December 2007 Memorandum of Agreement (MOA) outlining interagency operating procedures, oversight, monitoring, accountability measures, and use of force agreements. At its root, the MOA is designed to “prevent a situation in which PSCs working for different elements of the US government follow differing policies and regulations.”³⁹ However, in spite of these positive moves in Iraq, no similar agreement exists in Afghanistan.

A similar problem exists in Afghanistan with DOD’s attempt to manage its own armed contractors. The military established an Armed Contractor Oversight Division (ACOD) in Afghanistan to “implement DOD’s armed contractor policies, procedures, processes and liaison

³⁵ Ibid.

³⁶ Cole, *DynCorp, Fluor Win Army Jobs*

³⁷ Commission on Wartime Contracting in Iraq and Afghanistan, *At what Cost? Interim Report to Congress*

³⁸ Congressional Budget Office, *Contractors’ Support of U.S. Operations in Iraq* (The Congress of the United States, 2008),

³⁹ Commission on Wartime Contracting in Iraq and Afghanistan, *At what Cost? Interim Report to Congress*, 64.

with PSCs throughout Afghanistan.”⁴⁰ While the unit is modeled on a similar body in Iraq staffed by DOD personnel, the Afghan variant was not created until February 2009, and its operations were outsourced to the British firm Aegis. Under the terms of its contract, Aegis is responsible for maintaining the day-to-day operations of the directorate and provides the majority of the ACOD’s personnel, including the deputy director. Thus, in Afghanistan, the coordination of the most problematic PMSCs, those bearing arms, has been outsourced to another firm with very little direct military supervision.

Problems coordinating PMSCs in Afghanistan persist at the most basic level: tracking US employed contractors. The need to better identify which services are supplied by contractors is long standing. The DOD was aware as early as 1988 of the need to identify contractors providing essential services, yet a 2003 GAO report found that the department had made limited headway in terms of identifying these services.⁴¹ Following the Nissour Square incident, DOD, the Department of State, and USAID launched the Synchronized Predeployed and Operational Tracker (SPOT) database to share contractor data. However, the system focuses primarily on tracking foreign contractors, and thus works far more effectively in Iraq, where the majority of contractors are foreign, than in Afghanistan where most contractors are locally engaged Afghans.⁴² As a result, the CWC has argued that “the effectiveness of contractor support of expanded US operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those about poor coordination among agencies.”⁴³

Counter-Terrorism in Afghanistan and Pakistan

In addition to supporting the conventional military’s counter-insurgency operations in Afghanistan, PMSCs, and Blackwater in particular, have also worked extensively with the intelligence community and the military’s Special Operations Forces in support of direct action operations in Afghanistan and Pakistan. Blackwater and its subsidiaries have been directly assisting the CIA’s operations in Afghanistan and Pakistan since the agency’s post-9/11 operations in Afghanistan began. The company was awarded a contract to protect the CIA station in Kabul in 2002 and contracts to protect several other CIA bases throughout the country soon followed.⁴⁴ As a result, the 2009 Al-Qaeda attack at a CIA base in Khost killed two Blackwater guards in addition to several CIA officers.⁴⁵ From this starting point, the company’s relationship with the CIA has strengthened over time, in part due to several ex-CIA officials joining its corporate ranks, including Cofer Black, the former director of the CIA’s Counterterrorism Center.⁴⁶ These links helped the company develop ties so close to the CIA that

⁴⁰ Ibid.74,

⁴¹ Ibid.18,

⁴² Schwartz, *Department of Defense Contractors in Iraq and Afghanistan*

⁴³ Commission on Wartime Contracting in Iraq and Afghanistan, *At what Cost? Interim Report to Congress*, 5.

⁴⁴ Scahill, *Blackwater*

⁴⁵ Jeremy Scahill, "Blackwater's Secret War in Pakistan," *The Nation*, November 23 2009,

⁴⁶ Adam Goldman and Pamela Hess, "Blackwater - CIA Program to Hunt Terrorists used Foreign Recruits on Surveillance Missions," *Winnipeg Free Press*, August 30 2009,

according to former intelligence officials, “There was a feeling that Blackwater was an extension of the agency.”⁴⁷

On this basis, Blackwater expanded its CIA contracts to include direct participation by its contractors on CIA “snatch and grab” operations designed to apprehend suspected militants and terrorists and “target killings” of Al-Qaeda leadership. While the utility of such programs has been debated,⁴⁸ these activities have been a core component of American counter-terrorism strategy since 2001.⁴⁹ However, until CIA director Leon Panetta revealed Blackwater’s participation in these programs to Congress in the spring of 2009, it was not known that they had been outsourced.⁵⁰

The company has also played an instrumental role in another component of the targeted killings program, by supporting the CIA’s drone attacks on suspected terrorists and militants in Pakistan, which have increased markedly under the Obama administration.⁵¹ Blackwater employees are responsible for loading and launching the Predator UAVs that target suspected terrorist in Pakistan, in addition to protecting their bases. Although the CIA retains responsibility for firing the weapons, the company’s role demonstrates how the “CIA now depends on outside contractors to perform some of the agency’s most important assignments.”⁵² In the words of a former CIA official, all three types of operations are “Quintessential CIA work”⁵³ so the extensive involvement of Blackwater raises the question, “Why are we still funding the CIA?”⁵⁴

While its activities on behalf of the CIA were revealed in a Congressional briefing, the company has reportedly also carried out very similar operations for the military’s far more secretive Joint Special Operations Command (JSOC). These contracts have involved Blackwater “tactical operations operatives” conducting covert raids into Pakistan against suspected Al-Qaeda training camps.⁵⁵ Furthermore, the company supports JSOC’s UAV operations in Pakistan, which run in parallel to the CIA’s drone activities. Notably, Blackwater’s operations in Pakistan involve planning the targeted killings ultimately carried out by JSOC operatives.⁵⁶

Problematically, these contracts with Blackwater have been used by the CIA and JSOC to avoid both outside scrutiny and Pakistani sensitivities. For JSOC, contracts with Blackwater are “an attempt to get around the Pakistani government’s prohibition of American military

⁴⁷ James Rissen and Mark Mazetti, "Blackwater Guards Tied to Secret C.I.A. Raids," *New York Times*, December 11 2009,

⁴⁸ Jenna Jordan, "When Heads Roll," *Security Studies* 18, no. 4 (2009): 719-755. , Alex S. Wilner, "Targeted Killings in Afghanistan," *Studies in Conflict & Terrorism* 33, no. 4 (2010): 307-329.

⁴⁹ Hoffman, *A Counterterrorism Strategy for the Obama Administration*, 359-377.

⁵⁰ Mark Mazetti, "C.I.A. Sought Blackwater's Help in Plan to Kill Jihadists," *New York Times* (August 20 2009)

⁵¹ "How the Whitehouse Learned to Love the Drone," May 19 [cited 2010]. Available from www.reuters.com.

⁵² James Rissen and Mark Mazetti, "C.I.A. Said to use Outsiders to Put Bombs on Drones," *New York Times*, August 21 2009,

⁵³ Goldman and Hess, *Blackwater - CIA Program to Hunt Terrorists used Foreign Recruits on Surveillance Missions*

⁵⁴ Ibid.

⁵⁵ Matthew Cole, "Same Blackwater, Different Names," *Abcnews.Com*, February 1 2010,

⁵⁶ Scahill, *Blackwater's Secret War in Pakistan*

personnel's operating in the country."⁵⁷ Similarly, using the company for its targeted killings program enabled the CIA to avoid reporting the operations to Congress for over eight years.⁵⁸ This use of PMSCs to avoid Congressional oversight dramatically curtails the public's understanding of American counter-terrorism activities. It furthermore brings into question the very nature of the program itself. Israel's controversial targeted killing program has come under severe criticism but has retained strong public support largely due to clear, transparent mechanisms for selecting targets that involve review by elected officials and open communication about the program's aims. As Byman argues, for an American program to be effective, it needs to adhere to similar standards to ensure its legitimacy.⁵⁹ While the American drone attacks may be effective at degrading Al-Qaeda,⁶⁰ the secret reliance on one of the most notorious PMSCs to support them brings into question the legitimacy of the entire operation.

Counter-Terrorism at Home: Intelligence

It is widely recognized that "the intelligence function is a central element in any counter-terrorist effort."⁶¹ Because most terrorist activities are carried out in secret, successful counter-terrorism relies on sound intelligence, both to prevent attacks and to facilitate targeted actions against terrorist networks.⁶² Like the American defence establishment, the United States' intelligence community has undergone substantial privatization since 2001. This move has been subtle, but substantial. As one prominent commentator has described, there has been "A quiet revolution ...in the intelligence community toward wide-scale outsourcing to corporations and away from the long-established practices of keeping operations in US government hands."⁶³ At present, the intelligence community currently spends over 70% of its budget on contracts and more than a quarter of its workforce is now contractors.⁶⁴ Of these, more than 25% are engaged in "core intelligence functions."⁶⁵ Privatization has been significant for both the collection and analysis of intelligence.

The modern collection of intelligence is divided primarily between Signals Intelligence (SIGINT) and Human Intelligence (HUMINT) and both aspects have been contracted. Companies such as SAIC and Boeing have been hired to design and operate the computer hardware and software that power American SIGINT operations. With the exception of PMSCs support for the National Security Agency's (NSA) warrantless wiretapping of Americans during

⁵⁷ Dexter Filkins and Mark Mazetti, "Contractors Tied to Effort to Track and Kill Militants," *New York Times*, March 14 2010,

⁵⁸ David Ignatius, "Outsourcing Intelligence," *Washington Post*, 2010,

⁵⁹ Daniel L. Byman, "Do Targeted Killings Work?" *Foreign Affairs* 85, no. 2 (April 2006): 95-111.

⁶⁰ "Killing "Bubba" from the Skies," in Salon.com [database online]. February 15 [cited 2010]. Available from http://www.salon.com/news/feature/2008/02/15/air_war/print.html., Gal Luft, "The Logic of Israel's Targeted Killings," *Middle East Quarterly* 10, no. 1 (Winter 2003): 3-13.

⁶¹ Ronald D. Crelinsten, *Intelligence and Counter-Terrorism in a Multi-Centric World*, 1st ed. (Stockholm: Swedish National Defence College, 2006), 5.

⁶² Hoffman, *A Counterterrorism Strategy for the Obama Administration*, 359-377.

⁶³ R. J. Hillhouse, "Outsourcing Intelligence," *The Nation*, July 24 2007,

⁶⁴ Rissen and Mazetti, *C.I.A. Said to use Outsiders to Put Bombs on Drones*

⁶⁵ Glenn J. Voelz, "Contractors and Intelligence," *International Journal of Intelligence and Counterintelligence* 22, no. 4 (Dec 2009): 587.

the Bush Administration, PMSC involvement in SIGINT collection has received little attention.⁶⁶ A number of high profile scandals have revealed the extent of private sector involvement in the collection of HUMINT, however, primarily regarding interrogations. Contractors working for both SAIC and Titan were involved in the detainee scandal at Abu Ghraib. Unlike their military counterparts, many of whom received jail sentences for their roles, the contractors were never convicted of any wrongdoing.⁶⁷ Similarly, a former Director of the CIA has admitted that some of the individuals involved in water boarding Al-Qaeda prisoners were contractors.⁶⁸ This admission is notable for two reasons. First, contractor involvement in these activities and their avoidance of any subsequent prosecution is believed to have stirred anti-American anger.⁶⁹ Second, the use of contractors for water boarding, which was reserved for a select few very high profile terrorists, indicates that the CIA relies on the private sector for even its most crucial activities.

PMSCs involvement in intelligence analysis is no less problematic. Several components of the intelligence community have experienced a brain drain, as their top talent retires early to pursue higher salaries in the private sector, only to be hired back by the government on contracts. Booz Allen Hamilton, for example, a firm providing advice and strategic planning, lists amongst its top executives several former senior members of the intelligence establishment. Mike McConnell, for instance, left his post as the head of the NSA to work for Booz Allen, only to return a few years later as the Director of National Intelligence.⁷⁰ Former CIA officer Michael Scheuer has derided these practices, claiming that they ultimately undermine the advice of senior analysts, who remain cognizant of how their actions, while in government, may affect their job prospects upon retirement.⁷¹

The pervasive spread of contractors into American intelligence analysis has extended to the point that they now influence the composition of the President's Daily Brief, the nation's most sensitive national security document.⁷² This fact is troubling, since current CIA Director Leon Panetta has expressed a desire to see the agency's reliance on contractors reduced because of their questionable loyalties.⁷³ For contractors to be simultaneously distrusted by the head of the CIA because of questionable loyalty, yet charged with briefing the President points to a convoluted approach to outsourcing. Consequently, Voelz has argued "the time has arrived for the government to move beyond viewing its commercial augmentation as an ad hoc resource without having clear strategies and policy for its use."⁷⁴

Privatization in this realm is inherently problematic as "top-level analysis is precisely intended to shape strategic policy, and the more such tasks are delegated to private actors the further they are removed from traditional accountability structures such as judicial and

⁶⁶ Simon Chesterman, "We can't Spy ... if we can't Buy!" *European Journal of International Law* 19, no. 5 (2008): 1055-1074.

⁶⁷ Ibid.

⁶⁸ House Permanent Select Committee on Intelligence, *Hearing of the House Permanent Select Committee on Intelligence: Annual Worldwide Threat Assessment*, February 8 2008,

⁶⁹ Singer, *Can't Win with 'Em, Can't Go to War without 'Em*

⁷⁰ Chesterman, *We can't Spy ... if we can't Buy!*, 1055-1074.

⁷¹ Michael Scheuer, *Imperial Hubris* (Virginia: Potomac Books, 2005), 314.

⁷² Hillhouse, *Outsourcing Intelligence*

⁷³ Voelz, *Contractors and Intelligence*, 586-613.

⁷⁴ Ibid.: 587.

parliamentary oversight, and the more influence they may have on the executive.”⁷⁵ If its effects on Congressional oversight of the military are any indication, the use of PMSCs by the Intelligence Community will further reduce Congress’s limited utility in this realm. The Church and Pike Committees in the 1970s demonstrated the value of maintaining Congressional oversight of the executive branch’s intelligence activities, and subsequent investigations have again asserted the value of maintaining a strong system of congressional oversight.⁷⁶ As Kibbe writes, oversight, in addition to ensuring that statutory legislation is respected, “done well... helps to improve the intelligence product.”⁷⁷ As Director Panetta’s 2009 admission demonstrates, however, the use of contractors makes oversight much more difficult. The Congressional intelligence committees have very little control over the actual appropriation of funds for the Intelligence Community. Thus, with being briefed, they lack basic information about specific intelligence functions generally, let alone any way of knowing about the existence of any contracts unless alerted by the contracting agency.⁷⁸ While the executive branch is supposed to notify the Congressional committees about intelligence activities, this has often been lacking. Employing contractors in positions of grave importance to US national security mandates a much higher standard of accountability and oversight.

Counter-Terrorism at Home: The Department of Homeland Security

The final component of the US counter-terrorism establishment discussed here is also the newest. In the wake of 9/11, the US federal government underwent its most significant reorganization since the creation of the DOD. Unlike the post-WWII reorganization of the national security establishment, the massive upheaval accompanying the amalgamation of twenty two federal agencies and departments under DHS occurred during a period of active war. Despite the widely divergent mandates of its constituent agencies, DHS is squarely focused on counter-terrorism. Although its mandate has been expanded slightly in recent years, DHS’s primary responsibility is counter-terrorism. According to the latest *Homeland Security Strategy*, “Homeland Security is a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”⁷⁹

Unlike either DOD or the Intelligence Community, DHS has from its inception recognized its role as one of collaboration with the private sector in a “truly national effort.”⁸⁰ However, despite DHS’s admission that government alone cannot protect the homeland, it has not recognized the activities of the contractors working on its behalf. Rather, public-private

⁷⁵ Chesterman, *We can't Spy ... if we can't Buy!*, 1057.

⁷⁶ Loch K. Johnson, "The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability," *Intelligence and National Security* 23, no. 2 (April 2008): 198-225. , Frederick A. O. Schwarz, "The Church Committee and a New Era of Intelligence Oversight," *Intelligence and National Security* 22, no. 2 (April 2007): 270-297. , National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*

⁷⁷ Jennifer Kibbe, "Congressional Oversight of Intelligence," *Intelligence and National Security* 25, no. 1 (February 2010): 25.

⁷⁸ *Ibid.*

⁷⁹ United States of America, *National Strategy for Homeland Security* (Washington, D.C.: 2007), 3,

⁸⁰ *Ibid.*, 1,

collaboration is required because DHS has responsibility for maintaining US critical infrastructure, and over 70% of this is privately owned. Thus, for DHS, collaboration with the private sector is needed so it can help the corporate owners of the national critical infrastructure safeguard national assets. As Stanger argues, however, for public-private partnerships like these to work, the government needs to clearly articulate “what only government can do well, the so-called inherently governmental functions.”⁸¹ DHS, however, has instead adopted a policy of outsourcing whatever functions it could since its inception. Thus, the private owners of American critical infrastructure have been working with a mixture of both contractor and government DHS employees.

In 2003, its first year of existence, DHS spent \$3.5B on contracts, and amount that rose steadily to \$15.2B by 2006 with little planning or scrutiny. What Stanger describes as “laissez fair homeland security”⁸² offered little consideration of what functions should be privatized, and instead focused on which *could* be. This approach led to scandals such as the US Coast Guard’s (USCG) *Deepwater* program which was almost 50% over budget before it was cancelled. In this case, the same company building the new USCG boats was responsible for managing its own contract and ensuring value for the taxpayers. Clearly, such practices are unwise.⁸³

As with the Intelligence Community, DHS has witnessed its most senior staff, including inaugural director Tom Ridge, leave the department to join private sector homeland security firms. Since its creation, almost two thirds of DHS’s senior personnel have left government to work in the private sector,⁸⁴ raising concerns about the level of institutional knowledge and DHS’s ability to meet its mandate. When these ex-employees are rehired as contractors, a recent report asserts that the government pays an additional 60% for the same services contractors performed before leaving.⁸⁵ Much like the Intelligence Community, this has led to concerns that contractors are performing inherently governmental tasks by influencing DHS policy. The Government Accountability Office (GAO) recently found that “program officials did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments.”⁸⁶ In this climate, the GAO argued that the department risked losing control over mission-related decisions.

For the most part, DHS contracts have received even less public scrutiny than those with the military of Intelligence Community. One notable exception is the criticism leveled at one of its constituent agencies, FEMA, for relying extensively on the private sector for its response to Hurricane Katrina. In the hurricane’s aftermath, the agency awarded more than \$5B worth of contracts, without competition, to company’s such as Blackwater, for protection services, and KBR, Fluor, Parsons, and Bechtell for reconstruction assistance.⁸⁷ In the event of another large scale terrorist incident on US soil, it would appear that the private sector would play a huge role in any government response.

⁸¹ Stanger, *One Nation Under Contract*, 146.

⁸² *Ibid.*, 150.

⁸³ *Ibid.*

⁸⁴ Chesterman, *We can't Spy ... if we can't Buy!*, 1055-1074.

⁸⁵ Voelz, *Contractors and Intelligence*, 586-613.

⁸⁶ Government Accountability Office, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services* (2007), 3,

⁸⁷ Stanger, *One Nation Under Contract*

Is Transparency the Key?

Commentators both critical and supportive of the use of PMSCs have accepted that they are now a fact of life and governments need to “figure out how to get better value out of them.”⁸⁸ Although they pose problems of coordination, oversight, and transparency for governments employing them, contractors also provide much needed manpower and knowledge. Responding to the imperatives of counter-terrorism has pressed government agencies to undertake new responsibilities and to do so with fewer people than required. Contracting has thus been a necessary component of the *National Strategy for Combating Terrorism*.

However, the American government’s use of PMSC to-date has largely been “ad hoc.”⁸⁹ Examples like the 2004 incident in Fallujah, where contractor deaths precipitated the city’s invasion, demonstrate that poorly planned use of PMSCs can create strategic level problems. Similarly, the continual departure of government employees for the private sector, only to be rehired by the same agency, does not seem sustainable. As Stanger notes, this type of “uncontrolled outsourcing...creates more problems than it solves.”⁹⁰ The ultimate success of American counter-terrorism initiatives will rely in part in developing more “strategic outsourcing”⁹¹ that can advance national interests. As Avant has argued, it is ultimately transparency that facilitates the proper oversight needed to ensure contracting is effectively coordinated in a manner that can best achieve American strategic ends.⁹² A crucial first step in making contracting strategic then is recognizing the degree to which government agencies are reliant on the private sector. This recognition would improve both the government’s transparency regarding contracting and well as more accurately align the means and ends of current counter-terrorism strategy.

The agencies involved in the facets of counter-terrorism discussed here have recognized their reliance on the private sector with varying degrees of success. DOD has gone the farthest in attempting to note and improve upon its heavy dependence on the private sector for conventional military operations. The 2006 *Quadrennial Defense Review* (QDR) recognizes that contractors, active and reserve forces, and government civilians all contribute towards an integrated ‘Total Force’ and mandates that contractors be included in operational plans and orders.⁹³ As the 2008 *National Defense Strategy* recognizes, “Each element [of the Total Force] relies on the other to accomplish the mission; none can act independently of the other to accomplish the mission.”⁹⁴ Going beyond this simple recognition, the Obama Administration has taken a series of steps to recalibrate America’s use of contractors, by reducing the military’s reliance on PMSCs. Secretary of Defense Gates announced an in-sourcing initiative to convert over 11,000 contractor positions into permanent defense civilian employees, in an effort to better balance between mission requirements and ‘overall return.’ The 2010 *QDR*, thus proposed a revised Total Force concept, that seeks a “balanced total workforce of military, government

⁸⁸ Max Boot, "The Mercenary Debate," *The American Interest* 4 (May-June 2009): 37-42.

⁸⁹ Peter Singer, "Outsourcing the War," *Salon.Com*, April 16 2004,

⁹⁰ Stanger, *One Nation Under Contract*, 33.

⁹¹ *Ibid.*, 33.

⁹² Avant and Sigelman, *What does Private Security Mean for Democracy?*

⁹³ United States of America, *Quadrennial Defense Review Report* (Washington, DC: Department of Defense, 2006),

⁹⁴ United States of America, *National Defense Strategy* (Washington, D.C.: 2008), 19,

civilians, and contractor personnel that more appropriately aligns public and private sector functions, and results in better value for the taxpayer.”⁹⁵ This initiative will see the contractor workforce shrink as a proportion of all DOD employees as contracts are replaced by government employees.

The other major components of the US counter-terrorism community have been far less successful than DOD at acknowledging the private sector, however. The Intelligence Community has taken the first step of recognizing the integrated nature of its government/contractor workforce. In this light, the 2009 *National Intelligence Strategy* recognizes that the US must build an intelligence workforce that is “properly balanced among its military, civilian, and contractor components.”⁹⁶ However, despite this recognition, no suggestions have been offered as to how this might be achieved, and no mention has been made of PMSC support for covert operations. In contrast, even this limited step is noteworthy when compared to DHS, which makes no mention of contractors whatsoever in its latest policy documents.⁹⁷

Conclusion

Just as the privatization of counter-terrorism is little recognized in the respective agencies’ policy documents, it has received little attention in the scholarly community. For intelligence activities this lack of attention is somewhat understandable, given the highly classified nature of the subject. Even in this area, and certainly with respect to homeland security and US counter-insurgency operations in Afghanistan, the strategic studies community could make a valuable contribution by further exploring the role of PMSCs. In some of these areas, such as intelligence, contractors have been hired to conceal government actions from the public and even elected officials. Where their activities are known, as are those supporting military operations in Afghanistan, the activities of PMSCs have been difficult to coordinate, sometimes with detrimental effects on military operations. In areas such as homeland security, the government has difficulties retaining enough talent to ensure the agencies can effectively execute their mission without relying on contracted employees whose interests may lie with their corporate employers, rather than with the public.

For all of these reasons, the role PMSCs play in the war on terrorism deserves further scrutiny to ensure that the terrorist threat is being countered effectively. The means employed to serve modern American strategy have changed significantly over the past decade, but recognizing this fact has been a slow process. In each of the three US counterterrorism initiatives considered above, contractors represent either a majority of all personnel or the lion’s share of spending. Simply put, American cannot counter terrorism without PMSCs. To-date, however, this reality has not been reflected in American strategic documents. Likely as a result, Congressional oversight has suffered, although it is significantly better for contractors working

⁹⁵ United States of America, *Quadrennial Defense Review Report* (Washington, D.C.: U.S. Department of Defense, 2010), 56,

⁹⁶ United States of America, *The National Intelligence Strategy of the United States* (Washington, D.C.: Office of the Director of National Intelligence, 2009), 16,

⁹⁷ United States of America, *Quadrennial Homeland Security Review Report* (Washington, D.C.: U.S. Department of Homeland Security, 2010),

for the military. That this area of counter-terrorism displays the highest degree of transparency concerning contractor involvement is likely no coincidence, and suggests the urgent need for similar moves in the Intelligence Community and DHS. The longstanding problems associated with coordinating PMSCs, even where their roles are acknowledged and oversight is present, should raise concern for the other components of the counter-terrorism community. The Senate Committee investigation into the attempted downing of the Northwest Airlines flight over Detroit by Umar Farouk Abdulmutallab cited poor coordination between security agencies as a contributing factor leading to the failed bombing.⁹⁸ Further investigation is warranted to examine what role, if any, a heavy reliance on contract personnel plays in such problems.

⁹⁸ Senate Select Committee on Intelligence, *Unclassified Executive Summary of the Committee Report on the Attempted Terrorist Attack on Northwest Airlines Flight 253* (Washington, D.C.: United States Senate, 2010), <http://intelligence.senate.gov/100518/1225report.pdf>.