

The Good, the Bad, and the Unknown: PMCs in Iraq



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Many of the sources of this information for this report come from nonofficial, public sources such as newspapers, magazines, journals, and books. As such I cannot vouch for the complete accuracy of all of the cited sources. In addition I am drawing on a major study I wrote, "*Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq*," that was published in 2004. Responsibility for the report's contents is that of the author. Photos were provided courtesy of Doug Brooks.

The views expressed here are the author's and do not necessarily reflect those of BASIC, its staff or Council members.

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The Good, the Bad, and the Unknown: PMCs in Iraq

The guidance for writing this paper was simple: provide a “synopsis of good and bad practices in Iraq, the lessons learned from Iraq, If you are able to include Afghanistan you would be our grand hero and could count on our eternal gratitude.”

Much as I would like to be a hero I fear that I cannot rise to the occasion. As most people who follow private military and security companies in more than cursory fashion know, trying to follow their activities, let alone derive lasting lessons from them, is like nailing jello to the wall. It is impossible, unless you freeze it first.

Similarly, the only way to try and derive lessons from the activities of PMCs is to perhaps isolate and examine the activities of some firms at specific moments of time. While one might get a feel for what works, or worked that week or month in a specific country, to go beyond that is hazardous.

Let's be honest about this. The fact that we are dealing with an industry which has really only been in the public eye for a bit over a decade, depending on who and where you count, makes drawing conclusions difficult. Quite simply it is, despite notable consolidations in recent years, an industry in flux. Ten years ago most public commentary focused on just three companies, Executive Outcomes, Sandline (both of which no longer exist) and MPRI (which is now a subsidiary of L-3). Now, just in Iraq alone one has had probably hundreds of private military and security firms, of all shapes and sizes (and most of them NOT employing armed personnel) which have operated in Iraq since the start of the 2003 U.S. invasion.

And whereas public interest in and coverage of PMCs was episodic and far too often sensationalistic now it is regular and far more comprehensive. Thanks to groups like BICC¹ and many others one does not have to spend much time to get a good basic understanding of the industry. Indeed, PMCs merit their own entry in online encyclopedias like Wikipedia.²

Note that I write “private military and security firms.” Unlike some other writers on the subject I don’t believe that all firms fit neatly, or at all, into one basket or even multiple baskets. It makes no sense to lump military logistics services firms like Kellogg, Brown & Root (KBR) in with the likes of Blackwater or Armor Group. Anybody who has ever logged into a relevant listserv or industry chat board knows that one of the easiest ways to start a virtual war is to call ArmorGroup or Control Risks a private military company

In addition, given the size and resources of the larger firms they are easily capable of moving from one category of activity to another, depending on the contract they win.

What is a private military company? It is a sign of the confusion over and controversy about the idea of private sector firms carrying out military and security missions of many different kinds, from combat service support and military training to personal protection that hardly anyone uses the term the same way. In truth, it is a definitional morass. The media invariably uses it to include non-weapons bearing firms such as Halliburton. In Iraq all of the private firms are actually acting as bodyguards, rather than as combat military units, like the now disbanded Executive Outcomes, which fought in Angola and Sierra Leone in the 1990s. Some commentators prefer to call them Private Security Companies (PSC). But, given that the term is now embedded in popular culture I use PMC here for the sake of convenience.

And, even among those firms that employ armed personnel, whose mandate includes shooting if necessary, there are very wide gulfs. A firm like Blackwater whose employees have often found themselves in the midst of combat have little in common with a group like Erinys, whose main function was to provide on site security for fixed petroleum sector infrastructure, such as pipelines, and did so mainly by training over 14,000 Iraqis to provide it.

I would agree with the comments of academics such as Chris Kinsey, who writes, “You can only distinguish between different activities. Some companies will continue to operate within their core competency, such as ArmorGroup and CRG. Other companies may decide to move around the market depending on market opportunity.”³

Still, since we are here to at least advance the discussion on industry (however it is defined) let me offer the following observations.

1. Overview of strengths and failings of PMCs in Iraq

PMCs have done reasonably well in fulfilling their contracts in Iraq. They have performed difficult missions under trying circumstances.

Generally, their personnel have conducted themselves professionally and are more in tune with the local culture than are regular U.S. military forces. In several, little noted cases, they performed above and beyond the call of duty. On the whole they are culturally more sensitive than the military. We need to remember that to be able to operate they have to mix with locals thus getting to know the local culture. Such integration is done professionally and during periods of relaxation. While one can’t eliminate the possibility of getting an ill-trained or unqualified person working for a company on the whole the level of professionalism compares favorably with, and in many cases exceeds that of regular military forces. For the sake of comparison consider the hapless reservists who were tasked with guarding inmates at Abu Ghraib, a task for which they were not trained.

PMCs cannot lock themselves away, for reasons of force protection, as the military can do. Many companies are also reliant on local intelligence to be able to operate. Getting such intelligence requires an understanding of local culture. PMCs in Iraq do not operate in a cultural vacuum.⁴

But, with the advantage of hindsight it seems clear that a lack of strategic planning has affected private sector operations in Iraq in the same way it has affected the regular U.S. military.

Coordination of PMCs was deficient and they failed to be given sufficient early warning before the war about how much their service would be needed. Both the US and UK military failed to realize the extent to which they would become reliant on PMCs after the invasion. It was not until they hired one of the companies to protect a US general did they realize how useful PMCs could be to them. This is understandable since no one really understood what PMCs were about, but also because no one foresaw what was coming in terms of the insurgency. The UK military also failed to engage with UK civilian police who later played a very important role in training local police in forensic duties.⁵

In 2004 I wrote, "The tendering process has been hasty with some contracts awarded on the basis of lobbying or political influence." Unfortunately, since then, we have had numerous revelations about bribes, kickbacks, sweetheart deals, and lack of oversight. At this point it is clearly an understatement to say that auditing and awarding of contracts is a problem.⁶

My belief at this point in time is that scandal and corruption is a near inevitability. Partly it is because the very process of competing for contracts produces the temptation, if not the actual practice, of resorting to unethical means to win a tender. The other part is simply due to the fact that the governmental agencies and regulators who are charged with leveling the field and acting as neutral judges are far too often too few in number, too little trained, too overburdened in terms of contracts they are supposed to monitor, and kept on the job too little time to gain the experience they need to adequately monitor bids, let alone do follow-up in terms of how a company actually implements a contract.⁷

This, however, is not as bad as it sounds. Corruption is endemic to all regular military establishments. For example, recently in the United States, Congressman Randall "Duke" Cunningham pled guilty to conspiring to commit bribery, tax evasion, and honest services fraud. Congressman Cunningham took bribes totaling at least \$2.4 million in return for using his public office and taking official action to influence the appropriations of funds and execution of government contracts. The bribes included the purchase of Cunningham's home in California at an artificially inflated price by one defense contractor, the payoff of a mortgage on a multi-million dollar home in Sante Fe by another defense contractor, and a down payment on a condominium in Arlington, Virginia by a third coconspirator.⁸

Last year Darleen Druyun, a former AF acquisition official, went to jail for having negotiated for employment with Boeing while negotiating a major lease tanker deal with Boeing. She admitted to giving Boeing preferential treatment in certain contract matters.

While there have been many cases of contracting scandal on the part of Western firms in Iraq my sense is that more of them, with the notable exception of Custer Battles, have had to do with logistics firms doing reconstruction work, as opposed to those doing security work.

One might argue that there is another category of scandal where security companies have not paid promised salaries or benefits or paid death and survivor benefits or insurance payments, or not lived up to the terms of their contracts with their employees in terms of providing needed equipment and supplies. Although it is also true that in some cases the contractors simply don't understand the benefits package, and failed to read the small print. But that, as the saying goes, is another story, beyond the scope of this paper.

It is true that PMCs need a better understanding of the basic laws and regulations of the country they operate in. When, as in the case of Iraq, they are under contract to the U.S. government this becomes a governmental responsibility.

Some of the big companies do have a clear understanding of their legal responsibilities when operating in foreign countries. Remember they operate around the world and understand that they are accountable to national regulation. Indeed, on one occasion ArmorGroup took the unprecedented step in removing the scene of an accident back to the UK for forensic experts to determine the cause of death of one of their employees. The scene was a hut that they had dismantled and shipped back to the UK because the local police were unable or unwilling to do anything about the death.⁹

Insurance is also an important factor here. As part of their policy they will have to abide by all local laws pertinent to their activities. They also employ local staff that know the law and inform them of what they can and cannot do. Unfortunately this aspect of the industry is rarely touched on. However, I agree that the fly-by-night companies may not know the law and as in the case of Iraq will do as they wish because they think they can get away with it.¹⁰

But, underlying this is the widespread view, though not often publicly voiced, perception among PMCs, that they frequently can't trust the Iraqi government, as its military, police, intelligence and security services are infiltrated by members of the insurgency.

Such a view, which is likely true, is going to make it difficult, to say the least, to coordinate security for reconstruction efforts. Since such reconstruction is critical to defeating the insurgency it is a difficulty that must be overcome. At present this remains a contractor responsibility for the simple reason that the U.S. government does not consider that to be its responsibility. In the laissez faire environment of privatization and outsourcing it is considered to be the responsibility of the individual contractors. While U.S. military forces do monitor the whereabouts of all contractors and will respond when they are in distress, if they are able, it does so at its discretion. It is worth noting that the U.S. military is able to monitor all security details thanks to the systems set up by Aegis Defence, which won the contract for coordination of security contractors. Aegis's Regional Operations Center (ROC) and Tapestry software system allows the U.S. military to see every transponder equipped security convoy, although not all security convoys use transponders. But it is only a one-way system. The military can see the contractors but the contractors do not know where the military is.

2. Operational Coordination between PMCs

In the early stages of Iraq, after major combat operations, companies had varying access to information, and as they were in fierce competition for contracts, there was a resistance to sharing such information. Indeed, the contract awarded to Aegis Defence was challenged by two other competitors.

But with the growth of the insurgency and the increase in PMC casualty's things have changed. Companies are far more willing to share information. The awarding of the contract to Aegis Defence marked a major step in information sharing, both among them and with the U.S. military. Thanks to the tracking system Aegis put into place the U.S. military at any given moment now knows the exact location of all PMC transponder equipped details and convoy on Iraqi roads.

On the other hand, while confusion about the formal relationship between the regular military and PMCs may have abated it is evident that there are still tensions. The incident in 2004 between U.S. Marines and Zapata security is an illustration of that.

Press reports indicate serious confusion in authority between PMCs and the military. For example, In a major incident in May 2005, 19 security contractors working for Zapata Engineering were detained for allegedly shooting recklessly in the streets of Fallujah and nearly hitting U.S. forces. Later Marines searched, roughed up members of the convoy, and jailed them for three days without charges.

The Zapata contractors were released, but complained that the U.S. military had blacklisted and banished from working in the security business in Iraq -- although none ever was charged with a crime.¹¹

3. What Do They Do?

The debate over the different types of PMCs is both endless and ongoing. Thus, for the sake of convenience, I use the following typology for the sake of discussion, while acknowledging that it has limitations and is still convoluted.

PMCs provide three categories of services in Iraq: personal security details for senior civilian officials, non-military site security (buildings and infrastructure), and non-military convoy security. Rather than working directly for the U.S. government or the CPA, most PMCs are subcontracted to provide protection for prime contractor employees, or are hired by other entities such as Iraqi companies or private foreign companies seeking business opportunities in Iraq.

- *Military combatant companies* - Firms that actually provide military forces capable of combat are fairly rare and only constitute a minority of PMCs, even though such firms tend to receive the most publicity. Examples include: the now disbanded PMCs, Executive Outcomes of South Africa and Sandline of the United Kingdom. None are currently operating in Iraq.
- *Military consulting firms* - These traditionally provide training and advisory services, though some have expanded into personal security and bodyguard services. Examples include: Blackwater, MPRI, DynCorp and SAIC of the United States.
- *Military support firms* - Provide nonlethal aid and assistance, such as weapons maintenance, technical support, explosive ordnance disposal, and intelligence collection and analysis. According to a past Congressional Research Service (CRS) report some eight firms were identified in news accounts of firms providing protective services to or on behalf of the CPA. These firms are Armor Group, Blackwater Security Consulting, Custer Battles, Erinys Iraq, Diligence LLC, Global Risk Strategies, Special Operations Consulting-Security Management

Group, and the Steele Foundation. In addition, a State Department list cited another firm, ISI Iraq, as providing security to coalition facilities.¹²

It will take a more talented and ambitious person than I to break these categories down, say in terms of tasks done by contractor. In fact, it would take an organization, for the simple reason that a contractor can do more than one task and offer more than one capability. Military consulting firms, in particular, are capable of offering a wide variety of service.

And, if they don't have the capability in hand when they win a contract they simply go out and hire it. That is the same as most conventional contractors in the military industrial and national security realms. While it affords them great flexibility in competing for contracts it makes classifying them very difficult. That may explain why the services they advertise (risk management, protective security, security training, risk consultancy, risk management, et cetera) on their web sites are so bland.

Nevertheless, the International Peace Operations Association is currently doing a survey of private security firms, a subset of military consulting firms, and a tiny segment of the overall private military and security industry¹³ to try and establish who they are and what they are doing.

Some wonder if there is a preference for particular third country workers. The only preference seems to be to get people who can do the job and, like any other company, pay them as cheaply as possible. That is not the same as saying firms are paying below standard for the simple reason there is no industry wide standard.

Certainly, when it comes to security personnel firms have shown no hesitation in recruiting qualified workers from all parts of the world; first, second, and third worlds. It would be wrong to assume that companies assume all employees from third world countries are unskilled and can be paid much less than workers from developed nations. Employees from Fiji or former Ghurkhas from Nepal are highly sought after and are seem to be paid competitive wages, according to news reports. But, in general, it is true that Third Country Nationals (TCN) do not command salaries comparable to their Western counterparts.

However, workers recruited for combat service support work, i.e., base maintenance, truck drivers, staffing base cafeterias and laundry services and the like are a different story. Brokers appear to have recruited large numbers of low-paid workers from countries such as India, Nepal, and the Philippines.¹⁴

4. Casualties: The PMC body count in Iraq

Nobody knows for certain how many PMCs are operating in Iraq. In response to a request from Congress, a 2004 Coalition Provisional Authority compiled report listed 60 PMCs with an aggregate total of 20,000 personnel (including U.S. citizens, third-country nationals and Iraqis). Incidentally, that figure was often taken by the media to mean there were 20,000 armed non-Iraqi security personnel operating in Iraq. They were often described as the third or second largest foreign-armed contingent in Iraq. It took a lot of gall to make such a statement, considering that 1) the number of armed personnel was overstated and 2) implied that all the armed Westerners were operating as some sort of cohesive, unified, body, which was never the case.

The total number of non-Iraqi PMC personnel is certainly less than 20,000. When the Erinyes personnel, the vast majority of which were Iraqi, were subtracted from the total, the number is significantly less, perhaps as few as 6,000 security contractors. And despite claims to the contrary, PMCs do not constitute the second or third largest Army in Iraq, they are not coordinated into one cohesive whole, nor do they engage in offensive operations. Personally, I agree with the estimate of five to six thousand armed Westerners in Iraq¹⁵

PMC operations tread the difficult line in providing protection in a manner that meets the intricate demands of corporate, military and government ethics, and come at significant cost. As of November 14, at least 280 coalition contractors have been killed.¹⁶

According to an October 2005 report by the U.S. Congressional Budget Office (CBO) there was a workforce of about 38,000 employees (including foreign nationals and subcontractor personnel) working on the U.S. Logistics Civil Augmentation Program (LOGCAP) in Iraq from March 2003 to November 2004. But at least 524 US military contract workers, many of them Iraqis, have been killed in Iraq since the March 2003 invasion.

At least 25 Blackwater workers have been killed in Iraq. San Diego, California-based Titan Corp, which provides military translators, has lost 148, the most among the 43 companies that have filed death-benefit claims with the Labor Department. As of January 22 DynCorp had lost at least 26 employees in Iraq since the war began.¹⁷

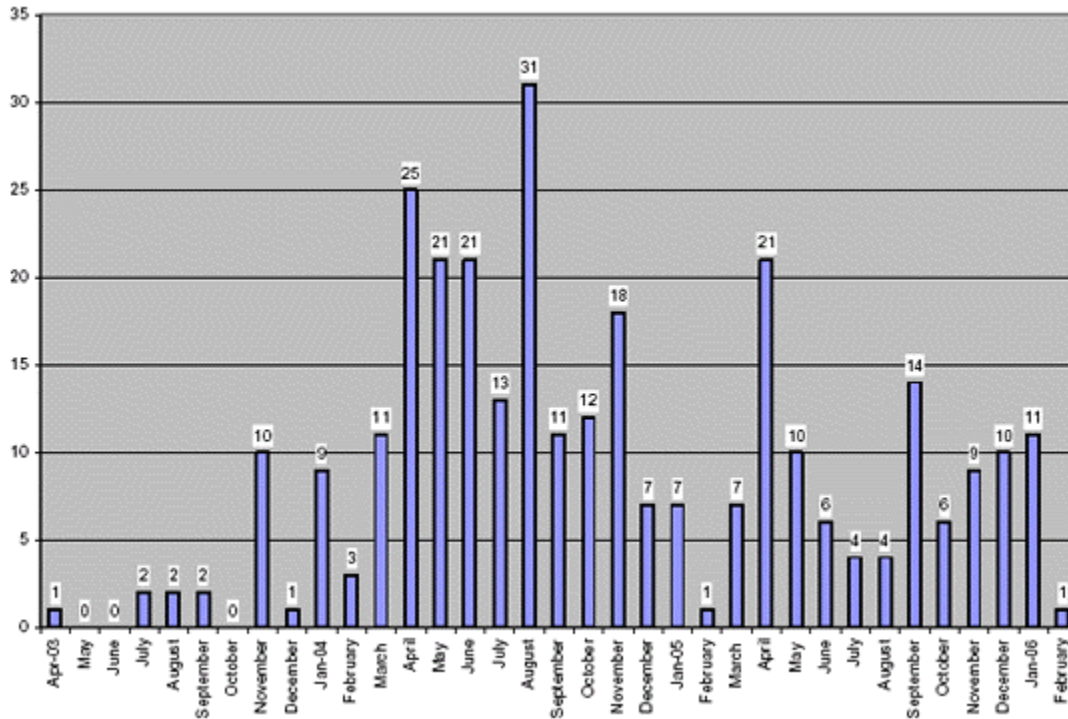
At least another 3,963 were injured, according to Department of Labor insurance-claims statistics obtained by Knight Ridder news service. If one assumes the base is the CBO number that works out to 10% of the total. Those statistics, which experts said were the most comprehensive listing available on the toll of the war, are far from complete. Two of the biggest contractors in Iraq, Halliburton and its Kellogg Brown and Root subsidiary, said their casualties were higher than the figures the Labor Department had for them.

The government's listing shows the contractors' casualty rate is increasing. In the first 21 months of the war, 11 contractors were killed and 74 injured each month on average. This year, the monthly average death toll is nearly 20 and the average monthly number of injured is 243.

In the beginning of November 2005 Knight Ridder newspapers reported that 428 civilian contractors had been killed in Iraq and another 3,963 were injured, according to Department of Labor insurance-claims statistics. Those figures, however, were incomplete, and the true total is likely higher. For all practical purposes this means the United States suffered its 2000 casualty in Iraq far sooner than the date last October than the media focused on.

There are not many good, comprehensive public sources of information on contractor casualties, both fatalities and wounded. So, even though it has its own limitations the following graphs merit examination.¹⁸

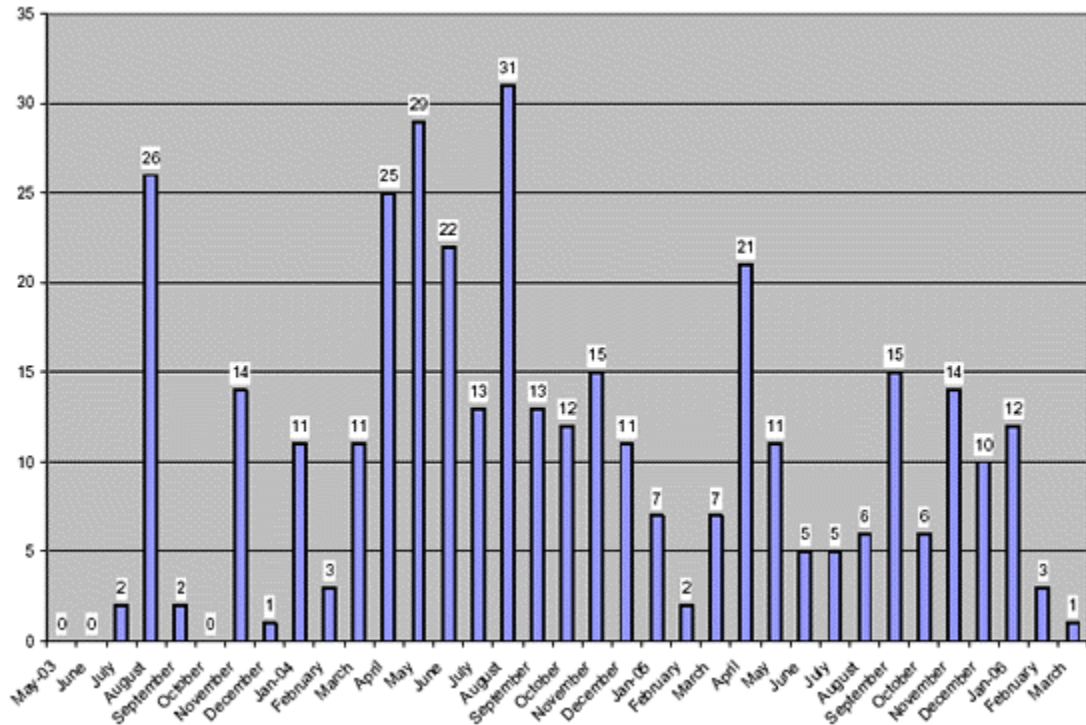
NON-IRAQI CIVILIAN CONTRACTORS KILLED IN IRAQ



Total as of March 19, 2006: 311

NOTE ON NON-IRAQI CIVILIAN CONTRACTORS KILLED IN IRAQ: This list is incomplete and does not include an additional 44 contractors that were killed up until December 31, 2004. Since we do not know during which month these deaths occurred they are not represented in the graph above. As of March, 2005, there were more than 20,000 foreign (non-Iraqi) private military contractors in Iraq. 6,000 of these are in armed tactical roles. Peter W. Singer, "Outsourcing War," *Foreign Affairs*, March 2005.

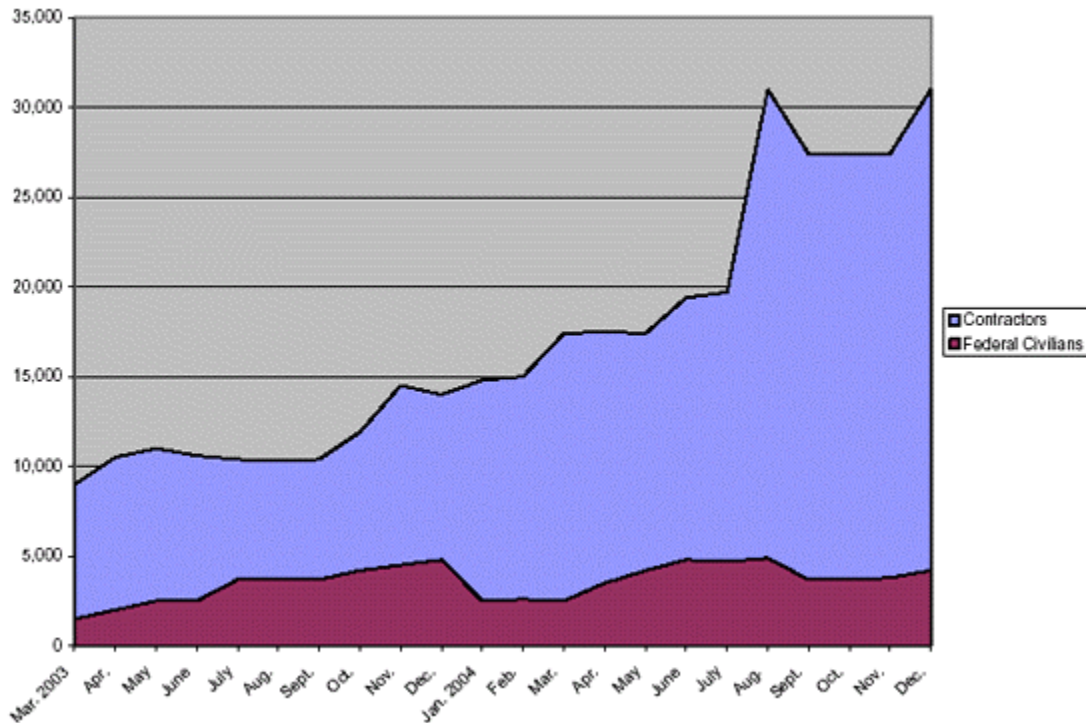
NON-IRAQI CIVILIANS (INCLUDING CONTRACTORS) KILLED SINCE MAY, 2003/17



Total through March 19, 2006: 366

LOGISTICS PERSONNEL IN IRAQ AND KUWAIT	
Civilian Personnel Total	38,305
US expatriates	11,860
Third-country nationals	900
Host-country nationals	35
Subcontractors and labor brokers	25,510
US Army Combat-Service-Support Personnel	45,800

NUMBER OF US CONTRACTORS AND FEDERAL CIVILIANS IN THE US CENTRAL COMMAND AREA OF RESPONSIBILITY



Differences between companies for different countries?

As an old saying goes in my country it is different strokes for different folks. Companies are influenced by various factors; some of which are universal, such as international law which they all, in theory, must comply with, and some are nation specific, depending on the laws of the books. For example, companies in the United States hiring workers for overseas work are required to provide insurance, pursuant to the Defense Base Act law.¹⁹

Companies may also be influenced by the culture of the country in which they are headquartered. While they may hire workers from anywhere in the world it is often the case that the supervisory and highest management personnel will be citizens of the country in which the firm is headquartered.

Yet because it is a global industry there is a curious inversion of the old saying that a chain is only as strong as its weakest link. Since most of the truly profitable contracts are issued by Western governments and companies any firm that wins the contract has to take great pains to live up to the strictures of that contract. And the contracts that such companies issue are usually written to comply with laws that are far more stringent in terms of use of force and respect for human rights than those issued by companies or governments in developing nations. Thus, security contractors are significantly influenced and driven by their clients.

For example, any PMC, regardless of where it is headquartered, that operates under a U.S. government contract must adhere to U.S. law

While generalizations are just that and hardly definitive British security contractors, for example, are generally regarded as lower profile and thought to be less likely to pull the trigger at the first alarm, than many American counterparts. Though the "trophy" video complete with postproduction Elvis music appearing to show private military contractors in Baghdad shooting Iraqi civilians sparked two investigations after it was posted on the Internet last October could change perceptions, depending on the results of the investigation by Aegis, that is expected to be announced soon.

Hopefully, as companies interconnect and dialog with each other in the future a general standard will be established that all can and will adhere to. This has long been a goal of trade groups like the International Peace Operations Association.²⁰ In fact, there are currently numerous trade associations in existence, many of which exist to regulate and promote standards for security countries in their respective countries.²¹

A relatively new one is the Private Security Company Association of Iraq (PSCAI). Its website states, "It was formed and maintained to discuss and address matters of mutual interest and concern to the industry conducting operations in Iraq. The PSCAI seeks to work closely with the Iraqi Government and foster a relationship of trust and understanding."²² And yet another one, the British Private Security Company Association is just getting started.

Transparency, reporting, democratic control

U.S. government contracts with PMCs above \$50m have to be reported to Congress. Companies must comply with a set of arms transfer and services rules called the U.S. International Traffic in Arms Regulations (ITAR). Accountability has been enough of a concern that members of Congress wrote to Defense Secretary Rumsfeld in April 2004 requesting proper screening of security companies in Iraq. The CPA set some initial minimum standards for regulating PMCs and new mandatory guidelines were in 2004 under consideration by the Iraqi Ministries of Interior and Trade to vet and register PMCs.

Before handing over power to the newly elected Iraqi government in January 2005, the CPA established Memorandum 17, a notice that called for all private security companies operating in Iraq to register by June 1 and established an oversight committee led by Iraq's Ministry of the Interior.²³

According to Lawrence Peter, a former CPA official and the director of the PSCAI, as of June 21, 2005, 37 security contractors have registered with the Iraqi Ministry of the Interior. One is awaiting approval, and at least 18 additional security companies are in the process of registering.²⁴

Transparency of the industry will always be challenging, given the claims of firms that there business information is proprietary. The CRS report noted:

Details of the CPA contracts and related subcontracts are not public information. This has led to questions concerning the cost-effectiveness of the contracts as well as of any obligations of the contractors under the contracts regarding the use of force. According to the CPA, "subcontracted PSCs and their parent companies generally do not make available details concerning the prices of their contracts,

salaries, or numbers of employees,” because “such information is proprietary and may have privacy implications... .” Some analysts suspect that at least a few of the contracts may detail “rules of engagement” under which contracted personnel are permitted to use their weapons as a means of protecting the personnel and other assets of the companies performing reconstruction work, as there currently is no legal framework governing the use of private weapons in Iraq

In the past PMCs working for the CPA or to any of the coalition forces in Iraq operated under three levels of legal authority: 1) the international order of the laws and usages of war and resolutions of the United Nations Security Council; 2) U.S. law; and 3) Iraqi law as amended by orders of the CPA. Of course, now that sovereignty, at least in the de jure sense, has been handed back to Iraq, contractors must comply with any new laws and regulations put forth by Iraqi authorities.

Under the authority of international law, contractors working with the military are civilian non-combatants whose conduct may be attributable to the United States, but may be held accountable under laws that apply extraterritorially or within the special maritime and territorial jurisdiction of the United States. Iraqi laws that continue to apply during the occupation of Iraq, as well as regulations issued by the CPA, applied to civilian contractors, at least until June 30, 2004, when the CPA transferred sovereignty to Iraq. Iraqi courts did not have jurisdiction to prosecute them without the permission of the CPA.

It may seem rhetorical but it actually is still an unsettled question as to whether the duties of contractors amount to “taking an active part in hostilities.” Only members of regular armed forces and paramilitary groups that come under military command and meet certain criteria (carry their weapons openly, distinguish themselves from civilians, and generally obey the laws of war) qualify as combatants.

Because contract employees fall outside the military chain of command, even those who appear to meet the criteria as combatants could be at risk of losing their right to be treated as POWs if captured by the enemy.

The Geneva Conventions and other laws of war do not appear to forbid the use of civilian contractors in a civil police role in occupied territory, in which case they might be authorized to use force when absolutely necessary to defend persons or property. But given the fluid nature of the current security situation in Iraq, it is sometimes difficult to discern whether civilian security guards are performing law-enforcement duties or are engaged in combat.

If their activity amounts to combat, they become lawful targets for lawful enemy forces during the fighting, and, if captured by such forces or an enemy government (if one should emerge), could potentially be prosecuted as criminals for their hostile acts.

U.S. contractor personnel and other U.S. civilian employees in Iraq are subject to prosecution in U.S. courts under a number of circumstances. Jurisdiction of federal statutes extends to U.S. nationals at U.S. facilities overseas. Also, many federal statutes prescribe criminal sanctions for offenses committed overseas, including crimes defined as “war crimes” under the War Crimes Act of 1996.

At the end of June 2004, Deputy Secretary of State Richard Armitage and Deputy Secretary of Defense Paul Wolfowitz proposed guidelines for all U.S. Government contractors working in Iraq and for US government offices supporting and coordinating those contractors. It is intended to "provide an initial blueprint for eventual adoption of common contractor coordination and security rules for all nations providing contractors for the reconstruction of Iraq."

Things should improve in the future as on October 3, 2005 the Pentagon finally released a long-awaited directive on the roles and functions of the contractor on the battlefield. That was DoD Instruction 3020.41 "Contractor Personnel Authorized to Accompany the U.S. Armed Forces."²⁵

This regulation was issued pursuant to a provision in the FY 2005 Defense Authorization Act. The 33-page document clarifies the legal status of civilians hired to support those forces in a contingency. The new instruction also explains when contractors can carry weapons in areas where U.S. troops operate -- places like Iraq, where armed contractors have been operating for more than two years without clear regulatory guidance.

The regulation ties together nearly 60 Pentagon directives and Joint Staff doctrinal statements that relate to the role of contractors on the battlefield. From the viewpoint of firms like Blackwater or Triple Canopy the new regulation is important because it establishes detailed criteria for civilian contractors to carry weapons, which are to be used only in self-defense. It also sets forth detailed procedures for arming contingency contractor personnel for security services.

However, the question now is how it will be implemented. Companies that contract with the Pentagon are required to follow a set of rules known as the Defense Acquisition Regulation Supplement (DFARS).²⁶ DFARS governs all aspects of contract enforcement, from accounting procedures to use of government property, and contains a section on "Contractor Standards of Conduct" covering proper behavior and a hotline for reporting improper conduct. DFARS was amended on June 6, 2005, to hold contractors working to provide support to U.S. forces deployed overseas accountable under U.S. and international laws as well as those of the host country. It also permits contractors to carry weapons at the discretion of the military commander

Reportedly a number of DFARS are being modified to reflect the guidance in the new instruction. But it may be too difficult to retroactively implement all of the rules and regulations spelled out in the policy to cover all of the contracts in effect in Iraq.

In June 2003, the Coalition Provisional Authority handed down Memorandum 17, which grants foreign contractors immunity from Iraqi law while working within the boundaries of their contracted tasks. The memo placed private contractors under the legal authority of the workers' home countries. In June 2004, one day before the CPA transferred sovereignty in Iraq to the interim Iraqi government, Paul Bremer signed a revised version of Memorandum 17, which stipulates that the rule remain in effect until multinational forces are withdrawn from Iraq or until it is amended by Iraqi lawmakers.

U.S. government contracts worth \$50 million or more with private companies must be reported to Congress, and the companies must comply with the U.S. International Traffic in Arms Regulations (ITAR), which regulates the import and export of arms material and services. But, for example, of the 60 known private security companies operating in Iraq,

only eight worked directly for the CPA; the rest are subcontracted to provide protection for the primary contractors or even other subcontractors.

Furthermore, of the scores of private security companies that were and are operating in Iraq, only eight worked directly for the CPA; the rest subcontracted to provide protection for the primary contractors or even other subcontractors. When companies are not contracted directly to the government, they are accountable only to the contractor whom employs them.

In Britain, where pressure for public regulation is growing, the House of Commons Defence Committee is to investigate the role of PMCs in Iraq. The UK Government has been reviewing options for regulating PMCs contained in a Green Paper published in 2002 and a decision is expected by the end of the year.²⁷

Political influence

Just like traditional military contractors that make weapons for national armed forces political connections are important to PMCs when landing contracts. Several companies, including Diligence LLC, The Steele Foundation and CACI, have senior directors or advisors with high-level experience or influence with current or former U.S. and British governments. PMCs also extensively use political campaign donations and employ lobbyists to influence government officials. In 2001, the ten leading private military firms spent more than \$32m on lobbying, while they invested more than \$12m in political campaign donations.

Recently, Stephen Kappes, the former deputy director of the CIA's clandestine operations department, has taken the post of chief operating officer at ArmorGroup, the UK-based private security group.

On the lobbying front it was reported that Washington, D.C.-based PR and lobbying firm Alexander Strategy Group is working on behalf of Blackwater USA. Though ASG recently announced it was shutting down because of its ties to disgraced lobbyist Jack Abramoff and former House majority leader Tom DeLay, who has been indicted on money-laundering charges.²⁸

Triple Canopy, Inc. announced Dec. 2 the formation of its Strategic Advisory Board. Among the heavyweights it signed up are Dan Bannister, former Chairman and CEO of DynCorp; David Binney, former Deputy Director of the FBI and former Director of Security for IBM; BGEN Steve Cheney, USMC (Ret.) currently the Chief Operating Officer for Business Executives for National Security (BENS), and Catherine Lotrionte Yoran, former Assistant General Counsel with the Central Intelligence Agency.

Small Arms: Use, transport and purchase of arms

The arming of PMCs also raises a number of accountability, small arms non-proliferation and safety concerns. In Iraq, CPA rules restrict the weapons PMCs may use to small arms with ammunition as large as 7.62mm and to some other defensive weapons. However, some PMCs guarding foreign contractors and sensitive installations are demanding the right to carry more powerful weapons. U.S. Army regulations allow contractors performing combat support services to carry weapons when required by their combatant commander.

It is not well appreciated that PMCs, at least in Iraq, are not the source of a significant amount of small arms and light weapons. They don't import a lot into Iraq. And much of what they do import is limited, single shot as opposed to full auto rifles.

Of course, companies do obtain fully automatic weapons but they buy them in country, often, if not usually, on the street. Whatever they have they are required to register them.

The previously mentioned DoD Directive has various provisions concerning small arms:

4.4.1. Subject to the approval of the geographic Combatant Commander, contingency contractor personnel may be armed for individual self-defense.

4.4.2. Contracts for security services shall be used cautiously in contingency operations where major combat operations are ongoing or imminent. Authority and armament of contractors providing private security services will be set forth in their contracts.

6.2.7.8. Weapons. Contingency contractor personnel will not be authorized to possess or carry personally owned firearms or ammunition or be armed during contingency operations except as provided under subparagraphs 6.3.4. or 6.3.5.

6.3.4. Force Protection and Weapons Issuance

. . . .

However, it may be necessary for contingency contractor personnel to be armed for individual self-defense. Procedures for arming for individual self-defense are addressed below:

6.3.4.1. According to applicable U.S., HN, and international law, relevant SOFAs or international agreements, or other arrangements with local HN authorities, on a case-by-case basis when military force protection and legitimate civil authority are deemed unavailable or insufficient, the geographic Combatant Commander (or a designee no lower than the general or flag officer level) may authorize contingency contractor personnel to be armed for individual self-defense. In such a case the Government shall provide or ensure weapons familiarization, qualifications, and briefings on the rules regarding the use of force to the contingency contractor personnel. Acceptance of weapons by contractor personnel shall be voluntary and permitted by the defense contractor and the contract. These personnel must not be otherwise prohibited from possessing weapons under U.S. law. The defense contractor shall ensure such personnel are not prohibited under U.S. law to possess firearms. When armed for personal protection, contingency contractor personnel are only authorized to use force for individual self-defense. Unless immune from HN jurisdiction by virtue of an international agreement or international law, contingency contractor personnel shall be advised of the inappropriate use of force could subject them to U.S. or HN prosecution and civil liability.

6.3.5.1. Requests for permission to arm contingency contractor personnel to provide security services shall be reviewed on a case-by-case basis by the appropriate Staff Judge Advocate to the geographic Combatant Commander to ensure there is a legal basis for approval. The request will then be approved or denied by the geographic Combatant Commander or a specifically identified designee, no lower than the general or flag officer level.

6.3.5.3.4. Documentation of individual training covering weapons familiarization, rules for the use of deadly force, limits on the use of force including whether defense of others is consistent with HN law, the distinction between the rules of engagement applicable to military forces and the prescribed rules for the use of deadly force that control the use of weapons by civilians, and the Law of Armed Conflict, including the provisions of reference (j).

6.3.5.3.5. DD Form 2760, "Qualification to Possess Firearms and Ammunitions," certifying the individual is not prohibited under U.S. law from possessing a weapon or ammunition due to conviction in any court of a crime of domestic violence whether a felony or misdemeanor.

6.3.5.3.6. Written acknowledgement by the defense contractor and individual contractor security personnel, after investigation of background and qualifications of contractor security personnel and organizations, certifying such personnel are not prohibited under U.S. law to possess firearms.

6.3.5.3.7. Written acknowledgement by the defense contractor and individual contractor security personnel that: potential civil and criminal liability exists under U.S. and HN law for the use of weapons; proof of authorization to be armed must be carried; contingency contractor personnel may possess only U.S. Government-issued and/or approved weapons and ammunition for which they have been qualified according to subparagraph 6.3.5.3.4; contract security personnel were briefed and understand limitations on the use of force; and authorization to possess weapons and ammunition may be revoked for non-compliance with established rules for the use of force.

Conclusion

In terms of providing a synopsis of good and bad practices in and lessons learned from Iraq it seems there are no grand conclusions to ponder. This is primarily due to the fact that Iraq was such a huge operation it is unlikely to be replicated anywhere else again.

In terms of good practices learned there have been many but they appear mostly tactical and operational. For example firms that do convoy security will be much more experienced in how to deal with improvised explosive devices. Companies that used to

be fierce competitors have learned how to work with each other and coordinate operations and share information. The software developed by Aegis Defence for tracking and coordinating security details will likely be used as a model in future operations. The industry is coming together and standardizing procedures on mundane but important issues such as procedures and equipment, i.e., the use of hand signals, and pencil flares, and the standardization of signs for use on vehicles in convoys.

More significantly PMCs have learned, by an order of magnitude, invaluable lessons on how to work with regular military forces.

Also, on the plus side, PMCs have not been, in terms of small arms and light weapons proliferation, a significant actor. What they brought with them they kept. And, though accounts are still mostly anecdotal it appears that most of the small arms they used they bought in country.

Though PMC personnel from the United States may be ardent 2nd amendment supporters at home, when they are on the job they become big supporters of gun control, as they know better than most that the guns that are unsecured are likely to be used against them.

Probably the single most important lesson that will be taken from the experience to date in Iraq is that other countries will conclude that despite whatever imperfections there are in privatizing military functions overall it works. One should expect to see continued military outsourcing by Western countries in the future.

Notes

¹ <http://www.bicc.de/pmc/portal.php>

² http://en.wikipedia.org/wiki/Private_military_contractor.

³ January 13, 2006 email from Dr. Chris Kinsey, Lecturer, Joint Services Command and Staff College, Shrivenham, UK.

⁴ Kinsey, *Ibid*.

⁵ Kinsey, *Ibid*.

⁶ For examples see T. Christian Miller, "Military Suspends Firm Accused of Overbilling in Iraq," *Los Angeles Times*, October 9, 2004; "'No-Bid' Often No Good," *Atlanta Journal-Constitution*, October 27, 2004, Pg. 12; Robert O'Harrow Jr., "FBI Widens Probe of Halliburton: Agents Interested In Big KBR Contract," *Washington Post*, October 29, 2004; Page E1; T. Christian Miller, "Halliburton Contracts Bypassed Objections," *Los Angeles Times*, October 29, 2004, Pg. 1; and Felix Rohatyn and Allison Stanger, "The Profit Motive Goes To War," *London Financial Times*, November 17, 2004.

⁷ Shane Harris, "Lack of personnel, expertise impede Iraq reconstruction," November 11, 2004, <http://www.govexec.com/dailyfed/1104/111104h1.htm>; and Michael P. Bruno, "U.S. Efforts in Iraq Hampered by Lack Of Contracting Personnel, Distance, PSC Says," <http://pubs.bna.com/ip/BNA/fcr.nsf/is/a0b0a7w3v2>.

⁸ <http://www.iecjournal.org/iec/news/index.html>.

⁹ Kinsey, *Ibid*.

¹⁰ *Ibid*.

¹¹ David Phinney, "From Mercenaries to Peacemakers?: Scandals Confront Military Security Industry," *CorpWatch*, November 29th, 2005.

¹² Jennifer Elsea and Nina M. Serafino, *Private Security Contractors in Iraq: Background, Legal Status and Other Issues*, Congressional Research Service, May 28, 2004, RL 32419, http://www.opencrs.com/rpts/RL32419_20040528.pdf.

¹³ According to Doug Brooks, head of the International Peace Operations Association that subset would be 5 percent of the overall industry. Phone conversation, January 19, 2006. See <http://www.ipoaonline.org/uploads/survey.doc>.

¹⁴ See, for example, David Pugliese, "The security detail's dirty secret: Armies of low-wage workers form the backbone of private military contracting in Iraq," *Ottawa Citizen*, November 13, 2005, Pg. B5; Cam Simpson and Aamer Madhani, "U.S. cash, demands of war fuel human trade," *Chicago Tribune*, October 13, 2005; David Phinney, "Blood, Sweat & Tears: Asia's Poor Build U.S. Bases in Iraq," *CorpWatch*, October 3rd, 2005; and T. Christian Miller, "Poor Migrants Work in Iraqi Netherworld: U.S.-Hired Contractors Rely on Laborers from Impoverished Countries, But No One Looks Out for the Rights -- or Lives -- of the Foreigners," *Los Angeles Times*, October 9, 2005.

¹⁵ Figure cited by Doug Brooks, head of the International Peace Operations Association, in interview with author, February 8, 2006.

¹⁶ The figures in this section are taken from David Isenberg, "America's unsung war dead," *Asia Times*, November 30, 2005.

¹⁷ "DynCorp Deaths In Iraq War Rise To 26 Employees: The Dallas-area firm also has lost 5 in Afghanistan," (By Associated Press), *Houston Chronicle*, January 22, 2006

¹⁸ Source: *Iraq Index: Tracking Variables of Reconstruction & Security in Post-Saddam Iraq*, Brookings Institution, January 17, 2006, <http://www.brookings.edu/fp/saban/iraq/index.pdf>.

¹⁹ <http://www.dol.gov/esa/owcp/dlhwc/ExplainingDBA.pdf>.

²⁰ <http://www.ipoaonline.org/home/>. IPOA's Mission Statement says, "IPOA is committed to maintaining industry-wide standards to ensure sound and ethical professional and military practices in the conduct of peacekeeping and post-conflict reconstruction activities. All member companies subscribe to our Code of Conduct, based on the belief that high standards will both benefit the industry and serve the greater causes of human security and development." Source: <http://www.ipoaonline.org/about/mission/>.

²¹ <http://www.privatemilitary.org/securityindustry.html>.

²² <http://www.psc.ai.org/index.html#>.

²³ <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/faqs/cpamemo.pdf>.

²⁴ <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/faqs/>

²⁵ DoD Instruction 3020.41 "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," October 3, 2005. Under the authority of Section 133 of title 10, United States Code and Deputy Secretary of Defense Memorandum, "DoD Directive Review – Phase II," July 13, 2005, this Instruction establishes and implements policy and guidance, assigns responsibilities, and

serves as a comprehensive source of DoD policy and procedures concerning DoD contractor personnel authorized to accompany the U.S. Armed Forces. This includes defense contractors and employees of defense contractors and their subcontractors at all tiers under DoD contracts, including third country national (TCN) and host nation (HN) personnel, who are authorized to accompany the U.S. Armed Forces under such contracts. Collectively, these persons are hereafter referred to as contingency contractor personnel. One significant sub-category of contingency contractor personnel, called contractors deploying with the force (CDF), is subject to special deployment, redeployment, and accountability requirements and responsibilities. Definitions for these personnel and other key terms are addressed in enclosure 2, <http://www.dtic.mil/whs/directives/corres/html/302041.htm>.

²⁶ <http://www.acq.osd.mil/dpap/dars/dfars/html/current/tochtml.htm>.

²⁷ The Green Paper outlines six options for regulation: a ban on military activities abroad; a ban on recruitment for military activity abroad; a licensing regime for military services; registration and notification; a general licence for PMCs; and self-regulation via a voluntary code of conduct. For detail see Christopher Kinsey, "Private Military Companies: Options for Regulating Private Military Services in the United Kingdom," BASIC NOTES, 7 September 2005, <http://basicint.org/pubs/Notes/BN050907.htm>.

²⁸ Jeffrey H. Birnbaum and James V. Grimaldi, "Lobby Firm Is Scandal Casualty: Abramoff, DeLay Publicity Blamed For Shutdown," Washington Post, January 10, 2006; Page A01.