

Private Security Companies and Operational Contract Support Requirements

by

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Abstract

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Government agencies now routinely contract for private security functions during all types of contingency operations for the purpose of guarding their personnel, facilities, work sites, and contractors. Based on U.S. global commitments and military end-strength, the use of contractors to support contingency operations will be an enduring method for providing support to U.S. Government agencies in future operations, and the U.S. Government must make efforts to improve the utilization of PSCs. This paper proposes six recommendations on providing better government oversight and coordination of PSCs to increase future operational contract support success.

Private Security Companies and Operational Contract Support Requirements

The one thing that's a given: We can't go to war without contractors and we can't go to peace without contractors.

–Christopher Shays, Co-Chair for the Commission on Wartime Contracting.¹

The U.S. Government has placed significant reliance on private security companies (PSCs) to provide protection for operational contract support efforts and must improve current processes to provide effective security for future contract execution. Historically military forces have maintained a monopoly as a government's only agent responsible for the application of lethal force, but in recent conflict environments the U.S. Government has used PSCs as an alternative to military-provided security.² Government agencies now routinely contract for private security functions during all types of contingency operations for the purpose of guarding their personnel, facilities, work sites, and contractors. Based on U.S. global commitments and military end-strength, the use of contractors to support contingency operations will be an enduring method for providing support to U.S. Government agencies in future operations,³ and the U.S. Government must make efforts to improve the utilization of PSCs.

This paper examines the U.S. Government's reliance on contractors and the concurrent use of PSCs through the case study of Operation Iraqi Freedom (OIF). The paper identifies the risk associated with PSC use, the conditions that enabled their unprecedented growth, the reasons why U.S. efforts developed a reliance on these elements, and the challenges associated with their usage. Because PSC operations are an embedded part of the conflict environment, this paper proposes six

recommendations on providing better government oversight and coordination of PSCs to increase future operational contract support success.

The Growing Reliance on Contractors from Bosnia to Iraq

The reductions to military end strengths and budgets following the Cold War combined with the perception of successful usage of support contractors in Bosnia helped set conditions for more extensive contractor use in current contingency operations to sustain military operations. The increased numbers of contractors led to additional security and contract oversight requirements by U.S. Government agencies. The increased security requirements were met by PSCs while contract oversight requirements failed to meet reasonable standards due to difficulty in monitoring performance, coordinating efforts, and holding them accountable. This section will discuss assessments made by the Commission of Wartime Contracting in Iraq and Afghanistan (CWC) and the implications that their recommendations may have for future contingency contracting.

Due to several factors, the U.S. Government developed a greater reliance on contractors to support contingency operations following the Cold War. After the conclusion of the Cold War, the U.S. Army reduced end strength from 780,815 to 495,000,⁴ and by the year 2000 the U.S. military's active component was reduced by one-third and its budget by 22 percent.⁵ The U.S. Army restructured to place two-thirds of its support capabilities into the reserve component with an active sustainment force only capable of supporting limited peacetime operations.⁶ These reductions led to a reliance on contractors and a need for PSCs to provide security for their efforts,⁷ along with the concurrent problem of a shortage of U.S. Government personnel to provide contract oversight functions for this expansion of contractor support.

The successful use of contractors to fulfill traditional military sustainment and support functions during the peacekeeping mission in Bosnia reinforced the idea that the expanded contractors use in future contingency operations was not only feasible but acceptable. When the U.S. Government deployed 20,000 military personnel to Bosnia, it also deployed the Army's "Logistics Civil Augmentation Program" (LOGCAP) to provide logistical support. By utilizing a contracted workforce to meet operational requirements, the U.S. was able to meet mission demands, avoid the political challenges of mobilizing U.S. Army Reservists to deploy, and maintain the mission for eight years without public pressure. The success of LOGCAP led many to consider future outsourcing possibilities including intelligence, air transport, and security options.⁸ Military personnel outnumbered contractors at a 10-to-1 ratio during the peacekeeping mission in Bosnia⁹, a situation much higher than the ratios seen in OIF.

While perceived success in Bosnia led military leaders to the expanded use of contractors during OIF, there were important differences in the theater sustainment and security environments. First, the Iraqi operational sustainment environment was significantly more complex due to the size of the coalition, the huge reconstruction effort, and the number of contractors on the battlefield which were considerably smaller in Bosnia. Finally, the growing insurgency and Level II threats (as defined as small-scale, irregular forces conducting unconventional war)¹⁰ contributed to a critical security challenge for the widespread reconstruction effort. Unlike the peacekeeping mission in Bosnia, U.S. Government agencies were severely challenged to effectively use operational contracting to meet critical mission requirements.

This increased reliance also changed the way contractors were used following the Cold War. While contractors had historically been used to meet short-term operational needs during conflict, they were typically only used to allow time for the military to mobilize; however, in Iraq, contractors were used for the duration of the operation.¹¹ The increased reliance on contractors was evident at the onset of OIF when over 100,000 contractors were performing traditional military sustainment tasks, making the U.S. Government's contracted workforce the second largest member of the "coalition of the willing."¹²

However, contingency contracting even in peacekeeping missions is significantly different than peacetime contracting due to the complex operational environment, rapid demand changes, and oversight requirements. Contingency contracting occurs in high-risk environments where it is difficult for U.S. Government agencies to oversee contract execution¹³ because of threat conditions, dispersion of the contracted workforce, and the contractor to military personnel ratio. This lack of oversight introduces political, operational, and financial risk because contractors are not adequately supervised. In a rush to meet new and changing operational demands, contracts are hastily written and sometimes incomplete, thus leading to the inability to hold contractors accountable for poor performance.¹⁴ In Iraq, these oversight challenges were even more pronounced than in Bosnia because of the reverse ratio of government personnel to contractors. It is estimated that by the summer of 2013, there were over 100,000 Department of Defense (DoD) contractors to support only 84,000 military personnel.¹⁵ In both cases, the lack of effective contract oversight methods coupled with an increased emphasis on the speed of execution led to increased risk, waste, and corruption.¹⁶

To properly understand the growing reliance on and challenges of contracting sustainment services during OIF, it is important to understand the cost of services procured in order to see how security quickly became a major challenge for U.S. Government agencies. While the most expensive contract during the Bosnian peacekeeping mission was for LOGCAP worth \$350.2 million annually,¹⁷ the cost of contracting in Iraq and Afghanistan was projected to be \$206 billion by the end of 2011¹⁸ with 66 percent of contracts being awarded for services.¹⁹ By mission transition, the GAO estimated the actual cost of such operational contracting to be \$159 billion.²⁰ In addition, the DoD, the Department of State (DoS), and the U.S. Agency for International Development (USAID) utilized over 260,000 contractors to meet mission demands.²¹ Since most services and reconstruction efforts were performed outside forward operating bases, this required on-site security which had to be provided by either military forces or privately procured means.

According to joint doctrine, security is provided by military forces for contract efforts based upon expected threat levels; however during OIF, contract security was provided based on military or contractor personnel availability. According to Joint Publication 4-10, *Operational Contract Support*, military commanders must plan for and provide secure working conditions when the contractor cannot obtain effective host nation security support or threat conditions dictate. Doctrine identifies military provided force protection as the preferred option where there is “an on-going or anticipated Level II (small-scale, irregular forces conducting unconventional war) or Level III (conventional forces capable of air, land, or sea attacks) threat level”²² present in the work area. During OIF there was an ever present Level II threat, but military commanders lacked

the operational forces to provide effective security, which in turn necessitated PSCs to fill the required gap. Additionally, as operational forces were reduced, PSCs filled an even larger security vacuum as redeploying military units were not replaced.²³

Poor contract oversight and ever present security challenges led to increased Congressional oversight and involvement. In 2008, Congress established the Commission on Wartime Contracting (CWC) to assess ongoing efforts and provide recommendations on how to improve contingency contracting processes to reduce fraud, waste, and abuse. Between 2008 and 2011, the Commission examined contracting for reconstruction, logistics, and security in both Iraq and Afghanistan and published three major reports analyzing the contingency contracting environment with recommendations on improving accountability and effectiveness.²⁴ The Commission found that contracting agencies maintained poor oversight of the broad reaching and diverse efforts which led to poor contractor performance, costly overruns, mission failure, and lost lives.²⁵ In all, reports noted that the U.S. Government agencies lacked organic capability to perform many mission-critical functions, leading to an over reliance on contractors for essential mission functions.²⁶

The Commission also found that there were eight significant factors that made contingency contracting more challenging in Iraq and Afghanistan than in peacetime efforts elsewhere, including a complex contracting support structure, various contract types, tiering of subcontractors, and sheer contract volume.²⁷ While the CWC's findings were valid, they omitted the need for security during contract execution as one of their eight significant factors but did discuss PSC use throughout the reports. Overall, the Commission's reports were very worthwhile because they were the first efforts in

identifying the scope and challenges of the contracting effort and led Congress to increasingly monitor the contracting efforts in theater. Despite the challenges encountered, the Commission noted that it is still the U.S. Government's retained responsibility to provide proper contract oversight.²⁸

In all, contingency contracting has become an essential element of expeditionary operations and is significantly more challenging than peacetime contracting due to the volume, diversity, flexibility required, and supporting security. Contracting during OIF included billions of dollars-worth of service and construction contracts which required increased security which over-burdened military security capabilities and necessitated a reliance on PSCs to enable field contract execution.

Private Security Companies in Iraq

The use of PSCs introduced significant political, operational, and financial risk. The unprecedented growth in the private security industry was based upon U.S. troop strength limitations and increased security demands by military and civilian agencies operating under the U.S. "Coalition Provisional Authority" (CPA), and fueled PSC misconduct.

Security contracts posed greater operational, political, and financial risk than most other contingency contracts, and the CWC's findings introduced risk concepts that should be applied to the use of PSCs. Already degraded by military end-strength reductions following the Cold War, the DoD lost additional mission-essential organic capability when its military functions were outsourced. Politically, U.S. objectives were adversely impacted by the use and actions of their contractors.²⁹ As PSCs and U.S. military personnel operated side by side during operations, insurgents and the local population made little distinction between the two³⁰ as contractors were often equally

targeted. Financial risk included significant cost increases in hiring local security, resulting in an influx of money which harmed local economies.

A major operational risk to mission success was that PSCs were managed by different organizations from multiple locations with no common operating picture of their overall performance. The combination of U.S., host-nation, and multinational PSCs performing missions presented identification, communication, coordination, and oversight challenges for military and contractor forces. In 2004, 30,000 PSC employees from 30 different countries performed security for agencies, non-governmental organizations, coalition partners, host-nation, and private industry throughout Iraq.³¹ To reduce operational risk, DoD awarded a contract to improve oversight, direction, and coordination for the multiple companies providing security. Aegis Defense Services (ADS) was awarded the \$293 million contract to create and manage a coordination center to assist DoD in overseeing the 50 PSCs working throughout the country.³² Efforts by ADS concentrated on establishing a contractor oversight cell to improve coordination and monitoring of security activities and improve situational awareness for military forces. The Aegis monitoring contract focused on coordinating PSCs' movement, information sharing, and incident reporting³³ to improve coordination with coalition military operations and reduce the chance of fratricide.

Another significant challenge was the contractors' Rules for the Use of Force (RUF) that governed when they could use lethal force. While military forces operated using Rules of Engagement (ROE), PSCs operated using RUF which could be different depending on who developed the guidance. For DoD's contractors, the Joint Force Commander established the RUF and defined what constituted the need for deadly

force, graduated force steps, weapons loading and firing guidance, and restricted the types of operations that PSCs could participate in.³⁴ Confusion and disconnects with coalition military operations occurred when PSCs not working for the DoD operated in the same joint environment using a RUF that was different than the DoD approved rules. Another complicating factor was that some PSCs operated under a RUF negotiated and established by a private sector purchaser of security services.³⁵ The differences in ROE and RUF were a continuing challenge during OIF and contributed to PSCs' reputation for excessive violence that disrupted the U.S. Government's operational and political goals.

The use of PSCs has both advantages and disadvantages in regards to political risk. While the U.S. Government viewed the use of security contractors in Iraq as a way to reduce political risk because contractors worked for profit³⁶ and there was less public objection to them being deployed. For this reason, Illinois Congresswoman, Jan Schakowsky, asked DoD if the U.S. was "outsourcing in order to avoid public scrutiny, controversy or embarrassment? Is it to hide body bags from the media and thus shield them from public opinion? Or is it to provide deniability because these private contractors are not covered by the same rules as active duty U.S. service persons?"³⁷ While the answer to the Congresswoman's question was unclear, PSC usage reduced public scrutiny and provided political deniability in certain situations. Additionally, PSCs and U.S. military personnel performing similar occurring functions appeared the same to locals and insurgents,³⁸ so contractor misconduct would be seen by Iraqis as a U.S. military action when it was not.

The financial risks associated with the use of PSCs included billions of dollars spent on security contracts³⁹ and the inflationary impact on the local economy. Multiple reports found that a significant reliance on contracting led to fraud, waste, and abuse.⁴⁰ To illustrate contractor fraud, the U.S. based PSC Custer Battles was taken to court in 2007 for allegedly double billing the U.S. Government when they used the same security contractors on two separate contracts.⁴¹ Additionally, costly contracts led to inflation, distorted economic activity, fraud and corruption.⁴² An example of such distortions was found in the Joint Contracting Command Iraq/Afghanistan's "Iraqi First" program which mandated that DoD contracts would be awarded to local companies whenever possible. The program's implementation resulted in over \$100 million per month to Iraqi companies in contract revenue,⁴³ creating an economic bubble that burst once coalition military operations ceased.

Conditions Leading to the Growth of the Private Security Industry

The conditions that enabled the security industry's unprecedented growth included U.S. troop strength limitations, increased numbers of agencies requiring security, and actions taken by the CPA. The Iraq reconstruction required huge contractor efforts to enable the U.S. to fill capability gaps and achieve mission success. Every contracted company had to protect its employees through military or private provided security. When military resources were frequently not available, companies were forced to hire their own security to perform required work. As a result of this capability mismatch, by the end of 2003, at least 60 PSCs performed security operations in Iraq that employed more than 20,000 employees.⁴⁴

First PSCs' efforts increased in response to restrictions on military troop strength. Prior to OIF, Army Chief of Staff General Shinseki projected that 400,000 troops were

needed for post-conflict operations amid 27.5 million Iraqis in a potential counterinsurgency mission.⁴⁵ When less than 200,000 military personnel were authorized for the campaign,⁴⁶ contracted employees that were not counted against force-level “caps” were needed when limited combat power focused on offensive operations against insurgents and military security to support reconstruction was reduced.⁴⁷ This miscalculation and an underestimate of insurgents created the demand for private services.⁴⁸ The private security industry capitalized on the demand by quickly deploying assets into the theater.

The second condition demanding a reliance on PSC’s was the large numbers of U.S. agencies supporting both the stability and reconstruction efforts that did not have sufficient organic security capabilities. In response to these known civilian agency shortfalls, PSCs were able to quickly mobilize forces capable of providing security services for U.S. Government agencies that were augmented with operational support, advising, training, logistical support, site security, crime prevention, and intelligence capabilities.⁴⁹ Across these areas, it was estimated that contractors and DoD personnel were matched at a 1-to-1 ratio, and that contractors outnumbered DoS personnel on the ground 18-to-1 and USAID at a 100-to-1 ratio,⁵⁰ and that PSCs supplied more than 90 percent of security for U.S. diplomatic and development efforts.⁵¹ The large numbers of U.S. personnel who were accustomed to permissive environments were now operating in a hostile environment without organic security capability which created the temporary demand for private security.

The final condition that led to a growth in the private security requirements was the actions taken by the CPA to dismantle the Iraqi governmental and security

institutions. During the initial stage of OIF, CPA Orders 1 and 2 forced the “De-Baathification” of the previous Iraqi Government institutions and agencies along with dissolving Iraq’s army, police and intelligence forces. These two orders terminated the employment of 85,000 former Iraqi government administrative and management employees, 385,000 military personnel, 285,000 Ministry of Interior and police employees, and 50,000 presidential security employees.⁵² The implementation of these two orders destabilized the Iraqi Government and introduced unemployed, weapon-trained members back into a population that was already building toward an insurgency movement. In addition, the CPA’s Order 17 gave immunity to contractors working in Iraq and ensured that they could not be prosecuted by Iraqi courts. The Center of Constitutional Rights noted “the fact that they [contractors] have immunity means that there is not even the possibility of them fearing any consequences for acts of killing and brutalization.”⁵³ PSC personnel operating without the threat of prosecution likely contributed to a culture with behavior and misconduct that did not support U.S. interests in stabilizing the country and gaining support of the local population for CPA efforts.

As a result of these conditions, a broad range of organizations including the DoS, DoD, USAID, U.S. Army Corps of Engineers, United Nations, coalition members, host nation government, and other contractors all used PSCs to provide needed security during OIF. Although the exact numbers are imprecise, it is estimated that PSCs accounted for 10 percent of the contract workforce in Iraq and Afghanistan.⁵⁴ By 2009, DoD and DoS had an estimated 16,263 private security company employees working in Iraq.⁵⁵ As of December 2010, there were 100 PSCs licensed by the Iraqi Ministry of Interior to perform within the country.⁵⁶

In supporting numerous agencies with different operational requirements in Iraq, the PSCs fielded a vast array of mission essential capabilities very quickly at a tremendous financial cost to customers. Several PSCs were awarded large dollar contracts, and there were numerous examples of companies being awarded major contracts by various U.S. Government agencies. Blackwater Security Company was one of the first PSCs to provide security when they were awarded a \$27 million DoS contract to provide personal security for CPA governance and development efforts in 2003. By 2007, this would grow to over \$1 billion worth of DoS contracts for personal security.⁵⁷ Additionally, DoS awarded DynCorp International contracts to train the Iraqi police forces worth \$50 million⁵⁸, while the firm Custer Battles was contracted to provide security for the Baghdad airport⁵⁹ at a cost of \$16.8 million.⁶⁰

Both DoS and USAID continued to rely on PSCs to perform their operational mission in Iraq. In 2011, the CWC estimated that the DoS would require thousands of private security contractors for security and quick-reaction-force missions after U.S. military forces were withdrawn. The Commission also recognized that while USAID does not directly contract security for its projects, many of their reconstruction contractors employed private security subcontractors to support their enduring mission.⁶¹ In 2007, Ambassador Ryan Crocker explained how important PSCs were to the DoS when he stated, “there is simply no way at all that the State Department’s Bureau of Diplomatic Security could ever have enough full-time personnel to staff the security functions in Iraq. There is no alternative except through contractors.”⁶²

PSC Misconduct

Overall policy and supervision of PSC contracting efforts fall under the Office of the Deputy Assistant Secretary of Defense (Program Support), and their guidance

requires that PSCs be “regularly established, registered, well regulated, rigidly disciplined, properly staffed with carefully selected operating personnel.”⁶³ However, examples of questionable use of force such as the Nisour Square shootings highlighted instances where PSCs’ conduct introduced increased and unanticipated operational and political risk during OIF. Accusations of abuse and war crimes prompted Congressional hearings, investigations, and increased legal regulations.⁶⁴ Because the local population made little distinction between contractors and U.S. military personnel, analysts at the Center for a New American Security concluded that contractor conduct likely impaired U.S. authority and legitimacy on the ground.⁶⁵

PSCs developed a reputation for continued and constant aggressiveness towards the host nation population which elevated overall resentment toward coalition efforts and operational risk. PSC convoys routinely driving at high speeds and running through intersections were among a variety of actions which angered and endangered the local population.⁶⁶ Other allegations against private security contractors included shootings and intimidation of Iraqi civilians.⁶⁷ Due to such conduct, it is estimated that PSC employees were 1.5 to 4.8 times more likely to be killed than uniformed military personnel.⁶⁸

Two significant incidents involving private security misconduct earned international outrage, extensive media attention, and Congressional hearings addressing increased security contractor oversight and accountability. In 2006, an off-duty Blackwater employee killed an on-duty Iraqi security services guard in Baghdad’s Green Zone. Although Iraqi officials claimed that the bodyguard was murdered, Blackwater fired the U.S. employee and removed him from country to avoid Iraqi

prosecution.⁶⁹ Additionally, in September 2007 a Blackwater security team opened fire on Iraqi citizens in Baghdad's Nisour Square resulting in 17 Iraqi citizens killed and 24 wounded. These incidents drew international attention and led to reviews of the shootings by the United Nations, Human Rights First, Amnesty International, and the International Committee of the Red Cross, as well as the U.S., British, and Swiss Governments.⁷⁰

Based on the multiple allegations of PSC misconduct, it is accurate to say contracting for security without proper oversight and management can introduce operational and political risk into contingency operations. The local population viewed the actions of contractors as representing the U.S. Government, and PSCs' actions garnered international and U.S. Congressional attention. Accordingly, future decisions on and guidance for using PSCs in future contingency operations must be improved to ensure effective conduct of security efforts and reduce the risk to mission success.

Revising Guidance for PSC Use

To avoid future challenges, the U.S. Government will need to reform and add new laws and regulations to govern contractors during future contingency operations.⁷¹ The laws that govern war were developed for traditional state militaries so the legal status of contractors is often unclear and it has proved difficult to hold contractors accountable in contingency operations.⁷² Although there are several existing laws and policies that apply to the use of PSCs, their use presents significant challenges including coordination, oversight, and accountability.⁷³ The U.S. Government will need to take several steps to improve oversight and accountability of battlefield contractors and specifically the use of PSCs. These steps will include reforming and amending several laws and regulations governing contractors.⁷⁴

The 2000 “Military Extra-Territorial Jurisdiction Act” (MEJA) applies to DoD contractors whose employees can be tried in federal court for crimes committed overseas. In 2004, Congress expanded the MEJA legislation to include contractors working for other U.S. Government agencies while performing DoD support missions.⁷⁵ While this law holds U.S. Government contractors accountable, it does not extend control to actions by contractors hired by other governments, agencies, or companies outside DoD.

As the security industry in Iraq began to take a more prominent role in contingency operations, the U.S. Government utilized the “International Transfer of Arms Regulations of the Arms Export Control Act” to create additional regulatory structures for PSC’s. Based on the magnitude of security contractor usage in Iraq and Afghanistan, the U.S. Government realized their representatives did not have sufficient capacity to control the industry because they lacked the personnel to oversee contract enforcement and export licenses for agreements between PSCs and foreign governments. The U.S. Government acknowledged failures in their regulatory processes and proposed steps to improve contract oversight including Congress’ legislation to extend U.S. jurisdiction over foreign contractors operating in U.S. controlled zones.⁷⁶

The Federal Acquisition Regulation (FAR) provides overall direction to all agencies for contingency contracting in general, but provided very limited direction for the use of PSCs during OIF. In July 2012, DoD proposed clarifications to the FAR governing the use of PSCs in order to improve selection, accountability, training, equipping, and conduct of these unique organizations.⁷⁷ The new FAR Clause 52.225-

26, "Contractors Performing Private Security Functions Outside the United States," was introduced in 2013 to improve oversight and accountability in the private security industry.⁷⁸

Additionally, in 2014, the Defense Federal Acquisition Regulation (DFAR) provided additional changes that required all PSCs to use the Synchronized Pre-deployment and Operational Tracker (SPOT) System and to be compliant with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Operations.⁷⁹ This change built on earlier requirements identified in the FAR in 2013, which improved oversight and accountability of the private security industry.⁸⁰ These changes to the FAR and DFAR required that PSCs report information on all personnel working on each contract and that these personnel met minimum standards identified in ANSI/ASIS PSC. 1-2012. Again these changes only applied to contractors hired by U.S. Government agencies. Finally, the Status of Forces Agreements (SOFAs) between the U.S. and foreign governments can add to the complexity of regulating contractors. Although the CPA initially provided U.S. companies immunity from the Iraqi laws, this changed when the U.S. and Iraqi Governments negotiated a SOFA in 2009 that made a U.S. contractor subject to Iraqi laws.⁸¹

From a military standpoint, Joint Publication (JP) 4-10, *Operational Contract Support* provides DoD specific information on developing operational contracting support requirements, providing security for contract execution, and considerations for using PSCs. It defines the roles and responsibilities of the different levels within DoD,⁸² and further identifies the different DoD agencies that are tasked to support the

operational contract support process.⁸³ This publication concludes with guidance for planning considerations on the use of PSCs.

The JP also provides guidance on improving contractor accountability and oversight in order to reduce fraud, waste, abuse, and risk. It also notes that PSCs “are a legitimate source of support in joint operations, but commercially provided security services require careful planning and very deliberate government execution oversight,”⁸⁴ and charges Commanders at all levels to understand the roles, limitations, and authorities for using PSCs. Finally, JP 4-10 stresses that the use of PSCs must follow specific procedures and reporting requirements that include synchronization of private security company and military provided security actions, and close coordination of these efforts with other U.S. Government agencies and with other partners.⁸⁵

Due to Congressional pressure and negative reports, PSCs initiated their own internal controls to regulate the security industry in Iraq. Beginning in 2008, a collaborative effort amongst PSCs produced the “Swiss Initiative,” which laid out a plan for industry self-regulation. The Initiative led to a three step, phased plan that included a study of applicable laws, the development of a code of conduct, and the establishment of an enforcement body that would oversee security companies, certifies companies, and investigates allegations of misconduct.⁸⁶

In 2008, the security industry implemented this three step plan. In conjunction with the International Committee of the Red Cross,⁸⁷ PSCs developed the Montreux Document which outlined how international laws applied to PSCs. While the document was not a binding international agreement, the U.S. Government supported the effort and agreed that the legal obligations identified and the recommended practices are

important for the security industry.⁸⁸ In 2010, PSC organizations developed an industry code of conduct which provided rules for screening, training, reporting, rules of force, human trafficking, and established a global enforcement body. Recognizing that the code of conduct was a voluntary initiative, DoD still encouraged participation and by 2013 more than 700 PMSC had signed the code of conduct.⁸⁹ The code of conduct did not replace the requirement for conformance to existing regulations and contractors were not required to sign it as a condition for obtaining contracts.⁹⁰ By 2013, the private security industry established a global enforcement body, the “Private Security Service Providers’ Association,” to oversee industry standards, certify companies, and investigate allegations of misconduct.⁹¹

PSCs are contracted to provide security either directly by a U.S. Government contract or indirectly by a coalition government, host nation government, or a prime contractor, a distinction that affects which laws and regulations govern their conduct. Private security contractors hired by the U.S. Government are subject to U.S., host nation, and agency specific regulations and policy as issued by the Departments of Defense, Justice and State. Congress has also issued guidance through the National Defense Authorization Acts.⁹² PSCs hired by non-U.S. Government agencies are not subject to these regulations and policies. Finally, the laws and regulations applying to PSCs in contingency operations vary depending on the contract “agency of origin” and SOFA agreements. While DoD has a structured approach to operational contract support, it is not applicable to other U.S. Government agencies or non-DoD entities.

Recommendations for Future Improvements

Based on experiences in Iraq, improvements should be implemented to enhance oversight and management of PSCs and make their legal status less ambiguous during

contingency operations.⁹³ While the CWC made recommendations for improving interagency coordination and guidance for using PSCs,⁹⁴ the following are additional recommendations that expand on their findings. If these recommendations are implemented, PSCs would provide more effective security during contingency operations and reduce operational, political, and financial risk.

First, requirement owners and contracting authorities should use risk factors to determine if contracting for security is appropriate. Just because there is legal justification, funding available, and a contractual capability, U.S. Government agencies and their coalition partners should heavily consider the operational, political, and financial risks associated with the use of PSCs. The use of PSCs may introduce too much risk to mission accomplishment to be a viable option. The Army's Counterinsurgency Manual, FM 3-24, identifies "establishing and maintaining security" as a major tenant of counterinsurgency operations while winning the local populations' support. It also notes that abuses by security forces, either military or private industry, are a major escalating factor for insurgencies.⁹⁵ Despite improvements, the legal framework that covers contractors on the battlefield is still complex and difficult to apply. Experiences in Iraq have demonstrated numerous incidents where contractors were involved in misconduct which harmed local civilians and U.S. personnel and increased animosity toward coalition efforts.⁹⁶

Second, regulations should standardize how PSCs are hired and utilized across the different U.S. Government agencies. This recommendation builds upon the CWC's findings which advocated standardizing private security company contracting. The 2008 NDAA directed that DoS, DoD, and USAID develop a memorandum of understanding

ensuring that potential misconduct committed by contracted employees would be investigated and referred if necessary to the Department of Justice,⁹⁷ a process that should continue in the future. In addition, U.S. Government agencies should increase the size, training and qualifications for its contracting agencies' workforce which has steadily decreased in size over the past 30 years as the volume and complexity of contracts have increased.⁹⁸ Additionally, all U.S. Government agencies should standardize how they contract in contingency operations by improving consistency in contract type, directives, and tracking of work performed by contractors to improve transparency and accountability.⁹⁹

Third, requirement owners and contracting agencies must provide improved oversight for private security contracts. While the Commission identified that contracting authority was inconsistent across U.S. Government agencies and it is difficult to provide adequate and coordinated oversight of PSCs,¹⁰⁰ this recommendation is focused on improving oversight at the individual contract level where a single contract is performed by a prime contractor and tiered subcontractors. As mentioned previously, DoD, DoS, and USAID must improve their contracting capability and establish formal interagency coordination processes,¹⁰¹ but agencies must also improve accountability and monitoring of subcontractors which make up approximately 70 percent of the contingency contracted workforce. This would require revisions to the FAR to allow for subcontractor oversight.¹⁰² Finally, the U.S. Government should develop a baseline ratio of contracting personnel to the number of contractors supporting a contingency operation to enable adequate, quality oversight.¹⁰³

Fourth, agencies must improve coordination procedures with the host nation for the use and conduct of PSCs. The U.S. Government must work with the host nation government to clarify how local and U.S. laws apply to contractors involved in contingency operations.¹⁰⁴ Early in the operation, SOFA should be negotiated between the U.S. and the host nation government in order to establish legal protections and rights for all U.S. personnel operating in the foreign country. Although the U.S. has entered into more than 100 agreements with other countries during peacetime and war,¹⁰⁵ more needs to be coordinated concerning the use of PSCs during contingency operations. This coordination should focus on legal jurisdictions, host nation provided security alternatives, RUF, licensing, and other limitations.

Fifth, military commands and contracting agencies must improve coordination and synchronization between U.S. military and private security efforts. Commanders and contractors working in the same joint operations area must improve communication and information sharing. While taking into account that contractors may be working for different agencies, governments, or companies, military commanders controlling operational areas must have visibility on the numbers and missions of the contractors working in their vicinity. For example, in 2004 four Blackwater Security Company employees were killed in Fallujah and the Marine unit based outside the city learned of the incident from news reports and not from Blackwater as the PSC.¹⁰⁶ One way to implement this recommendation would be to replicate the contract methods used with ADS in Iraq to create and manage a coordination center that assisted the DoD in overseeing PSCs.¹⁰⁷ While efforts concentrated on establishing a contractor oversight cell that would lead to improved coordination and monitoring of security activities and

improved situational awareness for DoD, future efforts could be further enhanced by adding additional military personnel to the coordination cell to improve contractor oversight and improve information sharing.

Finally, DoD and other U.S. Government agencies should seek a coordinated coalition agreement for using security contractors in a common space. The use of DoD PSCs should be coordinated with those utilized by other U.S. Government agencies, coalition partners, and the host nation. Joint Publication 4-10, *Operational Contract Support*, identifies the task of private security coordination with non-DoD and non-U.S. Government agencies as the most important and challenging operational contracting support task. Visibility, movement coordination, and information sharing by PSCs are critical components that must be coordinated in advance across the various U.S. Government agencies, coalition partners, and the host nation when they potentially impact mission success. Efforts must be made to identify all PSCs performing in the joint operations area and their RUF must be understood and should be coordinated with all interested parties. Additionally, information sharing requirements and incident reporting measures should be defined.¹⁰⁸ Finally, the U.S. Government and coalition partners should determine how host nation and international laws apply to contractors during contingency operations.¹⁰⁹

While the implementation of these recommendations will not eliminate problems associated with PSC use during contingency operations, adopting these measures should reduce operational, political, and financial risks. The processes associated with operational contract support and providing security requires well developed and effective coordination, oversight, training, and improved communication.

In conclusion, the U.S. Government's reliance on contractors to support contingency operations expanded rapidly during the decade between the peacekeeping operations in the Balkans and OIF. As the number of contractors increased, so did the use of private security contractors to protect them. With this expansion came a concurrent expansion in the operational, political, and financial risk brought on by the dramatic requirements for PSC usage. Based on the fact that PSCs have become an essential part of the way future contingency operations will be executed, it is imperative that the U.S. military improves oversight and coordination of their actions.

Over the past two decades the U.S. Government has developed a reliance on contractors to support contingency operations that peaked during OIF. It is important to learn from the experiences in Iraq on the use of private security contractors and their impact on operational effectiveness. Due to our current operational environment, military force size, and fiscal constraints, it is likely that PSCs will continue to have a prominent role in future operations.¹¹⁰ Unprepared for the tremendous increased reliance on contractors, U.S. Government agencies struggled to provide effective security and contract oversight. The concurrent security requirements were met by PSCs while contract oversight requirements were severely overextended by their use. The significant risk associated with the use of PSCs with little oversight was evident in Iraq and will likely be present in future contingency operations. Therefore, it is imperative that DoD improve its processes to increase effective supervision and address legal and policy challenges of the last decade. Finally, implementing the six recommendations for improving contract management will improve interagency

coordination and the effective use of private security during future contingency operations.

Endnotes

¹ Ann Hagedorn, *The Invisible Soldiers; How America Outsourced our Security* (New York: Simon & Schuster, 2014), 250.

² Scott L. Efflandt, "Military Professionalism & Private Military Contractors," *The U.S. Army War College Quarterly* 44, no. 2 (Summer 2014): 51.

³ Richard Fontaine and John Nagl, *Contracting in Conflicts: The Path to Reform*, (Washington, DC: Center for a New American Security, June 2010), 5.

⁴ Efflandt, "Military Professionalism," 52.

⁵ Fontaine and Nagl, *Contracting in Conflicts*, 11.

⁶ Bernard Rostker, "Right-Sizing the Force: Lessons for the Current Drawdown of American Military Personnel," Center for a New American Security, June 2013, (Washington DC) http://www.cnas.org/sites/default/files/publications-pdf/CNAS_RightSizingTheForce_Rostker_0.pdf (accessed February 7, 2015).

⁷ Efflandt, "Military Professionalism," 52.

⁸ Hagedorn, *The Invisible Soldiers*, 33.

⁹ Richard J. Hornstein, "Protecting Civilian Logisticians on the Battlefield," *Army Logistician*, Volume 38, Issue 4, July-August 2006, http://www.almc.army.mil/alog/issues/JulAug06/protect_civilian.html (accessed February 2, 2015).

¹⁰ U.S. Joint Chiefs of Staff, *Operational Contract Support*, Joint Publication 4-10 (Washington DC: U.S. Joint Chiefs of Staff, July 16, 2014), V-25.

¹¹ Efflandt, "Military Professionalism," 50.

¹² Deborah D. Avant, "Contracting for Services in U.S. Military Operations," *Political Science & Politics* 40, no. 3 (07, 2007), 1. (accessed December 20, 2014 from <http://search.proquest.com/docview/224670675?accountid=4444>).

¹³ Carlos Ortiz, "Private Armed Forces and Global Security: A Guide to the Issues," <http://psi.praeger.com/doc.aspx??x=x&d=%2fbooks%2fgpg%2fD6114C%2DF6114C-648> (accessed December 20, 2014), 4.

¹⁴ Ibid.

¹⁵ Hagedorn, *The Invisible Soldiers*, 239.

¹⁶ Fontaine and Nagl, *Contracting in Conflicts*, 17.

¹⁷ U.S. Government Accountability Office, *Contingency Operations: Opportunities to Improve the Logistics Civil Augmentation Program* (Washington, DC: U.S. Government Accountability Office, February 1997), 3.

¹⁸ Commission on Wartime Contracting in Iraq and Afghanistan, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks, August 2011* (Arlington, VA: U.S. Government Printing Office, 2011), 2.

The following table is from the Wartime Commission's 2011 report and shows the DoD's contracting efforts from the beginning of hostilities projected until the end of 2011.

Service Description	Total (in billions)
Logistics support services	\$46.5
Construction of miscellaneous buildings	\$10.5
Technical assistance	\$5.5
Other professional services	\$5.2
Guard services	\$3.8
Maintenance and repair, alterations of office buildings	\$3.5
Construction of office buildings	\$2.9
Lease-rent or restoration of real property	\$2.8
Facilities operations support services	\$2.5
Program management/support services	\$2.4
Total obligations for top 10 services	\$85.6

¹⁹ Ibid., 6.

²⁰ U.S. Government Accountability Office, *Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan* (Washington, DC: U.S. Government Accountability Office, August 2012), 1.

²¹ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 2.

²² U.S. Joint Chiefs of Staff, *Operational Contract Support*, V-25.

²³ Hagedorn, *The Invisible Soldiers*, 101.

²⁴ U.S. Government Accountability Office, *Contingency Contracting*, 1.

²⁵ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 1.

²⁶ Ibid., 2.

²⁷ Ibid., 22.

The following table provides additional information and is from the Wartime Commission's 2011 report and shows their findings regarding the challenges of contingency contracting.

Commission on Wartime Contracting Findings	
Finding 1	Contracts are managed under a variety of acquisition procedures by multiple organizations from multiple locations: in the overseas area of operations, in a nearby country, and in the United States.
Finding 2	An already strained acquisition workforce is further burdened by the need to deploy overseas.
Finding 3	Most contracts are for services supporting the U.S. forces and civilians or actually carrying out direct-mission objectives.
Finding 4	The contingency-contractor workforce comprises U.S.-based companies, host-nation, and third-country firms.
Finding 5	Most contract dollars are awarded to just a few large U.S. companies.
Finding 6	Much of the work is performed through multiple tiers of subcontractors, resulting in a large host- and third-country workforce. ²⁷
Finding 7	Socio-economic procurement policies such as Iraqi First and Afghan First give priority to helping develop local economies and countering the insurgency.
Finding 8	Perhaps the most important characteristic of contingency contracting in Iraq and Afghanistan is the sheer volume of contract dollars that will have been injected into those undeveloped economies because of the United States' presence. ²⁷

²⁸ Ibid., 7.

²⁹ Ibid., 29.

³⁰ Christopher Spearin, "Contracting a Counterinsurgency? Implications for U.S. Policy in Iraq and Beyond," *Small Wars & Insurgencies* 18, Issue 4 (2007), 3. (accessed December 20, 2014 from <http://www.tandonline.com/doi/full/10.1080/09592310701778258>).

³¹ Efflandt, "Military Professionalism," 59.

³² Hagedorn, *The Invisible Soldiers*, 53.

³³ U.S. Joint Chiefs of Staff, *Operational Contract Support*, J2.

³⁴ Ibid., J3.

³⁵ Program Support, "PSCs," 5.

³⁶ Avant, "Contracting for Services," 2.

³⁷ Hagedorn, *The Invisible Soldiers*, 111.

³⁸ Spearin, "Contracting a Counterinsurgency," 3.

³⁹ Jennifer K. Elsea and Nina M. Serafino, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, (Washington, DC: U.S. Library of Congress, Congressional Research Service, July 11, 2007), 5.

⁴⁰ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 29.

⁴¹ Dana Hedgpeth, "Judge Clears Contractors of Fraud in Iraq," *The Washington Post*, February 29, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020801871.html> (accessed February 7, 2015).

⁴² Commission on Wartime Contracting, *Transforming Wartime Contracting*, 29.

⁴³ United States Army Combined Armed Center: Center for Army Lessons Learned, "Restoring Hope & Economic Revitalization in Iraq Moves Forward," March 2010, http://usacac.army.mil/cac2/call/docs/10-34/ch_6.asp (accessed February 7, 2015).

⁴⁴ Hagedorn, *The Invisible Soldiers*, 44.

⁴⁵ Spearin, "Contracting a Counterinsurgency," 5.

⁴⁶ Kenneth T. Walsh, "10 Years Ago, the U.S. Invaded Iraq," U.S. News, March 19, 2013, <http://www.usnews.com/news/blogs/press-past/2013/03/19/10-years-ago-the-us-invaded-iraq> (accessed January 25, 2015).

⁴⁷ Efflandt, "Military Professionalism," 58.

⁴⁸ Hagedorn, *The Invisible Soldiers*, 39.

⁴⁹ Avant, "Contracting for Services," 2.

⁵⁰ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 20.

⁵¹ Hagedorn, *The Invisible Soldiers*, 10.

⁵² Ibid., 40.

⁵³ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation, 2008), 15.

⁵⁴ Efflandt, "Military Professionalism," 53.

⁵⁵ *Ibid.*, 56.

⁵⁶ Moshe Schwartz, *The DoD's Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis, and Options for Congress*, (Washington, DC: U.S. Library of Congress, Congressional Research Service, May 13, 2011), 3.

⁵⁷ Scahill, *Blackwater*, 13.

⁵⁸ David Isenberg, "DynCorp in Iraq," *Huffington Post*, January 24, 2010, <http://www.cato.org/publications/commentary/dyncorp-iraq> (accessed February 7, 2015).

⁵⁹ Hagedorn, *The Invisible Soldiers*, 43.

⁶⁰ Hedgpeth, "Judge Clears."

⁶¹ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 47.

⁶² Scahill, *Blackwater*, 46.

⁶³ Program Support, Office of the Deputy Assistant Secretary of Defense, "PSCs," <http://www.acq.osd.mil/log/PS/psc.html> (accessed December 20, 2014), 1.

⁶⁴ Efflandt, "Military Professionalism," 54.

⁶⁵ Fontaine and Nagl, *Contracting in Conflicts*, 22.

⁶⁶ Avant, "Contracting for Services," 3.

⁶⁷ Bobby A. Towery, *Phasing Out Private Security Contractors in Iraq*, Strategy Research Project (Carlisle Barracks, PA: U.S. Army War College, March 14, 2006), 5.

⁶⁸ Efflandt, "Military Professionalism," 54.

⁶⁹ Scahill, *Blackwater*, 10.

⁷⁰ Hagedorn, *The Invisible Soldiers*, 97.

⁷¹ Fontaine and Nagl, *Contracting in Conflicts*, 5.

⁷² Avant, "Contracting for Services," 4.

⁷³ Fontaine and Nagl, *Contracting in Conflicts*, 5.

⁷⁴ *Ibid.*, 5.

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⁷⁶ Sie Cheou-Kang Center, University of Denver, “Laws and Regulations,” http://psm.du.edu/national_regulation/united_states/laws_regulations/ (accessed December 20, 2014), 2.

⁷⁷ Ibid.

⁷⁸ The Federal Register; The Daily Journal of the United States Government, “Defense Federal Acquisition Regulation Supplement: Defense Contractors Performing Private Security Functions (DFARS Case 2014-D008),” <https://www.federalregister.gov/articles/2014/06/2014-14594/defense-federal-acquisition> (accessed December 20, 2014), 4.

⁷⁹ Ibid., 3.

⁸⁰ Ibid., 5.

⁸¹ Fontaine and Nagl, *Contracting in Conflicts*, 25.

⁸² U.S. Joint Chiefs of Staff, *Operational Contract Support*, II-2.

⁸³ Ibid., II-13.

⁸⁴ Ibid., J1.

⁸⁵ Ibid., J2.

⁸⁶ Hagedorn, *The Invisible Soldiers*, 124.

⁸⁷ Fontaine and Nagl, *Contracting in Conflicts*, 28.

⁸⁸ Program Support, “PSCs,” 4.

⁸⁹ Hagedorn, *The Invisible Soldiers*, 163.

⁹⁰ Program Support, “PSCs,” 4.

⁹¹ Hagedorn, *The Invisible Soldiers*, 124.

⁹² Sie Cheou-Kang Center, “Laws and Regulations,” 2.

⁹³ Fontaine and Nagl, *Contracting in Conflicts*, 6.

⁹⁴ Commission on Wartime Contracting, *Transforming Wartime Contracting*, 64.

The following table provides additional information and is from the Wartime Commission’s 2011 report and shows their recommendations on improving PSC contract execution and oversight.

	Commission on Wartime Contracting & Private Security Company Usage
Recommendation 1	Hold the ambassador, USAID mission Director, and military commanders responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change, giving particular consideration to the geographic, temporal, and organizational proximity to armed conflict.
Recommendation 2	When private security or other contractors are to be armed, they should be overseen by government employees and tracked in a centralized system, as done in Iraq.
Recommendation 3	Reliance on private security contractors should be accomplished by greater use and emphasis on vetting, training, authorizing arms, and weapons control; post-convoy debriefing, locational tracking and video monitoring; and more thorough and comprehensive management.
Recommendation 4	Execute an interagency agreement to provide guidance on security contracting.
Recommendation 5	Defense, State, and USAID should develop and enter into a standing interagency MOA, incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors in future contingencies.
Recommendation 6	This standing MOA should be modified within 90 days of a declared combat operation or other contingency to specifically address the needs and circumstances of that operation.

⁹⁵ Schwartz, *The DoD’s Use*, 14.

⁹⁶ Fontaine and Nagl, *Contracting in Conflicts*, 5.

⁹⁷ Efflandt, “Military Professionalism,” 55.

⁹⁸ Fontaine and Nagl, *Contracting in Conflicts*, 33.

⁹⁹ *Ibid.*, 35.

¹⁰⁰ Efflandt, “Military Professionalism,” 58.

¹⁰¹ Fontaine and Nagl, *Contracting in Conflicts*, 31.

¹⁰² *Ibid.*, 36.

¹⁰³ Ibid.

¹⁰⁴ Ibid., 25.

¹⁰⁵ Sie Cheou-Kang Center, "Laws and Regulations," 2.

¹⁰⁶ Fontaine and Nagl, *Contracting in Conflicts*, 40.

¹⁰⁷ Hagedorn, *The Invisible Soldiers*, 53.

¹⁰⁸ U.S. Joint Chiefs of Staff, *Operational Contract Support*, J3.

¹⁰⁹ Fontaine and Nagl, *Contracting in Conflicts*, 37.

¹¹⁰ Efflandt, "Military Professionalism," 60.