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American PMCs: towards institutionalization?

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1. Introduction

As a consequence of privatisation of activities related to security, a lot of States are increasingly relying on private military companies (PMCs) to perform certain functions, including the provision of security and other traditional military or governmental activities. However, in those countries, even in the United States, from where most of these private actors operate, legislation and oversight are weak or limited.

In the US led War on Terror several private military and security contractors are involved. Although they perform crucial security and military functions regarding certain operations, the precise number of people employed by these companies is unknown. In the past years a number of organisations (*US Government Accountability Office, US Central Command, Private Security Company Association in Iraq etc.*) have made surveys, which disclosed various estimations.

What they all have in common is that tens of thousands of private contractors work in specific war theatres. It is also worth mentioning that "the *coalition of the billing*" created by PMCs suffered the greatest losses in battle, following the Military of the United States.²

Realizing these unbearable conditions, some Democrat House of Representatives and Senators of the Congress have recently introduced some bills which seek to clarify and control the use of contractors in complex contingency operations and to establish appropriate methods of ensuring contractors accountability in the field.

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² Peter W. Singer used this term in that context at the Private Military Industry and Iraq: What we have learnt and where to next? DCAF Policy Papers www.dcaf.cf

This paper aims to summarize the role of private military companies in the U.S. foreign and defence policy and also to highlight the forthcoming attempt of the 110th U.S. Congress to establish legislation for the regulation of PMC involvement in overseas commitments.

In spite of the growing importance of private military contractors in the U.S. foreign policy there are no U.S. or international standards for establishing Private Military Companies (PMCs), nor consensus among academics and industry experts on what constitutes a PMC. Therefore first of all we need to define what we mean by referring to a PMC in this paper.

2. The definition of PMC

Different terms (Private Military Companies; Private Military Firms or Private Military and Security Companies) are used to describe the phenomenon. According to the Democratic Centre of Armed Forces (DCAF): „PMCs are businesses that offer specialized services related to war and conflict, including combat operations, strategic planning, intelligence collection, operational and logistical support, training, procurement and maintenance.”³

Another definition by Doug Brooks, the president of International Peace Organizations Associations, (IPOA)⁴: „PMC is a company that provides, for a profit, services that were previously carried out by national military force including military training, intelligence, logistics, and offensive combat, as well as security in conflict zones”⁵

The most widely accepted definition of PMC comes from Peter W. Singer, a senior researcher at the Brookings Institution, based on whose definition Privatized Military Firms (PMFs) are „business providers of professional services intricately linked to warfare.”⁶

His 'Tip-of-the-Spear' typology is based on military and economic fundamentals of the industry. Singer defines three different types of firms based on the range of services and level of force that they are able to offer for their clients.⁷ These three types of PMFs are the following: (1) The Military Provider Firms; (2) Military Consulting Firms (3) Military Support Firms.

³ DCAF Backgrounder – Private Military Companies http://www.decaf.ch/publications/bg_private-military-companies.cfm

⁴ See more on IPOA: www.ipoaonline.org

⁵ Schreier, Ferd; Caparini, Marina (2005): *Privatising Security: Law Practice and Governance of Private Military and Security Companies*. DCAF: Geneva p. 18.

⁶ Singer, Peter W. (2003): *Corporate Warriors: The Rise of the Privatized Military Industry*; Cornell University Press: Ithaca & London p. 8

⁷ Singer *Corporate Warriors* pp. 91-92

Singer's classification provides the advantage that it can be applied to categorize not only military but also the security related companies who are seeking business and engagements abroad.⁸

2. 1. Failed business model: the military provider

The military provider firms were the most exciting outward form of privatized military industry during the '90s.⁹ However, actual fighting by these firms often received universal condemnation by the international community and the press who stigmatized them as mercenaries.

The South African company, Executive Outcomes led several successful operations against the UNITA and RUF rebels in Angola and Sierra Leone by providing safe harbour for their clients, the failed states governments and forced the rebels back to the jungle. Despite of its operational success EO disbanded on January 1, 1999. The company's successor called the British Sandline International shared EO's fortune 5 years later.¹⁰ Since then no military providers can be identified on the market.¹¹

2. 2. The new player: security provider

After 9/11 a new type of private military company appeared on the market, fuelled mainly by the demand of the U.S. government, called the *security provider firm* or as most commonly referred to the Private Security Company (PSC). This kind of companies provide armed tactical services related to security for their client in the conflict zone.¹² The following three primarily tactical services are provided: (1) personal security detail for key leaders and

⁸ Security Provider; Security Consulting and Security Support Firms.

⁹ *The Military Provider Firms* are defined by their focus on the tactical environment, providing services at the forefront of the battle space by engaging in the actual fighting, either as line unit or specialist (e. g. combat pilots) Singer 'Corporate Warriors' pp. 92-95

¹⁰ On 16 April 2004 Sandline International announced the closure of the company's operations. "The general lack of governmental support for Private Military Companies willing to help end armed conflicts in places like Africa, in the absence of effective international intervention, is the reason for this decision. Without such support the ability of Sandline to make a positive difference in countries where there is widespread brutality and genocidal behaviour is materially diminished." www.sandline.com

¹¹ The Military Provider Firm (or as it called by James R. Davis the Military Combat Companies) is not existing in the present, because its business model is failed. Either South-African Executive Outcomes or British Sandline International demonstrated that it could properly survive the imponderables of its chosen market. Clients either didn't pay or ran the company out the country based on social or political pressure. See more on Fortune's Warriors by James R. Davis Douglas & McIntyre Vancouver p. 171

¹² Traditionally PSCs are providing security in domestic environment like malls or banks, but after 9/11 their market was boomed and the scope of their services offered is ever growing. Abroad, the PSCs are providing security and protection for multinational corporations, NGOs, embassies or diplomats etc. Now the line draw between Commercial Security Company, that offer services domestic level and Security Provider Company, which provide security and protection at the international level.

individuals, (2) escort convoys, help the reconstruction work and (3) protection of key installation and facilities against insurgents' attacks. The security contractors carry and use weapons for the purposes of defence during their activity. Blackwater, the most powerful among those established its own fleet of MD-520 "Little Bird" helicopters which carried armed shooters on board and created its own Mamba-team with armoured vehicles to support its professional activities.¹³

In this paper Private Military Company refers to a profit driven organization that provides combat and security related services to its clients. This covers the definitions of Security Providers (e. g. *Blackwater U.S.A., Triple Canopy* etc.), Military Consulting Firms (e. g. *MPRI - Military Professional Resources Incorporated*), and Military Support Firms (e. g. *KBR – Kellogg, Brown & Root*) in Singer's classification.

3. The growing reliance and demand for PMCs

The use of private contractors for support within the U.S. military is nothing new. In World War II or the Vietnam War several civilian contractors carried out mainly logistics or construction work. For example in Vietnam, the RMK-BRJ (*Raymond International, Moris-Knudsen, Brown & Root and J.A. Jones formed civilian-based military construction conglomerate*) had more than \$2 billion worth of work in South Vietnam from 1965 to 1972. RMK-BRJ were building everything from roads to airports and bases for the military and employed 51,000 people in 1967.¹⁴

Reliance on the use of PMCs has grown dramatically since the end of the Cold War. The reasons for this are manifold.¹⁵ (1) The United States are likely to remain involved in contingency operations, particularly in the context of 'Global War on Terror', and has been committed to the transformation of the military, especially in military-technological-terms since the end of the Cold War. (2) the professional armed forces offer a pool of highly trained personnel for the private sector (3) the ideological climate towards privatization of public services combined with the cultural preference of 'slim' state.

¹³ See more on that Robert Young Pelton 'Licensed to Kill' Crown Publishers New York 2006

¹⁴ The conglomerate contract was cost plus 1.7 percent profit in Vietnam, this value is far left behind the contemporary KBR's contract with its cost plus 1 to 9 percent profit. Dan Briody 'The Halliburton Agenda' John Wiley & Sons Inc. New Jersey 2004 pp. 164-165

¹⁵ This list based on the three factors which caused the emergence of the privatized military industry. See more on Singer "Corporate Warriors" pp. 49-70

One indicator that shows the importance of private military services for a client is the ratio between private contractors and military personnel involved in the same contingency operations. During the first Gulf War in 1991 for every one contractor there were 100 U.S. military personnel involved, however, the ratio later constantly diminished. The outsourcing process gained momentum with the terror attacks of 9/11. In the 2003 war in Iraq this ratio of contractors was 1 to 10 and since the formal ending of the war in May 2003, the number of contractors has increased further.¹⁶ The total number of private contractors is a lot higher than previously reported. According to contemporary estimations the private contractors now outnumbered the American combat troops in Iraq. More than 180,000 civilians (21,000 Americans, 43,000 Third Country Nationals, 118,000 Iraqis) are working under U.S. contracts paid by U.S. tax dollars.¹⁷

There has been a significant qualitative shift in the range of services since the early '90s. These days the PMCs provide more mission critical services for the U.S. military than ever before. In Operation Iraqi Freedom, private contractors handled everything from feeding and housing U.S. troops to maintaining sophisticated weapons-systems like B-2 stealth bomber, Apache gunships or AEGIS defence systems on numerous Navy ships.¹⁸ These reach far behind the original concept of outsourcing which was mainly based on the idea of cost saving. At the age of defence reduction contractors have been viewed as force multipliers used extensively over for many tasks in an attempt to reduce the strain on a downsized military. One of the first areas that to be outsourced was logistics. In 1985 the U.S. Army established the Logistics Civilian Augmentation Program (LOGCAP) for utilizing civilian contractors in the theater of operations to provide an additional means to adequately support the current and programmed force.¹⁹ By supplementing overstretched active duty personnel with contractors for jobs which do not require special military expertise (feeding, housing, facilities maintenance or logistics) allow soldiers to concentrate more on their core activity, fighting.

¹⁶ 'Warriors for Hire in Iraq' by Peter Singer Salon.com, April 15, 2004, however in the words of some expert this ratio was 1 to 50 in the first Gulf War. See Caroline Holmquist "Private Security Companies: The Case for Regulation" SIPRI Policy Paper No. 9; SIPRI January 2005 p. 23 or David Isenberg "A Fistful of Contractors" British American Security Information Council September 2004 p. 7.

¹⁷ US combat troops number in August is 162,000. According to State- and Defence Department figures obtained by the Los Angeles Times. 'Iraq contractors outnumber troops' by T. Christian Miller; The Baltimore Sun July 4, 2007.

¹⁸ Peter W. Singer "Warriors for Hire"

¹⁹ Army Regulation 700-137 Logistic Civil Augmentation Program Headquarters Department of the Army Washington DC December 16 1986 <http://www.aschq.army.mil/gc/battle2.asp>

The first LOGCAP contract awarded by the Halliburton for 5 years in 1992 was \$2 billion in value; the last LOGCAP III signed in 2001 for 7 years ballooned to \$23 billion.²⁰

After the occupation of Iraq, perhaps it wouldn't stretch things to suggest that the U.S. won't be able to manage a large scale military intervention without the effective contribution of the privatized military industry.²¹

The occupations of Iraq also brought attention to new areas of services. All U.S. ambassadors and the Head of the Coalition Provisional Authority (CPA) in Iraq, have been protected by Blackwater, a U.S.-based company. Dyncorp International which also provided logistics under LOGCAP II to the U.S. Army (1998-2001) also established its own branch for security services. Just 2 years after the end of major combat operations in Iraq, about 60 private companies provided security services with as many as 25,000 employees.²² In the words of David Isenberg this unique demand for security services is mainly due to two factors.²³ First, the Bush Administration underestimated the number of troops that would be required for sustaining peace and security in the county. Second, the Republican Administration did not anticipate the emergence of growing insurgency and its consequences for the reconstruction work. The private companies engaged in this work had no choice but to turn to private contractors to protect their employees in the field.

Like soldiers, the civilian contractors incur the risk of death and injury from insurgents or job-related accidents in Iraq. Labour Department Statistics show that the death toll for civilian contractors in Iraq has topped 1,000 since March 1, 2003²⁴ This number compares with the official U.S. losses (3,642 in Iraq by the 28th of July according to the database of the Department of Defence²⁵) which means that on average one civilian contractor is killed for every four of the U.S. Armed Forces. By other words, if those deaths – of truck drivers and

²⁰ Army Split Award Among 3 Firms by Dana Hedgpeth Washington Post, June 28, 2007; A08

²¹ Singer 'Corporate Warriors' p. 137.

²² GAO Report Rebuilding Iraq Action Still Need to Improve the Use of Private Security Providers Statement of William Solis, Director of Defense Capabilities and Management GAO-06-865T June 13, 2006 <http://www.gao.gov>

²³ David Isenberg David Isenberg A Fistful of Contractors

²⁴ 'Labour Dept: 1001 contractor have died in Iraq' by David Ivanovich Houston Chronicle, 2007. Aug 7.

U.S. Representative Jan Schakowsky (D-IL) announced on August 6 that over 1,000 contractors have been killed in Iraq since the war began in March 2003. Congresswoman Schakowsky obtained this information after contacting the U.S. Department of Labor to request the latest numbers on contractor injuries and deaths in Iraq and Afghanistan. Under the Defense Base Act, claims for deaths and injuries for employees of federal government contractors are filed with the Department of Labor, which had received 1,001 death claims as of June 30, 2007. http://www.house.gov/apps/list/press/il09_schakowsky/pr_contractordeaths_080607.shtml

²⁵ See more on the official webpage of Department of Defence www.defencelink.mil

security guards etc. - are added to the military toll, the human cost of the U.S. war effort in Iraq is more than 25% higher.²⁶

4. From the foreign policy perspective

To highlight the private contractors' role in the foreign policy it may be worth just once again reviewing the definition of *PMCs*: they *are profit driven economic actors, whose functioning generates strategic and political consequences*. As Singer stated through privatization, the state agent of action is no longer its national military, but instead a profit-motivated actor.²⁷ On one side this distance creates unique opportunities for the government to avoid the expense associated with some foreign venture: keep low of the human and political costs or elude condemnation from others which give U.S. policymakers more flexible foreign policy tool. But on the other side motivations are changed, which would lead to a transformed relationship, and often much different outcomes than with the use of the public resources of power. In short the PMCs operate outside of the state's exclusive control which generates four central problems²⁸: (1) problem of establishing clear mandates (2) the lack of accountability, (3) problems of oversight and control, (4) the problems of coordination among PMCs and regular forces at operational level.

4. 1. *The effects for political costs*

By privatizing parts of the U.S. mission, the Bush administration has dramatically lowered the political cost for its Iraq policies. Since Somalia 1993 the deaths and abuse of soldiers are an important issue in American politics, by other words the executive power is held accountable for the life of its citizens in foreign policy. In March 31, 2004 four Blackwater contractors were ambushed, killed and mutilated by the crowds while escorting a convoy through Fallujah in Iraq.²⁹ In both cases, in Mogadishu and Iraq the pictures of the tragedy were broadcasted by the media but the following consequences were different. Forced by the public opinion President Clinton withdrew the U.S. contingency from the Horn of Africa, while in Iraq with

²⁶ The U.S. Labour Department reported that one of the biggest contractor in Iraq, the ArmourGroup has lost 26 employees, base don insurance claims. Sources close to the company said the figure is nearly 30. Only three countries in the 25-nation 'coalition of the willing' – the U.S., Great Britain, and Italy - have sustained more combat-related death. 'Iraq Contractors face mounting losses' by Steve Fainaru, Washington Post June 16, 2007 Page A 12

²⁷ Singer 'Corporate Warriors' p. 170

²⁸ Caroline Holmqvist Private Security Companies The Case for Regulation Stockholm SIPRI Policy Paper No. 9; January 2005 p. 25-33

²⁹ Slain contractors were in Iraq Working Security detail by Dana Priest and Mary Pat Flaherty Washington Post April 2, 2004 Page A 16

a little overstatement only general interest has become more active towards private security contractors. To illustrate the advantages of using private contractors instead of military in the field of human cost, the contractor casualties and kidnappings are not listed on public rolls and are rarely mentioned by the media. While military casualties are updated daily and posted on the Pentagon's Web site, civilian contractor deaths are updated only quarterly by the Labour Department.³⁰

In relation to the Congress by outsourcing military services policymakers hoped to meet the demands on the force while minimizing the increase in the number of military personnel and repeated call-ups of reserve units. Since the Vietnam War the Congress has a broad right to limit the size and the scope of the U.S. military involvement in certain operations and with nearly the same amount of contractors than military in Iraq the Bush administration can avoid some of the political compromises with the Congress. While the Bush's proposed surge for additional 30.000 troops has sparked a fierce debate in the Congress and among the public, the Administration's increasing reliance on PMCs has gone largely undebated and underreported.

By applying PMCs the government can plausibly deny, or keep unseen its involvement in certain foreign policy activities. In September 1994 the U.S. based military consulting company MPRI and the Croatian government signed two contracts, with the permission of the U.S. Administration for moving the Croatian forces closer to participation for NATO's Partnership for Peace (PfP) program. The first, for helping reconstruct the defence department for long-term strategic capabilities, the second to take courses on democratic armed controls. Avant mentioned that there are some speculations that MPRI was, in fact, doing far more than stipulated in its original contract.³¹ It allows surmising MPRI participation for planning the offensive of Operation Storm, which changed the balance of power in West-Balkan. Tonino Picula, Croatian foreign minister claims that MPRI's aid was significant in helping Croatia achieve its rightful independence.³² The contract between the PMC and the government of Croatia allowed the U.S. to flow its military expertise to Croatia during U.N. arms embargo without sending U.S. forces.

³⁰ The civilian contractor figures are compiled by Labour Department's Division of Longshore and Harbour Worker's Compensation, which track workers' compensation claims by injured workers or families of contractors who died.

³¹ Deaborah D. Avant 'The Market for Force' Cambridge University Press Cambridge 2005 pp. 103-105

³² Avant pp. 109-110

4. 2. Negative effects concerning PMCs

The engagement of private military companies, which have political and strategic benefits in foreign policy (detailed above), may also pose several problems, which are the followings:

4. 2. 1. Unclear mandates

In contradiction to the military the private military companies do not have clear mandates or rules of engagements. This allows them to fulfil situational demand in a short period of time and may take the liberty of deciding themselves what action is required in order to fulfil their contractual obligations. This may cause abuses in relation to their original tasks.

The unclear mandate creates blurred understandings on what roles and functions should be privatized, the borderline has been drawn by the mission critical activities.³³ The same conceptual problem occurs with security providers who are armed contractors and are working in the conflict zone in parallel with the military – the only factor that differentiates these private military provider companies is the defensive character of their services.

4. 2. 2. The question of accountability

Task holding individuals accountable for crimes or misconduct fall under the state legislation where the company is registered or where the act is committed. However, soldiers are accountable under their nations' military code of justice (in case of U.S. Uniform Code of Military Justice, UCMJ) irrespective of their actual location in the world. Normally a civilian's crimes fall under the jurisdiction of the country where they are committed. But in case of Iraq, according to the CPA Order Number 17, (revised June 27, 2004) the contractors are effectively granted immunity from local prosecution. "...contractors shall not be subject to Iraqi laws or regulations in matter on relating to the terms and conditions of their contract..."³⁴ In some cases there are states which assert extraterritorial jurisdiction over their nationals, but as Singer claims they do only for certain times and often lack the means to enforce their laws abroad.³⁵ Despite the fact that approximately 30,000 security contractors carry gun in Iraq only one successful prosecution occurred against a Department of Defence

³³ Quadrennial Defence Review Report 30 Sept, 2001. p. 53

³⁴ CRS Report on Private Security Contractors in Iraq: Background, Legal Status, and Other Issues June 21, 2007 p. 15

³⁵ Singer Outsourcing of War

(DOD) contractor who was pleaded guilty for the possession of child pornography under U.S. Military Extraterritorial Jurisdiction Act (MEJA) in February 2007³⁶.

Due to the commercial motivation of private contractors it is difficult to hold private military companies accountable under the contract with the state. In contradiction to the military whose activity is strictly regulated and enforced by the military Rules and Engagements the relations between the client and the contractor and the company and its employee are determined by normal law like in case of any other multinational commercial companies. This creates a certain element of uncertainty in military operations. For its strategic role, the KBR logistics convoys have been protected by the U.S. Army but even with their security umbrella the insurgents ambushed the convoys several times. On the morning of April 9, 2004 five employees were killed, two remain missing and Thomas Hamill captured by an insurgents attack in Fallujah.³⁷ After the tragic event several drivers terminated their contract which temporarily affected the quality of KBR services. *“For the safety and security of convoys, the Army and KBR jointly made the decision to temporary suspend some convoys at this time until additional security efforts can be put in place by the military to provide the new level of security necessary to move supply into Iraq.”* KBR spokeswoman Wendy Hall interpreted the tragic event.³⁸

A recent publication shows that more than 41,000 third-country nationals, 118,000 Iraqis and only 21,000 Americans are employed by PMCs in Iraq paid by U.S. tax dollars.³⁹ The recruiting, screening, and hiring of individuals from third-country nationals for military service are the responsibility of the company. Private military companies usually have their own code of conduct for their staff, but sometimes they have no intention or opportunity to verify the criminal or professional history of their employees.

4. 2. 3. Problems of transparency and oversight

By outsourcing the activity the state's agent in action is no longer the military but a profit-oriented economic actor, the PMC, therefore the well established institutional frame for oversight and control related to armed forces is no longer effective.

It is difficult to achieve transparency in a market which is highly personalized and characterized by confidentiality. Some PMC CEO, like Carl Vouno, perhaps not surprisingly

³⁶ CRS Report p. 18

³⁷ http://www.halliburton.com/news/archive/2004/kbrnws_122204a.jsp

³⁸ http://www.halliburtonwatch.org/news/suspend_hal_convoy.html

³⁹ Christian T. Miller The Baltimore Sun July 4, 2007 op. cit.

fulfilled high ranking positions in the military or the administration during their active carrier. Therefore they maintain good connections to their predecessors, who are in some cases their former deputies.

Among others one clear sign of the weak oversight and transparency is that controversial information came into light on the precise number of people employed by these companies in Iraq. The estimates of the numbers of contract personnel in Iraq, including private security contractors, vary widely. For example, according to the U.S. Central Command (Command) estimation in 2006 approximately 100,000 PMC contractors worked in the Persian Gulf country. Early this year the Los Angeles Times requested the Command under the Freedom of Information Act to present the exact number of contractors in Iraq. The Los Angeles Times received a database in June with the information that 130,000 contractors working for 632 companies were holding contracts in Iraq with the DOD or other U.S. Federal Agencies.⁴⁰ Probably one of the reasons behind this phenomenon is that PMCs can decide for themselves what action and workforce is required on order for them to fulfil their contractual obligations in the ever changing environment. Like KBR the official supplier for the U.S. Army under LOGCAP III indefinite-delivery, indefinite-quantity contract hires its employees on a monthly basis.

4. 2. 4. The lack of effective operational coordination

Private contractors, especially the security providers are independent entities, responsible for their own operations, security and safety, therefore they are not integrated part of the public forces' structure or chain of command.⁴¹ They do not receive full or timely access to military intelligence reports on contemporary area of operations, do not have full access to the military communication net because of the weak protection compared to the troops and they may act differently than soldiers in the same situation. The lack of established practice of identification in the field also raises obvious problems. Soldiers told the Government Accountability Office that security providers frequently entered their battle space without notifying them.⁴² In extreme cases this has led to friendly fire accidents.⁴³ With the aim of improving the operational coordination, the DOD created the Reconstruction Operation Centre (ROC), in Bagdad and six regional centres collocated with the military's major

⁴⁰ The Baltimore Sun, July 4, 2007. op. cit.

⁴¹ This picture is a little bit different in case of military support companies because logistics convoys under LOGCAP contract are under the security umbrella of the U.S. Army.

⁴² Statement of Willian Solis, Director of Defence Capabilities and Management GAO-06-865T www.gao.gov

⁴³ During the five month period of May 2005, the ROC received reports of 20 friendly-fire incidents. In Statement of Willian Solis.

subordinate commands, where representatives of contractors, government civilians and soldiers can exchange their information, mainly voluntarily. The interesting aspect of ROC is that the state outsourced the problem for AEGIS Defence Services, which won the contract for operational coordination.⁴⁴ In spite of the achieved improvement reached by ROC there is a clear need to develop formal and established procedures in the field of training before the units are deployed in Iraq.⁴⁵

5. The political will of the Congress

The use of private contractors in support of U.S. missions overseas has been the subject of a heated debate on Capitol Hill mainly since 2004.⁴⁶ The topics of contractor accountability and transparency of the contracting process have been the theme of a recent flurry of new legislations of the House of Representatives and the Senate since the beginning of the 110th U.S. Congress. The debate at the floor has focused on concern and confusion over the use of private security contractors in relation with the ongoing U.S. missions in Iraq and Afghanistan. The new bills seek to clarify and control the use of contractors in complex contingency operations, specify definitions and to establish appropriate methods of ensuring contractor accountability for situations of wrongdoing by contractors in the field.

The issue of contractors' weak oversight and accountability has become a central issue mainly for some Democrat House of Representatives, like Henry Waxman, Jan Schakowsky or David Price; and Senators as the Democrat Presidential runner Barack Obama or Patrick Leahy.

In this paper we will focus on the content and intention of three proposed bills, which are the following: the (H.R. 369) *Transparency and Accountability in Security Contracting Act of 2007* (Transparency and Accountability Bill on Security) and (S. 679) *Transparency and Accountability in Military and Security Contracting Act of 2007* (Transparency and Accountability Bill on Military) (H.R. 897) *Iraq and Afghanistan Contractor Sunshine Act* (Contractor Sunshine Act).⁴⁷

⁴⁴ See more on the webpage of Reconstruction Operation Centre: <https://brief.aegisiraq.com/>

⁴⁵ The Associations of PMCs working in Iraq printed a card with the most basic information about security providers working in Iraq. This card is given to each individual soldier before deploying.

⁴⁶ For most Americans, the Fallujah incident of Blackwater on March 31, 2004 was the first that they had heard of private contractors. This public awareness creates a political will among some members of the Congress to keep the phenomenon on the floor. One of those is Representative David Price, a North Carolina Democrat.

⁴⁷ The Transparency and Accountability in Security Contracting Act of 2007 was introduced both the House and Senate. The House version was presented on January 10 this year by Mr. Price of North Carolina supported by 19 Representatives. While the Senate version of the bill, which contains some differences in compare with Mr.

5. 1. Findings on definitions

One important finding in each bill on Transparency and Accountability is that they are trying to give a clear definition of what constitute private security functions: “ (1) Any activity for persons are allowed to carry weapons in the performance of the contract” which include among others the performance of military logistics for operations, maintenance or arming of weapon systems, and local force training.⁴⁸

This enumeration carries an important addition for the future trend of outsourcing in the military. Military logistics has traditionally been performed by unarmed civilian logistics companies like Dyncorp or KBR under the protection of U.S. Army. The definition above points to the fact that the Army is planning to use private security contractors on military convoys. However, it is still unclear whether it contains the U.S. Army logistics services under LOGCAP too or just the reconstruction convoys which transport vehicles, weapons and ammunitions for the Iraqi army and police.

Nevertheless in light of the above it is interesting to hear the announcement of Maj. Gen. Darryl A. Scott, who oversees U.S. military contracting in Iraq and Afghanistan: the U.S. military plans to outsource at least \$1.5 billion in security operation this year (2007), including the three largest security contracts in Iraq.⁴⁹ One is up to \$475 million to provide intelligence for the Army and personal security for the U.S. Army Corps of Engineer; the others are (2) a contract to protect U.S. bases in Iraq valued up to \$480 million, and (3) a contract to protect reconstruction convoys valued up to \$540 million. This would significantly increase the presence of armed contractors in Iraq and the reliance of the United States on them.

Another information which may suggest the direction of the outsourcing policy is that the U.S. Army awarded the LOGCAP IV contract worth up to \$150 billion spread among three companies: the Flour International, Dyncorp and KBR to feed, house and provide other services to U.S. troops in Iraq, Kuwait and Afghanistan.⁵⁰ Each company's part of the contract is worth up to \$5 billion a year and can be extended for up to nine years. In value this is a significant increase in comparison to the LOGCAP III contract's \$23 billion for 7 years.

Price text was submitted by Senator Barack Obama on February 16. While the Iraq and Afghanistan Contractor Sunshine Act was introduced by Ms. Schackowsky supported by 19 Representatives.

⁴⁸ (S. 674) Sec. 9.(2) (A); (H. R. 369) Sec 7. (2) (B) <http://thomas.loc.gov/>

⁴⁹ 'Iraq Contractors face mounting losses' by Steve Fainaru, Washington Post June 16, 2007 Page A 12

⁵⁰ Army Split Award Among 3 Firms by Dana Hedgpeth Washington Post June 28, 2007; Page A8

5. 2. *Reports on contemporary involvements*

The Barack Obama bill would require for the Secretary of Defence, the Secretary of States, the Secretary of Interior, the Administrator of the USAID, and the Director of National Intelligence to provide information within 90 days of the exact number of companies, contractors, cost of such contracts etc. to have a clear view of the real cost of the U.S. presence in Iraq and Afghanistan.⁵¹

The Price bill would require the Government Accountability Office (GAO) to create a report within 270 days about the total cost to the Federal Government related to procuring security services through contractors.⁵²

There has been some improvement in the field of reliable information since the beginning of this year, while the largest employer of contractors the Defence Department is moving to create a central repository for information on contractor employees deployed with the military and to require contractors to keep the database current. Early this year DOD started to operate a web-based system known as “*Synchronized Predeployment and Operational Tracker*” (SPOT) which provides remarkably detailed information on individual level on a monthly basis.⁵³ The SPOT may be used for State Department and other U.S. government agencies in the near future.

5. 3. *For better operational coordination*

By improving the coordination between the armed forces and security providers, the bills would require the Chairman of the Joint Chiefs of Staff to take measures to establish rules of engagements regarding the circumstances under which force may be used by armed contractors and the types of force authorized. The bills also contain provisions intended to set up minimum training and certification standards for the hired contract personnel, who perform private security functions within the area of contingency operations. The bills also introduce the institution of *Theater Security Contract Coordinating Officer*, who is responsible for maintaining the flow of information between the military and the security providers in a certain area of operations.⁵⁴

⁵¹ (S. 674) Section 3. op. cit.

⁵² (H.R. 369) Section 6. op. cit.

⁵³ DOD Moves to implement Data Repository to track contractors deploying with forces; Federal Contracts Report Volume 87 Number 12, March 17, 2007

⁵⁴ (S. 674) Section 6.; (H. R. 369) Section 3. op. cit.

5. 4. For better accountability

The Obama and Price regulations would also require the contractor to provide to the contracting officer cost estimates of salary, insurance, administrative costs, and other costs of carrying out private security functions under the contract. Before the contract closeout, the contractor shall provide a report on the actual costs.⁵⁵

5. 5. Report from lower value

The main feature of the Contractor Sunshine Act is that it would require that copies and descriptions of contracts and tasks orders over \$5 million for work to be performed in Iraq and Afghanistan are sent to the Congress before the licence is approved by the State Department.⁵⁶ This would be a tenfold decrease in comparison to the contemporary legislation, which has a \$50 million limit.⁵⁷ This will strengthen the Congress' political control over the Bush Administration's policy on military service contracting.

6. Conclusion

The United States is relying heavily on private companies to supply a wide variety of services in its contingency operations in Iraq and Afghanistan. Based on some estimations the ratio between military personnel and contractors has reached 1 to 1 in Iraq. According to the available reports made by the Congressional Research Service (CRS) and GAO this is the first time that the U.S. have depended so much on contractors in its foreign policy. While the trend of military outsourcing foreshadows the embracement of the mission critical activities (e. g. intelligence or the protection of Army supply convoys etc.) and a further growing demand forced by functional needs, the oversight and control over the private contractors is weak.

To improve the contemporary regulations the 110th Congress is trying to pass some bills which seek to clarify and control the use of contractors in U.S. missions abroad. The problem lays in privatization itself. In relation to the military the state agent of action is no longer the armed forces but the profit-motivated economic actor, the Private Military Company, which is outside the state's exclusive control. Hence the real issue from the point of view of the state is how it would be able to enforce the regulations, in terms of having enough oversight in the theatre where the companies operate. Therefore it is important to increase the number of contracting officers who are the main connection between the state and its executive in the

⁵⁵ (S. 674) Section 5.; (H. R. 369) Section 2 op. cit.

⁵⁶ (H.R 897) Section 1.

⁵⁷ Deborah Avant 'The Market for Force' p. 151

field and to set up a detailed strategy on what range of services need to be outsourced in the military.

But while the two actors have different motivations the result doesn't only come from the coercive power of the single state. As in every business relations it has to be based on mutual interests and confidence of the parties. If the introduced regulations on transparency and accountability have been implemented that will probably produce a higher confidence among policymakers on the utility of privatized military companies and may serve as an example for other countries.