STRATEGY RESEARCH PROJECT

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THE NEW CONDOTTIERI AND U.S. POLICY
THE PRIVATIZATION OF CONFLICT AND ITS IMPLICATIONS

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ABSTRACT

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The increased privatization of conflict and the use of private military corporations challenge the traditional state monopoly on violence. While recognizing the challenges associated with their employment the United States should embrace the private military corporation as a means to further its strategic objectives. Private military corporations offer potential solutions to the United States for the application of force in situations that have limited objectives such as peacekeeping, humanitarian operations or combating transnational threats such as terrorism.

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THE NEW CONDOTTIERI AND U.S. POLICY
THE PRIVATIZATION OF CONFLICT AND ITS IMPLICATIONS

> The mercenaries and auxiliaries are useless and dangerous, and if anyone supports his state by the arms of mercenaries, he will never stand firm or sure, as they are disunited, ambitious, without discipline, faithless, bold amongst friends, cowardly amongst enemies, they have no fear of God, and keep no faith with men.
>
> — Machiavelli, The Prince

Machiavelli's warning against the privatization of conflict is almost a cliché of international relations. And yet conflict at the beginning of the 21st Century is in many ways reminiscent of the Italian philosopher's time, long before the emergence of the European state system at Westphalia in 1648. Niche Wars, for instance, are on the rise around the globe, pitting governments and non-governmental forces against each other. "As new forms of armed conflict multiply and spread," Martin van Creveld has observed in this regard, " they will cause the lines between public and private, government and people, military and civilian to become as blurred as they were before 1648."[1] Already, the new era is marked by a decrease in conventional warfare with large armies and an increase in conflicts characterized as Military Operations Other Than War (MOOTWs). Added to this are a growing number of national actors unable to provide security for their citizens as well as the increasing demands by civilian leadership around the world for leaner, less expensive military forces. These developments have fueled a surge of interest in the privatization of conflict. An increasingly important manifestation of this trend is the Private Military Corporation (PMC), organized to provide often-specialized military expertise to its clients.

PMCs are different from other private means of violence in scope, purpose and legal form. They differ significantly, for example, from mercenaries, the familiar traditional soldiers for hire. In addition recent world events in Afghanistan, Columbia and the Balkans have publicized another type of privatized means of conflict- the private army or militia led by their warlords. These organizations, representing a step above the mercenary, manifest themselves as transnational terrorist groups, drug cartel forces, and religiously motivated combat groups like the Islamic Brotherhood. A more conventional means of privatized violence is the private security company that provides personnel and installation protection at home and abroad. In this hierarchy, the private military corporation, represents the ultimate evolution of private means of violence. PMCs are a legally chartered company or corporation organized along business lines and engaged in military operations across the spectrum of conflict.[2]

The initial task is to examine this evolution against the historical backdrop of state efforts to suppress violence. Why, despite these efforts and the time-honored resonance of Machevelli's warning have PMCs emerged in the post-Cold War era? In what type of future operations could these organizations be most effective? What are the advantages and disadvantages of their use for the United States at this historical junction? The purpose of this paper is to provide answers to these questions.

THE RISE AND DEMISE OF CONFLICT PRIVATIZATION

The privatization of conflict is not a new phenomenon and was still widely practiced until the 1800's. As kings and princes tried to extend their control over new tracts of land, the feudal system of military service prevented the raising of the required larger armies. This constraint led them to the practice of employing mercenaries.[3] Although the use of mercenaries and other privatized means of violence proved successful, the price for that success was a continuous state struggle to regulate behavior and performance. This conflict ultimately was about the authority and legitimacy of the state versus the very real power of these privatized means to wage war on anyone they chose.

EARLY PRIVATIZATION TRENDS

The early European use of organized mercenaries was in the form of private bodies in the 14th century known variously as Free Companies or Great Companies. These organizations ultimately developed in Italy as condottieri, literally military contractors, who offered their services to the highest bidder. The condottieri system maintained fairly permanent companies of armed military specialists that were hired out for set periods to various Italian states.[4] This practice of offering large private armies for hire continued to flourish through the seventeenth century. As early as the 15th century, however, some sovereigns were already finding these large private armies a threat to their own security. As a consequence, they began to integrate individual mercenaries into their own armies or hire the services of other army units from another ruler. By the 18th century, this was fairly common practice as the British demonstrated with the use of Hessians to fight in the American Revolution.

Land warfare was not the only medium in which the privatization of conflict was practiced. Privateers on the high seas had a legal standing in international law and were widely used by nations through the 1800's to bolster their maritime forces. These ships were defined as "vessels belonging to private owners, and sailing under a commission of war empowering the person to whom it is granted to carry out all forms of hostility which are permissible at sea by the usages of war."[5] Granting such a commission was a relatively easy method for a sovereign to

rapidly expand maritime power in time of war. For example, England effectively countered Spanish naval superiority in the 16th and 17th centuries through the extensive use of privateers in the New World. Popularly known as "Sea Dogs", Francis Drake, and Walter Raleigh among others plundered Spanish ships in that region and extorted large sums of ransom from Spanish settlements. In addition to the monetary rewards, both Drake and Raleigh were knighted for their exploits. In America, privateers were used in the War for Independence to capture or destroy 600 British ships. The new republic continued the use of privateers during the War of 1812, to capture 1,300 ships. During the Civil War, the Confederacy continued to resort to this practice.[6]

Privateers were granted their right to wage war through the issue of letters of marque and reprisal. Besides providing the legal basis for the use of privateers in war, these documents also empowered private individuals to seek redress during time of peace. Originally they were issued at a time when very few international mechanisms existed to resolve private disputes. The underlying concept for these letters embodied responsibility and accountability. If, for example, a French vessel seized a British ship, then a Letter of Marque could be granted that would allow the legal seizure of an item of like value from any French vessel on the high seas. [7]

On a larger scale than privateers, merchant or mercantile organizations like the Dutch East India Company, English East India Company or the Dutch West India Company, were European companies created in the 16th century with extraordinary powers to explore and exploit overseas territories. As a general rule, these companies were given a monopoly on trade in a region. The chartering government then granted the companies broad powers to raise military forces, negotiate treaties, conduct war, and govern fellow nationals. The capacity of these organizations to wage war was significant, best demonstrated in the latter part of the 19th century by the direct rule or political control by the British East India Company of almost all India south and west of the Punjab.[8]

STATE SUPPRESSION OF PRIVATE VIOLENCE

While the use of private military corporations in various forms was both attractive and useful for states, several forces also converged to cause their suppression. To begin, with the growing structure of states and their armies made the use of private military corporations unnecessary or unattractive. The increased use of more technologically sophisticated weapons required a dedicated and full time professional who was well trained. Training demanded constant drilling to master the movements required to individually fire a weapon and maneuver

in formation on the battlefield. All this necessitated a degree of discipline not found previously in any PMC. At the same time, state bureaucracies had developed to a degree where it was possible to recruit, train, pay and maintain a full time force. These two trends made the use of private military corporations an increasingly less desirable option for states.[9]

As states matured and the concept of sovereignty developed, legitimacy was defined more and more by the ability of states to protect and control citizens at home and abroad.[10] The immediate impact was the withdrawal of the right of private citizens to conduct private war. The army and navy became the primary manifestation of a state's legitimacy and prestige as the sole holder of the legitimate means to enforce order. Control, then, not moral or legal problems, was a major reason that states began to move from employing privatized means to state-government organized means of violence.

The other cause was the growing inability of states to regulate private military corporations. Increasingly, the commissioned privateer of today would turn into tomorrow's pirate and embarrass the government that had originally chartered him. The most celebrated example was Sir Walter Raleigh, who was knighted for his earlier successes against Spain, but would continue to ply his trade after hostilities ceased. Raleigh would be ultimately captured and executed for his troubles.[11] On a larger scale, mercantile companies continued to fight each other for economic ascendancy in often significant military actions such as the Hudson Bay Company conflict with the Montreal-based Northwest Company over control of the fur trade in 1815. In a similar manner, mercantile companies chartered by different countries would often fight each other when their respective countries were at peace. The struggle between the English and French East India Companies in India from 1748-1756 is an example. Moreover, the reverse was also true. Mercantile Companies would observe a self-imposed truce even when their respective countries fought each other, as did the three rival East India companies (English, French and Dutch) in the War of Spanish Succession (1701-1713).[12]

Ultimately, the two trends were mutually reinforcing. The growth of bureaucratically mature states capable of organizing violence created increasingly strong competition for PMCs. At the same time, states began to recognize that their inability to control the actions of these private organizations challenged state sovereignty and legitimacy. The result was that the utility of the PMC function as a tool of state warfare disappeared.

PRIVATE MILITARY CORPORATIONS IN THE POST COLD WAR ERA

The resurgence of PMCs can be attributed to several factors that stem from the end of the Cold War. Chief among them was an increase in regional and intra state conflict which resulted throughout the world in failed or failing states unable to field sufficient armed forces to maintain internal order. At the same time, the end of bipolar confrontation led to a diminishment of great power interest in these areas. A parallel development during this period was a dramatic decrease in the world's great militaries and a concurrent demand for improved efficiencies in remaining forces.[13] The result of these trends was two fold. For many fragile states, lacking, great power support and unable to provide security for their citizens, PMCs such as Executive Outcomes (EO) provided a solution. For the United States, focused on a more efficient, smaller force, outsourcing and privatization with PMCs such as Military Professional Resources Incorporated (MPRI) was part of the answer. Their employment respectively in Africa and the Balkans is representative of the range of performance that PMCs can offer.

EXECUTIVE OUTCOMES IN AFRICA

Some PMCs like EO provide security services their employers cannot perform on their own. Originally formed in 1989 as an incorporated private security group, EO was registered in South Africa and Great Britain.[14] Initially its employees were drawn almost exclusively from the ranks of veterans of the South African Special Forces that had been demobilized as a result of the end of the apartheid regime in that country.[15] The company marketed its services as a provider of military training and peacekeeping services to "create a climate for peace and stability for foreign investment."[16] The company's exclusive use of South African military veterans ensured a common training background, a reliance on a common military culture and extensive counter-insurgency experience. Armament and equipment used by the company was quite extensive, to include armored personnel carriers, amphibious vehicles, Soviet helicopters and helicopter gunships, Soviet fighter-bombers, and Boeing 727 transports.[17]

The company's first contract was in Angola. The 1992 ceasefire between the Popular Movement for the Liberation of Angola (or MPLA from the Portuguese) and the National Union for the Total Independence of Angola (or UNITA from the Portuguese) in Angola called for free elections in September of that year. A UN-monitored election declared MPLA the winner. UNITA refused to accept the result.. Conflict broke out again, with UNITA quickly controlling 80% of the country to include the critical Soyo oil preserve. Hired by several international oil companies, Executive Outcomes successfully recaptured and held the area against significant UNITA opposition.[18] This action led to a subsequent one-year contract by the Angolan MPLA

government worth $40 million in September 1993. Ultimately, operations would include training MPLA 16th Brigade soldiers in such skills as motorized infantry tactics, artillery gunnery, communications, engineering, sabotage, and reconnaissance.[19] A major triumph occurred when the 16th Brigade defeated a strong UNITA force outside the Angolan capitol of Luanda. The operation was jointly planned between the Brigade and Executive Outcomes and resulted in only four casualties. Besides planning and training, Executive Outcomes personnel also participated in ground and air combat.[20] In the end, the PMC was credited with being a key to the MPLA success in persuading UNITA to sign the Lusaka Protocol ending the fighting.[21] This success led to other contracts in Africa for Executive Outcomes.

In May 1995, Sierra Leone hired Executive Outcomes to help fight the insurgent Revolutionary United Front (RUF). The PMC entered a conflict that since 1992had created one and one-half million refugees, had killed at least 15,000 people, and had totally disrupted the country's economy. The 14,000 man Sierra Leone regular forces were not effective. The soldiers lacked training and were generally corrupt. These units more often than not fought each other and sometimes resorted to outright banditry or even rebel activities.[22] To aid them, EO mounted a rapid campaign, defeating insurgent forces throughout the country. These actions forced the RUF to negotiate with the government for the first time in five years and resulted in countrywide elections in 1996.[23]

In both cases, Executive Outcomes provided contracting governments with capabilities their militaries did not possess. In the case of Angola, the PMC was predominantly used as training and planning cadre with some operational involvement. In Sierra Leone, the company was initially hired to conduct training, but ended up planning and conducting a more ambitious and sophisticated campaign for the government due to the lack of a credible military force. Operations in that case ranged from long-range reconnaissance and aerial surveillance operations, to signals intercept and jamming, and successful counter-intelligence. In addition, the PMC created and trained an effective indigenous force and augmented direct military operations with a simple but effective civic action program that won over the local populace and provided the company with valuable human intelligence to supplement its technical intelligence.[24]

Although Executive Outcomes provided valuable service to their contracting governments, the use of the PMC also generated a substantial amount of concern and outright criticism. Some international groups speculated that EO's employment represented a new chapter in exploitation of Africa countries by mercantile companies from the previous century. The issue was in part tied to the Angolan government's granting concessions to international oil and

diamond companies for their role in facilitating EO's employment.[25] In Sierra Leone, criticism centered on the possibility that the company might have in fact widened the conflict by arming ethnic groups in its campaign to subdue the insurgents.[26] Moreover, EO was also blamed for upsetting the balance in civil-military relations, since military leaders were harshly critical of the political leadership for bringing in the PMC to conduct counter-insurgency operations in lieu of their own unreliable and even outright criminal formations.[27]

MPRI IN THE BALKANS

Other PMCs provide services that their employers do not want to perform themselves or for political reasons cannot provide. Founded in 1988 and fueled by the outsourcing and privatization focus of the U.S. military in the 1990's, Military Professional Resources Incorporated or MPRI is such a company. The organization is structured along conventional corporate lines with a Board of Directors, President, Chief Financial Officer, corporate staff, three operating groups and a full time staff of 800. According to its own literature, MPRI provides an extensive array of services to include: training and education, simulation and war-gaming support, equipment fielding support, democracy-transition assistance, peacekeeping and humanitarian aid, anti-terrorism/force protection, consequence management, and non-military services.[28] The company's projects are international and varied to include conducting civil-military transition assistance in Nigeria, developing a "National Security Enhancement Plan" for Equatorial Guinea, assisting the Columbian Ministry of Defense with its counter narcotics program, and executing a "Stability and Deterrence Program" for the Republic of Macedonia.[29] It is the company's activities in the former Yugoslavia, however, that first brought world attention to the PMC.

In 1994, under a contract signed with the United States State Department, MPRI provided the 45 US border monitors tasked with reporting on the sanctions against Serbia. The contract lasted 18 months until sanctions were lifted with the signing of the Dayton Accords in November 1995.[30] Also in 1994, the company signed a contract with the Croatian government to help its military transition from a Warsaw Pact-type force to a professional western oriented military.[31] With the consent of the U.S. government, the PMC set out to retrain the national command and staff structure of the Croatian army.[32] It was the alleged company involvement in the Croatian military's "OPERATION STORM" that generated international attention.

This operation was a well-coordinated offensive against the Serbs in the Krajina region in August 1995. This large scale, sophisticated operation collapsed Serbian defenses within a week resulting in the recapture of the region. U.S. combined arms maneuver warfare targeted

against Serbian operational centers of gravity characterized the operation.[33] MPRI received the credit for the success of the operation and shortly thereafter received a renewable 13-month contract with Bosnia.

The task in Bosnia was to administer a "Train and Equip Program" outlined in the Dayton Accords. The program was specifically designed to enhance the combat capabilities of the Bosnian Army and assist in the fielding of military hardware. The Bosnian minister in charge stated that he awarded the contract to MPRI because he viewed the company as "second only to official U.S. military assistance."[34] The U.S. military could not be the provider of the training due to its participation in the NATO Implementation Force and subsequently the Stabilization Force. Although MPRI's contract is with the Bosnian government, the U.S. State Department monitors the contract through a "Military Stabilization in the Balkans Office" headed up by an ambassador.[35] Throughout that area, the company has been a successful military trainer for a variety of clients in a wide range of subjects to include command and staff skills, individual soldier skills, and new equipment fielding skills. MPRI, in short, has proven to be a reliable supplement to U.S. policy in the Balkans, taking on tasks that the U.S. military either could not do or did not want to do.

Like Executive Outcomes, however, MPRI's success has not been achieved without criticism. Some observers believe that the use of MPRI is simply a convenient ploy for the executive branch to avoid congressional oversight.[36] Other comments focus on MPRI as a vehicle to conduct foreign policy by proxy and therefore an inappropriate use of a corporation that challenges the state's sole legitimate claim to wage war.[37] And in Europe, many allies perceive that the U.S.-dominated role of the PMC in the Balkans has complicated the search for a peaceful solution in that area.[38] Pragmatic concerns have also been raised that U.S. government officials could lose their neutrality in the eyes of belligerents in the region and face reprisals based on the actions of MPRI.[39]

THE FUTURE USE OF PRIVATE MILITARY CORPORATIONS

Sovereigns initially turned to the use of PMCs when they lacked the requisite means to accomplish their desired ends. Those organizations represented a convenient means to overcome the strategic mismatch. Countries are again faced with circumstances in which they lack the required means to accomplish the desired ends. Despite the historical reasons for their eventual suppression, Private Military Corporations as evidenced by EO and MPRI once again represent a convenient means to accomplish desired ends. These PMCs have shown

their utility for client states in a variety of ways from providing local security and serving as military trainers to actually planning and conducting small scale military operations.

CONSIDERATIONS IN THE USE OF PMCS

The modern use of PMCs poses several challenges that must be considered. Chief among them is the emotion charged issue of using "mercenaries". Most of this emotion grew out of the various struggles for independence of African nations from colonial powers. "Mercenaries" in the classical sense were recruited abroad and then fought to suppress indigenous liberation movements. These actions were also often linked to violations of the Rules of Land Warfare. The current definition of a mercenary is found in Article 47 of the 1977 Protocol I addition to the 1949 Geneva Conventions. According to that Protocol, to be considered a mercenary one must be specifically recruited to fight, take a direct part in hostilities, be motivated essentially by the desire for private gain, and be promised pay in excess of that granted to member of the regular armed service.[40] Additionally, international law recognizes a role for civilian support specialists on the battlefield, which specifically precludes their inclusion as mercenaries.[41] As a result, there is international recognition that private military corporations are not mercenaries and in fact are legitimate national corporations organized in accordance with the legal codes of their respective home countries. Most importantly, the United Nations agrees that PMCs do not meet the stated definition of a mercenary.[42]

Nevertheless, the United Nations has raised some concerns that the U.S. needs to consider about the supervision and monitoring of PMCs in order to avoid any Geneva Convention violations. This issue can be overcome by several means, most notably using the existing provisions of the Geneva Convention that require belligerent parties to uphold the provisions of the convention and provide for mechanisms such as the International Red Cross to monitor conflicts for adherence to international law. Additionally, there could be a stipulation in any American contract that the PMC would abide by all international laws regarding treatment of individuals or face immediate forfeiture of the contract and prosecution under applicable national and international law. Day-to-day supervision of the activities of the PMC could be provided by an on scene contracting officer with broad powers to withhold payment or terminate the contract for cause should the PMC not act in accordance with governmental wishes. The government could also deploy an integrated military-diplomatic plans and operations team with the PMC to provide overall guidance just as the Italian states did with their condottieri. Finally the U.S.

could invite U.N. observers to monitor the actions of the PMC in order to provide greater transparency of its actions and thus help allay concerns by the international community.

Another legal consideration is the U.S. neutrality laws that prohibit an American from being hired in the United States to participate in armed conflict with a party at peace with America.[43] But the U.S. government is hiring the PMC to act as its agent; there should not be any violation of the neutrality laws. Tied closely to international recognition of U.S. neutrality is the concern about responsibility for the actions of the PMC. Does it lay with the country where it is based, the PMC itself or the contracting state? Once again, the answer is relatively straightforward. Generally speaking, the state where the PMC is based will not be liable for the actions of a private entity, unless it clearly permits internationally recognized illegal acts to occur. An exception would be when the PMC is acting for the government where it is based.[44]

Far more significant from an American policy perspective is the issue of presidential versus congressional powers in making war and regulating commerce. Currently there are two mechanisms for providing guidance, the United States Constitution and the U.S. law embodied in the Arms Export Control Act, under Title 22 of the United States Code.[45] The U.S. Constitution in Article I, Section 8 grants Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." This specified congressional power provides a potential means to regulate any action by a PMC and if used would overcome concerns that a President is attempting to circumvent the wishes of Congress in either foreign affairs or war making.[46] Arms control laws currently require firms engaged in training of foreign militaries or providing services to foreign militaries to register and pay a fee. The State Department's Office of Defense Trade Controls monitors the firms for compliance with the law and current U.S. policy. In the case of MPRI, however, some critics argue that although it follows this procedure, the existing control mechanism is inadequate and allows the President to circumvent the intent of Congress.[47] These two concerns could be overcome with congressional legislation that re-introduces the granting of Letters of Marque and Reprisal and provides guidelines for the oversight of PMCs, either by the arms export regimes in place at the State Department or by establishing new ones that could include direct congressional oversight.

WHY THE U.S. SHOULD USE PMCS

There are currently four competing developments trends at work that have an impact on the ability of the United States military to support the national security strategy of global

engagement. The first concerns the increased requirements for homeland defense. The recent Quadrennial Defense Review considered defense of the United States as the primary mission for the Department of Defense.[48] Military forces for this mission have not yet been specified; but at the very least there will be a requirement to task either the active or reserve component, or both to support homeland defense.[49]

The second development is that the U.S. national military strategy requires a full spectrum force in order to achieve American strategic objectives in the world.[50] The QDR approached force planning with the explicit realization that it must "provide over time a richer set of military options across the operational spectrum than is available today".[51] No one has yet outlined how the U.S. military will match means with the potentially endless objectives that can be associated with full spectrum dominance.

The most immediate result is that this full spectrum force has been under increasing strain in recent years- -the third major development affecting U.S. military capabilities.[52] "Over the past decade," General Shelton noted before leaving office as the Chairman of the Joint Chiefs of Staff, "our response to the strategic environment has placed a wide range of demands on the U.S. military. Increases in missions and requirements coupled with decreases in structure and procurement have stretched elements of the force and resulted in imbalance between strategy, force structure and resources."[53]

Many of these new missions have come at the lower end of the operational spectrum, the result of the last post-Cold War development, the rise of ethnic conflict, failing states and transnational threats. Failed and failing states are, in particular, fertile breeding grounds for terrorists, organized crime, arms trafficking, genocide and the proliferation of weapons of mass destruction.[54] In the wake of the 11 September 2001 terrorist attacks, the U.S. Defense strategy recognized that states in this condition pose a major threat to America's stability and security, thus potentially placing more demands on U.S. military forces.[55] Moreover the United Nations conducted 31 peace operations between 1990 and 1999, the majority of which were in response to failing states.[56] Most trends indicate that the number of failing states will increase.[57]

The convergence of these post-Cold War developments and America's continued prioritization of force structure development present risks for the United States as it pursues current military objectives across the operational spectrum in support of global engagement. Simply put, military means are not sufficient to allow full and efficient implementation of the U.S. national security strategy.[58] If the risk is to be mitigated, the U.S. must find alternative approaches. One such approach is the increased use of PMCs.

Peace operations represent an area of extensive activities in which PMCs could be used with maximum benefit. Challenges for using current force structure in this area exist in terms of training and providing the right type of units for the mission, since the force is sized, organized, and trained to support two Major Theater Wars at the upper end of the operational spectrum. From this perspective, peace operations are non-core activities; and training on the required skills occurs only as required. For similar reasons, the ability to provide the right type of units required for peace operations has been a major challenge, often requiring units to "retool' in order to provide the desired capabilities.[59] The U.S. could overcome these difficulties by specifically contracting PMCs to provide a tailored force that could expand and contract to meet the ebb and flow of the mission. Just as EO demonstrated in Angola and Sierra Leone, these organizations can provide capabilities such as planning, security/ force protection, logistics, engineering, medical support, and aviation and ground transportation.[60] Equally important, as MPRI demonstrated, a PMC could also provide a reconnaissance and surveillance capability to monitor ceasefire and truce implementation in disengagement zones like the Sinai or along borders in the Balkans.

Major questions still exist, of course, in terms of oversight and capabilities, particularly in terms of any United Nations peace operation. That organization of nations would probably be reluctant to use any national PMCs in peace operations, especially those that required the imposition of a peace settlement on belligerents in support of a Chapter VII UN mandate. But more limited use of PMCs in smaller scale UN peace operations might be possible.[61] For such operations, as an example, the U.S. could provide close supervision of the contracted PMC by deploying the integrated military-diplomatic plans and operations team discussed earlier. Similarly, U.N. or other international observers could be invited to provide transparency in operations and to ensure that all applicable provisions of the Geneva Convention are followed.

Humanitarian operations offer some of the same challenges and opportunities as peace operations. A key factor in humanitarian efforts is rapid intervention, something that has often proved elusive for the U.S. with the constraints not only of the normal decision-making procedures, but of the force generation process as well.[62] To overcome these roadblocks to rapid intervention, the United States could maintain contingency contracts with a PMC to ensure a rapid response once approval is obtained. And in fact a contingency contract with a PMC for such missions could ensure faster decisions, particularly if the contract already had congressional approval. In any event, the PMC would have to provide planning expertise, air and ground transportation, engineering, medical, and security capabilities. In planning for all this, a PMC with a contingency humanitarian contract could also conduct preliminary

coordination with appropriate national donors as well as non-governmental organizations to provide the required assistance.[63]

A more problematic area but worthy of consideration concerns transnational threats such as criminal groups, terrorists, and drug cartels. These gray area threats increasingly represent a sophisticated networked enemy that mixes criminal enterprise and armed conflict and are a growing strategic threat to America.[64] Dealing with these threats abroad may involve large-scale operations such as those currently being conducted successfully in Afghanistan. Even more likely, however, these types of threats will call for paramilitary operations that the U.S. government may be either unequipped or ill suited to fight.[65] In such circumstances, a PMC could be given a contract and congressionally approved Letter of Marque and Reprisal to hunt down and either eliminate or capture those associated with these threats. For such missions the PMC would have to provide the C3ISR, security, aviation, and logistical capabilities similar to those demonstrated by EO during its Sierra Leone and Angolan contracts. Most important, the Letter of Marque and Reprisal would have to be coordinated in most circumstances with the host country. Absent such coordination, the ensuing criticism would far exceed that concerning MPRI operations in the Balkans.

Offensive information warfare is another example of how the U.S. military lacks the required force structure since the requisite capability represents a non-core activity. This capability, known in the civil community as hacking, phreaking and other terms for arcane computer skills, also poses cultural problems for the U.S. military. The hacker community is somewhat anarchistic, with individuality being a key motivator. These cultural norms are at odds with a traditional military approach, making the acquisition of new and evolving skills difficult. The U.S. military could hire specialized PMCs for specific offensive information campaigns, providing a surge capability instead of attempting to maintain limited use, cutting-edge skills in the regular force, far removed from its core activity.[66]

Finally, asymmetric warfare is an area where by definition it is almost impossible to maintain appropriate forces.[67] Defensively this is an area where vulnerabilities are rarely recognized until an attack has occurred. As a consequence, it is difficult in most cases to respond quickly and with the appropriate capabilities. Offensively, even after the target has been identified, a capability may be required that is not in the current inventory and would take too long to create. EO's provision of sophisticated surveillance, signals intercept and jamming capabilities in Sierra Leone is illustrative of a PMC's providing the client state asymmetric capabilities against its enemies. This approach would keep the U.S. military from trying to

defend against all threats or to maintain capabilities across the entire spectrum regardless of risk or cost.

CONCLUSION

The United States continues to pursue a national strategy of engagement and requires the ability to generate forces that can respond across the spectrum of conflict. Either a large force must be maintained or alternate solutions must be found. Private Military Corporations provide the United States the ability to respond across the spectrum of conflict by contracting out for required non-core or emerging capabilities. Their use for peace and humanitarian operations, as well as providing cutting edge capabilities for combating transnational threats, conducting offensive information operations or facing asymmetric threats at the lower end of the conflict spectrum represents untapped potential. This is a pattern in state affairs that is not entirely new and one that has been used successfully by states for ages. Rather than a usurper of state legitimacy, the PMC can become an extension of the United States as a tool to further American strategic interests.

The United States need not succumb to Machievelli's dire predictions. Adequate supervision and oversight can be provided for PMCs to mitigate domestic and international concerns. Control and oversight can be maintained by deploying of an integrated military-diplomatic plans and operations team with the PMC and by inviting outside observers to monitor adherence by the organization to applicable Geneva Convention protocols. Contracts can be written to ensure they are executed in the best interest of the United States and fully compliant with international laws. Congressional concerns can be addressed by actively exercising the constitutional provision to grant Letters of Marque and Reprisal and by requiring that such letters be granted prior to any commitment of PMCs for offensive actions. Strategy is the calculated relationship of ends and means. The use of PMCs would ultimately help the U.S. to avoid a mismatch of these two variables. Additionally, these organizations would mitigate risk by allowing the America to achieve military strength focused on core capabilities instead of trying to create a force spread so thinly across the operational spectrum that it is in danger of indecisiveness at every point on that spectrum.

WORD COUNT = 6,001

ENDNOTES

[1] Martin van Creveld, The Transformation of War (New York, NY: The Free Press, 1991), 226.

[2] See Kevin A O'Brian, "PMCs, Myths and Mercenaries: The Debate on Private Military Companies," Defence and International Security 145 (February 2000): 62, for a complete hierarchy and associated definitions of non-governmental security forces.

[3] Janice E. Thomson, Mercenaries, Pirates and Sovereigns (Princeton, New Jersey: Princeton University Press, 1994), 27.

[4] See Michael Mallet, Mercenaries and their Masters, (Totowa, New Jersey: Rowman and Littlefield, 1974), 80-88 for details on the actual contracts and the state oversight of the contracts.

[5] William Edward Hall, A Treatise on International Law, 8th ed., ed. A. Pearce Higgins (Oxford: Clarendon Press, 1924), 620-621.

[6] Thomson, 23, 25-26.

[7] Ibid., 22.

[8] Ibid., 32, 35-37, 39-41. Military power was granted for primarily defensive purposes against pirates, other Europeans or natives. A clear exception was the Dutch West India Company that was established solely for the purpose of waging war on Spain in its American Empire.

[9] See Chapter 4 in Michael Howard, War in European History (Oxford: Oxford University Press, 1976), for a summary of the forces and trends that led to regular standing armies as opposed to contracting out for military power. See Thomason, 145 for additional information on the growing ability of a state's military and bureaucracy.

[10] Thomson, 68.

[11] See Ibid., 23, 44-54 and 69-70 for a detailed account of the significant and widespread problem of piracy, its impact on the economies of maritime nations and the inability of nations to control their own privateers.

[12] Ibid., 59-61. The war between the Hudson Bay Company and the Northwest Company would only end in 1821 when both companies merged.

[13] The United States has reduced its army by approximately one third from the height of the Cold War while the Soviet Union/Russia has gone from an army of 5,227,000 in 1987 to a force of approximately 1,240,000 in 1997. NATO countries conducted similar reductions with the result that the United Kingdom now has an army that is at its lowest since the it fought at Waterloo. Likewise, France went from a 1987 high of 547,000 to a force of 381,000. David Shearer, Private Armies and Military Intervention (New York: Oxford University Press Inc., 1998), 27-28.

[14] David Isenberg, Soldiers of Fortune Ltd.: A Profile Of Today's Private Sector Corporate Mercenary Firms, (Washington, D.C.: Center for Defense Information, November 1997; available from <http://www.cdi.org/issues/mercenaries/merc1.html>; Internet; accessed 2 November 2001. It ceased operations under the name Executive Outcomes in 1999. For details of its demise see Khareen Pech, "Executive Outcomes," in Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies, ed. Jakkie Cilliers and Peggy Mason (South Africa: Institute for Security Studies, 1999), 96.

[15] Members were drawn from the Reconnaissance Commandos, Parachute Brigade and the 32nd Battalion. See Shearer, 41.

[16] Executive Outcomes Mission Statement quoted in Ibid., 40.

[17] Ibid., 41 and Isenberg, 9.

[18] It is generally reported that oil companies hired Executive Outcomes, but at least one report has the Angolan government hiring the company to retrieve the province. For an account claiming it was the Angolan government see Shearer, 46. For accounts claiming it was a British oil company see Pech, 85-86 and Herbert Howe, "Private Security Forces and African Stability: The Case of Executive Outcomes," in The Journal of Modern African Studies 36, no.2 (June 1998) 311. The latter two accounts cite interviews with company members and intelligence community sources.

[19] The contract was originally to train 5,000 troops and 30 pilots as well as direct front line operations against UNITIA. See Howe, 312 and Shearer, 46 for details of the Angolan operation.

[20] Executive Outcomes personnel helped recapture the diamond areas of Cafunfo in July 1994 and the Soyo oil installations in November 1994. Pilots flew combat sorties in Mi-8 and Mi-17 helicopters as well as Mig-23 fighters. See Howe page 312.

[21] Shearer, 48.

[22] James Larry Taulbee, "Mercenaries, Private Armies and Security Companies in Contemporary Policy," International Politics 37, no. 4 (December 2000) 444 and Howe, 312-313.

[23] Shearer, 49-50.

[24] Howe, 315-317.

[25] For criticism of EO as the vanguard for economic exploitation see Jakkie Cilliers and Richard Cornwell, "Africa-From the privatization of security to the privatization of War" in Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies, ed. Jakkie Cilliers and Peggy Mason (South Africa: Institute for Security Studies, 1999), 229-233, and Pech, 83-90. See Taulbee, 446 for a more balanced view.

[26] EO armed and trained the Kamajors in a classic counter-insurgency tactic of empowering other suppressed ethnic groups, nonetheless see Cilliers and Cornwell, 235 for their concern that EO's actions widened the conflict.

[27] The military would ultimately stage a coup, drive the democratically elected government out of the country and make a deal with the RUF. See Shearer, 68 and Ian Douglas, "Fighting for diamonds-Private military companies in Sierra Leone," in Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies, ed. Jakkie Cilliers and Peggy Mason (South Africa: Institute for Security Studies, 1999), 186-189.

[28] For details of MPRI organization, number of employees and capabilities see the company website at http://www.mpri.com; Internet; assessed on 7 December 2001.

[29] Isenberg, 13-14 and Shearer, 56-57. Business in 1996 exceeded $24 million. See also MPRI's company website sections "National Programs," <http://www.mpri.com/subchannels/nat_business> and "International Programs," <http://www.mpri.com/channels/int_overview>; Internet; assessed 7 December 2001.

[30] Shearer, 57-58.

[31] Ibid., 58.

[32] Thomas K. Adams, "The New Mercenaries and the Privatization of Conflict," Parameters 24 (Summer 1999): 109.

[33] For accounts of the operation see Ibid, 110 and Shearer, 58.

[34] Mohamed Sacirbey quoted in Colum Lynch, 'For US Firms War Becomes a Business', Boston Globe, 18 February 1997, 1; as quoted in Shearer page 60.

[35] Shearer, 61.

[36] See for example, Jakkie Cilliers and Ian Douglas, "The military as business-Military Professional Resources, Incorporated," in Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies, ed. Jakkie Cilliers and Peggy Mason (South Africa: Institute for Security Studies, 1999), 119.

[37] See for example, Isenberg, 18.

[38] Shearer, 61.

[39] Cilliers and Douglas, 121.

[40] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, found at http://www.hri.ca/uninfo/treaties/94.shtml; Internet; assessed on 29 January 2002.

[41] Yves Sandoz, "Private security and international law," in Peace, Profit or Plunder?, 209.

[42] In 1997, the UN Special Rapporteur for Mercenaries, noted that private military corporations "cannot be strictly considered as coming within the legal scope of mercenary status", February 20, 1997 "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination". For a complete discussion of the legal status see Shearer,16-22.

[43] See Thomson, 78-79 for a succinct discussion of U.S. neutrality laws.

[44] Sandoz, 212-213.

[45] For text of the regulations see "Rules and Regulations", Federal Register, 62 (247), 24 December 1997, pages 67274-67278. For a discussion of this law see Sandoz, 216-217.

[46] Matt Gaul, "Regulating the New Privateers: Private Military Service Contracting and the Modern Marque and Reprisal Clause," Loyola of Los Angeles Law Review June 1998; available from <http://faculty.lls.edu/~manheimk/ns/gaul2.htm>; Internet; assessed 19 October 2001.

[47] Ibid.

[48] Donald H. Rumsfeld, Quadrennial Defense Review Report (Washington, D.C.: U.S. Department of Defense, 2001), 17.

[49] The QDR discusses homeland defense in several different sections but fails to identify specific forces required. See pages 18-20 for an overall discussion, page 30 allocates primary responsibility to the Reserve Components and page 42 discusses protecting bases of operation at home and abroad in general terms.

[50] General Shelton wrote in "Statement of the Chairman of the Joint Chiefs of Staff" on page 62 of the QDR: "In my view, maintaining a credible military capacity to respond to multiple crisis worldwide is absolutely fundamental to America's global leadership role."

[51] Rumsfeld, 17.

[52] In 1999, DOD reported 50 named overseas operations conducted since the end of the Gulf War, 10 of which were peace operations. John J. Spinelli, "Peacetime Operations: Reducing friction," in QDR 2001, Strategy Driven Choices for America's Security, ed. Michele A. Flourney (Washington, D.C.: National Defense University Press, 2001), 270.

[53] Rumsfeld, 67.

[54] National Defense University, Strategic Assessment 1999. Priorities for a Turbulent World, (Washington, D.C.: National Defense University, 1999), 229.

[55] Rumsfeld, 5.

[56] Strategic Assessment 1999, 232.

[57] 36 recent future studies all indicate that the number of failing and failed states will increase, see Sam J. Tangredi, "The Future Security Environment, 2001-2025: Toward a Consensus View," in QDR 2001, Strategy-Driven Choices for America's Security, ed. Michele A. Flourney (Washington , D.C.: National Defense University Press, 2001), 33.

[58] For the military risk see Rumsfeld, 68.

[59] Timothy D. Cherry, "Engagement Force: A Solution to the Readiness Dilemma," Military Review LXXI, no.5 (September-October 2001): 106-107.

[60] See Spinelli, 287, for a discussion of desired peace support capabilities in a military context. A PMC could easily adapt these desired capabilities.

[61] Of the 15 current U.N Peace Operations, seven are below the 250 personnel mark and an additional three are manned at around 1,000 military personnel. U.N. Background Note, "United Nations Peacekeeping Operations," 15 January 2002; available from <http://www.un.org/Depts/dpko/dpko/cu-mission/body.htm>; Internet; accessed on 24 February 2002.

[62] Rapid action has also proven elusive for the U.N as well. A proposed U.N. rapid reaction force has been proposed many times but to date has never been organized. See U.N. Department of Peacekeeping, "Annual Update On The United Nations Standby Arrangements System," 20 December 2001; available from <http://www.un.org/Depts/dpko/rapid/0Annual Update.html>; Internet; accessed 25 February 2002. A PMC would still offer advantages to the U.S. even if the long-awaited U.N. rapid intervention force were ever to be formed since the U.S. would be expected to contribute forces anyway and these forces would still represent high-demand, low-density skills and units not normally maintained in the force structure in sufficient quantities or at all. For the type of skills and units see Cherry, 106-107.

[63] Partnerships between NGOs and PMCs have already occurred as humanitarian relief organizations search for security in increasingly hostile regions. See Christopher Spearin, "A Private Security Panacea? A Response to Mean Times on Securing the Humanitarian Space," available from <http://www.cfc-pec.gc.ca/OtherAnnualEvents/Chris_Spearin.htm>; Internet; accessed 29 October 2001. Also "The Privatization of Security in Africa," 12 March 1999; available from <http://www.gca-cma.org/esecurity.htm>; Internet; accessed 29 October 2001.

[64] Steven Metz, Armed Conflict in the 21st Century: The Information Revolution and Post Modern Warfare (Carlisle, PA: Strategic Studies Institute, April 2000), 56-59.

[65] These threats represent groups that exist in the "war and crime" cell of Robert Bunker's four-cell matrix used to describe the operational environment. The four cells are: "war", "crime", "peace" and "war and crime". The U.S. in particular has been challenged in combating this type of phenomena. Robert J. Bunker, "Failed State Operational Environment Concepts", Military Review, (September-October 1997): 2. Assessed electronically at www-cgsc.army.mil/milrev/English/sepoct97/bunker on 23 August 2001.

[66] Metz, 19-21 for comments on how privatization allows acquisition of non-core capabilities and 76-77 and 88-90 for discussion on the slowness of militaries to acquire new and innovative technologies.

[67] Defined as "attempts to circumvent or undermine US strengths while exploiting US weaknesses using methods that differ significantly from the United States' expected method of operations," see Steven Metz and Douglas V. Johnson II, Asymmetry and U.S. Military Strategy: Definition, Background, and Strategic Concepts (Carlisle, PA: Strategic Studies Institute, January 2001), 5 quoting the 1999 Joint Strategy Review.

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