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Mini-Dissertation

Master of Social Science in International Relations

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The Role of PMCs (Private Military Companies) in Counter-insurgency Combat in Afghanistan (2001 to 2010).

Abstract

“The Role of PMCs (Private Military Companies) in Counter-insurgency Combat in Afghanistan (2001 to 2010)” aims to identify the primary combat roles which PMCs played while in support of U.S. forces during the counterinsurgency campaign in Afghanistan from 2001-2010. It first provides background on a number of issues, including U.S. legal and policy themes regarding PMCs, their previous use in combat situations while supporting U.S. foreign policy goals, and the insurgency and counterinsurgency campaign in Afghanistan. It finds while overall there is a relative dearth of information regarding PMCs in combat for a number of identified reasons, PMCs did engage in combat in a number of roles, specifically while conducting mobile, static, and personal security functions. Analysis of the environment and circumstances in which PMCs engaged in combat bring up a number of broader themes which are highlighted, these generally involve negative impacts on the overall counterinsurgency campaign. Although limited by information constraints, it is seen that by empowering and legitimizing local warlords, indirectly funding Taliban operations and alienating local populations, PMCs have in various instances undermined the counterinsurgency campaign.

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Chapter 1 - Introduction/Background

1.1 Introduction/Background

The relatively recent rise of the private military industry is well documented in contemporary media and scholarship. Within the field there are many divisions, mainly to do with a number of key points, including: the causes of the growth of the industry, the contemporary web-like corporate nature of many private military companies (PMCs,) professional military's (and in particular the U.S. and UK) increased reliance on PMCs, problematic international law regarding mercenaries, PMCs and related entities, and issues of accountability and corruption.

A key issue within the scholarship on PMCs is their use in combat roles. Described by Singer as 'tip of the spear'¹ duties, an analogy typically applied to military units, these roles usually entail deployment within the 'tactical battlefield'², as opposed to more traditional support roles, such as logistics or administration.

While scholars hold the general consensus that PMCs initially did not usually function in combat roles, this reality was overshadowed by a number of high profile cases involving mercenaries or PMCs engaged in, or planning to engage in combat, such as Executive Outcomes in Sierra Leone or the attempted coup in Equatorial Guinea in 2004³.

While many PMCs are still not engaged in combat roles as a primary function, scholars are now arguing that their combat roles are increasing, with roles varying but mainly consisting of: security provided to individuals; security provided to bases and facilities; security provided to logistical chains, and more covert roles, including participation in special forces and intelligence gathering operations.

¹ P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2004), 91.

² Ibid, 91.

³ See: Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror*. (New York: Crown Publishers, 2006) and Eben Barlow, *Executive Outcomes: Against All Odds*. (South Africa: Galago Books, 2007).

It has been argued that these combat roles are primarily defensive; the contractors defend a convoy of fuel-tankers, for example, when it is attacked or defends a guarded civilian from assassins. The use of deadly force may not, however, be measured, even when the responsibility is defensive. Contractors have been shown to be overly aggressive in discharging their responsibilities, with various instances of attacks on civilian populations within their areas of operations. The use of deadly force by PMCs may also be intentional, although concealed and denied. As indicated above, while there is ample scholarly research dedicated to rise of the PMC industry, this particular topic of combat roles is one less scrutinized to date.

1.2 Why the U.S in Afghanistan?

It is understood that the U.S. military and diplomatic arms are some of the largest employers of PMCs in the industry; this was the case well before the terror attacks of 9/11 and the ensuing military actions of the U.S. in Afghanistan and Iraq.⁴ Afghanistan, however, has seen PMCs emerge to take on roles not previously seen before in their complexity and scope in a war zone.⁵ Particularly related to combat functions, Afghanistan has proved to be a highly challenging environment for PMCs, and one that warrants further scrutiny.⁶ While a similar analysis of PMC actions in Iraq would also be useful, time constraints will limit this study to a focus on Afghanistan.

1.3 Research Question

This thesis seeks to establish the relevant facts about PMCs combat roles, and does so in the context of the current counterinsurgency campaign in Afghanistan. It focuses specifically on those

⁴ David Isenberg, "Private Military Contractors and US Grand Strategy." PRIO Report 1/2009. www.prio.net.

⁵ John F Tierney, "Warlord Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan." Report of the Majority Staff, Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform. U.S. House of Representative, June 2010, accessed September 18, 2011, publicintelligence.info/WarlordInc.pdf.

⁶ Ibid, Tierney, 1. This study highlights the high number of instances in which PMCs were forced to engage in combat, and will be analyzed in much greater detail later in this work.

PMCs employed by United States, specifically the Department of Defense (DOD), the State Department, the CIA and various aid agencies, mainly USAID. The question asked is thus of an empirical nature.

1.4 Methodology and Research Design

The research question is an empirical one, and thus answers will be of an empirical nature, meaning the resources gathered will need to generate the relevant material. It is also important to note that this work is a form of atheoretical case study, meaning it is solely descriptive in nature, and focuses on a single country and conflict, Afghanistan⁷. Rather than attempt to form new theories regarding the topic, it aims to provide a baseline for further exploration while attempting to observe general trends present in the topic of PMCs operating in combat in Afghanistan. Although it has been pointed out that a true atheoretical case study likely does not exist⁸, this study's aim and approach - in seeking to establish the facts around PMCs in combat - warrants its classification as a form of atheoretical case study.

In order to obtain the necessary information for this work, the following will be examined:

- Primary documents, mainly from various U.S. Congressional Committees and oversight bodies, the U.S. Congressional Research Service, the U.S. Inspector General and a number of others.
- Reports from non-governmental organizations.
- Documents from Private Military Companies themselves.
- Secondary sources, which will include a range of materials from scholarly articles to the work on investigative journalists.

⁷ Arend Lijphart, "Comparative Politics and the Comparative Method." *The American Political Science Review*, Vol 65, No. 3 (Sep., 1971), 691.

⁸ Ibid, Lijphart.

1.5 Limitations

This study will be limited to an analysis of the functions PMCs employed by the United States played in combat roles within the Afghanistan conflict from 2001 to 2010. The study of PMCs in their modern form is a difficult one, as it spans multiple disciplines, and this difficulty is reflected in the fragmented nature of modern literature on PMCs. My intention is not to come to definitive conclusions regarding the morality or legal implications of PMCs operating in Afghanistan, but rather gain an understanding of the roles they played in combat during the conflict.

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1.6 Acronyms

ANA - Afghan National Army
ANP - Afghan National Police
AQ - al-Qaeda
CENTCOM - U.S. Central Command
CIA - Central Intelligence Agency
COIN - Counterinsurgency
CRS - U.S. Congressional Research Service
DFAR - Defense Federal Acquisitions Regulations
DOD - Department of Defense
EO - Executive Outcomes
FAR - Federal Acquisitions Regulation
FATA - Federally Administered Tribal Areas
FOB - Forward Operating Base
FOIA - Freedom of Information Act
GIROA - Government of the Islamic Republic of Afghanistan
HNT - Host Nation Trucking
IMU - Islamic Movement of Uzbekistan
ITAR - International Transfer of Arms Regulations
KPD - Karzai Protective Detail
MEJA - Military Extraterritorial Jurisdiction Act
NA - Northern Alliance
NATO - North Atlantic Treaty Organization
NGO - Non-governmental Organization
ODTC - Office of Defense Trade Controls
OEF - Operation Enduring Freedom
PMC - Private Military Company
PMI - Private Military Industry
PRT - Provincial Reconstruction Team
RFP - Request for Proposal
RUF - Revolutionary United Front
SF - Special Forces
SOW - Statement of Work
UCMJ - Uniformed Code of Military Justice
WPPS - Worldwide Personal Protective Services

1.7 Terminology

This section will briefly introduce some of the terminology used in this work, and provide clarity on what definitions will be used regarding various terms. Although there are multiple ways to identify the companies who employ contractors in Afghanistan to conduct security and combat related functions, for the sake of consistency this work will use the term PMC, for private military company. Other terms in common usage across various mediums include PMF (private military firm)⁹, PSC (private security company)¹⁰, while less common is PSP (private security provider) and MSP (military service provider). For many scholars – and for this dissertation - the term PMC denotes a highly focused private company, one that provides ‘tactical military services’¹¹, or ‘military skills’¹², who specialize in tasks such as intelligence gathering, support, training and combat operations, as opposed to more general functions.¹³ Some academics have distinguished between ‘PMC’ and the above classifications based on various factors, such as the services they provide¹⁴ or the contracts they sign¹⁵, although in broad, general usage the terms are interchangeable. Again, for consistencies sake, this work will stick to the term ‘PMC’, as opposed to utilizing multiple acronyms depending on a particular scholar’s interpretation of the function and actions of a particular company.

Combat is a term which also needs defining in the context of this work. For the purposes of this study, combat will refer to armed conflict or fighting between PMC personnel and adversarial forces in Afghanistan, which take a number of different forms. This can be engaging in actual warfighting, or the

⁹ PMF is the acronym used to generally identify these entities in a number of academic works, most notably Singer, *Corporate Warriors*.

¹⁰ PSC is the acronym generally used by U.S. Government organizations in their reports on Afghanistan.

¹¹ Ibid, Singer.

¹² Fred Schreier and Marina Caparini, "Privatizing Security: Law, Practice and Governance of Private Military and Security Companies." Geneva Centre for the Democratic Control of Armed Forces, Occasional Paper No. 6, (March 2005): 2.

¹³ Ibid, 2.

¹⁴ Ibid, Singer.

¹⁵ Deborah Avant, *The Market for Force: The Consequences of Privatizing Security* (Washington DC: George Washington University, 2005).

command and control of assets on the battlefield, for example.¹⁶ Defining combat in relation to PMCs has proved difficult however, with various approaches often focusing on ‘direct’ versus ‘indirect’ combat for example, and how PMCs may or may not engage in each.¹⁷ What is clear is that extent to which PMCs are permitted to engage in combat, and how the government determines what constitutes combat is a controversial issue which resists clear definition, and will be covered in depth in further sections.

Lastly, the term COIN, which refers to counterinsurgency, will be used frequently in this work. COIN is here defined as a strategy, utilizing multiple tactics, to confront an insurgency in one country.¹⁸ In the case of this paper, it will specifically refer to the overall effort by U.S. and ISAF forces against the Taliban, their foreign allies, and various other insurgent groups, following the conventional defeat of Taliban forces in the early stages of the war. This term will be further analyzed and covered extensively in Chapter Three.

1.8 Literature Review

This section will survey the existing literature relevant to the topic of PMCs in combat in Afghanistan. The review will aim to do a number of things, firstly to identify what is being written, by whom and in what way regarding PMC's in combat, and secondly, to highlight the strengths and weaknesses prevalent in the existing body of work. By focusing on these areas, it will become apparent that a wide ranging, holistic look at the topic of PMCs in combat in Afghanistan is currently lacking, as the current body of literature consists of very specific types of work.

The chapter will be broken down into various sections, which will discuss certain aspects of the literature on PMCs in combat in Afghanistan. Following this introduction the next sections will review the literature that has been produced by the four most common sources writing on the topic. These are: academics, the government/military, the NGO community, and investigative journalists. Although there

¹⁶ Ibid, Singer.

¹⁷ Ibid, Schreier & Caparini.

¹⁸ David Kilcullen, “Countering Global Insurgency”, *Journal of Strategic Studies*, Vol. 28, No. 4 (Aug 2005) p 2.

are various sub-sections within each of these categories, these general classifications will provide the structure for the literature review.

Taken together, these four general areas provide the body of literature currently available covering the activities of and issues related to PMCs in combat in Afghanistan. A key characteristic of this body of literature as a whole is the disparate nature of its offerings. Each area tends to focus on either narrow, specific interests, or broad concepts covering the existence of PMCs themselves, as opposed to an overall look at their use in combat roles in Afghanistan. There are some common themes, however, the most prominent being the overall difficulty in obtaining information from Afghanistan, considering it is an active war-zone, among a number of other factors. The result of this is the focus in terms of PMCs tends to be on other themes, such as their corporatized nature, corruption, morality, etc, as opposed to the specific topic of combat. This paper will attempt to craft a more broad and holistic view of their use in combat, as existing offerings are by nature limited and tend to be highly focused.

1.8.1 Academics

From an academic standpoint, a rapid increase in authors publishing works on the private military industry has occurred since the late 1990's, in an attempt to keep pace with an ever expanding and often little understood topic.¹⁹ The most noteworthy, as well as most widely cited work is Peter Singer's *Corporate Soldiers*²⁰. Although not without its critics²¹, it is likely the most comprehensive analysis of the private military industry to date, and one which is sure to garner a mention in any academic work on the topic. That being said, precious little else exists in the way of robust academic discourse related to the specific issue of contractors in combat. Although the overall topic of the private military industry has seen a significant increase in focus, work on combat specifically is still relatively light. While a few other authors with a background in academia have published on the topic, such as

¹⁹ Heather Gallup, "Blending the Battlefield: An Analysis of Using Private Military Companies to Support Military Operations in Iraq." (Masters diss., Air Force Institute of Technology, March 2008).

²⁰ Ibid, Singer.

²¹ Richard Lacquement's review is noteworthy in this regard, see: Richard Lacquement, "Singer, Peter W. Corporate Warriors." *Naval War College Review*, Autumn 2004, accessed May 18, 2011, http://findarticles.com/p/articles/mi_m0JIW/is_57/ai_n8685846/.

Deborah Avant²² the overall body of academic literature on the topic is relatively sparse.

Within the overall body of work on the private military industry, a few key themes do emerge. They mainly deal with perceived 'problems' related to the industry. These are morality, accountability, legality and increasing corporate structure of PMCs. Most academic work on the topic of PMCs will focus at least in part on one or all of these four issues. Although Singer would be the most ubiquitous, other authorities on the subject currently include the aforementioned Deborah Avant, as well as Sarah Percy and a number of others.

Related to combat and specific instances of combat in Afghanistan, academic work is even less prevalent. Afghanistan being an active war zone, it is very difficult for academics to gain access to the sources and material necessary for a robust study of the topic. Combined with the secrecy currently inherent in the private military industry and their relationship with state actors, it is likely some time before more regular and in depth academic work emerges on the topic of PMCs in combat in Afghanistan. One instance of combat, however, has been addressed, and that is the case of Executive Outcomes in Sierra Leone. Hired by the embattled Sierra Leone government in 1994 to arrest the advance and push back the rebel RUF from the capital, Freetown, the South African based company produced spectacular results. Highly trained as well as tactically and technologically superior to their opponents, EO pushed the RUF away from Freetown and deep into the Sierra Leone hinterland, before being forced out of the country by pressure from the United Nations and African Union.

As one would expect, a number of the key issues related to EO are addressed by scholars, these being morality, legality, accountability and the corporatized nature of the company. The tone of such works varies widely however. Some point out that while serious questions related to the legality and accountability of Executive Outcomes remains, the fact is that the company provided an effective, viable alternative for a government with little other option.²³ Others decried Executive Outcomes as simply a new form of neocolonialism, further exacerbating conflict as opposed to resolving it due to the

²² See Avant, *The Market for Force*.

²³ Herbert Howe, "Private Security Forces and African Stability: The Case of Executive Outcomes.", *The Journal of Modern African Studies*, Vol 36, No 2 (June 1998): 330-331.

temporary nature of their presence in Sierra Leone.²⁴ The case of Executive Outcomes is the most oft-cited instance of PMCs in combat among scholars, and various methods and conclusions in analysis can be found in works by Singer and Avant, as well as a number of other scholars, including Howe²⁵, Francis²⁶, Cilliers²⁷, and Cleary (although he focuses on their activities in Angola)²⁸ among others.

Although limited in its current form, it is a certainty that the amount of research conducted by academics on the use of PMCs in combat will increase in the near future. Although the existing body of work is relatively limited, and generally focused on a select few high profile examples, as the Afghan war eventually winds down information will become more available to scholars. Analyzing what is currently available, one can identify the primary issues concerning scholars, mainly the morality, accountability, legality and corporatized makeup of PMCs.

1.8.2 Government/Military

The U.S. Government and military are perhaps the most important and insightful source of information regarding PMCs in combat in Afghanistan. Much of this work avoids explicit discussion of combat per se, due to the fact that it is illegal for private contractors to engage in combat activities. For example, the U.S. Congressional Research Service regularly publishes reports on the use of contractors by U.S. forces in Afghanistan²⁹ in which the author will often discuss the roles armed contractors undertake and their overall numbers in country, but won't specifically discuss instances of combat.³⁰ Other reports from both CRS³¹ and the Department of Labor³² will also even provide detail on

²⁴ David Francis, "Mercenary intervention in Sierra Leone: Providing National Security or International Exploitation?" *Third World Quarterly*, Vol 20 No 2 (1999): 335-336.

²⁵ Ibid, Howe.

²⁶ Ibid, Francis.

²⁷ Jackie Cilliers and Peggy Mason, *Peace, Profit or Plunder?: The Privatisation of Security in War-Torn African Societies*. (South Africa: Institute for Security Studies, 1999). Book available for download at <http://www.iss.co.za/pubs/Books/BlurbPPP.HTML>.

²⁸ Sean Cleary, "Angola - A case study of private military involvement." in *Peace, Profit or Plunder?*

²⁹ Moshe Schwartz, "The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress." U.S. Congressional Research Service, January 19, 2010, accessed May 1, 2011, www.fas.org/sgp/crs/natsec/R40835.pdf

³⁰ Ibid, Schwartz.

the deaths of armed contractors in Afghanistan (as well as unarmed), but again, may not discuss whether or not these deaths occurred while engaging in combat. That being said, a number of reports by various organizations have delved into the issue of PMCs engaging in combat.

Perhaps the two most crucial source of governmental reporting on PMCs are Congressional Committees and oversight bodies. Committees such as the Subcommittee on Crime, Terrorism and Homeland Security, Senate Armed Services Committee, Commission on Wartime Contracting in Iraq and Afghanistan, House Oversight and Government Reform Committee and the House Committee on Armed Services, among others, provide a detailed and wide ranging source of information on PMCs in Afghanistan. Their reports cover issues ranging from corruption during the tender and bidding process³³ to a potential over-reliance on the services of PMCs³⁴, with much in between, including PMCs undertaking combat functions.

The second, oversight bodies, also constitute an important source of first hand information. The Congressional Budget Office (CBO), Government Accountability Office (GAO), State Department Office of the Inspector General and others all provide reporting on the topic of the use of PMCs in Afghanistan. These reports naturally tend to focus on accountability issues, such as whether contractors and those hiring them are correctly following all procedures and laws relevant to them.³⁵ These two governmental sources will provide much key information for this report, as they have wider ranging and better access to information than other mediums, as well as being more reliable in general.

In addition to reports generated from Congress and oversight bodies, an additional

³¹ Valerie Bailey Grasso, Baird Webel and Scott Szymendera. "The Defense Base Act (DBA): The Federally Mandated Workers' Compensation System for Overseas Government Contractors." U.S. Congressional Research Service, April 9, 2010, accessed May 4, 2011, www.fas.org/sgp/crs/natsec/RL34670.pdf.

³² Department of Labor figures are available at <http://www.dol.gov/owcp/dlhwc/dbaallemployer.htm>.

³³ U.S. Congress, House Committee on Armed Services, *Contingency Contracting: Implementing a Call for Urgent Reform*, 110th Cong., 2nd sess., April 9, 2008.

³⁴ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *An Uneasy Relationship: U.S. Reliance on Private Security Firms in Overseas Operations*, 110th Cong., 2nd sess., February 27, 2008.

³⁵ John P. Hutton, "Contingency Contracting: DOD, State and USAID Contracts and Contractor Personnel in Iraq and Afghanistan." GAO Report to Congressional Committees. U.S. Government Accountability Office, October 2008, accessed May 12, 2011, <http://www.gao.gov/new.items/d0919.pdf>.

governmental source which has proliferated rapidly is that of military research. This source tends to be bespoke research reports, or dissertations generated from the postgraduate institutes run by the three branches of the U.S. military, and similar institutions of various other military's, including the UK and Australia. The authors of these reports, officers in their respective military's, could generally be categorized as falling into two camps, those who are wary of the rapid rise of PMCs and their encroachment on areas traditionally reserved for uniformed military personnel, notably combat, and those who see this trend as inevitable, and welcome the assistance of the private sector to an already stretched thin military.³⁶ Serving military officers can provide a number of unique insights in their research which would not be found in work by academics or journalists. Their detailed knowledge of things such as counterinsurgency (COIN) and military & intelligence gathering tactics can provide a more holistic understanding of the overall topic of PMCs, and specifically their use in combat.³⁷

1.8.3 NGOs/Think Tanks

The NGO community provides a diverse and often unique insight into the topic of PMCs in combat in Afghanistan. This is mainly due to the fact that NGOs are often highly focused on one specific theme, for example de-mining, human rights, or combating small arms proliferation. These can take the form of advocacy groups, such as Human Rights Watch or CorpWatch, who focus on a specific topic area or represent a certain industry, NGOs who work extensively on the ground in Afghanistan, such as various UN bodies, and finally independent research units, such as SwissPeace. Those NGOs which work specifically in a sector which would be impacted by PMC activities or security in general, have therefore produced a number of valuable reports from Afghanistan. Due to their highly detailed knowledge of their area of interest and their presence on the ground in Afghanistan, their reports tend to provide a level of detail not often found in other mediums. Inevitably, reports from NGOs also adopt the tone of their authors, meaning that many such reports cast contractors in a seemingly negative light, highlighting things such as crimes against civilians³⁸, or

³⁶ Ibid, Schreier & Caparini, 30.

³⁷ Brent Jorgensen, "Outsourcing Small Wars: Expanding the Role of Private Military Companies in U.S. Military Operations." (Masters Diss., USNPS, September 2005).

³⁸ Ulrike Joras and Adrian Schuster, "Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola." Working Paper, SwissPeace, April 2008.

corruption³⁹.

Think Tanks also provide material related to PMC activities in Afghanistan. Groups such as the RAND Corporation, the International Institute for Security Studies, the International Crisis Group and the Stockholm International Peace Research Institute (SIPRI) all have completed in depth studies on various topics related to PMC activities in Afghanistan. As think tanks aim to provide research which can guide and influence public policy, their reports often focus on PMCs and their activities in combat in part, if at all, and not as a focus of their research. As they often have a certain issue-specific focus, or even ideological base, the tone and content of their reports can vary widely. That being said, they do provide valuable information on a number of topics related to PMCs in Afghanistan.

1.8.4 Investigative Journalists

By far the most available and wide ranging array of literature on PMCs in U.S. combat in Afghanistan comes from investigative journalists. This form of literature is an excellent example of both the strengths and weaknesses of the overall body of work on PMCs in combat. Many journalists, mostly American, are able to use their investigative abilities to break stories which likely would not have made it into the public view without their persistence and contacts within both the military and private military industry.

There are a number of high profile instances of journalists breaking major stories on the use of PMCs in combat operations. Mark Mazzetti⁴⁰ and his colleagues at the New York Times have broken numerous stories, including that of Blackwater allegedly being intricately involved in a covert CIA assassination program⁴¹, as well as being involved in the expanding drone war in Afghanistan and the Pakistani tribal regions.⁴² Other stories reported by the Times and Mazzetti and his colleagues include

³⁹ Fariba Nawa, "Afghanistan Inc." CorpWatch Investigative Report. October 6, 2006, accessed May 8, 2011, <http://corpwatch.org/article.php?id=13518>.

⁴⁰ For a full list of articles see: http://topics.nytimes.com/top/reference/timestopics/people/m/mark_mazzetti/index.html.

⁴¹ Mark Mazzetti, "C.I.A. Sought Blackwater's Help to Kill Jihadists." *New York Times*, August 19, 2009, accessed February 8, 2011, <http://www.nytimes.com/2009/08/20/us/20intel.html>.

⁴² Mark Mazzetti and James Risen, "CIA Said to Use Outsiders to Put Bombs on Drones." *New York Times*, August 20,

the revelation that the Department of Defense was using a network of private contractors to track and kill militants⁴³, and the FBI employed a similar network to hunt militants linked to the murder of aid workers in 2010.⁴⁴ The Washington Post is another major U.S. daily which has contributed prolifically to the topic of PMCs in combat in Afghanistan, most notably its two year long investigation by Dana Priest and William Arkin titled 'Top Secret America', which attempted to portray the enormous scope and complexity of the private security and intelligence industry which has emerged since 9/11.⁴⁵ Karen DeYoung has also been a frequent contributor to the topic for the Washington Post.⁴⁶ Also following the topic closely are the LA Times, the Christian Science Monitor, Pajhwok Afghan News, and others.

Magazines, such as Salon, Vanity Fair, The Nation and Wired, among others, have also contributed numerous in-depth reports on PMCs in combat. Authors such as Jeremy Scahill⁴⁷, David Axe⁴⁸, David Isenberg⁴⁹, Spencer Ackerman⁵⁰ and others all have contributed a number of stories. Various books written in a similar style have also been published. Robert Young Pelton's *Licensed to Kill: Hired Guns in the War on Terror* would be the most notable, where he recounts various stories of private contractors involved in covert operations in Afghanistan, including the story of the infamous Jack Idema.⁵¹

While these types of reports provide value in that they bring to light actions and events which

2009, accessed February 8, 2011, <http://www.nytimes.com/2009/08/21/us/21intel.html>.

⁴³ Mark Mazzetti and Dexter Filkins, "Contractors Tied to Effort to Track and Kill Militants." *New York Times*, March 14, 2010, accessed March 3, 2011, <http://www.nytimes.com/2010/03/15/world/asia/15contractors.html?ref=global-home>.

⁴⁴ Mark Mazzetti, "Private Spies Aid FBI in Afghan Investigation." *New York Times*, February 28, 2011, accessed May 15, 2011, http://www.nytimes.com/2011/03/01/world/asia/01clarridge.html?_r=1&ref=global-home.

⁴⁵ Dana Priest and William M. Arkin, "Top Secret America, A Washington Post Investigation." *The Washington Post*. July 19, 2010, accessed September 3, 2011, <http://projects.washingtonpost.com/top-secret-america/>.

⁴⁶ See: http://www.washingtonpost.com/karen-deyoung/2011/03/02/AB56xmP_viewAll.html.

⁴⁷ For an extensive list of these types of reports see: <http://www.thenation.com/authors/jeremy-scahill>.

⁴⁸ David Axe's work can be found on his own personal website, see: www.warisboring.com/category/david-axe.

⁴⁹ David Isenberg's work for the Huffington Post can be found at: <http://www.huffingtonpost.com/david-isenberg>. He also blogs at <http://isenberg.securitycontracting.net/>.

⁵⁰ Spencer Ackerman's work can be found at: <http://www.wired.com/dangerroom/>.

⁵¹ Ibid, Pelton, 227-251.

may have otherwise gone unreported, they also highlight one the main weaknesses of the literature on PMCs in U.S. combat in Afghanistan. This is that although a number of excellent investigative pieces have been written, the reality is that the majority of media coverage on PMCs in combat in Afghanistan tends to be melodramatic, and designed to convey a certain emotion to the reader. It is not difficult to conjure up images of mercenaries of yesteryear in descriptions of secretive contractors hunting militants in the mountains of Afghanistan, coming from unnamed and unverifiable sources. This 'soldier of fortune' style of descriptive language pervades many of these types of reports, and inevitably leaves the focus on the controversy surrounding the topic itself, as opposed to taking a measured, insightful look at the issues involved.⁵²

1.8.5 Conclusions

It is important to emphasize a number of key points in regards to the exiting literature on the topic; mainly that Afghanistan is still an active war-zone, and thus it remains extremely challenging to conduct research and obtain consistent, accurate and unbiased information. The result is that while multiple articles, reports and books have been published on the topic of PMCs in Afghanistan, the reality is that combat is generally merely a part of reporting, as opposed to the focus. As a result, the existing literature specifically dealing with combat is widely varied in terms of its topics, and generally focused on specific incidents, companies or individuals. In addition to this, certain types of writing can convey emotions, generally negative, which can manipulate the reader's interpretation of the story, thus distorting analysis. While this generally affects more journalistic style accounts, it is important to note that this medium is also able to obtain and report types of information not available in others, and can expose previously unknown topics.

A further point of emphasis is that the most common source of information specifically regarding PMCs in combat comes from the governmental sector, and specifically U.S. Congressional committees, as well as oversight bodies. Reports and information from these two groups will be the primary sources of analysis for this work. Summarizing the various sources of information above, a clear characteristic is the disparate nature of the sources, in terms of their authors and content. While various works cover highly specific incidents regarding PMCs in combat, or more broad themes

⁵² Ibid, Schreier and Caparini, 10-11.

regarding contractors overall, there are few descriptive works on the topic of PMCs in combat in Afghanistan. This work will attempt to use the various above named sources to provide a more complete framework and understanding regarding PMCs in combat in Afghanistan.

Chapter 2 - The U.S. Use of Contractors in Combat: Select Themes

This chapter introduces the use of contractors in combat situations by the United States government, encompassing both the Pentagon and other agencies. The purpose of the chapter is to highlight a number of specific themes. The first is that the use of private contractors by the U.S. government has increased rapidly since the end of the Cold War, for a number of readily identifiable reasons. The second theme is that while the roles of contractors within the overall increase have diversified widely, they still mainly conduct support functions, and generally do not engage in combat. So while it will be shown that at times support functions can rapidly evolve into combat situations given certain sets of circumstances, combat is very much the exception and not the rule when it comes to U.S. government contractors. A further theme is related to the laws governing both private companies who obtain government contracts, as well as the individuals who are employed by the companies. While laws and regulations do exist, they have yet to catch up with the realities involved in the contracting process, leaving much room for potential fraud, corruption and a general lack of clarity related to the existence and operations of many companies and their employees. Specific sections will look at both the laws relating to contracting companies and their employees, as well as the major issues with those laws in their current state. By analyzing these issues, this chapter aims to identify the key themes related to contractors on the battlefield, and develop the framework through which to examine the case of the Afghanistan War, and U.S. contracting during the conflict.

2.1 Contractors and the U.S. Military

This section provides a brief historical background on contractors as used by the U.S. Military and other governmental organizations. This will be done through an introduction to the reasons why such a large scale proliferation of PMCs occurred following the end of the Cold War, and a brief look at the evolution of roles undertaken by PMCs from then until now. As PMCs roles expanded, in some cases the lines were blurred between support and combat functions, requiring them to engage in combat. A number of examples of this will be analyzed, with the aim to show that while combat is not the norm for most PMCs, their ever expanding roles often force them into situations which require combat.

2.1.1 The Rise of the Private Military Industry

Much scholarship has focused on the increase in the use of contractors within the sphere of U.S. military operations in the latter stages of the 20th century. This section will introduce the specific reasons for this increase following the end of the Cold War. It can mainly be attributed to the general downsizing of standing armies globally (the U.S. Military in particular), a reluctance on the behalf of U.S. Presidents to engage in low intensity conflicts common during the Cold War, the increased technological sophistication of weapons systems, and the general trend towards privatization across all sectors, not only military services.

Primary among the reasons for the initial surge in privatized military functions was the fall of the Soviet Union, which led to subsequent downsizing of the U.S. military.⁵³ No longer faced with a global power in an adversarial position, the U.S. Military no longer required the sheer number of troops it had kept on active duty to this point. It is estimated that over 7 million soldiers around the world were cast into the civilian world⁵⁴; while the U.S. military found itself at the end of the 1990's with 285,000 fewer active duty soldiers than it had in 1990.⁵⁵ Naturally, a massive decrease in manpower led to gaps which would need to be filled.

Ancillary to this was the reluctance on the part of the U.S. government to officially engage in further low intensity conflicts which had characterized the 1970's and 80's. Although numbers wise, the actual instances of U.S. troop deployments increased in the 1990's, the aforementioned manpower strain and increased wariness of domestic public opinion necessitated the more widespread use of contractors.⁵⁶ Rather than use U.S. Special Forces in their traditional role of training indigenous troops

⁵³ For more details on the overall downsizing of the U.S. Military and how it related to the proliferation of PMCs, see Singer, *Corporate Warriors*.

⁵⁴ Ibid, Schrier and Caparini, 3.

⁵⁵ Bart Brasher, *Implosion: Downsizing the U.S. Military, 1987-2015* (Westport: Greenwood Press, 2000), 213, taken from Michael Kornburger and Jeremy Dobos, "Private Military Companies: Analyzing the Use of Armed Contractors" (Masters diss, USNPS, 2007).

⁵⁶ Ibid, Schreier and Caparini, 4. Here they point out that from 1990-2000 the U.S. Army was deployed 36 times. In the 40 year Cold War, they were only deployed 10.

and police, in addition to other functions, in many instances in the 1990's and 2000's the Pentagon turned to private contractors to fulfill this duty. A number of these examples will be detailed later on in this section. Although private firms had been used for this specific function since the 1970's, the practice expanded greatly following the downsizing of U.S. forces. Today it is estimated that U.S. PMCs provide training services to military's and police forces in over 40 countries.⁵⁷

A further cause of the increased use of PMCs was the widespread adoption of more sophisticated weapons and communications systems by the U.S. Military. With this increase in sophistication comes an accompanying increase in reliance on civilians, often those who built the system in the first place, in order to service, train in the use of, and in some cases, even operate hardware and software used by the U.S. military.⁵⁸ In the high profile case of Predator drones, which are used to target individual enemy combatants, it was widely reported in 2009 that a private firm was contracted by the U.S. Government (in this case, the CIA), to maintain, as well as assemble and load munitions onto Predator drones which were then sent on missions.⁵⁹ In this case the CIA deemed it required the expertise of a PMC in order to effectively carry out its missions using the drones. General Michael Hayden, who headed the CIA from 2006 to 2009, stated "There are skills we don't have in government that we may have an immediate requirement for."⁶⁰ Examples such as these are widespread in the current day U.S. military.

The final theme discussed in this section relates to what Singer identifies as the 'privatization revolution'⁶¹, or Schreier and Caparini call 'the ultimate representation of neo-liberalism'⁶²; namely the idea that domains which were previously associated with the public sector alone have now been opened up and made available to the private sector. Many functions previously reserved for the military exclusively have begun to move to the private sector, and this is a trend which spreads across a number

⁵⁷ Esther Schrader. "U.S. Companies Hired to Train Foreign Armies." *Los Angeles Times*, April 14, 2002, accessed April 12, 2011, <http://www.globalpolicy.org/security/peacekpg/training/pmc.htm>.

⁵⁸ Ibid, Singer, 62.

⁵⁹ Ibid, Risen and Mazzetti, "CIA Said to Use Outsiders to Put Bombs on Drones."

⁶⁰ Ibid, Risen and Mazzetti.

⁶¹ Ibid, Singer, 49.

⁶² Ibid, Schreier and Caparini, 5.

of sectors. In the United States, everything from sanitation to the administration of public libraries has moved into the private sphere in recent years, eliciting mixed reactions from government and citizens.⁶³ This overall trend has certainly manifested itself in the military and intelligence realms, with massive increases in contracting since the early 1990's.

As demonstrated, a confluence of circumstances and varying factors has led to the increased privatization of military functions. Although a number of other reasons also have played a key role in developing the situation into what it is today, the primary causes have been identified above. The above factors not only have played a key role in the overall increase of contracting out functions, but also in the nature and type of roles contracted out to PMCs.

2.1.2 A Variety of Roles

This section will briefly introduce the concept of greatly expanded roles for contractors as time progressed from the 1990's into the 2000's, and saw U.S. troop deployment across two major theaters. Although contractors were used by the U.S. Military and intelligence arms previously, the type and variety of roles expanded drastically from their standard functions of training and logistical support.

As the end of the Cold War transitioned into the mid and late 1990's, a large number of functions previously performed by uniformed U.S. soldiers were outsourced to private firms. In the period from 1994-2002, the Department of Defense entered into over 3,000 contracts with U.S. based PMCs, who provided a variety of services.⁶⁴ As time progressed however, the type of roles contractors were paid to perform began to vary widely. As indicated, the U.S. outsourced mostly training functions to private contractors, generally to train foreign military's (so as to not stretch to thin the Military's Special Forces capability), or provide logistical support to deployed U.S. troops. As a number of the factors mentioned in the previous section converged however, specifically force downsizing and the increased sophistication of weaponry, these roles began to expand. No longer bound to their traditional

⁶³ David Streitfeld, "Anger as Private Company Takes Over Libraries." *New York Times*. September 26, 2010, accessed April 2, 2011, <http://www.nytimes.com/2010/09/27/business/27libraries.html>.

⁶⁴ P.W. Singer, "War, Profits and Vacuum of Law: Privatized Military Firms and International Law." *Columbia Journal of Transnational Law*, 42, (2004): 522.

roles as cooks, cleaners, trainers, drivers and others, contractors can now be found operating as "communication specialists, intelligence operatives, target selectors, surveillance pilots, armed security and peacekeeping agents, hostage rescuers, interrogators and weapons system operators."⁶⁵

After Operation Desert Storm was initiated in 1990, various contractors sprung into action in order to support the deployment of U.S. troops. The U.S. military awarded contracts to 76 companies, who employed nearly 10,000 people in order to support U.S. troops.⁶⁶ Their roles included water and petroleum supply, maintenance, laundry, engineering and cargo haul services.⁶⁷ Although their use was fairly extensive, their roles generally did not extend out of the traditional support functions.

Fast forward to the early 2000's and the U.S. Military deployment in Southwest Asia, and it is clear that contractors roles have expanded noticeably from the previous U.S. troop deployment to the area. For example, the U.S. Congressional Budget Office notes that under the provisions of the LOGCAP III (Logistics Civil Augmentation Program), which in theory deals with logistical issues only, contractors provided many of the same services as previously rendered during Desert Storm/Desert Shield, but now also included: ammunition storage and supply, hazardous-materials management, communications and information technology, firefighting services, morale, welfare and recreation services, and a number of others which were not explicitly part of previous deployments.⁶⁸ While these functions are still decidedly support based in nature, a gradual increase in the roles taken on by contractors was apparent at this stage.

In the Afghanistan War, from 2001 to 2010, contractors took on all the aforementioned roles and more. These will be discussed in subsequent chapters, although it can be pointed out that contractors have played a crucial role in the conflict on behalf of the U.S. Military, both in the standard support roles, as well as a wide array of roles not previously seen undertaken by a contractor.

⁶⁵ Jon D. Michaels, "Beyond Accountability: The Constitutional, Democratic and Strategic Problems with Privatizing War.", *Washington University Law Quarterly*, Volume 82 (2004): 1019.

⁶⁶ Congressional Budget Office. "Logistics Support for Deployed Military Forces." Congressional Budget Office Study, October 2005, accessed April 23, 2011, www.cbo.gov.

⁶⁷ *Ibid*, CBO, 4.

⁶⁸ *Ibid*, CBO, 8.

2.1.3 From Support to Combat

All the roles which contractors undertake on behalf of the U.S. Government in a war zone mentioned in previous sections are very much support based. Logistics, cleaning, even training were very clearly separated from the act of engaging in combat with adversarial forces. However, the modern battlefield is not the clear cut arena it once was, where trenches and lines of infantry demarcated the territory held by opposing sides. In the modern, fluid combat environment, contractors in support functions can rapidly find themselves forced to engage in combat, due to a variety of circumstances. This section will highlight a number of examples where contractors employed by the U.S. government to complete a support role ended up engaging in a task far closer to combat than initially envisioned. A number of these cases are reviewed below.

The role of private actors in the 'war on drugs' in Latin America is certainly extensive, but very little information, comparative to other conflicts, is available in the public sphere. Although conventional U.S. military units were and are not engaged specifically in 'combat' against the FARC or other groups involved in drug trafficking in Colombia, private companies such as DynCorp have engaged in various activities targeting them.⁶⁹ These include gathering intelligence for Colombian police and military actions, as well as aerial defoliation using chemicals.⁷⁰ These actions have also brought casualties and capture, including the deaths of three pilots employed by Eagle Aviation Service and Technology Inc. (EAST), a DynCorp subsidiary, while flying over Colombia, and in 2003 when a number of employees of California Microwave Systems, a Northrop Grumman subsidiary, were captured by FARC forces while conducting intelligence gathering and rescue operations.⁷¹ So while ostensibly in Colombia to strictly provide support services, employees of these firms often found themselves on the front lines, taking fire from FARC and other forces, and sustaining casualties.

Another example of private contractors taking on more combat related roles is that of the

⁶⁹ Josh Hammer and Michael Isikoff, "A Mysterious Plane Crash Highlights U.S. Covert Operations.", *Newsweek*, August 9, 1999, accessed April 10, 2011, <http://www.mapinc.org/drugnews/v99.n812.a08.html>.

⁷⁰ Ibid, Hammer and Isikoff.

⁷¹ Juan Forero, "3 Americans on Search Mission Killed in Colombian Plane Crash.", *New York Times*, March 27, 2003, accessed April 10, 2011, <http://select.nytimes.com/gst/abstract.html?res=F30F10FF3A540C748EDDAA0894DB404482>.

Balkans conflicts of the mid and late 1990's. Due mainly to various political factors influencing the decision making of the U.S. Presidency, overt U.S. Military assistance of both Croatian and Bosnian forces in opposition to Serbia was not possible. Still committed to assisting them against expansionist behavior on the part of Serbian forces, the Clinton administration authorized private companies, and in particular MPRI and its subsidiaries, to assist the Bosnians and Croats in various ways.

While MPRI assisted Croatian military forces primarily in a training capacity, the results were almost instantaneous, with a force considered 'poor quality'⁷² by the Pentagon prior to the introduction of MPRI, conducting an advanced tactical offensive in 1995, routing Serbian forces in opposition and forcing over 100,000 Serbian civilians from their homes.⁷³ According to those familiar with the operation, "the Croat forces used typical American combined-arms tactics, including integrated air, artillery and infantry movements, as well as maneuver warfare targeted against Serbian command, control and communication systems."⁷⁴ Having in their ranks a number of American ex-military officers who had direct experience implementing such tactics against Saddam Hussein's forces in Desert Storm 4 years earlier, it is clear that MPRI was able to have an immediate impact on the conflict.⁷⁵ Although this was a highly successful operation, MPRI did not go without criticism, being accused of having actually directed the offensive⁷⁶, as well as simply providing a convenient way for Washington D.C. to implement policy by proxy, without the risk of committing troops to combat.⁷⁷

Two other little reported example of private contractors engaging in combat occurred in Saudi Arabia in 1991 and Rwanda in 1994. The Vinnell Corporation, a subsidiary of Northrop Grumman, began training the Saudi National Guard, on behalf of the U.S. Government in 1975.⁷⁸ In 1991, when

⁷² Leslie Wayne, "America's For-Profit Secret Army." *New York Times*, October 13, 2002, accessed April 11, 2011, <http://www.nytimes.com/2002/10/13/business/america-s-for-profit-secret-army.html?pagewanted=all&src=pm>.

⁷³ Ibid, Wayne.

⁷⁴ Thomas K. Adams, "The New Mercenaries and the Privatization of Conflict." *Parameters*, (Summer 1999): 109.

⁷⁵ Ibid, Wayne.

⁷⁶ Ibid, Adams, 109.

⁷⁷ Eugene B. Smith, "The New Condottieri and U.S. Policy: The Privatization of Conflict and its Implications." *Parameters*, (Winter 2002-2003): 110-111.

⁷⁸ Global Security. "Saudi Arabian National Guard." globalsecurity.org, accessed April 12, 2011,

Iraqi forces invaded the Saudi town of Khafji, Vinnell employees allegedly joined the Saudi National Guard units they had been training in engaging the Iraqis in combat.⁷⁹ Although there ostensibly to provide training only, the unique circumstances of the invasion prompted employees of Vinnell to participate in its repulsion. Although the company will deny direct involvement to this day, a number of employees of the company and other firms employed in the area confirm the story.⁸⁰

In Rwanda in 1994, the firm Ronco, now part of Group 4 Securicor, found itself in the midst of the Hutu extremist genocide of Rwanda's Tutsi and moderate Hutu inhabitants.⁸¹ Under contract to the Department of Defense, Ronco was tasked with undertaking de-mining training activities in the country when the genocide began. Finding itself in a dynamic and rapidly changing environment, the contractors expanded from their primary activity of de-mining into further training roles, including that of training the newly formed Rwandan Patriotic Army, as well as the police services.⁸² It is also alleged that during the genocide they protected various villages from attack.⁸³

These examples show that while the U.S. Government employs contractors primarily in support roles, various factors can quickly lead them to engage in 'combat'. This phenomenon is one that can be expected in the context of the modern battlefield, where rapidly changing and fluid circumstances can quickly lead to civilian involvement in combat. Examples such as these will also be seen in the case of Afghanistan, highlighted in further chapters.

It is clear that contractors have become an integral part of U.S. military operations, so much so that it would likely be impossible for the armed forces to conduct overseas operations without their presence. This was not always the case however, with the proliferation of PMCs occurring rapidly

<http://www.globalsecurity.org/military/world/gulf/sang.htm>.

⁷⁹ Esther Schrader. "U.S. Companies Hired to Train Foreign Armies." *Los Angeles Times*, April 14, 2002, accessed April 12, 2011, <http://www.globalpolicy.org/security/peacekpg/training/pmc.htm>.

⁸⁰ Ibid, Schrader.

⁸¹ Ibid, Michaels, 1036.

⁸² Susan Buchner. *The Role of Mercenaries in Contemporary International Relations*. (University of Johannesburg Department of Political Studies, 2008), 127, accessed April 10, 2011, <http://hdl.handle.net/10210/370>.

⁸³ Ibid, Michaels, 1034.

following the collapse of the Soviet Union in the early 1990's. There are a number of factors which influenced this rise, leading to today's current state where PMCs undertake more numerous and a wider variety of tasks than ever before. It had also been seen that while often in crucial supporting roles, contractors can rapidly be thrust into combat situations, due to the ever shifting nature of the modern battlefield. The next section will analyze the legal background related to contractors; in terms of both the companies themselves, and the individuals employed by them

2.2 U.S. Policies on the Use of Contractors - Legal Background

Today's PMCs are a far cry from the mercenaries of yesteryear, as increased government use has brought further legitimacy, and forced companies to adopt advanced corporate structures, at times indistinguishable from companies in other private sectors. Unlike other sectors however, the law governing both PMCs and the individuals employed by them has yet to keep pace with the rapid proliferation of the companies themselves and the ever more complex roles they have acquired from the U.S. Government. This section will analyze the law relating to PMCs in a number of parts. Initially the laws regarding companies will be introduced, followed by the laws related to individuals employed by PMCs. Following this, some of the current weaknesses of this system will be highlighted, specifically the idea that the laws in their current form leave ample space for various forms of corruption and fraud, in the pursuit of increasingly lucrative private contracts.

2.2.1 The Law about Private Military Companies

This section briefly introduces the various laws and regulations which govern the use of PMCs by the U.S. Government. The constitutional basis for use of PMCs is quite clear, and further laws have been developed in an attempt to guide and govern the industry. The success these laws have had in ensuring a fair and accountable contracting process is debatable however. This section will only focus on the laws as they exist currently, further issues will be examined later. What is clear is that while current laws and regulations lend legitimacy to the existence and use of PMCs, in their current form they are not sufficient to prevent corruption and fraud by the companies and individuals who work for them.

Legally, the right for PMCs to exist and operate is enshrined in Article I Section 8 of the U.S. Constitution, which ensures that the defense of the United States is not the sole reserve of the government itself.⁸⁴ Although this particular passage intended to deal with such things as rebellions or insurrections within the country, it does clearly indicate that the existence of a private military industry is a part of the defense of the United States. The industry has not been established without opposition however. A key issue framed within the overall debate of the government vs private sector is what - exactly - is an 'inherently governmental function', as this will determine whether or not the private sector can be used to perform that function.⁸⁵

The U.S. government defines an inherently governmental function as "a function so intimately related to the public interest as to require performance by Federal Government employees."⁸⁶ The OMB Circular A-76 also provides a similar definition to guide policy makers.⁸⁷ Generally, functions are broken down into three broad categories, those that *must* be performed by a federal employee, those that *should* and those which can be transferred to the private sector.⁸⁸ Naturally, debate over which functions fall within these separate categories is common, especially so in regards to PMCs and their operations. As the global strategic landscape changed drastically following the collapse of the Soviet Union in the early 1990's, the rapid emergence of the private military industry fueled the debate even further, as PMCs took on more and increasingly diverse roles.

In terms of national regulation of the industry, PMCs generally avoid much of the legislation aimed at mercenarism, while no legislation exists which prohibits the sale of 'military services'.⁸⁹ Thus

⁸⁴ Available at www.usconstitution.net.

⁸⁵ John R Luckey, Valerie Bailey Grasso, Kate M Manuel, "Inherently Governmental Functions and Department of Defense Operations: Background, Issues and Options for Congress." U.S. Congressional Research Service. June 22, 2009, accessed April 11, 2011, 1-6. www.fas.org/sgp/crs/misc/R40641.pdf.

⁸⁶ Federal Activities Inventory Reform Act - 1998, full act is available at: http://www.whitehouse.gov/omb/procurement_fairact/.

⁸⁷ OMB Circular A-76, available at: http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction.

⁸⁸ Ibid, Luckey, Grasso and Manuel, 1-6.

⁸⁹ Ibid, Singer, 537.

PMCs are free to offer a wide range of services to military clients. PMCs cannot provide these services however without first registering and licensing themselves with the State Department (Office of Defense Trade Controls), through the provisions of the International Transfer of Arms Regulations (ITAR) controls.⁹⁰ ITAR was formed in the wake of the U.S. Arms Export Control Act of 1968, but evolved to incorporate PMCs as well.⁹¹ The ODTC will analyze the company and decide whether or not to grant a license for it to operate. Further checks exist in relation to the size of the contract a company is bidding on. In theory, a congressional review is triggered when a contract reaches \$50 million or more in size. In practice the sheer volume of contracts reaching this size makes such oversight difficult.

Further mechanisms governing and regulating the use of contractors are the FAR (Federal Acquisitions Regulations) and the DFAR (Defense Federal Acquisitions Regulations). The FAR intends to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives,"⁹² as well as "using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform,"⁹³. Although it attempts to put in further steps in the regulatory chain to ensure the best value for the customer, it will be seen later that there is much overlap, and room for potential fraud.

2.2.2 The Contracting Process

PMCs obtain contracts from the Federal Government via a process formalized by the FAR.⁹⁴ Under the Regulation, a government agency will determine that it has a need that it cannot fulfill with existing personnel, or that this need can be better filled by an outside company.⁹⁵ The agency then

⁹⁰ Kathleen M Jennings, "Armed Services: Regulating the Private Military Industry." *New Security Programme*, FAFO. (2006): 31-32.

⁹¹ Ibid, Jennings, 32.

⁹² FAR Regulation. Available at https://www.acquisition.gov/far/current/html/Subpart%201_1.html#wp1130776.

⁹³ Ibid, FAR.

⁹⁴ Documents detailing process available at <https://www.acquisition.gov/far/>.

⁹⁵ The majority of this section is taken from Jorgensen, "Outsourcing Small Wars: Expanding the Role of Private Military Companies in U.S. Military Operations".

crafts a Request for Proposal (RFP) and a Statement of Work (SOW), which details exactly what work needs to be done by the outside contractor. The RFP is then made available to perspective bidders, who have thirty days to bid on the contract (in certain circumstances the thirty day time limit is waived, and the contract can be awarded in a no-bid process). Once the contract is assigned to a company by a Contracting Officer, it is assigned to a Contracting Officer's Representative, who becomes the liaison between government and company.⁹⁶ During the bidding process, the Contracting Officer will take a number of factors into account when making a decision, and will not necessarily choose the company which offers the lowest bid. Also, a number of resources are available to the officers, including a government database which tracks past behavior of contractors while under the employ of the U.S. Government.⁹⁷ A number of issues have been identified within this process which can lead to problems with oversight and fairness.

2.2.3 The Law about the Employees of Private Military Companies

The law regarding the employees of PMCs operating in foreign countries is fraught with difficulties. Some of the most high profile incidents regarding PMCs in both Iraq and Afghanistan have been the conduct of their employees, and specifically their employees breaking various local laws without any seeming repercussions for the individuals themselves. The key questions in regards to this issue is what is the legal status of individuals employed by PMCs in a foreign country, and who is held accountable when certain actions occur, such as the use of lethal force by a civilian contractor. The current ambiguities in addressing these questions will be discussed in this section.

The Army Field Manual titled 'Contractors on the Battlefield', notes "Currently, there is no specifically identified force structure nor detailed policy on how to establish contractor management oversight within an AOR...*only the contractor can directly supervise its employees.* [my emphasis] The

⁹⁶ Ibid, Jorgensen, 62.

⁹⁷ Federal Times, "Contractor Database Goes Public - With Limits.", *The Federal Times*, April 17, 2011, accessed April 17, 2011, <http://www.federaltimes.com/article/20110417/AGENCY01/104170303/>. The contractor database is available at www.ppirs.gov/fapiis.html.

military chain of command exercises control through the contract."⁹⁸ The U.S. government has taken a number of steps to rectify this, although its results have been inconclusive to this point.

An initial attempt in relation to the issue of accountability of civilian contractors was the Military Extraterritorial Jurisdiction Act (MEJA) in 2000, which allows for prosecution in the United States of contractors who commit a crime while working overseas on a military contract. Originally worded to only include DOD contractors, it was amended in 2004 to include those under the employ of other federal agencies as well.⁹⁹ While implemented to ensure contractors were held to certain legal standards which had been previously absent, it is unclear if the act has had much success; in the period from 2003-2008 in Iraq for example, only one individual was officially charged with a crime under the provisions of MEJA.¹⁰⁰

A further effort at applying standards of accountability occurred in 2007, when the U.S. Congress amended the Uniformed Code of Military Justice (UCMJ) to include 'civilian contractors during a contingency operation'.¹⁰¹ Originally the UCMJ specified only active war zones, the update would presumably take into account the increased use of contractors in various situations, such as post-war Iraq and Afghanistan. It is unclear however, what the ultimate results of this change will be. Broadly, the adjustment in language may now require U.S. civilians to submit to military justice in the event of a crime being committed.¹⁰² More specifically, the UCMJ criminalizes many behaviors which are not in fact criminal to a civilian; thus how and if this will be applied to civilian contractors is somewhat unclear.¹⁰³

⁹⁸ Nathan Hill, "Military Contracting - Too Much Dependence?" (Strategy Research Project, U.S. Army War College, 2008), 13.

⁹⁹ Mike Doyle, "Law's Unclear if U.S. Can Prosecute Blackwater Guards.", *McClatchy's News*, December 9, 2008, accessed on April 10, 2011, <http://www.mcclatchydc.com/2008/12/09/57441/laws-unclear-if-us-can-prosecute.html>.

¹⁰⁰ Elana Schor, "Report: U.S. Fails at Enforcing Prosecution of Contractors.", *The Guardian*, January 16, 2008, accessed April 15, 2011, <http://www.guardian.co.uk/world/2008/jan/16/iraq.usa>.

¹⁰¹ *Ibid*, Hill, 6.

¹⁰² Mitchell McNaylor, "Mind the 'Gap': Private Military Companies and the Rule of Law.", *Yale Journal of International Affairs* (Spring-Summer 2010): 6.

¹⁰³ *Ibid*, McNaylor, 7.

While the contractors themselves are private citizens, they do have certain rights and responsibilities afforded to them by the government while under their employ. One of the key commitments which the government gives to civilian contractors is personnel recovery, similar to any uniformed military personnel.¹⁰⁴ Under Department of Defense Directive 2310.2, and later updated via Directive 3002.01E in 2009, the military assigns itself the role of recovering any American civilian contractors employed by PMCs overseas.¹⁰⁵ In the event of detention or capture by adversarial forces while under contract to the government, the Department of Defense will undertake activities to rescue contractors. As expected, this only extends to American contractors under the employ of the PMC, and not any host or third country nationals.

Similar to the section on the law on companies, it is clear that while current rules and regulations lend legitimacy to those individuals employed by PMCs, and protects them from labels of 'mercenary' while providing military services, there is much ambiguity in interpretation of the various laws. These will be analyzed further in the section regarding issues with the law on individuals.

2.2.4 Issues with the Law on Companies

This section will briefly look at a number of the issues related to the law on companies, which exists to guide and regulate PMCs when under the employment of the U.S. Government. There are a number of deficiencies and loopholes which currently exist, making the legal umbrella covering PMCs less than ideal.

An initial look at the issues related to the law regarding PMCs would likely start with procedure and capacity. As indicated in the previous section, companies are guided by the provisions of ITAR and the FAR. Under these regulatory mechanisms, PMCs are meant to be properly vetted and reviewed, but the reality is far different. Although applications for license are subject to an internal review process involving multiple offices, there is little consistency in this process, and oftentimes a contract will be

¹⁰⁴ Ibid, Jorgensen, 63.

¹⁰⁵ Document available at <http://www.aschq.army.mil/supportingdocs/d23102p.pdf>. Document 3002.01E is available at <http://www.dtic.mil/whs/directives/corres/pdf/300201p.pdf>.

awarded by a lone department, bypassing the process altogether.¹⁰⁶ Put simply, there are not enough resources dedicated to these bodies to effectively ensure the contracting process proceeds in the stated manner.¹⁰⁷ In addition to this, under the provisions of ITAR, no formal procedures or body exists which focuses on oversight, it is done on an ad hoc basis as per the government, usually when an issue is identified, often publicly.¹⁰⁸ Inevitably this means that 'oversight' in this situation is reactive in nature, as opposed to proactive, which is inherent to any process involving oversight.

Another component of the oversight issue is that of speed, both in the necessity to get the tasks specified in the offer off the ground and running, as well as the the time in which companies have to analyze a contract and prepare an offer. With two major deployments occurring simultaneously, the number of contracts made available to PMCs and the speed at which they needed to be filled often leave gaps in oversight and accountability. For example, when under strict time pressure, often government agencies did not have adequate time to analyze competing bids, and would take the lowest, with little regard to whether or not that company had the required know-how or experience for the job.¹⁰⁹ Another issue emerges on fixed price contracts, where companies with less experience or poor reputations would under bid more established companies, who were more likely to provide a realistic cost projection.¹¹⁰ In cases like these, a combination of time pressure, government decision makers with little experience of the contracting process or understanding of their own security needs, as well as less than honest bidding firms combined to create clear opportunities for fraud and corruption within the process.

Further issues arise in the classification of PMC employees. In one well known case, the firm Blackwater (later known as Xe) was accused of classifying their workers as 'independent contractors' as

¹⁰⁶ Caroline Holmqvist, "Private Security Companies: The Case for Regulation." SIPRI Policy Paper No. 9, Stockholm International Peace Research Institute (January 2005): 61-62.

¹⁰⁷ Ibid, Jennings, 30.

¹⁰⁸ Ibid, Jennings, 30.

¹⁰⁹ David Isenberg, "A Government in Search of Cover: PMCs in Iraq." Paper prepared for "Market Forces: Regulating Private Military Companies," March 23-24, 2006 conference, Institute for International Law and Justice, New York University School of Law.

¹¹⁰ Ibid, Isenberg, 15.

opposed to employees, allowing them bid on and receive nearly \$150 million in contracts reserved for small businesses, as well as avoid \$50 million in withholding taxes.¹¹¹ In another, the firm Custer Battles was convicted of 37 cases of fraud in regards to its contracts in Iraq, costing the U.S. Government \$50 million.¹¹² Numerous examples similar to this have occurred over the course of the wars in both Afghanistan and Iraq. Instances of fraud and corruption have occurred regarding classification, overcharging for services, paying protection money (which allegedly found its way to insurgents), and a number of other types, perhaps the most pervasive issue that of the revolving door between the public and private sector.

In 2009, an investigation by the congressional Commission on Wartime Contracting found a number of major issues regarding contractors and corruption, namely that the disparate nature of the governmental contracting process fostered an environment which encouraged corruption and fraud.¹¹³ They also provided a number of recommendations to the federal government to rectify these issues, but it is yet to be determined whether they will be implemented. Regardless, it is clear that current U.S. laws and regulations have hardly kept pace with the rapidly evolving industry of private contracting.

2.2.5 Issues with the Law on Individuals

This section will look at a number of select themes within the topic of issues related to individuals who are employed by PMCs; specifically what laws and regulations govern them, and who they are accountable to when deployed to a combat zone. Similar to the laws regarding the PMCs themselves, current laws leave much to be desired, and a number of high profile incidents have occurred in which PMC employees escaped any punishment for serious crimes committed while under contract. While there are a myriad of issues related to the laws on individuals, this section will focus on a few themes within the topic of legislation which establishes the legal status of individuals who are

¹¹¹ Karen DeYoung, "Democrat Calls for Blackwater Probe, Alleges Tax Fraud." *The Boston Globe*, March 11, 2008, accessed April 25, 2011, http://www.boston.com/news/world/middleeast/articles/2008/03/11/democrat_calls_for_blackwater_probe_alleges_tax_fraud/.

¹¹² David Isenberg, "Challenges of Security Privatization in Iraq.", in *Private Actors and Security Governance*. Alan Bryden, Marina Caparini. (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2007): 156-157.

¹¹³ Commission on Wartime Contracting. "At What Cost? Contingency Contracting in Iraq and Afghanistan.", Interim Report to Congress, June 2009, accessed September 14, 2011, <http://www.wartimecontracting.gov/index.php/reports>.

employed by American PMCs operating in a combat zone, and their accountability when the law is broken.

It is important to note that while contractors are generally covered by three layers of laws and regulations; that of international law, the domestic law of the country they are operating in, and the laws of country in which their employer (PMC) is based,¹¹⁴ this section will focus solely on the third layer, that of U.S. law. International law tends to address the topic of mercenarism,¹¹⁵ a definition which PMCs and their employees easily avoid, while the domestic law of a nation in which PMCs operate is either subverted entirely, as was the case in Iraq, where the CPA ruled that contractors were immune from domestic Iraqi law¹¹⁶, or local justice mechanisms simply do not have the capacity to investigate and prosecute violations, as was and is the case in Afghanistan.¹¹⁷ Therefore this section will look solely at what U.S. laws and regulations were and are used to hold individual contractors accountable for their actions while in theater.

While certain laws and regulations regarding the use of contractors on the battlefield predated the conflict in Afghanistan, the U.S. Government quickly realized that existing legislation was insufficient to handle the proliferation of contractors following the early 2000's. As mentioned in a previous section, the Army Field Manual clearly states that oversight of individuals employed by PMCs lies strictly with the PMC itself. In this instance the Army is explicitly admitting that it simply had no mechanism or capacity to oversee the contractors working in theater. By indicating that only a contractor can supervise its own employees, one can begin to see the potential difficulties which could arise in a situation in where accountability for nearly all other personnel lies within the military command structure. Although the U.S. took a number of steps to clarify laws and regulations designed to govern contractor behavior, it is clear a number of major gaps still exist.

¹¹⁴ Jennifer Elsea, Moshe Schwartz and Kennon Nakamura, "Private Security Contractors in Iraq: Background, Legal Status and Other Issues." U.S. Congressional Research Service. August 25, 2008, accessed May 18, 2011, <http://www.fas.org/sgp/crs/natsec/RL32419.pdf>, 14.

¹¹⁵ Yves Sandoz, "Private Security and International Law." in Cilliers and Mason, *Peace, Profit or Plunder?*

¹¹⁶ Sharon Otterman, "Iraq: The Bremer Edicts." Council on Foreign Relations Backrounder. July 8, 2004, accessed May 18, 2011, <http://www.cfr.org/iraq/iraq-bremer-edicts/p7639>.

¹¹⁷ Antoine Bossenkool, "U.S. Wartime Contract Fraud Expected to Increase.", *Defense News*. May 24, 2010, accessed May 20, 2011, <http://www.defensenews.com/story.php?i=4640719>.

While MEJA offers a concrete way for individuals, specifically contractors, to be prosecuted for offenses committed while abroad, reality has shown that it has little effect in practice. Federal prosecutors have to date shown little desire to prosecute individuals using it, while states which host PMC headquarters in the United States have also shown little appetite for prosecuting PMC personnel.¹¹⁸ Furthermore, despite a 2005 amendment which upgraded MEJA from only applying to Department of Defense contractors to include "contractors supporting the mission of the Department of Defense"¹¹⁹, questions over whether contractors under the employ of the State Department or other government agencies fall under MEJA persist.¹²⁰ The firm Blackwater, for instance, argued that their employees were not subject to MEJA after an incident in which 17 Iraqi civilians were killed, since they were at the time under the employ of the State Department. A Federal judge threw out the case in 2009, although it had been reopened by an appeals court at the time of writing.¹²¹ The application of MEJA in terms of prosecutions has been decidedly light. From 2000-2008 only 12 individuals were officially charged under its provisions, a number of these contractors.¹²² It is likely that the lack of clear precedents regarding the application of MEJA to contractors will continue this trend.

The alternate option for regulation of civilian contractors, the UCMJ, is also far from robust. Although as mentioned previously it was updated to include 'contingency operations'¹²³, as Iraq and Afghanistan are now defined, and not solely war as declared by Congress, it is not yet clear whether constitutionally the UCMJ can apply to civilians. For one, treating civilians the same as soldiers legally can leave them open to punishment for violations such as fraternization or drunkenness, neither of

¹¹⁸ David Isenberg, "Putting Round Pegs into Square Holes: U.S. Government Oversight and Regulation of Private Military and Security Contractors." Presentation at the International Security Forum, Zurich, Switzerland, October 27, 2006.

¹¹⁹ Del Quentin Wilber and Karen DeYoung, "Justice Department Moves Toward Charges Against Contractors in Iraqi Shooting." *Washington Post*, August 17, 2008, accessed May 20, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/16/AR2008081601967.html?hpid=topnews>.

¹²⁰ *Ibid*, Wilber and DeYoung.

¹²¹ James Risen, "Ex-Blackwater Guards Face Renewed Charges." *New York Times*, April 22, 2011, accessed May 20, 2011, http://www.nytimes.com/2011/04/23/us/23blackwater.html?_r=1&partner=rss&emc=rss.

¹²² *Ibid*, Elsea, Schwartz and Nakamura, 25.

¹²³ *Ibid*, Elsea, Schwartz and Nakamura, 33.

which is illegal for civilians.¹²⁴ Although it is highly unlikely an attempt to prosecute a civilian for one of these 'minor' offenses would occur¹²⁵, it raises further questions regarding the accountability of contractors. For example, under the UCMJ it is illegal to disobey a superior officer. In the case of a civilian contractor however, what exactly defines a superior officer? Their force structure exists outside the direct military chain of command, so it would be nearly impossible to determine definitively who was a superior officer and whether a contractor could be prosecuted for disobeying that person, under the UCMJ.¹²⁶ The waters are muddied further regarding the UCMJ when considering the case of a soldier who was exempted from justice as per UCMJ regulations as he had been discharged and thus the UCMJ could no longer be applied to him. If this precedent were followed, a PMC could simply fire an employee, providing immunity.¹²⁷

Although both MEJA and the UCMJ provide guidance and an established legal framework for holding contractors accountable, neither has yet proven to be an effective tool in doing so. The reasons for this mainly lie in the fact that courts are hesitant to utilize them with so much constitutional uncertainty surrounding them, while also having no major precedents to guide them, although this may soon change with a number of cases in progress.¹²⁸ The likelihood of a constitutional challenge to any potential prosecution using these new statutes has resulted in a widespread reluctance by courts to take on these cases.¹²⁹

While multiple layers of laws exist to govern contractor behavior, it is U.S. law which holds the most weight in providing accountability for contractors. However, this section has shown that there are a number of major issues within U.S. laws and regulations, the result being that it has been very

¹²⁴ William Matthews, "Some UCMJ Rules Now Cover U.S. Contractors." *Navy Times*, January 5, 2007, accessed May 5, 2011, <http://www.navytimes.com/news/2007/01/dfn.ucmjcontractors070105/>.

¹²⁵ Ibid, Matthews.

¹²⁶ Elizabeth Newell, "Human Rights Group: End 'Culture of Impunity' for Security Contractors." *GovernmentExecutive.com*. January 18, 2008, accessed May 18, 2011, <http://www.govexec.com/dailyfed/0108/011808e1.htm>.

¹²⁷ Alex Koppelman and Mark Benjamin, "What Happens to Private Contractors Who Kill Iraqi's? Maybe Nothing." *Salon.com*, September 18, 2007, accessed May 17, 2011, <http://www.salon.com/news/feature/2007/09/18/blackwater>.

¹²⁸ Michael Gordon, "U.S. Charges Contractor at Iraq Post Stabbing." *New York Times*, April 5, 2008, accessed May 10, 2011, <http://www.nytimes.com/2008/04/05/world/middleeast/05trial.html>.

¹²⁹ Ibid, Koppelman and Benjamin.

difficult to prosecute American contractors for crimes committed while abroad in a combat zone. A combination of vague legal definitions, lack of solid precedent and overlapping statutes and regulations results in an environment which is not conducive to holding individual contractors accountable.

2.3 Current U.S. Policies on the Use of Contractors

This section will introduce current U.S. Government policies on the use of PMCs operating in war zones. A number of clear themes emerge when analyzing this particular aspect of PMC operations. Mainly, from a technical standpoint clearly established and communicated policy did not emerge from the U.S. Government and specifically the DOD regarding PMCs until much later during the Afghanistan conflict, around 2008-2009. Although official policy guidance did exist prior to this time, it was not applied on a consistent basis, and the U.S. Government generally failed to provide a clear definition of the role PMCs were permitted to play in combat operations.¹³⁰ This lack of clarity did not only apply to the use of armed contractors, but also to the general use of contractors in other support functions as well.¹³¹ Many consider this lack of clear policy direction and subsequent oversight directly linked to abuses, corruption and even damaging overall counterinsurgency aims by alienating local populations.¹³² This lack of clarity is also in stark contrast to the broad trend of privatization which occurred since the mid-1980's, and accelerated rapidly following 2001.

Policy on the use of contractors in their current form by the U.S. Government can be traced to the creation of the Logistics Civil Augmentation Program (LOGCAP) by the U.S. Army in 1985.¹³³ Its primary intent was to "cover the planning process for the use of civilian contractors during wartime situations."¹³⁴ Practically speaking, this regulation opened the door for the mass privatization of various

¹³⁰ Moshe Schwartz, "The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis and Options for Congress." U.S. Congressional Research Service, January 19th, 2010, accessed August 10, 2011, www.fas.org/sgp/crs/natsec/R40764.pdf.

¹³¹ Dan Guttman. "The Shadow Pentagon." Commentary, The Center for Public Integrity, September 29, 2004, accessed July 10, 2011, <http://projects.publicintegrity.org/pns/report.aspx?aid=386>.

¹³² Ibid, Schwartz, 22.

¹³³ Full directive can be found at: www.apd.army.mil/pdffiles/r700_137.pdf

¹³⁴ U.S. Army. "Army Regulation 700-137, Logistics Civil Augmentation Program (LOGCAP)." 16 December 1985, accessed September 14, 2011, www.apd.army.mil/pdffiles/r700_137.pdf.

support functions, such as providing food or mechanical repair services. This steady trend towards privatization continued throughout the late 1980's and through the 1990's, with further budget cuts and troop reductions the main drivers.

At the core of policy related to governmental use of PMCs in combat zones is the previously discussed concept of an 'inherently governmental function'. U.S. Government policy indicates that only functions falling outside those considered 'inherently governmental' can be completed by contractors. While policy guidance tools, such as the OMB Circular, DOD regulation 1100.22¹³⁵ and the FAIR act provide broad guidance on what these functions are, such as 'significantly affecting the life, liberty or property interests of private persons'¹³⁶, as well as specific functions which fall within or outside the definition, the reality is that PMCs often simply ignore their directives in carrying out their duties.

From a technical and doctrinal standpoint, policy drivers in relation to contracting existed from the mid-1980's onward, even if vague and unclear. From a practical perspective however, the appointment of Donald Rumsfeld as Secretary of Defense in 2001 brought about a rapid increase in the number of contractors, both armed and unarmed, in Iraq and Afghanistan.¹³⁷ In the case of Iraq, Rumsfeld pushed for smaller troop numbers, utilizing an extreme technological advantage to rapidly defeat adversarial forces. However, reduced troop figures then required PMCs to take on static and mobile security functions, among many others, which resulted in a rapid proliferation of private contractors on the ground.¹³⁸ Similarly in Afghanistan, a deteriorating security situation, some believe caused in part by the presence of too few troops, led to multiple NGOs withdrawing to Kabul, or leaving the country entirely, such as MSF, and a rapid increase in private contractors.¹³⁹

¹³⁵ Department of Defense Instruction Number 1100.22 is available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>.

¹³⁶ Ibid, Luckey, Grasso and Manuel, 12.

¹³⁷ William Neikirk, "Use of contractors for military purposes under scrutiny." *Chicago Tribune*. May 8, 2004, accessed August 28, 2011, <http://www.highbeam.com/doc/1G1-118307889.html>.

¹³⁸ Ken Miller. "Outsource This." Center for American Progress, May 6, 2004, accessed August 28, 2011, <http://www.americanprogress.org/issues/2004/05/b67759.html>.

¹³⁹ Ann Jones. "Why it's Not Working in Afghanistan." *Asia Times*, August 30, 2006, accessed August 29, 2011, http://www.atimes.com/atimes/South_Asia/HH30Df02.html.

The stark contrast between the application of 'policy' versus the codified policy itself is best surmised by the fact that it was not until 2008-2009 that Congress forced the Secretary of Defense, through legislation, to provide clearer guidance on the use of PMCs.¹⁴⁰ This indicates that in the seven to eight years of conflict in Afghanistan prior to this time, there was likely little consistency in the application of policy. This lack of clearly established and adhered to written guidance did not deter or prevent the rapid proliferation of PMCs in Afghanistan however. The generally unclear nature of policy directives however would have clear implications on PMC activities in Afghanistan however, which will be explored further later on.

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¹⁴⁰ Ibid, Schwartz, 22.

Chapter 3 - The U.S. in Afghanistan - Counterinsurgency

This chapter will introduce all aspects of the current COIN campaign in Afghanistan, mainly focused on the U.S.'s involvement, and the range of actors in an adversarial capacity. It will review the policy that drives U.S. COIN activities, introduce the legal basis upon which it rests, briefly introduce the insurgent actors opposed to U.S., ISAF and Afghan forces, before concluding with information regarding the geographic context in which the campaign takes place.

3.1 U.S. Counterinsurgency Policy

This section will briefly discuss U.S. counterinsurgency (COIN) policy during the Afghanistan war, while also highlighting the legal basis for U.S. operations. The policy, strategy and execution of COIN goals in Afghanistan by U.S. forces have been a hotly debated and contentious issue from the war's beginning. The purpose of this section is only to introduce some of the themes and drivers present in U.S. policy on COIN, as an in depth analysis would require far more space than is available here. The section will review U.S. actions from the beginning of the conflict, and the evolution of policy as the war progressed into the Obama administration, and to the present. The policy guiding U.S. COIN activities is key to understanding some of the later themes regarding the use of PMCs as part of the overall war effort.

The initial stages of the war were characterized by a very light footprint in terms of U.S. troop numbers, with overwhelming firepower, mainly from precision air support, quickly routing the Taliban and their allied conventional forces. After the Taliban had been defeated and removed from the seat of power in Kabul, their forces mainly fled over the eastern border into the tribal areas of Pakistan, or quietly retreated to their traditional Pashtun base in the south. From here, the insurgency emerged, and the subsequent COIN campaign by U.S. and eventually ISAF forces¹⁴¹ began.

¹⁴¹ ISAF, the International Security Assistance Force, was created under the Bonn Agreement of 2001. Initially it was to act as a U.N. mandated force to assist the Afghan Transitional Authority to create a secure environment in the Kabul region. Beginning in 2003 it expanded operations to various parts of the country, and eventually included nearly 50 nations. More detailed information on ISAF and its operations can be found at: <http://www.isaf.nato.int/history.html>.

Although a contentious subject, most analysts will agree that the COIN campaign in Afghanistan could be characterized by lacking a unifying strategy or approach over the course of the war and a lack of coordination between the various players involved.¹⁴² Over time, various strategies have been employed, by both the U.S. and other ISAF member nations in their areas of operations, with little consistency, or application of institutional memory in terms of what has been successful and what has not.¹⁴³ Perhaps most telling is the fact that the U.S. Military's recognized primary guide to COIN, U.S. Army Field Manual 3-24, was not even published until 2006, Generals David Petraeus and James Amos noting in the foreword, "It has been 20 years since the Army published a field manual devoted exclusively to counterinsurgency operations. For the Marine Corps it has been 25 years."¹⁴⁴

The initial COIN efforts following the end of conventional conflict mainly consisted of small detachments of U.S. Special Forces (SF) working with indigenous forces and populations to kinetically target Taliban and specifically al-Qaeda assets, as well as work with locals to win their trust, by providing security and initiating reconstruction projects.¹⁴⁵ Working from remote areas mainly in the south and east of the country, U.S. SF saw a number of successes, while taking minimal casualties during this time period, from 2003-2004.¹⁴⁶ Led at this point by Lt. General David Barno, U.S. forces at this stage also began to introduce Provincial Reconstruction Teams (PRTs), a combination of civil and military forces whose primary goals were to: "increase security through providing military presence and working with Afghan forces, strengthening the reach of the Afghan central government, and facilitating reconstruction through improvement of the security sector."¹⁴⁷ The PRT's main focus was to secure a specific piece of territory, a village or group of villages, their presence allowing for

¹⁴² Steve Bowman and Catherine Dale. "War in Afghanistan: Strategy, Military Operations and Issues for Congress." U.S. Congressional Research Service, June 8, 2010, accessed August 28, 2011, www.fas.org/sgp/crs/row/R40156.pdf.

¹⁴³ Leopold Scholtz and Thean Potgieter, "Counterinsurgency in Afghanistan." in Deane-Peter Baker and Evert Jordaan, eds, *South Africa and Contemporary Counterinsurgency: Roots, Practices, Prospects*. (Cape Town: UCT Press, 2008.): 173-174.

¹⁴⁴ Department of the Army, *FM3-24, Counterinsurgency*. Washington DC: U.S. Army, (December 2006).

¹⁴⁵ Andrea M Lopez, "Engaging or withdrawing, winning or losing? The contradictions of counterinsurgency policy in Afghanistan and Iraq." *Third World Quarterly* 28:2: 247-248.

¹⁴⁶ David S Clukey, "A District Approach to Countering Afghanistan's Insurgency." (Masters diss., USNPGS, December 2009), accessed August 24, 2011, smallwarsjournal.com/blog/journal/docs-temp/415-clukey.pdf, 12.

¹⁴⁷ *Ibid*, 248.

security against Taliban attacks, while also beginning reconstruction and development projects.¹⁴⁸ In this way, local populations could begin to identify with and recognize the contribution of the central government, not a common concept in Afghanistan.

Although the idea and actions of the PRTs produced some positive results, there were a number of factors which prevented overall COIN efforts from being successful over the long term. A primary issue mainly identified by analysts for the failure to quell the overall insurgency was the insufficient amount of troops dedicated to COIN on the ground in country.¹⁴⁹ Traditional COIN literature generally calls for 20 dedicated COIN personnel for every 1,000 civilians in order to create and maintain stability; with the numbers of foreign forces falling far below this ratio, and indigenous Afghan forces not yet up to the task of dedicated counterinsurgency for much of the conflict, it becomes clear why many felt this to be a major stumbling block.¹⁵⁰ Although troop figures did increase substantially over the course of the war, from around 5,000 in 2002 to over 70,000 by 2010, this was still not considered sufficient for the complex COIN operation at hand. This lack of troops contributed to a number of other perceived negative results; for example an inability to hold an area led to the increased use of 'raiding' tactics, which would further alienate civilian populations¹⁵¹, while the lack of troops combined with Afghanistan's harsh geography made living among the population, or establishing 'presence', extremely difficult.¹⁵²

Overall, despite an increase in troop levels, and a combined force of over 200,000 troops and police by 2009-2010 dedicated to combating insurgency, the Taliban and their allies have still yet to be defeated, with Taliban influence even growing substantially over that time period. Some estimates even identify them as active in up to 75% of the country by 2009.¹⁵³ A deteriorating security situation and

¹⁴⁸ Ibid, 250.

¹⁴⁹ Ibid, Bowman and Dale, 31.

¹⁵⁰ JT Quinlivan, 'Burden of victory: the painful arithmetic of stability operations', *Rand Review* (Summer 2003): 28 – 29, and Ibid, Lopez, 252.

¹⁵¹ Ibid, Bowman and Dale, 31.

¹⁵² Ibid, Bowman and Dale, 31.

¹⁵³ Ibid, Clukey, 6-8.

increased U.S./ISAF casualties could generally characterize the course of the war from its early stages until 2010.

The evolution of U.S. policy regarding COIN in Afghanistan can be broken down to a number of key areas. After the initial military victory, efforts were focused on small groups of SF forces obtaining kinetic victories over Taliban and al-Qaeda forces, while establishing relationships and presence within local communities. This was the birth of the strategy defined as 'clear-hold-build' in Chapter Five of FM3-24.¹⁵⁴ By removing insurgents from an area, physically remaining in that area to provide security, and subsequently building indigenous institutions, in areas of 'overt insurgent activity'¹⁵⁵, SF saw minimal casualties and increased successes.

As time progressed, identifiable operational shifts occurred, whereby an increased focus was put on launching search and destroy missions from large, generally isolated from the population forward operating bases (FOB), in which the metrics relevant to U.S./ISAF commanders were insurgent body counts and weapons/contraband recovered.¹⁵⁶ In conjunction with this, over the time period 2005-2010, a visible shift in priorities from the local/district to the national/provincial took place, in terms of engagement by the national government.¹⁵⁷ Measuring the practical results of this shift is difficult, as a myriad of other factors also come into play. However, one cannot ignore the significantly higher casualties; 200 U.S./ISAF fatalities from 2001-2004, 2,081 from 2005-2010¹⁵⁸, as well as increased instability and Taliban control/influence throughout various parts of the country.

As this operational shift occurred, the increase in troop figures brought a corresponding increase in contractor figures, the effects of which will be explored in later sections. U.S. COIN policy and strategy also had significant impacts on PMCs engaging in combat. Since the COIN effort evolved to

¹⁵⁴ Ibid, Department of the Army, 5-18 to 5-23.

¹⁵⁵ Ibid, 5-18.

¹⁵⁶ Ibid, Clukey,2.

¹⁵⁷ This policy was laid out in the Afghanistan Compact, a document formulated by the GIRoA and foreign partners, at a conference in London in early 2006. The document is available at http://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf.

¹⁵⁸ Detailed casualty information can be found at: <http://icasualties.org/oef/>, accessed August 25, 2011.

encompass over 200 FOBs spread out across the country, the logistics of resupplying these outposts were by nature quite complex, due to various geographic, political and military challenges. PMCs can play a crucial role in ensuring the safety and success of these resupply functions, as well as protecting the FOBs and other static sites themselves, both of which will be the focus of analysis in this work.

3.2 Legal Basis of U.S. COIN Efforts

From a legal standpoint, U.S. COIN activities were initially governed by diplomatic notes exchanged between the U.S. Embassy in Kabul and the Afghan Ministry for Foreign Affairs in 2002 and 2003.¹⁵⁹ These notes covered a range of topics, but only dedicated a few lines to actual warfighting, specifically the 'conduct of ongoing military operations'¹⁶⁰ The notes themselves are also only two pages in length.¹⁶¹ In terms of their direct relevance to U.S. combat operations, they gave U.S. forces the equivalent of diplomatic immunity, exempting them from Afghan legal jurisdiction.¹⁶² Naturally many consider that such vague and brief guidelines dictating the legal boundaries of U.S. operations are problematic.¹⁶³ In 2005, a more expansive joint declaration was signed by Presidents Karzai and Bush, which covered such COIN related issues as counterterrorism operations, ANSF training programs and intelligence sharing, among others.¹⁶⁴

3.3 The Insurgency

This section will introduce the insurgency and subsequent counterinsurgency campaign in

¹⁵⁹ Ibid, Bowman and Dale, 23.

¹⁶⁰ Karen DeYoung, "Only a Two Page 'Note' Governs U.S. Military in Afghanistan." *Washington Post*, August 28, 2008, accessed August 26, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/27/AR2008082703628.html?nav=emailpage>.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid, Bowman and Dale, 23.

Afghanistan, which emerged following initial military action in the country in 2001. It will begin with a brief historical background of the insurgency, mainly from 2002-2010, followed by a discussion of its main components and characteristics, before moving into the policy and legal framework of the U.S. counterinsurgency campaign. This will provide important context in terms of the environment in which PMCs operated in following the initial invasion in 2001. It will also show how U.S. legal and policy directives, along with the reality of the insurgency on the ground facilitated the use and proliferation of PMCs in country.

3.3.1 Historical Background

In late September and early October, the CIA began inserting small teams into Northern Alliance held areas of Afghanistan, liaising with various NA commanders to begin the assault on the Taliban and al-Qaeda.¹⁶⁵ Officially beginning on October 7th, 2001, Operation Enduring Freedom aimed to destroy the capability of the Taliban government to wage war, and prevent the use of Afghanistan as an operating base for al-Qaeda and other terrorist groups.¹⁶⁶ As Fall turned into Winter the CIA along with inserted Special Forces (SF) soldiers began to coordinate air strikes against Taliban and AQ positions, allowing the forces of various commanders, such as Mohammad Fahim, Abdul Rashid Dostum and Atta Muhammad Noor in the North and Hamid Karzai in the South to make rapid progress.¹⁶⁷ The technological superiority of U.S. forces, specifically the ability of SF assets to direct air power to a devastating degree of accuracy, quickly led to the downfall of the Taliban and AQ as a conventional fighting force. As Operation Enduring Freedom evolved, its early stages were characterized by small, generally decentralized units of SF working closely with Afghan tribal forces to pursue and engage Taliban and al-Qaeda targets in various strategically important areas of the country. Following their conventional defeat, the Taliban, their foreign allies within al-Qaeda, and a number of other groups began an insurgency which has enveloped the country ever since.

¹⁶⁵ For a detailed account of the CIA's initial entrance into Afghanistan in late September, see: Gary Schroen, *First in: An Insiders Account of How the CIA Spearheaded the War on Terror*. (New York: Presidio Press/Ballantine Books, 2005).

¹⁶⁶ Ibid, Bowman and Dale.

¹⁶⁷ Ibid, Schroen, 250-255, 268.

Following the initial invasion and offensive by combined U.S. and Northern Alliance forces, the Taliban and al-Qaeda could no longer operate as a conventional fighting force. At this point, the remnants of these forces, along with a number of other groups, initiated an insurgency against the U.S. and eventual ISAF forces as well as the GIRoA. The number of participants in the insurgency varied throughout the course of the conflict, but six groups can be identified as playing major roles in the insurgency.¹⁶⁸ They are the Taliban, foreign militants (mainly al-Qaeda), Hezb-i-Islami, the Haqqani Network, criminal groups, and local tribes.¹⁶⁹ Most prominent of these would be the first four, as they upped the tempo of the insurgency as time passed, taking back increased control of areas within their zones of influence as the decade wore on. Although there has been some evidence of increased coordination between the various groups, likely through meetings in tribal areas of Pakistan, a unified leadership is not a characteristic across the insurgency.¹⁷⁰

3.3.2 The Taliban

The Taliban was formed in the Fall of 1994 in Kandahar, by ethnic Pashtun religious students schooled at various Pakistani madrassas.¹⁷¹ Led by Mullah Omar, two years after their founding they had emerged from the south to capture both Jalalabad and Kabul. Applying an extremely strict interpretation of Islam, they ruled over two-thirds of the country from 1997 until their ouster by U.S. and Northern Alliance forces in late 2001. Following their defeat as a conventional military force, and their removal from the seat of government in Kabul, they fled to Pakistan's North-west Frontier Province, which abuts the north-eastern section of Afghanistan.¹⁷² From here they regrouped, and began a protracted insurgency against the GIRoA and coalition forces which has been marked by various levels of intensity, depending on a number of factors.

¹⁶⁸ Seth Jones, "Counterinsurgency in Afghanistan." *RAND Counterinsurgency Study*, Volume 4. (Santa Monica, RAND Corporation. 2008): 1-3.

¹⁶⁹ Ibid, 1-3.

¹⁷⁰ Ibid, Chapter Four.

¹⁷¹ "Taliban." GlobalSecurity.org, accessed August 15, 2011, <http://www.globalsecurity.org/military/world/para/taleban.htm>.

¹⁷² "Pashtun Taliban Insurgency." GlobalSecurity.org, accessed August 15, 2011, <http://www.globalsecurity.org/military/world/war/pakistan2.htm>.

A number of key components characterize the Taliban insurgency. Firstly, the porous nature of the Afghan/Pakistani border, combined with the fact that the Pashtun ethnic group is split between the two nations, greatly influences the Taliban's ability to conduct operations in Afghanistan, while finding safe havens in Pakistan.¹⁷³ The second major component is many analysts' belief that the Taliban is directly aided by the Pakistani ISI, who provides various forms of support, enabling them to maintain an active insurgency.¹⁷⁴ Although their traditional powerbase is in the Pashtun south of the country, they have expanded their operations and influence to a number of northern areas of Afghanistan including Kunduz province and a number of others.¹⁷⁵

3.3.3 Hizb-i-Islami

Hizb-i-Islami is an insurgent group located mainly in the the northeastern part of Afghanistan, and the adjacent Pakistani border regions.¹⁷⁶ Led by Gulbuddin Hekmatyar, it was one of the primary insurgent groups supported by both the CIA and ISI during the Soviet invasion and occupation of Afghanistan during the 1980's. After a stint as Prime Minister following Soviet withdrawal, Hekmatyar began living in Iran starting in 1996, until returning to Afghanistan in 2002.¹⁷⁷ Re-consolidating forces and control around his traditional area of influence near Jalalabad, Hekmatyar began a concerted insurgency against U.S., GIRoA and coalition forces. Named a 'specially designated global terrorist' by the United States in 2003, he has continued operating in concert with the Taliban, the Haqqani network

¹⁷³ Ibid.

¹⁷⁴ For a detailed analysis of ISI-Taliban links, see: Matt Waldman, "The Sun in the Sky: The Relationship Between Pakistan's ISI and Afghan Insurgents." Discussion Paper 18, Crisis States Research Centre, London School of Economics. June, 2010, accessed August 18, 2011, <http://www.longwarjournal.org/threat-matrix/multimedia/20106138531279734lse-isi-taliban.pdf>.

¹⁷⁵ Wahidullah Mohammad, "Taliban Expand Insurgency to Northern Afghanistan." *Terrorism Monitor* Volume: 7 Issue: 36, The Jamestown Foundation, November 25, 2009, accessed August 17, 2011, http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Bsword%5D=8fd5893941d69d0be3f378576261ae3e&tx_ttnews%5Bany_of_the_words%5D=Hekmatyar&tx_ttnews%5Btt_news%5D=35774&tx_ttnews%5BbackPid%5D=7&cHash=698dd409ce1ac08b69a9d7f7d0f56a1b.

¹⁷⁶ "Themes: Hizb-i-Islami Gulbuddin (HIG)". Institute for the Study of War: Military Analysis and Education for Civilian Leaders, accessed August 19, 2011, <http://www.understandingwar.org/themenode/hezb-e-islami-gulbuddin-hig>.

¹⁷⁷ "Hizb-i-Islami (Islamic Party)." GlobalSecurity.org, accessed August 19, 2011, <http://www.globalsecurity.org/military/world/para/hizbi-islami.htm>.

and other groups mainly in the northeastern part of Afghanistan and the tribal regions of Pakistan.¹⁷⁸ Hekmatyar, a recipient of U.S. and Pakistani largesse during the resistance to Soviet occupation, narrowly avoided assassination by a missile fired from a CIA operated Predator drone in 2002.¹⁷⁹ Hekmatyar and Hezb-i-Islami upped the tempo of their attacks on GIRoA and ISAF targets beginning in 2008, cementing his role as one of the primary leaders of the insurgency.¹⁸⁰

3.3.4 Haqqani Network

Led by Jalaluddin Haqqani, the network has emerged as one of the most formidable opponents to GIRoA and ISAF forces in Afghanistan. Originating from Khost in eastern Afghanistan, Haqqani moved to Miram Shah in neighboring North Waziristan Province, Pakistan in the mid 1970's.¹⁸¹ One of the main insurgent groups in the battle against the Soviets, Haqqani also received significant aid from the CIA and Pakistan ISI and is now considered to be a favorite of rich Middle Eastern backers.¹⁸²

Although structurally separate from the Taliban, with their base of operations mainly in the eastern part of Afghanistan and Pakistan, the group does seem to take guidance from the Quetta Shura, the main Taliban leadership council, on the path of insurgency.¹⁸³ The Haqqanis also do not limit their operations to their home areas; they have also carried out a number of high profile attacks on targets in

¹⁷⁸ Ibid.

¹⁷⁹ Walter Pincus and Thomas Ricks, "CIA Fails in Bid to Kill Afghan Rebel With Missile." *The Washington Post*, May 10, 2002, accessed August 18, 2011, <http://www.washingtonpost.com/wp-dyn/articles/A62842-2002May9.html>.

¹⁸⁰ Muhammad Tahir, "Gulbuddin Hekmatyars Return to the Afghan Insurgency." *Terrorism Monitor* Volume: 6 Issue: 11, The Jamestown Foundation. May 29, 2008, accessed August 18, 2011, http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=4951&tx_ttnews%5BbackPid%5D=167&no_cache=1.

¹⁸¹ Anand Gopal, Manshur Khan Mahsud and Brian Fishman, "The Battle for Pakistan: Militancy and Conflict in North Waziristan." New America Foundation. April 2010, accessed August 22, 2011, http://counterterrorism.newamerica.net/the_battle_for_pakistan.

¹⁸² "Haqqani Network." GlobalSecurity.org, accessed August 28, 2011, <http://www.globalsecurity.org/military/world/para/haqqani.htm>.

¹⁸³ "Snake Country: The Pakistani Army's Complex Relationship with Jihadists." *The Economist*, October 1, 2011, accessed October 5, 2011, <http://www.economist.com/node/21531042>.

Kabul, and other GIRoA and ISAF targets.¹⁸⁴ Many analysts also consider the Haqqanis to be one the groups most entwined with Pakistani intelligence.¹⁸⁵ Using their Pakistani base to conduct operations over the border in Afghanistan, it uses its tribal loyalties and links with the ISI to ensure its continuity and safety in the area.¹⁸⁶

3.3.5 Al-Qaeda/Foreign Militants

Although now reduced in number and influence, the presence of al-Qaeda in Afghanistan was what initially brought U.S. and ISAF forces into the country. Having been born during the fight against the Soviets in the late 1980's, through the money and resources of Osama Bin Laden, al-Qaeda moved its base of operations to Sudan in 1991, only to return to Afghanistan after the Taliban took power in 1996.¹⁸⁷ A highly decentralized group of fighters from various regions, including multiple Arab countries as well as from Central Asia and the Caucus, they proved to be fierce fighters in the battle against Northern Alliance and eventually U.S./ISAF forces.¹⁸⁸ Ideologically and objective wise, their main aims are to: establish the rule of God on earth, attain martyrdom in the cause of God, and purify the ranks of Islam from elements of depravity.¹⁸⁹

As U.S./ISAF & GIRoA forces increased the pressure on al-Qaeda in Afghanistan, they were forced to relocate their base of operations to the Federally Administered Tribal Areas (FATA) of

¹⁸⁴ Mark Mazzetti, Scott Shane and Alissa Rubin, "Brutal Haqqani Clan Bedevils U.S. in Afghanistan." *New York Times*. September 24, 2011, accessed October 5, 2011, <http://www.nytimes.com/2011/09/25/world/asia/brutal-haqqani-clan-bedevils-united-states-in-afghanistan.html?pagewanted=all>.

¹⁸⁵ Ibid.

¹⁸⁶ Shuja Nawaz, "FATA: A Most Dangerous Place." Center for Strategic and International Studies. January 7, 2009, accessed October 6, 2011, csis.org/files/media/isis/pubs/081218_nawaz_fata_web.pdf.

¹⁸⁷ "Al Qaida/Al Qaeda (the Base)." GlobalSecurity.org, accessed August 25, 2011, <http://www.globalsecurity.org/military/world/para/al-qaida.htm>.

¹⁸⁸ For a detailed description of the initial combat operations against Al-Qaeda forces, see: Gary Schroen, *First In: An Insiders Account into How the CIA Spearheaded the War on Terror in Afghanistan*. (New York: Presidio Press, 2005), 331-333.

¹⁸⁹ Ibid, Global Security, "Al Qaida/Al Qaeda (the Base)."

Pakistan in 2001-2002.¹⁹⁰ Although it is difficult to gauge the exact number of al-Qaeda fighters still in Afghanistan, U.S. intelligence officials were estimating the number to be as low as 100 in 2009.¹⁹¹ A number of other groups of foreign fighters also are active in Afghanistan, most notably the Islamic Movement of Uzbekistan (IMU), a collection of Islamist fighters from Central Asia.¹⁹²

3.4 Geography

Analyzing history, it is clear that the geographic characteristics of a nation play a crucial role in any insurgency. In the case of Afghanistan, this geography perhaps plays a more critical role than nearly anywhere else. Landlocked, extremely rugged terrain, porous borders and unstable neighbors, Afghanistan has all the characteristics suitable for an insurgency. In addition to this, climate also plays a major factor; from roughly October to April sustained campaigns are virtually impossible due to snow.¹⁹³

Briefly, Afghanistan can be described as 'land of highlands and lowlands'¹⁹⁴, with the population naturally mainly living in the lowlands. Historically, lowland dwelling tribal fighters quickly and easily take to the mountains in times of war; the mountains offer sanctuary from conventional adversaries and offer a good base to conduct raids into lowland areas. Due in part to this geography, no force, whether foreign or domestic, has ever been able to claim complete control over all

¹⁹⁰ Anne Sternsen, "Al-Qaeda's Allies." *Counterterrorism Strategy Initiative Policy Paper*. New America Foundation. April 2010, accessed August 27, 2011, <http://counterterrorism.newamerica.net/sites/newamerica.net/files/policydocs/stenersen2.pdf> .

¹⁹¹ Richard Esposito, Matthew Cole and Brian Ross, "President Obama's Secret: Only 100 al Qaeda Now in Afghanistan." *ABC News*, December 2, 2009, accessed August 27, 2011, <http://abcnews.go.com/Blotter/president-obamas-secret-100-al-qaeda-now-afghanistan/story?id=9227861#.TsWRzTIFuso>.

¹⁹² For more information on the IMU, see: Steve Coll, *Ghost Wars: the secret history of the CIA, Afghanistan, and bin Laden, from the Soviet invasion to September 10, 2001* (Penguin, 2004), 456, and "Islamic Movement of Uzbekistan (IMU)." *GlobalSecurity.org*, accessed August 27, 2011, <http://www.globalsecurity.org/military/world/para/imu.htm>, and Mark Burgess, "In the Spotlight: Islamic Movement of Uzbekistan (IMU)." *Terrorism Project, Center for Defense Information*, March 25, 2002, accessed August 28, 2011, <http://www.cdi.org/terrorism/imu.cfm>.

¹⁹³ John Keegan and Andrew Wheatcroft. *Zones of Conflict: An Atlas of Future Wars*. (New York: Simon and Schuster, 1986), 51.

¹⁹⁴ *Ibid*, 51.

of Afghanistan's tribes.¹⁹⁵

A number of long and tall mountain ranges spread across Afghanistan from east to west, with the Hindu Kush dividing the northern provinces from the remainder of the country, while unstable or downright hostile neighbors share nearly every border. For U.S./ISAF forces the primary challenge is supplying a concerted COIN effort with such difficult geo-political factors in place. The most straightforward resupply route is via Iran to the southwest; for political reasons this is not an option. The same goes for Turkmenistan to the north, leaving only Pakistan and Central Asia, neither ideal options for reasons ranging from instability (the former) to time and expense (the latter).¹⁹⁶ For U.S./ISAF forces, these geographic (and related political) realities mean that by the later stages of the war, nearly 80 percent of its cargo and 40 percent of its fuel requirements for operations in Afghanistan were required to transit Pakistan.¹⁹⁷ This reliance on limited supply routes can result in disruption or even the suspension of supplies reaching U.S./ISAF forces in Afghanistan, as militants have increased attacks on these routes.¹⁹⁸ This difficult geography, and the resulting limited options for resupply routes, has major implications regarding the overall COIN effort and the use of PMCs by U.S./ISAF forces.

¹⁹⁵ Ibid, 54.

¹⁹⁶ Ibid, Tierney.

¹⁹⁷ Ibid, Nawaz, 10.

¹⁹⁸ Ghanizada, "Militants Destroyed a NATO Oil Tanker in Khyber Agency." *Khaama Press*, June 9, 2011, accessed August 28, 2011, <http://www.khaama.com/militants-destroyed-a-nato-oil-tanker-in-khyber-agency>, and "Militants Destroy 27 NATO Oil Tankers in Southern Pakistan After Supply Route to Afghanistan is Closed." *The Daily Mail*. October 4, 2010, accessed August 28, 2011, <http://www.dailymail.co.uk/news/article-1316736/Militants-destroy-Nato-oil-tankers-Pakistan-Afghanistan-supply-route-closed.html>.

Chapter 4 - PMCs in Afghanistan - Introduction

This section aims to introduce some of the themes related to PMCs in combat, as part of the overall COIN effort in Afghanistan. It will begin by introducing the concept and definition of combat, as it pertains to security contractors in Afghanistan, before moving on to the statistics and figures currently available regarding PMCs in the country. Following this there will be a number of sections detailing instances of PMC activities, with a focus on their combat roles. From these descriptions emerge a number of key themes, which will be covered in depth.

There are a few items which deserve emphasis in terms of the content of this section. The first, also mentioned in the literature review, is that primary source information is extremely difficult to obtain, due to Afghanistan's status as an active war zone, and PMCs natural reluctance to divulge information. Therefore much of the material in this section derives from declassified U.S. government investigations, supported by the work of analysts, researchers and journalists from a number of sectors. Another item of note, related to the sources of information, is the predominance of available information related specifically to DOD contractors, as opposed to those employed by other American organizations, such as the CIA, the State Department or U.S.AID. Although some information on PMCs employed by these organizations is available, it is dwarfed by that on those PMCs employed by the DOD.

The second main item regarding the content is the relative dearth of information regarding PMCs operating in Afghanistan from 2001-2006 and even later in the conflict. This has a number of likely explanations, the most probable being that with a light troop footprint in the early stages of the war, contractors were less present than they were in the later stages. In addition, public and Congressional consciousness of PMCs operating in Afghanistan was not widespread (likely due to increased focus on Iraq from 2003 onward) until a number of high profile incidents occurred in both Iraq and Afghanistan involving PMCs. The practical result of this is that the majority of primary information comes from the time period of 2008-2011.

Considering the above, the following sections will look at various aspects of PMCs in counterinsurgency combat in Afghanistan. It will approach the topic through three general classifications. These are: static and mobile security, individual security and finally covert action. By

far the most common occurrence of contractors engaging in combat is while conducting static or mobile security and most often while protecting convoys.¹⁹⁹ Therefore the bulk of this particular chapter will focus on the section related to this aspect. Following these sections, a number of themes will be identified regarding contractors in combat, and how this has influenced the overall COIN campaign by U.S./ISAF forces.

4.1 Combat

As discussed in previous sections, the traditional idea of 'combat' as it pertains to the Afghanistan conflict involves governmental actors, whether they be U.S., ISAF or GIROA, engaging adversarial forces, mainly the Taliban, al-Qaeda and various other insurgent groups. Combat itself is categorized by the U.S. as an 'inherently governmental function', which prohibits private actors from engaging in it, ostensibly including PMC personnel. The reality on the ground, however, is far different in that PMC personnel are regularly called upon to undertake combat functions, often as part of their contractual obligations. The U.S. Congressional Research Service categorizes contractors in two ways, those providing 'armed services' and 'unarmed services'.²⁰⁰ Armed services include 'static site security, convoy security, security escorts and personal security details'.²⁰¹ Naturally contractors performing these roles must engage in what widely would be considered 'combat' at times in the course of their duties; if attacked by insurgents, a PMC contractor is contractually obligated to defend the convoy, site, or individual which they are protecting. Whether or not they are actually 'combatants' is an issue of interpretation, and varies depending on the specific circumstances, and who is making the assessment.²⁰² For the purposes of this section, combat will be defined at a more basic level (as covered

¹⁹⁹ In one study of security incidents recorded by the DOD from June 2009 - April 2010, 72% of PMC personnel fatalities (188 out of a total of 260), occurred during convoy protection missions. Moshe Schwartz. "Statement of Moshe Schwartz, Specialist in Defense Acquisition, U.S. Congressional Research Service." House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, hearing on The Investigation of Protection Payments for Safe Passage Along the Afghan Supply Chain. June 22, 2010, accessed September 1, 2011, http://democrats.oversight.house.gov/images/stories/subcommittees/NS_Subcommittee/6.22.10_HNT_HEARING/Schwartz_Statement.pdf, 6-7.

²⁰⁰ Ibid, Schwartz, "Statement," 3-5.

²⁰¹ Ibid, 2.

²⁰² Ibid, Elsea, 5-6.

in the terminology section), as 'a fight or contest between individuals or groups'²⁰³ within the overall insurgency campaign. This took various forms, which will be presented in the following sections.

4.2 The Figures

Consistent and accurate figures on the number of PMCs and contractors active in Afghanistan over the course of the war are notoriously difficult to come by. There are a number of reasons for this. The first is that various different organizations utilize PMCs as part of their efforts in the overall COIN campaign, and until the more recent attention by Congress, no major efforts to aggregate or report this data have occurred.²⁰⁴ The result is that while data exists, it is disproportionately from certain organizations, is for specific time periods, and can be highly unreliable. For example, ample information on PMCs employed by the DOD during the time period 2009-2010 is available, less so is aggregated information on USAID contractors employed from 2003-2005. A second result of this overall lack of oversight and accountability is that often the organizations themselves don't actually know how many contractors they employ.²⁰⁵ One clear theme to emerge from the limited figures available is that the amount of contractors in Afghanistan has grown rapidly; as troop levels saw a massive increase from the early stages of the war, so did contractor figures.²⁰⁶ This section will introduce a number of themes present in the data available in the early stages of the war, then the later stages, in which far more data sets were available, before reviewing some overall figures on contractors over the course of the entire conflict.

²⁰³ Ibid, Merriam Webster.

²⁰⁴ John P Hutton, "Contingency Contracting: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan." GAO Report to Congressional Committees. U.S. Government Accountability Office. April 2010, accessed September 5, 2011, www.gao.gov/new.items/d10357.pdf.

²⁰⁵ In reference to a Freedom of Information Act request by ePluribus Media's Susie Dow in 2007, regarding the number of contractors employed by USAID in Iraq, the organization replied "...USAID does not aggregate the kind of information for which you are asking." It is presumed this is also true for Afghanistan. Susie Dow, "USAID: We don't know how many contractors we have working for us in Iraq." *ePluribus Media*, September 19, 2007, accessed September 5, 2011, http://www.epluribusmedia.org/features/2007/20070727_USAID_does_not_know.html.

²⁰⁶ Ibid, Schwartz, 1.

4.2.1 Early Stages of the Conflict

As mentioned, complete figures on the use of contractors in Afghanistan from the early stages of war are not available, for a number of reasons. The DOD, State Department and USAID, the three main U.S. employers of contractors in country, all had varying and sometimes non-existent reporting requirements.²⁰⁷ In a number of cases, the agencies claimed that they had transparent reporting mechanisms, but were proved patently false by investigations by various committees and NGOs.²⁰⁸ In addition, it has been shown that even information provided by the various agencies has proved to be incorrect.²⁰⁹

The most comprehensive aggregated figures available regarding contractors in Afghanistan from the early stages of the war, 2001-2003, comes from the Center for Public Integrity. Describing themselves as 'one of the country's oldest and largest nonpartisan, nonprofit investigative news organizations,'²¹⁰ they conducted an investigation of contracting in Iraq and Afghanistan for the period of 2001-2003, submitting 73 FOIA requests to the DOD, State Department and USAID.²¹¹ Noticeably absent from this list is the CIA, who is not required to provide information under the FOIA due to the secretive nature of their activities. They found that in Afghanistan these three organizations had awarded 45 contracts overall, USAID awarding 16 contracts worth over \$260 million collectively, State awarding five contracts worth over \$53 million, and the DOD awarding over \$1.3 billion over 24 contracts.²¹² In addition, the three agencies shared a contract with Ronco Consulting Corp. for over \$12 million.²¹³ The services rendered under these contracts, 45 in total handed out to 45 different companies, varied, from construction and logistics, to security. These figures can hardly be characterized as a complete picture, however, as the CPI indicates they received inconsistent and

²⁰⁷ Maud Beelman, "U.S. Contractors Reap the Windfalls of Post-War Reconstruction." Center for Public Integrity, October 30, 2003, accessed September 10, 2011, <http://projects.publicintegrity.org/wow/report.aspx?aid=65>.

²⁰⁸ Ibid, Beelman.

²⁰⁹ Ibid, Beelman.

²¹⁰ Center for Public Integrity. "About." <http://www.iwatchnews.org/about>.

²¹¹ Ibid, Beelman.

²¹² Ibid, Beelman.

²¹³ Ibid, Beelman.

incomplete information from all three agencies, even filing suit against the DOD and State Department after they would not comply with the requests.²¹⁴

As the agencies were not required to provide detailed information on the nature of the contracts or services actually rendered, it is difficult to extrapolate the number of companies who were conducting 'armed services' during this time period. One exception is DynCorp, whose contract with the State Department in Afghanistan became available following the publishing of the CPI report in 2003.²¹⁵ Its initial contract with the State Department for this time period called for the company to begin providing security for President Hamid Karzai, previously the remit of U.S. SF and the Bureau of Diplomatic Security²¹⁶ The contract, which had a maximum ceiling of over \$80 million, was not made available for competitive bidding from other companies, the State Department noting: "There is no other contractor that can handle this current mission without delays....formal market research was not conducted, due to the urgency of the requirement."²¹⁷ In addition to protecting Karzai, the mammoth 200 pages contract also calls for DynCorp to provide protection services for the U.S. Embassy in Kabul, as well as the Presidential Compound.²¹⁸

Aside from the CPI's wide ranging report, little else is available in terms of figures from this time period on contractors in Afghanistan. What is available, specifically related to combat, mainly takes the form of newspaper articles regarding the deaths of contractors in the employ of the CIA. As reviewed in earlier sections, the initial stages of the conflict saw the CIA work closely with Northern Alliance fighters to topple the Taliban. As the war progressed, and morphed into a hunt for al-Qaeda figures, the CIA turned to contractors, mainly former SF personnel, in an effort to maintain and increase operational tempo.²¹⁹ On October 25th, 2003, two of these contractors were killed in an

²¹⁴ Ibid, Beelman.

²¹⁵ "Windfalls of War: New Info." Center for Public Integrity, May 27, 2004, accessed September 12, 2011, <http://projects.publicintegrity.org/wow/report.aspx?aid=129>.

²¹⁶ Vernon Loeb, "State Department Takes on Protection of Karzai." *Washington Post*, August 24, 2002, accessed September 12, 2011, from http://articles.orlandosentinel.com/2002-08-24/news/0208240413_1_karzai-security-kabul.

²¹⁷ Ibid, CPI.

²¹⁸ The contract itself can be found at <http://projects.publicintegrity.org/wow/resources.aspx?act=resources>.

²¹⁹ The Associated Press, "Hired Guns Bolstering CIA Effort on Terror." *The Boston Globe*, November 27, 2003, accessed

ambush near Shkin, in the eastern part of the country.²²⁰ Very little additional information exists regarding the incident, or other CIA contractors operating during this time, thus it is difficult to draw any conclusions on the extent to which the CIA used contractors in combat operations.

Overall, the difficulty in obtaining information on contractor figures during this period prevents a complete analysis of the issue. The main hiring organizations did not follow existing guidelines and requirements for reporting and oversight, and quite simply could not accurately determine exactly who they had hired, for how much, for what exact purpose, and whether the contract winner succeeded in their duties. In the case of the CIA, almost zero information is available in the public domain, with journalistic reports of specific incidents the only current source available. Although this highlights that contractors were being used in combat roles, it does not provide broader insight into numbers or figures. In a case where a company was contracted to provide 'armed services', and information is available, in the case of DynCorp and their State Department contract, for example, no additional verifiable information is available in terms of the size of the force actually used in Afghanistan.

4.2.2 Later Stages of the Conflict

As the conflict progressed, and many, most crucially the U.S. Congress, became more conscious of the use of contractors in Afghanistan (and Iraq), increased focus was brought to bear on the issue. While the incident in Nisour Square, involving the killing 17 Iraqi civilians by Blackwater guards, is considered to be the event which sparked greater collective interest in PMCs in general, this also increased focus on Afghanistan.²²¹ Among other things, this allowed for a more comprehensive, if not complete, picture of exactly how many contractors were actually working in Afghanistan. The majority of this information comes from the DOD; as compared to the other agencies employing armed and unarmed contractors, they have presented the most complete data sets to date.

Beginning in the summer of 2007, U.S. Central Command (CENTCOM) started releasing

September 14, 2011, http://articles.boston.com/2003-11-27/news/29195286_1_paramilitary-operatives-cia-contractors-cia-effort.

²²⁰ Ibid.

²²¹ Ibid, Commission on Wartime Contracting.

quarterly reports on the contractors in their employ in both Iraq and Afghanistan.²²² From these reports analysts could begin to track the fluctuations in numbers of contractors used by the DOD in Afghanistan on a consistent basis. These reports were also the primary method by which contractor activity in Afghanistan would be tracked by the DOD, until the SPOT (Synchronized Predeployment and Operational Tracker) system became active, which due to delays will likely not occur until late 2011.²²³ On the one hand, this was a positive development in terms of contractor statistics; it was the first time one of the main hiring agencies attempted to consistently and accurately aggregate information on the contractors it employed in Afghanistan. However, there are a number of issues with the data within the reports. The GAO, for example, stated in October 2010 that the reports represented "only a rough approximation of the number of contractors and therefore should not be relied upon for precise analysis."²²⁴ Despite these concerns, it is currently the most complete data set available, and at a minimum provides guidance on certain trends.

The findings of these aggregated quarterly reports highlight a number of themes. The first is that inevitably, the presence of contractors increased along with the surge in U.S. military personnel into Afghanistan. As U.S. troop numbers increased from just above 20,000 in September 2007 to nearly 100,000 in December 2010, contractor figures saw a similar increase, from around 30,000 in September 2007 to a peak of nearly 120,000 in March 2010, before dropping to as low as 70,000 by December of that same year.²²⁵ Of these figures, by 2010 roughly 14% of these contractors were performing 'security functions'²²⁶. Reporting that there were 70,599 contractors employed by the DOD in December of 2010, 20,874 of these were U.S. citizens, 15,503 third country nationals, and 34,222 Afghan citizens.²²⁷

²²² For a list of all quarterly reports, please see: http://www.acq.osd.mil/log/PS/CENTCOM_reports.html.

²²³ Moshe Schwartz and Joyprada Swain, "Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis." U.S. Congressional Research Service, May 13, 2011, accessed September 15, 2011, www.fas.org/sgp/crs/natsec/R40764.pdf, 4-5

²²⁴ Ibid, 5. Full GAO report referenced can be found at: <http://www.gao.gov/new.items/d111.pdf>.

²²⁵ Ibid, 10.

²²⁶ John P Hutton, "Iraq and Afghanistan: DOD, State and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel." GAO Report to Congressional Committees. U.S. Government Accountability Office, October 2010, accessed September 5, 2011, www.gao.gov/new.items/d111.pdf.

²²⁷ U.S. Central Command, "Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan." U.S. Central Command, December 15, 2010, accessed September 16, 2011, http://www.acq.osd.mil/log/PS/CENTCOM_reports.html.

This means of the entire contingent of contractors, 51% were local nationals, who while significantly higher than Iraq (15% for the same period), is markedly lower than the corresponding figure in September 2008, which was 83% of all contractors.²²⁸ There are a number of explanations for this fluctuation, mainly being the difficulty the DOD has in obtaining this information (as highlighted by the GAO), due to the fluid nature of the hiring and firing of local nationals for specific projects.²²⁹

CENTCOM also distinguishes between what it calls 'PSC' (private security contractor) personnel, and non-PSC contractors in its quarterly reports. Interestingly, in its early quarterly reports, it would distinguish between armed and unarmed PSC personnel; in later reports it did not.²³⁰ From 2007, a relatively stable number of around 4,000 'PSCs' were employed by the DOD; this number had moved up to 17,814 by Q4 in 2010, with a rapid spike beginning around Q3 2009.²³¹ The reasons for this rapid increase (50% increase, from 5,165 to 10,712, in between Q3 and Q4 2009 alone²³²) are identified by CENTCOM as due to the 'decentralized expansion of operations'.²³³

As indicated, it is difficult to extrapolate similar figures for the State Department or USAID, the two other major employers of security contractors. Although required to input information via the SPOT system, there is no evidence that this is done consistently, or includes all Afghan personnel, as the fluid employment nature of host country nationals makes tracking this information difficult.²³⁴ Information available from USAID indicates that they have allocated over \$6.7 billion in contracts since commencing activities in Afghanistan in 2002, and as of 2009 had over 20,000 'implementing

²²⁸ Ibid, Schwartz and Joyprada, 9-11, 17.

²²⁹ Ibid, Schwartz and Joyprada, 12.

²³⁰ For example, in tables provided in the 2008 Q3 report, it details both 'Total DOD PSCs in Afghanistan' and 'Armed DOD PSCs in Afghanistan.'. In its 2010 Q4 report, it only lists 'DOD PSCs in Afghanistan'. All reports at: http://www.acq.osd.mil/log/PS/CENTCOM_reports.html.

²³¹ Ibid, U.S. Central Command.

²³² Ibid, U.S. Central Command.

²³³ Ibid, U.S. Central Command.

²³⁴ Ibid, Hutton, "Iraq and Afghanistan: DOD, State and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel.", Highlights.

personnel', the term used for contractors, 19,000 of these being Afghan nationals.²³⁵ They give no indication as to what percentage of these perform security services or are armed. To highlight the difficulties in tracking and general confusion regarding the number of contractors, an investigation by the Subcommittee on Contracting Oversight in 2009 identified the number of USAID contractors to only be 14,000, while State had 3,600 contractors under their employ.²³⁶ They also noted however, "Due to problems with the completeness and accuracy of contractor personnel data, the total number is likely to be even higher."²³⁷

In terms of the makeup of companies, the majority tend to foreign owned, while a number of Afghan or Afghan/foreign partnerships are also active. Information gathered by an NGO in 2007 indicates that there were 59 licensed and registered PMCs in Afghanistan at the time.²³⁸ Of these, 16 were Afghan, 4 were an Afghan-international partnership, 21 American, 17 British, 19 other nationalities or partnerships, and 13 which could not be determined.²³⁹ As of 2010, research by the CRS indicated that there were only 52 registered companies, although figures from both sources may be incomplete or inaccurate due to the challenges in reporting and obtaining data.²⁴⁰

If there is any trend or theme present in the data on contractors in Afghanistan under U.S. employ from 2001-2010, it is that no single agency, oversight body, or anyone for that matter had a realistic idea of how many contractors there actually were. Despite various pieces of legislation, Congressional committees, internal and external review processes, and increased media attention, the fact was that the DOD, State Department and USAID never could accurately report how many contractors were under their employ. This makes analysis of trends or themes very difficult; the Special

²³⁵ Charles North, "Testimony before the Senate Homeland Security and Governmental Affairs Committee's subcommittee on Contract Oversight: "Afghanistan Reconstruction and Development Contracts: An Overview" ", December 17, 2009, accessed September 12, 2011, <http://mccaskill.senate.gov/files/documents/pdf/121709/NorthTestimony.pdf>.

²³⁶ Subcommittee Majority Staff, "Memorandum." Subcommittee on Contracting and Oversight. Hearing: "Afghanistan Contracts: An Overview.", December 16, 2009, accessed September 12, 2011, <http://mccaskill.senate.gov/pdf/121709/2009-12-16StaffMemo.pdf> , 3.

²³⁷ Ibid, 3.

²³⁸ Ibid, Joras and Schuster, Appendix II.

²³⁹ Ibid.

²⁴⁰ Ibid, Schwartz, "Statement", 2.

Inspector General even saying in a 2010 audit that pre-2007 data was simply "too poor to be analyzed."²⁴¹ As a result of this, specific conclusions regarding the facts, figures or statistics on contractors operating in combat or even non-combat roles can be difficult to draw regarding the early stages of the war.

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²⁴¹ BBC, "U.S. Not Tracking Spending on Afghan Projects, Audit Says." *BBC News*, October 28, 2010, accessed September 14, 2011, <http://www.bbc.co.uk/news/world-south-asia-11641964>.

Chapter 5 - PMCs in Afghanistan - Combat Roles

This section will review the three main combat roles which PMC personnel played during the COIN campaign in Afghanistan from 2001-2010. These are static and mobile security, individual security and covert action. By far the most common form of PMC personnel engaging in combat with adversarial forces is via mobile and static security, in particular convoy security.²⁴² While it is recognized that these provide the most instances of combat, there are a number of factors which must be acknowledged when assessing this statement. The first is that the information regarding occurrences of combat during static site or convoy defense is much more readily available; as it is the DOD who employs contractors on a larger scale for these services (information from the DOD also being more accessible than information from State or USAID, as indicated.). Secondly, in terms of covert action, very little information, or even acknowledgment of the roles PMCs play in this aspect exist in the public domain. Therefore information on PMCs involvement in covert action is largely reliant on journalist reports, almost entirely cloaked in anonymity and unverifiable information. As a result, the majority of this section will focus on convoy and static site security.

5.1 Mobile (Convoy) Security

Afghanistan is a nation of harsh geography, with desolate stretches of desert intersected with various mountain ranges. Keeping a dedicated COIN campaign supplied, including over 200 U.S./ISAF FOB's in various, generally isolated areas of the country is a monumental task. In fact, U.S. military commanders call it 'the most complex logistical operation' it has ever undertaken.²⁴³ With hostile neighbors in Iran and Turkmenistan, along with politically unstable ones such as Pakistan and Tajikistan, supplying U.S. troops is a difficult and costly effort. The primary means by which this occurs is by truck, and since 2008, specifically the HNT (Host Nation Trucking) contract.²⁴⁴ This \$2.16 billion dollar contract uses eight different companies to transport over 70% of DOD supplies in

²⁴² Ibid, Schwartz, 10.

²⁴³ Ibid, Tierney, 1.

²⁴⁴ Ibid, Tierney, 1.

Afghanistan.²⁴⁵ A wide ranging investigation by the U.S. House of Representatives made a number of jarring discoveries regarding the use of contractor personnel, in particular armed contractors, as part of the HNT contract.²⁴⁶ A number of key findings emerge from this report which have a particular relevance to contractors engaging in combat activities, and massive implications for the COIN effort overall. Two in particular will be addressed in this section, the first being the conversion of 'warlords' and their militias into PMC actors, and the second the inadvertent funding of the Taliban via the HNT contract.

5.1.1 Host Nation Trucking

As emphasized, information regarding PMCs in combat in Afghanistan is difficult to obtain. The extensive investigation by the Subcommittee on National Security and Foreign Affairs into the HNT however, provides fascinating insight into the world of convoy security by contractor personnel. Security wise, the contract is clear, stating: "Contractor is responsible for all security."²⁴⁷, while giving guidelines that each contractor must provide two security vehicles for every five trucks.²⁴⁸ With estimated 6,000-8,000 trucks in transit per month during this time period, the HNT called for a massive amount of security personnel and operations in order to keep the convoys safe.²⁴⁹ In 2008-2009 the IED and ambush threat had increased significantly on Afghanistan's roads, with over 14,000 record IED incidents occurring from 2007-2009.²⁵⁰ This meant that the likelihood and occurrence of contractors defending these convoys engaging in combat was rather high.

²⁴⁵ Erin Fitzgerald, "A Logistics Nighmare." *The Huffington Post*, September 27, 2011, accessed October 3, 2011, http://www.huffingtonpost.com/erin-fitzgerald/afghanistan-logistics_b_980988.html.

²⁴⁶ Ibid, Tierney, and: Aram Roston, "Congressional Investigation Confirms: U.S. Military Funds Afghan Warlords." *The Nation*, June 21, 2010, accessed September 28, 2011, <http://www.thenation.com/article/36493/congressional-investigation-confirms-us-military-funds-afghan-warlords>.

²⁴⁷ Ibid, Tierney, 10-11.

²⁴⁸ Ibid, Tierney, 10-11.

²⁴⁹ Ibid, Fitzgerald.

²⁵⁰ Ibid, Tierney, 14. Taken from: Craig Whitlock, "Soaring IED Attacks in Afghanistan Stymie U.S. Counteroffensive." *Washington Post*, March 18, 2010, accessed September 28, 2011, <http://www.washingtonpost.com/wpdyn/content/article/2010/03/17/AR2010031703649.html>.

The investigation found a number of themes worth highlighting in terms of the contractors engaging in combat.

5.1.2 The Use of Warlords and Militia

The report found that the primary source of security contractors protecting convoys under the HNT were in fact recruited and employed under the auspices of various regional warlords.²⁵¹ One particular commander guards roughly 3,500 trucks per month on Highway 1, the main transportation route between Kabul and Kandahar, nearly half of all trucks in the HNT effort.²⁵² In a society in which strength and influence is generally wielded through tribal militias, many feel that 'warlords' simply transfer their militias into the form of PMCs in order to assign legitimacy and enrich themselves through contracts.²⁵³ In one example, a warlord known as Commander 'Ruhullah' would operate under the license of PMC Watan Risk Management²⁵⁴, generally escorting 200-400 trucks at a time from Kabul to Kandahar, with his men traveling alongside and among the convoy trucks, often armed with RPG's and heavy machine guns, despite regulations limiting contractors to weapons no more powerful than an assault rifle.²⁵⁵ A number of other 'warlord' figures also control various PMCs in charge of convoy security; these include Matiullah Khan (Urguzan), Abdul Razziq (Chaman-Spin Boldak), Pacha Khan Zadran (Paktia and Khost) and a number of others.²⁵⁶

The practical effect of these men controlling PMCs who protect convoys is clear. Without paying them, the security of convoys could not be guaranteed. Paradoxically, in many of these cases, the convoys would not only come under increased attack from the Taliban and other insurgents, but also from the PMCs themselves.²⁵⁷ Although no set of 'comprehensive incident data'²⁵⁸ exists, a number

²⁵¹ Ibid, Tierney, 17.

²⁵² Ibid, Tierney, 17-18.

²⁵³ Ibid, Tierney, 20, and Forsberg & Kagan, 1.

²⁵⁴ Watan Risk's website is www.watanrisk.com; however it is not active at the time of writing.

²⁵⁵ Ibid, Tierney, 22.

²⁵⁶ Ibid, Tierney, 25-28.

²⁵⁷ Ibid, Tierney, 29-31.

of HNT contractors were clear that they faced significant additional risk if they had not paid a specific warlord in his area of operations for protection, even getting 'shot up'²⁵⁹ on the few times they attempted to provide their own security.²⁶⁰

An incident in 2010 provides the best example of the influence these local warlords have. After contractors under the employ of Watan Risk and Compass Integrated Security Solutions fired on local villagers in Wardak Province in May of 2010, the two companies were banned from operating between Kabul and Kandahar, beginning Monday, May 10.²⁶¹ Starting that day, convoys leaving Kabul, using their own security or other alternative providers, came under some of the heaviest and sustained attacks of the year, with the pace of attacks and ambush only easing upon the reinstatement of Watan on May 18th.²⁶²

Actual data on combat incidents during convoys is difficult to obtain; there is little evidence the trucking companies or PMCs hired to protect them kept such data. Therefore is difficult to determine the rate and frequency of such incidences, and reports on them vary widely. Commander Ruhullah for example claimed in one interview that he had lost 450 men in firefights with the Taliban while guarding convoys, and regularly spent over \$1.5 million on ammunition alone per month.²⁶³ On the other hand, two trucking companies employed under the HNT claimed that collectively they had only lost 11 trucks over a one year period, out of over 25,000 missions.²⁶⁴ Another truck company owner attested that he had lost 119 trucks (out of 1,000) and had 21 drivers kidnapped since 2009.²⁶⁵

²⁵⁸ Ibid, Tierney, 30

²⁵⁹ Ibid, Tierney, 31.

²⁶⁰ Ibid.

²⁶¹ Ibid, Forsberg and Kagan, 3.

²⁶² Ibid, Forsberg and Kagan, 4.

²⁶³ Ibid, Tierney, 17.

²⁶⁴ Ibid, Tierney, 35-36.

²⁶⁵ Matthew Green and Farhan Bokhari, "High Costs to Get NATO Supplies Past Taliban." *Financial Times*, November 13, 2009, accessed September 28, 2011, <http://www.ft.com/cms/s/0/e7c7ecc2-d06f-11de-af9c-00144feabdc0.html#axzz1eIMcr2fl>.

Attempting to provide further clarity is the DOD, who for example reported that from June 2008-March 2009, 260 PMC personnel were killed on duty, 188 of these (72%) killed while providing convoy security.²⁶⁶ The discrepancies are a reminder of the difficulties in obtaining accurate, unbiased data on any number of aspects of contractors in Afghanistan.

5.1.3 The Funding of the Taliban

The second major finding relevant to this particular study, and a finding that will be echoed in later sections, is that U.S./ISAF forces are in fact indirectly funding the Taliban via the HNT contract.²⁶⁷ Through various reports, interviews and emails reviewed by the committee, they found ample evidence that the Taliban regularly extorted varying amounts of money along the transport routes, with some estimates putting it at nearly 10% of the HNT contract itself.²⁶⁸ Various individuals involved in the HNT process corroborated this claim, indicating at various times that PMC commanders regularly paid off, or even colluded with Taliban forces.²⁶⁹ One security consultant interviewed by the committee noted that "I have yet to find a security company that doesn't rely on payoffs to the Taliban."²⁷⁰

The results of this are obvious; by indirectly paying the Taliban through the extortion of trucking companies and the PMCs hired to protect them, the U.S./ISAF is in effect paying the Taliban to fight them. This clearly undermines the overall COIN effort, a theme which will be discussed further at the conclusion of this section.

5.2 Static Security

²⁶⁶ Ibid, Schwartz, 7.

²⁶⁷ Ibid, Roston, also Tierney, Section 3.

²⁶⁸ Ibid, Roston.

²⁶⁹ Ibid, Tierney, Section 4.

²⁷⁰ Ibid, Tierney, 38.

Analyzing the use of PMCs conducting static or fixed installation, security in Afghanistan brings up a number of the same issues highlighted in the section on convoy security; mainly that consistent, reliable data is not publicly available on a large scale. A number of investigations and reports however, similar to mobile security, have shed light on the practical realities of using PMCs in Afghanistan to secure fixed assets, generally FOBs, airstrips, embassy's/consulates, and various other static installations. This section will explore a number of the themes present in the use of PMCs to guard static sites, by analyzing a number of these reports and investigations.

The most prominent investigation into the use of PMCs for static security was undertaken by the Committee on Armed Services (CAS) of the U.S. Senate. Beginning research in 2009, the Committee aimed to obtain an understanding of how PMCs were utilized by U.S./ISAF forces in Afghanistan. Reviewing thousands of pages of documents provided by the DOD, State Department, USAID, PMCs themselves, as well as numerous interviews, the result is the most comprehensive view available to the public on PMC activities in Afghanistan.²⁷¹ Its findings echo many of those found in the previous study completed by the House of Representatives on the HNT contract, mainly that PMCs were funneling money directly to warlords, including those with direct links to the Taliban and other insurgent groups.²⁷² The report looked at two primary case studies of static security, that of Shindand Airbase in Herat province, and Police training center in Adraskan, north of Shindand.

5.2.1 Shindand Airbase

The report looks initially at the case of Shindand Airbase in Herat Province, not far from the Iranian border. In 2007, the company Environmental Chemical Corporation (ECC) was contracted by the DOD (via the Air Force) to complete a construction and expansion project at the airbase; the company in turn hired Armor Group North America to provide security for the project.²⁷³ Following the signing of the contract, expat personnel from Armor Group traveled to the base in order to begin hiring

²⁷¹ Senate Committee on Armed Services. "Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan." United States Senate, September 28, 2010, accessed September 20, 2011, <http://publicintelligence.info/senate-report-on-private-security-contractor-oversight-in-afghanistan/>.

²⁷² Ibid, i.

²⁷³ Ibid.

personnel. After consulting U.S. Military team leaders at the site, it was determined that Armor Group would hire guards from forces loyal to two local warlords, Nadir Khan and Timor Shah.²⁷⁴ The company eventually employed around 30 men supplied by the two warlords, supported by a number of men from Kabul.²⁷⁵ Over the following months, the Committee found that the Armor Group guards were engaged in combat multiple times, including assassination attempts, IED attacks, and the eventual murder of Shah, in fact carried out by his fellow (and rival) warlord Nadir Khan.²⁷⁶ Despite the fact that one of the chief suppliers of guards to Armor Group had murdered the other chief supplier, no contractor oversight personnel were sent to the scene, no sanctions were taken against Khan, and none of his men were fired; they continued their guard duties as normal.²⁷⁷

Following this episode, another local warlord stepped into the void to contribute personnel to the site, Timor Shah's brother, Reza Khan.²⁷⁸ Around this time, U.S./ISAF forces in the area also became aware of the fact that Nadir Khan had close links to the Taliban, and was likely providing them with key intelligence regarding the defense of the base by Armor Group.²⁷⁹ Over the next few months, Armor Group and U.S./ISAF forces were presented with a number of challenges regarding the guard force, including an escalating feud between Nadir Khan and Reza Khan, the seizing of weapons from Reza Khan's militia by ANA and ANP forces, and identifying increased links between both commanders and the Taliban.²⁸⁰ These came to head on August 21, 2008, when a combined U.S./ISAF and Afghan force raided a compound which was hosting a meeting including Reza Khan, and a number of other Taliban commanders. The raid, which would hit international headlines in the following days, killed an estimated 80 people following airstrikes, although U.S./ISAF forces insisted the death toll was much lower, with the Taliban providing misinformation as part of its propaganda campaign.²⁸¹

²⁷⁴ Ibid, 9.

²⁷⁵ Ibid, 10.

²⁷⁶ Ibid, 8-11.

²⁷⁷ Ibid, 14-16.

²⁷⁸ Ibid, 18.

²⁷⁹ Ibid, 19.

²⁸⁰ Ibid, 19-25.

²⁸¹ Carlotta Gall, "Evidence Points to Civilian Toll in Afghan Raid." *New York Times*, September 7, 2008, accessed

Relevant to Armor Group was the fact that Reza Khan and six other guards employed by Armor were all killed in the raid, with almost the entire remaining guard force abandoning their posts at the airbase following their deaths.²⁸²

5.2.2 Adraskan National Training Center (NTC)

In January of 2008, the DOD awarded a \$7 million contract to EOD Technology (EODT) to provide security for the building of a new ANP NTC in the village of Adraskan, in Herat province.²⁸³ Upon initially arriving at the scene, EODT expat hiring personnel were immediately beset by many of the issues found by Armor Group in Shindand, mainly inter-tribal feuding related to who would be hired by the company.²⁸⁴ Eventually, EODT hiring personnel worked out deals with local warlords, but again encountered similar issues, mainly the use of personnel associated with the Taliban, including individuals who had been fired from Armor Group contracts for the same reason, and affiliation with various other warlords associated with insurgent groups, and even a 'hostile foreign government.'²⁸⁵

Aside from these two case studies investigated by the CAS, a number of other companies and contracts were noted in the report. What the CAS found continues a number of the key themes identified in the overall report. These themes echo those found by the House in their study of the HNT, mainly that local warlords and powerbrokers have formalized themselves into registered PMCs, in order to obtain contracts and thus maintain power and influence, and there are clear links between PMCs employed by U.S./ISAF forces and the Taliban.

5.3 Personal Protective Services (PPS)

September 21, 2011, <http://www.nytimes.com/2008/09/08/world/asia/08afghan.html?pagewanted=all>.

²⁸² Ibid, SCAS, 30-31.

²⁸³ Ibid, 38.

²⁸⁴ Ibid, 38-39.

²⁸⁵ Ibid, 48. The government in question is implied to be Iran in the report; the Iranian border is not far from this particular area.

In addition to mobile and static security, a personal protective service (PPS) was a key function outsourced to PMCs and contractors during the conflict in Afghanistan. Although more highly focused in terms of the contracts offered and the PMCs who won them than mobile or static security, studying this aspect of PMC activities also runs into many of the same issues as the previous sections. The primary inhibitor is the fact that the State Department was the primary employer of PMCs assigned to protect individuals, under its Worldwide Personal Protective Services contracts. As seen in previous sections, the State Department has proved the most reluctant to divulge information on its dealings with PMCs. Through the WPPS contracts, the State Department hired three separate PMCs beginning in 2002 to undertake activities related to various PPS services, including the protection of the U.S. Ambassador to Afghanistan, as well as that of Afghan president Hamid Karzai; these were DynCorp²⁸⁶, Blackwater and Triple Canopy.²⁸⁷

The initial iterations of the WPPS contracts were given to DynCorp, and called for the establishment of the Karzai Protective Detail (KPD), at the cost of nearly \$50 million to the State Department.²⁸⁸ In January 2003, this was extended to include the creation of the Ambassador Protective Detail (APD), later changed to the Embassy Protective Detail (EPD).²⁸⁹ The contract called for employees to be highly trained and experienced with PPS work, as there was a high likelihood of DynCorp's employees to be engaged in combat at some stage or another.²⁹⁰ This also meant that much of the contractors hired for the KPD and APD details would be not be Afghan nationals, but rather those with specific experience in U.S. Special Forces or law enforcement, with a focus on PPS.²⁹¹

²⁸⁶ DynCorp signed its first WPPS contract in 2002.

²⁸⁷ Portions of the contract itself can be found at United Press Internationals website, who obtained them under a FOIA request. r.m.upi.com/other/12216818791223.pdf.

²⁸⁸ State Department. "Task Order 6." Worldwide Personal Protective Services Contract in Afghanistan (S-LMAQM-00-D-0027). This task order was taken from the appendices of: Cameron Hume, "Report of Audit: Review of Allegations Concerning DynCorp International's Worldwide Personal Protective Services Contract in Afghanistan." Office of the Inspector General, September 2004, accessed September 21, 2011, oig.state.gov/documents/organization/103470.pdf.

²⁸⁹ Ibid, Hume, 15.

²⁹⁰ David Isenberg, "The Well Ordered Worldliness of WPPS." *United Press International*, September 19, 2008, accessed September 21, 2011, http://www.upi.com/Top_News/Special/2008/09/19/The_well-ordered_worldliness_of_WPPS/UPI-64411221853811/.

²⁹¹ U.S. State Department, Contract - Blackwater, Triple Canopy and DynCorp - WPPS. Obtained by UPI. The contract notes that host nation/third country nationals can be employed to provide 'static security', and in certain cases assist American nationals in PPS duty. This seems to imply that they would not be tasked with protecting the individual

Although detailed incident reports regarding the DynCorp KPD engaging in combat activities are not available to the public, a number of high profile incidents brought attention to the company's activities in Afghanistan.

Although there were multiple assassination attempts of President Karzai during his tenure²⁹², the most prominent incident occurred on August 24th, 2004, when a massive car bomb destroyed the headquarters of DynCorp in Kabul, killing 10, including three American employees of the company.²⁹³ In addition to this, the company consistently came in for criticism over the course of their tenure for the actions of the DynCorp personnel assigned to the KPD.²⁹⁴ This included overly aggressive behavior, even towards U.S./ISAF military forces and journalists, as well as drunkenness and soliciting prostitution.²⁹⁵ One European diplomat in Kabul even indicated the August bombing was "specifically targeted at the presidential guard, which is odious."²⁹⁶

In 2005, the WPPS contract was extended, and renamed WPPS II, and now assigned three companies, DynCorp, Blackwater and Triple Canopy, to conduct PPS services in Iraq, Afghanistan and Jerusalem.²⁹⁷ In February of 2006, a further task order was granted specifically to Blackwater for the

him/herself.

²⁹² Craig S. Smith, "The Intimidating Face of America." *New York Times*, October 13, 2004, accessed September 21, 2011, <http://www.nytimes.com/2004/10/13/international/asia/13letter.html?pagewanted=print&position=> .

²⁹³ BBC News, "Blast Rocks Kabul Foreign Quarter." *BBC*, August 30, 2004, accessed September 21, 2011, http://news.bbc.co.uk/2/hi/south_asia/3610178.stm and Amy Waldman, "7 Killed in Kabul as Bombing Rips a U.S. Contractor." *New York Times*, August 30, 2004, accessed September 21, 2011, <http://www.nytimes.com/2004/08/30/world/the-reach-of-war-afghanistan-7-killed-in-kabul-as-bombing-rips-a-us-contractor.html>.

²⁹⁴ BBC News, "U.S. Chides 'Hostile' Karzai Guards." *BBC*, October 14, 2004, accessed September 22, 2011, <http://news.bbc.co.uk/2/hi/3743188.stm>.

²⁹⁵ Richard Lardner, "Contractors Behaving Badly Means Headaches for U.S.." *Associated Press*, December 19, 2011, accessed September 22, 2011, <http://www.newstribune.com/news/2010/dec/19/contractors-behaving-badly-mean-headaches-us/>.

²⁹⁶ Craig S Smith, "The Intimidating Face of America." *New York Times*, October 13, 2004, accessed September 22, 2011, <http://www.nytimes.com/2004/10/13/international/asia/13letter.html?pagewanted=print&position=> .

²⁹⁷ Harold W. Geisel, "The Second Worldwide Personal Protective Services Contract: Management by the Diplomatic Security and Contractor Performance, Capping Report." United States Department of State and the Broadcasting Board of Governors, Office of the Inspector General, August 2010, accessed September 22, 2011, oig.state.gov/documents/organization/135559.pdf , 6-7.

APD and other related PPS functions required by the U.S. Embassy in Kabul.²⁹⁸ Although Blackwater, and later Armor Group, who took over protection of the embassy in 2007²⁹⁹, faced similar issues related to the behavior of their employees in Kabul³⁰⁰, the State Department and other investigating bodies have noted: "No one under the protection of personal security specialists has been injured or killed as a consequence of hostile actions."³⁰¹ Although the protection and safety of its personnel and that of Hamid Karzai are clearly the State Departments primary priority, the ignorance of what effects these PMCs have on the overall COIN effort in Afghanistan can cause further issues.

5.4 Covert Action

Perhaps the most controversial and high profile theme related to PMCs in combat in Afghanistan is also that with the least amount of available information. PMC personnel operating alongside U.S. and Afghan national forces during covert action missions is a topic which has garnered coverage by various media outlets, throughout the duration of the conflict. However, due to the nature of covert action and the inherent secrecy and sensitivity involved, no first hand information is available in the public sphere regarding these operations. This lack of information prevents any sort of analysis, although the below section details some of the stories emanating from journalists regarding PMCs involved in covert action.

There are a number of high profile examples of news reports regarding PMCs engaging in covert action alongside U.S. forces. Perhaps the most notable was the NY Times story regarding Blackwater's involvement in a secret CIA assassination program in the early stages of the war, around 2004.³⁰² A further example was in 2010, when the story broke that a DOD official had initiated a

²⁹⁸ Ibid, Geisel, 7.

²⁹⁹ Nathan Hodge, "Party Ends for Kabul Embassy's Booze Soaked Guard Force." *Wired Magazine*, September 3, 2009, accessed September 22, 2011, <http://www.wired.com/dangerroom/2009/09/party-ends-for-kabul-embassys-booze-soaked-guard-force/>.

³⁰⁰ Ibid.

³⁰¹ Ibid, Geisel, 17.

³⁰² Ibid, Mazzetti, "C.I.A. Sought Blackwater's Help to Kill Jihadists."

program which hired former SF operatives as contractors to help track and kill insurgents.³⁰³ Various other examples have also been highlighted, including private actors capturing and interrogating suspected militants³⁰⁴, as well as contractors being used to load munitions onto drones which then targeted militants in Afghanistan and Pakistan.³⁰⁵

It has yet to be seen whether the U.S. government bodies that have investigated and reported on various other aspects of PMCs in combat in Afghanistan will also look into these incidents. However, without further information available in the public domain, analysis of these events and the impacts they may have had on the overall COIN effort would be pure speculation.

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³⁰³ Ibid, Mazzetti, "Contractors Tied to Effort to Track and Kill Militants." Also see Ibid, Pelton.

³⁰⁴ Ibid, Pelton.

³⁰⁵ Ibid, Risen and Mazzetti, "CIA Said to Use Outsiders to Put Bombs on Drones."

Chapter 6 - Key Themes & Conclusions

In reviewing the information available on PMCs in combat in Afghanistan, a number of key themes come to light. Primarily, there is a glaring dearth of information on PMCs and their activities in Afghanistan. From 2001 to 2007, little reliable information exists detailing the number of contracts, number of personnel employed by contractors or effectiveness of PMCs carrying out their duties to their employers, these being the DOD, State Department, USAID and the CIA. The primary cause of this is the overall failure of oversight mechanisms in place. Although there was an increased focus on implementing and improving these later in the war, many still existed prior to 2007-2008, and were simply ignored. This greatly affects study of the topic, but strictly limiting the information available for analysis. That being said, additional themes are identifiable through study of what is currently available; these being related to the overarching concept that PMCs engaging in combat activities had a negative effect on the overall COIN campaign.

6.1 General Failure of Oversight Mechanisms

One characteristic inherent in all of said agencies dealings with PMCs is the disregard for standard reporting and oversight mechanisms. Prior to the implementation of SPOT, each agency was beholden to their own internal reporting and oversight requirements, many of which they often ignored, and in some cases seemed to not even exist. What is clear is that for much of the initial stages of the conflict, these agencies had little understanding of the amount of PMCs and contractors employed by them in Afghanistan. For example, USAID written policy required that it provide "a transparent monitoring and evaluation system to ensure that contractors are meeting their goals and staying on schedule."³⁰⁶ However, in response to a journalist FOIA request on providing a specific number of contractors employed by the agency, they replied: "USAID does not aggregate the kind of information for which you are asking."³⁰⁷ It is difficult to envision how they could determine if contractors were meeting their goals if they did not know how many they actually employed.

³⁰⁶ Ibid, Beelman.

³⁰⁷ See footnote 6.

Even in the later stages of the war, when public and Congressional pressure began to force more accountability onto these agencies, little improved. The SPOT system, designed to provide a uniform, central location for entering PMC and contractor data for all agencies involved in contracting has not been effective. A 2009 GAO report found that even though implemented, the agencies themselves often simply did not use the system.³⁰⁸ In one report, the PMC Compass Integrated Security Solutions told Congressional investigators that they had 1,672 Afghan nationals working for them under DOD contracts, and to that point had entered the details for 2,070 in total into SPOT³⁰⁹. When verified in the system itself, investigators found that Compass had only entered information for 196.³¹⁰ Armor Group, whose activities are detailed in previous sections, did not have a single individual entered into the SPOT system for its Afghanistan operations as of May 2010.³¹¹

This lack of reporting and oversight extends to PMCs in combat as well. In addition to baseline information such as the number of contracts, companies and employees, basic regulations require agencies to report all instances of combat. For example, the DOD is required to, via their contractors, track: "1. The injury or death of PSC personnel, 2. The discharge of weapons at or by such personnel, 3. The injury, death or damage of property caused by the actions of such personnel, 4. Incidents of alleged misconduct."³¹² In practice, this rarely occurred, as DOD had little presence or insight into the operations of their contractors whatsoever. While the DOD did begin to attempt to track incidents and casualty figures later in the conflict, many of the factors already identified prevent a thorough and complete picture of either category.

6.2 PMC Operations Negative Impact on Aspects of COIN Campaign

This theme is likely the most noteworthy, and present, in terms of what can be derived from the

³⁰⁸ Ibid, Hutton, 1.

³⁰⁹ Ibid, SCAS, 79.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid, Tierney, 16. This comes from DOD Instruction 3020.50, titled *Private Security Contractors Operating in Contingency Operations*, which was mandated under the National Defense Authorization Act of Fiscal Year 2008.

information available on PMCs in combat in Afghanistan. In nearly every Congressional committee or oversight body report, NGO/think tank investigation, and news article related to PMCs in combat, some aspect of this theme is highlighted. It is clear that the use or misuse of PMCs in Afghanistan has undermined aspects of the COIN campaign undertaken by U.S./ISAF/Afghan forces to various extents. This takes a number of forms, three of which will be highlighted here.

6.2.1 Warlords as PMCs

"Warlords in Kandahar had been allowed to build up militias that they claimed were private security companies, and these private security companies were a creation of the international community." - U.K. Major General Nick Carter³¹³

The primary way in which the use of PMCs in combat functions undermines the overall COIN campaign is the enabling and exacerbation of existing tribal, ethnic and regional divisions through the employment of local warlords and their militias as PMCs. This is a theme that is highlighted across nearly all forms of research and reporting on PMCs in Afghanistan. As noted, Afghanistan differs significantly from Iraq in that the vast majority of PMC personnel, up to 93% in 2011, are Afghan nationals.³¹⁴ These men employed by PMCs do not come from a vacuum, they bring along their existing tribal and ethnic loyalties with them, and as seen in multiple reports, including that of the Senate Armed Services Committee³¹⁵, the Committee on Oversight and Government Reform³¹⁶, the Institute for the Study of War³¹⁷, and a number of others, their employment is facilitated by a warlord who usually controls a specific piece of territory.

As highlighted time and again, a local warlord uses money gained from obtaining U.S./ISAF contracts in order to maintain power and influence, thus exacerbating divisions between these militias,

³¹³ Ibid, Tierney, 20.

³¹⁴ Ibid, Schwartz, 4.

³¹⁵ Ibid, SCAS, 5-36, 38-48.

³¹⁶ Ibid, Tierney, 17-29.

³¹⁷ Ibid, Forsberg and Kagan, 1-7.

the areas the control, and the central government. The basic conflict in any COIN campaign is the battle for legitimacy in the eyes of the population, between the government and insurgents. By funding and enabling the power and influence of local/tribal militias, U.S./ISAF forces are allowing them to compete with the central government for legitimacy, which will inevitably extend attempts to bring the campaign to a conclusion, peaceful or otherwise.

6.2.2 The Indirect Funding of the Taliban

Perhaps the most literal example of undermining the overall COIN campaign is the indirect funding of the Taliban, via extortion and protection payments made by PMCs, as cited by numerous committees and reports. First brought to mainstream attention through an investigation by *The Nation*, further inquiries found an extensive system of bribery and extortion implemented by local Taliban commanders, forcing PMCs to pay them to avoid attack.³¹⁸ Although in the case of the HNT contract, the Afghan PMC leaders denied the charge, a significant amount of documentation, correspondence and interviews with various stakeholders in the contract confirmed that up to an estimated \$1.6-\$2million dollars per-week was paid to the Taliban to ensure safe passage of convoys.³¹⁹

In an even more extreme example, the cases of Armor Group and EODT, which culminated in the raid at Azizabad, show the extent to which PMCs are linked to the Taliban. In this case the heads of militias which later later became PMC personnel were shown to be members of the Taliban, allegedly providing intelligence on the areas and personnel they were supposed to guarding, and in the case of the Azizabad raid, actively engaging in combat with U.S./ISAF/ANA forces.³²⁰

There is unlikely to be a more straightforward way to undermine your own COIN campaign than by funding the insurgents you are attempting to defeat. The fact that U.S./ISAF forces effectively funded the operations of the insurgents opposed to them via PMCs is the result of a number of realities faced by coalition forces in the conflict. The first is the utter lack of oversight or awareness of the

³¹⁸ Ibid, Tierney, 33-35.

³¹⁹ Ibid, 35.

³²⁰ Ibid, SCAS, 27-31.

details of PMC activity in Afghanistan, and especially when it comes to those PMCs affiliated with the HNT. Due to various contextual realities, U.S./ISAF forces have little choice but to pay those who hold sway over a particular area, regardless of their other affiliations. In one case already highlighted, refusal to pay a particular PMC resulted in the largest attacks on convoys leaving Kabul that year.³²¹ In another case in Panshir Province, a local governor handpicked a force of local fighters to act as PMC personnel protecting a PRT. A contracting official then noted that "...if any other guard force or U.S. security force is used, the governor will eject the PRT from the valley."³²² These realities then manifest themselves into the scenario whereby U.S./ISAF forces fund the insurgents they are fighting.

6.2.3 Relations Between PMCs and Local Populations

"Actions speak louder than words, and the locals see these drugged-out thugs with guns and trucks with 'The United States' painted on the side." - Lt. Col. David Abrahams, 2nd Battalion, 1st Infantry Regiment, 5th Stryker Brigade, 2nd Infantry Division, Kandahar, referring to PMC personnel guarding U.S./ISAF convoys passing through civilian areas.³²³

"Some Americans think all Afghans are terrorists or insurgents; but if they keep killing civilians, I'm sure some Afghans will decide to become insurgents." - Mohammed Shafi, Afghan elder from Yaka Toot, Kabul, in reference to an incident in which American Blackwater guards killed two Afghan civilians, May 2009.³²⁴

The final theme in this section is another that emerges in nearly all reports on the the topic of PMCs in Afghanistan, but in a number of different ways. The way government forces and their allies are perceived by the local population is crucial to COIN efforts in any context. In the case of

³²¹ Ibid, Forsberg and Kagan, 3.

³²² Ibid, SCAS, 77.

³²³ Sebastian Abbot, "Reckless Private Security Companies Anger Afghans." *Associated Press*, April 30, 2010, accessed September 23, 2011, http://seattletimes.nwsourc.com/html/nationworld/2011744674_apasafghansecuritycontractors.html.

³²⁴ David Zucchini, "Deadly Contractor Incident Sours Afghans." *Los Angeles Times*, August 13, 2009, accessed September 25, 2011, <http://www.latimes.com/news/nationworld/world/la-fg-afghan-contractors13-2009aug13,0,3327495,full.story>.

Afghanistan, U.S./ISAF forces, combined with their Afghan counterparts, fight to win hearts and minds against an array of insurgent groups. Inevitably, PMC personnel are equated with the overall coalition force in the eyes of the local population regardless of how tenuous that connection may be. In the case of convoy and static security, many Afghan citizens do make the distinction between locally hired PMC actors and their U.S./ISAF employers. As noted in the report on the HNT by the House Committee for Oversight and Government Reform, "When a supply convoy of 300 trucks and 500 heavily armed guards rolls down Highway 1 engaging in firefights with competitors, criminals and insurgents, the local population understands that it is an American convoy."³²⁵ Attempting to protect the population, and in doing so proving the legitimacy of the government, is a staple of any COIN campaign, but this is seriously undermined by reckless actions by PMC personnel. Naturally the Afghan population will not hold the individual contractor to account (and couldn't), but rather will equate such behavior with the overall U.S./ISAF/Afghan COIN effort.

Although the above refers to specifically combat-related actions by Afghan PMC personnel (generally), western PMC contractors have also contributed to a decidedly negative image of PMCs in Afghanistan. DynCorp, as mentioned previously, came under criticism for various transgressions while employed under the WPPS contract, and specifically the KPD. Blackwater was in an incident in which civilians were fired upon in Kabul³²⁶, while Paravant (a Blackwater subsidiary) removed over 500 weapons from a ANP depot, even using a fictional characters name from the show 'South Park' in order to sign the weapons out.³²⁷ These types of incidents inevitably foster resentment towards the PMCs and by extension U.S./ISAF forces. Although it is difficult to gauge popular opinion from a quantitative point of view, one Swiss NGO was able to conduct various interviews with citizens of Afghanistan regarding PMCs in 2007³²⁸. Their findings confirmed that many Afghans make little distinction between PMC personnel and other security/military actors (U.S./ISAF/Afghan), they felt that PMCs in fact increased insecurity due to their poor behavior, heavy armament, and high profile, which attracted

³²⁵ Ibid, Tierney, 46.

³²⁶ August Cole, "U.S. Contractors Fired at Kabul Car." *Wall Street Journal*, May 18, 2009, accessed September 25, 2011, <http://online.wsj.com/article/SB124239900599924043.html>.

³²⁷ Spencer Ackerman, "Blackwater Took Hundreds of Guns from U.S. Military, Afghan Police." *Washington Independent*, February 23, 2011, accessed September 25, 2011, <http://washingtonindependent.com/77476/blackwater-the-senate-and-south-park>.

³²⁸ Ibid, Joras and Schuster.

insurgent attention, and that it was simply a way for warlords to maintain and increase their influence.³²⁹ Overall, it is clear that the actions of certain PMC actors have contributed to the undermining of the overall COIN effort in Afghanistan.

6.3 Conclusions

This thesis aimed to analyze the extent to which PMCs played combat roles as part of the overall U.S. COIN effort in Afghanistan, from 2001 to 2010. A number of key themes were identified from the available literature. The primary theme regards the availability of information; because neither the PMCs nor U.S. government agencies who employed them recorded accurate and consistent information regarding their operations, it is difficult to draw comprehensive conclusions regarding PMCs use in combat. Further themes are generated from what information was available. These mainly focused on the perceived and actual effects of PMCs actions on the overall COIN campaign, specifically the arming and empowering of warlords, the indirect funding of the Taliban, and the negative overall perception of PMCs by the population of Afghanistan.

6.3.1 Summary of Work

The first chapter of this work introduced the research topic, as well as its focus, that of PMCs in Afghanistan. In addition to this, it clarified key terms, and identified the main sources of information regarding PMCs in combat, and some of the themes present in the available literature. The primary focus of the literature review was to highlight the strengths and weakness of various aspects of the current literature, as well as emphasized the primary source of information for this work, which were U.S. Government documents.

The second chapter introduced the history and relationship between contractors and the U.S. Military. It outlined the rise of the PMI, highlighting the various roles contractors have played, and specifically how the support roles contractors have traditionally undertaken can rapidly become combat

³²⁹ Ibid, 37.

related due to the contextual factors of modern warfare. The chapter continued by highlighting the current main themes regarding contracting from a legal and policy standpoint.

Chapter three introduced the topic of the conflict in Afghanistan, and specifically legal and policy aspects of the COIN campaign, as well as the characteristics of the insurgency.

The fourth chapter specifically addressed the issue of PMCs in combat in Afghanistan, providing a more general introduction by covering the statistics available regarding PMCs, focusing on the the early and then later stages of the conflict.

The fifth chapter delves into PMCs engaging in combat through various functions, but specifically mobile, static and personal security, as well as covert action. It provides a number of examples taken mostly from U.S. Government reports, including congressional committees, oversight and watchdog groups, as well as investigative journalists, NGO's and academic researchers. From this, a number of themes are introduced.

Chapter seven reviews the main themes identified in the previous chapters. Four overall themes are identified; that a general failure of the oversight and reporting mechanisms regarding PMCs led to a significant lack of comprehensive data, and that a number of factors had a negative effect on various aspects of the COIN campaign. These included the funding of warlords and the Taliban, as well as negative perceptions of PMC personnel by the Afghan population.

6.3.2 Further Research

As indicated in earlier sections of this work, the topic of PMCs in general is underdeveloped, with academic analysis relatively sparse outside of a few major cases. In the case of PMCs in combat in Afghanistan, a number of contextual factors inhibit all relevant information from being available in the public sphere. That being said, there are a number of potential themes which deserve further scrutiny in the future.

As the conflict in Afghanistan comes to an eventual conclusion, individuals and documents will

be come available which are not currently, due to the ongoing insurgency. These will likely shed more light on PMC activities in country in general, with a corresponding increase in information on combat. Although it is clear that not much of this type of information was recorded by PMCs, or the government agencies employing them, any increased availability will be helpful for future scholars. In addition to this, it is likely that the government agencies themselves will make more information public by way of FOIA requests in the future. While it is unknown what types of documents will be available, and how heavily they will be redacted, they should provide more depth to the topic in general.

In terms of themes which researchers will likely confront, the most interest should likely focus on the results of contracting realities which occurred in Afghanistan. Specifically, to what extent the empowering and arming of warlords and militias has on the long term stability of Afghanistan, and the ability of the government in Kabul to maintain legitimacy. This approach will have clear implications not only for Afghanistan, but will also provide guidance for future U.S. interventions in foreign nations. Therefore it is likely researchers in both the civilian and government world will study this topic closely.

In addition to the above, a key topic for future analysis is the general failure of oversight and reporting mechanisms regarding PMCs. With such a blatant lack of understanding, coordination, oversight and responsibility in terms of the relationship between PMCs and government organizations, future situations of a similar nature will likely have far more scrutiny applied to them.

6.3.4 Final Comments

This thesis aimed to obtain the relevant facts regarding PMCs engaging in combat as part of the overall COIN campaign in Afghanistan from 2001 to 2010. It did not aim to make generalizations regarding the morality, cost effectiveness or any other broad topic regarding PMCs; rather, it simply attempted to understand to what extent PMCs present in Afghanistan engaged in combat. A number of themes were found. Primarily, a clear and systematic misuse or ignorance of reporting and oversight mechanisms resulted in a general lack of information regarding PMCs in combat, whether that be from government organizations, PMCs or even contractor personnel themselves. From what information was available, mainly government investigations, supported by NGO and journalist reports, a number of

themes emerged. This mainly pointed to the continued undermining of the overall COIN campaign, through the funding of warlords, as well as the Taliban, and alienating the local population. It is too early to determine what long term effects these actions will have on the GIRoA's ability to maintain power and legitimacy.

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