Private Security Contractors and New Wars

Risk, law, and ethics

Kateri Carmola

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This book addresses the ambiguities surrounding the growing use of private security contractors and provides guidance as to how our expectations about regulating this expanding "service industry" will have to be adjusted.

In the war zones of Iraq and Afghanistan many of those who carry weapons are not legally combatants, nor are they protected civilians. They are contracted by governments, businesses, and NGOs to provide armed security. Often mistaken as members of armed forces, they are instead part of a new protean proxy force that works alongside the military in a multitude of shifting roles, and are overseen by a matrix of contracts and regulations.

This book analyzes the growing industry of these private military and security companies (PMSCs) used in war zones and other high-risk areas. PMSCs are the result of a unique combination of circumstances, including a change in the idea of soldiering, insurance-industry analyses that require security contractors, and a need for governments to distance themselves from potentially criminal conduct. The book argues that PMSCs are a unique type of organization, combining attributes from worlds of the military, business, and humanitarian organizations. This makes them particularly resistant to oversight. The legal status of these companies and those they employ is hard to ascertain, which weakens the multiple regulatory tools available. PMSCs also fall between the cracks in ethical debates about their use, seeming to be both justifiable and objectionable. This transformation in military operations is a product of more general changes in the relationship between the individual citizen and the state.

This book will be of much interest to students of private military and security companies, war and conflict studies, security studies, and IR in general.

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To Joseph and Sonia

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Abbreviations

BAPSC	British Association of Private Security Companies
CPA	Coalition Provisional Authority
CRG	Control Risks Group
DoD	Department of Defense (US)
EO	Executive Outcomes
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IGO	international governmental organization
IPOA	International Peace Operations Association
LOAC	Law of Armed Combat
MEJA	Military Extraterritorial Jurisdiction Act
MPRI	Military Professional Resources Incorporated
NGO	non-governmental agency
PMSC	private military and security company
RUF	Revolutionary United Front (Sierra Leone)
SMOM	Sovereign Military Order of Malta
SAS	Special Air Services (UK Special Forces)
TNC	Transnational Corporation
UCMJ	Uniform Code of Military Justice
UNITA	Unia Nacional Pro Independencia Total de Angola
UK	United Kingdom

Introduction

In late 2002, a new private military and security company (PMSC) was formed by British Lt. Col. Tim Spicer, a notorious and controversial figure in the new global "defense assistance" industry. Aegis Defense Systems Ltd is based in London, with offices in Iraq, Afghanistan, Bahrain, and the United States. Its services include risk assessment; the provision of security guards for corporate, humanitarian, and governmental clients; and a wide array of security training courses. As its name implies – Aegis refers to the shield of the Greek god Zeus – the company offers protection and security, as well as control and coordination.

In 2004, the Pentagon awarded Aegis the largest contract ever given to a PMSC involved in Iraq: $293 million to provide bodyguards, Iraqi security service trainers, and an office that would coordinate all the other security companies operating in Iraq (Flaherty 2004). Initially, there was a storm of protest to the award of this "no-bid, cost-plus" contract. Peter Singer, author of the book *Corporate Warriors*, said:

> This contract is a case study in what not to do. The Army never even bothered to Google this guy to find out that he was involved in political scandal, that he was a source of parliamentary investigations and the owner of failed businesses.

> (Sennott 2004)

Other large and well-known firms from both the UK and the US, including Blackwater, Dyncorp, and ArmorGroup, claimed that Aegis was unqualified to offer the services it was promising: none of its principals had any Iraqi experience, and it did not seem able to provide the personnel and equipment necessary to do the job (Witte 2005). In response, the Pentagon's Inspector General commissioned an audit. When it was published a year later, in April 2005, it listed a number of glaring deficiencies in Aegis' performance, and concluded that "there is no assurance that Aegis is providing the best possible safety and security for government and reconstruction contractor personnel and facilities as required by the contract" (Murrell 2005: 3). Nevertheless, a few months later the DoD extended its contract with Aegis. Celebrating the victory, Tim Spicer noted that

his company was "completely integrated into the military chain of command" in Iraq (O'Connell 2005).

The name of Lt. Col. Spicer, the former head of two of the most controversial firms in the industry, did little to help legitimize the new face of the PMSC industry. In the 1990s Spicer had been the public face of two now-defunct companies – Executive Outcomes, a joint UK and South Africa company, and later Sandline International, a UK firm – both of which offered full-fledged military services to countries that could pay.

Angola hired Executive Outcomes (EO) in 1993 to train the Angolan army and then help rout the remnants of the UNITA rebel guerrilla group that controlled access to profitable oil fields (Singer 2003: 104ff.). Using members of a former South African battalion that had been used to fight African National Congress rebels in the apartheid era, and helicopter gunships and weaponry bought from downsized Eastern European militaries, EO made Angola safe for resource extraction by such companies as the UK-based Branch Heritage. In 1995, the Sierra Leonean government hired EO after its embattled military lost ground to brutal Revolutionary United Front (RUF) rebel forces, which terrorized civilians, and held crucial diamond mining areas. Skirting an embargo on supplying weaponry to the Sierra Leonean government, EO ultimately received $35 million for driving the rebels from the field. After EO left, United Nations peacekeeping forces were dispatched to the capital, Freetown, and were able to hold the peace long enough to bring an end to the conflict. Executive Outcome's actions in Sierra Leone resulted in a scandal in the UK government – now known as the "Arms for Africa Affair" – in which it was alleged that certain members of the UK Foreign Office gave tacit approval to EO's operation, and allowed it to circumvent Parliamentary policy. Unable to shake the bad reputation it had acquired as a result of the Arms for Africa Affair, and its hiring of questionable members of the ex-South African Defense Forces, EO formally disbanded in 1999.

In 1997, however, Sandline – one of the companies formed out of the ashes of EO – agreed to a similar mission in Papua New Guinea: to rout a rebel group that was occupying the largest copper mine in the world on the island of Bougainville. The rebel group was a mix of indigenous peoples protesting further development of the copper mine, and disaffected Papuans, protesting the corrupt government of Sir Julius Chan. But Papua New Guinea, unlike Sierra Leone or Angola, had a functional military, and they threatened a coup should Sandline be hired to perform its work. After details of the contract were leaked to the public, demonstrations and riots occurred in response, and eventually Prime Minister Chan was forced to resign. Sandline staff quickly left the country.

After these incidents, Spicer tried to remake Sandline into the leading organization promoting its type of forces for UN peacekeeping operations. But by April 2004 the company closed its doors, tarnished by the widespread sense that it had tried to push for too much change too quickly. On its website, which had served as a clearinghouse for articles debating the use of PMSCs, the company posted the following statement:

The general lack of governmental support for Private Military Companies willing to help end armed conflicts in places like Africa, in the absence of effective international intervention, is the principal reason behind Sandline's decision. Without such support the ability of Sandline (and other PMSCs) to make a positive difference in countries where there is widespread brutality and even genocidal behavior is irretrievably diminished.

(Sandline International 2004)

Given its unseemly demise, many were surprised to see the new Aegis firm emerge unapologetically from the ashes. As one member of another prominent firm put it, "we don't even want our name mentioned in the same paragraph as Aegis, or any other organization connected to Spicer."[1] Later that year, the two most prominent industry organizations debated whether or not to admit Aegis. But, after some grumbling, the British Association of Private Security Companies (BAPSC) eventually decided to admit Aegis to its membership, as did the US-based International Peace Operations Association (IPOA).

Since then, Aegis has weathered additional scandals associated with its operators shooting civilians in Iraq. Recently it was awarded the Armed Contractor Oversight Directorate Contract in Afghanistan. The most recent report from the Office of the Special Inspector General for Iraq Reconstruction gave it a passing grade (Bowen 2009: 30). It seems that Aegis, like the private military and security industry more generally, is here to stay.

* * *

Military operations at the beginning of the twenty-first century include a new cadre of private actors like Aegis and the multinational contractors who work for them. Increasingly, the traditional responsibilities of state military forces have been ceded to these private actors. Privatized security has become a global business, with individuals recruited from many countries and backgrounds.

This new industry lends itself to headline-grabbing images: The "world's first private Christian army" defends US-held territory in Baghdad; legions of consultants advise overstretched militaries and transnational corporations on how best to suppress insurgencies and end civil wars; former soldiers with questionable backgrounds from multiple countries shoot civilians on highways in Baghdad. Meanwhile, some companies deny death benefits to those who die in what can only be called combat, or short-change employees filing insurance claims. Headlines proclaim that "the dogs of war have gone corporate," or that "business is making a killing."[2] There is a lot of truth behind these headlines.

Meanwhile, policy-makers and scholars are trying to understand an industry that seems at once a return to familiar trends of the past (soldiers for hire), and a completely new species of international actor. At a 2006 conference at the NYU Law School on the problem of regulating private military and security companies, Christopher Beese, the most public face of the firm ArmorGroup, expressed his continued astonishment (and exasperation) at the fact that academics and policy-makers continued to find the legitimate activities of his publicly

traded company so interesting. "I am here because you care about me," he began, "not because I care about you." Why indeed do we care about Beese and his industry? And what exactly are they doing anyway?

The growing use of contractors is occurring in three separate sectors: alongside the military in places like Iraq and Afghanistan, where parallel services are provided; in peripheral areas where the military is not present but large corporations are, and in training missions that used to be conducted by the military. Contractors follow the contracts and the money, and this means that they are usually found in zones of instability and war, where either defense contracting or multinational business is taking place.

PMSCs challenge the essential and longstanding idea of what constitutes a political state, and how violence, anywhere, is named legitimate, or not. An abbreviated version of Max Weber's definition of a state is often repeated by social scientists: a state "claims the monopoly of the legitimate use of physical force within a given territory" (Weber 1946: 78). Weber's definition is much wider than this, however, and underscores the connection between justice, power, community, and security that is the essence of politics:

> Today the relation between the state and violence is an especially intimate one. Today, we have to say that the state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.... Specifically, at the present time, the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the "right" to use violence. Hence, "politics" for us means striving to share power or striving to influence the distribution of power, either among states or among groups within a state.
>
> (Weber 1946: 78)

A few sentences later, he specifies that "legitimate" means "considered to be legitimate," that is, law and "right" rest upon a shared consideration among people, which is also the essence of politics. The connection between the state and the use of force, and by extension modern political life itself (which includes the debates about what should or should not be considered legitimate), is explicitly challenged by the flourishing industry of PMSCs, whose access to the use of force is so often only weakly linked to the state. The issue is even more important than Weber's definition, however. As Deborah Avant puts it: "state control of force (though often imperfect) has provided *the best* (even if highly uneven) mechanism human kind has known for linking the use of violence to political processes and social norms within a territory" (Avant 2005: 3). In other words, Max Weber's definition of the state represents *the best way* by which violence actually is judged, and by extension, controlled.

In the 1990s, US military officers became concerned about the rising levels of contractors working alongside the military performing various jobs, including weapons repair, logistics provision, and administration. The widespread use of

the American PMSC Dyncorp for civilian policing units in Bosnia and Kosovo in the 1990s drew attention to the ways in which the State Department was outsourcing post-conflict reconstruction. Before the attacks of September 11, 2001, the debate focused on the quiet transformation of the mercenary trade into an industry that, if not yet seen as legitimate, began to wield increasing influence. Questions of legitimacy aside, everyone could agree that the industry was a force that would need to be reckoned with. In Iraq, especially after the grisly deaths of four contractors working for Blackwater in Fallujah in April 2004, attention began to shift toward the ways in which a certain new breed of PMSC was changing the profile of force on the ground.

Speaking more broadly, the ideal image of a globe populated by territorially and legally bounded sovereign states is being challenged by the rise of strong non-state actors of all kinds: armed groups, ranging from recognized rebel and guerrilla movements to transnational criminal and terrorist networks, multinational corporations, and international non-governmental organizations (NGOs). Our world may consist not of territorially bounded areas so much as of alternating zones of law and lawlessness, places where state power is so weak as to demonstrate a failed state altogether, and where contracts are enforced and security provided in distinctly sub-state ways. This fluid situation has contributed to a changing culture of warfare, or armed conflict, or complex emergencies – or, in the newest nomenclature, "contingency operations." Not only are there new actors on the ground amidst violent conflict, but the ways in which we define and understand conflict are changing. The legal and ethical categories that have been traditionally used to judge warfare do not seem adequate to the task: they are "on the cusp" of comprehensibility (Coker 2007).

This book focuses on PMSCs to better understand them, but also because they can serve as a prism, to separate out some background trends and assumptions that have given these firms their staying power. If Avant is right, and "the PMSC train has left the station," I want to illuminate the ideas that made such a train line possible. PMSCs are more than ambiguous entities that pique our curiosity; their prominence draws attention to larger theoretical issues at the heart of contemporary political life. This analysis requires an understanding of the background assumptions that have allowed this new phenomenon to flourish. Some of the assumptions, such as those of liberal capitalism, are familiar to us, and PMSCs operate according to the assumptions of contract and profit which lie at the heart of capitalism. But many of these conditions are truly new, having arisen during the last two decades. They include a new conception of military service in the post-Cold War era, and a novel view of risk and its impact on business and conflict. The assumptions that have helped PMSCs thrive at this historical moment include, too, a crisis in ethical and just-war thinking. If PMSCs are our future, which it seems like they are, then it will be a future that is quite different from the one we have come to know. And if they are the logical outcomes of shifts and changes that have been happening for a long time, then they have caught us by surprise. They are either the foreshocks, or the aftershocks, of a tectonic shift in the relationship between violence, the state, and politics.

Roadmap

This book is divided into five chapters. The first addresses the complex identity of PMSCs, which I describe as protean: a mix of organizational cultures that represents a new type of international actor and resists governance. PMSCs sometimes operate as corporately organized proxy forces – auxiliaries – to the military; which may make them more dangerous than any single group of mercenaries. The second chapter provides five "origin stories" to explain the advent of this new species of actor. The first three – the market story, the political story, and the story of the rise of private authorities – are those most often told by analysts. Two more recent changes also deserve analysis: the advent of a certain type of new war, fought by a military undergoing changes in strategy and tactics; and the rise of a new type of professional soldier, marked by a much more individualized identity, and, in many ways, good material for a future private security contractor.

There is a more diffuse change, however, that is also responsible for the rise of the PMSCs. This is the rise of the risk industry more broadly, which is the subject of the third chapter. This chapter looks at those specific firms that have grown up in and around the longstanding political and war-risks insurance industry. PMSCs that provide security and analysis to businesses and NGOs often do so as part of a risk-reduction strategy mandated by insurance coverage. The insurance industry itself is part of a larger "economy of risk" that some theorists say defines the late-modern era. Although they may be hard to define and understand, PMSCs are emblems of this era. Seeing them through the lens of the "remarkable story of risk," as Peter Bernstein called it, enables us to understand why they are here to stay (Bernstein 1996).

The fourth chapter takes up the question most often associated with the industry: how can it be regulated? Here there is an interesting paradox: although they are often described as being "beyond the law," there are in fact multiple forms of legal tools that apply to PMSCs. In this chapter I argue that the protean nature of the PMSC described in the first chapter has resulted in a clash of legal cultures. PMSCs could be regulated using three cultures of law: military law, contract law, or International Humanitarian Law. The combination of all three, however, has yet to create a distinct legal personality that can be easily reined in. Military contractors, especially the armed security contractors profiled in this book, are the uncomfortable inheritors of this mixed genealogy: and as yet no one has determined which body of law really fits. This chapter is as much about legal theory as it is about the status of contractors, for it uses contractors to discuss more broadly the role of law in war.

There is even more confusion about PMSCs in the ethical realm. Looking at them through an ethical lens, the fifth chapter asks: how should we understand these contractors in a normative light? In this chapter I characterize them as inhabitants of an ethical "frontier," where actions are judged in an entirely different manner than either those of a military organization or civil society. The language of the "contractor code of conduct" embeds itself in a different set of

practices than does the language of military ethics – now a central part of a military education – or that of civil society. If we have become accustomed to a division between military and civil society, we must also consider this third category, which is distinct from the military–civil divide. Finally, in such a volatile and current field, policy recommendations are necessary, and in the epilogue I add my own. If in fact the train has left the station and PMSCs are here to stay, it will be necessary to carve out a new way of guarding the guardians.

Cultures of risk, law, and ethics: these three analytic lenses will sharpen the view of exactly what the phenomenon of PMSCs represents. At the same time, the process works in reverse: the PMSC can serve as an enfolding case study, or living example, of these larger, more abstract, issues. If extremism has the suicide bomber as its symbolic face, then liberal capitalism is best symbolized by the private military contractor. They are, in a sense, polar opposites. The one uses its body as a weapon, representing the religious expression of martyrdom to achieve political ends. The sacrifice of the body for specific, territorially bounded resistance to foreign occupation, metaphysically expressed, contrasts sharply with the highly armored security guard, protecting a person, a convoy or a building from harm, but at the same time doing homage to two of the liberal West's greatest icons: the right to contract and the right to make money. In order to comprehend modern warfare and the evolution of the state, we have to understand the PMSC.

Acknowledgments

1   The complex identity of the PMSC

In the last decade, private military and security companies (PMSCs) have been the objects of great interest. Scholars, policy-makers, and journalists have worked to define who these new actors are, and how they should be used and judged. Two issues arise consistently amidst all of this attention. First, PMSCs defy easy categorization: we do not really understand what they are. Second, regardless of what they are, we suspect that they are tainted, potentially corrupt, and somehow suspicious entities: whatever they are, we do not like them. These two issues are fundamentally connected. Can there be a legitimate mercenary-like force operating in war zones around the world? Should there be any such thing as a "corporate warrior"?

Protean shape-shifters

All studies and accounts of PMSCs begin with the problem of simple definition: they are ambiguous or polymorphous entities – a mix of old and new, public and private; slippery, and hard to pin down analytically (Avant 2005: 22; Singer 2003: 40; Alexandra *et al.* 2008: 7; Chesterman and Lehnardt 2007: 3). Researchers, governmental agencies, and Congressional subcommittees decry the lack of even the most basic information regarding the number of PMSCs worldwide, what they are doing, and whom they employ. In January 2008, the Chairman of a Senate Subcommittee on Oversight of Contingency Contracting, Senator Thomas Carper (D-DE), noted that "five years after going into Iraq, we still do not know how many contractors are there. We have estimates, but they differ" (US Senate Committee on Homeland Security 2008: 2). Seven months later, after an extensive attempt by the US Government Accountability Office to narrow down these numbers, the Congressional Budget Office reported that the current estimate of the amount of money spent on private contractors was between $15 billion and $20 billion (Congressional Budget Office 2008). In "the most definitive account yet of the private security industry in Iraq," wrote T. Christian Miller of the *Los Angeles Times*, "the numbers are, to put it mildly, squishy" (Miller 2008).

The task of characterizing PMSCs qualitatively is also difficult. During a 2002 House of Commons hearing, a Member of Parliament commented on the difficulty of regulating these firms, noting that keeping track of the facts was

"like sand going through your fingers: companies dissolve, ownership is vague and the soldiers themselves are not known or named … [these companies] are *very protean, they are like amoeba*; they come and go" (MacShane 2002: question 158; my emphasis). Years later, and despite continued study, little has changed. The corporate structure of these firms, their exact affiliations with governments and businesses, and their legal status remain murky. On the ground, it is difficult even to identify who they are or for whom they work. Some security contractors might be well-trained, with recognizable uniforms. Others are outliers among an already hard-to-classify force. As one Marine Colonel put it:

> On the other hand, there were other security contractors over there that were just cowboys. They clearly had neither the training nor the experience. Could I identify them? No. They wore a mixed bag of uniforms. Nobody wore name tags. They didn't have unit logos. You'd run into these people in town; you would see them handling weapons improperly. You would see them with really kind of a bad attitude, and there's nothing you could do about it. How do you identify them? Well, there's no license plate on their car. They're driving an SUV. Some of them weren't even in any uniform even within the team.
>
> (Col. Thomas X. Hammes, in Gaviria and Smith 2005)

Among scholars, the most common complaint is that PMSCs lack accountability. First, PMSCs are literally hard to *count*: it is difficult to ascertain how many there are (estimates of firms providing armed security in Iraq range from 50 to 75, and if the definition is widened to include firms that provide "security services" but are unarmed, the number could be as high as 280). It is hard to know how much money the government has paid for armed security contractors (estimates range from $6 to $10 billion) (GAO 2005; Congressional Budget Office 2008; Hartung 2006). And it is unclear what kinds of jobs they are doing and where. Second, it is unclear exactly who is in charge – what the lines of authority are within companies and between firms, and their contracting and sub-contracting authorities – and so not obvious who is liable for mistakes or breaches of contract or crimes. Third, PMSCs literally lack "an account" – a story or narrative that can make sense of their role. The lack of an explanation of what these firms are, and how they came about, contributes to the sense that they are indeed shape-shifting, not just numerically and factually, but as organizations themselves.

PMSCs are what organizational theorists refer to as "informal organizations," entities whose basic structure resists easy categorization. Such organizations can act effectively in unclear situations, are quick to adapt, and cohere through informal trust networks. Many times, such informal organizations play a "boundary-spanning" role between two other formal organizations – in this case the military and the bureaucracy (Scott 1981: 185; Williams 2002).

In public policy analysis, boundary-spanning organizations are often called "hybrids" or "quasi-organizations," since they combine aspects of both public

and private organizations. In 2007, the Congressional Research Service issued a report on the role of these hybrids in "the quasi government." The report focused on public–private partnerships with non-governmental organizations (NGOs), federally funded research organizations like the RAND Corporation, and any private business with "the federal government as a guaranteed customer":

> The quasi government, virtually by its name alone and *the intentional blurring* of the governmental and private sectors, is not easily defined. In general, the term is used … to refer to entities that have some legal relation or association, however tenuous, to the federal government.… While different categories of quasi governmental organizations can be described and found useful as an analytic tool, *such categories are artificial, with porous lines of distinction and differentiation, and tend to be imposed upon the disparate entities after the fact.*
>
> (Kosar 2007: 2; my emphasis)

One reason PMSCs are hard to pin down is that they are more than one thing at once, and any analytical categories or typology will have "porous lines of distinction and differentiation." In itself this may not be such a strange thing – many organizations may blur categories – but in the case of PMSCs, the categories being blurred are ones that have typically resisted any such combinations.

A good (if superficial) example of the difficulty of trying to clarify what PMSCs actually are is the longstanding debate about which name (or acronym) to assign these firms. Originally they were called PMFs – private military firms – which emphasized their use of former soldiers and their connection to the military. Firms resisted this moniker; wanting to downplay their offensive military capabilities, they referred to themselves PSCs – private security companies. Recently, a compromise was reached: the name was combined, and they are now routinely referred to as PMSCs. In some circles, a new name is being tried out: they are "peace and stability operators" in "contingency operations" (Brooks 2009).

PMSCs are not the only current aspect of conflict that is inspiring ambivalence and perplexity. Current conflicts are called "new wars": they are challenging old ideas about strategy and tactics, and they are requiring a mix of actors and agencies on the ground. They are filled with a "polymorphous violence" that runs the gamut of precision missile strikes and human suicide bomb attacks (Aron 1959: 57). In the battle against transnational terrorist networks, the US is at war with an enemy – al-Qaeda – which has been described as a "protean enemy" with shape-shifting qualities (Stern 2003). These enemies exist in the midst of a "new world disorder," marked by much conceptual anarchy (Jowitt 1992: 308). The etymological root of the English word for war – *werre*, from the Germanic *verwirren* – meaning "to bring something into confusion, to perplex," has never been more accurate. Confusing entities in the midst of a confusing form of war, in a confusing time, call for some attempt at establishing conceptual clarity.

For the sake of both accuracy and consistency, I will use the term "protean" to refer to PMSCs: they are more than just hybrids, since they combine more than two organizational types. "Protean" suggests a flexible, changing, and multifaceted organization – but one that also has underlying ominous powers: after being captured, Proteus the sea god changed into a lion, a serpent, and a leopard, before he could be subdued. One way to understand the conceptual (and normative) confusion that surrounds PMSCs is to see it as a direct result of their protean character. We do not know how to judge what we cannot understand, and existing categories of classification and judgment fall short. The fault here is with us, not them; we are stuck with outdated ways of seeing, and need to adapt. And in the meantime, we greet unfamiliar categories with a mixture of paranoia and suspicion. The anthropologist Mary Douglas argued famously that "dirt is just matter that is out of place": shoes on the kitchen table are much harder to tolerate than shoes on the floor; trash at the dump is not as offensive as trash by the side of the road (Douglas 1966: 50). Cultures invent complex rules to assign places to things, and to order and make sense of the world. Objects "out of place" then come to inspire varying amounts of animosity and anxiety, as well as a desire to clean them up and order them into place. They are described as "dirty," but that is only because they are out of place, not because they actually are dangerous.

Ambiguous and hard-to-place entities also inspire fascination and wonder. In Plato's *Republic*, Socrates tells his interlocutors that philosophy begins in questioning, and questioning begins with a puzzle, and ambiguous entities are always puzzling. These ambiguous things "roll around" between categories and appear to be more than one thing at the same time (Plato 1991: 479d). The fascination that PMSCs hold for scholars is partly due to this ambiguous character.

The mercenary problem

To those who express confusion about what private military and security contractors are, there is a ready answer: they are merely modern versions of the age-old mercenary fighter, a throwback to the day of mercenaries and pirates, private actors wielding deadly force as proxies for governments and corporations. This negative characterization is one that PMSCs have been unable to shake.

Two related criticisms have always dogged mercenaries: lack of discipline and lack of reliability. At least since the beginning of the modern state system, every description of them refers to their general untrustworthiness and risk aversion. Frederick the Great, in the eighteenth century, claimed that contracted mercenary forces possessed "neither courage, nor loyalty, nor group spirit, nor sacrifice, nor self-reliance" (quoted in Singer 2003: 33). Clausewitz noted that the contracted forces he observed were "an expensive and therefore small military force. Even smaller was their fighting valued: extremes of energy or exertion were conspicuous by their absence and fighting was generally a sham" (Clausewitz 1976: 232).

PMSCs garner the same criticism. Any attempt to legitimize the business has been met with the suspicion that security contractors or the firms they work for are ineffective, untrustworthy, undisciplined, disloyal, corrupt, and generally renegade. We hear about the "cowboy" attitude of security contractors, endangering regular military forces with their bravado, or we hear of contractors underperforming – doing an incomplete or substandard job, and then running away with the money. There is good evidence that these claims are often exaggerated, and historical examples of organized mercenary groups have often belied this criticism (Thomson 1994: 67; Singer 2003: 34). Certainly, regular troops also shirk and mutiny and underperform. But in comparison to regular, state-based militaries, who can be ordered into combat under highly policed command-and-control structures, security contractors most often seem like just a trumped-up version of their mercenary cousins: as both a risk to operational control and risk-averse. Nothing captures this tension like the ongoing debate about the use of the "M" word.

In 2005, the United Nations Commission on Human Rights established a Working Group to study the problem of PMSCs, which it steadfastly referred to as mercenaries.[1] The group expressed concern about "the new modalities of mercenarism, and noting that the recruitment of former military personnel and ex-policemen by private military and private security companies to serve in their employ as 'security guards' in zones of armed conflict seems to be continuing" (United Nations 2009). In response to the efforts of this group, Doug Brooks, the head of the PMSC industry trade group, objected to the use of the term "mercenaries":

> The Working Group's continued use of "mercenary" is perceived as derogatory and presents a significant obstacle to exactly the kind of cooperation vital to successfully addressing the key issues.… IPOA recommends that the Working Group remove the word "mercenary" from both its name and mandate. A change to "the UN Working Group on Stability Contractors (or something similar) will … reflect the true nature of the industry …
>
> (Brooks 2009)

So far, the group has kept its name, perhaps echoing the sentiment expressed by *Washington Post* reporter Steve Fainaru, who – when he was criticized for using the term "mercenary" in many of his accounts – replied:

> The other day you were suggesting that I used the M word, as you call it, because it sells. In fact, I think it's self-evident that we're talking about mercenary activity. I wouldn't use it if I didn't believe it, and I'm not throwing it around to call people names. I know all the arguments, etc., but to me that's the most accurate term available.
>
> (Fainaru 2008)[2]

In fact, the history of the modern state begins with the explicit rejection of mercenaries. Although rarely adhered to in practice, the ideal of a state-based standing

army drawn from its own citizenry, holding in Max Weber's oft-quoted line, "a monopoly on the legitimate use of force," has become almost a truism, posted like a motto over the door of the state (Weber 1946: 78). Private militias and mercenary companies need to be disbanded and delegitimized if the project of proper state-building is going to occur, and part of this effort involves condemning them – justly or unjustly – as dirty and dangerous. No one was more explicit about this project than Machiavelli.

Machiavelli's two major works, *The Prince* and the *Discourses on Livy*, constitute the beginnings of a modern political theory. The centerpiece of his advice for new states, whether republics or principalities, is the need for a state to possess its "own arms," that is, sovereign control over those who fight for it.

> The principal foundations that all states have, new ones as well as old … are good laws and good arms. And because there cannot be good laws where there are not good arms, and where there are good arms there must be good laws, I shall leave out reasoning on laws and shall speak of arms.
>
> (Machiavelli 1985: 48)

The use of the word "arms" is deliberate. Not only must a state possess the ability to defend itself with an army and armaments; these arms must be attached to "the body politic." They must be "one's own," and not borrowed or rented from any others. Machiavelli's rejection of mercenary forces is explicit: they are lazy, untrustworthy, bad fighters, and motivated only by pay.

> Mercenary and auxiliary arms are useless and dangerous … for they are disunited, ambitious, without discipline, unfaithful; bold among friends, among enemies cowardly; no fear of God, no faith with men; ruin is postponed only as long as attack is postponed and in peace you despoiled by them, in war by the enemy. The cause of this is that they have no love nor cause to keep them in the field other than a small stipend, which is not sufficient to make them want to die for you.
>
> (Machiavelli 1985: 48)

The connection between a rejection of mercenaries and the creation of a state-based citizen army as the foundation of the modern state system is made again and again in the writings of political theorists. Sovereign control over militias, the monopoly over the use of force, is the lifeblood of the state. The condemnation of PMSCs as a return to the days of mercenary armies, regardless of their efficacy, stems from this sense that they are anathema to the meaning of a nation-state. The mercenary label thus accounts for much of the negative reaction to these firms; we are culturally and politically opposed to anything that seems to symbolize the undoing of the state (Lanning 2005).

Critics of PMSCs see the proliferation of firms and the increasing reliance of the military on their presence as a sure sign that the state is losing its monopoly on legitimate violence, and that the world will soon be awash in out-of-control

mercenary bands, getting rich off of increasing instability. These pessimists see a widespread conspiracy to undercut democratic authority of the use of force both abroad and domestically. In the US, even before the publication of Jeremy Scahill's book *Blackwater: the Rise of the World's Most Powerful Mercenary Army* (2007), many saw the links between the Bush Administration, companies like Halliburton, former generals, and the iron triangle of K-Street lobbyists for the defense industry as hatching a plot to distance US use of force from all but the most serpentine processes of oversight. Scahill also asserts that the connections between Blackwater's founder and CEO Erik Prince and the Catholic Church give these forces the veneer of "holy war" (Scahill 2007: 20) Outsourcing military labor, like outsourcing in other industries, has the effect of diffusing responsibility, avoiding onerous regulations, and hiding the adverse affects of policy, such as the healthcare costs associated with long-term commitments to domestic employees. The conspiracy account maintains that the rise of the industry has been to the consequence of a number of under-the-radar deals between certain industries and certain governments.

Defenders of PMSCs, or those who have what Deborah Avant calls an "optimistic" attitude toward their use, usually respond to the mercenary moniker by denying that contemporary PMSCs are anything like mercenaries of old, or by saying that even if they are mercenaries, this should not condemn them (Avant 2005: 5). Optimists begin their defense by asking if it is really possible to *define* a mercenary. They point out that even the UN Special Rapporteur for the Regulation of Mercenaries, Emanual Ballesteros, spent five years trying to come up with a workable definition of a "mercenary," and the result was unworkable and laughably vague.

Another line of defense is to show that defining a mercenary by the "intent" to profit from military service will include practically any serviceman or woman. Defenders may offer a long list of reasons why they believe these companies are nothing like the feared mercenaries of the past: they are under corporate control; they are contracted by legitimate entities; they are transparent and well-regulated (whatever others may think); and they are accountable on all kinds of levels. Defenders note that PMSCs are legitimate businesses filling a necessary niche in a service industry that has long operated in and around the military. And their actions are undergirded by a fundamental right to contract (see Frost 2008b). Optimists paint a picture of an adaptive and responsive industry that has freed up businesses and governments to pursue legitimate goals with maximum flexibility and responsiveness.

Defenders argue that PMSCs do not operate in shadowy illegitimate ways; they are licit, transparent, and organized. PMSCs are "lawful, profit-seeking international companies" that operate "under normal legal and financial constraints. They have little in common with the infamous 'mercenaries' of the past that thrived on anonymity and individual gain. PMSCs are legal, visible, and accountable" (Doug Brooks at State Department forum, quoted in Fisher-Thompson 2003).

But even if they *are* mercenary-like, defenders argue that it might be possible to admit them back into the coalition of forces working in Iraq or Afghanistan

under certain new rules. The feared dangers might be diminished by the very fact that they are "only" motivated by money and "only" restrained by contracts, so they can be fired if anything goes wrong. Moreover, given the large number of potential mercenaries out there, it is better to give them some organized cover of legitimacy, and put them to some good use, lest they come back to haunt us. According to Doug Brooks:

> However, widespread international bias against these companies means that their potential for peacekeeping, peace enforcement, and humanitarian rescue missions could very well remain tragically untapped. Ironically, not using legitimate private firms will probably lead to a resurgence of uncontrollable individual freelance mercenaries who will flock to satisfy the profitable demand for military expertise, but who have far less regard for the legitimacy of their clients.
>
> (Brooks 2000: 129)

Among these optimists are those who see the humanitarian use of these forces, augmenting United Nations or NATO missions or even replacing them altogether (see the IPOA Concept Paper, in Brooks and Wright 2007; Newton 2008).

The final line of defense offered for the use of mercenary troops stresses the ubiquity of these kinds of forces, despite the normative preference for a citizen-based army. Defenders cite examples such as the ancient Greeks, and the Hessians, and the use of Air America in Vietnam. If it was acceptable in the past, why is there so much protest now? These lines of defense often bear a resemblance to a defense of the ubiquity of prostitution, that other oldest profession (Baker 2008).

The threat of auxiliary forces

Machiavelli saves his most severe criticism for another type of proxy force, which he calls "auxiliaries," after the Roman fashion. Although mercenaries are too lazy and disorganized to pose any real longstanding threat, these other "useless arms" are a real danger. This is where Machiavelli's contribution is often overlooked or misread. Auxiliaries bear a much stronger resemblance to PMSCs than mercenaries; in fact, the very things that defenders say to distinguish PMSCs from mercenaries make them sound like the much more dangerous type of force for Machiavelli.

Machiavelli's criticism of auxiliary forces comes from his reading of Roman history, in which the empire's military forces were divided between legions, composed of Roman citizens, and auxiliary forces, made up of non-citizens from various ethnic groups who often served at the edges of the empire, far from their own ethnic base.[3] According to Machiavelli, auxiliary units were well-organized, well-coordinated, and highly skilled. And, importantly for Machiavelli, they were aware of their power and had varying levels of loyalty to the central state of Rome:

> Let him, then, who wants to be unable to win make use of these arms
> [armies], since they are much more dangerous than mercenary arms. For
> with these, ruin is accomplished; they are all united, all resolved to obey
> someone else.... A wise prince, therefore, has always avoided these arms
> and turned to his own.... And it has always been the opinion of judgment of
> wise men "that nothing is so infirm and unstable as the reputation of power
> not sustained by one's own force".
>
> (Machiavelli 1985: 57, quoting Tacitus, *Annals* XIII: 19)

If PMSCs are a new type of auxiliary force, more dangerous precisely because
of their organizational unity and skill, what type of force might this be? Recent
examples of auxiliary or proxy forces resemble those of the Romans: either eth-
nically based units that serve alongside regular military units, such as the
Ghurkas in the British Army, or the Swiss Guard unit that has historically
guarded the Vatican. The French Foreign Legion might be a better example,
since its members come from a variety of national backgrounds. The ability to
become a French citizen after three years' service is similar to the Roman
example. But these auxiliary units serve in a specific branch of the French armed
services: soldiers are governed under military law, and classified as members of
the military. By contrast, PMSCs are a distinctly new version of auxiliary force.

Some contemporary scholars recognize the various and distinct eras of
Roman auxiliary forces, and agree with Machiavelli's general assessment that,
eventually, their skill and organization made them a danger to the overburdened
Roman army. One even likens Roman auxiliary forces to modern-day PMSCs
(Whitby 2007: 521). And while the concept of "auxiliary forces" is less well-
known than that of "mercenary," it does fit the industry's own self-definition,
offered in defense of the accusation that they are mercenary-like. PMSCs are
proxy forces, they work alongside a wholly state-based citizen military, but do
not meet the strict definition of a national force.

Proxy forces come in many shapes and sizes (for an excellent summary of the
subject, see Davis and Pereira 2003). Sometimes they are indigenous forces, such
as Afghanistan's Northern Alliance, which in late 2001 helped the US military
oust the Taliban from Afghanistan. Sometimes they are indigenous forces trained
by external militaries, such as the Sunni militias that were co-opted, armed and
trained as part of the Iraqi counter-insurgency strategy initiated in 2007. In all of
these cases, as with the Roman auxiliary forces, rewards have been given for those
who align their own strategic goals to those of the central power that provides
them logistical support. And in all of them, citizenship is not assumed, and loyalty
is in some sense problematic, or based on a different set of incentives than that of a
regular military force. Treating PMSCs as proxy forces, rather than mercenaries,
allows for a more nuanced and accurate understanding of their activities and func-
tions. It also helps to clarify the dangers of these types of forces, which – as
Machiavelli points out – are dangerous precisely because of their organizational
loyalty, unity, and spirit. But how can we begin to characterize these new proxy
forces more precisely? How are they distinct from their predecessors?

Making sense of the chaos: five taxonomies

The easiest way to categorize PMSCs is simply to list companies' names. Although this is often done, it provides little analytical value. Taxonomies, on the other hand, allow for patterns and "family resemblances" to emerge, while also illuminating the heterogeneity within and among categories. The best place to begin is with the series of definitions used by Robert Mandel, in the first serious academic work done on PMSCs, *Armies Without States* (Mandel 2002). Mandel includes any organization that meets two simple definitions:

1   The *ownership and control* of the organization providing the services is *distinctly non-governmental*; and
2   the nature of the services provided focuses on the provision of *coercive security*, including elements such as advice, logistical support, intelligence, or direct combat troops and related equipment (Mandel 2002: 94).

This definition encompasses "those colluding closely with national and local governments, those serving international, transnational, or sub-national organizations, and those out for their own personal idiosyncratic ends (or those of other individuals)" (Mandel 2002: 94). Although security services must relate in some way to the use of coercion to create or maintain order, there is no specification of the kind of coercion applied, if any. This allows the same broad category to include "business-suited security consultants who never venture outside of their offices as well as combat troops in army fatigues who perform exclusively in the battlefield" (Mandel 2002: 94). In Mandel's definition, the idea of security itself can be as narrowly or as widely construed as necessary, covering bodyguards or personal security details, gated communities, and mobile teams guarding State Department diplomats abroad. The defining feature is that security is offered through the provision of coercive force, which is neither directly provided by nor directly controlled by the state (regardless of contracting arrangements). Mandel then poses the following questions, to which I add my own commentary (Mandel 2002: 100–105).

First, what is the geographic *scope* of the security being privatized? Is it foreign, where security is provided to governmental or non-governmental groups operating outside their own state of origin? Or is it domestic, substituting for the lack of public security in order to maintain an area of domestic order? Again, although this book has focused on the international provision of security, this question addresses the fact that the privatization of security influences a trend with domestic and international configurations. This question reminds us that there is a continuum of private security options, from unarmed bar bouncer to the fully armed PMSC in the helicopter.[4]

The second question has to do with who the principal is: who initiates the contract? Is the private security initiated from the top, by governments themselves, to substitute for foreign or domestic entities? Or is it initiated from

the bottom, by individuals or groups – including, as Mandel puts it, "militias, vigilantes, neighborhood watches, self-defense forces, gangs, and survivalists"?

The third question concerns the *form or content* of the private security provided: is it direct combat support, or is it merely advice and training? In the language of principal–agent theory, this pertains to the task the agent is being asked to carry out. There are important implications here, since, as many commentators have noted, some tasks are better suited to a contract, and others are not. Colonel Hammes highlighted this problem:

> I think contractors are best used for mundane, repetitive tasks that are clearly defined with a legal structure; for instance, running a training facility in Kuwait. MPRI [Military Professionals Resources, Inc.] runs a superb training facility with retired NCOs [non-commissioned officers] – vast experience, but it's not a combat zone. Very clearly defined regulations, rules, very clearly defined product which [it is hired to] deliver.
>
> You get into trouble when you put them in a situation – for instance, the security forces guarding Ambassador [L. Paul] Bremer. Blackwater's an extraordinarily professional organization, and they were doing exactly what they were tasked to do: protect the principal. The problem is in protecting the principal they had to be very aggressive, and each time they went out they had to offend locals, forcing them to the side of the road, being overpowering and intimidating, at times running vehicles off the road, making enemies each time they went out. So they were actually getting our contract exactly as we asked them to and at the same time hurting our counterinsurgency effort.
>
> (Gaviria and Smith 2005)

And finally, there is a fourth, crucial question: what is the overall *purpose* of the security provided? Is it aimed at maintaining the status quo – that is, keeping order, and guarding against threat – or is it aimed at overthrowing existing sources of (legitimate or illegitimate) power and authority? In part, this question aims to differentiate between defensive and offensive operations: defensive security aims to guard what has already been achieved or is already in place – an oil pipeline, a convoy of vehicles, a visiting diplomat, or an embassy. Offensive actions might aim to change the status quo: to re-acquire territory held by others, or to rescue others. This is a simple definition that can easily become complicated. Does interrogation or intelligence-gathering aim to change the status quo or not? Is it offensive or defensive? Is the diplomat being guarded part of a mission in Iraq that was meant to change the status quo? And if the answer is yes, then is not any support of a US mission in Iraq part of an offensive mission against an ongoing insurgency? Despite these complications, it is useful to at least have the question of the overall purpose of the mission highlighted.

Mandel's questions enable us to view dissimilar organizations on the same spectrum. Although his book focuses primarily on the provision of private security in and around war zones, where the field has grown most rapidly, the

Agents are *private*,
and provide forms of
coercive security

Scope (jurisdiction):
National?
International?

Principals:
Government?
Corporations?
Organizations?
Ad hoc groups?

Task:
Armed security?
Advice and training?
Logistical support?

Purpose:
Maintaining status
quo? "Defensive"
Overturning status
quo? "Offensive"
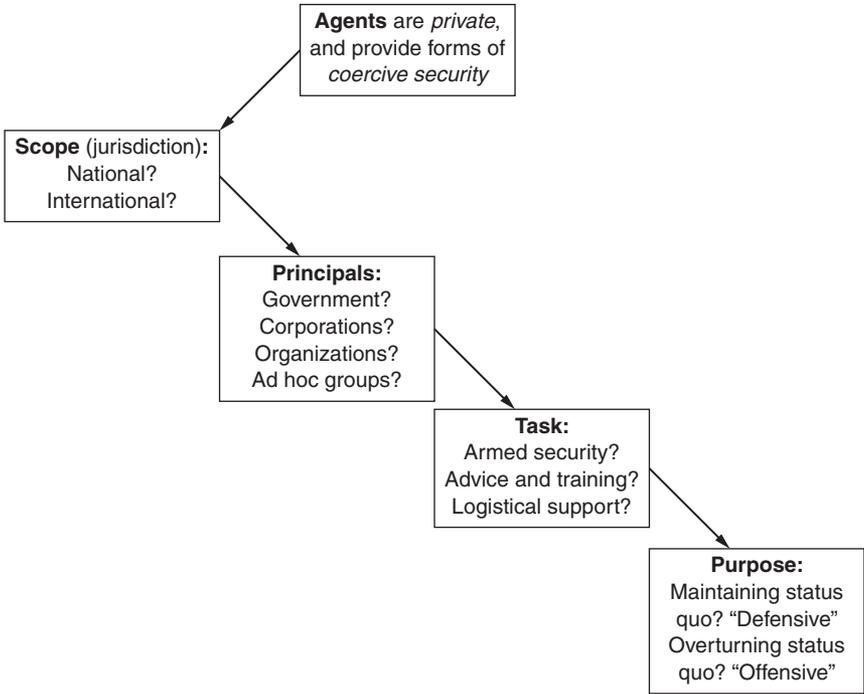
Figure 1.1   Mandel's definition, and questions.

protean quality of PMSCs and their contractors is due to the fact that they span
so many of these boundaries: they carry out domestic and foreign contracts that
are sometimes initiated "top-down" by governments, and "bottom-up" by indi-
viduals or corporations. They provide both direct support and indirect advice,
and they have worked to keep the status quo ante, subvert it, or – as in the case
of the example quoted above – exacerbate a larger situation even as they carry
out their narrow mission perfectly.

Taxonomy (1): judging the agents

Many taxonomies begin by simply listing firms alphabetically, combining firms
based in all types of countries and doing a huge array of tasks in multiple loca-
tions. David Isenberg's 2004 Report "A Fistful of Contractors" does just this
with regard to companies serving in Iraq, as does the more recent 2008 Human
Rights First report "Private Security Contractors at War" (Isenberg 2004; Human
Rights First 2008). Both publications warn readers that any list is not compre-
hensive, and is only included in order to "show the wide range of shapes and
sizes that PMSCs come in and the scope of activities they perform." The follow-
ing statement captures the problem:

Some have been around for decades; others are newly created subsidiaries of other firms. Some have contracts directly with the CPA [Coalition Provisional Authority] or the Army, other U.S. governmental agencies, or as subcontractors working for contractors, working for a government agency. Others work as subcontractors to primarily civilian contractors such as Halliburton, Fluor, GE, Parsons, etc. Still others work for the media or various nongovernmental organizations.

Some individuals and small teams have simply incorporated a company and offer their services through it. They are not necessarily looking for client contracts, although they might get lucky enough to get one, but are looking to be employed by the established firms, although the employment contract would be written with their company, not themselves as individuals.

(Isenberg 2004: 80)

One of the most important ways of classifying firms is to look at the national state of origin of the firm itself, and the various states of origin of those hired. This approach recognizes that the nation of origin often dictates the types of jobs it undertakes, where it works, and how it operates. For instance, most British firms distinguish their own "brand" of security contracting from that of American or South African firms. British firms frequently refer to the experience of former British military members in Northern Ireland, or the British Empire's tradition of training other militaries, or to the British concept of "policing," as being highly influential in their own understanding of security provision.[5] Most British firms take pains to distinguish their own brand from that of American firms in particular (as well as distinguishing the American military from the British military). The national culture of security provision influences the ways in which certain tasks are undertaken, as well as the closeness with which firms align their interests with the government.

Most firms also hire "third country nationals": foreign contractors from neither the "host country" nor the "country of origin." Each company has networks enabling them to hire different nationalities, including Russians, Ukrainians, Fijians, Peruvians, Nepalese, Salvadorans, and Ugandans. In interviews, different companies expressed distinct opinions of the various national "types" available. Some firms claimed they would only hire Fijians and Colombians, others preferred Ukrainians, others liked South Africans, and others said they would never hire anyone who had served under an apartheid regime.[6] Most well-known companies do hire a mix of nationalities, including both host-nation nationals and third-country nationals, who then serve alongside contractors from the firm's country of origin. This multinational mix creates whole new networked groups with their own complex dynamics and what could be termed "ad hoc chains of command."

In Afghanistan, for instance, there are a number of locally owned firms that employ Afghans with a variety of backgrounds. ArmorGroup also holds a large contract to guard the US Embassy and employs Afghans and other third-country

nationals, primarily Ghurkas. The use of local host-country nationals to provide security has substantial benefits: aside from the reasonableness of employing citizens to provide for their own state's security, they know the language and the customs of the area, and can provide good intelligence. The International Committee of the Red Cross (ICRC) has long used local host-country nationals to provide site security.[7]

A current list of US and UK firms that had some contracts in Iraq would include the following: UK firms are in italics, and larger more prominent firms are in bold.

AD Consultancy
Aegis Defense Services
American–Iraq Solutions Group
ArmorGroup
Babylon Gates
Blackwater Worldwide/Xe
Blue Hackle
Britam Defense
CACI International
Carnelian International Risks
The Centurion Group
Cochise Consultancy Inc.
Combat Support Associates
Control Risks Group
Crescent Security Group
Custer Battles
Dyncorp International
Edinburgh International
EOD Technology, Inc.
Erinys International
Global Strategies Group
Group 4 Securicor
HART Security
Kroll Security International Ltd
Janusian
L-3 Titan
Metoric
Meyer & Associates
MPRI
Olive Group
Paratus Group
Pilgrims Group
Reed
RONCO Consulting Corp
Rubicon International Services

Sabre International Security
Saladin Security
Sallyport Global Holdings
Securiforce
SOC-SMG
Steele Foundation
Threat Management Group
Titan Corporation
Triple Canopy
Unity Resources Group
Vinnel Corp
Zapata Engineering

Another way of classifying agents is to group them according to their "skill-sets," or the military or police background experience of those they hire. "First tier" security providers usually have an elite background in either UK or US Special Operations Forces. Some have had a background in one of the intelligence services. The next level "down" includes regular military members, and then those with a public law enforcement background. And beneath them, in the lowest tier, is a mixture of former bodyguards and other security professionals, including prison guards.

Taxonomy (2): the scope of activity

The major PMSCs all work both domestically and internationally. Blackwater, ArmorGroup, Steele, and others have provided security in New Orleans in the aftermath of Hurricane Katrina, their contractors taking breaks from work in Iraq. Blackwater won a contract to provide security for the Federal Emergency Management Agency (FEMA) employees as they did their work. Along with other defense-industry regulars like Lockheed-Martin, Raytheon, and Boeing, Blackwater vied for a lucrative Department of Homeland Security contract to provide security along the US/Mexico border (see the Appendix for an example of one of their ads for work after Katrina). UK firms also do both domestic and international work: they are contracted to work with both public law-enforcement and private corporations to provide intelligence and analysis, and they provide armed security internationally. This wide scope of activity makes them less like a military force, which can only act domestically under extreme emergencies, and more like a business or an NGO.

Taxonomy (3): judging the principals

Another way to understand the diversity of the PMSC world is by grouping them according to the entity that hires them to do the work: the "principal." The classic "principal–agent" problem studied in political science and economics is that there is always an inherent tension between the principal and the agent: the

principal needs a task to be done but the agent has interests of its own, and they do not necessarily line up. The contract is the vehicle to align the interests of both, and it specifies how the agent will be paid, and how the work will be monitored and evaluated. But the wide variety of principals who hire PMSCs makes any external oversight of their activities a challenge. Businesses have no obligation to reveal the details of their contracts, and PMSCs have little incentive to report evaluations of their performance to anyone.

PMSCs can be hired by any number of very different kinds of organizations, although the most reputable ones among them make a huge effort to only work for "legitimate" entities: states, multinational companies, or humanitarian organizations, including the UN. Less-reputable companies have provided security forces for drug barons in Mexico or Colombia (Singer 2003: 220). There is an enormous range of even so-called "legitimate" principals. States with terrible reputations, like Equatorial Guinea, have hired Israeli PMSCs to train their military. Business executives may hire a PMSC to help them avoid kidnapping, or to extract them and their families in some kind of an emergency, or to train their employees in ways to avoid terrorism. Others work for such established NGOs as the World Wildlife Fund (Avant 2005: 206).

Although it is difficult to do so, ranking the principals is important, since oversight can only happen with the cooperation of the contracting entity. Governments are obviously the principals with the most potential for oversight, but here again there may be different agencies in one government with different amounts of oversight. Businesses that contract with security companies are not currently under any requirement to have the activities of their contracted agents reported or assessed. If governments like the UK and the US who contract with PMSCs have trouble keeping track of the activity of their agents, the problem is even more serious with MNCs or NGOs.

Taxonomy (4): the contracted tasks

Most other analysts have narrowed the scope of the taxonomy from Mandel's original work. They tend to focus on the third of Mandel's questions, regarding the types of services provided or the tasks undertaken. Most often firms are classified based on their relationship to the battlefield, using the analogy of a spear. Those closer to "the tip of the spear" are firms that specialize in security provision. Further back from the battle space are those who were hired as consultants and trainers to national police and military. And further back still are those who provide logistics for the military and maintenance of military systems and vehicles. Singer's taxonomy, which has been picked up and used by many others, mimics the military's account of its array of forces: the combat troops ("teeth") at the front, supported by the administrative and logistical ("tail") at the rear (Singer 2003: 91), and in the middle those who provide advice and training. Early on, it seemed possible to assign specific firms to these specific types of tasks: Executive Outcomes and Sandline offered the most robust form of military operational support, MPRI and Vinnel offered advice and training, and Kellogg Brown and Root (KBR) provided logisti-

Front line	

Military services	**Police services**
Armed support	**Armed static security**
Executive outcomes in Angola	Armorgroup in Afghanistan
Sandline in Sierra Leone	Triple canopy in Iraq
Armed mobile security	**Police advice and training**
Blackwater in Iraq	Dyncorp in Iraq and Kosovo
Military advice and training	**Crime prevention (military police)**
MPRI in Croatia	Dyncorp in Iraq and Kosovo
Vinnel in Saudi Arabia	**Intelligence**
Logistical support	Kroll in Iraq
KBR in Iraq and Afghanistan	CACI in Iraq (in Abu Ghraib)

Figure 1.2   The range of PMSC roles.

cal and base support services. But the current situation is much more complicated. First, there are a number of other services occurring in and around the battle space in Iraq and Afghanistan. More recently the International Peace Operators Association (IPOA) has added more categories for firms that provide risk-consultancy services, de-mining, and various intelligence services, including translation, interrogation, and analysis. Avant then divided the services into two broad categories: military and police work. An edited version of her chart appears above:

This type of taxonomy has real benefits. It provides an idea of how close the agents are to the direct use of coercive force. It helps divide tasks into two fundamentally different cultures: the security culture of the military and that of the police officer. But the problems here outweigh the benefits. As Avant herself notes, many of the tasks that are being contracted out are harder to characterize: services that provide special operation or counter-insurgency support; kidnap and ransom services, or evacuation and rescue, operate "in that nebulous area" that combines "external and internal security" (Avant 2005: 21).

> These companies promise to respond to crises offensively with armed personnel, but it is hard to know whether to call this a police/SWAT-type action or a military special operations action. As their aim is combating not troops, but international criminal elements, they might be better characterized as internal security tasks.
>
> (Avant 2005: 21)

It is perhaps preferable to consider such tasks along a continuum, rather than in two divided categories. The problem with grouping PMSCs by the nature of their task is this taxonomy does not capture the range of services any particular firm may provide. The same firm can provide many of these tasks. Control Risks, for example, provides risk consultancy advice to all sorts of clients, but it also provides armed security in Iraq and is contracted to provide domestic

intelligence to Scotland Yard in the UK. One benefit of grouping firms by the tasks they have been contracted to do is that policy-makers can draw "bright lines" around those tasks that might be "inherently governmental," and so inappropriate for contracting.

A second related issue is the shape and content of the military and security training provided by these forces. Almost all private security companies are engaged with some type of training of indigenous forces, and aside from the obvious demand for highly trained professional Iraqi (or other indigenous) forces, two questions have always dogged these kinds of missions. Are these forces being trained to similar standards? As they become both more effective (more lethal), will they become truly professionalized, that is, more restrained? Who will hire, pay for, and be able to provide legitimate command and control over these newly trained forces? What will stop them from imitating their trainers and working for the highest bidder, inside or outside Iraq? In other words, when does professionalization amount to mere lethalization, and what kinds of responsibility do the trainers have to the forces they create and help?

Taxonomy (5): their relation to scandal

For a final taxonomy, I use their relationship to scandal. As may be typical with entities that cross boundaries and are hard to characterize, the stories of the firms are often told by way of the scandals associated with them. This is an endless source of frustration for those firms trying to establish clean reputations. Firms such as ArmorGroup put a lot of work into the effort to keep their name from being grouped in the same paragraph as Sandline or Executive Outcomes. PMSCs have made an enormous effort to promote themselves as responsible purveyors of "due diligence" and "best practices." And as Christopher Kinsey points out, some firms are trying to lead the way in the area of "corporate social responsibility" (Kinsey in Alexandra *et al.* 2008: 70). But, despite these efforts, the popular account of all of these firms remains attached to whatever scandal can be attributed to them in general. What many of the firms see as an undeserved exaggeration of their business is due not only to the fact that their employees may have done something that others in the military might also do, but to the fact there are no real consequences for their behavior. Academics and the press may exaggerate the scandalous aspects of private security firms (perhaps more than they do the crimes of the military) in order to draw attention to the lack of any workable procedure to take care of crime. Regardless of the outcome of the court-martial proceedings that have been brought against members of the military serving in Iraq and Afghanistan, there have been no similar proceedings for contractors, a fact returned to again and again in the press. Mapping PMSCs by scandals fits the popular perception of the industry.

So far, three types of scandals have dominated coverage of PMFs in Iraq. Revelations about fraud, overpricing and mismanagement have dogged logistics providers like Halliburton and its subsidiary, Kellogg, Brown, and Root (KBR). Companies have been accused of fraud, contract-fixing, and under-equipping

their employees (US Senate Homeland Security 2008; GAO 2005). More than a few companies – among them Custer Battles (now defunct), Triple Canopy, Aegis, and Blackwater – have been accused of randomly shooting Iraqi civilians, and for excessive use of force (Myers 2005b; Myers and Ronston 2006; Finer 2005; Human Rights First 2008). One member of a contractor list-serve, in response to a question of whether these allegations were true, admitted his own knowledge of bad behavior:

> Well, yes, [there are instances of] strafing Baghdad commuters. I have by now seen my share of videos where PSCs did just that, shooting fairly indis-criminately at other cars, making the suckers pay for the lead car's poor driving skills. I know, I know, black sheep, who knows what happened before, maybe they had a bad day, exception to the rule, and possibly I would have acted the same way, all valid points. But the fact remains that each of these exceptions would make for pretty bad press if some major paper, network or senator really wanted to make a determined effort to screw with the private military industry.
>
> (Anonymous 2006)

Some PMSCs have been charged with questionable hiring practices: some firms have been caught hiring those with criminal backgrounds or with attachments to criminal regimes; others have been outsourcing their labor to under-paid and overworked third-country nationals. Contractors have also been implicated in sexual slavery and drug-running, profiteering in the transnational criminal networks in the midst of which they often find themselves (O'Meara 2002; Lawson 2001; Lynch 2001). And most notoriously, contractors were implicated in the torture and abuse of prisoners in Abu Ghraib. Two firms – CACI and Titan – provided translators and interrogators who tortured prisoners at Abu Ghraib (Janofsky 2005; Robertson 2005; Chatterjee 2008; Bina 2005; Schooner 2005; Chatterjee and Thompson 2004). Industry defenders see the preoccupation with crimes and scandals to be a mark of the academic distaste for an otherwise rela-tively well-behaved and honorable group of people. They decry the media and scholarly focus on these few incidents as attempts to spice up their stories.

In fact, the scandals remain the lay person's way of dividing up the industry, and they crystallize the problems associated with making it legitimate.

A protean typology

The new proxy forces are distinctly protean. They combine the worlds of the military, the business world, and the humanitarian NGO in unfamiliar ways. The reason they are so hard to understand is that they combine organizational cul-tures that in many cases have defined themselves in opposition to one another. The public-spirited attitude of a government bureaucracy is fundamentally at odds with the ethos of a private corporation. Similarly, non-profit, non-govern-mental, humanitarian aid groups are, by definition, not part of any governmental

strategy; in fact they often portray themselves in opposition to governmental aid programs or to specific sides in a conflict. Even when humanitarian groups compete for contracts with the State Department's Agency for International Development (USAID) and become, for all intents and purposes, governmental contractors or "partners" (US AID 2009), they are not seeking to make a profit.

PMSCs span the boundaries of a growing divide between the ways of life of a civilian, and that of a soldier. Under the laws of war, PMSCs are nominally classified as civilian organizations. They are not under a military chain of command, nor does military law currently apply to them (though this may change). They often work for civilian agencies that themselves are working alongside military agencies in a war zone, and they are often armed. Such hybrid actors are not new to warfare: in the twentieth century, for instance, the category of a resistance fighter, or guerrilla soldier, challenged the applicability of the laws of war in intrastate conflicts, or occupied states, or in wars of national liberation. Over time, a new category emerged to capture the combatant status of such fighters, with relevant laws and a complicated moral language that guided judgment, if not action, toward these mixed-type actors: the guerrilla fighter in a national liberation movement, covered under the 1977 Additional Protocols to the Geneva Convention. Guerrilla soldiers were given "belligerent status," with the protections and responsibilities associated with being a soldier in an inter-state conflict, if they abided by the laws of war, were under organizational command and control, carried their weapons openly, and wore some sort of uniform to separate themselves from civilians.

PMSCs do not just span the civilian–military divide, or the public–private divide: they combine aspects of three organizational cultures – military, business, and humanitarian – and shift among them as needed. At times, and from some vantage points, these firms appear like classic business firms, providing a "100% client focused" service in the market for force (ArmorGroup International 2006). Elsewhere, they show up as part of the humanitarian world of "peace and stability" operations, with the simple mission of "saving lives" by providing the "right" to human security. And, in other contexts, they seem to be auxiliary forces to the military, providing "force protection" and "surge capacity" as part of the "total force" package (Prince 2006). A simple Venn diagram (Figure 1.3) captures the mixture.

PMSCs combine three organizational cultures that do not easily mesh. But within each field there is already a tension between the "central" idea of that type, and its more "peripheral" manifestations. In the following diagram, for instance, the classic NGO may look down on those NGOs that combine too easily with businesses, or the military (the shaded areas), and especially those NGOs that work too closely with both (Anderson 1999; Wheeler and Harmer 2006; Hellinger 2004). NGOs that work in conflict zones and have more explicit contracts with governmental agencies, or work alongside the military in de-mining actions, or security provision, have an uncomfortable relationship with other, more traditional, NGOs. Similarly, the attributes of the military that lend themselves to adoption by PMSCs are the more irregular aspects toward which the
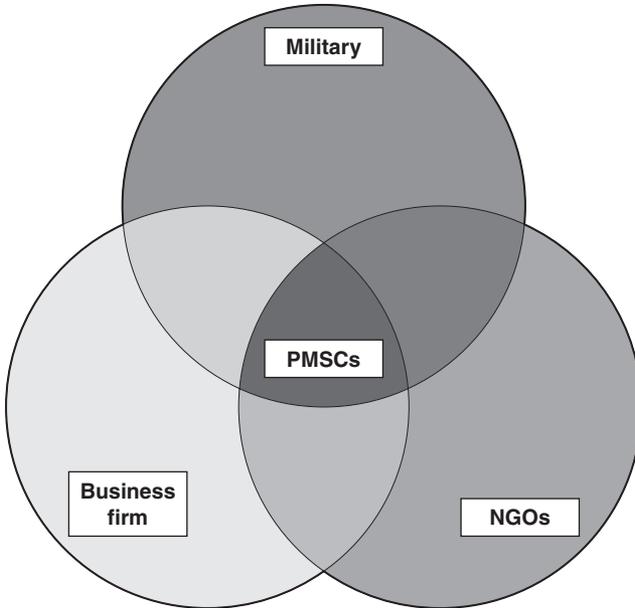
Figure 1.3 The mix of organizational types.

regular army sees itself in opposition. Thus, the types of soldier used by PMSCs tend to be former members of Special Operations Forces – former Navy SEALs or Green Berets. The regular army has an often uncomfortable relationship with such "peripheral" forces, even though these forces have come to play a central role in current military operations.

My use of the term "organizational culture" here is deliberate. It stresses the historical and cultural attitudes and "ways of life" of an organization that guide action and judgment. Max Weber was the first social scientist to compare these competing cultures as those which showed distinctly different (and often opposed) practices and orientations. He noted that a "way of life" needed to offer its adherents external rewards and internal justifications in order for it to be sustainable; there had to be a way in which membership in the group was justifiable socially and psychologically (Weber 1946: 123–125). These ways of life exist within a culture that surrounds them and either legitimizes or reacts against them. Military historian John Keegan describes culture as "that great cargo of shared beliefs, values, associations, myths, taboos, imperatives, customs, traditions, manners and ways of thought, speech and artistic expression which ballasts every society …" (Keegan 1993: 46). He argues that cultural attitudes are responsible for the ways in which wars have been won and lost. Any historian of warfare must therefore be a historian of culture, as well as someone who can understand the type of soldier that fights them. Soldiers, warfare, and culture are

bound up with each other; thus, any effort to understand the role of PMSCs in current conflicts must be rooted in a broader understanding of the current culture of warfare – the stage on which they are acting.

From within the military itself, numerous concerns have been expressed with the rules and guidelines for interaction between military and contractor security forces (Castillo 2000). At the most basic level, there is the problem of logistics and supply, and the widely varying equipment and armor available to each company. As one ArmorGroup official explains, the two biggest headaches for the company are the bureaucratic details on either end of any contractor's tour: entry and exit visa requirements, supply and resupply lines, contingency rescue operations, medical care, and evacuation guidelines going out.[8] Contracting out a large portion of any military's efforts diffuses this logistical hassle, but makes it just as labor-intensive. Discussions of interoperability begin with these essential details. Beyond this lie the legal questions of command and control, and who bears responsibility for the individual actions of the contractors. Finally, there is international law, including the basic laws governing armed conflict and the status of those working in and around the regular military.

These concerns reveal underlying tensions between those within the military on a number of fronts: pay scale, risk acceptance, evacuation and casualty procedures, rules of engagement, and organizational cultures. Moreover, there seems to be a distrust of those who are now working as contractors, alongside a certain amount of envy and resentment, and a knowledge that someday they could be working for the same outfits (White 2005; Kelty 2008).

Business culture

The primary culture in which PMSCs operate is that of the corporation. PMSCs are not just privately owned and often publicly traded; they speak the language of business. They describe themselves as competing for "customers" or "clients" (which include states, multinational companies, and NGOs). They provide "turnkey security protection packages" with dogs, helicopters, fully armed contractors, and emergency evacuation procedures. They continually remind their clients that their "business model" is to do things "better, faster, and cheaper," "like UPS over the US Postal Service" . One prominent industry representative noted that "PMSCs are just like hair dressers, they just want to make an honest buck" . They note that they provide services to help other national armies "upgrade" their capacity (IPOA conference, fall 2006), and point to the "natural leveraging of synergies" that can be accomplished when state militaries use PMSCs as "surge capacity" . In one notable metaphor, a Blackwater representative likened the "socialist" military's "product" to the car marketed by the former Yugoslavia: "[t]he military creates Yugos: wouldn't you rather drive a better car?" (NDU 2008).

Making sure their shareholders are listening, PMSC officials invoke the marketplace as the final arbiter on decisions. For example, an executive of ArmorGroup was quoted in the US industry journal as saying:

> Let no one be fooled, *unlike state security forces with codified standards, practices, and ethics policies*, private security companies exist at the pleasure of their shareholders. How they run their affairs is, by and large, a matter of their own choosing. In respect to passion for maximizing shareholder value, I am no different.
>
> (Schmitt 2005; my emphasis)

Firms acknowledge the approval needed from states because they need to win contracts by reputation, through appropriate licensing, and through political connections. They are also aware of the importance of maintaining good relations with employees and the public, and employ PR firms to advise them. They show up frequently and willingly at conferences on the industry and know the importance of a giving a good impression to the press and academics.[9] Companies in the US and the UK have set up self-regulation associations, with codes of conduct and requirements for membership. All of these are classic private-sector mechanisms used to boost consumer confidence, brand recognition, and competition. They ascribe to the "corporate good governance" or "corporate/professional self-regulation" idea, conferring legitimacy on the companies that practice them.

Military culture

Firms whose "business model" includes government contracts also highlight their role as auxiliaries to regular militaries, as part of the "total force package." They portray themselves as arms of the state: "If you have a problem with Dyncorp, it is because you have a problem with the state". At the same time, the content of government policy is not their concern. "Morality is a problem of the state" . They stress the benefits of the military culture inherited from those they hire, and argue that this military background will extend to procedures and operating attitudes on the ground in war zones: "They don't just hang up their ethics when they become contractors". The culture of the military, they assert, infuses ex-military contractors with a notion of restraint, honor, service, and professionalism.

When industry members make this claim, they are arguing that the profession of the soldier is not dependent on actual current attachment to a military; it is a way of life that extends beyond active service. But, while it may be true that the public values of the professional soldier may outlast service in the military, it is not clear that they mesh as well with the private values of a PMSC. As one retired US General put it, "The profit motive never aligns 100 percent with the public interest". PMSC defenders reply to this criticism by noting that motivation should not be the deciding factor: "Who cares why they go? All that matters is what they do when they get there". This focus on the final outcome, however, ignores the argument that organizational culture matters: actions are framed in different ways depending on whether you are working for a PMSC or a military. Colonel Thomas Hammes has been one of the most outspoken critics

of the idea that military culture can be easily exported to other types of organizations:

> And oftentimes the terms of the contract, will actually be in tension with what needs to be done, because contracting, you try to be about efficiency. Wartime is not about efficiency; it's about effectiveness. The American way of war is "We don't care what it costs. Let's get it done right and save lives." Contracting [is] about the most efficient way rather than the most effective way.
>
> (Gaviria and Smith 2005)

The culture of the soldier and the culture of the business professional are often described as diametrically opposed. To use Max Weber's language, the "calling" of each is dramatically different. For the soldier, at least in the version of soldiering popularized by military historians and theorists of the modern state, the call was to a way of life marked by group norms, physical and mental discipline, sacrifice for a larger political entity (the nation-state, or an ideology), and the subordination of individuals to group goals and identities.

Unlike many other contemporary organizations, relationships among individuals in military life are marked by hierarchical "command and control." Scholarship on the military has always emphasized the ways in which the military is a world apart from civilian and capitalist institutions in its organizational structure, its aims and methods, and its essential reason for being. The benefit of this "civilian–military divide" has long been a source of debate in the United States. Most maintain that it is precisely by being a world apart from civilian society that the modern army retains its effectiveness while still remaining under civilian control (Cohen 1985, 2002). Authority within the military is traditionally hierarchical, and the military professional is deferential to civilian authority and resistant to change. Morris Janowitz, a scholar of modern military organization, described the danger of merging this distinctly military world with that of the civilian:

> To achieve the objectives of the democratic elite model, it is necessary to maintain and build on the differentiation between civilian and military roles. A democratic society must accord the professional soldier a position based on his skill and on his special code of honor.
>
> (Janowitz 1991)

This world apart, whose mission is to defend the very society from which it differentiates itself, has given rise to what legal scholars call a "pocket republic," with its own understanding of criminal law, its own judicial proceedings, and legal infrastructure. Supreme Court decisions have long "recognized [the military as a] specialized society separate from civilian society with laws and traditions of its own" (Turley 2002: 3).[10]

The military's particular culture rests on a high regard for formalized ceremony, procedure, and hierarchy that surrounds the task of training efficient and

disciplined soldiers. Contemporary military theorists remind civilian academics that if we forget that the military's central role is to die and to kill others (as we so often do), we underestimate the power of these formalities, needed to legitimize and authorize killing done in the name of the state. The late-modern liberal democratic state the military defends is a state that distrusts authority, and along with it any notion of deference. The military has always existed in opposition to the society that surrounds it, a Spartan republic defending Athens and the greater cosmopolitan empire. Studies of what has come to be called the "civilian–military divide" stress the clash between cultures. Researchers have long noted the difficulty of recruiting for the military in a culture that values individuality, autonomy, and the values of the marketplace (Cohen 1985; Ricks 1998). This traditional divide is threatened, however, by the existence and expanded use of private military companies.[11]

The military is under pressure from three fronts: from the changing realities of new wars, from the political requirement of low-risk wars, and from their distance from the surrounding civilian culture. As Martin van Creveld noted, "the most powerful modern armed forces are largely irrelevant to modern war – indeed their relevance stands in inverse proportion to their modernity" (van Creveld 1991: 32). By contrast, the civilian world in the age of rapid globalization has moved away from strict hierarchy, vertically integrated structures, and formal rules toward businesses and organizations run by much looser and informal models, watched and monitored by the regulatory state.[12] Large bureaucratic organizations with hierarchically based notions of authority that privilege the group over the individual, and a way of life over a short-term contract, are out of step with the late-modern world, for better or worse. As Christopher Coker noted to a sober group of military officers at a conference, " 'Sorry guys, it's all contracts now.' They didn't want to believe me," he admitted.[13]

The military has often tried to market itself in contradictory ways, simultaneously presenting the life of the soldier as a life apart and appealing to those values that seem to define a civilian way of life. For example, in the year 2000, at the end of a decade of military "transformation," the US Army began a new advertising campaign aimed at boosting declining levels of recruitment and retention. Across the military, forces were declining as a result of a large-scale downsizing in the mid-1990s, a strong private-sector job market, and an increasingly unclear notion of what it meant to be a soldier in the post-Cold War era. The ad campaign showed images of a single soldier running across a desert, like a participant in a marathon, seemingly facing unknown and invisible adversaries. The voice-over and captions called this "An Army of One." It was meant, said an Army spokesman, to counteract the prevailing notion that the military was all about the formation of mindless members of a corporate body, faceless soldiers for the state. It was meant to appeal to a notion of individualism, wherein the "single operator," restrained by professional honor and internal virtue, battled amorphous forces of evil (in the wide-open desert, as opposed to the closed-in jungle).

The ad campaign backfired and was ridiculed in the press, but its underlying message nevertheless reflected an evolving trend: the separation of the individual

soldier from the corporate group of the military, and the economic, political, and professional validation of the single operator on the battlefield (Dao 2001; Truskott 2001). An "Army of One" was exactly what the military was trying to be, a professional organization that valued individual initiative and allowed its members to reach professional self-fulfillment.

Looking at the organizational nature of PMSCs, it is clear that their own authority structures bear little resemblance to the formal vertical hierarchy of the traditional military. These firms are classic "informal organizations," with fragmented and fluid structures of governance, and they pose a genuine problem for regulators of the industry. Christopher Kinsey has examined multiple PMSCs in the UK, and calls the typical organizational structure a "loosely coupled organic network" (Kinsey 2005). These organizations have a very different relationship to law than that of a strict hierarchical organization:

> In the "quasi-government" [of these hybrid organizations] management can do whatever is not forbidden to do by law, thus providing the basis for innovation and partnerships. Accountability will be for performance; however it may be defined and measured, rather than to strict conformance to law.
>
> (Kosar 2007)

Andrew Bearpark, who heads the British Association of Private Security Contractors, noted that any effective self-regulatory body needed to be local, limiting its members to only those based in the same state, "so that we can check up on guys within three phone calls." The effective regulations would form a "matrix" of regulatory bodies and rules, thereby almost mimicking the horizontally integrated models of the networked and informal organizations being regulated.[14]

The humanitarian culture

The way of life of the humanitarian emphasizes transnational goals and aspirations. Humanitarians may be attached to specific organizations, but generally speaking they see themselves as having a specific set of skills that can be used in disaster zones around the world, regardless of the specific organization for which they work. The ideals that guide the actions of the humanitarian organization and their members are often described in trans-political and universal terms: human security, human rights, and basic needs for shelter and healthcare. Although research shows that these organizations often take on the cultural and political attitudes of the states from which they emanate, they have more in common with each other than with their national state of origin (Stroup 2008).[15] Humanitarian actors are united by a belief in the inherent dignity of all people, and the ideal of service to those in need, and they now make up what has come to be called a "global civil society."

Those who work for international NGOs are akin to transnational citizens. There are a number of professions that have become only tangentially linked to

any one particular state. Foremost among these are international airline pilots: a class of people (mostly men) who have more in common with each other than they have with any of their fellow countrymen. They have a language all their own, and spend a large amount of time en route, in between the nodes or hubs that are the global transportation industry. There are other examples as well: long-haul truckers, or container ship captains and employees, who are almost perpetually in transit. Employees of transnational businesses that require endless travel ("road warriors") are a step below those for whom transit is the actual site of their jobs, but the image is the same: they are human beings for whom the state no longer means a fixed location, but is something one enters and leaves at will.

Members of PMSCs possess several attributes of humanitarians. They may work for one company one year and another company another year, but their "skill set" remains the same: they are loyal not to the organization but to the mission. They describe their mission in humanitarian terms, as "saving lives" and "providing human security," above all. "We are not just a for-profit company," said one Blackwater contractor at a conference on PMSCs, "we are helping people and the planet". PMSCs note that they strive to "abide by human rights norms" and that they are "peace and stability operators."

The organizational ties are clear: many PMSCs work specifically for humanitarian NGOs in worldwide "conflict zones." At a Washington, DC conference sponsored by the American PMSC industry group IPOA in 2006, representatives from US development agencies mixed with non-profit humanitarian organizations and for-profit development firms that implement contracts for USAID. Repeatedly, "business opportunities" were identified in areas where reconstruction, peace-keeping, and "stability operations" were occurring. The résumés of those attending described a new career arc: one man who worked for Chemonics International, a large firm that competes for USAID contracts, had experience working for the International Monetary Fund (IMF), UNICEF, the UN Development fund, the State Department, and the US Army. Many PMSCs specialize in de-mining, or provide security and logistics for refugee camps, and a recent press release by the State Department notes the humanitarian focus of the contracts they are awarded:

> The Office of Weapons Removal and Abatement in the U.S. Department of State's Bureau of Political-Military Affairs has awarded a contract to DynCorp International for the formation of a *humanitarian* Quick Reaction Force (QRF) to respond globally to urgent and emergent humanitarian operations that require the removal or mitigation of explosive hazards to protect civilian populations.
>
> (State Department Media Note: Office of the Spokesman 2008)

Since at least the 1990s, the military has found itself embroiled in complex emergencies, wherein humanitarian and military forces join together. The organizational affiliations between the military and USAID, for instance, have

grown and become more formal. But the creation of a whole new type of inter-national actor is a new phenomenon. The rise in attacks on humanitarian and development workers witnessed in the last ten years has solidified the humani-tarian way of life: working for an NGO now contains a genuine aspect of sacri-fice and risk, and it requires recourse to security measures (Bollettino 2008; UN General Assembly 2005).

There are also a number of small NGOs that are composed of ex-military men with ties to religious orders that stress military virtue. In his book *Licensed to Kill*, journalist Robert Young Pelton mentions two such organiza-tions – Knightsbridge International and Partners International Foundation (Pelton 2006). Knightsbridge founder Ed Artis is a part of the ancient Sover-eign Military Order of Malta (SMOM), a centuries-old humanitarian-aid society originally dedicated to providing aid to Crusader knights. Like the ICRC, the Sovereign Military Order of Malta is a recognized international entity, and according to its website has formal diplomatic relations with 103 countries (the US is not one of them). Its current membership – referred to as Sirs and Dames – includes many members of the US Military, the Department of Defense, and the CIA. One of its most prominent, former US Inspector General Joseph Schmitz, left the Bush Administration to work for Blackwater USA, a company whose leadership includes many former military members who see themselves as Catholic humanitarians. "Sir Edward Artis," as he is called, is an Illinois native with a decade of experience in Vietnam and Central America as an airborne medic with the US military. After working in real-estate and banking, he started an all-volunteer force that could answer the call of God to provide aid to those in need.[16] Ed Artis had already worked in Afghanistan when the attacks of September 11, 2001 induced him to return. Although Knightsbridge sees itself as a purely humanitarian relief organiza-tion, and does not profess to have any religious aims on the ground, its website – and the Order of Malta that advises it – is filled with references to service in the glory of God.[17] The long tradition of humanitarian organizations that are linked with a military ethos, through the idea of a muscular type of service, is alive and well, but is often overlooked in traditional characterizations of NGOs.

Both business and the military have taken on aspects of this humanitarian way of life, especially in more recent conflicts. The humanitarian interventions of the 1990s, as well as the state-building and reconstruction projects in Iraq and Afghanistan, drew on alliances between corporations, humanitarian organiza-tions, and the military. At the same time, businesses began to don the cloak of humanitarianism, most notably through the use of "corporate social responsibil-ity" norms used to govern their business decisions. Many corporations now pub-licize their human-rights records, and advocate "corporate social responsibility" in order to demonstrate their concern with humanitarian goals (see especially Kinsey 2008).

It is helpful to compare international NGOs with those they are now hiring to provide security. The motivations of the actors, the sense of their mission, and

even the legal and ethical challenges of their work are remarkably similar. First, globalized transnational NGOs hire global actors to perform tasks that the state is no longer willing or able to provide, and to work in place of, or alongside, existing international organizations, which are often hamstrung by bureaucratic rules or lack of political backing. Second, although their non-profit status is the opposite of the publicly traded companies that own and operate PMSCs, NGOs' need to raise money and compete with similar organizations, and their use of advertising and brand identification, are similar. Third, NGOs, like PMSCs, rely on a pool of highly mobile contracted workers, who identify themselves first and foremost as professionals, rather than as acting in any specific national interest. Finally, NGOs operate in the midst of conflict – and in fact rely on disaster, crisis, and instability for their livelihood. Like security companies, they have been criticized for having a vested interest in the continuation of conflict, and in some cases for perpetuating the conflict by providing humanitarian aid to the combatants (Anderson 1999: 39).

Zygmut Bauman's account of the human consequences of globalization divides a large portion of the world's people into two types, both of whom are defined by their relationship to the possibility of movement (Bauman 1998: 77). The first – composed of global business professionals, cosmopolitan citizens of all types (including academics), and members of the global civil society that staff NGOs around the world – move freely wherever they want to go. They are "tourists," going from sight to sight, beckoned by a consumer culture that lures them from one location to the next. Bauman calls the other class of people the "vagabonds," forcibly displaced or moving illegally from place to place. PMSCs are wedged between these groups of people: they are managed and staffed by well-paid members of the first class, looking for adventure and new sights to see, and familiar with the world of expatriate business people, journalists, and disaster relief agencies. They often employ members of the latter class, as "third-country nationals" who are displaced from their homelands involuntarily, either because of lack of employment opportunities or, for some, because of problematic professional reputations.

PMSCs as new types of global actors

The combination of three entities – a profitable corporate business working as a military force-multiplier with a mission construed in humanitarian terms – exacerbates the conceptual confusion that surrounds PMSCs. In the legal realm, this conceptual confusion has serious consequences: the legal status of PMSCs and their contractors is hard to pin down, and efforts to regulate these companies fail to provide a recognizable, legal identity. The world of international and military law, which begins by dividing the battle space into combatants and non-combatants, soldiers and civilians, and inter-state or intra-state conflicts, is severely challenged when such complex organizations become major players in these zones.

The profile of the private contractor, with its shifting identity that has aspects of humanitarian aid, business, and the military, easily becomes the focus of

anxiety and mistrust. The contractor becomes a "dirty" or "polluted" category, a type that fits in many worlds at once, but none of them unambiguously. Contractors are akin to those whom anthropologist Mary Douglas describes as "marginal" and "dangerous": "These are people who are somehow left out in the patterning of society, who are placeless. They may be doing nothing morally wrong, but their status is indefinable" (Douglas 1966: 118). There are always dangerous entities, she points out, but what dangers we choose to focus upon and what we choose to ignore speak volumes about our social life. Specifically, we create social categories – businessman, humanitarian, soldier – that allow us to judge certain kinds of actions as acceptable or unacceptable, even comprehensible or incomprehensible. For a while, we push ambiguous entities into some non-ambiguous category (mercenary or soldier, for instance), but eventually the cognitive dissonance builds and we are forced to invent new social categories, and ultimately new legal identities. Seen in this light, PMSCs show up in the same ambiguous and fraught ambiguous category as transnational terrorists, or our enemy combatants at Guantanamo Bay, currently stuck in a strange legal limbo, awaiting some workable legal categorization.

Protean organizations may be perplexing, but they also can signal a powerful new realignment of forces that speak to novel ways of seeing the world. They may result in new legal doctrines, or new paradigms of governance, and new ways of fighting wars. In the midst of the agitation they cause, they may signal a shift in the larger environment that nurtures them. It could be that PMSCs are in fact powerful adaptations to under-analyzed institutional and cultural trends. Organizational theorists have studied these types of protean and informal organizations that arise in complex environments, wherein established laws and customs are breaking down, and new practices are emerging. These organizations are not necessarily lawless, or without governing principles, but they may seem to appear out of nowhere. For instance, John Padgett has looked at how certain kinds of new organizations, hard to characterize and understand, can often be the springboard for novel ways of structuring a social and legal world (Graham 1998). These newly emerging organizations often act in a "multi-vocal" way, as I have argued PMSCs do, spanning boundaries and creating new alliances and networks (Padgett and Ansell 1993).

These protean organizations are also operating in complex environments, and dealing with what have been called "wicked" public policy issues – that is, hard to solve problems like urban crime or healthcare. "Wicked" issues require networks of many different types of organizations working alongside each other in various partnership arrangements (see especially Lowndes and Skelcher 1998). Complex emergencies wherein military, humanitarian, intelligence, diplomatic, and reconstruction activities exist simultaneously, like in Iraq or Afghanistan, could easily be seen as one of these "wicked issues" requiring just these kinds of complex organizational arrangements, and shape-shifting agencies.

The protean quality of PMSCs must be put front and center as an object of analysis. Any calls for better regulation, oversight, and transparency are only possible when the phenomenon to be regulated is better understood. PMSCs

combine aspects from very different cultures, or ways of life: the business world, the world of the military, and the world of non-governmental humanitarian organizations. This is not a benign clash of cultures. Since the work of these firms takes place in "hostile environments" and "complex emergencies" amidst "wicked issues," and involves men who are more often than not heavily armed, the stakes are much higher.

Conclusion

My initial characterization of PMSCs was as a protean organization: a complex and uneasy mix of three distinct ways of life that reveal a tremendous amount about the culture in which they appear. As fascinating as protean entities may be, however, they have the aura of something sinister: we should be wary of anything that seems to resist understanding – especially an entity that undermines the ability of a state to act in its own best interests. Proxy forces might present themselves as easy solutions to complex problems, but in fact they hide another danger beneath their cloak of efficiency and cost-effectiveness.

Typologies and taxonomies can help shed light on the specific ways on which these boundary-spanning organizations create perplexity. But another way of understanding these organizations and their prominence is to explore their origins and the forces that have influenced their growth. The next chapter begins with the two most common accounts of PMSCs' origins and adds two less-acknowledged but equally important trends that have helped them flourish.

2 The multifaceted origins of the PMSC industry

> There appear to be no integrating forces, no unified meaning, no true inner understanding of phenomena in our experience of the world. Experts can explain anything in the objective world to us, yet we understand our own lives less and less. In short, we live in the postmodern world, where everything is possible and almost nothing is certain.
>
> (Vaclav Havel, Independence Hall, Philadelphia, July 4, 1994)

> The private sector is becoming an increasingly important partner of government. Politics is being increasingly privatized; not only is power shared with business, the commercial ethos is challenging the traditional professional ethos of public service. This is true of soldiers as well as doctors, civil servants and university professors. Military power is now judged by utilitarian standards.
>
> (Coker 1999: 102)

To note that the current world is marked by confusing changes or paradigm shifts is certainly a cliché if nothing else. And yet the conceptual confusion that surrounds PMSCs is a result of demonstrable shifts in the economic, political and military environments in which they are flourishing. These changes point to a complex profile of new wars. The origins of the PMSC industry are – like other protean mythical characters – shadowy, indistinct, and prone to exaggeration. According to some accounts, PMSCs arose spontaneously in response to a diverse set of market realities that sprang onto the scene in the last two decades (Chesterman and Lehnardt 2007: 181; Avant 2005: 114–115; Singer 2003: 53; Mandel 2002: 38). Other accounts stress an almost conspiratorial attempt by a vague array of business and governmental leaders to subvert established laws and governance and create shadow proxy forces answerable only to them (Silverstein and Burton-Rose 2000: 45; Scahill 2007: 148ff; Zarate 1998; Pelton 2006: 343). In between are many military scholars that see the rise of PMSCs as a logical outcome of fundamental shifts within the military, and in response to a changing operational environment on the ground – "new wars" (Turner and Norton 2001; Guillory 2001; Smith 2002; Nitzschke 2005; Adams 1999). Each of these stories has some degree of truth to it. And each contributes to the background assumptions that have allowed PMSCs to flourish even as they are being criticized and

held in suspicion. In the previous chapter I stressed the tripartite character of the protean PMSCs, and I sketched out how each of the cultural types – soldier, business person, and humanitarian – showed up as part of the complex character of these organizations. This chapter expands on these initial descriptions to give an account of the changes in the world in which these types operate.

This chapter begins with five of the typical accounts of how PMSCs have originated: first, the more passive idea of a market for force; second, the more conspiratorial account, wherein specific political frustrations led to policies that encouraged the use of private proxy force. The third account stresses the role of a change in ideas – specifically the neoliberal idea that downsizing the state will be more "cost effective" on a number of fronts. This account includes the new prominence of global civil society organizations – NGOs – as more efficient actors in complex humanitarian disasters. The fourth change responsible for the spread of PMSCs concerns a shift in the idea of warfare. "New wars" are complex operations that involve multi-lateral and multinational regular forces, and a complex web of irregular armed forces. They include new strategies and tactics, and new relationships with private NGOs as well as IGOs (International Non-Governmental Organizations) like the United Nations. In the complex mix of the new war, PMSCs can flourish. Finally, I turn to the new soldier that fights in these wars, and how the availability of specifically this type of figure influences the character of the PMSC. These five origin stories – market and political forces, the force of ideas, new wars, and new soldiers – will provide a background to the next chapter on the relationship between PMSCs and the new attitudes toward risk and security.

Origins (1): the market for force

In 2004, a year into the war in Iraq, the *New York Times Magazine* profiled soldiers who had returned home with debilitating battlefield injuries. Pictured on the cover was one soldier who had been injured by a roadside bomb. Having lost his right arm and part of his hearing, this soldier was undergoing many operations to remove shrapnel from his face and body, and struggling, psychologically and physically, with the consequences of his experiences in Iraq. Unable to work, he spent his time attending physical therapy and group counseling sessions and driving around with another Iraq veteran. By the end of the article, however, he had hit upon a new plan for his future: "returning to Iraq as a security contractor for a private company" (Corbert 2004). The soldier was responding to the market for force.

This first origin story is offered by those who argue that there is nothing truly new about the PMSC; that a market for force has existed whenever supply has aligned with demand. Mercenaries and contractors will inevitably increase to meet a rising demand, if there are enough otherwise unemployed soldiers to create the supply. For these scholars, the contemporary political economy resembles that of any other period in which veterans needed jobs (Campbell 2003; Avant 2005: 80). Here three factors stand out: the large pool of ex-military men

and weaponry, providing the supply; the increase in failed or quasi-failed states, providing the demand; and a political and economic theory in favor of privatizing formerly public functions, making the supply answerable to the demand.

The Cold War was "a period of hyper-militarization that … affected virtually the entire world" (Lock 1998). When it ended in the early 1990s, militaries around the world were downsized drastically. Estimates from the Bonn International Center for Conversion place the number at 6–7 million former combatants no longer needed by national militaries (BICC 1998). The US military, for example, began a process of military "conversion" by which it shrank by one-third in the 1990s; the British Army before the 2003 Iraq War was numerically smaller than it had ever been (Singer 2003: 53). Russia's forces were dramatically cut in the 1990s, with more than 1.6 million military personnel demobilized (Heinemann-Grueder 2002: 9). Around the same time, regime changes in South Africa, Eastern and Central Europe, East Asia, and Latin and Central America forced both a downsizing and a de-legitimization of the security forces associated with the former regimes. Internal destabilization threatened any state trying to reintegrate demobilized forces, sell off or destroy stocks of weaponry, and reorient defense industries (Brzoska 1999). The situation eerily presaged the problems encountered in Iraq with the de-Baathification of the Iraqi Army following the American invasion: former members of a country's military, "let go" as a result of "victory" (in the US or UK), "loss" (in the former states of the Soviet Union), or "regime change" (in places like Argentina, Chile, and South Africa), became a large population of underemployed, and often bored, former combatants.

The prospects for these demobilized forces were seldom bright. Among 2.6 million former military members studied in 2002, many had experienced a drop in income, prestige, privileges, and housing quality; few had easily found new work that used the skills they had acquired, and many hoped to find work in private security services or "as teachers or trainers in areas related to their former military skills, [such as] emergency relief" (Heinemann-Grueder 2002). These former military actors held new regimes in ominously low regard; among them was a pervasive sense of distrust and demoralization. In Central America and West Africa, demobilization and reintegration involved many ex-combatants who were not necessarily ex-soldiers. Guerrillas, insurgents, or rebel forces were being asked to disarm and demobilize as part of complex peace negotiations at the end of devastating civil wars. In Nicaragua, for instance, many restive former combatants returned to violence and reasserted their demands, often joining groups against which they had previously fought in order to challenge the new governments (Spencer 1997). And in sub-Saharan Africa, the decline of Cold War funding to prop up state militaries resulted in a sudden rash of failed or semi-failed states that could not pay even their diminished militaries.

In these weakened states, security forces began to sell their services to the highest bidder, and security itself became effectively privatized, ranging from more formal private security firms to violent criminal gang networks. This "slow-motion demobilization" did not result from any specific regime change or

peace treaty, and its haphazard nature now creates a vicious circle in which pred-atory bands of low-paid or former soldiers prey on the civilian population and force them to hire private security forces for protection. The private security forces pay higher salaries than does the regular military, and thus they draw even more soldiers away from the remaining regular army. Without coordinated and well-funded efforts to meet combatants' reintegration needs, demobilization often subjects civilians to renewed violence.

Scholars of military downsizing point to the long-established historical pattern of demobilized forces, unneeded and often unwanted at home, migrating to other areas of the world with their expertise for sale, not only as mercenaries, but as advisors, consultants, and trainers (Lock 1998). The Peloponnesian War that shattered the leadership of democratic Athens in the fifth-century BCE was often fought with mercenary soldiers left over from the earlier Persian wars. At the end of the Peloponnesian War, members of the Greek armies hired them-selves out as professional trainers of area militias. The Crusades were filled with men whose fighting power was destabilizing their home territories, and who needed some focus for their energies. In the modern era, veterans of Napoleon's wars emigrated to the new colonies in Latin America to find work, and the American Civil War contained fighters demobilized from (and disheartened by) the failed European socialist revolutions of 1848.

After World War I, a large group of demobilized Russian and British officers were hired by Chiang Kai-Shek to fight the emerging Red Army under Mao Tse-Tung (Fenby 2004). Many demobilized Germans were also brought in as advi-sors, arms merchants, and military trainers, opening the door to a barter relationship between China and Germany, which in the 1920s lacked adequate cash and foreign exchange, and permitting Germany to begin rearming with Chinese raw materials (see Krebs, in Lock 1998). In the United States, veterans from both the Spanish–American War and World War I found immediate employment as strike-breakers in mining camps. Having often gambled away their money on the trip home, many veterans were willing to work for low wages replacing anyone on strike. The public, moreover, frequently sympathized more with out-of-work veterans than with strikers demanding higher wages (Norwood 2002: 61, 295). Local militias deployed against striking miners were often led by veterans from a wide variety of domestic and colonial wars, including the cam-paigns against the Sioux, the Boer War, and the Mexican Madero revolt (Norwood 2002: 146). And, after World War II, the huge demobilization of sol-diers, many of whom hailed from colonies, contributed in no small way to the wars of independence in colonial Africa and South Asia. The notorious merce-naries whose exploits made history in the 1960s for their commission of atroci-ties and their role in coups were World War II veterans.

As the United States tried to chart a new course for its post-Cold War military in the 1990s, many people with backgrounds in the defense industry and the mil-itary looked for new careers in which to apply their hard-won expertise. They formed an early labor pool for PMSCs, and they have since been joined by those who have left the military for the private sector, in some cases before their terms

of service have expired (Kelley 2005; Norton-Taylor 2005). Private companies provide a structure and an identity for those who imagine no other way of life: the increasing professionalization of the soldier since the end of the draft era may have its logical end in the career of a private contractor.

At the present moment, both locally owned and foreign-owned security companies in Afghanistan are hiring Afghanis who have been recently demobilized from warlords' militias. In fact, the same men are often hired by the same warlord as private security forces after having undergone a UN- or NGO-related demobilization process (Nawa 2007). In Iraq, the use of private military contractors to train and equip the Iraqi security forces has resulted in weapons being used by insurgents, or smuggled into Turkey by the Iraqi Kurds, or else just sold on the black market (Schmitt and Thompson 2007). As Michael Walzer noted, it is "exceedingly strange" that we are using "private militias of our own" to disarm Iraq's private militias (Walzer 2008).

Nevertheless, the idea that PMSCs can provide work for potentially destabilizing veterans in need of employment is a powerful one with historical force. Complex humanitarian emergencies, including genocide, and increasingly strong insurgencies in places like Sierra Leone, the Congo, Rwanda, Liberia, and Angola, created a great demand for well-trained and equipped forces. This demand for military power against internal insurgents, as in the well-documented cases of Executive Outcome's contracts in Angola and Sierra Leone, was readily supplied by ex-combatants and officers from a newly downsized and reconstituted South African military.

At the same time and as Figure 2.1 depicts, more and more multinational and transnational corporations have been doing business in these unstable areas, and they have led the demand for private security. States with large multinational oil
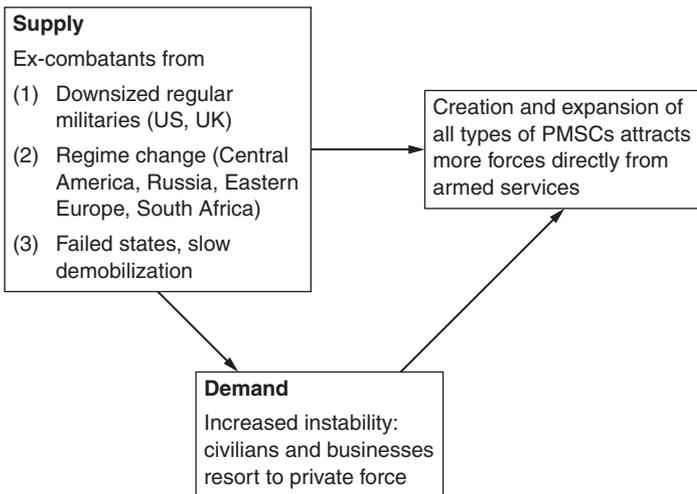

Figure 2.1 How supply affects demand in the market for force.

and gas investments have seen an increase in executive kidnapping cases, and one response has been an increase in private security. States that formerly had their own police forces may no longer provide it to certain industries, or they may do so in conjunction with private forces trained, equipped, and hired by the industry itself.

The market for force, like any other market, is extremely difficult to control, either by limiting the supply or decreasing the demand. All available evidence shows that current conflicts have been seriously affected by the rise in supply and the simultaneous increase in demand. But when the market story is stressed, the authority for policy decisions is shifted onto impersonal market forces, which presumably lie beyond any one state's ability to control. The mention of a market mechanism makes certain outcomes seemingly inevitable, which then works to diffuse responsibility and blame. As Louis Pauly points out in his account of the global rise of private authorities, the market analogy implies that "[s]ome will win, some will lose … but the political blame for such outcomes will be diffused" (Pauly, in Hall and Biersteker 2002: 82). Market-based accounts for circumstances hide the specific political choices that brought certain types of unregulated markets into such prominence in the first place. This insight brings us to the next type of account given for the resurgence of private security forces: the idea that political factors force the privatization of certain policy choices, making them less visible and transparent.

Origins (2): the political story

The second narrative that explains the rise of the private security industry is less about the impersonal workings of a market and more about the specific requirements of politics. This "political story" has three versions: a nice version, wherein reasonable policy choices are thwarted by irrational political demands made upon them, thereby requiring outsourcing; a cozy version, where PMSCs openly work hand-in-hand with government; and a nasty version, in which conspiracies to overthrow leaders and concentrate power in hidden ways are only achieved through the covert use of private armies.

The nice version: achieving laudable goals when politics gets in the way

Military Professional Resources Incorporated (MPRI) was founded in 1987 by a group of retired military officers who wanted to put their skills to work. It was bought by defense industry giant L-3 Communications in 2000, but still focuses on providing military and police training overseas. Its current work includes large contracts training both the Iraqi and Afghan National Security Forces, mentoring military leaders in Afghanistan, and providing training in Bulgaria, Nigeria, and Kuwait. MPRI/L-3 has a contract recruiting for the US military, and staffs the country's ROTC centers. They burst on the political scene with their 1995 contracts to train Croatian military forces during the civil war in the former Yugoslavia. Forbidden by law to receive military advice from standing

US forces, Croatia negotiated a contract with MPRI (Avant 2005: 98; Kassebaum 2000; Singer 2003: 125). After lectures and discussions on topics ranging from civilian control over military forces to officer training, logistics, and strategy, the Croatian military initiated successful operations in the spring and summer of 1995, which took back major areas that had been occupied by Serbian forces. Despite official statements denying any specific involvement of MPRI leaders in this military campaign, it is widely assumed that there were longstanding plans for the company to advise, train, and equip the Croatian force as a first step toward ending the Balkan Wars (Avant 2005: 101ff.).

In Iraq, when MPRI won the contract to train the new Iraqi Army, the contract had to be renegotiated repeatedly as the operational environment, and the sheer difficulty of the task, gradually became clear. The goal of recruiting a whole new force, and training the trainers to push units out as fast as possible, had to be abandoned. Finally, the US Army took over all training itself and relegated MPRI to provide security to those trainers. In contrast to the work MPRI had done in the former Yugoslavia, where they were training a more experienced fighting force in the nuances of tactics and maneuver, the Iraqi recruits were completely untrained and quickly became the targets of the insurgency. This required the creation of new training grounds, first outside of Baghdad, and then eventually outside of Iraq altogether, in Jordan.

Although MPRI is staffed with retired US military officers, and has a very close relationship with the military, its status as a private company sometimes makes them resented on the ground. In 2004, Theresa Whelan, the Deputy Assistant Secretary of Defense for African Affairs noted that when MPRI was hired to train the new African Crisis Response team, set to operate out of Nigeria, the military was brought in to do any training regarding the laws of war (Whelan 2003). While MPRI has been providing training in logistics, tactics, and command and control, Special Operations Forces gave lectures on human rights and rules of engagement, in order to underscore the high level of importance placed on this training, and to avoid any sense that the United States was distancing itself from the conduct of these forces. It was assumed that this was a reaction to the criticism that MPRI garnered in the wake of Croatia's military successes, which were marked by serious allegations of human rights abuse, and ethnic cleansing of ethnic Serb Croatians (Kassebaum 2000). A similar frosty dynamic was apparent between African military officers and MPRI trainers at a conference in Washington, DC in 2006, where, despite an enthusiastic presentation by a representative of MPRI, he was met with skepticism. Some officers noted that they were offended that they would be treated to training "on the cheap" by retired military who didn't have any real investment in the forces they were training, except for a contract. "You open your binders, deliver a lecture, collect your pay check, and go home. You don't really care about us," said one officer.

Critics see MPRI as a way for former military personnel to streamline their way into the defense contracting industry, and avoid the same level of political oversight that the State Department or the military would encounter. The advan-

tages of having an especially close private foreign policy and military team, however, seem to outweigh any criticisms. MPRI is one of the most trusted PMSCs out there, much more "politically correct" than those who offer more robust security services (Pelton 2006: 260). In a recent commentary on the use of PMSCs, Michael Walzer came down in favor of the use of MPRI as an example of "mercenary usefulness" (Walzer 2008) when just such political considerations stand in the way. But then he offers an alternative:

> Might it not have been better in the long run – better at deterring future Serb attacks, better at preparing the American people for just interventions (and making unjust interventions harder) – if President Clinton had gone to Congress and laid out the argument for helping the Croats? Using private soldiers makes policy invisible and so reduces (or eliminates entirely) its political costs. But it is a crucial feature of democratic decision-making that politicians should pay the costs of decisions they make. They should also get credit for the benefits. And then voters can study the balance sheet.
>
> (Walzer 2008)

The cozy version: PMSCs as part of longstanding foreign-policy goals

In 1975, Vinnell was a struggling company whose lucrative contracts building military installations in Vietnam were coming to an end. It was saved by a lucrative contract with the Saudi Arabian government to train and advise their National Guard, a force of over 125,000, whose duties include protecting the Saudi royal family from internal coups by its own military. Since then, Vinnell, now 51 percent owned by Saudi backers and 49 percent by Northrup-Grumman, has maintained a team of over 1,000 contractors to train, equip, and advise the National Guard (or SANG). According to its website:

> Vinnell Arabia is the market leader in U.S. military doctrine-based training, logistics, and support services within Saudi Arabia. We provide unparalleled training and simulation services for defense, national security and fire/ emergency medical response that fit our customer's requirements perfectly throughout the Kingdom of Saudi Arabia and have done so for over 32 years.

Vinnell's contract with the SANG best represents the "cozy" relationship between a PMSC and another country. Vinnell contractors are hired directly from the military and the Special Forces, and they maintain a recruiting office at the Special Operations Command in Florida. In the past they have worked for the CIA, leading to speculation that they have served as a "front company," or at least that they cycle intelligence professionals in and out of their business. According to a career military office who has worked in Saudi Arabia overseeing the Vinnell contract, the relationship is a "win–win" one: "the Saudi government deposits $186 million yearly to the US Treasury; and the money is then

used to hire Vinnell."[1] The regular US military also works directly with the regular Saudi military, but Vinnell's relationship with the SANG, whose members are drawn from a specific tribe that remains loyal to the royal family, sustains a direct American tie with the ruling family, as well as makes money for a US company. The close relationship between the US and Saudi Arabia might make a strong partnership between the country's respective militaries reasonable, but the specific cozy political relationship between the SANG and the Saudi royal family make it necessary to have this particular training done by contractors.[2]

The nasty version: subverting the political process

The final version of the political uses of PMSCs emphasizes the most nefarious of actions: intervening covertly in the politics of another nation. There is no better recent example than the March 2004 coup attempt in Equatorial Guinea (Pelton 2006: 302ff; Roberts 2006). Equatorial Guinea is a small, but very oil-rich, country sandwiched between Cameroon and Gabon on the south-west coast of Africa. "The Wonga Coup," as it is now known ("wonga" is British school-boy slang for "money"), involved an array of characters worthy of a novel, including Niek du Toit, a longstanding South African mercenary; Simon Mann, a former member of the British Special Air Services and debt-ridden aristocrat who used to work for Executive Outcomes and Sandline; and Mark Thatcher, the former UK prime minister's son. The coup aimed to remove the much-maligned president of Equatorial Guinea, Teodoro Obiang Nguema, and replace him with an exiled opposition leader, Severo Moto, in return for preferential oil rights in the country. Moto was living among other exiled ex-patriots in Spain, which had formerly ruled Equatorial Guinea. Moto had attempted a previous coup in the mid-1990s, for which he was convicted of high treason in absentia. The 2004 plot seems to have enjoyed the tacit approval of both UK and US administration officials: Greg Wales, one of its organizers, met twice with Theresa Whelan, the Deputy Assistant Secretary for African Affairs at the Defense Department. Both of them attended an International Peace Operations Association (IPOA) conference for security contractors in November 2003, wherein Secretary Whelan laid out the DoD's plans for the use of contractors in Africa (Whelan 2003). A former South African intelligence official with mercenary experience, who this time felt cut out of the plot, blew the whistle and sent a report of his information to the UK Foreign Office and the Pentagon a few months before the coup was to take place. Although the details are shady, it seems that both offices did very little to investigate and gave the impression of tacitly approving the operation (Pelton 2006: 324).

   The "Wonga Coup" was foiled when Zimbabwean police impounded a plane that landed in Harare ostensibly to refuel on its way to the Congo. Aboard were 64 men, a "mini army" that included, among others, two men who partly owned a South African security firm with substantial contracts in Iraq; many former contractors who had worked for the defunct Executive Outcomes; and one who

had just returned from working for the US-based Steele Foundation, a security firm whose most recent mission had been to spirit Haitian president Aristide to safety in the Central African Republic. All of these men were arrested, some were tortured, and an additional group on the ground in Equatorial Guinea was also arrested. Some now face life in prison.

The Wonga Coup demonstrates the conspiratorial side of the political origin of PMSCs. The ability to finance and organize decisions to use ad-hoc teams of PMSC men for "assisted regime change," as one internal document put it, no matter what the justifications, speaks to the worst fears of those analyzing the industry. There may be very good reasons to intervene, on humanitarian grounds, in another country. And there may be very real difficulties posed by doing so openly, as an act of state. But ideally, no intervention should be tied to any immediate financial gain: it should not be funded by companies who will profit from a change in regime, nor should it be tied to promises of resources on the cheap. The strong suggestion of covert involvement by Spain, the US, and the UK makes the ineptly planned Wonga Coup an exemplar of the political story's nastiest version.

During an interview in London, Michael Grunberg, former CFO of Sandline, observed that "for one billion dollars, one well trained company could put an end to all the civilian casualties in Africa." When asked to describe how to accomplish this mission, he sketched an imaginary map of Africa on the table: "we'd start here in the middle of West Africa, and move here," he said, pointing north.[3] He imagined no serious opposition, painting a picture of an Africa free from human atrocity and free for profitable resource extraction and business development. PMSC could be the answer to humanitarians and business companies alike, a readily available army willing to do what is right. In this case, the political realities of sovereignty and international agreements are arcane roadblocks to securing a better world for all. The political origin of PMSCs reflects, to some degree, this sense of impatience with reality.

In these examples, supporters of PMSCs justify on political grounds the use of a formal PMSC or of a loose grouping of mercenaries to achieve a specific goal, whether it is the goal of achieving a certain kind of military victory by the Croatian military, or the goal of regime change in an odious state. In both cases, the political circumstances in the home countries of the US or the UK required these ends to be achieved covertly. Supporters of private forces speak in terms of "costs and benefits" and "political necessity." The political costs in the US or UK of circumventing arms embargoes to the Croatians or of openly supporting one side or the other in the civil war, and the costs to the state system of openly fomenting and executing a coup in Equatorial Guinea, were too high. The need for action, however, also remained high. The resulting employment of a PMSC, or the quiet wink and a nod given to the coup in Equatorial Guinea, were thus justified and beneficial, but only when done clandestinely. It is the reluctant politician that allows the State Department to hire MPRI, or keeps the secret of UK involvement in a coup carried out by mercenaries with ties to extractive industries.

A final aspect of the political account of PMSC origins underscores the financial enrichment of companies attached to political leaders and the various kinds of kickbacks that those companies then provide to politicians. It is also the story often heard about then-Vice President Dick Cheney's relationship with Halliburton, for which he had previously served as a Vice President. Halliburton's subsidiary KBR was granted almost exclusive contracting rights to provide a wide array of logistical services for military bases in Iraq and Afghanistan. The ties between these companies and high-ranking members of the Bush Administration are well documented, and the assumption has remained that contracts would be granted to these firms on the basis of these relationships, and that, moreover, any fraud or crimes exposed would be subsequently overlooked or minimized. PMSCs, like the privateers and mercenary forces of old, allow administrations and governments to "outsource" responsibility and subvert laws. Those scholars who emphasize the political story of PMSCs' origins tend to be the "pessimists" that Deborah Avant describes (Avant 2005: 4).

Origins (3): the rise of private authorities

The political rationale behind the use of these forces has been given greater legitimacy by the third "origin" story: the increasing prominence of private organizations, or public–private partnerships in policy-making and governance. This rise has occurred both domestically and internationally, and it is due to a number of factors. The increasing use of private forces to take on formerly public tasks is found within the military, in domestic politics, and in international affairs. The transformation is driven by a number of key capitalist assumptions. First of all, private firms foster competition, which means cheaper, but also better, products and services. As Doug Brooks, of IPOA, repeatedly mentions, Fed Ex can do things "better, faster, and cheaper" than the US Postal Service. Private firms may be more autonomous, but their contractual relationships with the government can be severed quickly if needed. And the decisions of multiple actors and organizations can be more effectively coordinated through these networks.

Domestically, there was an explicit choice to downsize government in the 1990s. Former Vice President Al Gore's project to "Reinvent Government" by contracting out many formerly public functions to private entities was just one manifestation of this trend. The US Agency for International Development, in the Bush Administration, decided to downsize its direct provision of services, and instead began directing much of its funding to US-based firms that would then compete to run overseas programs (and employ US citizens in the process).

Not only does the privatized, market-based approach to solving problems provide better practical solutions to any particular need, it is also a "better" option on its own: it has an edge on the normative side of the scale. Private firms offered professionals better salaries, more flexibility, and, in general, a more interesting (and mobile) career path than one in government, and gradually they began to attract the best talent – schools of public policy began sending their graduates to private firms or non-governmental organizations rather than govern-

ment. This shift in the idea of public administration is part of what spawned the idea of a public–private hybrid. Sometimes these hybrids are referred to as public–private partnerships, or mixed regimes, and recently they have come under increasing scrutiny. Jonathan Koppell is one of the few researchers who have looked at the gradual rise and increasing autonomy of such hybrid organizations. In his account, hybrids, though not completely new, began extending their power and autonomy in recent decades because they seemed "more 'business-like' than a typical government program. They might be cheaper, and more effective, but they also just invoked a better idea of how to do business" (Koppell 2003: 3). Regardless of their true benefit – which his analysis questions – the use of hybrid organizations is only likely to increase, perhaps only because they are perceived as beneficial (Koppell 2003: 185).

Although domestic private security contracting firms are not officially referred to as hybrid institutions, they take on many of the same aspects: not only do they merely do business with the government, their activities are seen as part of national policy, and the risks of their actions and choices are ultimately backed up by public force. They gain privately from the relationship, but are ultimately part of a public policy, and any problems (fraud, mis-use of force, etc.) are ultimately borne out by the public. In the most direct case, the military has to step in and do the job if the contractors walk off the job: as happened when Custer Battles walked off the job of securing Baghdad airport (Witte 2005). More indirectly, the liability for contractor actions or firm fraud falls on the government or the contracting entity. And, as Koppell points out, the costs of adequately regulating contractors have to be deducted from any beneficial aspect of the arrangement.

What was wrong with a solely public administration of public problems? As one scholar put it:

> The traditional system of administration persisted for decades and on the whole was extremely successful. It fought several world wars, produced and administered a massive expansion of social services, instituted large-scale economic management for the public sector, and initiated a host of remarkable policies. This system has now, however, gone from "hubris to helplessness."
>
> (Downs and Larkey 1986, quoted in Peters 1996: 13)

In the wake of the 2008 financial crisis, much of which was exacerbated by the hybrid mortgage-lending agency Fannie Mae, much of Koppell's research seems prescient. Since the fall of 2008, the state has stepped back in, calling all of this emphasis on the benefits of privatization into question.

One recent book, *The Emergence of Private Authority in Global Governance*, argues that there are three broad categories of private entities in the international arena: market actors, moral actors, and criminal actors (Hall and Biersteker 2002). Organizations that possess private *market authority* include: transnational financial institutions like the International Monetary Fund (IMF) or the World Bank; transnational corporations; and those formal and informal "regimes" of

Table 2.1 Sources of international and transnational private authority

Market authority	Moral authority	Illicit authority
Corporations	NGOs	Criminal networks
Global financial institutions	Religious organizations	Mafias
Insurance regimes		Warlords
PMSC work under these types of private authority:		
Risk protection	Demining, DDR Refugee protection	Mercenaries, weapons smuggling and bodyguards

large private banks and corporations, including "cartels" that cooperate across borders. Transnational private *moral authority* is wielded by a wide array of NGOs and religious organizations. Finally, private armies and transnational criminal networks are evidence of the large amount of private *illicit authority* (Hall and Biersteker 2002: see top of Table 2.1)

As the lower half of Table 2.1 demonstrates, PMSCs are a bit of all three: they are private market-based actors, who claim moral authority for their actions "saving lives," and who are illicit in a number of ways. Some members of PMSCs have been linked with illicit weapons trading, or drug smuggling, or sex-trafficking (Human Rights First 2008). And all PMSCs are still seen as extra-legal actors, problematic and suspect because of the legal and moral norms they subvert.

Private authorities often replace public authorities in some of the most important acts of governance: maintaining contracts and providing security. On the ground, in places as diverse as Congo and Mozambique, private authority regimes supplant the state. And most importantly, they are often highly mixed up in each other. Carolyn Nordstrom's *Shadows of War* provides a glimpse into the economic and social arrangements that emerge in and around conflict zones, literally in the shadows of on-going wars. She describes the inter-penetration of networks of drug runners, humanitarian relief workers, and private militias, all operating in the midst of semi-lawless areas. This is a world where the same airplane pilots subcontracted by NGOs to ferry in relief supplies are subcontracted by drug barons to ferry out coca or weapons (Nordstrom 2004: 87):

> From diamonds to drugs, dominions exist that follow hierarchies of authority, rules of conduct, ways of punishing transgression, and codes of behavior.... These interrelated transnational industries shouldn't be confused with states, but they do have governing councils, laws, and security forces. They forge trade agreements, foreign policy, and currency exchanges. And they set up transport routes, communication linkages, and banking systems needed to effect trade.

(Nordstrom 2004: 131)

This rise of private authority is helped by an ideology that the market provides a more efficient playing ground and the fact that certain professional identities are tied to a notion of mobility and flexibility. There is another level of explanation, however, that looks at the vacuum that private authorities rushed in to fill, the waning or declining power of the state itself. The same series of questions that opened up around the end of the Cold War – about the potentials of globalization, or the rise of a global civil society – also included a number of serious questions about the future role of the state itself. Many scholars began to see the end of the Cold War not as a victory of one form of state (liberal democratic capitalist) over another (communist), but as heralding a gradual demise of states altogether. Either states were failing because they were no longer propped up by Cold War super powers, or they were failing because they had over-extended themselves during the Cold War, or else they were heading toward eventual collapse as they faded into obscurity and irrelevancy. "State death" became a focus of much study, along with the end of all sorts of other things.

In place of a world as it might look on a map, with multiple sovereign states with recognizable borders, two opposing predictions were offered. Either the future would be marked by a coming anarchy and global lawlessness (where it was, in Thomas Friedman's words "hot, flat, and crowded"), or there would eventually be established a new super-state composed of ever more tightly bound regions. (Kaplan 2001; Friedman 2008; Wendt 1999) In these two depictions, either bonds are broken altogether, and Hobbes' state of nature reasserts itself in all its brutal, bloody, and chaotic anarchy, or else the spider webs of a global civil society begin to provide a flexible world of increasing trust, if not clarity, allowing for peace, if only in pockets at first, but increasingly spreading in a conceptually less-organized, but more bottom-up fashion.

In the midst of these two scenarios, the smaller centralized state becomes more and more regulatory – for some scholars we are entering into the "age of the regulatory state" wherein private entities carry out state functions, and the state merely regulates (Glaeser and Shleifer 2003). So in contradiction to any theory of the decay or withering away of state power, there has been a tendency toward a new form of state expansionism, extending its regulatory power even as it cedes power to private authorities.

Social theorist Anthony Giddens has referred to the contemporary world as a "runaway world," symbolized as a "juggernaut" that requires those who do not want to be crushed by it to learn to "ride" it. Knowledge is "spinning out of control," and the social practices are not up to the task of providing some sort of "ground" or solid principles (Giddens 1990: 151). The social world that the state surrounds is becoming, for better or worse, "disembedded" from established geographic locations, or traditional institutions, or even stable organizations. All seems to be in flux. This leads to what he terms "ontological insecurity," the sense that nothing is certain, and that very little can be trusted. But the picture is not as grim as it sounds, since late-modernity has begun to establish new modes and practices that allow for a new form of social "re-embedding." All of the gadgets that keep people linked and networked allow for new forms of trust

mechanisms to come into play. These new connections, however, are often only superficially secure, even as they allow for cosmopolitan mixture and movement, and for flexibility.

The trend toward public–private partnerships and the rise of multiple private authorities thus creates a kind of "anarchy" and disorder, making it all the harder to grasp conceptually or analytically. The proliferation of private authorities – including PMSCs – is part of this anarchic web of connections, connections often based on the very trust mechanisms that Giddens wants to highlight as a distinct aspect of late-modernity. Trust has recently begun receiving its share of academic interest, as economic and social theorists attempt to figure out how the insecurities of globalization can be moderated. Trust, wherever it is found, is a social mechanism that arises in the presence of its opposite: insecurity, danger, or risk. Only because of the specific character of modern risk-taking, and the level of dependence that must be placed on faceless (abstract) others, is trust so necessary.

This section began by describing the global trend of a rise in private authority, in both domestic and international arenas, in the last two decades. Underneath the many reasons for these trends, whether or not they are explicit responses to ideological shifts, or needs on the ground, is a deeper background shift that is only captured by those, like Giddens or Bauman, who theorize about contemporary modernity as a whole. PMSCs may be responding to a market for force, and they may be explicitly chosen by politicians eager to act with plausible deniability, but they can only flourish and last in an environment that is ready for them. The growth of multiple private authorities overlapping and competing in situations of complex emergencies and reconstruction required, for it to work, a supply of people willing to align themselves with the goals and interests of these organizations, and to move wherever necessary to do so.

We have seen how the shifts in the business world and the world of humanitarian action have influenced two of the three "ways of life" that contribute to the PMSC. But so far I have said very little about the actual way of life of the soldier, and especially the soldier in what we call "the age of new wars." The next two origin accounts will serve to turn the discussion back toward the culture of warfare, and the culture of soldiering, both of which now offer fertile ground for the growth of the PMSC industry. If PMSCs represent a new actor in the world, the new wars and battlegrounds in which they work are the stage on which they act.

Origins (4): new wars

Former President George W. Bush repeatedly reminded the world after the attacks of September 11, 2001 that "we are fighting a new war, against a new enemy." This new war would require new types of weaponry, a new array of forces on the ground, and new strategies for combat. In fact, his announcement of a new enemy and a new way of war was old news. Throughout the previous

decade, scholars and military analysts had been united in describing the types of conflicts as new, even if they were divided on exactly what these new wars actually were. Most famously, Israeli military scholar Martin van Creveld announced a fundamental "transformation of war." Classic state-based war was being eroded; and current strategies were "either wrong or obsolete … today, the most powerful modern armed forces are largely irrelevant to modern war – indeed that their relevancy stands in inverse proportion to their modernity" (van Creveld 1991: 32).

In order to understand these new wars, it is necessary to first understand what is being overturned; or perhaps more appropriately, defeated. There are many ways to describe what has been left behind. Van Creveld referred to it as "trinitarian warfare," after Clausewitz's oft-repeated thesis that wars are the result of a "remarkable trinity" of forces: the irrational passions of a people, the rational calculations of a government's policy, and the "probability and chance" that the army and its commanders try to bend to their will. War is suspended between these three forces, "like an object suspended between three magnets" (Clausewitz 1976). Warfare now is distinctly "non-trinitarian": the state, army, and people are often disconnected; the forces that once might have balanced a magnet are more chaotic than ever. Some modern military strategists now refer to various "generations" of warfare: we have now passed into the fourth generation since the beginning of the modern nation state in 1648. Earlier generations stressed order above all: war was state-directed, commands were to be obeyed, soldiers were to fight in ordered columns. Gradually more and more decentralization began to occur: initiative in achieving goals rather than obeying orders was accepted, strategy began to stress maneuver and "non-linear" battles. Fourth-generation warfare is more chaotic and decentralized than ever: we now fight non-state actors who are more protean than anything, and we fight with an array of protean forces ourselves. In general, then, old wars were inter-state conflicts, where massive firepower was brought to bear, often requiring a total-war economy in order to produce and sustain the necessary military might.

More than any of these specifics, however, new wars are those that subvert the cultural model of warfare that one scholar calls the "western way of war," an idea of war that has lasted throughout the history of Western Europe. Victor Davis Hanson's groundbreaking study of Greek hoplite warfare, *The Western Way of War*, identified four essential features of this cultural ideal (Hanson 1989). He argues that the cultural attitudes of the West concerning the methods and purpose of warfare have created an almost unbeatable combination of forces on the battlefield (Hanson 2001). For two millennia these forces have driven the expansion of empires, the consolidation of states, European colonization, the victories against Germany and Japan in the first two World Wars and the Soviet Union in the Cold War. The four essential elements of the "western way of war" are as follows: "face to face" *battles of attrition*, fought by *citizen-soldiers*, motivated by some kind of overarching *abstract ideal*, and aided by a liberal use of *technology*. New wars are culturally perplexing to Western militaries because they upend almost all of these ideals.

The first of these, arguably the most important, was the "invention" of what Hanson calls "face to face battle unto the death," or what modern military

scholars would call "a war of attrition" with "decisive" battles. As opposed to a strategy of low-level attacks or the hit-and-run skirmishing that marked the warfare of so many other groups, the Greeks opted for the horrific, but short-lived and decisive, battles of massed warriors fighting at close range until one side broke. The resulting battles would become one of the most enduring attributes of the West's cultural ideal of warfare: "It is this Western desire for a single, magnificent collision of infantry, for brutal killing with edged weapons on a battlefield between free men; that has baffled and terrified our adversaries from the non-Western world for more than 2,500 years" (Hanson 1989: 9). Other cultures have long viewed this propensity for deadly battles fought in the open with real perplexity, in the same way in which guerrilla combatants or insurgents today question the need to show themselves. Hanson cites the Persian General, Mardonias, who in 490 BCE commented on the methods of hoplite warfare: "these Greeks are accustomed to wage their wars among each other in the most senseless way" (Hanson 1989: 9).

Hanson's second essential aspect of the "Western way of war" was the discovery that ideas – or ideology – could motivate combatants and, more importantly, the citizens that support them. Fighting for abstract, even "holy" ideas, rather than a specific people or clan or race, allowed widely divergent combatants to become unified behind the idea of divine right (the Crusaders), jihad (Muslim holy warriors), spreading democracy and the rights of man (Napoleon's armies), or protecting human rights (war in the 1990s). Especially where armed forces have relied on the financial and political support of citizens and non-combatants, the justification for combat became absolutely central, and the more abstract and sacred the ideals for which war was fought, the better.

> Since he who fights puts everything at risk, whatever he fights for must be deemed more precious than his own blood…. God, country, nation, race, class, justice, honor, freedom, equality, fraternity … [are those] myths for which men are prepared to give their lives…. So elemental is the human need to endow the shedding of blood with some great and even sublime significance that it renders the intellect almost entirely helpless.
>
> (van Creveld 1991: 166)

The third essential aspect of war in the West was the emphasis placed on the citizen-soldier as the best form of combatant. Although mercenaries and auxiliaries were often used (a point often noted by those defending the use of private military companies), the ideal remained the citizen-soldier. This ideal began in the Greek city-state and evolved in fits and starts into the consolidated states of Europe. The citizen-soldier would ideally alternate duties on the battlefield with the rights and responsibilities of citizenship at home. There was a tension in this ideal: as the democratic base for warfare expanded, the restraints on warfare that had evolved partly in order to preserve social hierarchies began to break down. But the cultural ideal remained strong.

And finally, from the beginning, and in contrast to other flourishing civilizations, war in the West has always grown alongside a faith in technological solu-

tions to military problems. This has affected the Western cultural attitude toward war in a number of ways. First, there have been little of the culturally driven restrictions of weapons to certain classes that occurred elsewhere. Second, technical innovation has tended to come from the bottom, from those same democratically inclined citizen-soldiers that expanded the power of the battlefield to begin with. Finally, this attitude toward technological experimentation and adaptation created an expansive weapons industry that profited from the innovations on the battlefield. The military–industrial complex is only the most recent manifestation of a longstanding relationship between experimentation and innovation in military technology.

The relationship between warfare and technology is one that is fraught with perils: alongside the rush to technological innovation (the most recent being the embrace of robotics in warfare) there runs a continual sense that technology will be the Achilles heel of modern combat, and that what is needed is a return to a much more embedded, or intimate, human-to-human form of combat. This is most obvious in the new counter-insurgency doctrines that have been developed and promoted over the last four or five years. Nonetheless, military analysts may decry the emphasis on technological solutions while, at the same time, recommending even more technological solutions to problems on the battlefield.

The old form of war that so clearly embodied these four "western ways of war" was epitomized by the multiple conflicts that made up World War II. These were wars between states, mobilizing entire citizen armies and requiring massive deployments of armaments and logistics. These wars represented the ability of states to consolidate power, both politically and economically, in order to extend or defend their territory. What is replacing this increasingly obsolete form of war?

New wars confront these established conventions on a number of fronts. The battlefield is no longer geographically confined; instead, we fight in a "battlespace" that extends in all directions, with no clear boundaries, beginnings, or endings. The citizen-soldier has given way to a professionalized military which, in turn, has given way to a hybrid public–private mix. New wars are marked by the absence of any abstract ideology, apart from the desire for self-defense: defense of the American way of life, or defense from the invaders (in general) and a vague humanitarianism. New wars, with their low-intensity and indecisive combat, and their asymmetric forces – often invisible and indistinguishable from non-combatants – continue to strike most Western militaries as not just frustrating, but wrong, cowardly, and unjust.

Mary Kaldor characterizes new wars as follows. They focus on an occupied or usurped homeland that is linked to a global diaspora of supporters and former inhabitants. These wars rely on all types of non-governmental non-state actors for financing, personnel, and logistics provision (Kaldor 1999). The types of armies used employ a mixture of former professionals and irregulars, often drawing from previously established armies, such as in South Africa or the former Yugoslavia, and augmenting these skeleton professional forces with irregular militias. The weaponry used is most often relatively non-complicated

small arms, able to be smuggled and hidden easily. And the overarching articulated goal of a war is the assertion of some sort of autonomous identity, usually under threat from some sort of occupation by another people. Many theorists stress the ways in which this focus on "identity" is a response to the disorienting experience of modernization or globalization, and the fragmenting of the idea of the nation-state. Others maintain that these identity-politics were always there, merely held down by a coercive state that has loosened its grip.

In an almost complete reversal from state-based Cold War nuclear-deterrence planning, the wars of the present day pit transnational and privatized actors from "above" against sub-state but equally globalized combatants from "below." Kaldor and van Creveld both describe a world in which the private contractor is the most obvious example of a new world order, an order in which individual actors are motivated by money and resources on the one hand, and identity on the other. The "new" wars of the last decade are wars fought neither for political ideology, nor for state goals as we know them, and by actors who often identify themselves only tangentially with a state. Contractors working for PMSCs are motivated by better pay, certainly, but also a desire to do what they do best, and for a cause that is often hard to put into state-based terms.

For many historians, the myth of some neat and clean battlefield populated by easily distinguishable combatants fighting under a recognized set of rules is just that, a myth. Clausewitz would call this ideal "abstract," or ideal, warfare, and he would contrast this idea with the "real" ways in which wars are fought, which, because of their mixed and messy reality, are often harder to characterize and accept. Despite plenty of examples of the skirmishing or low-intensity fighting so often seen in primitive war, guerilla war, and insurgencies, the "abstract" war, occurred when opposing forces met en masse, on a recognized battlefield, and for a specific period of time, until some "decision" was made. For all the ways in which World War II, for instance, evokes ideas of "a good war," the fact that civilians were explicitly targeted in strategic bombing raids, or that nuclear weapons were unleashed twice, or that millions upon millions were murdered in organized death camps, reminds anyone that new forms of horrific violence were being invented that subverted any idea of a recognizable form of warfare. Raymond Aron's essay "On War," written in 1956, tried to characterize the "polymorphous violence" that marked mid-twentieth-century warfare: "Let us try to understand the obscure logic of this polymorphous violence, of these wars that do not dare utter their names …" (Aron 1959). The wars that are unnamable are just those kinds of wars that represent, for some, the apotheosis of certain features of warfare in the West.

Here we run into a problem of terminology, for many of these environments have been simultaneously described as "new" and as a return to a certain "old." Contemporary conflicts are clearly different from the kinds of wars focused upon during the Cold War period, or the eras of the World Wars in the early twentieth century, and so they are new to analysis on many fronts. But in some crucial ways, the types of wars that now predominate bear resemblance to the wars of

early-modern or medieval Europe, enough so that a number of scholars have called this period one of "neo-medievalism" (Rapley 2006). Classic old wars had cracked under the pressure of two opposing types of war: the planning for strategic nuclear war, and the reality of the counter-insurgency wars of Algeria and Vietnam. The types of soldiers who fought these two types of war, their reasons for fighting, and the strategies used to win them could no longer unify a state: the people could not ever really support the logic of strategic nuclear war that the military might plan for; the military would not fight the kinds of wars the politicians might ask them to, and so on.

These essential features of warfare have supplied a foundation for military transformation: only those changes which do not challenge these genetic features will be easily accepted. How does contemporary conflict comply with these features? On the one hand, the military's use of technological solutions has not changed; new uses of unmanned aerial vehicles are only the tip of the robot-warrior iceberg. But on the other three fronts, new wars present significant challenges for the contemporary military. The new battlefield is populated by mostly unseen, hidden, enemies, who if they are seen at all, are often seen in the act of blowing themselves up. The regular army is being augmented by contractors, many of them non-citizens. The ideas which are fought for, as van Creveld notes, are either so broad as to be meaningless ("humanity, freedom for all"), or too suspect to be workable ("to make the world safe for business"). The political ideologies which substituted for religious holy wars have devolved (or evolved) into vague humanitarian ideals. The culture of Western war, in other words, is undergoing a massive shift, for better or worse.

Despite the proliferation of violence, especially violence to civilians, some scholars argue that these wars are not wars at all: they are remnants of a type of war that has slowly been delegitimized in the last half of the twentieth century. John Mueller compares "old" warfare with slavery, which has occurred in some horrific form or another for thousands of years, only to be gradually delegitimized and eventually outlawed. Warfare itself could be undergoing a similar slow demise. Instead, warfare is being replaced with the violence of criminality on the one hand, and law-enforcement (often by state-based militaries) on the other (Mueller 2004).

Mueller argues that war has not been transformed into something new, but is slowly disappearing altogether. In its place is the kind of indiscriminate violence that targets civilians, sometimes in genocidal numbers, and for the purpose of mass terror. Mueller is not arguing that violence has abated at all: but the shape of violence is markedly different, and even more importantly, the way in which it is judged, culturally and politically, has been transformed. The cultural idea of warfare is the big shift and transformation, and only by fully understanding this cultural shift can we see how private military firms have begun to flourish as defensive security actors, doing a form of policing in an insecure world.

Much of the outcry over private military firms, I maintain, has to do with these underlying transformations, themselves aspects of late-modern warfare, all of which present fundamental challenges to centuries-old ideas about how

warfare should be conducted. First and foremost is the bifurcation of the battle-field into legitimate, regular, state-supported, soldiers, and illegitimate, irregular, enemy combatants. Or between clearly defined combatants (regular or irregular) and clearly defined civilian non-combatants. But the cultural ideals of the military are often years behind the reality of its composition, and the popular imagination of the battles it fights rarely bear resemblance to their reality.

I have to admit to a certain amount of ambivalence about the waning of state power in the arena of war and combat. On the one hand, one of the primary purposes of state creation was to rein in disparate violent groups of people. On the other hand, in so doing, the nation-state created an abstract reason for violence: defense of the abstract entity known as "the state" and, along with it, inaugurated an era of total warfare, from the French Revolution to nuclear war. The apparent weakening of the state, evidenced in part by the rise of private security forces, may herald an age of not only mercenaries, but limited wars, in the best of circumstances "policing wars" in areas of instability, and in the worst case a return to the endemic instability and disorder of the early-modern age.

Origins (5): new soldiers

Various domestic cultural shifts have required militaries to change their internal cultures. Within the militaries of the developed world, and prior to the war in Iraq, the all-volunteer professional forces in developed nations had begun joint-forces training, attempted to integrate women into their forces, and created a new type of soldier, the "soldier-scholar," who returns repeatedly to military post-graduate schools to revise their training. Militaries have become highly "reflexive" organizations, continually assessing their performance and instituting new ways of addressing assessed weaknesses with "lessons learned."

Current scholarship divides the twentieth-century Western military into three eras. The "modern era" of the military dates from the Treaty of Westphalia in 1648 until the end of World War II and the development of nuclear weaponry. Roughly speaking, the state-based militaries that were formed during this era relied on an (often aristocratic) officer class and universal conscription of large citizen-armies. The aim of such forces was defense of state boundaries. The classic social-science analysis of this era of the military profession can be found in two books: Samuel Huntington's *The Soldier and the State* (1959) and Morris Janowitz's *The Professional Soldier* (1960). Both books trace the development of the often-problematic relationship between a liberal democratic state and the rigidly hierarchical and disciplined profession of the officer. Some scholars have dubbed the new postmodern military profile as the "clean and gentle" military. With a nominal emphasis on peace-keeping and nation building (stability operations and reconstruction), and a focus on the humanitarian missions of disaster relief, some wondered whether the pre-Iraq military had lost its focus on war fighting and defense (Lobe 2005; Goulding 2000; Luttwak 1996).

There are three distinct ways in which these internal military cultural shifts have strengthened the world of the private military contractor. First, the career

trajectory of soldier-scholars allows for legitimate transitions into the private sphere. In the UK, for instance, soldiers can take a year's leave-of-absence from the military in order to work in the private sector, with little adverse affect on their level of pay or job status. In the US, plenty of public-sector professionals migrate between public and private organizations. The "revolving door" between think tanks, governmental institutions, and private companies has generated plenty of criticism, from former President Eisenhower's warning about the growing "military–industrial complex" to current accusations of an "iron triangle" of business, government, and the military. Nevertheless, the career track is there, breaking down the idea of a civilian–military divide, or a military ethos that is all its own. As one ex-Special Operations soldier put it, "With three kids in college, I wouldn't be a responsible parent unless I augmented my retirement pay and worked for – or rather got worked by – MPRI."[4]

Second, the types of new wars that are being fought do not lend themselves to the horrific demands of what Christopher Coker called "metaphysical warfare," war fought for abstract ideals, especially that of the nation-state. What Edward Luttwak referred to as "post-heroic warfare" is now fought for unclear reasons. As one former British army officer put it, "In Iraq, the look on most American soldiers' faces says: 'Why am I here?'" In contrast, the culture of private military contractors has no ideal of heroism to live up to, and needs no larger justification for its mission than the fact of a business contract. These "postmodern" militaries are rarely fighting classic wars of defense, and have often tangential or more opaque relationships to overt state goals. Although there are still traditions of military service, many of these more globalized soldiers join the military "more for the desire to have a meaningful personal experience than out of either national patriotism or an occupational incentive" (Battistelli 1997).

Metaphysical wars were fought by soldiers who had a "calling" to be a soldier; that is, they were those non-mercenary citizen-soldiers (eventually, all volunteer professional soldiers) who took an oath to a profession, or a way of life. The state set itself up as the ultimate "end" for which such soldiers fought, and this language remains the mainstay of military ethics, the ethics of a profession with allegiance to the higher, metaphysical (literally non-material) entity of the Constitution, or the state itself. The (public) social contracts, civil and military, that mark the political theory of the seventeenth-century state were not at all the same as the (private) contracts of today. They were, in Coker's insightful formulation, more covenants than contracts. The distinction is crucial:

> professional armies had moved from having a contract with a feudal master or the Crown to a covenant with society. Social contracts produce governments, nations, and centralized power: they are the basis for all political society. A covenant, by comparison, produces families, communities, and traditions. It is the basis of civil society. The two forms of association are maintained in different ways: a contract by external threat if it is broken and a covenant by internalized identity, loyalty, obligation and responsibility.

> What makes a covenant more "virtuous" than a contract is that it is uncondi-
> tional. Contracts are bilateral and are based on terms. They are enforced by
> penalties. Their conditions precede agreement. Covenants, by contrast, tend
> to be open-ended. What Hegel saw in the modern soldier was a man with a
> vocation, not a job.
>
> (Coker 2001: 47)

This vocational calling to something beyond the soldier was what constituted his
metaphysical existence, and his potential ability to sacrifice his life for that state.
It led to the total mobilization and total warfare of the Hegelian state, the inabil-
ity to "individualize" the millions killed (civilian and soldier alike) in such con-
flicts that became the apotheosis of the modern state, and the ironic postmodern
retreat to contracts, rather than covenants, and individualized goals instead of
sacrifice for the state. Compared to the wholesale slaughter of early-twentieth-
century battlefields, and the annihilation of whole cities that accompanied it, the
non-metaphysical nature of late-twentieth-century warfare is a positive step
away from what looked like a lofty but horrific abyss. Now, the army boasts that
"it's not just a job, it's an adventure": the professional vocation that still endows
the officer ranks of the military is sold to new recruits as a chance for individual
betterment, and adventurous experience. But this may only be a real problem for
those who overly romanticize the modern battlefield as a place where thousands
would accept the authoritative demand that they sacrifice themselves for a noble
cause. This is metaphysical war, and it now strikes most Westerners as some-
thing almost barbaric, as nationalism gone horribly wrong.

Metaphysical warfare demanded bodily sacrifice for communal needs. In its
place, non-metaphysical warfare elevates the physical body of the soldier as
something to be protected and rescued. This makes war itself a completely dis-
orienting pursuit: the anarchic ethics of global civil society make it harder for
militaries to do their jobs: "In a world in which individuals must produce, stage
and cobble together their biographies themselves," militaries must balance indi-
vidual rights against the need for the subordination of the individual to group
demands (Coker 2001: 78). And it is not just the individual soldier who receives
our care and attention; the individualized victim of our policies is also
recognized.

Finally, there is the complex issue of what is variously called "casualty aver-
sion," or more negatively "casualty phobia." High numbers of battlefield casual-
ties are no longer seen as readily justifiable. Casualties of all sorts require
accounting and explanations, within the force, and to the public. Lamentable to
some, and a sign of a welcome change to others, this has led many analysts of
the private military industry to see them as part of a picture that will help mini-
mize the lethal effects of military operations by hiding a large part of the force
from view. The relationship between casualty aversion and the rise of contract
ethics are both related to the death of what Coker's "metaphysical warfare." This
change is addressed more fully in the next chapter, but provides the background
assumptions that make "new soldiers" good material for the PMSC industry.

Conclusion

The enormous shifts highlighted in this chapter have helped to spawn the proliferation of PMSCs. They span conscious policy decisions – to use PMSCs when other choices are seen as politically unviable – to impersonal market forces like the glut of former military men dumped into societies that would be more than happy to have them employed in some fashion. There are ideological shifts, like the idea that private authorities can better provide for public goods, driven by the reality of the increasing expense of expanding the military troop size even as the deployments multiply. There is also the reality of change in the idea of the military profession, which is less attached to the specific organization, and more about a set of skills than can be employed in any number of ways. Finally, there are the simultaneous and often chaotic shifts going on in the ideas of warfare: how they should be fought, and what type of solider is best equipped to fight them. All of these forces are affected in various ways by the subject of the next chapter: the rise of a particular way of conceiving of risk, and the existence of what could be called the "risk society."

3 Contracting and danger in the risk society

We live in a dangerous world where businessmen, diplomats, construction workers and others need to feel secure and be safe as they go about their legitimate business in difficult, and sometimes unstable, countries. ArmorGroup provides that security.... Delivering safety and security is a vital task in the modern world.

(Sir Malcolm Rifkind, Chairman of ArmorGroup)

The reality of dangers is not an issue. The dangers are only too horribly real.... This argument is not about the reality of dangers, but about how they are politicized. This point cannot be emphasized too much.

(Mary Douglas, *Purity and Danger*)

Security provision in a dangerous world

The UK firm AKE was founded in 1991 by a former soldier, Andrew Kain. His intention was to use his knowledge of counter-terrorism and intelligence, along with his military connections, to provide private risk-management solutions to a wide range of NGOs and businesses. AKE has since evolved into the typical protean PMSC, the tripartite military–business–humanitarian firm described in Chapter 1. The company has its main offices in Hereford, England, near the central offices of the UK Special Forces, the Special Air Service (SAS). It provides bodyguards (or "protective services") to clients ranging from businesses to humanitarian organizations to media companies. Its office provides intelligence on political and security risks worldwide, and they currently publish a bi-weekly report on Iraqi violence for their clients. AKE also offers a well-respected course for humanitarian aid agencies, journalists, and business people entitled "Surviving Hostile Regions."

In April of 2009, AKE also began offering a training course in human rights and international law in conjunction with the University of Aberdeen in Scotland. The two-day course (which cost £1,860, or almost $2,700) was advertised as follows:

This course is essential for personnel from a multitude of backgrounds, not least non-governmental organizations (NGOs), the media, government,

armed forces, the security industry, the international energy industries and corporate social responsibility offices (CSR) and humanitarian sectors that are operational in these areas. It allows better understanding of the challenges raised in terms of human rights and international law by issues such as trends in global conflict, international legislative standards and developments, the realities of working in a hostile environment, accountability and moral duty, military operations and legislative issues (such as corporate manslaughter), and their application to their working environment.

(AKE Group Inc. 2009)

AKE has thus positioned itself at the intersection of the security-services industry and the world of public international law, national regulation, and "moral duty." It combines the soldier's world with the humanitarian world not only through the provision of services, but by way of instruction in relevant humanitarian law.

For this particular chapter, however, it is not AKE's Hereford office and its link with the military that is most interesting, nor its newer role as a consultant in international law. This chapter will focus on AKE's involvement in the insurance industry, symbolized by its London branch office, which is located within the building occupied by the risk insurance giant, Lloyd's of London. This office is staffed by people with backgrounds in law-enforcement and the military, academia, medicine, information technology, and most importantly for this chapter, the insurance industry. AKE offers not just training and private security, but war and terrorism risk-insurance policies with "preferential terms" (AKE Group Inc. 2009). These special insurance policies are made available to those who take AKE's courses on risk-management, and their preferential terms are made possible due to its close relationship with Lloyd's.

In order to understand the unique origins of the contemporary PMSC, it is necessary to examine its location at the heart of the international risk-insurance business. These firms provide ways that businesses can insure against the physical and financial risks of working in dangerous areas. The close relationship between PMSCs and the global risk industry, especially the insurance business, has been under-analyzed and often ignored altogether, even though it plays a significant role in when and how a PMSC firm will be engaged.

Although PMSCs are part of the risk-reduction industry, their very use is often described as increasing various kinds of risks: as a risky practice itself. A 2005 RAND study, *How Should the Army Use Contractors on the Battlefield? Assessing Comparative Risk in Sourcing Decisions*, asked the right question – "are private military contractors risk minimizers or risk multipliers?" The study attempted to answer the question using multiple rubrics, but the answer was still unclear. One theme repeatedly emerged, however: if security contractors and members of the military were going to be able to work together, they would have to align two very different cultures of risk:

[L]essons of the past clearly point out the tenuous relationships forged between the warrior and the contractor. These new relationships will have to

be built upon *shared risk* and a sense of mission.... This *tolerance for risk and the establishment of trust and security is a challenge for the DOD*.
(Mailander 2002, quoted in Camm and Greenfield 2005: 142; my emphasis)

In a similar vein, contractors are routinely criticized for not taking enough risks to fulfill their jobs: of walking off the job if things get too dangerous, or of shooting first – offensively – in order to provide the best defense. In a survey of military service members' attitudes toward contractors in Iraq, one of the most consistent refrains was the sense that contractors take on less risk than soldiers, in fact that they "view risk" through a different lens (Kelty 2008). At the policy level, Deborah Avant has argued that the availability of contractors enables a type of "risky foreign policy" (Avant 2004). Their availability promotes risky behavior by those who employ them. This use of PMSCs thus represents what analysts of the insurance industry would call a "moral hazard," that is, a risk-reduction technique that ends up promoting, rather than minimizing, risky behavior. In the same way that drivers of larger and heavier cars feel enabled, so to speak, to take more risks by driver faster, private security contractors enable riskier business practices, "hazarding" the benefits of their use.

At the same time, the military has been criticized in recent decades as too risk-averse to fight wars properly. They have been accused of flying too high to bomb accurately, or of avoiding the political cost of casualties by outsourcing jobs to contractors or other proxy forces, and in general putting more of a premium on the lives of its soldiers than on the lives of those they are sent to protect (Singer 2003: 58; Avant 2005: 176; Schreier and Caparini 2005: 71; Camm and Greenfield 2005: 34). The last part of this chapter will address the ways in which the military has adapted to the new risk environment of what Edward Luttwak called "post-heroic warfare," and the role of PMSCs in this shift (Luttwak 1996). Later in this chapter I will analyze these two different risk cultures or postures in order to explain the expanding role of PMSCs in military operations.

In order to understand the international insurance industry and its expanding role in policy-making, it is necessary to see it within the wider context of what has been called the contemporary "risk society" and the various risk-reduction and management practices that define it. The use of PMSCs by the insurance industry is just one of the many manifestations of a wider trend that some see as defining the contemporary world itself (Beck 1992; Giddens 1990). This connection is obvious in the proliferation of PMSC names like Control Risks Group, Risks Incorporated, and Global Risks Solutions; and there are the continual reminders on company websites that, as Sir Malcom Rifkind tells ArmorGroup clients, "we live in a dangerous world" where everything is a potential risk (ArmorGroup International 2006). But in this risk society, which I will explore in detail later, the idea of risk and danger has become "highly politicized," as Mary Douglas put it, and subject to various organizational and cultural understandings of exactly what a risk or danger really is (Douglas 1966).

The notion of a "risk society" refers to a way of understanding multiple developments in policy-making and organizational management. It indicates a

way of seeing the world as full of risks that can be managed, if not mitigated, by certain methods of assessment and the creation of proactive habits and practices. Although the idea of risk has been around in various forms for a very long time, we have recently experienced what Jacob Hacker has called "the great risk shift," in which the majority of risks – including physical security and social security – are now shouldered by individuals and private organizations. This shift of liability to the individual rather than the organization or the state has resulted in an increased sense of insecurity and instability (Hacker 2006: 8). PMSCs play an increasingly large role in this shift of risk to private entities. I argue that this new conception of risk is part of what makes private security companies prevalent, even seemingly necessary. An important part of the story of their origin, their relationship to the larger political risks-insurance industry – also an outgrowth of the risk society – has added to their increasing legitimacy.

The language of risk currently shows up in a wide array of topics: liability law, criminology, financial regulation, health and environmental policy, and counter-terrorism, to name a few (Beck 1992; Douglas and Wildavsky 1982; Adams 1995; Ericson and Haggerty 1997; Sunstein 2002; Lupton 1999). All of these topics are unified by a concern with the politics of danger, and the cultural attitudes that underlie how risks are chosen for analysis, and how that analysis will inform decision-making. Certain risks – especially financial markets, terrorist attacks, or environmental collapse, for instance, are especially resistant to rational risk analysis. As a result, some threats are vastly overblown and exaggerated, in order to justify risk-reduction services with an emphasis on certain types of solutions (Mueller 2006b). PMSCs are embedded in this world in a number of ways: they assess risk, they offer solutions and services to manage and reduce risk, and they work closely with the insurance agencies that will reward those who take on these firms for risk reduction with "preferential terms."

Below, I describe three ways in which the culture of risk has influenced the practices of the private military service industry. First, the *international insurance industry* has contributed to the growth of the private security industry. This industry has changed in specific ways that currently benefit PMSCs. Second, I explain more specifically what is meant by the *risk society*, and how it has come to influence the wider question of how insurance and security are provided. Finally I turn to the concept of *risk aversion in the military*; the diverse ways in which risk has come to influence practice on the battlefield, and the relationship between the soldier and the security contractor. Here I argue that the growth of "casualty aversion" within the military is a development in which risk has been reconfigured so as to require the use of security contractors, even when they are openly acknowledged to be risk-averse themselves, and risky or untrustworthy partners. As a result, private contractors are part of the arsenal of what some call "risk transfer warfare," where risk and liability are shifted to new, less-visible organizations, or spread in such a way as to make blame harder to assess (Shaw 2005; Rasmussen 2006).

PMSCs and the insurance industry

The PMSC industry owes much of its prominence and power to its relationship to the international risk-insurance business. Insurance companies provide security on a number of fronts: business ventures are made financially more secure by spreading financial risk and insuring against potential loss; and business actors are made physically more secure through the use of security training, bodyguards, and kidnap and ransom or extraction teams mandated by insurance contracts. The insurance industry contributes to a privatized mode of governance, allowing certain actions and disallowing others, providing physical and financial security, and backing up its preferred policies with the use of private security actors (Heimer 2003). Although insurance firms ostensibly act within the legal framework provided by their home state, they export these frameworks and practices to much more unstable areas. Thus, in places far from the reach of a stable state, the insurance industry provides a de facto form of governance, extending one of the most important functions of the modern liberal state: insuring that ventures can be undertaken without incurring prohibitive risk. Much research has been done on the role of the insurance company as a form of private authority and policy-making in global governance (Haufler 1997; Cutler *et al.* 1999; Ericson and Stehr 2000; Ericson and Doyle 2003, 2004). Many private industries now rely on private security organizations in lieu of the state:

> While the state has enormous legal power to spread risk and responsibility among different sectors of society, the insurance industry also has regulatory power.... *While the state has formidable military and police power, the insurance industry mobilizes private security systems. It forces policyholders to implement security measures intended to provide an efficient level of prevention*, and thereby minimize actual harm and the future cost of harm.
>
> (Ericson and Doyle 2004: 3; my emphasis)

The decentralization of what are traditionally state governmental functions, and the consequent shift toward a more regulatory role for the state, has resulted in the increasing prominence of private non-state actors addressing what used to be governmental responsibilities.

As I noted in Chapter 2, private organizations of all types increasingly operate in the midst of violent conflicts. But the notion that large private businesses can play a role in conflict management, and governance in general, is rather new (Crocker *et al.* 2001; see for instance Haufler 1997: 659ff.). Recent research has begun to focus on "the private face of globalization": how transnational firms, non-governmental groups, and private security firms all compete for influence with state-based or international organizations to provide the basics of regulation and predictability amidst risk-taking and profit-making (Cutler *et al.* 1999; Hall and Biersteker 2002). While this kind of competition is not new, the authors of these studies stress the increasing legitimization of the efforts of these privatized actors, some of whom even going so far as to substitute private regimes for

failing or unavailable governments (Ericson and Doyle 2004; Dixit 2004). As I noted in my first chapter, PMSCs embody an aspect of this non-governmental organization profile: as private entities working in conflict areas, they compete with or replace state-based agencies as security providers. Their rules and regulations end up contributing to the new patchwork face of global governance.

Admixed within these changes, transnational organized crime piggybacks on the networks created by these more legitimate groups, often supported by private militias or low-tier PMSCs (Sullivan 2002; Bates *et al.* 2002). Although this chapter will refer to this process only in passing, it is important to note that the rise of private authority in such fields as the private insurance industry and PMSCs is occurring alongside the rise of private authority in much less legitimate arenas (Phil Williams, in Hall and Biersteter 2002: 160). And, especially in the PMSC world, the line between legitimacy and illegitimacy is often blurred. I will return to the link between PMSCs and "dirty" businesses in Chapter 5.

The rise of the international market for risk reduction and security

The changes that allowed for the global insurance industry to take on this role as a private provider of state services began gradually. The insurance industry has its origins in the ability to collect information about past events and quantify the possibility that they will occur again. This ability required the discovery of the mathematics of probability, and their applicability to gaming, or hazarding a loss (Hacking 1990; Bernstein 1996).

According to Virginia Haufler, one of the few scholars who has studied the political economy of the global insurance market, events in the 1970s and 1980s gave rise to a new perception of how private corporations could handle "dangerous commerce" – commerce vulnerable to unexpected disasters, including "political" risks. Haufler argues that, in the 1970s, certain technological changes – including such new practices as offshore oil platforms, computerization of information, and the invention of the container ship – allowed for an era of "jumbo risk," where both the volume of transactions and the value of what was being risked at any one time increased substantially (Haufler 1997). In addition, certain political events contributed to a new perception that the state was no longer the primary security actor worldwide. The overthrow of the Shah of Iran and the taking of the Iranian Embassy hostages marked a watershed in the sense of political risks. For the first time,

> [t]he perception of risk was directly influenced by the *belief that major political powers, especially the United States, had lost control over events*…. The collapse and overthrow of the Shah's government electrified corporate executives, both in the United States and around the world. Until then they had firmly believed that trade and investment in a country so closely supported by the U.S. government could not possibly be subject to political risks.
>
> (Haufler 1997: 92; my emphasis)

One response to this growing sense of commercial vulnerability was the creation of a specialized insurance market for political risks. Analysts would try to determine the probability of any occurrence that might affect the property and investments of foreign multinationals. In the beginning, insurance agencies such as Lloyd's created their own internal departments responsible for analyzing political risks, and often traded such information with the foreign ministries of their home governments. Haufler relates one story in which Lloyd's provided information on the weapons trade during periods of arms embargo, and even suggested ways of implementing government policy. "In 1939 some [at Lloyd's] suggested that illegal immigration into Palestine could be restrained by refusing insurance on ships engaged to transfer emigrants" (Haufler 1997: 88).

The current market for political risks insurance is over $150 billion dollars per year (Anonymous 2007). Insurance providers require that the insured do all sorts of things to mitigate the risk of certain actions and undertakings. In order to avoid the trap of moral hazard, or a certain laxity once insurance has been purchased, the firm must demonstrate "due diligence" in carrying out their own side of the bargain, reducing risk even as they insure their loss. Foremost amongst these requirements, for our purposes, is the frequent requirement to engage private security firms to provide surveillance and to act as first responders defending against a threat. In many cases of international risk insurance, the only way in which insurance coverage will be allowed is if some form of private security firm has been engaged.

The oldest PMSCs in the business began in the mid-1970s when firms were formed by former members of the British military to provide risk analysis and minimization for "dangerous commerce," the kind of commerce that was exposed to political (as opposed to natural) crises and catastrophes (Haufler 1997). Initially the insurance provided was for "kidnap and ransom policies"; companies could insure against the possibility of paying ransom to kidnappers of rich executives. In the past few decades, although the number of executive kidnappings has remained stable, the use of kidnap and ransom policies has grown exponentially.[1] These previously uninsurable risks have been made possible by the provision of risk-reduction agents, hired by companies as a condition for receiving insurance, and the ability to collect and collate quantifiable data, and analyze it intelligently, for profit. Retired military and law-enforcement professionals perform the same risk-reduction work they did as public servants, and now market this information to corporate and non-governmental clients worldwide. Three companies will serve as examples of these trends: Control Risks Group (CRG), AKE (mentioned at the beginning of this chapter), and Aegis. All are British firms with close ties to Lloyd's political risk industry.

Control Risks Group

The oldest company in this business is Control Risks Group (CRG). CRG was started in 1975 by former British military and intelligence officers who saw a need for well-trained risk advisors to work with businesses operating in high-risk

environments. At the time, they were brought in to deal with high-profile kidnap and ransom cases in Argentina and Italy. Lloyd's had begun offering "Kidnap and Ransom" (K&R) insurance to top corporate executives, responding to the sense of political instability that gripped the world of commerce in the 1970s. After some initial failures (in the form of unforeseen big payouts), Lloyd's began to require that services provided by Control Risks Group be written into every K&R policy. CRG would analyze the risks associated with doing business in certain areas, and collect intelligence on the groups responsible for the growing corporate kidnappings in places like Italy and Argentina. In the event of a kidnapping, CRG would send trained negotiators to work with the kidnappers on behalf of the company and its insurance agency. These private risk-advisory teams stepped in as middlemen to negotiate agreements, secure the release of the victim, and provide transportation to safety. Eventually, as humanitarian workers came under increasing attack in the late 1990s, CRG, like AKE, expanded its clients to include well-known NGOs.

Around the same time, CRG also began working for companies that needed to monitor their own employees. Their first contracts were monitoring white-collar fraud for banks and other financial institutions in London. They now do classified work on contract for the FBI and Scotland Yard (on global pedophilia networks, for instance), and they publish country-by-country risk assessments "for corporate executives to read on the plane on their way to Jakarta."[2] They provide a service to track anyone, anywhere in the world, along with a readiness plan to evacuate them if necessary, and they help train executives to mitigate extortion, fraud, and corruption when doing business abroad. After the US invaded Iraq with help from the UK, CRG decided to provide armed security to a number of its clients, but only after a long and tense discussion about the costs involved in engaging in this high-profile and potentially problematic work. "We thought we could do better," said Eric Westropp, one of CRG's managing directors and an employee there since he left the military in 1985. They see themselves at the nexus of global public–private partnerships, and as a necessary part of making business more secure.

AKE, with its original links to Lloyd's, is a company that fits squarely into this relatively new form of insurance provision. AKE provides Lloyd's underwriters with trusted political and security "risk ratings." In return, AKE supplies both an insurance policy and the security providers to ensure a lower risk (and a lower insurance rate) to its clients. "Hostile zone insurance policies," as they are called, can be provided with "substantial discounts to personal accident premiums when AKE security risk specialists accompany those traveling." Graduates of AKE's *Surviving Hostile Regions* course "receive a year's personal accident coverage." This coverage extends only to "some hostile environments," but for the truly risk-inclined, "upgrades to the most hostile countries are available" (AKE Group Inc. 2009).

Seeing security firms as part of a larger industry of risk reduction, or risk insurance provision, puts them at the frontline of a different kind of security provision: not only do they physically protect clients, but they allow for a certain

kind of economic activity – the provision of reasonable risk insurance to those designated objects or persons. They enable not only the task of reconstruction or industry in the midst of war zones, but the provision of insurance to those actors and their property at reasonable rates. And they provide the information used to assess the probabilities of future attacks.[3]

What ultimately makes this business possible is the larger fact of political risk evaluation by insurance underwriters, which then provides a defined market for the provision of security services. Since the potential exists for PMSCs to tailor their background information for underwriters so as to increase perception of the need for their services, at times the relationship between the two industries can be, as one analyst put it, "rather dodgy."[4] Here the recent case of Aegis, Lloyd's, and piracy in the Malacca Straits of Indonesia is illustrative.

Aegis and piracy

In the summer of 2005, Lloyd's Joint War Risks Committee, a group of analysts and underwriters, recommended that the Malacca Straits be listed as having a high risk of "war, terrorist attacks, and related perils." The Malacca Straits are a high-traffic and narrow sea lane bordered by Indonesia, Malaysia, and Singapore, and traversed by the kinds of large-hulled ships frequently insured by Lloyd's longstanding hull and marine risks insurance policies. As with the waters off the horn of Africa, these straits have seen frequent attacks by a new breed of high-tech pirates. After an uptick in piracy attacks in 2005, Lloyd's decided to reclassify piracy as a *war risk*, rather than as had traditionally been classified, as a typical *marine risk*.

This reclassification drastically increased the insurance rates for ships using the Malacca Straits, and required all ships to notify the insurer every time they entered into the specific area. Reduced insurance would be offered to those ships that hired a PMSC. Due to the high traffic in this area, where some 50,000 ships pass each year, this new requirement led to tens of thousands of official notifications in the following months. Following this change in risk assessment, the foreign ministers of the three littoral states met to protest the change, and to reassert their own responsibility for securing ships from piracy off their shores. Chief among their complaints was the fact that armed escort boats provided by Aegis Defense Services and mandated by the insurance policy were patrolling their waters and undermining their sovereignty. And, although no one disputed the fact that pirates were attacking up to 50 ships a year, this represented only a small percentage (0.008 percent) of the more than 53,000 ships that used the straits each year. Within a few months of these diplomatic protests, the Lloyd's Joint War Risks Committee backed off on its earlier assessment, and downgraded most of the Malacca Straits to a lower-risk category which would no longer reward the use of a PMSC.

More recently, Aegis offered to play a role in combating piracy attacks on ships in the Gulf of Aden and off the coast of Somalia (Pheifer 2009). Other firms also admitted working in the lucrative anti-piracy market despite restric-

tions against carrying weapons on board ships, and the questionable use of armed support (*Marine Log Magazine* 2009). The insurance world has found itself caught in the middle of the piracy debate: while nervous about the escalation of conflict given the presence of armed guards and the damage that might be done if a shoot-out occurred, those who offer kidnap and ransom insurance may feel compelled to write policies that would discount the premium for those who hired armed guards (Phillips 2008).

From an economic point of view, it might make sense to have the same firm doing risk assessment and risk abatement, since presumably the people on the ground observing the situation are those who assess security best. But in the absence of any other reliable information, changes in assessment will come from those who profit from them, and who will become useless if the security threat is minimized. It is easy to see this relationship as more than "dodgy," and just plain corrupt.

In this example, risk categorization is influenced by a combination of real threats (increases in piracy attacks), and the possibility of profit (changing piracy from a marine threat to a terrorist threat, and so increasing the rate). But after the attacks of September 11, 2001, the consequences of a terrorist attack have been seen as so catastrophic that risk abatement appears in a whole new way: as akin to the overwhelming threats of things like a global pandemic, nuclear meltdown, or rising sea levels. These overwhelming "worst-case scenarios" now require the application of what is called "the precautionary principle":

> Responsibility for dealing with the uncertainties of terrorism is based on the precautionary principle. This principle implores everyone to pre-empt risk by heeding warnings, being suspicious, and embedding security measures in everyday life.… The only response is extreme vigilance, a kind of pre-caution. *One should even exercise caution about how one is being cautious.*
> (Ericson and Doyle 2004; see also Sunstein 2007)

For instance, the New York City comptroller's report on the "Fiscal Impact of 9/11" noted that private-security spending increased by up to 23 percent over four years. Hiring private security guards could be seen as a net investment if it lowered overall insurance premiums (Ericson and Doyle 2004: 276). Some insurance executives compared the war on terror as a bigger version of the same trend. The huge financial resources allocated – not only for the wars in Afghanistan in Iraq, but for all sorts of surveillance and "homeland security" measures put in place domestically – could be seen as the government taking on its share of the risk abatement in order to allow for business to continue properly with some measure of certainty. In this case, war is construed not as a risk-enhancer, but as a risk-minimizer, by preemptively addressing future possible attacks.

The insurance industry thus works to provide security amidst future uncertainties. Political and terrorism risk insurance allow for businesses to plan for, and recover from, what are termed "low probability high impact" disasters. In order to profit from this "market in uncertainty," insurance companies have to

design formulae to assess and classify risks, and to assign varying levels of responsibilities to agents. With health insurance, for instance, you must pay a higher rate if you smoke. With political-risk insurance, firms must pay a higher premium to do business in an unstable country. Cruise lines must pay more to sail in waters frequented by pirates. In designing the actuarial tables and formulae that guide the efficient provision of security for profit, insurance companies often design a "range of creative and sometimes ingenious solutions" (Ericson and Doyle 2004: 5). In *Risk and Reason*, Cass Sunstein argues that the ability to apply creative and rational solutions using actual data could provide a much less hysterical assessment of dangers and risks, reining in what is termed "the social amplification" – or irrational exaggeration – of risk (Sunstein 2002). But what exactly is rational risk assessment, and how can it be combined with the need to insure those same risks profitably? Asking this question reveals some of the more glaring paradoxes of the risk-reduction industry.

The paradoxes of risk-management

The promise of rational risk assessment is dimmed by at least five significant paradoxes.

First, information is incomplete, experts disagree, and assessments contradict each other. Broadly speaking, this is the problem of the *limits of knowledge*. Sunstein argues that in areas such as health, environmental pollution, and the threat of terrorist attacks, experts often get things wrong (Sunstein 2002). This causes people to react by over-regulating certain risks, and not paying enough attention to others (on this, see also Glassner 2000). The terrorism risk-insurance industry is notoriously uncertain and unpredictable. Terrorist attacks, like other man-made catastrophic events such as nuclear-reactor meltdown or a total market crash, are called "low probability high consequence events." Since the actuarial tables that model risks lack real data from comparable past events, the insurance industry runs up against the limits of knowledge, unable to rationally insure against future threats or provide any meaningful conditions to agreements. But despite this problem, the insurance industry is still often seen as the most rational social actor, coolly compiling actuarial tables in order to quantify the probability of certain events occurring. Even catastrophic risks can be insured, assures one of the top minds in the industry, if only the risk is spread widely enough and the odds are properly calculated (Lewis 2007). Nevertheless, war-risks insurance, and especially terrorism-related risk insurance, has remained notoriously hard to provide. An executive with a reinsurance company notes that, with regard to terrorism risk insurance, "We do not know how to model some of the things that we fear the most" (Ericson and Doyle 2004: 230).

The second paradox of risk assessment is the problem of *irrationality*: despite rational statistics and data, people react to this data in irrational ways. Sometimes threats are exaggerated, sometimes they are ignored altogether. Certain types of threats seem much more dangerous than they actually are. Security scholar John Mueller continually argues that in the years since September 11,

2001, the fear of a massive terror attack has outpaced any kind of rational thinking on the subject. While he does not deny that al-Qaeda is a threat, especially to Western interests in other countries, the true threat has been "overblown": "although it remains heretical to say so, the evidence so far suggests that fears of the omnipresent terrorist … have been … greatly exaggerated" (Mueller 2006a; see also Mueller 2005). But as much economic research also points out, the elements of irrationality – such as outright denial, or over- or under-reaction – are inherent in economic decision-making (Ericson and Doyle 2004: 12; Moss 2002; Bernstein 1996). In a similar vein, actual steps taken to decrease risk, for instance the use of PMSCs, increase risk (and worry) elsewhere in some other area. For instance, a common example is that, after the terrorist attacks of 9/11, many travelers in the United States elected to drive greater distances to their destinations rather than risk flying. This resulted in an increase in the risk of driving, which was already more dangerous, statistically speaking, than flying anywhere. Paradoxically, an attempt to reduce risk resulted in an increase in risk.

The third paradox is the situation of *moral hazard*, a strange phrase already mentioned earlier in the chapter. Here the word "moral," which carries a sense of ethical behavior, can also be taken to mean some sort of subjective judgment about allowable risks. As steps are taken in order to reduce risks, other risks are taken or seemingly allowed, resulting in no net reduction in actual risk. The provision of insurance, for instance, often increases risky behavior that then requires more insurance: "[w]henever someone retains control of an activity after having shed the downside of risk (by shifting it to an insurer, for example), he has a strong incentive to try to increase the overall riskiness of the activity" (Moss 2002: 37).

Social scientists and economists have studied this paradox for years: requiring motorcyclists to wear helmets often increases the chances that they will drive fast; requiring flood insurance increases the likelihood that people will build in flood zones, bailing out failing banks for making risky investments just encourages more risky investments, and so on. In this scenario, the provision of insurance encourages the very behavior that the insurance is meant to mitigate: morality and prudence are "hazarded." In the best-case scenario, risk-reduction measures allow for a net decrease in risk, even as they may prompt more risky ventures. But the problem of "moral hazard" is that sometimes insurance has the unintended consequence of increasing insecurity. Insurance companies must continually fight against the laxity that their own contracts induce. PMSCs are an example of a moral hazard: they increase risky ventures even as they seem to provide risk reduction. This underlies their role in "risk-transfer warfare," which I address later.

What the paradox of moral hazard reveals is the uncomfortable fact of the *attraction to risk*, the fourth paradox. Despite the assumption – underlying all insurance policies and other risk-abatement techniques – that the rational policy is one that minimizes risk, there are many areas of life in which risky behavior is attractive, both sought and rewarded. Properly understood, the idea of risk is Janus-faced, two sided: it means the ability to take chances and be adventurous

and courageous in the face of daunting odds, as well as the prudent ability to minimize potential harm (one PMSC is thus appropriately called "Janusian"). The etymology of the word "risk" contains both of these senses: carefulness and prudence as well as foolhardy abandon.

In general, it has been a challenge for political and social theory to provide models for risk-seeking behavior in institutions and organizations:

> Risk assessment as currently practiced … cannot account for danger-seeking political action. We can give no account of the motives … of the terrorists who take danger into their hands.… In spite of evidence to the contrary, avoiding loss is presumed to be the only normal rational human motive.
>
> (Douglas 1992: 41)

The final paradox is an *economic* one: the risk-reduction industry only profits because of certain situations in which risk is constant, yet low enough to both require insurance provision and not require too much payout, or loss. Theorists of the risk society begin with the idea that risk has become a type of commodity: bought, sold, transferred, or traded in a kind of market (Beck 1992). What is being sold, and to whom is it sold? Control Risks Group, for example, provides its clients with country-risk assessments, kidnap and ransom response teams, ways to track traveling employees and evacuate them if a crisis occurs. The firm offers security as a product. They also offer ways to monitor in-house white-collar crime, to prevent companies from having their goods stolen or corrupted, or their businesses used for money-laundering. The risks to a company are both internal and external. Hostile acts and external risks could compromise a company's "duty of care" to its employees, and internal sabotage can harm a company's brand and reputation: "[b]usiness does move forward in this era of terrorism and economic instability" they note, "and smart companies operating in complex commercial environments know the importance of recognizing and prioritizing risks" and spending money to reduce them (Control Risks Group 2003). AKE describes its services like this: "We deliver internationally acclaimed security and political risk management … giving clients the competitive advantage *of engaging safely in areas that might otherwise have been closed to opportunity*" (AKE Group Inc. 2007; my emphasis).

Private risk-mitigation firms thus help businesses and other organizations to justify risks they would not otherwise have undertaken: they mitigate risks, but in doing so they expand the opportunity for risk-taking. The business model first characterizes a risk. Then the firm assesses it, and then it offers solutions for the management or reduction of the risk analyzed. This business model requires a situation in which risks are seen as constant, but manageable. A member of Armorgroup's Afghanistan security team put it this way: "Our business requires constant, low level, risk."[5] In the absence of any hazards, insurance would not be necessary. Too many hazards and losses, and the company is overwhelmed. The best environment therefore is one that requires insurance policies but does not require large payouts.

To summarize, these five paradoxes undercut the promise of rational risk reduction. Experts disagree on what the risk actually is: knowledge is incomplete, and predictive formulas are often necessarily ad hoc. People invariably exaggerate some risks and ignore others: they behave irrationally. Even when there is good information out there, risk-reduction in one area can seem to encourage risk-taking in another area; the problem of moral hazard creeps in. We seem to have no good way to understand those who take inordinate amounts of risk, who court the edge of disaster, so to speak. We cannot explain the attraction to risk very well. And, finally, the industry as a whole feeds off of a certain amount of low-level risk, enough to induce fear and the policies sold to diminish it, but not enough to actually inhibit action altogether.

These paradoxes, however, are themselves part of the larger world in which the insurance industry and the use of PMSCs is merely the most obvious manifestation – the world of the risk society itself. The next section addresses the ways in which the language of risk has come to influence policy-making, both in the area of naming risks and assigning liability, and then more specifically within the military. PMSCs are located at the center of this wider trend.

The politics of uncertainty in the risk society

In order to further understand how the PMSC has gained so much legitimacy recently, it is necessary to step back and understand the role of risk language in general. Most definitions of the idea of risk focus on the fact that conceiving of something as a *risk* allows a potential *danger* to be made predictable – for its coming probability to be calculated, and for rational measures to be put in place to mitigate it. Peter L. Bernstein's book on the "remarkable story of risk" traces the history of the mathematical discoveries – most especially probability theory – that allowed risk to be seen as something that could be quantitatively assessed and rationally mitigated (Bernstein 1996). The ability to allow for just the right amount of risk while also making sure that loss would not be catastrophic became the backbone of modern capitalism. It also became the foundation of proper governance, more widely construed, and opened up the very humanistic idea of choice in future action. As Bernstein noted:

> [t]he word "risk" derives from the early Italian *risicare*, which means "to dare." In this sense, risk is a choice rather than a fate. The actions we dare to take, which depend on how free we are to make choices, are what the story of risk is all about.
>
> (Bernstein 1996: 8)

This idea of risk as something calculable and foreseeable was an idea that opened up a whole new conception of human action into the future. Of course risky trading ventures had always required some form of insurance, and it was usually provided for by some form of risk-sharing through a guild or other social network. This was nothing new. Our traditional or pre-modern predecessors led

lives that were also beset by dangers from all fronts, and they went to elaborate lengths to predict or prepare for threats, or accommodate themselves to disaster. But when the mathematical tools of probability were discovered in the early-modern age, the practice of insurance became much less risky, so to speak. "Uncertainty" once described a situation in which the likelihood of any specific disaster occurring was completely unpredictable. "Risk," on the other hand, describes a new and qualified form of uncertainty – one that offers some sort of prediction or probability test. It is a more rational way to approach the psychologically deadening effect of helplessness in the fact of raw uncertainty.

Even with the five paradoxes of insurance outlined in the previous section, this type of rational risk calculation can buttress policy decisions with a method that promises some level of predictability amidst uncertainty. Without the ability to insure against some types of loss, few transactions would occur. Home ownership needs insurance; businesses need to insure their workers against accidental death or injury; people need life insurance to ensure that their own death will not result in the impoverishment of their family. Insurance, in this light, is a means of providing security in the midst of uncertainty. Danger is reduced, and security increased, as insecurity and danger are transformed into the economically fungible idea of risk, and action directed toward an uncertain future is suddenly made possible. In this way, one of the shifts that marked the turn from the pre-modern to the modern world was this transformation of "danger" into "risk," calculated numerically and predictably. In this way, the modern world "eliminated genuine indeterminacy, or "uncertainty," by inventing "risk" (Reddy 1996).

But even though the modern concept of calculable risk heralded a new ability to contain the effects of disaster, at the very same time threats began to be perceived as much more widespread, and more catastrophic. As we battled disease, for instance, we became much more aware of humanly created long-range disasters-in-the-making: nuclear waste (or warfare), ozone depletion, climate change, pesticide damage, genetic mutations, and so on. A fascination with these "low probability" events with widespread and high-risk possibilities became the marker of modern risk discourse. In other words, anxiety and fear increased even as tools for risk assessment became more sophisticated.

So, despite all the attempts to confront danger rationally, in fact it seems as if safety is elusive in late-modernity. Risks are haphazard, diffuse, hard to see, and, worst of all, experts disagree about what to do about them. We have returned to the pre-modern world of "incalculable insecurities," except for, this time, these insecurities seem to be not the simple ways of the world, but rather failures of risk-management – the fault of no one but ourselves. Since the elusive quest for risk abatement and security results in an increased sense of insecurity, the apparently necessary use of PMSCs and various other security measures express the contemporary reaction to the resulting anxiety. This increase in anxiety is part of what social scientists began to notice when studying the risk society: the modern tools of risk-management tend to increase a sense of what Anthony Giddens calls "ontological insecurity," the pervasive sense that danger lurks around every

Table 3.1 The eras of danger and risk and their effects

Era	Traditional/ pre-modern	Early-modern/ modern	Late-modern
Danger type	Natural, inscrutable	Natural, but calculable	Unnatural, and long range
Reaction to uncertainty	Rituals, endurance	State-based security and insurance	Insurance assessment, legal limitations
Who is to blame for misfortune?	Gods, supernatural forces	Organizations can minimize, group blame	Individual must choose, individual liability
Outcome	Fear, resignation	Confidence	Anxiety/choice

corner (Giddens 1990). Modern life, despite its comparative security, is filled with references to mounting, and continual, danger:

> Try to read a newspaper or news magazine, listen to radio, or watch television; on any day some alarm bells will be ringing. What are Americans afraid of? Nothing much, really, except the food they eat, the water they drink, the air they breathe, the land they live on, and the energy they use.
>
> (Douglas and Wildavsky 1982)

Almost all writers on risk begin in a similar fashion, expressing amazement at the overwhelming preoccupation with risk and potential catastrophe that lurks around so many decisions (Adams 1995; Beck 1992; Caruso 2002; Sunstein 2002)[6] The risk culture is also a culture that financially rewards worry and anxiety.[7]

The cultural theory of risk selection

In *Risk and Culture*, co-authored by political scientist Aaron Wildavsky, Douglas advanced the novel claim that the classification of certain things as "risks" was itself a very cultural matter: *dangers were politicized for specific reasons*. Douglas and Wildavsky argued that, although "dangers are … horribly real," and their "reality is not an issue," risks constitute those dangers that societies decide to focus on for specific socio-cultural and political reasons:

> How do we choose which risks to face? *We choose the risks in the same package as we choose our social institutions.* Since an individual cannot look in all directions at once, social life demands *an organization of bias.* People order their universe through social bias.
>
> (Douglas and Wildavsky 1982; my emphasis)

One of the effects of a society that can calculate the odds of any specific event is the associated idea that, because of this, any particular disaster has been foreseen, and moreover, that someone is specifically to blame for not doing enough to mitigate its occurrence. The ability to collect statistics and transform them into actuarial charts predicting the likelihood of this or that particular event enabled anxiety to be reduced somewhat. But the transformation of dangers into risks also assumes that any particular misfortune could have been avoided. This sense that something could have been done differently, and that risks could have been avoided, leads to what Giddens calls a "hyper-reflexivity" in our practices: a continual need to assess and reassess how things could have been done differently in order to avoid unexpected outcomes. In the late-modern era, the distinction between catastrophic "acts of God" and the catastrophic acts of human beings has become blurred, and the biggest dangers are now considered our fault. Since risks can be hypothetically predicted and managed, all disasters or accidents can be explained by faulty decision-making and risk calculus (Luhmann 2005). Table 3.1 illustrates these different eras.

Focusing on certain risks and not others allows certain people to be blamed for misfortune, and not others. Risk mitigation is actually blame mitigation. In other words, the question of whom or what should be held accountable, or liable, for mishaps and catastrophes is the essential question of risk analysis: what is dangerous? Who is responsible for mitigating the danger? And who should be blamed for disasters? In her later essays, Douglas expanded on the idea that the crucial dynamic at work in assessing risks was the need to figure out whom or what might be to blame for any future misfortunes (Douglas 1992). Here the human need to blame something or someone for catastrophes – including war, disease, accidental death, natural disasters, or pollution, among others – was the driving force behind the classification and calculation of future risks. Risk-management is, in effect, *blame-management*: a form of liability protection for the socio-political group.

The politics of blame-management, however, follows certain rules. Certain types of organizations will tend to focus on certain types of risks, and construct narratives that blame certain kinds of entities. Risks are dangers whose mitigation serves to strengthen or shore up a vulnerable institution. In this way, the socio-cultural construction of risk is a form of social or institutional consolidation: institutions are shored up or buttressed by naming risks and doing something about them. Douglas was the first to see the language of risk as a specifically social or cultural process, revealing much more about the status of organizations and groups than about actual dangers (Douglas and Wildavsky 1982: 6). From this, it is possible to outline three "organizational cultures" for whom risks will show up differently.

In order to see how PMSCs and the military see risk so differently, it is necessary to understand the organizational culture out of which they originate, which itself dictates their specific clash of risk cultures. For the sake of heuristic simplicity, organizational cultures are divided into three. *Market-based* cultures reward the efforts of individual entrepreneurs. Their efforts will tend to reward

the freedom to contract. Their organizational DNA, so to speak, requires them to see the most risk if this freedom is diminished through regulation or other constraints. In contrast, *hierarchical organizations* like the military reward those who follow the rules and preserve the order inherent in the traditional way of doing things. The greatest risks to the continuation of these organizations will be innovations that undermine the ways both status and hierarchy are determined. With its rules and procedures executed through a strict chain of command, the military is a perfect example of a hierarchical institution. It is no wonder that the civilian–military divide is often characterized as one where the ideal soldier is contrasted with the individualist entrepreneur, interested only in maximizing profit.

Douglas and Wildavsky argued that situated between these two extremes of organizational culture is the *voluntary organization*, the association of those who elect to participate in a group with relatively fluid membership. Status here is less important than commitment to group goals, and decisions are made along more egalitarian lines. These groups, unstable and fluid as they are, often rely on magnified external threats in order to shore up commitment to collective goals. For instance, in the late-twentieth century, what emerged as the biggest risk was the threat of technology: environmental pollution, weapons of mass destruction, global warming, and genetically modified organisms. Douglas and Wildavsky concluded that *specific vulnerable organizations* were at the heart of this cultural shift.

In this case, the dangers focused upon were typical of those democratic societies that rely on voluntary, egalitarian, organizations to anchor their social and political organizations. American society, they argued, was caught up in a "sectarian outlook," wherein hidden dangers, conspiracies, and secret attacks on purity and goodness all lurk, ready to "infiltrate" and "contaminate" the body of nature, and society. These seemingly supernatural ideas have humble origins – the dynamics of social and political groups that rely on voluntary organization: "[these dangers] are the daily coinage of debate in groups that are trying to hold their members together without coercion or overt leadership" (Douglas and Wildavsky 1982: 11). In other words, in a democratic society that is caught between traditional organizations, which rely on hierarchy and tradition to enforce rules and norms, and "market" organizations, which promote the freedom of the individual to contract, voluntary organizations such as political parties or the new professional military see themselves arrayed against both corrupt "old-world" practices and the selfish world of the market. They are formed to do good in the world, but must recruit members and maintain an internal commitment by portraying the world as dangerous and themselves as vanquishers of the same danger. The threat of terrorism, globally integrated and with "global reach," lends itself perfectly to this scenario. So does the threat of imminent global warming, or world-wide economic collapse, or viral (computer or bodily) pandemics. Soon we have a recurrence of almost medieval apocalyptic anxiety and fear.

This is a stunning conclusion: societies that are the most openly structured, filled with voluntarily joined organizations in a classic civil society or cosmopolitan fashion, are the most apt to surround themselves with an idea of risks

outside the group, precisely in order to keep the group together. John Mueller ends up arguing the same thing: the less traditional a society, the more it is "spooked" by unknown and amorphous dangers (Mueller 2005). In this model, converting dangers into risks allows risk management to increase the legitimacy of certain specific groups, and, in the event of a disaster, allows for a way to assess blame.

The risk society thesis thus explains a number of things about PMSCs. It shows how their relationship to the insurance industry is more than a simple policy shift: it is part and parcel of the wider conception of risk and blame that undergirds contemporary society. This risk culture encompasses a shift in the way in which governments see their role in risk abatement, and helps us understand the events and ideas that have led to a wider role for private institutions managing insecurity and danger. It also shows that there is not just one overriding risk society: there are individual risk cultures in this society, organizations with very different risk postures, for whom risks take on very different forms. And there is a final way in which risk-society perspectives can help us understand the character of PMSCs in contemporary discourse: this is the relationship between risk and dirt; between dirty PMSCs and clean soldiers.

In the first chapter of this book I explained the common animosity expressed toward the private-security industry by pointing out that the industry falls between the cracks of certain cultural categories. I referred to Mary Douglas' idea that certain entities are viewed as pollutants or dangers precisely because they do not fit within socially established frames of reference (Douglas 1966; Hacking 2003). Central to Douglas' initial work was the idea that societies understand themselves through specific demarcations of good and bad, self and other, order and disorder. As one risk scholar puts it:

> Societies structure a world of security amidst insecurity, delineating dangerous actions, tarring them with the brush of immorality, and "cleaning up" dirt and disorder. Certain dangers are selected out for attention by a society and entitled "risks" for certain reasons that make sense to a particular culture, based on its shared values and concerns.
>
> (Lupton 1999: 45)

Risks and dangers in the organic world are often characterized as things that will harm the body: germs and dirt. At the societal level, certain persons and organizations are described as dangerous and contaminating to the body politic: they must be highly regulated or kept at bay. Those dangerous entities reflect a specific culture that finds its institutions endangered in specific ways. For instance, shifts in military culture require the simultaneous consolidation of essential aspects of the military – in this case its hierarchical culture – and this in turn is helped by a demonization of more associational cultures operating in and around the military – NGOs, as well as the even more demonic market-based individualist business cultures of PMSCs. Regardless of their actual cost or benefit, PMSCs are seen as rogue elements by the military because they threaten the

essential organizational culture – its organizational DNA, so to speak. This difference in organizational culture will play a large role in the dynamics of risk-transfer warfare, addressed later in this chapter. For now, it is important to see how the characterization of PMSCs as rogue or dirty elements on the battlefield is in part motivated by the challenge they pose to the risk culture of the military.

To sum up: PMSCs are an outgrowth of specific changes in the insurance industry, whose own shifts are part and parcel of the larger growth of the contemporary risk society. In addition to all the origin stories stressed in the previous chapter, there is the specific idea of risk, and how it has affected policy decisions by all three organizations that contribute to the PMSCs' identity: businesses, the military, and NGOs. Insights from the risk-society literature shed light on the risk-transfer politics of new wars, including the new ways in which liability or blame is shifted onto organizations whose cultures can "handle" certain kinds of risks better than others. Finally, risk-society theorists provide a theoretical explanation for the fact that mercenaries and PMSCs are often described by those opposing their use as dirty, contaminating, or polluting. This characterization, I have argued, aids in the effort to defend the organizational culture of the military from two types of cultures – NGOs and for-profit businesses – that are seen as absolutely contaminating to its way of life.

A clash of risk cultures

At first glance, individual contractors seem to have a lot in common with soldiers. Both contractors and soldiers are attracted to high-risk jobs, and they frequently refer to the fact that danger is a part of their job.[8] Security contractors are often drawn from previous work in high-risk jobs: over 50 percent of them come from the military itself, and a majority of the others are former police officers, state troopers, or fire fighters. Contractors of all stripes interviewed by the media, as they set off to or return from Iraq, have mentioned similar motivations for putting themselves at risk. Not surprisingly, the two main motivators seem to be money and adventure, but these are closely followed by a desire to "do something," to "contribute," or to "support the military effort and the soldiers." Those who had already done a stint of military service mention not only the inevitable pull of money, but also that of using skills that could not always be put to use in civilian life. But, as research has suggested, soldiers and contractors come down differently on how they understand the risks of the job (Kelty 2008).

Dyncorp employees, hired to do defensive security and train Iraqi police officers, mention the "up close and personal feel" they had of contributing to a serious situation that required courage, adrenaline, and thoughtfulness. But what about the threat of violent death? As the casualties, kidnappings, and beheadings began to mount, the tenor of the commentary began to change. After returning from Iraq, one CACI employee noted that, while the pay was substantial, "in retrospect it wasn't enough.… When you weighed out everything – the benefits versus the risks – I remember thinking you can't pay me enough to be here now."[9] The contrast between the ways in which soldiers and contractors describe

risk-taking behavior highlights the difference in risk cultures: that between the "monetary risk" of the contractor, and the "community risk" of the soldier. The risks taken by community risk-takers – soldiers, policemen, firefighters, for instance – and the risks taken on by contractors, show up as the difference between risks for which a high payout is the goal, and those for which some form of community service valorizes the risk.

At first glance, the military and warfare seem all about embracing risk: warfare in classic Clausewitzian terms asks the ultimate risk from the state, its people, and its army, especially since the "return" is so uncertain. Perhaps because of the potential for enormous risks ("the sacrifice of blood and treasure," as it is often put), the military is often seen as highly risk-averse (Record 2002; Gordon and Sollinger 2004; Larson 1996). PMSCs also have a contradictory risk profile. They are marketed as organizations that take on risk in order to minimize risk to others. They are also seen as organizations that increase risks in general, and destabilize a situation. The debate about the use of PMSCs to guard ships in areas of pirate attacks, for instance, is often a debate about how their presence can reduce or increase risks for ships and sailors. Finally, they are often described as one of the significant elements of "risk-transfer" warfare, wherein risk is transferred away from soldiers and onto civilians, PMSCs, and robots (or other types of military technology).

The idea of risk-transfer warfare owes much to the idea of an "economy of risk": the theory that risk is something that can be spread, offloaded, or bought and sold, as if it is an abstract content with a lot of value attached. The changing expectations of acceptable risks, rational or irrational as they may be, figure into the greater expectations of how wars should be conducted. Machines and robots can accept risks because they are non-human, and so their losses do not register emotionally or politically. The deaths of civilians can be politically minimized, even as they may be very costly in the long run. Transferring risks onto other actors in a war zone, like PMSCs, however, has its own dynamic. This final section of the chapter looks at the "risk posture" of PMSCs in the overall context of contemporary warfare. I argue that PMSCs and the contractors they employ view risk in general through a different lens than that of the military: "monetary risk" is contrasted with the "community risk" of soldiers. Risk is being transferred to them because this difference in organizational culture promotes it.

The deaths of four Blackwater contractors in Fallujah in 2004 provide a good example of the clash of risk cultures (US Congress House of Representations Majority Staff 2007; Pelton 2006; Scahill 2007). In March of 2004, Blackwater, who had been contracted to guard a food convoy for a catering company, sent four men through the notoriously dangerous Fallujah. The convoy was attacked, the contractors killed, and then their bodies were burned, mutilated, and hung from a bridge. The event received enormous attention, and was one of the first times that the media began to pay attention to contractors in Iraq. The events in Fallujah drove home for many the actual situation of contractors on the ground and the risks they were enduring. And, in a wrongful-death civil suit filed in January 2005, the families of those who died charged that the company had

taken insufficient precautions to guard against the risk of their capture and death.[10] According to a Congressional Committee convened to evaluate Blackwater's actions, the company allowed its employees to take enormous risks in order to reap higher profits. The evidence the committee collected included testimony that another PMSC, Control Risks Group, had deemed the entire mission too high a risk for their own operators (US Congress House of Representations Majority Staff 2007). I quote the following paragraphs in full to demonstrate the concrete decisions that make up different firms' risk postures.

> At the time of the Fallujah incident, Blackwater was taking over operations from a British security company, Control Risks Group. The project manager for the British company states that Blackwater "did not use the opportunity to learn from the experience gained by CRG on this operation … leading to inadequate preparation for taking on this task." The company's incident report states that Blackwater was informed that Control Risks Group twice rejected the mission because of unacceptable security risks, reporting: "Blackwater were informed that we had turned this task down and the reasons why were given."

- Prior to the Blackwater team's departure, two of the six members of the team were cut from the mission, depriving both security vehicles of a rear gunner. These personnel were removed from the mission to perform administrative duties at the Blackwater operations center.
- Blackwater had a contract dispute with a Kuwaiti company, Regency Hotel & Hospitality, over the acquisition of armored vehicles for the Blackwater team. Blackwater officials instructed its employees to "string these guys along and run this … thing into the ground" because "if we stalled long enough they [Regency] would have no choice but to buy us armored cars, or they would default on the contract," in which case the contractor who hired Regency "might go directly to Blackwater for security." According to a Blackwater employee, Blackwater's contract "paid for armor vehicles," but "management in North Carolina made the decision to go with soft skin due to the cost."
- One day before the Fallujah attack, Blackwater's operations manager in Baghdad sent an urgent e-mail to Blackwater headquarters in North Carolina with the subject line "Ground Truth." The e-mail stated: "I need new vehicles. I need new COMs, I need ammo, I need Glocks and M4s…. I've requested hard cars from the beginning…. Ground truth is appalling."
- Because they were without maps and the mission had not been sufficiently planned, the Blackwater personnel arrived at the wrong military base the day before the attack, where they were forced to spend the night. A witness at the military base assessed that "the mission that they were on was hurriedly put together and that they were not prepared."

In response to the lawsuit, the company issued the contract that had been signed by each of the employees. The contract absolved the company of any responsibility for their deaths, and acknowledged that the jobs they were undertaking would involve substantial risks. The contracts they signed noted the risks entailed in great detail. The "undersigned" had to note that they risked:

> being shot, being permanently maimed and/or being killed by a firearm or munitions, falling aircraft or helicopters, sniper fire, land mine, artillery fire, rocket-propelled grenade, truck or car bomb, earthquake or other natural disaster, poisoning, civil uprising, terrorist activity, hand-to-hand combat, disease, being killed or maimed while a passenger in a helicopter or fixed-wing aircraft, suffering hearing loss, eye injury or loss, inhalation or contact with biological or chemical contaminants (whether airborne or not) and or flying debris, etc.
>
> (Quoted in Neff and Price 2005)

In response to the wrongful-death suit, which argued that the company took insufficient care of its employees (by, for instance, sending them out without proper armored vehicles, without a map, and in too few numbers), the company argued that since the men were all military veterans they "knew the risks of working in a warzone." Blackwater's lawyers also noted that the contractors had been compensated for these risks by a salary of over \$600 per day, and lifetime survivor death benefits that amount to over \$1,000 per week.[11]

As this lawsuit makes clear, risk and liability show up differently for contractors and for soldiers. The 2005 RAND Study mentioned earlier highlighted the military doctrines that required continual risk assessment in the decisions of how and when to use any type of contractor, and the tensions induced by such an assessment:

> *Military planners are comfortable with risk.* They know that it comes with the territory in combat and cannot be reduced too much without constraining the commander. *They are also not comfortable with the risks imposed by contractors.* The idea of assessing such risks [of contractors] in the broader context of operational mission planning requires a better appreciation of how to create and sustain *trust* between the Army and its commercial supports on the battlefield. The issue of how this occurs must be an integral part of any risk assessment.
>
> (Camm and Greenfield 2005: 142; my emphasis)

Most broadly, the study highlighted the following risk factors:

- lack of command and control over contractors, increasing the "principal–agent" problem, wherein the agent is not carrying out the principal's demands;
- confusion over the place of contractors within the military structure, thereby increasing the "fog of war";
- increase in tension between military and contractors.

All of these risks were encapsulated in the two very different cultures of public and private, soldier and contractor. Again and again these different cultures have a lack of trust for one another. Without any trust mechanisms to facilitate their cooperation, operational risks are increased. The lack of trust stems from their two competing organizational cultures, wherein "motivations, responsibilities, and loyalties" are very different (Peter W. Singer, quoted in Camm and Greenfield 2005: 148).

> Reliance and trust [in the military] is based on military discipline and professionalism. If this is lost, or even put in doubt, a military mission may be put in peril. Will a combat soldier have the same level of confidence in civilian contractors … as they do soldiers? Why should they?
>
> (Gordon L. Campbell, quoted in Camm and Greenfield 2005)

And, as Avant observes, tellingly, "the tensions between [private security contractors] and active duty soldiers may erode the loyalty, initiative, and fighting power of soldiers" (Avant 2005b). This trend has already been documented, as the military has had difficulty stemming the tide of soldiers leaving for contracting jobs. This, together with a drop in recruitment, is severely damaging the core competencies of the military itself.

Private contractors providing defensive security to their clients do not, it seems, take the personal risks that the regular military does, nor do they assess the costs and benefits of their work in the same way, and this puts them at odds with even a transformed regular military. Incidents of what has been called "blue on white" violence between the military and security contractors are good evidence of this tension.

The case of Zapata Security is a good example. On May 28, 2005, 16 US security contractors, working for Zapata Security doing mine clearance, were driving through the tense streets of Fallujah Iraq. After allegedly firing indiscriminately on a Marine guard post and on Iraqi civilians, they were taken into custody by a Marine unit. Many of the Zapata contractors were former Marines.[12] Once detained, the contractors allege they were treated as enemy insurgents: stripped, physically abused, hazed, and humiliated (and photographed), and unable to communicate their whereabouts. Amidst allegations of abuse, the contractors claim they were repeatedly taunted about being contractors – "How does it feel now making that big contractor money?" – and accused of being a "rogue mercenary team" (Phinney 2005; Miller 2005). Eventually the Zapata Security team members were released, but blacklisted and barred from serving again in Iraq. One contractor, a former Marine, protested that "Marines don't do this to Marines, whatever happened to [our motto] *Semper Fidelis*, always faithful?"

One Marine colonel confirmed that the antagonism between contractors and the military is due in part to the fact that they have different motivations in a dangerous environment, and different attitudes toward risk:

> [The Marines] have a tendency to want to be a little bit more secure about operating in an environment, whereas I think some of the contractors are

motivated by the financial remuneration and the fact that they probably want to get from point A to point B quickly, [so] their tendency [is] to risk more. So yes, we're at odds.[13]

More recently, after the Blackwater contractors opened fire on Iraqi civilians in Nisoor Square on September 17, 2007, it was striking to note the complete silence and lack of support that greeted one of the biggest firms operating in Iraq. Conspicuously, neither the press, nor the military, nor the government, nor those within the community of current and former Blackwater employees defended the work of the firm. As Erik Prince, the founder and CEO of Blackwater, testified before Congress, and later mounted a spirited defense in the public media, the military remained silent. The only person who came out in public in favor of the firm was security scholar and former *Wall Street Journal* columnist Max Boot. His column, entitled "Accept the Blackwater Mercenaries" details the range of animosities felt toward contractors, but defends them as a necessary part of a downsized and over-stretched military effort:

> [l]ike a volcano finally erupting after repeated rumblings, the actions of a Blackwater USA team in Baghdad last month have brought to the surface a scalding gusher of animosity toward the private military industry. Everyone, it seems, has a reason to hate the men in black.
>
> (Boot 2007)

Contractors in general have been portrayed as the ultimate individual entrepreneurs: admirable and detestable at the same time. One letter to the editor summed it up: "As many professions have job hazards, I'm sure that each participating Blackwater contractor and employee was aware of dangers involved. After all, it was their choice to accept such a job or not" (Anonymous 2007). These examples illustrate two aspects of the operational and cultural conflict between contractors and the military: their motivations for being there – private gain versus public duty – and their attitude toward personal risk and the larger mission.

> [R]isk is an inherent part of counterinsurgency operations for everybody in the country. You cannot isolate people from any risk, because if you do that, you've created a separate class of people. And remember, counterinsurgency is about governance and making everybody feel like we're on the same side. Well, we're on the same side except "I want you to take all the risks, and I want my guys to be safe all the time. I don't think we're on the same team." And the Iraqis I work for somewhat resented that....
>
> (Col. Thomas X. Hammes, retired, quoted in Gavinia 2005)

The conclusion of the RAND study was that the risks of contractors on the battlefield had to be weighed carefully before employing them. The benefits that

they produced – operational flexibility, force multiplication, and a general ability for the regular military to focus on "military tasks" – had to be seen as incurring a fair amount of operational risks.

There are also significant benefits to the use of contractors. The presence of PMSCs enables a certain kind of risk-taking that is harder to justify within the military. Security contractors in particular often "show up" as a more positive risky business, one that makes new opportunities possible. The confusion about the place of security contractors on the battlefield is partly due to the ways in which they enable risk in what could be seen as an overly risk-conscious environment. At the most basic level, the use of PMSCs hides the cost of casualties. Second, security contractors allow for risk-taking on the part of those they guard: the use of Blackwater, or any other similar security firm, makes possible the presence of high-ranking civilians in danger zones. Third, the use of contractors may allow for risky practices to be outsourced away from the chain of command and liability for crimes, as occurred in Abu Ghraib prison. And, finally, the use of contractors may promote a more "adventurous foreign policy," as Deborah Avant put it (2004).

Analysts of the PMSC industry have long noted that one of the perceived benefits of the use of contractors is that their casualties (and risks) go unrecognized or under-reported. Awareness of contractor deaths is hampered by two things: there is no centralized means of reporting them, and many of the contractors, including security forces, are hired from other countries, and so their deaths go unnoticed by the American press. There is no question that contractor casualties are generally under-reported, and that the public display of mourning or acknowledgment of heroism is muted in contrast to the treatment of the deaths of soldiers (Avant and Seligman 2008). Debates have arisen about whether or not to add the names of contractors to war memorials, and on the proper ritual for an honorable burial (Magnani 2005; Scharnburg 2005).[14]

The use of contractors is thus also the result of a political risk calculation: how much loss can be openly sustained, or risked, in any current use of the military? How much of that loss could be minimized through the use of contractors, whose actions will be understood and calculated on a different "risk/return" rubric? Again, the point here is not the search for an actual cost, or the actual risk. These assessments are qualitative, not quantitative, in nature. The costs and benefits of any given policy choice will be different depending on *how* the risks are characterized. Much of the social science and economic research on the problem of rational risk assessment involves trying to ascribe meaning to the hidden costs of any policy choice, costs that may not figure in the initial risk assessment, but which show up as unintended consequences, or as costs of the simple act of choosing one strategy over another. As the mission changes, the costs of one choice over another may grow.

The immediate benefits of private forces may eventually be outweighed by the adverse effects of their use: they may appear to offer a risk-free option, and may minimize risks on the ground and at home, but in the long run, the

widespread use of contractors may destabilize the trust and restraint that democracies have imposed historically over military force.

Risk transfer and new wars

Martin Shaw locates his analysis of risk-transfer war squarely within the scholarship on new wars covered in the first chapter of this book. But he adds to this discussion by seeing the economic model of risk transfer at work as air strikes are planned, or civilians are contracted, or soldiers armored (or not).

> How the West fights its wars … is all about risks. It is especially about managing relationships between political risks (to politicians) and life risks (to combatants, and civilians), to make each war a successful project – that is to work as a risk economy. And the process of managing risks is all about transferring them.
>
> (Shaw 2005: 71)

Among his "rules of risk-transfer war" he notes that "wars must, above all, minimize casualties to Western troops" by transferring them to civilians and civilian contractors. This in turn exposes a "fundamental contradiction between the norm of civilian protection and the reality of Western war-making" (Shaw 2005: 93). Eventually, this way of conceiving of warfare touches fundamentally on the way in which the ethics of war are judged – a subject covered in Chapter 5. But what this theory emphasizes is how the language of risk ends up influencing the political calculations of acceptable deaths. This wider assumption shows up on the ground in two ways: the ways in which contractor casualties are discussed in the press, and the animosity between contractors and the military, especially regarding risk exposure and risky behavior.

How does the "great risk shift" show up in the world of military culture? This might seem like a silly question: the military is all about risking death for certain political or strategic goals. In fact, the military is only justified in doing what it does precisely because it risks the lives of its soldiers: killing and maiming others is only allowable – legal – because soldiers have agreed to be killed themselves; they put themselves at risk. This is the doctrine of what Michael Walzer calls "battlefield equality" in his account of the war convention in *Just and Unjust Wars* (Walzer 2000: 137). Battlefield equality allows soldiers to kill other combatants, and non-combatants by mistake, only because the soldier has exposed himself to a certain amount of risk: "[the soldier] can be personally attacked only because he is already a fighter. He has been made into a dangerous man … and … [f]or that reason, he finds himself endangered" (Walzer 2000: 145).

Around the same time that the insurance industry was stepping in to underwrite political risks no longer seemingly secured by the state, the US military seemed to become, for a variety of reasons, wary of taking military risks. For it seemed as if the United States especially had entered an era in which foreign policy and military engagements had to be done light-handedly, with technology

doing the most of the work, and civilians taking most of the hits (Odom 1993: 149, 164; Lacquement 2005). In the midst of this debate about how much risk could be justified by regular military forces, the private military industry offered itself as a "risk-free" alternative to exposing expensive troops to anything but their "core mission."

> Acting as if these guys are only risking their lives for money is false. In fact, it may be that this is a kind of risk acceptability they can stomach. The conventional military may be too risk averse, too sclerotic, to compete.
>
> (Mandel 2002)

The term "casualty phobia" – sometimes referred to as "casualty aversion" or "force protection fetishism" – has come to describe the reluctance of military commanders to risk the lives of ground troops, and the corresponding overuse of air power and "overwhelming force." As the use of psychoanalytic terms suggests, this phobia or fetish is somewhat irrational and unreal: it denies the reality of what is required on the ground, and perhaps even the *moral* status of the endeavor. In fact, as with the debate about what a true "risk" actually is, the debate about casualties is often based on a strange combination of assigning a certain value to casualties – a body count – and then predicting when the political will for a certain mission will be lost. The language of risk and return is wrapped up in the debate about how casualties literally "count" and what proportionate value should be placed on measures which may complete a mission but expose more soldiers to threats.[15]

While there are many reasons why the American military has historically been averse to casualties, a combination of factors throughout the 1990s grew to create what seemed to some to be an absolute bar to death in battle. The 1999 war "over" Kosovo, wherein planes bombed from excessive heights and no NATO air personnel were lost, seemed to seal the perception that military force could be exercised without risk to soldiers. The fact that NATO bombing in the absence of ground forces exacerbated the expulsion of Kosovar civilians into refugee camps, and caused widespread suffering on the ground, led to outcry from within the military and civilian sectors alike. Military scholars and strategists had long warned about the dangerous effects of a squeamish civilian leadership unable to sacrifice or take on risks. Previously known as the "Vietnam Syndrome," now referred to as "the CNN effect," the public's adverse reaction to the reality of ground operations was thought to work against committing "boots on the ground" (for a good overview of this issue, see Eikenberry 1996).

The standard assumption, put forth almost unanimously, is that after Vietnam, and especially after the 1993 capture and deaths of soldiers in Somalia, the American public will not "tolerate" military casualties, and that support for any operation will drop once any number of US soldiers are killed, captured, or grossly wounded. After the terrorist attacks of September 11, 2001, and during the war in Afghanistan, press accounts assumed just this kind of drop in support. Along with the military, the press seemed to want to prepare the public for

casualties that never came. Numerous polls, however, have disproved this assumption, and have demonstrated the fact that Americans can accept the deaths of soldiers in causes that are well understood and seen as "worth it," both in terms of US interests, and greater humanitarian missions.

The existence of this presumed risk phobia has been criticized from the left and the right. Left-wing supporters of human rights and humanitarian interventions decry the unwillingness to use effective military means, including ground forces, to respond to genocide, ethnic cleansing, or mass starvation. If the justice of "humanitarian war" allows only for intervention, but without ground troops, so the argument goes, riskless bombing is both politically and tactically ineffective. Within the military, many argue that the over-emphasis on force protection has had negative effects. It degrades the morale of the armed forces, prevents the fulfillment of missions, and requires the acquisition of costly weapons (often promoted as lessening casualties) (Sapolsky and Shapiro 1996). Both sides also speculate about the unreality of a "virtual" war fought by troops that kill but aren't killed, wound but are rarely wounded, and in which true acts of valor are hard to come by. The war in Iraq, with its higher level of military casualties, has displaced some of the rhetoric of a casualty-averse military. Even so, much of the criticism surrounding the continuing use of security and military contractors in Iraq, Afghanistan, Bosnia, and Kosovo continues to deride a downsized military's inability to handle the additional press about contractor casualties.

Four factors have influenced the increasing dominance of casualty phobia within the military: new forms of intervention and an expanded use of the military, the expanding and celebrated role of the technological battlefield, a much more *legalized* military, and the cumulative effect of terrorist attacks on the military, together with the clear sense of failure such attacks symbolize. I will briefly summarize how each of these factors has created a predisposition to casualty aversion.

Since the war in Vietnam, it has been increasingly hard to justify the use and risk of conventional ground troops in operations that are deemed to be far from home, and respond to conflicts that are often presented as being the result of "age-old" hatreds and with confusing actors: warlords, civilian militias, paramilitary forces, guerrillas, and terrorists. Responding to the new and confusing roles for soldiers that these conflicts brought with them, and the relative types of sacrifice they required, Anthony Zinni, Marine Corp General (Ret.), and former Commander in Chief of the Central Command, noted that some in the military wish for a return to the "old" style of combat, with clear enemies, and honorable causes:

> These are not neat, clean, medieval battlefields. The romance is not there in these operations. They are confusing to our people and our military leaders.... In the area of the world that I had responsibility for we had more young Americans killed who were working for nongovernmental organizations than were wearing uniforms.

(Zinni 2001)

General Zinni noted that in these "messy" conflicts, the ability to compel risk diminishes even as the demand for the complex set of skills to negotiate these situations increases. But their deaths, when they happen, still suffer from a perceived lack of justification, and "too much [emotional and political] baggage."

There are three forms of combat casualty that I think play a large role in the concern with force protection. Battlefield deaths are of course the hardest to bear. However, other types of casualties are included in the risk calculus, and are often harder for a society to deal with: these casualties are the bodies of the wounded and maimed, the physically present but bodily scarred victims of a war, and the bodies of those captured, missing, and in need of rescue. Each of these types of casualties, the not-yet-dead, is included in the justifiable and widespread fear of the captured and tortured soldier, which, interestingly enough, has not occurred much in the wars in Iraq and Afghanistan. While the dead can be hidden from view by being dubbed heroes and buried in state, the wounded, maimed, and disabled veterans live on to remind those at home of just those aspects of war they'd rather forget: the "body horror" of it all (Taylor 1998). Those who are captured or held hostage, those tortured or missing in action, inflict a rare sense of impotence and pain; the increasing awareness of the psychological "cost" of battle makes it hard to push soldiers, especially professional soldiers of an all-volunteer force, into direct combat.

The second source of casualties that I argue the military is trying to avoid through outsourcing is what could be termed the "psychological casualty" of warfare. The history of the relationship of psychology to war is a rich and long one, and those in the military, as the wealth of websites on Post-Traumatic Stress Syndrome indicate, are all too aware, as Lt. Col. Dave Grossman puts it, "of the psychological cost of learning to kill" (Grossman 1995).

The final element of casualty aversion that plays a significant element in military thinking is another more direct economic cost: soldiers, especially those of an all-volunteer professional military, are "too valuable" to lose in combat. Members of the "Army of One," trained and cross-trained in the highly technical skills of the modern battlefield, and even more, Special Operations Forces with their years of training, scarce skills, relative maturity, constitute valuable assets (even referred to as "inventory") that should not be expended (USSOCOM 2000). Acceptable levels of risks nowadays take into account the cost of loss in human, economic, and even psychological terms. Highly trained professional soldiers are an "asset" that should not be squandered, not only in wars that are not seen as just or have a low probability of success, but in individual tactics that expose soldiers to risk.

In the background, amplifying these effects, is the subtle presence of the risk society, wherein we are more and more risk-averse in general, and death and bodily disfigurement seem simultaneously distant and incomprehensible. Unlike the British of World War I, inured to casualties because men, women, and children were maimed and killed at a high rate in peacetime mining and industrial accidents, we in the postmodern West live in an antiseptic and safety-conscious world, especially, if ironically, in the military.

The preceding discussion of the various costs (loss of control) and benefits (financial and political) of contracting demonstrates how the calculation of risk shows up within the military. It is a different approach to that taken by the insurance industry: much more qualitative in nature. Instead of judging risk by quantifying the probability of a specific loss by using the actuarial tables (or employing new "creative" formulas, like that used by Armorgroup), the military has to juggle the amorphous demands of politicians and policy-makers for a "low-risk" mission, assessed most obviously in the numbers of casualties, but more qualitatively as well. A "costly mission," or "high-risk undertaking" can damage more than just bodies: it can damage the reputation of a country, the lifespan of its politicians, the long-range cooperation of allies, etc., all very difficult to quantify. In this context, the war on terror is in part an example of the new versions of "risk-transfer war," in which risks that would before have been taken by the military are transferred to civilians (and contractors) as they carry out pre-emptive wars.

Across the risk-culture divide

Given all of the reasons why casualties are seen as risks within the military, it is easy to see how attractive it is to transfer casualties (and potential crimes) onto contractors, whose status and liability is unclear. There is something more subtle going on, however, which provides what might be termed "structural momentum" for this process: the organizational cultures of PMSCs, especially the part of their organizational culture influenced by the business world, accepts certain kinds of risks in a completely different manner than the organizational culture of the military. To understand this argument, we must return to the work of Aaron Wildavsky, whose pioneering work on political and organizational culture provides a rubric for judging different attitudes (or "postures") toward risk (Thompson *et al.* 1990).

Wildavsky locates cultures on what he calls a "grid-group axis," a notion first developed by Mary Douglas, his later co-author of *Risk and Culture*. As depicted in Figure 3.1 different groups are first differentiated along a horizontal axis representing their "group-ness," or coherence as a group. In the original model, communes, or Hindu caste members, would score a high "group" score: their strong attachment to the group formed much of their habits, practices, and orientations. At the other end of the "group" spectrum, individual entrepreneurs and non-union factory workers had very little "group identity," seeing themselves in various ways as individuals – either as self-interested market actors, or as individual pawns in a game they could not control.

On the vertical axis, the strange term "grid" is used to describe the level of regulation experienced by the typical member of these different individuals or organizations. Those at the top of the axis experience a high degree of regulation; their lives are highly routinized and dictated by protocols. The non-union worker would feel little attachment to a group, but his or her working life would be highly regulated. And the perfect market individual, relatively unregulated, would embrace an atmosphere of laissez-faire. At the center of this group-grid
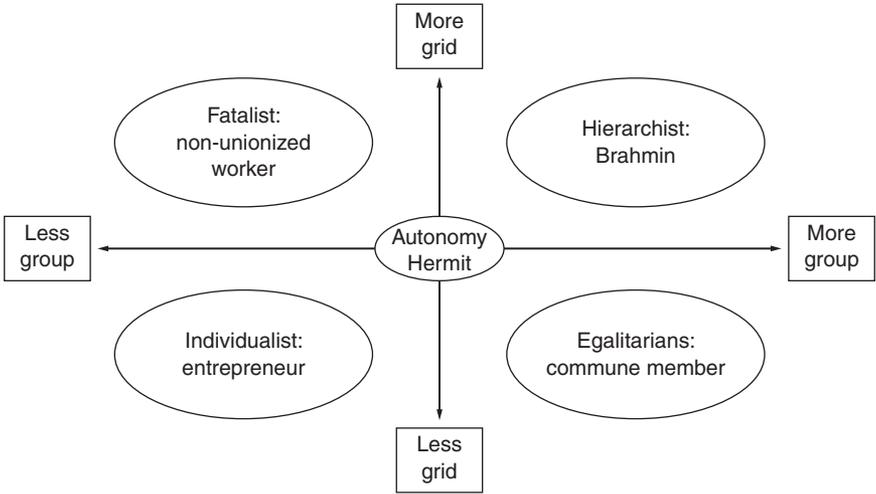
Figure 3.1 The grid-group typology.

axis would be the hermit, neither regulated nor unregulated, neither attached to a group nor fiercely individualistic and competitive.

This simple tool has been used to analyze many different cultures and the types of attitudes that go with them. It is an especially useful tool to provide order to the various military groups analyzed here. In place of the Hindu caste member, at the upper-right, substitute a high-ranking member of the regular military. Instead of the non-union worker, put a low-level military conscript, for whom life is highly regulated, but there is little attachment to the group. In the lower-right, replace the member of the commune with a member of an NGO, especially those that deal with virtuous issues, such as humanitarian relief. And in the lower-left, put the PMSC members along a diagonal axis according to their relationship to the military, and their relationship to regulation. In the bottom-most left-hand location would be the classic mercenary, and angling diagonally up to the right would be the various PMSCs insofar as they move closer to more paramilitary organizations.

This is a simple model, but it highlights the differing attitudes toward risk that can induce, so to speak, a transfer of risk between them. Broadly speaking, the military, like the Hindu Brahmin in Wildavksy's original model, will worry most about risks that disrupt hierarchy. As a highly rule-bound organization, the military will revert to the nearest protocol, rule, or procedure it can find. When faced with unclear categories or situations, the military falls back on routine, training, and loyalty to the group. In contrast, groups in the lower-left quadrant, despite their increasingly positive attitude toward regulation and loyalty, are governed overall by an attitude of risk-taking, a distain for hierarchy, a low level of loyalty to a particular firm, and a more ad-hoc chain of command. Security
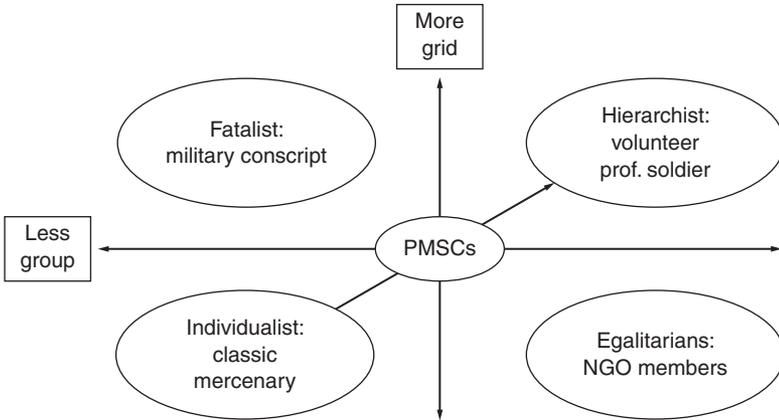
Figure 3.2 The grid-group typology and PMSCs.

contractors and soldiers, taking the very same risks, will see those risks differently, and will fall back on their organizational culture to justify their differences. They are "risky" to each other precisely because their organizational orientation is so different. But this difference, almost like two differently charged magnetic poles, allows for a rapid and swift transfer of risk when they come into contact.

This analysis is one that emphasizes organizational and structural cultural theory. It rests on the assumption that risk cultures affect how action is taken on the ground, how liability and blame is judged, and how dangers "show up." Analyzed in this way, the idea of risk-transfer warfare makes more sense. It is not merely that contractors are used in order to hide or minimize politically difficult choices. It is also not merely that PMSCs inspire risk-taking on their own. Their market-based organizational culture also promotes this transfer, allowing certain risk postures that are less allowable, even looked down upon, within the regular military. In this way, PMSCs serve the purpose of substituting for certain military deficiencies in risk-taking: they promote a risk posture that is radically at odds with that of the classic regular military, even as that same regular military is undergoing all sorts of transformations. The civilian–soldier divide – or, in the language of the grid-group axis, between the market individualist and the rule-bound hierarchialist – is one that is not bridged easily. We can thus see why any attempt to regularize members of PMSCs, for instance by including them under the rubric of the UCMJ, or referring to them as part of the "total force package" of military on the ground, will be resisted by both sides.

Conclusion: risk and PMSCs

Seeing the use of military and security contractors through the lens of risk theory situates the phenomenon in a wider context, more than that of the supply and

demand theories offered in traditional accounts, more than a conspiracy to just make profits in war zones, and more than merely a desire to hide casualties or outsource the dirty work. Risk theory also explains the animosity observed between contractors and the military, and the uncomfortable way in which contractors appear as dirty (dog-like) mercenaries in the press. Risk aversion is seen as a part of a larger trend, in both business and the military, to deal with the new uncertainties surrounding business ventures and political goals. In the midst of these uncertainties, one way of reacting is to pre-empt danger by averting risk defensively, and transferring unknown risks to those least able to understand them. Risk-transfer mechanics are mirrored in the mechanics of who is blamed, or who bears liability for mistakes. Blame-shifting and obfuscation is especially easy once this particular way of responding to risk is employed.

This dynamic has influenced our own assessment of the risk behavior of soldiers, and the overwhelming requirement that the military and political leaders transfer risk onto other, less-visible populations. This transfer has a moral aspect to it – some are exposed in order to protect others – and this is readily recognized by those who proclaim the paradox or unfairness of Western ways of warfare.

Finally, the involvement of an economy of risk transfer – the war and terrorism risk-insurance business – has created a fertile environment for the growth of the security industry: allowing certain behaviors and disallowing others, making risky business or policy ventures less so by recommending the use of private security providers, and even influencing how those providers operate on the ground.

It may be hard to see how all of these aspects of the sociological, economical, and military uses of the idea of risk fit together. Private security contractors are ambiguous, amorphous actors in war zones, in need of social classification. One way of typing them is to label them "dirty and dangerous" – as mercenary dogs and irregulars, cowardly, profit-seeking, and unreliable. Another way is to maneuver them into the social sphere using a language that grants them some kind of comprehensiveness. There is no better way to do this in the current "risk society" than to see them as the ultimate risk-reduction tools, allowing risky behavior in a carefully calculated way.

One of the biggest risks associated with the use of contractors and PMSCs in warfare is the lack of any clear, effective legal tools to control their behavior. The military refers to this situation as a "classic principal–agent problem," where the agents of the military – its contractors – are only weakly control.[16]

> Army personnel consider a commander's inability to force contract performance ... a serious problem. Even if a commander could legally direct contract personnel to do something, *the commander would have no immediate recourse if they refused to comply*. The commander could only take the issue to court and/or terminate the contract for nonperformance.
>
> (Camm and Greenfield 2005)

Currently the only way to punish those contractors who commit crimes or fail to perform their duties is to fire them or release them from their contract. This is for the simple reason that contract law, as a branch of civil law, was never meant to carry the burden of regulating the excessive use of lethal force. The next chapter addresses the question of how to reduce the legal risk associated with "unlawful belligerents" of a whole new type.

4 PMSCs and the clash of legal cultures

> We have to remember that the rule of law is neither a matter of revealed truth nor of natural order. It is a way of organizing a society under a set of beliefs that are constitutive of the identity of the community and of its individual members.
>
> (Paul Kahn, *The Cultural Study of Law*)

Legal quandaries

Running a sex ring in Bosnia, torturing prisoners at Abu Ghraib in Iraq, shooting at unarmed civilians in "questionable" uses of force, mistaken "friendly fire" incidents with other contractors and members of the military, and general mayhem on the roads of Baghdad: PMSC members have been involved in a number of high-profile and notorious episodes wherein their misconduct would be considered criminal under international, domestic, or military law.[1] And yet very few prosecutions have occurred. A 2008 study by Human Rights First asserted that:

> To date more than 60 US military personnel have been court-martialed in the deaths of Iraqi citizens and more are under investigation. In contrast not one private contractor implicated in similar crimes in Iraq has been prosecuted.... The Justice Department's neglect has created a "shoot first, ask questions later – or never" attitude among some contractors.
>
> (Human Rights First 2008)

It is repeatedly claimed that PMSCs operate in a shadowy legal environment, unregulated and uncontrolled by anything but hazy market forces and voluntary codes of conduct. The business is frequently described as operating in the "grey area of the law," or in the "shadows," "beyond the law," or simply as "unregulated."[2] Despite the fact that the industry has existed for many years in some form or another, and attempts have made to classify and clarify all sorts of aspects of it, the entire debate continues to be marked by confusion. As one critic pointed out, it is hard to believe that "we can regulate the ingredients of an Oreo cookie, but not the forces that work alongside our military" (Callahan 2004). Despite all the hue and cry about a "vacuum of law" or the lack of oversight,

there are actually many layers of international and domestic law that could apply to these actors. There are enough standing regulations to prompt the remark that, as one executive noted, "we are the most regulated force on the ground that has ever been seen" (Beese, Christopher). Given this, the suspicion often arises that this murky world was created on purpose, in order to shield contractors from the reach of law, and enable a faster and more flexible procurement of services. Critics repeatedly allege that this obscurity was intentionally rigged to prevent proper oversight and regulation.

After Blackwater contractors opened fire on civilians in Baghdad in September 2007, killing 17 civilians, Congress convened another hearing on the company, and renewed its cries for regulation. Representative Henry Waxman, Chairman of the House Committee on Government Oversight and Reform, began by listing the problems associated with the State Department's use of Blackwater to provide diplomatic security:

> New documents indicate that there have been a total of 195 shooting incidents involving Blackwater forces since 2005. Blackwater's contract says the company is hired to provide defensive services, but in most of these incidents it was Blackwater forces who fired first. We have also learned that 122 Blackwater employees, one seventh of the company's current work force in Iraq, have been terminated for improper conduct.
>
> (Waxman 2007)

Representative Tom Davis followed up, noting that:

> Incidents of erratic and dangerous behavior by security personnel from all the companies involved, not just Blackwater, are handled with little or no regard to Iraqi law. Usually, the bad actor is simply whisked out of the country, whether the offense is a civilian casualty, negligent discharge of a weapon, alcohol or drug abuse, or destruction of property. To date, there has not been a single successful prosecution of a security provider in Iraq for criminal misconduct.
>
> (Waxman 2007)

In his response, the CEO of Blackwater, former Navy SEAL Erik Prince, testified that "the Blackwater team acted appropriately while operating in a complex war zone" (Waxman 2007), and that the risks taken by the heroic men who worked for Blackwater had resulted in no deaths of those they were hired to protect.

The footage of Mr. Prince defending the actions of his company's men as a "measured and appropriate" response to threats, and his defense that his convoy-protection details and helicopter support only provided "defensive" security, contradicted many reports of offensive actions. Media accounts of his testimony were almost uniformly negative, and no one seemed to come

forward to defend Blackwater USA, not even their contracting agency, the US State Department. Their domestic deployment after Hurricane Katrina in September 2005, their contract to do border security along the US–Mexican border, and their repeated requests to do humanitarian rescue in Darfur, put them in the spotlight again and again. The fall of 2007 seemed to spell "the beginning of the end," as one contractor put it: all of the issues that had been smoldering along had suddenly crystallized: the lawlessness with which they operated in war zones and the no-bid contracts with the US government which gave them business. Blackwater had become the Sandline of the US: a large, privately financed, well-established firm whose close ties with the US government and the Republican Party made it look like they were the paramilitary wing of the Bush Administration.

Such appearances are not coincidental. In the political origin story referred to in Chapter 2, PMSCs were created in order for the executive branch and the Pentagon to bypass the strict rules of law and rigid practices that the military had developed over time, codes and rules that made its actions constrained and inflexible. Grey areas of conduct and murky legal codes would allow for more discretion, flexibility, and plausible deniability. Here, contractors would be seen as an outgrowth of mercenaries or covert operators, rather than as the more benign security workers. They would be part of the long tradition, documented so well by Janice Thomson, of privateers working in vague conjunction with national goals, but encouraged to operate at a hazy distance from those in power (Thomson 1994: 41).

In this story, the government actively wants to avoid checks and balances on a number of fronts. The President can avoid Congressional oversight. The Department of Defense can avoid public scrutiny. Contractors are freed from the onerous aspects of the established law of armed combat. And "citizens" are freed from the full implications and consequences of their foreign policy. This is a game of smoke and mirrors played to create plausible deniability. Confusing matrices of laws give this story real staying power.

This chapter addresses a simple puzzle: why do PMSCs continue to exist in a legal vacuum, despite years of attempts to regulate them? There are some initial possible (and simple) answers to this puzzle. First, the legal structures in place could be too new and untested. Without precedent and a collection of relevant cases, laws have no established reality (Gibson 2004). Who, then, has the political will to use the legal mechanisms that have emerged? Second, PMSCs have produced few actual problems needing regulation. Before the Blackwater incident in 2007, plenty of people within the industry downplayed any real concern, noting that, despite the laws in place, no prosecution had occurred because, noted one ArmorGroup official, "after 25 years in the business, I have not yet seen a case of improper conduct". Within the industry, many have argued that, given firms' desire for further contracts and need to avoid scandal, the market has worked to effectively regulate them.

A third reason for this legal vacuum could be that mentioned above: these firms are merely living out part of their purpose; to operate outside standard

accountability and transparency structures. The institutional momentum behind this unacknowledged purpose – of deniability and distance, and of legal impunity or at least obfuscation – may show up in the sense, if not the reality, that these firms are beyond the law. PMSCs may be "covered" by an array of laws, but there still may be no real laws that *work*. This chapter addresses how this might be so.

This chapter has two central arguments. First, I maintain that behavior in wartime operates on a two-track system, with central, regular combatants held under strict command and control, and more peripheral, irregular combatants held at arm's length and less-strictly controlled. The spatial metaphor of center and periphery can help to explain the different ways in which law operates close to, and further out from, law-makers and those charged with oversight. Here "peripheral" means three types of war: wars fought at a geographic distance from the nation's capital – wars at the frontiers of what we think of as civilization; wars peripheral to our consciousness (covert wars, even if fought close by); and wars using paramilitary proxy forces.

International humanitarian law, which includes the law of armed combat (and which in turn gets combined with domestic military law) includes processes that attempt to fill in the spaces and extend the power of law from the center out to the periphery. Partially this is intentional – it comes with the territory of mercenaries and covert operators, for better or worse. But, until it is understood how legal doctrines show up in this hazy peripheral realm, any attempt to bring contractors back into the fold, so to speak, will fail. This is why contractors are – or appear to be – unregulated.

Second, I argue that the attempt to regulate PMSCs is stymied by a clash of legal cultures. As the legal world attempts to control these forces – or at bare minimum bring them under some workable legal classification – it creates dissonance between international humanitarian law, military law, and regulatory and contract law. The clash of these three legal cultures and the assumptions that go with them treats PMSCs as three different legal persons – soldiers, businessmen, and disaster zone NGO workers – each unrecognizable within the legal culture of the other two. This leaves those who seek to understand these contractors through law in a world that is legally obscure and hard to navigate.

In this clash of legal cultures, the worlds of IHL, military law, and contract law all combine to form a novel and perhaps unworkable mix. In the same ways in which PMSCs combine three different "persons" and ways of life, the legal remedies offered to govern their conduct take bits and pieces from various legal frameworks that have very different orientations, goals, and histories. These types of laws have historical "genealogies," so to speak, wherein various assumptions and ways of doing things are inherited by those who operate under, or within, them. There is a lot of crossover in these genealogies: military law may bear a certain "family resemblance" to human rights law; contract law may contain some precursors of human rights law. The genealogies are intermixed for sure, but in their extreme forms, each

form of law analyzed here requires a different legal structure or process to adjudicate.

The most direct clash is that between domestic civil law (which includes contract law) and criminal law. Contractors who commit violent crimes in the process of fulfilling their contracts fall under a different legal rubric than the fraud and harm that civil contract law provides. They must "leave" the realm of contract law and "enter" the realm of criminal law. So far, so good: but when this jump from one legal realm to the other occurs in the midst of a war zone, things get complicated. As in the first chapter, the use of the word "culture" here is deliberate. I am referring to the idea of a way of life, which includes the "mentalities" that Clifford Shearing referred to when describing the differences between public and private domestic security providers. And I also mean the environment in which something can grow and flourish. This is a more biological understanding of culture, like the proverbial Petrie dish, which contains a medium in which new organisms can take root. Legal cultures not only refer to a way of life, they create ways of acting and understanding those actions.

Andy Bearpark, head of the British Association for Private Security Companies, once referred to just this mix of legal cultures. He noted that any workable legal remedy to govern contractors would require a "matrix" of regulations, laws, and statutes: "Matrix is a good word, my daughter suggested it, and it has just the right mix of post-modern and real."[3] A matrix of regulations would coalesce around firms and their employees with just the right amount of flexibility to make them workable and palatable. "Matrix" has come to mean a grid or axis, where something can be fixed. But it is descended from the word for mother, *materix*, and originally meant something like the primordial soup of a culture, a mix of things out of which something new could develop or be born. It may be that with enough time and effort, and enough gradual legitimacy, new legal mechanisms will be developed out of this legal soup to apply to a new international actor that so often operates in peripheral zones.

What unnerves us about the advent of the private military industry is the lack of coherence in the legal regime. This stems from the nature of contracts: specifically negotiated and usually short-term and informal relationships. There may be benefits to these contractual arrangements, even on the battlefield, but they remain a perplexing way to construct what is essentially a new legal person. The legal world of contract law does not contain in it a broad notion of "responsibility" or "honor," or even those grand-sounding but important references to "humanity" or "civilized peoples." And currently these ad hoc relationships do not have any coherent and mobile legal infrastructure – lawyers, judges, courts-martial proceedings, etc. – to deal with abuse.

Laws on the books mean nothing without a legal infrastructure willing to investigate and prosecute crimes and fraud. In this case, the problems have been magnified by the collision of the three distinct legal genealogies, with three distinct legal personas: first, a business contractor, governed by contract

regulation; second, a security guard, distinct from the military soldier but with some of his rights and responsibilities; and third, a civilian non-governmental worker, unconnected to any US government agency, working in conflict zones. So far, attempts to force PMSCs into any one box have been unsuccessful.

Effective regulation must be based on a coherent understanding of the legal entity being regulated. The hybridized character of private military contractors means that their legal personality, is undeveloped, at least some of the confusion regarding how to regulate them results from this problem. This chapter begins with a summary of the various laws that are already available for regulating PMSCs. It then addresses the problem of regulating peripheral organizations in war zones, and the clash of legal cultures that is involved in the new matrix of regulations being proposed.

PMSCs under international and national law

There are three important issues that have to be addressed in order to regulate PMSCs: the *legal status* of the security contractors who work for them; whose *jurisdiction* they fall under in the zones where contractors work; and the appropriate *choice of law* – the legal regime under which such ambiguous actors should be governed. All of these questions are central to any discussion of law. Are contractors combatants or non-combatants? Does their status according to various national laws match their status in international law? Which legal processes govern them? Can contract law, and contract oversight mechanisms, be made to work effectively to restrain them?

These questions become immediately complicated given the multinational character of PMSCs and those who work for them. What is the legal status of a fully armed Peruvian national, working for Blackwater on contract from the US Department of State? What law is authoritative over an armed Ukrainian contractor working for a South African firm contracted by the Department of Defense? What kinds of investigatory procedures should be granted to which national or international body to deal with crimes? What kinds of processes can protect whistleblowers and shield witnesses – and just as important – protect the accused, in a war zone?

The idea that there could be tens of thousands of participants in a war zone with an unclear legal status is not unfamiliar: it is the same situation in which enemy combatants have found themselves. Private security contractors are in the same position as those accused of being al-Qaeda terrorists: they have no firm legal ground on which to stand, and huge debate exists as to what body of law can speak to their status, under whose jurisdiction they fall. They too reside at the periphery of law. But the comparison ends here. Legal ambiguity aside, those in Guantanamo Bay exist in a certain legal black hole even as they are held in top-security lockdown, while so far, those private contractors who are accused of crimes have gone free, and face only the prospect of a diminished future employment in the industry. The wars in Afghanistan and Iraq

have spawned two simultaneous debates about legal status: the status of unlawful belligerents, and the status of civilian security contractors. In analyzing the debates about the one, the debates about the other will end up being significant.

The various international and national legal tools available at the current time range from longstanding international treaties to relatively unknown regulatory processes. Different provider and host nations have taken different approaches to regulation. The next section will profile the standing laws that provide nominal regulation at the international and national levels. In so doing, I will stress the background assumptions that have contributed to the different modes of regulation. The intent of this section is to describe the legal terrain as it now stands, in order to get a full picture of the matrix of laws under which PMSCs operate.

International law

In October 2008, a document concerning PMSCs was forwarded to the UN Secretary General from the Swiss Representative sponsored by the government of Switzerland and the International Committee of the Red Cross (ICRC). The "Montreux Document" (sometimes referred to as "the Swiss Initiative") is the result of two years of meetings and negotiations between state representatives from 17 countries, PMSC industry members, NGO officials, journalists and academics.[4] The long-awaited document reminds states of their obligations under existing international law, and lays out "best practices" that could help to provide a framework for licensing and regulation. The overall goal is "to promote respect for international humanitarian law and human rights law" by those states who contract with PMSCs for services, those states on whose territory PMSCs operate, and those "home states" wherein PMSCs are based, or whose citizens work for them.

The document is filled with good recommendations. One example directs that those who contract with PMSCs should require that the company "post a bond that would be forfeited in case of misconduct or non-compliance" with relevant international and national laws. However, although the document makes clear that the trend toward increasing use of PMSCs is worrisome, and pretty much unstoppable, its recommendations are soft-peddled as reminders and suggestions, couched in the language of "best practices" that evokes corporate good governance or project management. It is suggested that states "consider establishing corporate criminal responsibility for crimes committed by the PMSC, consistent with the Contracting State's national legal system." For territorial states, on whose soil PMSCs will be operating:

> The following good practices aim to provide guidance … [the state should] evaluate whether their domestic legal framework is adequate to ensure that the conduct of PMSCs and their personnel is in conformity with relevant national law, international humanitarian law and human rights law, or

whether it needs to establish further arrangements to regulate the activities of PMSCs.

<div align="right">(Swiss Government 2008)</div>

The problem with this suggestion is that most states that need to have PMSCs on their own territory need them precisely because they do not have a civil and legal infrastructure capable of monitoring and regulating the activities of armed contractors on their territory.

The Montreux Document, however, reveals a number of things about the problems of regulating PMSCs from the perspective of IHL. It has absolutely no legal teeth: it can only be a reminder of relevant legal obligations and a road map toward possible remedies. As noted in its own Preface: "This document is not a legally binding instrument … and should therefore not be interpreted as limiting, prejudicing or enhancing in any manner existing obligations under international law, or as creating or developing new obligations under international law." The overall purpose of the document is to remind states how to behave under existing frameworks, not to create new frameworks. The problem is that those existing frameworks have so far only provided only the weakest guidance, and in some cases may be entirely irrelevant. At a workshop wherein the Montreux Document was discussed, prominent US DoD lawyer and military Judge Advocate General (JAG) W. Hays Park noted that since IHL and the law of armed combat pertains to states and not private entities, the laws are not usually applicable (Parks 2006). He argued that the direct use of PMSCs by governments, such as in Iraq or Afghanistan, is in general the exception rather than the rule, and that when employed by any non-governmental organizations, they are only susceptible to domestic laws, not international law. He suggested contractual provisions that require industry self-regulation, and short briefings for employees on how they should behave in a war zone. The situation remains murky.

While leaders gathered in Switzerland to write up the Montreux Document, the UN Working Group on Mercenaries followed a different path, trying to gather momentum for a new international convention on the use of PMSCs. Over the last four years, the Working Group has traveled extensively to states whose citizens work for PMSCs as well as countries on whose territories PMSCs operate. They have heard testimony from contractors who attest to being hired for security work, only to receive military training with military-grade weapons (including anti-tank weapons). The Working Group deplores the "labyrinth of sub-contracts" that makes any simple attempt to use contract law to regulate the industry impossible. Aware that the Montreux Document was being generated simultaneously, the current leader of the Working Group distinguished the efforts of the two: while the Montreux Document aimed to provide guidance for industry self-regulation, the Working Group, impressed as it was with the disturbing realities it had observed, was trying to add some legal teeth to their recommendations, and to forcefully make the business of PMSCs the responsibility of the states that provide them with a "home." Addressing the President of the UN Human Rights Council, Alexander Nikitin, the current President of the

Working Group, put a more serious spin on the issue than the Swiss government had done:

> Mr. President, the Working Group believes that the way ahead is a challenging one. The private military and security industry is a global phenomenon with tremendous reach and substantial resources, operating among some of the most vulnerable people in the world. The need to ensure the protection and promotion of human rights in this respect has never been greater. We will continue to work with all partners to encourage the adoption of strong, principled legal mechanisms to regulate and hold accountable these companies and further safeguard the protection of human rights.
>
> (Nikitin 2009)

The recommendations of these two international bodies represent two very different faces of law and its relationship to PMSCs. The Swiss government's Montreux Document urges governments to be mindful of their obligations under existing laws, and advises better contracts that include ways in which companies can better self-regulate. The Working Group, whose consistent use of the term "mercenaries" sets it apart, sees abuses of human rights at all levels in the "labyrinth" of relationships, and pushes forcefully for laws with teeth. What direction is the right one? And how do the activities of PMSCs stand up under international law?

International humanitarian law (IHL) is the body of law that contains both human rights law and the law of armed combat (LOAC), and since its twentieth-century codification, it has consistently banned any person on the battlefield that might appear to be anything resembling a mercenary. The evolution of this negative norm is intertwined with the history of the LOAC, and the attempt to legitimize certain kinds of combatants – those that can be made to obey the laws – and delegitimize any combatant that does not fall under the its legal umbrella (Percy 2007).

Although contracted or mercenary forces have been used in warfare from the very beginning of recorded history, an anti-mercenary bias began to show itself in the laws of armed combat in the early twentieth century, first with the Hague Convention of 1907, then with the Geneva Conventions of 1949, and again in the 1977 Additional Protocols to the Geneva Conventions. Some portions of these latter protocols remained unratified by the United States and some other great powers, but they have in effect achieved the status of customary international law, recognized as legitimate, if not entirely binding. Although PMSCs present themselves as being much more than trumped up bands of mercenaries, it is important to understand both the law and the customs behind the anti-mercenary prohibitions in international law.

The 1977 Additional Protocol I to the Geneva Convention denies mercenaries combatant status, and defines a mercenary as anyone who meets the following criteria:

a   Is specially recruited locally or abroad in order to fight in an armed conflict;
b   Does, in fact, take a direct part in the hostilities;

c   Is motivated to take part in the hostilities essentially by the desire for private gain, and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

d   Is neither a national of a party to the conflict nor a resident of territory controlled by a Party to the conflict;

e   Is not a member of the armed forces of a Party to the conflict; and

f   Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

This complicated definition has proven easy to subvert.[5] Members of PMSCs are often nationals to parties of the conflict (UK or US citizens), or residents of territory controlled by parties to the conflict (Afghans or Iraqis – or "host country nationals"). And the idea that a mercenary is one who is motivated by "private gain," is hard to prove for anyone, including those in the regular military.

In 1989 the United Nations unveiled the International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries. This agreement, which went into force in 2001, after having been ratified by the minimum of 22 states, has mostly been treated with scorn and derision. The chief researcher, Enrique Ballesteros, spent large amounts of time researching and refining what proved to be an unworkable definition of a mercenary. Nevertheless, the Convention attempted a different approach from that of the Additional Protocol definition, and targeted not just the individual mercenary, but those states which recruit, hire, and train them. For instance, in Article 5 it stated that:

> States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination, as recognized by international law, and shall take, in conformity with international law, the appropriate measures to prevent the recruitment, use, financing or training of mercenaries for that purpose.

The remaining 15 Articles all pertained to state involvement in mercenaries. The UN Working Group urges that, at a minimum, its mandate be extended and that it be allowed to work in tandem with further conventions aimed more specifically at PMSCs. It is clear that, from the UN's perspective, PMSCs are just part of a continuum that includes mercenaries.

The essential problem, however, is that these two international legal instruments refer only to the individual mercenary, or the state which might allow his use, and not the firm that employs him. The corporate veil that now legitimates those whom others would see as mercenaries was not unforeseen by the drafters of these rules. In one draft of the UN Convention Against Mercenaries, the drafters noted that "prohibitions on numerous actions having to do with mercenarism … would be applicable to groups and associations." The 1998 Rome Statute for the International Criminal Court also explicitly omitted language granting it jurisdiction over states, or organizations, limiting itself to "natural persons."

The history of anti-mercenary laws reveals three strains of thought: first, that only explicitly state actors should be given the license to kill internationally; second, that no individual should stand to gain financially from war. Soldiers, like priests, should not be profiteers. Finally, and most interestingly, as Sarah Percy's research has indicated, anti-slavery abolitionists established a third principle when they decried any implied trade in human beings (Percy in Chesterman: 2007).

Nevertheless, these laws have failed, internationally, to make any dent in the question of PMSCs, primarily because of the corporate, and hence more legitimate, face of the industry. Private individuals contracting directly with a state would be mercenaries, and states would be liable for breaking international law, but corporations that contract with the government, and then extend contracts to individuals on the government's behalf, end up falling under the rubric of corporations, and hence the monitoring mechanisms of these very different entities. The international legal instruments that divide the world up into states and their individual members fail to apply to this new world of mid-level powerful entities.

National laws

Each of the three states that have significant numbers of security contractors working abroad have grappled with the need to regulate them: the United States, the United Kingdom, and South Africa. The evolution of these various regulatory structures has created widely different models and national attitudes. These variations further contribute to the chaotic way in which firms and actors are perceived, monitored, and judged. The attitudes range from outlawing the entire industry, in South Africa, to accommodating it, in the UK, and actively encouraging its growth, in the United States. These differences, summarized in Table 4.1, reflect the history (including the scandals) associated with the various companies, and the level of official involvement in the beginnings of the industry. The current legal tools and their modes of enforcement obviously reflect these different histories and attitudes, and in places like Iraq where American or UK companies employ South Africans and Russians, the legal networks become even more obscure.

South Africa

Currently, South Africa is faced with at least three potentially contradictory demands in its security policy. First, it must attempt to reverse decades of involvement in continental coups and wars, many of which were financed and staffed by members of such notorious units as 32nd Battalion, which included Namibians and Angolans. Second, it must find a way to employ the many members of these now demilitarized former mercenaries and covert police and soldiers. Third, it must negotiate a new role for its thriving defense industries, since their income is sorely needed, and they employ up to 30,000 citizens. At the same time, the South African government is trying to recast its role in

regional politics as a country willing to broker peace deals, and staff and train African Union battalions in conflicts around the continent. The simultaneous existence of well-trained and valued security contractors from the former pariah regime, serving openly in Iraq, and more clandestinely in Haiti and elsewhere, presents the new government with a serious obstacle to its new image as a promoter of legitimate, state-based, human security.

South Africa is the nation whose current laws most closely reflect the spirit of the international ban on mercenaries. The issue there is especially contentious, given Africa's long history of conflicts and coups involving mercenaries, the historical use of hired contract soldiers during the Apartheid era, the large number of former police and military that have worked for companies since the early 1990s and, most recently, the 2005 scandal of the thwarted coup in Equatorial Guinea, carried out by South African mercenaries.

In 1998, well before this most recent event, the new ANC-led government passed the Regulation of Foreign Military Assistance Act. This law was modeled on a number of regulations aimed at curbing the flow of South African defense-industry products to unstable and untrustworthy countries. Similar to the laws used for approving the sale of weaponry and defense products abroad, the Ministry of Defense was required to receive approval for the provision of any military "related" services outside of the country.

In 2005, after the thwarted South African-sponsored coup in Equatorial Guinea (most recently chronicled in Adam Roberts' book *The Wonga Coup*), South Africa was embarrassed into creating a new and broader ban on anyone serving in conflict areas abroad. The new bill, with its ponderous and clunky title, "The Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict" has so far been criticized as overbroad and impractical. According to critics of the bill, it requires humanitarian agencies working in and around areas of armed conflict to register their activities with the government, and suffers from "unworkable" definitions of "mercenary," "armed conflict," and "post-conflict peacekeeping activities."

The paradox of South Africa's strict attitude, despite large numbers of its citizens working abroad, is a unique product of the transition from the Apartheid state, the radically new Constitution, passed in 1996, and the need to regulate and control a dangerous class of citizens. In fact, as some have noted, the continued world-wide use of South Africans as body guards, military trainers, and mercenaries benefits a country at odds with how to properly demobilize a highly suspect group of Apartheid-era veterans of the various security forces. In 2004, South African Supreme Court Justice Richard Goldstone was quoted in the press that he knew of 150 "former Apartheid-era security operatives working as mercenaries in Iraq." "It is just a horrible thought that such people are working for the Americans," he said (Conachy 2004; Nevaer 2004). More than in any other country, there are significant benefits to reining in, corporatizing, and legitimizing what has been openly noted as a problematic force.[6]

Since the new Anti-Contractors Bill was passed in the spring of 2006, three other discussions have been taken up in the press.

The first is the controversial disbandment of a town set up for former mercenaries near an asbestos mine in the north. The town of Pomfret, near the border with Botswana, has been described simultaneously as the sorriest looking shanty town around, a retirement village for former soldiers – often hired from Angola or Mozambique during the late-1980s to put down the ANC – and the best place to recruit new contractors to work in Iraq. The forcible removal of the remaining ex-mercenaries from the town, ostensibly because of danger from the nearby asbestos mine, has been read as an attempt to hide the notorious past of the former government, and sweep the human results of its policy under the rug. The fact that many members of the fateful Equatorial Guinea coup attempt were Pomfret citizens forced attention on the existence of the town (Schmidt 2004).

The legal fallout from the eventual release and return of the coup participants coincided with the dramatic return of a number of wounded casualties from Iraq. Quoted as saying that "it was nothing like they had been told it would be," and that "it is not our war," these men became the focal point for criticism of the South African government (Clarno and Vally 2005). In response to the new political environment, Erinys followed in the footsteps of Executive Outcomes, and reconstituted itself as an offshore company, based in the British Virgin Islands and jointly owned by a South African and UK board of directors. The negative treatment of those who work for Erinys, Meteoric, and other South African firms was reflected in the widespread support the anti-mercenary bill has received. In addition, bad press about Erinys did not help those trying to promote the industry (Giragosian 2004; Hasham 2004; Hodge 2006b; Miller 2006). Although IPOA-leader Doug Brooks traveled to South Africa to argue against the unreasonable restrictions placed on South Africans by the new bill, it was finally passed (by the government's own admission "after considerable delay") in November 2007 (Le Rou 2008). The language used is the strongest used to date of any legal document, national or international, on mercenaries.

> The intent of the Act is to prohibit mercenary activity, to regulate the provision of assistance or service of a military or military-related nature in a country of armed conflict, to regulate the enlistment of South African citizens or permanent residents in other armed forces, and to regulate the provision of humanitarian aid in a country of armed conflict. It provides for extra-territorial jurisdiction for the courts of the Republic with regards to certain offences and it provide for penalties for offences related to the Act.

As an industry analyst put it, the process leading to the passage of this bill was an unusually comprehensive one, but one that angered many private security companies (Le Rou 2008).

Given the history of those employed by the South African PMSCs, they are inevitably portrayed as a new breed of mercenaries. More than any other place, the debate in South Africa has included vocal criticism from members of government, including justices of the Constitutional Court, as well as journalists and security analysts. Regardless of the actual conduct of those on the ground, or the

growing legitimacy of the industry, the long shadow cast by governmental use of mercenaries in covert wars abroad and at home means the South African contractor is under heavy suspicion.

For the purposes of this analysis, it is interesting to see that the evolution of the issue fell initially under the rubric of weapons regulation and transfer, and then moved into the more abolitionist rubric of a ban on any unlicensed activity in a zone of armed conflict abroad. These two rubrics, one of which regulates business in lethal technology, and the other of which outlaws certain types of action abroad, are significantly different legal mechanisms, with predictably different results.

The United Kingdom

The British attitude toward regulating private military firms has taken a very different approach, despite the strong historical connection between British and South African ventures. There are many layers of cooperation between the military, the Foreign Office, and the many contracting firms based in and around London. This cozier and more tolerant relationship has a lot to do, I would maintain, with a different historical shadow cast by two traditions not found in either South Africa or the United States, traditions that enable the industry to take on a more benign and familiar face: the tradition of "seconding" British officers to foreign militaries, and the tradition of the British East India Company. In addition, and as the previous chapter made clear, the strong relationship between the insurance industry, specifically Lloyd's of London, and the UK government has allowed regulation to chart a more accommodating course in the last ten years since "the Sandline affair" became headlines.

The industry has gone through a number of stages in the UK, beginning with early training ventures and proceeding, in the Thatcher era of privatization, to the establishment of such firms as Defense Systems Limited (DSL). As noted, the expansion of the insurance industry in the 1990s, extending kidnap and ransom insurance policies to businesses worldwide, and underwriting war-risks policies, has added an aura of necessity and legitimacy to many businesses which initially began as risk-management firms, and only eventually expanded into full-service risk-reduction providers. The UK government was adversely affected by the activities of especially Sandline, the now defunct PMSC responsible for the "Arms to Africa" scandal in Sierra Leone. In 1998, in the wake of that scandal, the government called for a "Green Paper" to be drafted outlining the costs, benefits, and options for regulating the industry. The 2002 document remains the only real government document related to PMSCs, despite years of requests for more guidance (Percy 2006).

The Green Paper is a remarkable document nonetheless. Jack Straw, the then-Foreign Secretary, begins by quoting Tolstoy: "'War is not polite recreation but the vilest thing in life, and we ought to understand that and not play at war'" (The Secretary of State for Foreign and Commonwealth Affairs 2002). It addresses the accusations that PMSCs might have a vested interest in conflict,

whether they are being used as a form of proxy force, and whether or not there should be an automatic moral objection to the use of private forces (paragraphs 42 and 53). It notes that, since the history of the modern state rests on its ability to restrain private forces,

> to allow it again to become a major feature of the international scene would have profound consequences.... Were private force to become widespread there would be risk of misunderstanding, exploitation and conflict. It may be safer to bring PMCs and PSCs within a framework of regulation while they are a comparatively minor phenomenon.

It offers a number of suggestions of how regulation might occur, including an outright ban on any activity abroad, a licensing regime, or self-regulation through "voluntary codes of conduct." And it ends with a list of all the countries in Africa which have suffered from mercenary action from the 1950s through 1998.

Since the publication of the Green Paper, the regulatory situation in the UK has languished at the governmental level, even as the industry has greatly expanded with companies operating in Iraq and Afghanistan. Despite the creation in February 2006 of the British Association for Private Security Companies (BAPSC), under the competent leadership of Andrew Bearpark (referred to earlier, p. 103), the matrices of regulation have yet to be tested. BAPSC has advocated for "aggressive self-regulation," – including the position of an industry ombudsman, who would independently hear complaints, investigate allegations, and issue sanctions. But in the end, the solution is going to have to be a complicated one. As Bearpark put it, "the broader trends in the transformation of the contemporary security landscape towards multinational and multi-agency approaches needs to be reflected by a multi-dimensional regulatory framework" (Bearpark and Schulz 2007). Hardest of all, in order for any of this to work, there will have to be significant political will at all the multiple levels, multi-faceted and multi-leveled, with the stress on state action. So far in the UK, state action is lacking.

United States

Private security firms in the United States have grown out of two unique circumstances. The first is the relationship cultivated after World War II between a newly powerful private defense industry and the government that relied on it for weapons development and technology research. The notorious "military–industrial complex," with the attendant practice of a "revolving door" between the military, the DoD, and the private sector, expanded in the 1990s to include new services offered by some well-known corporations, and some additional smaller firms, often started by retired military men, offering advice and consulting on all sorts of issues. Retired Marine Corps General Anthony Zinni, former Commander in Chief of the Central Command, provides a good example. After

serving at the highest level possible in the Marine Corps, Zinni retired and became a well-known critic of the war in Iraq. Meanwhile, he did work for a humanitarian organization based in Geneva, and then served on the board of Dyncorp, the PMSC with the broadest base in the US. He is currently chairman of the board of the US division of BAE Systems, Inc., the third largest defense and aerospace company in the world.[7] In an interview in 2003, Zinni noted (among other things) that working in the private sector, or doing pro bono work in the non-profit sector, probably accomplished a lot more than people realized.[8]

The primary use of contractors in the United States began through the expanding use of logistics providers, and then consulting firms, and finally, only in the 1990s, security providers. Despite the sense that contractors and public servants are separated by a huge divide, the common practice of moving from public official to private contractor or employee of a defense-related industry belies this division. One civilian Pentagon official who had worked at the Pentagon for 15 years and was now at RAND described his search for a new career working for the defense industry: "There is a lot of money out there to be made, lots of money for projects in Homeland Security. I am not driven by altruism or the desire to do good in the world. I just want to make money and have a career shift."[9]

A number of legal and regulatory tools have developed alongside the growth of the defense industry. Although it is certainly possible to see firms and individuals as "completely unregulated," those inside the industry see themselves as subject to layers of regulations and multiple forms of liability. There are bodies of law that regulate the acquisition of contracts, laws that specify how firms should insure themselves to protect against liability, and laws that enable the prosecution of contractors under US criminal law. Each law has its own loopholes, however, and at present there is only a limited body of jurisprudence that is emerging to shape the landscape. This section will focus on the debate over how security contractors themselves should be prosecuted for criminal actions committed while under contract.

Two possible avenues have emerged for prosecution of contractor misconduct. Both assume that the contractor is working in some capacity for the US government, which covers many of the contractor actions in Iraq and Afghanistan, but few others. The first of these paths is through the Military Extraterritorial Jurisdiction Act of 2000 (MEJA), which allows for any civilian who is working alongside the military to be under the jurisdiction of US criminal law, anywhere in the world. MEJA was written in the aftermath of a scandal, wherein a father's sexual abuse of his 13-year-old daughter on a US base in Germany resulted in a conviction that had to be overturned due to the lack of any formal jurisdiction over civilians on US bases abroad (Gibson 2004). In response, the Second US Circuit Court of Appeals asked Congressional committees to "close this jurisdictional gap," and MEJA was established. This enabled the prosecution of non-military family members on US bases by allowing investigators (in this case, normally the FBI) and prosecutors to apply US criminal law outside of the territorial US.

There were some early hopes that this would enable the prosecution of any criminal wrongdoing of PMSC contractors (Grice and Russell 2004; *Boston Globe* 2004). But, despite an early conviction of a woman who had stabbed her husband on an Air Force base in Turkey, no cases involving contractors have occurred. Some have noted that the delay might be due to special legal tools allowing for "implementation" that were only inserted in 2006. In addition, the original law was only applicable to contractors under DoD contracts, and the two most notorious contractor criminal cases – the torture of prisoners in Abu Ghraib by members of Titan and CACI, and the shooting of unarmed Iraqi civilians by Blackwater employees in 2007 – concerned contracts that had been given through the Department of the Interior and the State Department, respectively. The final and most important roadblock is a practical one: in order for MEJA to work, domestic law-enforcement agencies must gather evidence and interview witnesses far from home, which costs money and time that they often do not have. Even the high-profile FBI investigation of Blackwater in Baghdad was delayed and hampered due to the practical difficulty of flying FBI personnel over to Iraq. Extending US law-enforcement jurisdiction into an active war zone was not part of the original idea of MEJA, and so far, MEJA has not lived up to its promise of providing accountability for PMSCs.

The other legal avenue that is now available is the application of the Uniform Code of Military Justice (UCMJ) to non-military civilians under contract in a war zone. In the fall of 2006, Senator Lindsay Graham of South Carolina inserted a small clause in the 2007 Defense Authorization Bill, changing the jurisdiction of military law for "civilians accompanying the Armed Forces in the field under court-martial jurisdiction during contingency operations as well as in times of declared war" (Singer 2007). Senator Graham noted that "right now, you have two different standards for people doing the same job. This will bring uniformity to the commander's ability to control the behavior of people representing our country" (Witte 2007). The small change in language – extending UCMJ not only during a declared war but during a "contingency operation" – has enormous and complicated implications and caught many in the field off-guard. Singer noted that "this law serves as notice that Congress has essentially woken up on this issue and is kicking into action. It is merely the first of many new attempts at adding law to what had been an unregulated marketplace" (Singer 2007). Would the civilians covered include non-US citizens? Would they include journalists or employees of other governmental agencies? How would the military work out the mechanisms of enforcement? And could PMSC contracts include a provision that would deny contractors the rights they might have once had under civilian law? Finally, would this change stand up in a Supreme Court that had repeatedly denied the applicability of UCMJ to anyone but a soldier? All these questions have yet to be answered fully, and as is typical with the law, there will need to be cases which make their way through the courts allowing for rulings that work out the details (Jackson 2007; Peters 2006; Sacilotto 2008).

The military, specifically the corps of military lawyers, or Judge Advocate Generals (JAGs), strongly disagreed with this approach. The most important

rebuttal to the idea of prosecuting contractors under military law was the idea that the UCMJ could be applied in a piecemeal, "cafeteria-style" fashion: that it could be used on and off, for specific periods of time or specific situations, and then discarded. The UCMJ was not a mere legal tool, used only when necessary. It was, in the eyes of the JAG corps, a foundation and framework of an entire legal personality, entered into by oath, and lived out on a daily basis for years on end. Despite attempts to regulate the conduct of contractors on the battlefield through numerous regulatory mechanisms, the clash of legal cultures continues to loom large.

As Table 4.1 summarizes, the UK, US, and South Africa have taken different attitudes toward regulating PMSCs and those who work for them. There are some explanatory variables that could account for the differences between these states, but these are only speculations. I have argued that South Africa has been the strongest proponent of abolition because of its experience with mercenarism in Africa, and that the UK's benign support or accommodation is due to its history with foreign military advisors with its former colonies. Their widely divergent roles in Iraq and Afghanistan also enable the different attitudes toward regulation.

Despite these various legal tools, however, the situation remains both legally and procedurally unclear. There has as yet been no creation, either in law or in practice, of the legal persona of the armed private security contractor. This is due to the unacknowledged problem of regulating irregulars in general, and the specific problems associated with combining the legal cultures of the military and contract law.

Regulating irregulars

Regulating PMSCs effectively will require a coherent body of law that is applied frequently enough to create a new legal character, and a new legal culture. Con-

Table 4.1　States with significant regulatory guidelines

State	South Africa	United Kingdom	United States
Attitude	Outlaw/abolish	Accommodate/ support	Encourage
Relevant legal mechanisms	Anti-Mercenary Bill 2006	Soft regulation, voluntary industry group	Soft regulation, MEJA, UCMJ
Historical antecedents	Apartheid State, African mercenarism	Former Colonial Empire	Strong business/ military link
Numbers of armed security contractors in Iraq	2,000–10,000	10,000	20,000

tractors will have to have a clear status on the battlefield, and there will have to be clear guidelines denoting jurisdictional zones and layers. Two large road-blocks are preventing progress on these fronts. The first is the legacy of irregular warfare itself: war that is purposely "out of bounds" or "off the books," covert, or deniable, with a weak infrastructure for oversight. In order to understand the role of irregular warfare, it is first necessary to understand the general picture of how law operates to regulate warfare at all.

War happens at the chaotic periphery of relatively ordered civil society, where all civil society norms are turned inside out. Clausewitz referred to this state as where fog and friction rule, where "all action takes place, so to speak, in a kind of twilight ..." (Clausewitz 1976: 140). He stressed that the chaos associated with war contained very few rules. In a famous statement at the very beginning of *On War*, he noted that acts of force contained "certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they scarcely weaken it" (Clausewitz 1976: 75).

But even as war and violence represent the very margins of civil law and order, society "uses" these marginal areas in order to promote and encourage a place for lawless behavior – in the same way that certain less-controlled nights of the week or festivals in the year or places exist in contrast to times of sober control, a necessary creation of sober society in order to allow for and encourage marginal behavior. Similarly, according to some theorists, warfare exists in order to counterbalance the forces and norms of civil society. The anthropologist Mary Douglas, whose theory on risk provided a backbone for the previous chapter, wrote of adolescent initiation rituals in which the strictures of adult behavior are first deliberately cast off and then reacquired. During these structured times of allowable lawlessness:

> The initiates have no place in society. Sometimes they actually go live far away outside it. [And when there is contact between them and the village] we find them behaving like dangerous criminal characters. They are licensed to waylay, steal, rape. This behavior is even enjoined upon them. *To behave anti-socially is the proper expression of their marginal condition.*
>
> (Douglas 1966: 120; my emphasis)

Soldiers of all types, especially those that have seen combat, have always inhabited this marginal position with regard to the society they have left and to which they will return. The "civilian–military divide" is the most recent expression of this age-old recognition that the world of the soldier is highly distinct from the world of the civilian. The contrast is usually depicted as one between the strict order and discipline of military life and the loose and free civilian world. But the strict order of a military way of life occurs in the midst of, and as a reaction to, the violence and chaos of war itself. The organizational order belies the chaos of the ultimate activity, and the marginality of those who are trained to kill. Similarly, the strict command and control emphasized in military law is distinct from the legal culture of the civilian world. All sorts of actions that would be unallowable

in a law-abiding society – killing and other destructive mayhem – are not only allowed, they are the point. Military theorist Ralph Peters continually reminds us that "a soldier's job is to kill the enemy. All else … is secondary" (Peters 2004). Even so, in the midst of the marginality of soldiers and the chaotic "fog" of wartime, there have always existed laws, rituals, and rules governing the behavior of these marginal figures (in the same way in which there are rules of the game in Las Vegas, or expected and ritualized kinds of conduct during initiation rites). The rules, customs, and laws of war have always provided a bit of civilization in the midst of chaos.

To the uninitiated, it often seems strange that law appears in the midst of war. Centuries of civilization have realized that war needs rules in order to be fought and survived. Even as war is transformed, the necessity of the rule of law remains: to add some order the battlefield; to enable the return to some sort of peace and stability; and to distinguish those who are honored and legitimate from those who are criminals or outlaws.

> Without law to define what is and is not permitted, there can be no war. Though written international law is comparatively recent, previous ages were no less dependent on the war convention for their ability to fight.… Before there was international law there were bilateral treaties between kings. These in turn were preceded by the law of nature, the code of chivalry, the *ius gentium*, Greek religion and custom, and earlier still, the customs and usage of tribal societies.
>
> (van Creveld 1991: 93)

In the late-modern era in which we find ourselves, the internationally codified laws of war have achieved what I would term "canonical" status. They are treated as almost sacred repositories of what is right and just in warfare. In recent testimony before the Senate Armed Services Committee, military JAGs noted that the "Geneva Conventions and the Uniform Code of Military Justice which honors them, represent 'the gold standard' of the law of war" (Zernike 2006).

The best statement of the sentiment and scope of IHL is found in the preamble to the Hague Convention of 1899, in what is now known as the Marten's Clause:

> Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.

This clause was inserted in order to deal with an argument that had broken out during the Hague Convention about how to classify civilians who took up arms against an occupying force. Were these resisters lawful combatants, or were they

criminals? Larger states with larger militaries had argued that they should be treated as criminals, and executed, while smaller states – for the obvious reason that they were more subject to occupation, and had fewer regular military to defend them – argued that they should become lawful combatants (Ticehurst 1997). International lawyers still argue about the interpretation of this clause: is it a narrow statement about the continuing use of customary international law – that uncodified but recognized body of principles that guide the behaviors of states and armies? Or is it a wide sweeping statement about the principles of international law that govern conduct on the battlefield, regardless of incomplete codification?

International humanitarian law now includes the 1987 UN Convention Against Torture, an extreme human rights abuse of an individual, and the 1951 Convention on the Prevention and Punishment of the Crime of Genocide, a "crime against humanity" that occurs against a group. Both of these can occur outside armed combat, but most often occur as part of warfare. Both of these conventions contain a remarkable clause that proclaims universal applicability, and universal jurisdiction, regardless of time, place, or national sovereignty. Under IHL, everyone on the planet is a person first, with the equal right to be protected from gross bodily harm, and any nation can bring any other person to justice for abuses. One of the most famous examples of human rights law is found in Article III of all four Geneva Conventions (it is now known simply as Common Article III). It states the minimum requirements of any treatment of any human being found in any form of armed combat. Below I have italicized the most important elements:

> In the case of *armed conflict not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

> 1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, *detention*, or any other cause, *shall in all cases be treated humanely*, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.
>
>   To this end *the following acts are and shall remain prohibited at any time and in any place whatsoever* with respect to the above-mentioned persons:
>
>   (a) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture*; (b) taking of hostages; (c) *outrages upon personal dignity, in particular humiliating and degrading treatment*; (d) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted*

> *court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
>
> 2. The wounded and sick shall be collected and cared for…. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

What international humanitarian law tries to do is to make sure that no one in any sort of violent situation is left out, or completely marginalized. It offers, in often idealistic terms, a kind of universal aegis of protection. It is based in what political theorists like Thomas Hobbes would call a fundamental idea reached by reason – a natural law – that the individual retains a right over their own body that is never given up: even those who consent to be members of a group that may lawfully decide to execute them, says Hobbes, do not consent "not to struggle" and resist, on their way to be executed (Hobbes 1985: 199). The natural right to be sovereign over one's own body is never relinquished. IHL is highly idealistic: based in natural principles that are supposed to represent universal sentiments, but lacking strong enforcement mechanisms. Plenty of abuse slips through the cracks, not in application (which is universal), but in the efforts or will to prosecute.

In the year 2000, the International Committee for the Red Cross (ICRC), initiator of the Geneva Conventions and the body tasked with upholding IHL, initiated a study called "People on War." They surveyed dozens and dozens of countries, from Afghanistan to France to Colombia, and from peasants to academics to former mujahidin and paramilitary members. The results were astounding: almost as many Afghans knew the basic principles of the Geneva Conventions as did the French. Regardless of background and experience, the basic principles were known: prisoners should not be tortured or killed; the sign for surrender should be honored, women and children should be protected, hospital workers and journalists should not be targeted. The reach of International Humanitarian Law was wider than anyone had imagined, and there was remarkably little disagreement. This result was contrary to so many academics who had criticized human rights laws as being evidence of Western hegemonic thinking. Widespread knowledge, or acceptance, does not equal widespread practice: excuses and justifications abound for those individuals or groups who ignore or thwart the principles of humanity in wartime. The point here is merely that these IHL principles and ideals provide a background for judgments of action on the ground. There may be no effective way to prosecute wrong-doers, and the official status or jurisdiction of participants in a conflict may be contested, but it is safe to say that judgments are still being made about what is and is not appropriate in combat. The laws of armed combat (LOAC) can be seen as one step below the aegis of the broader IHL. Under this array of laws, the battlefield is divided up into those with combatant rights and responsibilities, and those with non-combatant protections and immunities.

Despite the widespread and canonical nature of these laws, it is often unacknowledged that, despite their long history, the laws and customs of war have

ridden along two simultaneous tracks. Regular war, with regular forces that are regulated by established rules; irregular warfare, with less-disciplined forces, follow a looser code of conduct. There are those laws and rules which govern the conduct of those at the center of power, and those hazy guidelines and improvised rules which operate at the outer boundaries of an empire, or out in the frontier, or out of the public eye. In each of these physical (or imaginary) locations, there have always been forces that have been perceived as both legitimate and illegitimate. And for each of these types of forces, different rules and customs have developed that guide behavior, reward restraint or a lack of restraint, and punish those who stray from expected behavior.

These rules and customs recognize that, although war itself has always existed at the margins of civilization, in the midst of warfare there have often been varied levels of barbarism. In contrast to the ideals of international humanitarian law, with universal minimum human rights and a universal application and jurisdiction, there are spaces wherein, either through explicit dehumanization or through distance from command and control, the tactics employed have been outside the laws of war. And frequently, this line has been crossed when combatants recruited different types of forces or trained fighters differently in ways which increased the level of irregular violence. A few examples demonstrate this trend of the two-track system of center and periphery.

The widespread use of mercenaries toward the end of the Athenian Empire, and especially at the margins, resulted in a loosening of the customs of war protecting civilians and limiting the times of fighting (Ober 1985: 37–50, cited in Howard *et al.* 1994: 23). The armies of the Roman Empire used a different type of force, with different methods, at the periphery of the Empire. The slow-moving legionary forces used at first auxiliary troops, and then ethnic numerii bands, to fight the smaller-scaled guerrilla-style uprisings on the frontiers (Luttwak 1976: 41–42, 122, 171; Campbell 1994: 33). The Muslim border warriors during the Ottoman era, or *ghazi*, were the least-disciplined warriors, sent out to the frontier (*ghaza*) lands of the empire to put down rebelling tribes. They tended to be the most brutal, and their methods, far from the center of power, reflected this. The British Army employed certain tactics with the dehumanized Irish which they did not use elsewhere, until they exported them to the similarly marginal native North Americans (Howard *et al.* 1994: 56). In the North American Revolutionary War, different tactics were used when fighting indigenous peoples, the French, and the British, and though General Washington attempted as much as possible to discipline and restrain troops fighting at the center of the war, those who fought on the peripheral boundaries of the colonies used very little restraint whatsoever (Howard *et al.* 1994: 81; Hoffman and Albert 1984: 119ff.). The French *paras* in Algeria explicitly noted that they would step out of accepted norms and mores in order to fight the anti-colonial forces in Algeria. And in the war on terror, Bush Administration officials have noted that fighting terrorists will be done "outside the confines" of the laws of war. Certain spaces, like Guantanamo Bay, and certain classes of enemy, as well as certain actors like the CIA, have been explicitly located outside the norms of warfare (Danner

2004; see especially p. 196, from the report by the Pentagon Working Group on Detainee Interrogations).

Table 4.2 tries to capture the relationships between these regular and irregular modes of war-making, the various bodies of laws that govern them, and their distance from the geographic and political center.

In the upper-left box (1), combatants are the legitimate regular national armed forces. Generally (and ideally) speaking, their soldiers are under strict command and control, and the laws that govern them are clear. This does not mean that such regular armed forces are all law-abiding, but they have a clear status, and the jurisdiction of the law is clear, as are the legal procedures available. Military law (in the US this is the Uniform Code of Military Justice, or UCMJ) and Law of Armed Combat, in this case the Geneva Conventions, clearly apply. There are strict divisions between combatants and non-combatants, troops are disciplined, and practices are relatively transparent. This is legitimate warfare as is practiced by the center.

To the right-of-center, box number (2) represents more peripheral forces – irregulars – who are nevertheless recognized as legal belligerents. Guerilla combatants fighting in civil wars that abide by the rules of war are now customarily recognized under the 1977 Additional Protocols to the Geneva Conventions. Those protocols were put into place after the formally *intra*state conflicts in Algeria, French Indochina, and later Vietnam, and the wars of national liberation against colonial forces in the mid-twentieth century. They provide international legal legitimacy to those guerilla forces that abide by four conditions: belligerents must wear some sort of uniform or insignia identifying themselves as combatants; they must carry their weapons openly; they must be under some kind of formal command and control; and they must abide by the rules of war – that is, they must discriminate between combatants and non-combatants, provide POWs with rights, and so on. These irregular forces and insurgencies, again, do not often rise to meet the challenge of abiding by the requirements of the Additional Protocols; nevertheless, this body of law offers a chance to be

Table 4.2 Central and peripheral legal regimes

	Center	Periphery
Legitimate (clear legal rules)	(1) Combatants: Regular armies Laws: Geneva Conventions, military law (UCMJ)	(2) Combatant: Guerrillas Laws: Additional protocols
Illegitimate (less clear legal rules)	(3) Combatants: CIA, Special Operations Forces, proxy forces Laws: Multiple domestic regulations, some UCMJ, little IHL	(4) Combatant: PMSC members, terrorists Laws: Multiple rubrics of law

recognized as legitimate combatants despite their irregular status. The Additional Protocols were not immediately recognized as fully legitimate (and the United States has never formally signed the Second); however, they have now come to achieve customary legitimacy. They are recognized as establishing a baseline in customary international law for how guerrilla and irregular forces should be recognized and governed (Schmitt 2009; Moir 2002). In other words, they legitimize peripheral forces and bring them under the canopy of the law of armed combat.

Regular armed forces controlled from the "center" must share the battlefield with intelligence operators and "special" forces. In box (3) are those forces which, although formally authorized by the powers at the "center," operate in some sense in an illegitimate manner. Their missions are often secret or "black," and oversight, or command and control (both civilian and military), may be compromised or less transparent. These forces may link up with foreign militaries or use other locations or other identities in order to carry out their tasks, and they may deliberately operate outside the rule of law. Covert operations once included assassination attempts, coups d'état, and other "dirty wars" that were formally deniable and questionably legal, but they nevertheless originated from the center of power, so to speak. In this box I am trying to capture those regular forces that operate with calculated irregularity or illegitimacy, and whose rules of engagement are looser or less visible and transparent. The profile of these operators is very important for the study of PMSCs, since many firms recruit from those with Special Operations background. In addition, it is estimated that a significant amount of PMSC business – some analysts pin the number at 30 percent – is contracted with "other governmental agencies" like the CIA. The 60 contractors hired by the CIA in November 2001 to recruit, train, and work with Afghan proxies in the effort to hunt down Osama bin Laden, or the Blackwater contractors hired to provide security in Kabul early on, were all officially off the books (Scahill 2007; Lumpkin 2003). Although the actions of these covert actors originate at the center of the state, the rules that apply are a mix of a number of international and domestic legal processes that provide hazy oversight (Oseth 1985; Reisman and Baker 1992; Johnson 2005). And, as even Michael Walzer confesses: "I don't know what moral rules apply to it" (Walzer 2004: 13).

Finally, in the far-corner box (4) are combatants who are peripheral and illegitimate at the same time. Here I have placed the two groups whose legal status remains hazy: trans-national terrorists and members of PMSCs. Terrorists, like mercenaries, are unquestionably outlawed in the LOAC. Their deliberate attacks on civilians, no matter their political aim, deny them any ability to be recognized as any form of lawful or legitimate combatant. The only rights they retain are human rights, those rights guaranteed to all in Common Article III of the Geneva Conventions. In this sense, the law is clear: they are criminals who retain only basic human rights when detained. But the spectacular attacks of 9/11 and the Bush Administration's decision to call into question the applicability of the Geneva Conventions has placed al-Qaeda terrorists into

a much hazier legal category, one not unlike that of private contractors. As different as they are, they remain peripheral and illegitimate actors at the center of new wars.

Lawlessness at the periphery

Out at the social, military, and cultural periphery – on the frontier of the state, so to speak – what social forces work to govern behavior? Research on transnational criminal networks, including various mafias, and on "alternative modes of governance" that arise in failed states provides some answers.

It is no surprise that for many people the first example that comes to mind when the topic of PMSCs is raised is the private security provided by warlords, gangs, and mafia-like organizations. The analogy rests on the fact that – to take the case of the mafia – contracts are guaranteed and security provided by private means, for the right price. At the most basic level, social and economic life requires some mechanism of contract enforcement. In the absence of some kind of formal, and functional, state-based mechanism for enforcing contracts, communities can attempt to self-regulate or self-govern. Here community members and social networks provide the information needed to vet the contracting parties, and they can often threaten some kind of ostracism as punishment for non-performance. This informal contract enforcement occurs all the time at all levels of society, in a society well versed in the rule of law, as social networks and gossip work alongside formal vetting procedures, often trumping them in importance. When the contracting industry says that it can regulate itself by only hiring "mates of mates of mates," they are referring to this social-networking mode of self-governance, and its tools of social ostracism. In societies without recourse to formal law, this level of contract or promise enforcement is paramount. Economist Avinash Dixit has studied the forms of social control that arise in the absence of formal legal systems. He asks:

> What if self-governance is infeasible, either because the community is too large or the information network and the system of social norms and sanctions too weak, and formal state law is unavailable, either because the state is too weak or lacks resources, or because it regards the activities in question as themselves illegal?
>
> (Dixit 2004: 97)

In these cases, he notes, some kind of private security force is usually engaged to provide information and to deter shirking, and to allow some regularity in basic economic transactions. Private judges and private intermediaries have often served trading associations and individuals researching and enforcing a deal. Dixit cites the medieval example of "the law merchant" and the quintessential example of a mafia boss. Gambetta's analysis of the Sicilian Mafia stresses the private provision of protection and contract enforcement as its main economic

niche (Gambetta 1993: 91). Even though a member of the mafia engages in criminal activity, he is not a mere criminal: "what does make him a mafioso is the fact that he is capable of protecting himself as well as others against cheats and competitors" (Gambetta 1993: 19). As entrepreneurs of private protection, there is always the suspicion that while mafias may work to create a market for their product, they may threaten the people and property that they are paid to protect (Dixit 2004: 100). It is often suspected that PMSCs do the same: they create instability in order to be hired to provide order.

In the complicated mix of personalities and ranks that are found within a war zone, what often emerges are what I call "ad-hoc" chains of command. Here the example of Abu Ghraib is illustrative. The Taguba report describes US civilian contract employees, local Iraqi subcontractors, and "third-country nationals" wandering around detention facilities, unsupervised, and with no clear identifying insignia (Taguba, in Danner 2004: 302). He summarizes the problem of their usage as follows:

> As a consequence of the shortage of interrogators and interpreters, contractors were used to augment the workforce. Contractors were a particular problem at Abu Ghraib. The Army Inspector General found that 35 percent of the contractors employed did not receive formal training in military interrogation techniques, policy, or doctrine. The Naval Inspector General, however, found some of the older contractors had backgrounds as former military interrogators and were generally considered more effective than some of the junior enlisted military personnel. Oversight of contractor personnel and activities was not sufficient to ensure intelligence operations fell within the law and the authorized chain of command.
>
> (Taguba, in Danner 2004: 367)

Two specific employees of the PMSC CACI – Steven Stephanowicz and John Israel – are named as having participated in or witnessed grave abuses. Again, the problem seems to have been a mixture of personalities, institutional cultures, and a general sense that the rules were non-existent or laxly enforced. The presence of contractors with unclear relationships with the regular forces, non-existent rules of engagement or disciplinary structures, and a culture of mutual admiration and competition, created an "ad-hoc" chain of command.

The clash of legal cultures

Private military contractors find themselves inhabiting a legal realm that is influenced by three separate bodies of law: international humanitarian law, national military law and contract law. The contrasting goals and assumptions of each, illustrated below, add to the confusion surrounding their purpose, and modes of restraint. In this section I begin by contrasting the three forms of law, including their different origins, before returning to the modes by which these three forms of law are attempting to restrict and guide the actions of contractors.

International humanitarian law and human rights law

Human rights law has as its main objective the protection of those without power through the granting of universally recognized rights. Most often, these are rights that protect individuals from abuse: from torture and mistreatment, from extrajudicial trials, from wrongful imprisonment or enslavement. Human rights, including those rights declared after World War II in the United Nations Declaration of Universal Human Rights, recognize the fundamental equality of persons, regardless of state of origin, or political boundaries. Although only formally declared in the last century, the ideas embedded in human rights laws are enshrined in the Anglo-American legal tradition: the *habeas corpus* doctrine protecting persons from wrongful imprisonment; the sanctions forbidding cruel and unusual punishment, and the all-important "due process" clauses, which guarantee individuals a certain equal representation before the law. Furthermore, the background ideas are implicit in ideas of natural law and a sense of universal humanity. Human rights law operates from the bottom-up, so to speak. It is not granted from above, but asserted or demanded from below, by those who are almost always at the receiving end of power. Its subjects are persons, or peoples, plain and simple. The language of human rights law is absolutist: certain outcomes are never tolerated, without exception. And if they are abused, as Michael Walzer repeatedly points out, they are "overridden," not denied: human rights can never be denied, they can only be trampled upon, and then, most crucially, some act of restoration or retribution must occur. The aim, in contrast to much of other law, is to recognize and safeguard the dignity and autonomy of the (often powerless) individual, in the face of changing social and political landscapes of power (Walzer 2000: 255).

Currently there is significant debate about who deserves the protections of these human rights laws, and which international or national body can represent or speak for those whose rights are in question. Are these protections granted only to citizens of states, state-actors, or types of combatants, or do they extend to any person, regardless of the crime, and regardless of state of origin? This debate goes to the heart of the human rights law quandary: are human rights granted to members of states, or are they truly *human* rights, with universal jurisdiction and universal remedy? If these rights – of protection from violence, or of rights to a fair trial – are granted only by and through membership in a state, then those with tangential relationships to states, whose status is in question – terrorists, refugees and "displaced persons," mercenaries – have questionable rights and questionable remedies. Despite the arguments of the Bush Administration about the relative standing of enemy combatants, most human rights scholars, and most legal experts world-wide, assert the universal aspect of certain rights. Common Article III of the Geneva Conventions lays out the basic human rights in conflict.

PMSCs note that they will "abide by the Geneva Conventions."[10] This admission in itself is strange, since private firms, unlike states, are neither party to the conventions nor covered by them. According to a strict definition of international law, contractors, even armed contractors, are civilians. This means that, while

they have obligations to treat civilians well, they have no combatant rights if captured. As civilians, security contractors have no real standing under these conventions and rules. In other words, there is no real incentive for them to abide by the conventions, since they are neither parties (states) nor subjects (combatants). What then do they mean by these vague references?

The rights-based international humanitarian laws are those which legal theorists might say, echoing Montesquieu, possess a "spirit." They are examples of, in Sandra Day O'Connor's words, "the majesty of the law."[11] These laws, which would include our own Bill of Rights, refer to such grand and universal ideas as "humanity." Gradually, their spirit has infused the laws of war, contributing to that strange language of humanity within warfare (Meron 2000). Against a backdrop of the growing inhumanity of most conflicts around the world, the Western way of war has become both legally and morally conscious of the humanitarian cruelty-free ideals of its citizens.

> We [in the West] no longer fight for History, or a class, or race. We fight for others, or ourselves. We fight against inhumanity. And that is difficult, of course, because war requires that we act cruelly toward others, that we inflict pain on other people. We can only do so if we are self-consistent – if we fight for humanity; if we fight humanitarian wars.
>
> (Coker 2001: 133)

The West's increasingly strong perception of itself as fighting only humanitarian wars, in as humane a way as possible, infused with the spirit of canonical humanitarian laws, contrasts with the reality of a military that is increasingly contracting out services of all types and overseeing the contracts that guide this outsourcing with "contract officers," not military commanders.

Military law and the "pocket republic"

Military law, the domestic legal descendent of the historical rules of war that have existed in various forms for centuries, has two separate objectives. Simply speaking, the first and most important is to maintain the legitimacy and integrity of the institution of the military itself. The military is an organization formally under civilian control, but which creates its own separate way of life – including its own embedded legal order – precisely because of the nature of its tasks, which requires the sanctioning of actions that would, in civilian life, be classified as crimes. The purpose of military law is to restrain those who have tremendous force at their disposal: in opposition to human rights law, its underlying goal is the restraint of the powerful. In the United State, the UCMJ applies to soldiers, members of a particular class of citizens, but it is the responsibility of officers and commanders to put it into practice. The UCMJ is a hierarchical – top-down – form of law: marked by strict interpretations of duty and obligation, and a chain of command that authorizes or excuses. The narrowed rules of defense and procedure, and the special use of an almost stand-alone judicial and police

structure, demonstrate not only the "pocket republic" nature of military law, but its own special organizational ethos. In contrast to human rights law, wherein the overall aim is freedom, the goal of military law is control (and for good reason too).

Contract law: public, private, and social

The final mode of law that I am briefly characterizing is civil law, and especially the subset of civil law that governs contracts and their regulation and oversight. Contract law, broadly speaking, enables relations between two legal equals, the parties to a contract. It specifies the terms of an agreement, the requirements that must be filled in order to honor this agreement, and grounds for the termination of the agreement. Contract law is the foundation for all business arrangements between two private entities or individuals. It is embedded in the background assumptions of legal and bureaucratic authority, which as Max Weber famously remarked, grants authority to impersonal rules, above all. In the world of contract law, what is being protected above all is the right to contract itself, rather than any special circumstance of this or that contract. Contract law is really a way to enable continued relationships between nominal equals. Most often, the subject of contracts is property, or money, or the complex arrangements of who will give what to whom and when, and what sanctions will be applied if it does not happen. Contract law is designed to formalize business relationships, to secure conditions for the release of a relationship if promises are not kept, and to create certainties within the market. The growth of contract law is responsible for, among other things, our understanding of democracy, the advent of capitalism, and the rise of social trust (Gordley 1991).

Contract law seems far removed from that of basic human rights law or military law, both of which take place against a threat of violence. And yet it is the legal language that governs both the contracting process and all of its oversight mechanisms. For instance, whether a private military firm is hired by a corporation or a governmental entity, the relationship is hammered out in a specific contract. The oversight mechanisms brought into play are part of the contract, part of the "transaction costs" associated with the arrangements. The contracting officers who monitor and evaluate government contracts focus on whether the delivery of services specified in the contract is occurring according to an agreed-upon timetable. Contract law, or in this case the version of contract law found within the government procurement process, governs this oversight.

While in some fundamental and abstract sense PMSCs might embrace the spirit of international humanitarian law – they may "abide by human rights norms" – in practice they are under the immediate application of public and private contract law.

In simple terms, contracts of all types mark the shift from traditional hierarchical ordered arrangements of "command and control" to more modern egalitarian partnerships between distinct individuals and entities. The contract must then be regulated, by law, rules, and oversight procedures.

One way of understanding contracts is to see them squarely within a continuum of organizational relationships, somewhere between a hypothetically pure market mechanism and an equally hypothetically pure hierarchical organization. Contracts are ways of ensuring some degree of control and predictability between entities that are often antagonistic, or competitive.[12] Well-written contracts try to minimize the natural uncertainty of this relationship: how else does the principal make sure that the "agent" keeps the promises made? Organizational and economic theory has much to say about the so-called transaction costs of this arrangement: chief among them being the lack of real knowledge about the agent's aims. The risk of non-compliance, or of misuse of the power conveyed by the contract, is an ever-present one, and the nuances of contract theory are an attempt to minimize it.

Laura Dickinson has argued that contract law can be one of the most effective legal tools to regulate PMSCs. Contracts could be made to include mechanisms to require "public law values": they could mandate specific training in human rights law, or use of force rules. They could include clauses that would require monitoring and certification by independent NGOs, or military lawyers (Dickinson 2006a, b). This would require a shift in organizational culture to protect these new public values, but those values could be reflected in oaths required by contract. With better written contracts, the only impediment would be the will to enforce them. This might require investigatory organizations that could act quickly, and judges willing to make criminal acts a form of breach of contract, and hold companies accountable.

Here is where the interesting quandary appears. According to recent research, even though contracts are made within an almost hyper-legal setting, legal remedies are rarely used; instead, the relationship is merely broken off. The market takes care of faulty contracts by punishing those who consistently fall short of expectations.

> On the one hand, most political, economic, and social theory suggests that in the market economy the law of contract comprises a fundamental mechanism of social order. Lawyers … in their emphasis on the fundamental of the law of contract within the legal system, hold that this legal regulation provides the crucial cement in sustaining the social system. *On the other hand, evidence from empirical studies of contractual behavior indicates the marginal and sometimes socially disintegrative effects of the law of contract.* Consumers who purchase defective products almost never vindicate their legal rights in the courts.
>
> (Collins 1999; see also Collins in Parker *et al.* 2004)

Applying the legal regime of contract law to constrain the behavior of private military companies, we are struck by two facts. First, the actual regulations that apply to military contractors and firms are diffuse, and confusing. They do not contribute to the creation of a comprehensible legal identity for any of the actors.

These three strains of legal reasoning, or legal realities, are of course arranged in a hierarchy themselves, ideally speaking. Basic human rights law, regardless of circumstance or nationality, is the broadest. It aims at universal coverage. Within that, the international law of armed combat, for instance the Geneva Conventions, specifies the laws of war across specific militaries. Within that, national military law looks to both national (in the US this would be Constitutional Law) law and the rules of war outlined in international law. And contract law, as a branch of civil national law, rests upon some of the rights – like the right to property – found in the Constitution as well.

Hypothetically, it should be possible to create a workable legal remedy to honor all of these commitments. In fact, however, the specific circumstances of the armed private military or security contractor, working in a war zone abroad, renders any such neat remedy impossible. The reason for this relates to the three primary questions asked above: the question of status, and what I would term the "time/space" problem – the question of jurisdiction (what space is this?) and the question of what kind of "time" it is – wartime or peacetime? Legal answers to these questions do not admit of hybrid or quasi-entities. In the language of the ICRC, in a war zone you are either a combatant or a non-combatant. It is either a time of war or a time of peace, and those who bear arms do so either lawfully or unlawfully, under the rules of war or not at all. Contract law cannot cover the lawful use of force by a private employee in an international zone. Unlike domestic private security providers, who act within strict confines of a domestic policing order, and can only very rarely bear arms, private military contractors serving in Iraq or Afghanistan currently have no such overarching legal order, except the contract. This relationship to the legal structure is what makes them akin to the privateers and mercenaries of old, rather than their specific actions, motivations, or profiles on the ground. And it is the inability of the primary contracting entities – national governments – to find any workable legal status under which contractors can operate that makes it seem as if these seemingly lawless mercenary-like forces are intended to be that way.

What is at issue here, more than anything, is the way in which law comes to represent the evolving reality on the ground, and creates certain recognizable and workable legal personalities within a legal framework that makes sense. The varying commitments and worldview of IHL, military law and contract law are mutually exclusive: the process of combining them into a workable legal language can only work by leaving out significant aspects of the work of PMSCs. So far the legal remedies offered within South Africa, the UK and the US all take different paths toward creating this legal persona, emphasizing or de-emphasizing aspects of the job. South Africa, as indicated in the above summary, has stressed the fact that private security workers are private citizens working in war zones for private companies: they are more akin to mercenaries, and so illegal. The United Kingdom has seen private military contractors as a brand of "seconded" military officers, using military skills in a capacity that is strongly tied to (and does not preempt) their career within the UK military. UK contractors are akin to those officers who work for other international organizations: the

Table 4.3 Legal cultures

Legal type	Human rights law	Military law	Civil/contract law
Purpose	Protects powerless	Restrains powerful	Enables relations
Responsible party	States (individuals)	Commanders	Firms/individuals
Found in	Criminal law; IHL	Unified code of military justice, constitutional law	Corporate law, including contract law
Background theories	Natural law/universalism	Traditional, hierarchical authority	Legal/bureaucratic
Relations between people	Bottom-up	Top-down	Side-to-side, mediated
Subjects of the law	Persons	Soldiers	Property, civil relations
Limits of the law	Absolutist, certain outcomes never tolerated or excused	Obligations narrowly defined, can be "breakdown in chain of command"	Escape clauses, exceptions, loopholes, mutually agreed upon exit modes
Responsibilities of the law	Absolutist, universal	Organizational, chain of command	Narrow, defined, limited or waived or insulated liability, nothing assumed
Law used to avoid	Extra-legal violence and coercion	Violence	Harm/tort
Overall aim or end of the law	Freedom	Control/obedience	Principal/agent relations

OSCE, NATO, the UN, or an NGO. But in the US, where the business model predominates, the private military and security contractor becomes a type of international business employee, and this, so far, is insufficient.

In sum, these strains of legal thought – with their different origins, purposes, and oversight mechanisms – create different legal persons and cultures. Private military contractors are private employees in need of regulation, not soldiers fulfilling a public service. The peripheral forces, like PMSCs or enemy combatants, end up being governed by a confusing matrix of incomplete regulations.

Conclusion

Existing regulations and legal mechanisms fail to effectively govern the behavior of contractors on the ground because they do not clarify who contractors are, and what legal world they inhabit. As legal scholars remind us, law works to

make the world comprehensible and intelligible, enabling judgments that assess responsibility and blame, and enact remedies to restore a sense of justice and order. In so doing, legal doctrines help policy-makers know what rational limitations can be put upon people, and what kinds of obligations they must answer. Without a rational understanding of what a crime is, or what a specific "harm" is, or who will stand in judgment on any of these counts, there will always be the perception that these actors were made to stand in the midst of legal lacunae.

The effort to create a coherent legal world for contractors has so far failed precisely because of their peripheral and protean nature. Contractors are still ambiguous combatant/non-combatant operators on the ground. They are strange types of outsourced government contractors, very different from contracted aid workers or translators. They are in the midst of an overseas war zone, as opposed to a mall, or a gated community. And they are former military, operating alongside the military, and yet do not fall under specific military command and control. For this reason, PMSCs are legally unrecognizable, and any attempt to maneuver them into one or other of the worlds they straddle does not do justice to their multiple identities.

The world of risk assessment, calculation, and management analyzed in Chapter 3 is a world that emphasizes uncertainty and contingency on the one hand, and the possibility of rationally reducing this uncertainty, and thus enabling action, on the other. The combination of bravado and anxiety associated with the world of risk calculation is often compared to a high-stakes game. But the uncertainty of political action requires the creation of arenas of justice and predictability: promises, contracts, and calculated judgments that provide anchors of relative certainty for our policies and our cognitive understanding. The processes of risk assessment and cost–benefit analysis are part of this scaffolding of clarity and certainty.

The legal realm can also be seen as a way of simplifying categories and definitions in order to make the world more predictable and stable, making human communities, and justice possible. The trains of logic that first divide and subdivide actors and actions, define terms, and then apply tests and queries to aid judgment, all work to simplify the cognitive complexity of everyday reality and enable judgment. Law's categories make governance and oversight possible by telling us what we are seeing. To borrow from Nietzsche, the world of law creates those "spider's webs" of concepts which bend and sway in the wind but still remain strong, and provide a world we can collectively inhabit, or, in which we can trap wrongdoers (Nietzsche 1972: 85). But the rule of law is more than just a way of creating certainty out of uncertainty. As we speak of rules and regulations, two central aspects of law often go unheeded: the need for some sense of justice, and the need for a true publicity, a sense that the laws are democratically created and maintained by a recognized public.

5 Frontier ethics with a cosmopolitan goal

> If the God of Battles presides over the tribunal of history, it is probably "virtue" in the Machiavellian sense that he judges, not morality in the Platonic, Christian, or Kantian sense.
>
> (Raymond Aron, *On War*)

Ethical private security?

In the winter of 2008, a discussion sprang up on the main PMSC list-serve, moderated by International Peace Operations Association president, Doug Brooks. The debate was in response to a comment made by Mr. Brooks at a conference in Princeton, where he argued that PMSCs were "ethical" actors in wartime. In response, one member asked Mr. Brooks to give some concrete examples of ethical actions. Soon the conversation degenerated, as it often does on such list-serves: plenty of members had seen evidence of crimes and misdemeanors committed by various members of PMSCs. Others noted that the military was just as bad, if not worse. Was this really even the right question to ask, whether or not a firm was ethical? And how would you even begin to answer this question? What would the right rules be for judgment? Plenty of answers were provided. Some said that ethical companies treat their employees and clients well. Others that they deliver what they promise, and fulfill their contracts. One member quoted the entire code of conduct his company had asked him to sign. It included clauses asking that those who work for them should not behave in ways that would degrade their profession, and that they should not undertake undue risks, and should not divulge the details of their clients' work (see Appendix B). In the end, the ethics discussion was "punted off-list," but not before Robert Young Pelton, author of *Licensed to Kill*, could quip: "We could always outsource our ethics …" (Pelton 2008).

In this chapter I address the ethical questions that arise when analysts try to judge the use of PMSCs. There are many layers to the moral and ethical judgments surrounding PMSCs. We might criticize the contractor himself (how he fulfills his duties), or the PMSC itself (how it treats its employees, whether it abides by industry standards). We might criticize the government or the corporation who subcontracts for security. It may be that PMSCs are the least bad

option in a world of tough necessities, or it may also be that they are a demonstrable force for good wherever they appear. As with the other issues surrounding PMSCs, these criticisms and justifications are occurring in the midst of wider debates about the ethical use of military power in general: should soldiers be trained on a policing model? Or should they be more intimidating and more ruthless? Finally, there is the moral judgment of the society that allows proxy forces to act in its name. In fact, PMSCs crystallize some of these current debates.

This chapter begins by characterizing the criticisms of the general use of a PMSC. I use the metaphor of hands: PMSCs are most often portrayed as evidence of "dirty hands," or as victims of a confused policy involving "too many hands," or else they are criticized as being the perfect example of "the right hand not knowing what the left hand is doing," of being evidence of a willful ignorance about the repercussions of policy choices. PMSCs fit all of these descriptions well.

In the next section, I employ a heuristic model provided by political scientist Ken Jowitt to contrast the different ethical mentalities of organizations in zones that are peripheral to law and order. Jowitt classifies organizational cultures as either those marked by a "frontier" mentality, or by "barricaded" defensive organizations, or as confident organizations comfortable with crossable "boundaries" (Jowitt, Ken). In a "frontier" zone, on the periphery of law and order, behavior is allowable (and judged necessary) that would not be allowed at the center, in a world marked by "borders." Jowitt's language is highly visual and often quirky, but his stark characterizations have tremendous theoretical power. His typology is used to characterize three versions of ethical attitudes toward security. Seeing the differences between these various attitudes makes it possible to see where the ethical dissonance occurs; that is, where parties unnecessarily talk past each other about ethics, or worse, use one discourse to hide the reality on the ground.

The ethics of PMSCs are also formed by the ethics of private security guards in general. Here I employ research done on privatized policing by Clifford Shearing and others. In a recent study done for the Department of Justice, Shearing and Bayley contrasted the "mentality" of a private security force with that of a public police force (Shearing and Bayley 2001). In this case, Shearing's research demonstrates that public and private forces have different ideas of what constitutes security – and, by extension, justice. It is necessary to understand these different mentalities before any workable normative judgments can be made about PMSCs; and especially before any workable legal or regulatory policies can be put in place.

Finally, I argue that the use of PMSCs is another form of virtual warfare. Similar to the way in which risk-transfer warfare works to hide the costs of war from those who can authorize it, virtual warfare works to distance citizens from those who act in their name.

For now, the debate about how PMSCs can be ethical actors on the ground is suffering from the same clash of norms that is occurring in the legal realm. This chapter tries to sort out that confusion, and suggest a way toward a more realistic

picture. Can they be ethically problematic and still be useful? Can they be moral actors for hire?

No matter how effective they may be in current conditions, or how benignly they may present themselves, PMSCs continue to be considered ethically shaky and morally hazardous: almost every treatment of them in the last ten years begins by pointing this out. Singer says that they "rest on a confused and precarious moral position" (2003: 216). Avant ultimately argues that increased privatization undermines democratic control over the use of force abroad (Avant and Seligman 2008). Even journalist Robert Young Pelton, who admits that he has "spent much of my adult life following the activities of mercenaries and soldier-for-hire," begins his exposé of the industry by noting that the only "moral leash that operates on these people is how they view themselves, not how the world views them" (Pelton 2006: 6).

Despite these criticisms, one PMSC did try to market itself as the "ethical security company." In 2001, Blue Sky Group International Security Company Ltd was founded in rural Salisbury, in the UK, near the headquarters for the British military. Its founding members were retired UK military officers who had years of experience with NATO and British forces, as well as ex-colonial experience in Nepal.[1] The company aimed to provide "ethical security" in a market filled with what they saw as overly aggressive and slipshod companies. Its teams of security officers and trainers were filled with younger ex-military men who had worked for humanitarian agencies in Indonesia, or the UN in Afghanistan. Blue Sky had contracts training security guards in Kuwait, and helping NGO or media workers to learn how to deal with security threats. But the company declined contracts in Iraq, claiming that the environment was much too insecure and violent for the unarmed and "ethical" security they wanted to provide. Blue Sky hoped eventually to be hired by the UN, doing post-conflict reconstruction and demobilization work. A year after I interviewed them, Blue Sky had downsized to a "shadow of its former self," and most of its professional staff had been laid off or had left to work as independent contractors for other security consultancies.[2]

To Blue Sky, ethical security meant using "brains not brawn," and being "transparent and accountable." And it meant committing to these ideals at the expense of profitable operations or commitments that might have required compromise. The language its principals used reflected a cosmopolitan ethic of humanitarianism (for profit), and in discussions they described their operations in contrast to a corrupt (or at least lax) array of other firms. When they ceased operations in 2005, it was because the "current climate did not allow them to conduct business" in the ways they thought best, or with the organizations, like the UN, whose contracts they coveted. They were too good for Iraq, and too tainted for the UN. The battle still remains an uphill one for those trying to market themselves as ethical PMSCs. It is not possible to subsume them under either a military ethic or an ethic of humanitarianism. PMSCs remain an ethical "problem child" in much the same way that they have not yet acquired a clearly delineated legal status.

The ethical criticisms of PMSCs: dirty hands and more

A month after the posts about the ethics of PMSCs on the contractor list-serve in 2008, Michael Walzer entered the debate. As the most respected voice in any discussion of the ethics of war, he published a short essay in *The New Republic* wherein he posed the question: "Is there an ethics that justifies Blackwater?" (Walzer 2008). In the essay he decried the ironic use of our own "private militias" in the Iraq in the effort to disarm Iraqi private militias, and create a unified security force with a monopoly on the use of force. He noted that accountability on all levels was lacking with the use of private contractors. And he argued that "we had best take a statist view of military activity" if we wanted any real type of accountability and responsibility with regard to violence.

> The state is the only reliable agent of public responsibility that we have. Of course, it *often isn't reliable*, and *it often doesn't* represent a democratic public.… Still, there isn't any agency other than the state in the contemporary world that can authorize and then control the use of force – and whose officials are (*sometimes*) accountable to the rest of us.
>
> (Walzer 2008; my emphasis)

His signature verbal hedges, italicized above, made the difficulty of arguing about ethics apparent: it is hard to get things right. And at the end of the essay he noted that there are "exceptions to every rule": perhaps we should use PMSCs in lieu of the state when the state refuses to act. Could Blackwater be used to stop the genocide in Darfur, as its representatives have so often argued it could do (Newton 2008; Brooks and Wright 2007; Fisher-Thompson 2003)? Walzer admitted to being uncomfortable with the idea, but also with the idea that states could avoid any meaningful accountability for inaction against genocide. Perhaps a Blackwater mission in Sudan and Chad would be exactly what inactive states deserved, he implied. (The Blackwater offer echoed the standing offer made by Michael Grunberg, referred to earlier in Chapter 2 (p. 49), who commented that the right PMSC could stop all civilian casualties in Africa for $1 billion.) If the ends are worthy, and the means are affordable, then why quibble over state sovereignty and the international order?

Walzer's essay perfectly characterized the lukewarm attitude toward a more widespread use of PMSCs. His reluctant endorsement (which received a large amount of criticism) encapsulated two ethical criticisms: states are shirking in their international treaty obligations to respond to victims of genocide, and states are being morally two-faced as they hire militias to disarm other militias. An even deeper criticism was implied: Americans are unwilling to admit that their chosen political goals may require questionable means. So, although the term "mercenary" can seem sensationalistic, it does identify a central ethical problem. This problem is not the ethics of those who fight when the opportunity calls, but the ethics of the governments and corporations that use them. Most analysts are relatively sympathetic to the difficulties of judging the complex intents and moti-

vations of individuals, and no one is dumb enough to believe that patriotism or "the public good" motivates people all the time. The most important ethical problem is the fact that governments are using these firms.

The problem of "dirty hands"

Any discussion of the idea of ethics in political life has to confront the problem of "dirty hands." The phrase comes from the title of a play by Jean Paul Sartre, in which an assassin tries to justify his actions by arguing that politics may sometimes require dirty but necessary acts, and those who care not to dirty themselves should stay away from it (Sartre 1948). This idea was around long before the twentieth century. Many have thought that politics requires constant moral compromise, necessary evils – and that anyone who thought any different was deluding themselves. An ethical person engaged in politics would have to make this compromise. Walzer addressed the problem in his now-famous essay "The Problem Dirty Hands." PMSCs can easily be seen as an instance of the problem of dirty hands (especially since, as noted in earlier chapters, they are organizations whose protean nature is easily characterized as "dirty").

Those who defend PMSCs in the light of the "dirty hands" problem characterize their use as an unfortunate necessity, dictated by uncontrollable circumstances. They claim that the problems caused by their use are minimal compared to the problems caused by their unavailability, and that they are a consequence of the situation: a shortage of military resources, the lack of political will for conflicts, the necessity of doing business in hostile environments. They are the lesser evil, so to speak, and though our use of them is regrettable, it is necessary given the greater good accomplished.

Walzer, and Max Weber before him, referred to this problem using a language of tragedy: the policy-maker would rather do something else, but this is all that can be done under the circumstances (Weber 1946: 127). Many of the problems associated with the ethics of violence contain this element of tragedy. More often, defenders of the "dirty" aspects of political choices avoid the language of tragedy, and instead employ the language of utility and necessity. In the end, a greater good is accomplished when one makes certain choices; PMSCs are in the business of "saving lives," even if they do have bad aspects. The dirty hands are dirty for a clean reason. And there is no tragedy here, only cold, hard, necessary choices, rationally undertaken. They claim that only the politically naive would imagine that anyone could provide purely ethical security – the real world requires compromises and choices, and the variety of particular situations and problems often justify these "dirty hands." A realistic justification of PMSCs simply accepts the full consequences of the political choices to fight wars in the way they are now being fought: with an over-stretched military; and in the midst of civil and infrastructure reconstruction goals that require businesses to operate with their own security on the ground.

The problem of many (slippery) hands – diffused responsibility

In response to the argument that PMSCs are a necessary (if dirty) choice, the remedy for their potential to operate too violently must be more effective oversight. But here another ethical problem emerges: the problem of diffused responsibility, or "many hands." When too many regulatory eyes are charged with the job of oversight, responsibility can be so diffused as to be ineffective. This is most often merely a problem of organizational inefficiency, with no ethical dimension to it at all. However, complex oversight mechanisms become an ethical problem when they result in inaction. Each oversight organization can "pass the buck" to some other agency until the problem disappears. Agencies can lose control of a problem when there are too many hands involved in the process.

Oversight involving too many hands can become bureaucratically cumbersome and authoritatively weak. One of the apparent advantages of contractors is that they are nimble and cost-effective; but realistically, though the cumbersomeness and cost of their oversight ought to be factored into the calculation of their cost and efficacy, it rarely is. The problem of many hands includes the problem of sluggishness: issues can linger in bureaucratic or legal slow lanes while demands on the ground shift, and actions again become virtually unregulated. Finally, the "many hands problem" is exacerbated by the "slipperiness" of the hands involved: the classic principal–agent problem of an agent continually trying to maximize profit and for minimum performance, or principals trying to shirk their own obligations and not pay.

The case of contractors in Iraq and Afghanistan has only underscored this accusation. The problem of many *slippery* hands characterizes the problem of contracting and sub-contracting among several governmental agencies, in the midst of a confusing array of entities on the ground in Iraq, and hiring many types to do the work. But, in order to exercise control, there has to be someone who can command, and in the world of contracting, there are too many hands involved for any effective command.

The left-hand/right-hand problem

The final ethical criticism of PMSCs is one that has surfaced in earlier chapters. This is the problem of peripheral forces in wartime: of allowable rogue behavior, plausibly denied. This is the problem of the right hand "not knowing" what the left hand is up to. The ability to engage some forces at certain times and then disassociate from them when necessary is the hallmark of the use of proxy forces – if unruly forces are used for their unruliness and then, at the first hint of trouble, the right hand can assert itself and chop off the left, so to speak.

Legal scholar Floyd Abrams goes even further: democracies, and especially democracies during wartime, need the ability "to do things off the books and below the radar screen" (Dershowitz in Levinson 2004). Without the ability for the right to "not know" what the left hand is doing, no democracy can survive. This is a version of the "dirty hands" problem, but one in which the pure and

clean right hand remains oblivious to the nefarious but effective left hand. Given the propensity of PMSCs for fraud and their ability to pursue policies that are beyond the reach of democratic control, any attempt to establish some kind of reasonable command and control seems insincere and half-hearted. Sometimes the right hand wants to allow the left hand to get away with certain behaviors even as it scrambles for the image of doing the right thing.

There is an important notion implicit in this idea of a separation between a right hand and a left hand, or in the idea that politics may require dirtying one's hands altogether. This idea surfaces repeatedly in defense of roguish or off-the-books behavior: one person's dirty hands are another person's "necessity." Within the context of certain "peripheral" places (Fallujah, Kandahar, Waziristan, Guantanamo), certain actions which might seem dirty and unethical elsewhere are actually necessary and even ethical and just, part of the rules of the game in this context. The problem of establishing ethical oversight of PMSCs then becomes the problem of calibrating different contexts: if the oversight is coming from the center, how does it get a sense of what is going on out on the periphery? If one of the justifications for the use of PMSCs is that they allow some actions to occur "off the books and beneath the radar," then their actions cannot be judged by contracting officers charged with keeping things on the books and on the radar, so to speak. The organizational dissonance that occurs in this circumstance is similar to what happens when well-meaning regulators advocate "better oversight" and assume this will curb most abuse: when the practices of the center are assumed to work on the frontier.

PMSCs as frontier organizations regulated by cosmopolitan rules

It is hardly new to see the postmodern world as a world divided into zones of civilization and barbarism, cosmopolitanism and chaos; order, quasi-order, and anarchy. These efforts to add some conceptual order to a chaotic world may fail; there may be times when the former categories cease to make sense of things or other times when biases get in the way, but the effort continues to modify and refine our understandings of the world. The biggest debates since the end of the Cold War are about how to re-conceive our understanding of the political world. Do we live in a time of clashes between huge civilizations, or among zones of peace (and wealth) and zones of anarchy, populated by "thugs, criminals, and hooligans" in charge of shadowy, illicit, black market economies (Mueller 2005)? The most simplistic see a North–South (formerly East–West) division, with the relative safety and security of the former First World nations juxtaposed against anarchic and ungovernable former Third World quasi-states. In the previous chapter I invoked the language of center and periphery to describe different forces and tactics used in warfare. A similar dynamic occurs between bounded areas and frontiers.

Ken Jowitt offers one way of visualizing the various institutional or organizational characters in these different areas (Jowitt 2000: all quotations below come

from this manuscript, unless specified). He classifies organizations, states, and attitudes – ways of life – under three rubrics: wild and seemingly ungovernable "frontiers," areas marked by strict "barricades," and areas marked by more open or porous "boundaries." I discuss Jowitt's conceptualization of these three ways of life at length in what follows because I think that his characterization offers a more cogent way of seeing current ethical disconnects, especially in the world of warfare in general, and private military contracting in particular. What gives private military contractors and their firms so much traction is that they can take on the character of each of these areas: they can behave outside of the rules, ungoverned by the strict rules of the military. They protect others through a show of barricaded force, asserting dominance in a hyper-tough manner. And yet they tout themselves as humanitarian forces, trying to make the world a safer place for businesses, the media, and NGOs.

Frontier organizations or zones are characterized by "weak ties" among people, and by the drifting, disconnected, and "disembedded" ways of life found among both global travelers and refugees (or, as Zygmut Bauman (1998) puts it, among "tourists and vagabonds"). There is much happening on the frontier: many borders are crossed and re-crossed, many connections or networks initiated, but the staying power of these connections is ephemeral. Jowitt's description of this zone of weak or momentary bonds is not unlike that described by many analysts of globalization, but it is also not completely incomprehensible (anarchic) or a "formless void." But the ties (or contracts) that bind these disorganized entities provide only weak social discipline or staying power. Organizations form, fall apart, and reform again. This is a highly charged state of "transformation" rather than merely a lawless wasteland. This is like the frontier at the Gold Rush: a lot is happening that is hard to discern from outside. Any organizations that do form are "undisciplined," and "insecure in both power and identity." Jowitt uses the analogy of a singles' bar – "a place where people unknown to one another 'hook up' for the night; where the cast changes regularly; where the arithmetic of multiple social exchanges fails to produce the geometry of a social institution."

Much of what goes on in the conceptually disorganized world of PMSCs reflects this frontier-like setting: this is their "cowboy" persona operating in a virtual "Wild West." As Jowitt puts it, these areas or institutions are not heterodox or orthodox, they aren't "-doxy" (or rule-)minded at all: "they are -doxy naïve." Lacking any kind of traditional or cultural institutions to discipline behavior or anchor identities, frontiers are unregulated. Moreover, "the general absence of institutional and ideational discipline means that frontiers are not only weak, they are violently weak…. In a frontier setting the absence of violence depends on the *immediate* threat of violence" (his emphasis). Because of this, "the most consequential feature of violently weak frontier settings … is that *preventative* acts prevail over *foundational* acts" (his emphasis). In other words, the preemptive use of defensive force is the necessary strategy, rather than the more disciplined offensive strategy allowable under less-chaotic conditions.

Here we return to one of the conclusions advanced in the previous chapter: PMSCs are regulated in less than satisfactorily ways because they operate in

zones that are, by definition, adverse to traditional forms of discipline. And in this way, they stand in complete opposition to the highly disciplined world of the military, where military ethics and values are explicit objects of oath and allegiance. This military culture stands, by design, in opposition to the frontier-like way of life otherwise practiced in war zones. This contrast with the military is useful, but not simple; PMSCs are not simply frontier-like organizations. Their status is complicated, and I have argued that PMSCs straddle a number of these worlds and are disciplined in a number of weakly overlapping modes. But before I return to the more protean profile, I will outline the two other zones that stand in contrast to frontiers: barricades and boundaries.

In Jowitt's terminology, barricaded identities and organizations often arise in response to the primordial soup of frontier life. Strict, disciplined, barricaded institutions may appear either in sequence, as a development away from the insecurity and disorder of the frontier-like phase, or they may originate elsewhere, but impose themselves on a frontier, in order to pacify or control an area of perceived insecurity through occupation or colonization. Jowitt describes the developmental phase that new organizations, or new states, go through after the initial ferment and strife that brought them to power as a phase of "consolidation," during which barricades (real or metaphorical) are constructed in order to secure the newly powerful. Barricaded organizations stress separation: they are a world apart, and highly guarded. Jowitt cites the frontier outposts of Norman castles, or the many examples of actual walls built to keep out frontier-like hordes: walls old and new in China, Berlin, Israel, the US–Mexico border or the "green zone" in Baghdad, each of which tries to demarcate safety amidst insecurity. The gated communities in which so many people now live are other examples. Present-day PMSCs often guard these barricaded zones. They patrol the outposts at the borders, and are the watchdogs between the zones of chaos and the zone of order. But the best example of a barricaded organization itself is the military.

Jowitt notes that the politics of barricaded organizations will be necessarily about exclusion. In his alliterative manner, he argues that barricades are intended to communicate "difference, distance, and dominance." Often their creation requires a whole new geographic entity, distinct from the old locations of corrupt power: Ankara, as opposed to Istanbul, for instance. Jowitt notes that "to those who are barricaded, frontier realities are seen as chaotic, disordering, infectious, and sinful: as morally contaminating threats. As such they are cast in stereotypical terms as objects to avoid or eliminate." Leaders of barricaded organizations also behave in hostile ways: they hold few press conferences, prize secrecy and loyalty above all, and see the world in stark, contaminating terms. Jowitt's examples of such strict, barricaded regimes include the Soviet Union under Stalin, Turkey under Ataturk, even Afghanistan under the Taliban. Their political programs are about consolidating power after a frontier-like chaos or a revolutionary transformation. For our purposes here, however, it is useful to see the military through this lens, as a fortress-like form of power that values strict rules and chains of command, rather than the flexible associations made possible by the free market and short-term contracts. (As opposed to the frontier-like singles

bar, Jowitt would say that we now have formal marriage without the possibility of divorce.)

The ethics of a barricaded organization are marked by commitment to the internal dynamics of the group: strict rules, oaths and covenants, chains of command, and a rigid attachment to procedure. Much of the action that takes place is focused on the internal maintenance of order, in order to more effectively perform its mission. Non-members of the organization are not the main focuses of concern: barricaded organizations are about consolidating their power in hostile zones. The commitment to a barricaded organization is a way of life; and it usually relies upon a class of people that pledge themselves to the goals of the institution.

Once enough barricades have been erected, and the safety of those protected becomes more reliable, then, and only then, can the porous and confident boundaries of civil society be really durable. Jowitt notes that that basic unit of this civilized world of "boundaries" is the confident individual: rule-abiding, tolerant of differences, "secure in identity and power." In this world, the humanitarian ideals of civil society thrive. At times, Jowitt uses this scheme to described the historical development of certain areas which begin as frontier zones, and then are colonized or invaded by a superior force that asserts its "difference and dominance" through the erection of barricaded strongholds. Years later, confident of its power (and successful in its occupation), the barricades are modified to allow for more integration with porous borders. A typical member of a cosmopolitan world marked by "boundaries" would be a French citizen in the EU. (Or, to continue Jowitt's metaphor of sexual relations, this would be a world of serial monogamy, of longer-term couplings and un-couplings.[3]) These may seem like elementary and obvious distinctions, but they are extremely important for understanding the competing languages of ethics that mark these different organizational types.

Jowitt's theory helps to clarify the problem with defending the use of PMSCs as acceptable if only they are better regulated. If, by definition, they operate in zones wherein regulation is not available, in frontier zones, the calls for oversight, regulation, and better contracts will never be enough. The only rule of law that operates effectively in frontier-like settings is military law, imposed on the chaos of war, so to speak. Nevertheless, two recent defenses of the ethics of PMSCs do use the language of civil and human rights law. Mervyn Frost's article "Regulating Anarchy: the Ethics of PMSCs in Global Civil Society" is one such defense. Frost bases his defense of PMSCs in his larger theory of an "anarchic ethics," those ethics that mark a world wherein every person has membership in a "society of sovereign states," and simultaneously in a "global civil society" (Frost 2008b). Based on these memberships, a certain language of a set of practices develops that reinforces these principles, including the right to contract, and to act beyond the borders of one's own state, as long as in doing so, no one else's rights are abused. Given this, there is nothing intrinsically wrong with PMSCs. His defense of PMSCs comes from the perspective of the cosmopolitan world of boundaries, populated by self-conscious "rights holders." Any person, as citizen of a state, has an intrinsic right to set up a firm, and as long as that

company does not harm the rights of others, do whatever business the market and the state in which that business is located allow them to do. Frost uses the example of Tim Spicer, the head of Aegis, the PMSC profiled earlier in my Introduction:

> For citizens who are setting up a PMSC, it is crucial that they do not flout the rules of the practice within which they are constituted as citizens.... For if [Spicer] were to be seen as an enemy of the state, as an international terrorist, as a person guilty of treason and so on, this would undermine the standing of his PMSC in the public domain.
>
> (Frost 2008b: 47)

Global civil society, along with functioning sovereign states, offers hope for the extension of rights and multiple versions of sovereignty; and, by extension, it offers freedom from overarching control of a group's way of life. Defending "anarchic ethics" means defending the messy, complex, layered, reality of multi-faceted rights-based claims for justice and recognition. This is the cosmopolitan vision that offers an escape from the stranglehold of modernity's inclination to standardize and universalize.

Frost's idea of an anarchic ethic is not what Jowitt would see in a "frontier" organization. His citizens, who see themselves as confident bearers of human and political rights, are much more stable than those whose weak ties and casual use of violence mark Jowitt's frontier society. His description of an anarchic ethic should not be confused with the violence of a complete lack of rules or principles. His anarchy is multi-faceted, and polymorphous, and protean, but ultimately all about the assertion and protection of rights on many fronts.

In fact, Frost is careful to point out that his ethical defense of PMSCs is one that requires a coherent set of legal and ethical principles to which they can be held account by a public composed of equal "rights bearers." PMSCs are not ethically problematic as long as the world is not divided into zones. His is an ideal defense of PMSCs that sees them as one type of international business among many others, with equal rights to operate as long as they abide by the norms and practices of their home state. And he claims that all states, as states, share normative values – or at least they should. By the end of his essay, however, Frost admits that this ideal vision breaks down in war zones:

> The key to preventing [the ethically noxious] outcomes [of PMSCs] is regulation by public bodies. Within stable democratic states, this kind of regulation is relatively easy. However, *within some unstable and dangerous territories beyond the borders of one's own state, greater problems are encountered* in attempting to monitor and regulate the activities of PMSCs.
>
> (Frost 2008b: 54; my emphasis)

This admission is a telling one. Since most PMSCs do not operate in such zones, but instead in frontier settings wherein it is harder to recognize the fundamental

rights of others, then the attempt to apply a code of ethics that reflects the more cosmopolitan world from which Frost speaks will merely paper over problems. A similar clash of cultures occurs when human rights activists advocate regulation to those who have been unleashed to be proxy forces on a frontier zone of sorts.

Present day Kabul, Afghanistan, now experiences this kind of culture clash, when a community of confident cosmopolitan rights proponents shows up in frontier zones whose anarchy is more ominous than that Frost is describing. As an example, consider the account of Scotsman Rory Stewart's 2002 walk across central Afghanistan in *The Places In Between* (Stewart 2006). When Stewart emerges from his walk through the mountains into the city of Kabul, he is bewildered and perplexed by the confident efforts of NGO and IGO workers, as they try to help "transition" the people of Afghanistan into citizens of a multi-ethnic democratic state. The efforts of these organizations, staffed by many friends of his from his former life in the UK, seem like a new version of neo-colonialism, well-minded but terribly naive, and marked by an almost complete indifference to the peoples being "served." In a chapter titled "@afghangov.org" he compares these "post-conflict" staffers to their colonial predecessors:

> Post conflict experts' … implicit denial of the difference between cultures is the new mass brand of international intervention. *Their policy fails but no one notices. There are no credible monitoring bodies and there is no one to take formal responsibility. Individual officers are never in any one place and rarely in any one organization long enough to be adequately assessed.* The colonial enterprise could be judged by the security or revenue it delivered, but neocolonialists have no such performance criteria. In fact their very uselessness benefits them. By avoiding any serious action or judgment they, unlike their colonial predecessors, are able to escape accusations of racism, exploitation, and oppression.
>
> (Stewart 2006: 247; my emphasis)

It is this kind of well-meaning but naive humanitarianism that undermines our efforts to speak clearly about an ethical defense of the use of PMSCs. Organizations that provide security in these areas will need to be under the more strict rules of a barricaded organization like the military, rather than the contract terms (even if they include references to human rights) of PMSCs.

The ethical criticisms of PMSCs are not only those of potential fraud and corruption, outlined earlier. When PMSCs are defended as ethical actors, they are supported by a certain global exhaustion with security and humanitarian issues, and yet they offer only partial micro-solutions to what are really broader problems. They straddle what I call the two "offshore islands" of international legitimacy left in the late-modern world: business and human rights. Their networked world of limited horizons (profit, short time spans, and small-scale "site-specific" human security) allows the larger questions to be avoided. As such they are the

perfect emblems of the bankruptcy of our multi-layered ethical languages and thin calls for a better regulation and oversight.

The other prominent defender of the ethical use of PMSCs, Deane-Peter Baker, uses an analogy taken from the world of the domestic private security guard: the bar-bouncer, the mall cop, the bodyguard (Baker 2008). Baker especially defends the fundamental right to contract for certain kinds of services.[4] Baker's argument and the example he uses to illustrate it, however, falls flat when the question of accountability is raised. In his example, a woman has to walk through a dangerous neighborhood at night, and the local police are nowhere to be seen.

> Believing (rightly) that her chances of being attacked are high, Jane enters into a contractual arrangement with a bouncer at a nightclub she happens to pass, who agrees to protect her on her walk through the neighborhood for an agreed fee. As it happens, Jane is attacked, and her companion does intervene to save her. Do we think that Jane's companion is in some sense unethical? No.
>
> (Baker 2008: 39)

But what happens if the hired bodyguard, having gotten her safely through the neighborhood, then attacks her? This scenario, ad-hoc contracts or not, is also probable. In this case, the agreed-upon contract is broken. But where would the women go, and for what type of enforcement and remedies? Or what if, as Jane and her bodyguard were walking through the neighborhood, they witnessed another woman being attacked? Jane's bodyguard would be perfectly ethical in not intervening, since his contract only specified Jane's safety. But this would not be a moral act. Baker's example is of the kind of contract that might take place in a frontier-setting, with short-term contracts backed up by a threat of imminent violence, not the type of embedded social contracts that would take place within a zone of relative law and order.

Imagine instead that the police had been called to escort Jane through the neighborhood (let's say they had the resources to do this). Jane could have been the victim of police brutality or corruption, but then two levels of contract would have been broken: the promise to protect a specific person, Jane, and the social contract to offer general security, on behalf of the public. Those two layers of responsibility are backed up by a legal system that offers at least the hope of legal justice. Here the relevant distinction is that of center and periphery from the previous chapter. Jane and the bouncer, ethical or unethical as he may be, are on their own, at the legal periphery of a contract. Jane and the policeman, on the other hand, are at the legal center, in a much more comprehensible relationship. Theirs is a social contract, not just a private contract. And with relational contracts, as I argued in the last chapter, the remedy is most often that of just "termination of the relationship," with little additional care for the wider public.

My second account of how PMSCs resist traditional accounts of ethical actors takes its bearings from the idea that PMSCs are a form of policing. PMSCs can

certainly be seen as a form of mercenarism: that point has already been addressed ad nauseum, with various ethical ramifications. But another, less sensationalistic, analysis sees them as mere extensions of the private security guard trend that has been researched domestically for at least three decades. The ethical relevance of this argument is twofold: the expansion of privatized security makes security into a commodity only available to those who can pay, and the ethical norms of private security police are frequently detrimental to wider community norms (or to the possibility of building them). PMSCs can be said to provide security for some, but not justice. To the extent that they are a new face of international policing, they are thus ethically problematic in their social impact, even if their operational procedures are individually blameless.

The ethics of war "on the cusp"

The debate about the ethical use of PMSCs also needs to be situated within a broader debate about the role of ethics in current conflicts. Currently, the military is strung between two models: the call for a much more humanitarian constabulary force, and the need, argued by some, for a new "pagan ethos" that allows for necessary inhumanity in order to fight wars more effectively. The debate about these two competing needs is occurring in the midst of the evolving counter-insurgency doctrine. I think PMSCs are implicated in this debate. One view advocates an increasing emphasis on articulation of and care for military ethics and law in the midst of what some have called the "humanization" of the battlefield. The opposing view believes that the current "long war" against global insurgencies (most of whom employ terrorist tactics) will require a newfound "paganism" on the battlefield, a willingness (acknowledged or not) to go against the prevailing discourse of humanitarianism where it is necessary. This is what Christopher Coker referred to as the strange case of the evolving ethics of operations "on the cusp." The cusp of what? I think he means the cusp of clarity, but also the cusp of a moral abyss.

In the twentieth century, the rise of wars of national liberation, or guerrilla warfare, or more widely any kind of insurgency, signaled the end of what could be termed a war of reciprocity: bipolar warfare wherein both sides hold a lethal balance of firepower. Here, in the ideal classical image, rules are maintained through the threat of reprisals and an underlying idea of reciprocity: one side "behaves" because it expects the other side to behave along with it. When fighting wars in which one side explicitly attacks the rules – aiming at civilians, using disproportionate means – then it becomes increasingly hard to employ any kind of mutually agreed upon restraint. This is where the modern liberal ideals of warfare run aground; where we are forced to fight wars "on the cusp" of allowable behavior (Coker 2007).

> This is the ultimate challenge facing a world that would like to make war more humane for its soldiers, and for society itself: will the other side play

by the same rules? The rich man's option is to sanitize war; the poor man's is to make it even more horrendous than it is.

(Coker 2001: 65)

On the other side of global civil society, and a society of sovereign states, there is the increasing awareness of what might be called a global "uncivil" society. The wars that are currently being fought reveal the problem resulting from wars fought between these new configurations of combatants. Two simultaneous trends mark the ethics of these new wars: the increasing "humanization" of combat, wherein humanitarian fighting is an explicit goal, and the simultaneous use of enormous power and the global reach of destructive capability.

Coker's most recent books describe a trend of increasing concern with humanizing warfare in twentieth-century warfare, and the confusion of ethical languages that has resulted from this effort. In *Humane Warfare*, he chronicles efforts to humanize the warrior. These efforts invoke language echoing that of St. Augustine, the earliest just-war theorist, and claim that war should be fought without intentional cruelty, without explicit hatred of the enemy, and in order to make the world safer for humanity as a whole. In recounting the complex history of the ways the late-twentieth-century warrior has been transformed into a more "feminized" and risk-averse soldier, he notes that NATO intervention in Kosovo symbolized the transformation:

> For the moment the West is still in the war business, but it is attempting to change its nature by fighting wars more humanely. Post-material societies fight post-material wars – they try to avoid the material (human and environmental) damage which was essential to warfare for two millennia. They are intent on sanitizing war, on purging it of those elements which, though once familiar and accepted without question, now cast it in a light that is offensive to the liberal conscience.

(Coker 2001: 3)

Coker notes that many find this effort to sanitize conflict a sham, and adopt a cynical attitude toward a culture whose left hand doesn't seem to know what its right hand is doing, and a military that wants to convince itself of its humanity through a form of "clean and gentle" warfare.

A longstanding way of addressing the problem of ethical wars has been through the languages of the just-war tradition, developed by early Christian thinkers in the aftermath of the fall of Rome and the barbarian invasions of the fifth century. Since then, it has become the central theory by which violence is justified – literally made just, or acceptable within a community. The West is not alone in needing certain arguments or justifications to legitimate violence; holy war, or jihad, requires that certain moral conditions be met as well. But for the last 1,500 years, the language of just war – debated, abused, or ignored for the most part – has characterized the way in which war is judged, regardless of how it is fought. One of the central tenets of just-war theory is that the authority that

allows or starts a war or other violent action be legitimate. The state is the only legitimate authority that can authorize legal violence, and the only justified violence is that authorized by a state (or people that deserve recognition as a state). When the violence of a guerrilla war takes on a kind of legitimacy, either because it is widely supported by a people or because it attempts to overthrow a form of government widely deemed illegitimate (for instance the "wars of national liberation" of the mid-twentieth century), then the "nation" – the people – can establish the legitimacy of the violence, even if the "state" deems it an insurgency. In any of these cases, even with all of their gray areas, violence is deemed justified if it is on behalf of a larger entity – a people or a public. PMSCs seriously undermine much of the foundations of this doctrine, and thus they are hard to talk about using the traditional ethical guidelines.

Here it might help to bring in the just-war categories for soldiers that for over a thousand years have served to divide conduct in battle into two categories: the justice of the war itself (jus and bellum), and the justice of the conduct in the war (jus in bello). Private military firms, like Blue Sky, ArmorGroup, or any number of others, could be hired for just reasons: private security in general is an ethical alternative to global risks. They provide "human security" for clients; they support humanitarian missions, including de-mining missions, or guarding humanitarian convoys or refugee camps. Like the contracted bouncer-cum-body-guard, private security contractors provide zones of safety in a highly dangerous, untrustworthy world. And at the extreme end of the scale, as Walzer reluctantly admits, they could also offer hope of real "robust" peace-making, in the face of rampant failures by nation states, international organizations like the UN, or regional coalitions. They are as moral or ethical as any multinational corporation, and they should be judged fairly by the rules of the market. In sum, they pull together some of the highest commitments we have in the West: they protect people, provide "defensive" security, and they are based on the individual freedom to contract, and the discipline of the market. They are the ultimate late-modern social entrepreneurs, doing good while making money. This is, repeatedly, how they are stressed: as realistic peace operators for profit.

PMSCs as virtual soldiers

The third account of the ethics of PMSCs is unrelated to the first two, but returns to a central debate in the ethics of current warfare: the prevalence of what scholars have dubbed "virtual warfare." In virtual warfare, technology contributes to a feeling of practicing a sterile warfare from afar that is falsely clean and gentle: technology can deceptively increase the felt "virtue" of those using it, even as it distances them from their targets. PMSCs are not directly a part of this aspect of virtual warfare. But their effect on those utilizing them can be similar; as proxy forces that allow the full cost of a war to be kept hidden, they are an example of what has been called a "virtual mobilization" (Ignatieff 2000: 184). The ethical problem is that, by outsourcing violence, Westerners may shield themselves from the reality of their policy decisions.

Prior to the war in Iraq, many writers from inside and outside the military focused on the phenomenon of virtual warfare.[5] This form of combat is distanced, driven by advances and fantasies of technology, and abstracted from the reality of bodies on the ground, civilian as well as military. Scholarship on this new form of warfare focuses on the new dominance of both cyberspace and cyborgs in war planning and "gaming," or on the ways in which the public has become distanced, confused, and unconcerned with the use of the military.[6] In the first categories, concerns about the use of new forms of linked and precise weaponry that is coordinated and organized globally, a huge expansion in the ability to gather intelligence, an employment of unmanned and robotic "drone" aircraft, and a reorganization of the military into smaller "platforms" which coordinate the whole thing, are said to have the effect of overwhelming those engaged, both soldiers and civilians, with layers of distance and unreality. The literature on this is enormous, and the effects are sometimes paradoxical. For instance, as the military becomes less about bodies dying and more about machines killing, the average masculine soldier is employed more as a operator and maintainer of machines, a category which can admit much more gender neutrality. In addition, the expanding ability to rescue and perform battlefield medicine, a project that is often advanced using the same high technology and virtual databases, is motivated by a care and concern for the actual human body on the ground. (One such database is to be called "the virtual soldier," and will include a coded inventory of all the vital statistics of each soldier, able to be radioed in remotely with each casualty, to better allow for more efficient medical care as quickly as possible.[7])

Although these books vary in their ability to analyze both the source and the ultimate effects of such technology, the anxiety (as well as the awe) is palpable. There is the sense that the combination of computers, science, weapons technology, and organizational theory have created "disembodied" or "decapitated" reason, that we live and operate in a hyper-real world of distraction and distance, in the midst of seeming precision, focus, and care.[8] Two other works go further than this analysis of the state of affairs, however, and point to a simultaneous rise in a sense of moral purity, or "virtuousness," that pervades the technological reality of this virtual world. Michael Ignatieff's book *Virtual War* (2000) ends with an essay by the same name. In it, he outlines the varieties of virtuality that marked the war over Kosovo in 1999: the technology used was virtual, the consent for the war was virtual, the media presence added to a sense of virtuality, and the sacrifice of soldiers was virtual.[9]

The impunity offered by the remote spectacle of this kind of war has a further twist. For Ignatieff, the overwhelming military superiority of NATO forces, a "battlefield inequality" that many within the military see as an explicit goal, is morally unjust. Virtual killing allows a kind of killing with impunity, and transforms the moral equality of the battlefield, wherein murder is not murder but killing, into a "turkey shoot," wherein soldiers return to becoming murderers.[10] While questions must be raised on whether or not this old chivalric idea has any standing whatsoever given twentieth-century warfare, the point for Ignatieff is

that the felt injustice of such asymmetric warfare is then compensated by an exaggeration of the moral reasons for warfare: virtual virtue. Warfare is not only virtual by means of technology, but the reasons for war become deceptively just and falsely virtuous in order to compensate for the reality of the destruction that is being caused.

This is a complicated point, and needs some elaboration. Ignatieff speaks from within the cosmopolitan left, from within a discourse of IHL and human rights, wherein moral distinctions about and within war are possible and necessary. It is, actually, a familiar world to most within the middle levels of the military, and for whom expressions of concern with ethics, just-war theory, and even human rights is prevalent. But Ignatieff argues that precisely because of increasing levels of virtuality, the military has begun to preoccupy itself with systems of ethics and legal rules that can internally legitimize its practices.[11] Even though this increasing legality can often seem inconsistent (we bypass the international law and do not support the establishment of an International Criminal Court to try war crimes and crimes against humanity), it is often done by way of defense against the very concerns with rule-bound legality and morality that already operates robustly in the military. This paradox in fact supports Ignatieff's claim: the commitment to ethics, law, and morality is a virtual one, conditioned by a need to compensate for the horrors of applying overwhelming force by telling ourselves we practice only falsely "virtuous" warfare.

Another critic of virtuality, however, asks not for moral clarification, but critical theoretical understanding about the more complex assumptions grounding such a commitment to virtuality. James Der Derian is a scholar of the military and international politics, and his book, *Virtuous War* (2001), focuses on the ways in which the combination of virtuality and virtue have produced an insatiable appetite for war that is technologically complex but politically facile.[12] The original root of the word "virtual" conveyed, he points out, a "sense of inherent qualities that can exert influence by will, as in the *virtú* of Machiavelli's Prince, or by potential, as in the virtual capacity of the computer."[13] And here the road becomes both murkier and more revealing. Der Derian's book combines interviews with those who plan and "game" new modes of warfare, visits to the war-gaming arenas in the Mojave Desert, and simulation laboratories in Los Angeles, with the thought of postmodern theorists such as Baudrillard, Deleuze, Foucault, and Benjamin. This cumbersome combination supports a theory of war as a culmination of everything modern: the need for a politics that appeals to a mass, the ability to endlessly reproduce images, the desire for a total system of domination that can be both centrally operated and easily shifted, and an organizational theory that will allow for rapid dominance but still respond to the need for immediate shifts of purpose and posture. Like Ignatieff, Der Derian sees the dominant effect of this as a distancing of war from death, from destruction, from bodies, even as it needs to produce these very things. Modern war relies on the death and mutilation of others, but in a falsely "clean and gentle" manner.[14]

Ethics, morality, and security

Although ethical rules abound these days, we still do not really know what we mean by "ethics." Let us start with the word. "Ethics" in its most original sense comes from *ethoi*, or *ethos*, a "way of life" understood by a community of others as coherent, as making sense. It is a way of structuring behavior and expectations in a way that is anchored in the past and reaffirmed continually. These ways of life are found in the daily practices, customs, rules, and what linguists call speech-acts: promises and oaths that enact something spoken. The ethical realm, as an ethos, is more than just the "rules of the game" that can be followed or not, although those rules provide a beginning. The word is descended from the word for "custom" but etymologically shares meaning with words referring to the self, or one's own. The original root shows up in other Indo-European words like "self." It is therefore all about what distinguishes one's own ethos from those of others, and so is usually found in explicit contrast with some other ethic.

Ethics are thus intimately connected – linguistically and in practice – with the idea of ethnicity, that celebration of one's own community. Ethics is some sort of rule-abiding behavior that has as its central concern, I would argue, the maintenance of a group standard or norm. Professional ethics and the like are primarily oriented back toward the need for the group identity to be as unsullied as possible: there may be concern for victims of abuse, but it is not the main focus of ethics. Even Aristotelian ethics are habits that have the primary benefit for those who practice them. The etymology of the word reveals this orientation toward one's self, or one's own.

Private security contractors can be part of associations that help build up the professional contractor ethic. They can write and maintain codes of conduct, and can self-regulate based on such codes. They can, like other professional associations, monitor and evaluate each other for lapses of all sorts. And gradually, as is already happening, a certain ethos will build up around the firms and the contractors, with its own customs and allowable practices, its own excuses and allowable justifications. They can be called professionally ethical if they abide by these rules. And this is mostly the level at which the debate is taking place: PMSCs say give us rules; monitor us well (and we'll monitor ourselves too); and we can be seen as legitimate professional forces in the field.

But for social and political theorists, the twentieth century has exposed moral problems that go beyond the simple application of good ethics. The ethical uncertainty that can be found in the vague phrasings of codes of conduct ("we will at all times abide by human rights norms") reveals a deeper uncertainty about the moral good. Here it is helpful to distinguish "ethics" from "morality," a word that is often used synonymously. In contrast with the reflexive orientation of ethics, morality is oriented toward others, usually those outside of one's own circle. How we should regard, or tolerate, or interact, or care for, others is the much bigger problem of moral behavior. In war zones, private contractors must have a professional ethic as employees of a firm, and as members of an emerging profession, but they must also, like soldiers, have an attitude toward

those in and amongst whom they operate, and against whom their aggression can be directed.

For the most part, the relationship between one person and another, where morality is concerned, involves a real asymmetry of power. Morality is required where one person has the power to do something to the other person, without any kind of immediate reciprocity. In a war zone, no one is asked to actually care about their potential victims. In the Balkans, the ICRC tried to deter war crimes by reminding militia members of a "warrior ethic" by putting out posters that said: "warriors don't rape women; warriors don't kill children" (Ignatieff 2000). They reminded them of the group norm to which they belonged. But they did not ask them to care for their potential victims, to behave morally, as one to another. This is the hard part, and understanding the problems that crop up here at this level of behavior will require a detour into moral theory in the late twentieth century.

Paul Kahn, the legal theorist whose thought figured in the previous chapter, characterizes the primary moral problem we face as one of cultural pluralism.

> Lacking a conviction in the absolute truth of our own beliefs and practices, we are uncertain how to respond to those who live by different norms. We are all too aware that such differences exist, as we interact with cultures that put different values on life and death, family and society, religion and the state, men and women. We constantly confront the question of whether some of the practices unsupported by these values are beyond the limits of our own commitment to a liberal moral philosophy and a political practice of tolerance. We worry about moral cowardice when we fail to respond critically; and about cultural imperialism when we do respond.
>
> (Kahn 2005: 1)

Given our knowledge of others, our contact with strangers, and our awareness of their often hatred of us, we are morally uncertain about how to act. This conundrum is exacerbated by the fact that those in the West hold immense power for catastrophic action, and retaliation.

We are the inheritors of the modern attempt to universalize ethics – to create a rationally comprehensive order of life that could cut across specific customs, strip humanity down to a core nature shared by all, and possessing certain natural laws, universal rights, and duties to humanity as a whole. We are intimately aware of the diversity of human cultures and ways of life, and we possess unprecedented power to harm, and we know we do. We have the freedom to act on many fronts, and the power to do so, but also the corresponding duty, or responsibility, to take the effects of those choices into account.

The moral position of most actors is thus one of profound ambiguity. Though we may wish it to be otherwise, it seems that the moral world is a messy one, and that some difficulties will never be overcome. Security scholar John Mearsheimer described the situation well on a news program in 2004 (*The News Hour with Jim Lehrer*, April 7). He was discussing the first US military incursion into the Sunni insurgent stronghold of Fallujah (an incursion partly described as

a retaliation for the murder of four Blackwater contractors the previous month), and the lack of any real positive outcome of this counter-insurgency attack. In response to a question about what should be done, Mearsheimer stated: "It's a hopeless situation. Either way we turn, we lose." Stunned, the news anchor asked again: "But a hopeless situation still has – somebody's got to do something. So somewhere in there, do you see a combination of toughness and a soft approach working at all?" But Mearsheimer wouldn't relent.

> I don't think you can combine [toughness and a soft approach]. I think you have to either be tough, you have to increase the number of forces there and get tough, or you have to keep force levels low and back off. Those are the two broad choices. And the problem that you face is no matter which one you do, you lose. It's just a matter of choosing your poisons here.
>
> (Lehrer 2004)

There is an upside to this situation, as confusing as it may be, but it will be hard to get there. One way to see the upside is to understand the downside of a false moral certainty, and its dehumanization of those this certainty decides need to be "cleaned up" or maneuvered out of the way. Political theorists who lived through the twentieth century's worst example of a crime against humanity – the Holocaust – blame the combination of a hyper-rationality and a cultural commitment to order and purity that is impossible in true human terms. Modernity was marked by the Enlightenment hope in a rational solution to any disorderly situation, howsoever conceived. For every misfortune, there was someone or some group responsible. Removing those responsible for the problem – killing them, confining them, retraining them – would get rid of the problem, finally. Now, following Mearsheimer, we are more fully aware that there are some situations which cannot be cleanly dealt with, that are morally ambiguous. And here, a number of moral theories come into play. We possess irretrievably dirty hands. Political action will not allow for clarity: in fact, perhaps too much clarity is dangerously empowering. This situation is not unbearable, however Zygmut Bauman offers and alternative:

> Human reality is messy and ambiguous – and so moral decisions, unlike abstract ethical principles, are ambivalent. It is in this sort of world that we must live; and yet … we demonstrate day by day that we can live, or learn to live, or manage to live in such a world, though few of us would be ready to spell out, if asked, what the principles that guide us are, and fewer still would have heard about the "foundations" which we allegedly cannot do without to be good and kind to each other.
>
> (Bauman 1993: 32)

Bauman is not talking about a war zone, but he captures the sense that we all seem to possess: that even without hard and fast rules or easy choices, it is possible to act morally.

Conclusion

Kant's famous essay "Perpetual Peace" is often taught as an example of the moral necessity of a global government that assures an end to warfare and an extension of the rights of civil society to all humanity. This global government would inaugurate "perpetual peace" (Kant 1983). I do not think that this global government is the main point of his essay, however, and in fact I think he has a much more pessimistic (or realistic) view of the possibility of any lasting form of peace through the promotion of liberal values. I think Kant is instead arguing that peace is an impossible dream, and that warfare, irrational and unethical as it may be, is here to stay. This conclusion is based on three not too subtle facts of the essay. First, Kant noted that the idea of a "perpetual peace" came to him after he noticed an inn by the same name (Kant 1983: 107). The sign for the inn depicted a quiet burial ground, perhaps advertising the safe and endless sleep of those who stayed at the inn. But the message of the sign is darker: perpetual peace is only possible in the grave, despite the inn's sign; no real perpetual peace is achievable in life. Second, Kant claims that "nature herself" guarantees perpetual peace through war: we are only motivated to make peace after the experience of war. This implies that each generation must learn the lesson anew, and so perpetual peace would require perpetual cycles of war. Finally Kant warns the "practical politician" not to misinterpret his ideas, and asks him to please try to act "consistently" and disregard the words of philosophers. Later in the essay we learn that any global confederation created with peace as its goal would have to rely on "consistently reasonable men." But if he has to beg for the consistency of any politician reading his tract, the prospects for perpetual peace, guaranteed through consistent wisdom, seem exceedingly slim. The perpetual peace of the grave seems to be the most consistent result of warfare.

Kant is unusually ironic in this essay, but ironic in a way that Hannah Arendt once described as necessary for all those "who love the world." Irony, she said, is the ability to love the world "without losing one's soul to it" (Arendt 1960: 6). An ironic distance allows the real knowledge of the ultimate futility of an idea not to interfere with the expression or hope of it. This is the wisdom of certain realists who take overly ethical attitudes toward the world to be the height of unethical folly, and in so doing they look away from the smaller but realistic steps that could be taken to improve things. A misreading of Kant, or an overly idealized humanitarianism, is the kind Rory Stewart found so annoying when he emerged from the Afghan highlands to a Kabul abuzz with NGOs who were committed to ideas, but not necessarily the specific place of Afghanistan (see p. 144). PMSCs and the contractors who work for them are caught up in these various ethical worlds, however, and it is not yet clear what ethical defenses remain for these operations "on the cusp," except the logic of the frontier bodyguard.

Epilogue
Problems and solutions

This book has focused on the kinds of problems that dog the provision of armed private security in and around war zones. I have argued that the legal and ethical challenges thus raised are embedded in larger background changes in practices and assumptions regarding security, risk, and politics. PMSCs are part of the risk industry, and danger and the need for security are now conceived in such a way as to make them essential.

PMSCs are relatively unregulated forces on the ground, not because there is a dearth of specific regulations governing the work that they do, but because extant regulations are not yet calibrated to PMSCs in a way that identifies with clear legal structures to investigate and prosecute – a specific legal person or actor, with specific and workable rights and duties. Like terrorists, they are caught in a clash of legal cultures. The solution is either to create a new body of law that would specifically address these actors, or else to maneuver them firmly under existing legal personalities.

The question of the ethical use of PMSCs has been sucked into the vortex of another clash of cultures. In the effort to defend the right to contract for services, and to defend contract law by claiming it offers adequate regulation, we have forgotten that, historically, the only workable way the use of force has been brought under any legitimate rule of law has been through the consolidation of forces into state-based (or "peoples-based") armies, along with an entire judicial infrastructure that is mobilized at the same time. Matrixes of regulations from multiple directions may work to regulate less-lethal commodities, but not the purchase of the use of force.

Research for this book began in 2003, and stretched over the next six years. The current economic crisis is changing the debate about the need for stronger state involvement in the market, and about the wisdom of allowing a relatively unregulated business-model drive policy-making. The state is being brought back in as the ultimate risk manager. The US Congress is also beginning to assert control over the use of contractors in Iraq and Afghanistan.

If we turn a large part of the military's job over to market forces, in practice, we also cede the specifically political aspect of the decision to go to war, and how to do it. This book thus comes down very hard against the use of any contractors by our government (DoD, State Department, Department of the

Interior) in any position where they have the power to kill, torture, or interrogate.

If the cost of war without outsourcing violence is an increase in the size and cost of the military, and Diplomatic Security Services, or paying for a better-trained cadre of interrogators, translators, and security guards, then we should admit that, and budget for it. If companies involved in reconstruction hire security guards, the conditions of their use should be that relative peace is already established. If there is a need for heavily armed security, then companies should supply offices where complaints about their contractors can be lodged, and there should be an oversight body ready to charge contractors with excessive use of force. If companies are unwilling to assume liability for the actors they hire, especially those actors with the power to wield a deadly use of force, than they should not be there. If security is commodified (Sandline argued that they would have gone into Rwanda if anyone would have paid them enough), then all is lost. Protection against genocide cannot become something that only those with means can buy.

An ideal solution

It will come as no surprise that my first suggestion is the outright ban on any armed private security contractors. Anyone operating in conjunction with a military operation, in and around a war zone or disaster zone, and carrying a weapon, should be part of the regular armed forces, and governed by formal military law. This requirement carries with it a number of assumptions that I will detail below, but it begins with the following principles.

Private security providers are part of the US Military's "total force," like it or not. There is no real dividing line between offensive and defensive security in a war zone. Anyone who has ever played any kind of sport knows the expression: "The best defense is a good offense." In war strategy, defense and offense are linked, and private security providers who defend their practices by invoking the distinction are playing word games. In policing, defense and offense are also linked. Private security providers note that they, like their domestic security counterparts, will not pursue the enemy: they will only defend their vehicles, passengers, or themselves, against in-coming fire. They will only practice self-defense and the defense of others. This tactic is not unusual during certain kinds of military fights as well: it is a form of "picking your battles," or moderating the use of force in order to focus on the mission at hand. Defense and offense here are just tactics employed when needed.

The recent debate about the application of military law, or UCMJ, to private security contractors has made their membership in the total force even more clear. If they are governed under military law, and they carry weapons openly, and are under a chain of command (including a contracting officer, but now formally including the combatant commander), it is hard not to argue that they are, legally speaking, combatants. If this is so, we should formalize this relationship, and create a formal "combatant for hire" reserve service unit.

Can we live without PMSCs? Formally uniting these forces with our military has two major implications. First, we may not be able to pursue the foreign policies we want to, if their true costs are revealed. If the only way to follow through on the commitments we have made to places like Bosnia, Iraq, Afghanistan, Haiti, Colombia, and others is to provide a surge of private security providers, then perhaps we should not be there. If there is no political will to formally deploy those public servants who are legally allowed to use weapons, whether within the formal military or in special reserve units, then there doesn't seem to be a sufficient national interest. Second, if we are only willing to send semi-combatants into war zones, or do drug eradication or stability operations if they can be hired "on the cheap," so to speak (that is, for short-term contracts with minimal safeguards and benefits), then we are demonstrating our half-hearted commitment to these goals. If we are going to live with them, we should formally invite them into the house. Can we live without them? Repeatedly the charge is made that the only alternative to hiring armed contractors is the return of a draft, compelling the service of citizens in the military. This is a false assumption, based on a continuation of our force numbers and their current basing.

One possible alternative is a type of mandatory national service. One option would be service abroad, doing support work for stability operations, as armed security providers. But this would be a form of international "national service." Others might choose to do national service of a completely different sort, working as teachers, or rebuilding infrastructure, or working on environmental clean-up jobs. National service would provide paid training, health insurance, and benefits. Many might chose the military, if it were seen as a limited time commitment, with an option for continuation in a national reserve corps. This suggestion is made in support of the idea that a nation's foreign policy should be backed by a citizen army. I am also assuming that this would change the debate about what kind of service that citizen army should undertake, and how dissenters could be accommodated. As for our armed forces, they cannot have armed contractors on the ground. If you need to have KBR trucking in supplies, then you need to use the military or national guard. Or you have to truck in less stuff, or not have those bases. Long-term, it is too risky to have such well-outfitted bases. We can have a contracted force that is called the National Guard.

As far as the use of third-country nationals to provide armed security, this should also be banned, unless those serving are on a fast track to citizenship. This again is in keeping with the idea that only citizens of the country, subject unequivocally to its laws, and able to avail itself of a citizen's veterans' benefits, should be operating in the country's name abroad. If we want to hire third-country nationals to fight in our wars, we need to guarantee them citizenship, partly as a reward, and partly as a way to make sure they can be tried for crimes, are under UCMJ and other US laws. Such an arrangement does not call for a repeat of the practices of the past few centuries, in which colonial powers used forces from colonized countries to fight alongside their national militaries. It would offer citizenship in return for the possibility of sacrifice for another nation's foreign-policy goals.

The idealistic solution set out above would cover any firm contracted, or sub-contracted, by any US agency to do work abroad. Contractors might work doing logistics, or provide technical training or repair of sophisticated weapons. But the simple test would be this: if they carried a weapon in the line of duty, they would have to be combatants under US military law. But what about security firms that work for multinational companies? Plenty of armed security is provided to other non-governmental entities, however. What about them? This is a more complicated problem. But the regulatory aim has to be to decrease the chance of civilian violence by anyone who was not properly under the jurisdiction of criminal law, whether that of the US, the military, or the host nation.

Where does this leave security firms? What can they do? If NGOs want to use them, then they can use international bodyguards. Those bodyguards will have to be subject to the laws of the states in which they operate, or can be tried in the contracting firm's home country for crimes they commit abroad. If CEOs want to have bodyguards, then they would have to abide by the same rules. Each embassy in each country would be in charge of knowing exactly who is carrying what kinds of weapons, and for whom. There should be consular offices charged with investigating anything amiss. The contractors, along with individual contract employees, will have to be licensed.

A more pragmatic solution

If it turns out that PMSCs are here to stay, and governments will continue to use them, there still must be a strict licensing regime for both the firm and the private security contractor. Individual contractors would have to become part of a profession, like a plumber, a securities trader, a doctor, or an engineer. Individual contractors would get relicensed every year, in order to be allowed to work as international security guards. There would have to be reporting mechanisms available for watchdog groups (many of whom, like Human Rights First, already track contractor activity), and a citizens' rights group. In the same way that police forces are policed by citizens as well as the state, citizens in the states where contractors were deployed would have to have access to ombudsmen, complaint bureaus, or even just video cameras (the NGO Witness.org provides cameras to people and helps them download footage of abuse). The actions of individual contractors would be compiled and would affect the rating of the PMSC as a whole, which would also have to have yearly license renewals. In other words, there would need to be a strict oversight apparatus available on the ground (not back in Washington) in order to receive accurate information from frontier-like environments.

The creation of a specific profession of "international security guard" would re-embed the PMSC world back in the domestic private security world, rather than forward into a military operations world. Anyone who worked abroad as an armed security provider would be characterized as a bodyguard, rather than a military auxiliary. Hopefully this would be combined with a reassertion of military forces (including National Guard) in the tasks like convoy security that are sometimes subcontracted to a PMSC.

   This pragmatic solution would attempt to re-brand PMSCs as a more global version of the domestic security guard, and embed the contractors themselves in a new international profession. The caveat would be the need for strict, regular licensing requirements, including perhaps continuing education credits, licensing exams, memberships in professional organizations, and other badges of a recognized profession. The most professional force with the best ratings would also, it is assumed, get the best contracts.

The worst-case scenario

The current status quo represents the worst-case scenario. PMSCs are flourishing on all fronts; even Blackwater, under its strange new name, Xe, has just secured a renewed contract to guard State Department employees. Clearly confident, they recently hosted a tour group from a conservative Catholic college at their Moyock, North Carolina, facilities. We are kidding ourselves if we believe that allowing many hands to regulate an already shady industry (one that is sometimes justified as a necessary dirty business) will ever result in any real reforms. Hearings can take place, shock can be expressed, calls for reform can be made, and change will languish in order for business to continue as usual. There may be very good reasons for the world of PMSCs to have grown and flourished in the last decade. That growth might reasonably be called an experiment whose results we are now being called in to evaluate. As with other experiments with allowing the market to compete with the state for provision of essential services without close public regulation, there is a need for assessment and reform. The status quo solution is tantamount to admitting that the abuses that have occurred are acceptable prices to pay in return for private profits and the governmental abdication of public responsibility.

Appendices

Appendix A

NEW ORLEANS SECURITY OPPORTUNITIES: Blackwater USA has an immediate need for Security Professionals for the New Orleans area. Interested candidates must posses [sic] the following:

- Current Law Enforcement Officer (if not current, must have maintained credentials and been separated or retired within the last two years.)
- At least four years Military Experience with duties involving carrying a weapon.
- Ability to commit to a 30 day contract.
- There are visible, physical standard requirements, must be in excellent health, Height and Weight proportionate and readily able to pass a physical training standard.

This opportunity is for immediate deployment. Earning potential up to $9,000 a month. Interested, qualified candidates, contact Blackwater at 252–435–2488 ext 360 and forward resume to bwkatrina@blackwatersecurity.com

From *Blackwater Tactical Weekly*, September 28, 2005.

Appendix B: a sample contractor code of conduct

SCHEDULE B – CODE OF ETHICS
X-Company members pledge in writing to abide by the Company's Code of Ethics. Their adherence to the Code signifies voluntary assumption of self-discipline above the requirements of law. Key provisions of the Code specify that X-Company Employees and Independent Contractors shall:

Discipline
- Show high levels of self discipline at all times while both on and off duty.
- Not use alcohol while on duty and not over indulge in alcohol while off duty such that it will affect their performance on duty the following day.
- Not use any illegal, narcotic or non-prescribed drugs at any time nor refuse

a drug test for the purpose of detecting them. Any breach of this code will be grounds for automatic dismissal.

- Not take any flagrant or undue risks in the performance of their duties nor at any time expose themselves unnecessarily to undue danger. This includes, when operating in hostile environments, minimizing movement for mission only or authorized purposes.
- Adhere to all published and promulgated Standard Operating Procedures and Drills.
- Conduct all operations within the bounds of legality, morality and professional ethics.
- Respect the rights and freedoms of all people and not harass any person on any grounds of sex, race, religion or creed.

Clients

- Conduct operations professionally with honesty, sincerity, integrity, fidelity, morality and good conscience in all dealings with clients.
- Serve our clients with integrity, competence, and objectivity, using a professional approach at all times, and placing the best interests of the client above all others.
- Treat all client information that is not public knowledge as confidential, will prevent it from access by unauthorized people, and will not take advantage of proprietary or privileged information, either for use by them, their firm or another client, without the client's permission.
- Shall avoid conflicts of interest, or the appearance of such, and will disclose to a client any circumstances or interests that might influence their judgment and objectivity.
- Refrain from inviting an employee of an active or inactive client to consider alternative employment without the prior discussion with the client.
- Preserve forever the client's confidence under any and all circumstances consistent with law and deal justly and impartially with each situation with each individual, irrespective of social, political, racial, ethnic, or religious considerations, economic status or physical characteristics.
- Counsel clients against any illegal or unethical course of action.

Engagements

- Only accept assignments which they possess the expertise to perform, and will only assign staff with the requisite expertise.
- Withdraw from a job or assignment when their objectivity or integrity may be impaired.

Profession

- Respect the individual and corporate rights of clients and consulting colleagues, and will not use proprietary information or methodologies without permission.

- Represent the organization with integrity and professionalism in their relation with their clients, colleagues and the general public.
- Support to the best of ability the professionalism of Private Security Companies operating in Iraq; to contribute to better community relations; through work and deed to elevate the status of the Private Security Company profession.

Appendix C

1 Sandline International

Years of operation: early 1990s–2004,[1] though it was officially founded in 1997[2]
Founded by: Offshoot of Executive Outcomes in the post-Apartheid era[3]
Based in: London, UK and Washington, DC
Contract areas of operation: Papua New Guinea, Sierra Leone
Contracting entities: US Department of Defense; internationally recognized governments (preferably democratically elected), international institutions such as the United Nations, and internationally recognized and supported liberation movements.[4]

2 Blue Sky Group International[5]

Years of operation: 2001–2004
Founded by: Ashley Truluck, former UK military
Based in: Salisbury, United Kingdom (near Hereford military base) and Washington, DC
Contract areas of operation: The Balkans, Afghanistan, Pakistan, Uganda, Sudan, Sierra Leone, Guinea, Rwanda, the Democratic Republic of Congo, Angola, Indonesia (Aceh), Thailand, Turkey, and the West Bank[6]
Contracting entities: Humanitarian organizations and NGOs worldwide, United Nations and other relief organizations in post-conflict zones[7]

3 Blackwater Worldwide/Xe[8]

Years of operation: 1997–present
Founded by: Erik Prince, former Navy SEAL
Based in: Moyock, North Carolina
Contract areas of operation: Iraq, Afghanistan, Persian Gulf region, Japan, Philippines, Azerbaijan, Jordan, Hurricane Katrina Relief Operations, Africa[9]
Contracting entities: United States Department of State, various local police departments and foreign governments[10]
Financed by: Self-funded by Erik Prince after the sale of his family business ($1.35 billion)[11]
Offshore entity: Greystone, Ltd.

4 Custer Battles at a glance[12]

Years of operation: 2001–2006
Founded by: Scott Custer, former US Army Officer and Michael Battles, former CIA officer
Based in: McLean, Virginia
Contract areas of operation: Iraq, United States, Fiji
Contracting entities:[13] Fortune 500 companies, non-profits and humanitarian groups, United Nations, the United States
Offshore entity: "Shell" companies in the Cayman Islands[14]

5 Dyncorp International at a glance[15]

Years of operation: 1946–present
Founded by: Product of a merger between Land-Air, Inc. and California Eastern Airway
Based in: Reston, Virginia
Contract areas of operation: Afghanistan, Bosnia, Colombia, Haiti, Iraq, Lebanon, US–Mexico border
Contracting entities: The Departments of Defense, State, Energy, and Justice; BAE Systems, DuPont, General Dynamics, and Raytheon
Financed by: Acquired by Computer Sciences Corporation in 2003
Revenue:[16] $2,113.7 million

6 Triple Canopy at a glance[17]

Years of operation: 2003–present
Founded by: Matt Mann, Tom Katis, former Special Operations Forces
Based in: Chicago and Washington, DC, USA
Contract areas of operation: Iraq, Afghanistan, Nigeria, United Arab Emirates, United States
Contracting entities: US Department of State, Joint Contracting Command (Baghdad)[18]
Revenues: $260 million[19]

7 ArmorGroup International at a glance[20]

Years of operation: Defense Systems Limited (previously): 1981–1997; Armor-Holdings: 1997–2003; ArmorGroup: 2003–present
Founded by:[21] Buy-out of Defense Systems Limited (founded in 1981) by Armor Holdings in 1997, and later buy out of ArmorGroup by private investors in 2003
Based in: London, UK and McClean, Virginia
Contract areas of operation:[22] *Africa:* Algeria, Sudan, Nigeria, Namibia, Uganda, Kenya, Tanzania, Algeria and the Democratic Republic of Congo; *Eurasia:* Japan, Laos, Azerbaijan, Kazakhstan, Russia; *Middle East:* Afghanistan, Iraq, Lebanon, Bahrain, Saudi Arabia, Kuwait, Jordan, UAE; *Americas:* Colombia, Ecuador, Venezuela, United States
Contracting entities: British Petroleum, Bechtel, United Nations, US Department of State
Financed by (current): Publicly held company since 1997, with investors from Granville Baird Capital Partners and Barclays International

Notes

Introduction

1 Private interview, January 26, 2004.
2 For a small sample see Zarate 1998; International Consortium of Investigative Journalists 2002; Wayne 2002; Burton-Rose and Madsen 1999; Schwartz 2003; Sellars 1997; O'Brien 2002.

1 The complex identity of the PMSC

1 The official title of the committee is the "Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination," a typical lengthy UN title which nevertheless highlights a new focus against the use of contractors: they are generally foreign born, non-native security actors.
2 For more on this debate, see also Avant 2005; Berkowitz 2004; Chesterman and Lehnardt 2007; Brayton 2002; Brooks 2000; O'Brien 2000; Isenberg 1999.
3 Scholars have long been fascinated with the role of these auxiliary forces in the Roman military, and their relationship with the other forces throughout the long history of the early Roman republic and later empire. Auxiliaries began as a way of consolidating power over populations and groups defeated by the Romans, and absorbing their own fighting forces into the formal structure of the central military. They were often led by Roman officers. Members were offered Roman citizenship after 25 years of service, with the benefits that came with this (Whitby 2007; Cagniart 2007).
4 This fact was not lost on the satirical newspaper *The Onion* which in 2004 published an article entitled "US to Send 30,000 Mall Security Guards to Iraq" (available at www.theonion.com/content/node/30776).
5 Interviews with Mark Whyte, Eric Westropp, Christopher Beese, London, March 2006.
6 Interview with Christopher Beese, London, January 2004.
7 Interview with Andres Kreusi, ICRC official, Chicago, May 2006.
8 Interview with Christopher Beese, January 2004.
9 See repeated comments by, among others, Doug Brooks of International Peace Operations Association. For instance: "We welcome the shift in academic literature on the Peace and Stability Industry …" in the IPOA newsletter. Similar comments have been made at every conference on the subject with a representative from the industry. My personal favorite appeared on the list-serve: one writer passed along the following question: "What, if anything, have the PMSCs learned from all the academic research that has been done on [them]?" An instant response appeared: "You could put all the academic research on PMSCs in a shotglass and still have room for a decent drink" (January 2, 2007).

10 This is a quote from the Supreme Court decision *Schlesinger* v. *Councilman*, 420 U.S. 738 at 757 (1975).
11 On this issue, see for instance, Castillo 2000; Fortner 2003; Guillory 2001; Turner and Norton 2001; Smith 2002; Hedahl 2007; Spearin 2004.
12 On this broad topic, see especially van der Pijl *et al.* 2004.
13 Conversation with Christopher Coker, London School of Economics, March 2006.
14 Interview with Andrew Bearpark, Bath, UK, March 2006.
15 See, for instance, the list of NGOs currently operating in Afghanistan, which number over 100. For a good database, see Bleuer 2009.
16 Artis has been the subject of two documentary films (Belic 2006). He received attention after he was linked to a notorious impersonator, Keith Idema, who claimed he was a CIA contractor and erstwhile journalist, and ultimately ran his own private prison in Afghanistan. In 2004 he was arrested in Kabul and put on trial. He had detained and tortured several Afghanis in his one-man effort to "hunt for Bin Laden."
17 Included on the Knightsbridge International website, in the midst of reports of relief efforts worldwide, is the Oath that members take in order to act in the true spirit of the order. The website notes that

> The following oath was translated from Medieval Latin and is found on the tomb of a knight of Malta in northwestern France. It dates from 1560 AD: *I do solemnly swear by Almighty God and His Name, and in free and voluntary desire, to serve as a Knight of Malta of the most holy Order of Saint John of Jerusalem. I do swear by the Eternal Power of the Trinity, to be both a true and chivalric Knight, to obey my Commanders and to aid my brethren. I also swear by all that is holy and dear unto me, to aid those less fortunate than I, to relieve the distress of the world and to fulfill my knightly obligations. This oath do I give of my own free and independent will, so help me God! Amen!*
>
> (Artis 2009)

2 The multifaceted origins of the PMSC industry

1 Interview with Major John Binder, San Diego, March 2006.
2 One interesting caveat surfaced in a wide ranging interview with the Marine who had overseen the Vinnell contract: while Vinnell may offer training in battlefield maneuvers, human resources, organizational structure, and command and control, they never address issues having to do with capture, detention, or interrogation: "that is a task saved for the Saudi Arabian Interior Ministry" (interview, San Diego, March 2006).
3 Interview with Michael Grunberg, Former CFO of Sandline, London, March 2006.
4 Interview with Captain Robert Schoultz, November 2002, Norwich University, Vermont.

3 Contracting and danger in the risk society

1 Interview with Eric Westropp, CRG Managing Director, London, March 2006.
2 Interview with Eric Westropp, CRG Managing Director, London, March 2006.
3 Interview with Christopher Beese, Chief Administrative Officer, ArmorGroup London 2005.
4 Interview with Iain Donald, analyst for AKE, London 2006.
5 Comment made to Haseeb Humayoon in Kabul, Afghanistan, July 2007.
6 For a compelling example of how pervasive this trend is, see the beginning of John Adams' book *Risk* (1995), where he lists the number of articles in one day's newspaper that concern risks: from the national news to world news, from the business pages to the health pages to the "living" sections.

7 Financier George Soros described life in as a world in which "hope … made me feel insecure. By contrast worrying made me feel safe" (cited in Ericson and Doyle (2004)).

8 For one example of this, see a popular PMSC website: Danger Zone Jobs, at www. dangerzonejobs.com.

9 John Johnson, in Whitehead (2005).

10 On this incident and the suit, see Waterman (2005); Neff and Price (2005); Hansen (2005).

11 See Waterman (2005); Neff and Price (2005); Hansen (2005).

12 On this incident, see among other accounts, White and Witte (2005). See also a four-part special that aired on Fox News Network, July 1, 2005: "Contractor Shadow Army Adds to Iraq Stress."

13 Hammes, Thomas X., quoted at conference *Contractors on the Battlefield: Learning from the Experience in Iraq*, George Washington University, January 2005.

14 It is hard to get an accurate picture of how many private contractors have died in Iraq and Afghanistan. There is no central database that tracks casualties, and numbers posted are presently gathered by means of monitoring claims made at the Department of Labor (see Miller (2009); Debusmann (2009); Department of Labor (2009); icausalties.org (2009). The current number of contractors who have been killed on the job numbers over 1,680 killed and 37,000 injured, in Iraq and Afghanistan, according to a websites devoted tracking them. This rate of death is actually in proportion to the number of military deaths.

15 To give a simple example, one former British soldier contrasted the typical British uniform during the operations in Sierra Leone with that of the United Nations troops:

> British soldiers wore a soft beret, and drove in open jeeps. When they interacted with civilians they removed caps and sunglasses, and laid their weapons on the hood of the jeep before walking forward to greet people. The UN, in the same (low-level threat) environment, sped through town at high speeds in their white armored vehicles, ensconced in safety.
>
> (Interview with Eric Westropp, London, March 2006)

16 The issue of political and operational control is the main focus of Avant's book (2005).

4 PMSCs and the clash of legal cultures

1 See especially US House of Representatives (2007); Human Rights First (2008).

2 Hodge (2006a); Myers (2005a); Lawson (2001); Singer (2004); Bicanic and Bourque (2006); Barstow (2004).

3 Interview with Andrew Bearpark, Bath, UK, March 2006.

4 The signatory states were: Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the UK, Ukraine, and the USA.

5 As Doug Brooks, head of the industry group IPOA, often quips: "Anyone who cannot find a way out of this law deserves to be shot, and his lawyer with him."

6 See for instance Cilliers (2003); Clarno and Vally (2005); Inskeep (2005); Taljaard (2004); Pech and Beresford (1997); Bell and Pantland (1997).

7 The biography available on the BAE Systems news release makes his wide-ranging post-military career even more explicit:

> General Tony Zinni (USMC ret.) was formerly Commander-in-Chief, U.S. Central Command and he also recently served as the United States Special Envoy to the Middle East. Tony Zinni has held positions on several boards of directors and as an advisor to major companies in the fields of government services, manufacturing, telecommunications, electronics, hospitality and hotels, defense industries, software development, financial services, shipbuilding, mining, and capital

investment. He has also served as the Executive Vice President of an international government services company DynCorp International and as President of International Operations for M.I.C. Industries, Inc.

(BAE Systems Inc. 2009)

8 Interview with Anthony Zinni, Alexandria, Virginia, February 2003.
9 Interview with Austin Yamada, Washington, DC, January 2003.
10 See, for instance, IPOA's "Principles of Conduct": "Signatories involved in armed operations will follow all relevant international protocols and conventions such as, but not exclusively, the Geneva Convention[sic] and the 1979 Protocol on the use of Toxic and Chemical Weapons." This statement is rather vague; to which Geneva Convention of the four do they refer? See www.ipoa.org.
11 Montesquieu *et al.* (1989) and Sandra Day O'Connor (2003).
12 Here, the vast amount of scholarship on the principal–agent theory is useful, as the contract usually has to specify the relationship between a principal – the person who wants something done – and the agent – the one performing the deed (see especially Cockayne 2007).

5 Frontier ethics with a cosmopolitan goal

1 Interview with Ashley Truluck, founding member of Blue Sky Group, and James Grimshaw, Salisbury, UK, January 2004.
2 Personal email from Ashley Truluck, February 2005.
3 Anthony Giddens describes the contemporary romantic world as one that is made up of these "couplings and uncouplings" (Giddens 2000).
4 Including prostitution, as the title of his essay indicates. Baker asks what the relevant analogy is between mercenaries and prostitutes. He argues that both professions carry an undercurrent of another relationship that has been violated: the prostitute has violated the presumed exclusivity of the marital relationship between a man and a woman, and the mercenary (the "whore of war") has violated the presumed exclusivity of the location of force in the state with respect to its citizens. But if the citizen has a right to self-defense (or sexual satisfaction), on a small scale or a large, national scale, why can't they contract with someone to provide for that right?
5 See, for instance, Berkowitz (2003), Clark (2001), Dao (2001), Dao and Revkin (2002), Der Derian (2001), Dunlap (1999), Fulgham (1997), Gray (1997), McNeill (1984), Record (2002), Sapolsky and Shapiro (1996), Scales (1998).
6 On this, see especially the well-regarded study on the distance between civilian and military cultures: Triangle Institute for Security Studies (2002).
7 Wax Satava (2003). This is a contracting ad, and was put out by the same agency that former Admiral Poindexter worked for, and for whom he developed the idea of trading futures on terrorist attacks. Here, a holographic "virtual soldier" will be created onto which individual soldier's data can be mapped, thereby adding a new level of "integration" to battlefield medical care. "This virtual soldier will be based upon a highly complex model that uses biologically driven principles and is populated [sic?] with properties that are extracted from evidence-based data."
8 See especially Gray (1997).
9 Ignatieff (2000: 191).

War thus becomes virtual, not simply because it appears to take place on a screen but because it enlists societies only in virtual ways. Due to nuclear weapons, it is no longer a struggle for national survival; with the end of conscription, it no longer requires the actual participation of citizens; because of the bypassing of representative institutions, it no longer requires democratic consent; and as a result of the exponential growth of the modern economy, it no longer draws on the entire economic system. These conditions transform war into something like a spectator

sport. As with sports, nothing is at stake; neither national survival, nor the fate of the economy. War affords the pleasures of a spectacle, with the added thrill that it is real for someone, but not, happily, for the spectator.

10 On this, see especially Michael Walzer's well-regarded argument in Walzer (2000: 41–45).
11 Ignatieff (2000: 197, 201).
12 Der Derian (2000).
13 Der Derian (2000: 211). The qualities that make Machiavellian *virtu* both flexible and strong, able to animate the political actor and yet change according to circumstances, are extremely significant here.
14 For just a sample of writings on the effects of precision-guided missiles on the conduct of war, see: Arkin (2000), Blackwelder (1993), Butler (2002), Chang (2001), Dao (2001), Schmitt and Dao (2001).

Appendices

 1 Singer (2003: 13, 88).
 2 Spicer-Obe (1999: 18).
 3 Pelton (2006: 265–283).
 4 Sandline International website, www.sandline.com.
 5 Blue Sky Group International website, unless otherwise noted: www.bsgfoundation. org.
 6 Blue Sky: *Ethical Security Consulting* publication.
 7 Blue Sky: *Ethical Security Consulting* publication.
 8 All information from Blackwater USA website, unless otherwise noted: www.black-waterusa.com.
 9 Source Watch: www.sourcewatch.org/index.php?title=Blackwater_USA.
10 Dao (2004).
11 Scahill (2007: 26–27).
12 Source Watch, unless otherwise noted: www.sourcewatch.org/index.php?title= Custer_Battles.
13 Custer Battles website: www.custerbattles.com.
14 Phinney (2004).
15 All information from DynCorp International website: www.dyn-intl.com.
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17 Triple Canopy website, unless otherwise noted: www.triplecanopy.com.
18 *Defense Industry Daily* (August 22, 2007). Available: www.defenseindustrydaily. com/triple-canopys200708-iraq-security-contracts-03611/.
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