

# BLUE HELMET: ACCOUNTABILITY AND USE OF PRIVATE SECURITY COMPANIES IN UNITED NATIONS PEACE ENFORCEMENT OPERATIONS



BY  
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A THESIS PRESENTED IN PARTIAL COMPLETION OF THE REQUIREMENTS OF  
The Certificate-of-Training in United Nations Peace Support Operations



Peace Operations Training Institute®

"Blue Helmet"  
Accountability and Use of Private Security Companies in United Nations Peace Enforcement  
Operations

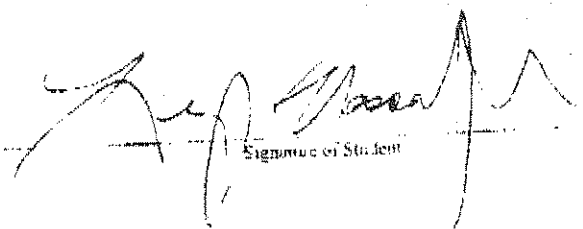
A Thesis

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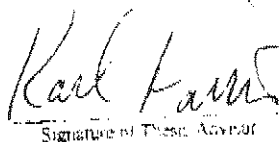
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# “Blue Helmet”

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## Accountability and the Use of Private Security Companies in United Nations Peace Enforcement Operations

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January 15, 2010

*But always in our ears ring the ominous words of Plato, that wisest of all philosophers:*

*"Only the dead have seen the end of war."*

**General Douglas MacArthur, United States Army  
Commander of United Nations Forces in Korea, 1950-1951**

**Excerpt from ‘Final Roll Call’ Speech  
United States Military Academy at West Point**

**May 12, 1962**

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## ABSTRACT

The deployment of private security companies in United Nations peace enforcement operations is both a reality and a necessity.

In a deconstructed world where belligerents often fight in a borderless and complex operational environment without respect to conventions or rules of engagement, member states of the United Nations are confronted with a simple choice. They can either abdicate their responsibilities to actively mitigate strife under Chapter VII, Article 42 of the U.N. Charter, or meet them by augmenting their under-funded and over-burdened peacekeeping forces with private security companies (PSCs). The only remaining question of consequence in such actions is the accountability of those companies deployed to “maintain or restore international peace and security.”

In *principle*, the foundation of all peacekeeping and peace enforcement operations rest on three pillars:<sup>1</sup>

- 1) consent of main parties to the conflict to the presence of the peacekeepers
- 2) impartial discharge of duties by all military and civilian staff in mission
- 3) non-use of force except in self-defense and defense of the mandate

In *practice*, where consent is not possible, compliance with international humanitarian law is essential when applying force. In contrast to conventional warfighting doctrine, peace enforcement aims to “influence and deter spoilers working against the peace process or seeking to harm civilians.”<sup>2</sup> Deterrence, and not defeat, is the military objective.

This thesis will argue that the only sensible course to attain effective mission command and control of private security companies in peace enforcement operations is through management initiatives that involve the development of a United Nations “Blue Helmet” database. The database will register, rate, and recommend or ban companies as well as individuals from future contracts based on past performance. Let market forces, driven by performance and demand, do what well-intended conferences and self-imposed codes have been unable to do: credibly and systematically apply a measure of accountability across an industry with estimated annual revenues of at least \$20 billion and rising.

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<sup>1</sup>United Nations Peacekeeping Operations 2008, *The Basic Principles of United Nations Peacekeeping*, Chapter 3, pp. 31-35

<sup>2</sup> Ibid., p. 35

## HOW MANY?

In the wider regulatory debates on the use of private security companies in zones of conflict, it is particularly striking that neither industry representatives nor their critics seem able to provide a reliable estimate of membership worldwide. Without an accurate count, such discourse is inevitably limited in scope. What is the value of industry acquiescence to rules governing the use of force if the extent of their impact cannot be meaningfully measured?

Of particular note is the current situation in Afghanistan, where the U.S. Department of Defense conducted a manual count in June 2009 that identified almost 74,000 U.S. contractors in country.<sup>3</sup> This estimate, which does not distinguish between U.S. nationals and local nationals, is reportedly “double the number shown in another survey by the Pentagon.”<sup>4</sup>

In November 2009, the U.S. Commission on Wartime Contracting in Iraq and Afghanistan convened hearings focusing on select issues, including the counting of contractors.<sup>5</sup> It is almost incomprehensible that the most powerful military in history seems challenged to conduct an accurate census of private security companies now engaged in the Afghanistan theater.

It is also clear that you can only regulate what is known, not unknown. Absent a coordinated, global effort to track and register PSCs, even the most rigorous laws will not necessarily yield an acceptable level of accountability in theaters or U.N. missions.

## I. THE PROBLEM OF COMMAND AND CONTROL: IN THEATER

### A. Status of Forces Agreement (SOFA)

A Status of Forces Agreement (SOFA) is a bilateral or multilateral treaty that defines the terms for basing military forces in a host country. In the universe of the UN, the treaty, which is often referred to as a Status of Mission Agreement (SOMA), addresses the operational as well personnel aspects of a mission.<sup>6</sup> A SOFA further affirms the international and impartial nature of the action.<sup>7</sup> It presumes that a host nation is largely functional and maintains an administrative and judicial structure that is both legitimate and effective.

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<sup>3</sup> Reuters.com, *Still No Count of US Contractors in Afghanistan*, November 2, 2009

<sup>4</sup> Ibid.

<sup>5</sup> Wartimecontracting.gov website, *Wartime Contracting Hearing to Probe Three Accountability Issues in Iraq and Afghanistan*, October 27, 2009

<sup>6</sup> Comprehensive Review of the Whole Question of Peace-Keeping Operations in All Their Aspects, *Model Status-of-Forces Agreement for Peace Keeping Operations*, United Nations General Assembly, Forth-fifth session, Agenda item 76, October 9, 1990

<sup>7</sup> Ibid.

Logic, however, dictates that any nation at war from within or without is far from functional. A compromised and degraded judiciary could create conditions where a previously-negotiated SOFA is capriciously applied, or perhaps not applied at all.

When a nation-state fails, command and control of personnel is severely tested.

From a contractor’s perspective, conduct and attendant accountability is ultimately allied with their employer.

Unlike the U.S. military, which maintains its own judicial structure, private security companies do not have a similar mechanism for personnel in theater.

In a scenario where a host nation drifts into full civil war, contractors should be considered an ‘at risk’ population in terms of command, control and operational capacity.

## **B. Hard Lessons in Iraq**

Even in mature theaters where there is a robust military presence, private security companies have endured losses.

In Iraq, more than 1,000 contractors have been killed and another 13,000 wounded since the start of hostilities in March 2003.<sup>8</sup>

The high casualty rate underscores the push of PSCs in the early days of the war to capture a significant share of the “Iraqi market.” Though ill-prepared for the intensity and insurgent character of the conflict, major firms such as KBR, which has lost at least 100 employees in the war<sup>9</sup>, Triple Canopy, and Blackwater (now doing business as Xe Services), were not dissuaded from chasing United States Department of Defense contracts valued at over \$100 billion to date.<sup>10</sup>

Company casualties also reveal operational deficiencies in a number of critical areas beyond command and control, including:<sup>11</sup>

- absence of uniform standards for vetting employees
- undefined legal position/standing while in country
- limited visibility of personnel and their contractual activities

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<sup>8</sup> The American Lawyer, *5<sup>th</sup> Circuit to Weigh Jurisdiction Over Contractors in Iraq*, January 29, 2008

<sup>9</sup> Ibid.

<sup>10</sup> Congressional Research Service, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, Moshe Schwartz, Specialist in Defense Acquisition, September 21, 2009

<sup>11</sup> Colonel Karl Farris, US Army (retired); Thesis Advisor, Peace Operations Training Institute, Williamsburg, VA



Though anecdotal, the following incidents are cautionary reminders that there is no margin for error in any mission where the credibility of the United Nations, however fragile, may be at stake.

## 1. Triple Canopy

In July 2006, two employees of the U.S. firm, Triple Canopy, watched as their supervisor fired multiple rounds randomly into two civilian vehicles while en route to Baghdad International Airport.<sup>12</sup> One of the employees, Shane Schmidt, a former U.S. Marine, reported the incident to management and was subsequently terminated from employment along with his colleague and the supervisor in question.<sup>13</sup> Mr. Schmidt claimed his termination was retaliatory while the firm contended its action was appropriate based on his two-day delay in filing a report on the incident—a point he did not dispute.<sup>14</sup> Mr. Schmidt won an appeal in the Virginia Supreme Court in 2008 reversing the prior decision of a trial court that upheld Triple Canopy’s initial action.<sup>15</sup> Though the case is still active, Mr. Schmidt’s recall of his supervisor’s boast that he was “going to kill someone today” is as uncontested as it is chilling.<sup>16</sup>

## 2. Blackwater USA

The bloodiest incident in the Iraqi theater involving a private security company is the shootings in Baghdad’s Nisour Square that left seventeen civilians dead and dozens more injured.<sup>17</sup> On September 17, 2007, a security detail staffed by Blackwater USA (now known as Xe Services) claimed to have returned fire after having encountered hostile contact. A subsequent investigation by American and Iraqi authorities concluded that the shootings in the square were unprovoked and indiscriminate.

In the months following the incident in Nisour Square, Blackwater executives responded by reportedly “authorizing secret payments of about \$1 million to Iraqi officials that were intended to silence their criticism and buy their support.”<sup>18</sup>

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<sup>12</sup> MSNBC.com, *Did American Fire on Iraqis for Sport?* Lisa Myers and Aram Roston, NBC News Investigative Unit, December 22, 2006

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Decision of the Supreme Court of Virginia, *Shane Schmidt et al., Appellants v. Triple Canopy, Inc., Appellee*, Record No. 072556, Circuit Court No. CL-2006-0009565, December 12, 2008

<sup>16</sup> Harpers.org, *A Decision in the Triple Canopy Case*, Scott Horton, August 3, 2007

<sup>17</sup> The New York Times, *Blackwater Said to Approve Iraqi Payoffs After Shootings*, November 11, 2009

<sup>18</sup> Ibid.

In an exceptional move, the U.S. Department of Justice elected to pursue a criminal case against four of the firm’s guards, charging them with 14 counts of manslaughter.<sup>19</sup> But on December 31, 2009, a Federal District Court Judge in Washington, D.C. dismissed all charges, noting that the prosecution’s case was based on sworn statements obtained from the guards “under the promise of immunity.”<sup>20</sup> Less than two weeks after the ruling, “16 of the 17 families of the dead agreed to \$100,000 lawsuit settlements.”<sup>21</sup>

Other charges leveled against the firm over the past few years have included a series of U.S. civil suits brought by “alleged Iraqi victims” who argued that Blackwater employees engaged in reckless, lawless behavior that resulted in random killings and beatings.<sup>22</sup>

Equally disturbing was a recent report in the *New York Times* quoting “former and current US officials” who claimed that the US Central Intelligence Agency “outsourced part of a secret program to track and assassinate al-Qaeda leaders to Blackwater.”<sup>23</sup> Under the terms of the program, which was “cancelled before any missions were conducted,” the firm was to have provided requisite planning, training, and surveillance.<sup>24</sup>

By the end of 2008, the Iraqi government finally chose not to renew Blackwater’s operating license, effectively ending the firm’s six-year presence in their country.<sup>25</sup>

### 3. ArmorGroup

In August 2009, Mr. Daniel Fitzsimons, a former paratrooper in the British military and an employee of the UK firm, ArmorGroup, confessed to the shooting deaths of two colleagues during a drunken brawl in the International Zone (formerly the Green Zone).<sup>26</sup> Mr. Fitzsimons, who stands charged with capital murder under Iraqi law, has since petitioned the court for a psychiatric evaluation in an apparent attempt to have the charge reduced or even dismissed.<sup>27</sup> In a recent interview with the *Guardian* newspaper, he claimed to have no memory of the shooting, arguing that he “was under the influence of the drugs they [the Iraqi investigators] gave me at the time.”<sup>28</sup>

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<sup>19</sup> The Washington Post, *US to Drop Shooting Case Against Blackwater Guard*, November 21, 2009

<sup>20</sup> The New York Times, *Iraqis Angered as Blackwater Charges are Dropped*, January 2, 2010

<sup>21</sup> CNN.com, *Most families in [Nisour] Square killings join Blackwater settlement*, January 10, 2010

<sup>22</sup> Associated Press, *Judge Tosses Lawsuits Against Blackwater, Now Xe*, November 3, 2009

<sup>23</sup> The Financial Times, *CIA Hired Blackwater for Killings Claims Report*, August 21, 2009

<sup>24</sup> Ibid.

<sup>25</sup> The Washington Post, *Iraq to Deny New License to Blackwater Security Firm*, January 29, 2009

<sup>26</sup> The Guardian, via Privatemilitaryherald.com, *Murder Charge Briton Daniel Fitzsimons May Face Psychiatric Tests*, November 3, 2009

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

### C. Local Nationals

It is difficult enough for private security companies to exert effective command and control among direct-hire personnel. The existing challenges are magnified when PSCs outsource their services to local nationals.

In Afghanistan, for example, “most contractors—and most contractor casualties—are local nationals earning local market wages.”<sup>29</sup>

At first glance, hiring locals is a rational course. Locals know the language(s), cultural terrain, and key actors in the conflict. They also presumably have a vested interest in a successful outcome. But these same attributes that make sense on paper may become liabilities in the field when locals do not fully embrace the mission objectives or best practices of their employer.

This past fall, Virginia-based DynCorp International had outsourced a contract to the Pakistani security firm, Inter-Risk, for services in support of U.S. consular interests in the North-West Frontier Province (NWFP) of the country.<sup>30</sup> Inter-Risk, which had previously been banned by government authorities in Islamabad for possession of unlicensed weaponry, now stands accused by the NWFP Inspector General of Police for its involvement in “illegal activities” in the province.<sup>31</sup> Although the precise nature of the accusations is unknown, the company’s troubles reflect a wider, ongoing concern over sub-contractor control by private security firms.

Of more immediate interest is the current U.N. mission to the Democratic Republic of the Congo (MONUC), where enforcement operations have been outsourced to the Congolese army since 2006. The army’s efforts to suppress well-funded insurgencies in the east, comprised largely of Rwandan war criminals and profiteers seeking control of the country’s vast gold, timber, and cassiterite reserves, is an unmitigated disaster that will likely diminish the perceived capacity and effectiveness of the United Nations to make and keep the peace.<sup>32</sup>

Equally tragic are the recent actions of Congolese army units that are believed to have “killed more than 60 civilians” in the eastern Congo between May and September of 2009.<sup>33</sup> The U.N. has since suspended its logistical and operational support to those units “implicated in these killings.”<sup>34</sup>

<sup>29</sup> PMCS Yahoo Discussion Group; Comment by Doug Brooks, President of the International Peace Operations Association (IPOA), on September 18, 2009 in reply to New York Times column by Bernd Debusmann on *Undercounting deaths in Iraq, Afghanistan*, September 10, 2009

<sup>30</sup> The Washington Times, *U.S. security firm’s Pakistan role questioned*, October 7, 2009

<sup>31</sup> Pakistan Observer, *Dyne Corps not Blackwater working in NWFP*, October 30, 2009

<sup>32</sup> Time.com, *U.N. Report: From Bad to Worse in War-Torn Congo*, November 27, 2009

<sup>33</sup> Reuters, *U.N. Suspends Support to Congo Army Units in East*, November 2, 2009

<sup>34</sup> Ibid.

## D. Summary

Despite the absence of industry-wide incident data, the available evidence and chatter on e-group sites, including the *Anonymous Mercenary and Private Military (AMPM)* mailing list, suggests that private security companies do not have the requisite internal provisions necessary for the effective in-theater command and control of personnel.<sup>35</sup>

## II. THE PROBLEM OF COMMAND AND CONTROL: INSTITUTIONAL

### A. The International Criminal Court

The jurisdiction of the International Criminal Court applies only to those individuals who are nationals of a State Party to the Rome Statute, which established the Court in 1998.<sup>36</sup>

There are currently 110 countries that are States Parties to the Rome Statute. Glaringly absent from the mix are three of the five permanent members of the United Nations Security Council—China, Russia, and the United States.<sup>37</sup>

The court’s chief focus as a standing tribunal is to prosecute large-scale crimes against humanity, including those committed in times of war and mass terror (genocide).

The reported 139 complaints received since the court’s inception, have given rise to four investigations, resulting in arrest warrants for thirteen military and political leaders from the war-torn states of Uganda, Sudan/Darfur, Central African Republic, and the Democratic Republic of the Congo.<sup>38</sup> Eight of the accused are still at large and cannot be tried in absentia.<sup>39</sup> One of the eight is Sudanese President Omar al-Bashir, who was charged with genocide, war crimes, and crimes against humanity in March 2009.<sup>40</sup>

While the United Nations Security Council can refer alleged crimes committed under Chapter VII of the Charter to the court’s prosecutor, private security companies domiciled in the United

<sup>35</sup> The *Anonymous Mercenary and Private Military (AMPM) Mailing List* “provides news, articles, and announcements related to the international trade in private military services.” The site is managed by Mr. Doug Brooks, President of the International Peace Operations Association (IPOA)

<sup>36</sup> untreaty.un.org, *Rome Statute of the International Criminal Court*, July 17, 1998

<sup>37</sup> International Criminal Court website, *The State Parties to the Rome Statute page*

<sup>38</sup> International Criminal Court website, *Situations and Cases page*

<sup>39</sup> Ibid.

<sup>40</sup> International Criminal Court website, *ICC Prosecutor Presents Case Against Sudanese President, Hassan Ahmad AL Bashir, for Genocide, Crimes Against Humanity, and War Crimes in Darfur*, July 14, 2008

States would be immune from prosecution.<sup>41</sup> Even if this were not the case, it is unlikely the court would expend valuable resources in opening an investigation involving the criminal actions of a few civilian contractors.

## **B. The Montreux Document**

Released on September 17, 2008, the Montreux Document identifies the “pertinent legal obligations and good practices for States related to operations of private military and security companies (PMSCs) during armed conflict.”<sup>42</sup>

Driven by the Government of Switzerland and the International Committee of the Red Cross, it seeks to “clarify and reaffirm the law applicable to [PMSCs] and to develop recommendations to enhance State control over such entities.”<sup>43</sup>

During the drafting process, government representatives from seventeen U. N. member states, including the United States, offered their counsel and subsequent endorsement of the initiative.<sup>44</sup>

To this point, over thirty member states have pledged their support.<sup>45</sup>

Yet, when assessing the document’s full impact, it is uncertain what legal recourse might be available to victims of criminal acts committed by PMSC personnel. Montreux makes mention that redress for such acts would require national legislation by the contracting and territorial states consistent with their respective national legal systems.<sup>46</sup> This process alone could take years, perhaps decades before consensus is attained.

Another primary concern of Montreux was expressed by Mr. Doug Brooks, President of the U.S. based International Peace Operations Association, who observed that client states, “including governments and NGOs, overwhelmingly default to hire the lowest bidder, too often without even examining a company’s ethics or background.”<sup>47</sup> If his assessment is correct, then best practices for states, and the contractors they employ, may be a casualty of cost.

Although the consequences and penalties for contractor misconduct are unclear, the document’s actual value lies in its carefully crafted “good practices,” which provide a foundation for future initiatives where accountability is non-negotiable.

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<sup>41</sup> International Criminal Court website, *The State Parties to the Rome Statute*, article 13, section (b)

<sup>42</sup> Montreux Document, *Annex to letter from Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General*, September 17, 2008, p. 2

<sup>43</sup> International Committee of the Red Cross website, *The Geneva Conventions Today*, July 9, 2009

<sup>44</sup> Montreux Document, *Preface*, September 17, 2008, p. 5

<sup>45</sup> Journal of International Peace Operations, *Success at Montreux*, Doug Brooks, July-August, 2009, p. 6

<sup>46</sup> Montreux Document, *Preface*, September 17, 2008, pp. 16, 22

<sup>47</sup> Journal of International Peace Operations, *Success at Montreux*, Doug Brooks, July-August, 2009, p. 6

### C. Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies (Office of the United Nations High Commission for Human Rights)

After four years of investigation and study, the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination,” completed a final draft of its work on July 13, 2009.<sup>48</sup>

Operating under the auspices of the United Nations Commission on Human Rights, the group ascribes full “responsibility [to] states in the licensing, regulation, oversight, and accountability of PMSCs.”<sup>49</sup>

The Convention, which has rightly been characterized by one industry observer as a “document of principles rather than precise rules,” also creates an international committee that will help ensure compliance with its articles.<sup>50</sup>

At core, however, the Convention does not *compel* states to ratify the terms of participation. It may only ask them to *consider* ratification.<sup>51</sup>

Equally problematic is the presumption that contracting and territorial states who do elect to opt - in are inherently stable, and will remain so throughout a conflict. Unfortunately, the reality is that in today’s complex operational environment, where a dispute may erupt into a protracted, full-scale war, fueled by intense factionalism or sheer banditry, states can quickly become destabilized and lose their ability to maintain effective control of PMSCs in their charge.

As discussed in the previous section on in-theater command, the United Nations recently suspended operational support to select Congolese army units suspected in the indiscriminate killing of civilians in eastern Congo.<sup>52</sup> Just three years earlier, the U.N. mission (MONUC) had ostensibly outsourced/sub-contracted its enforcement operations to the Congolese army.<sup>53</sup> The question of government (state) accountability in this country, which has been decimated by a decade-long civil war, remains a valid one. Mr. Joseph Kabila may be the republic’s current

<sup>48</sup> Moscow State Institute of International Relations(MGIMO) website, *Draft International Convention on the Regulation, Oversight and Monitoring Of Private Military and Security Companies*, July 13, 2009

<sup>49</sup> Journal of International Peace Operations, *Conventional Thinking*, Peggy Hu, September-October 2009

<sup>50</sup> International Government Contractor, *Analysis: New U.N. Draft International Convention On the Regulation, Oversight And Monitoring Of Private Military And Security Companies*, J. Chris Haile, partner at Crowell & Moring LLP, September 2009, p. 2

<sup>51</sup> Moscow State Institute of International Relations (MGIMO) website, *Draft International Convention on the Regulation, Oversight and Monitoring Of Private Military and Security Companies*, July 13, 2009, Article 9, p. 11

<sup>52</sup> Reuters, *U.N. Suspends Support to Congo Army Units in East*, November 2, 2009

<sup>53</sup> Time.com, *U.N. Report: From Bad to Worse in War-Torn Congo*, November 27, 2009

president, but does he have the power necessary to enforce the regulations proposed in the Convention? The realities in the field suggest that the Congo has already crossed the threshold to a state of lawlessness where rape and the forced displacement of an estimated 900,000 people are tools of war.<sup>54</sup>

In Article 32 of the Draft, an International Committee comprised of fourteen “experts of high moral standing, impartiality and recognized competence in the field covered by the Convention,” will exercise oversight and monitoring of all PMSCs. While the Committee will have the power to investigate complaints, it apparently will not possess equivocal power to subpoena testimony from parties in a dispute. On paper, the committee is more facilitator than arbiter. The application of international humanitarian law is left to individual states, which could apply them capriciously and conditionally, despite the Convention’s call to “punish offenses with the same penalties [that] would apply when they are committed in [the state’s] own territory.”<sup>55</sup>

Under the current Draft Convention, provisions that clearly and uniformly address victim relief and contractor culpability remain elusive.

#### **D. The United States Military Extraterritorial Jurisdiction Act (MEJA)**

The Military Extraterritorial Jurisdiction Act (MEJA) was enacted to “fill a critical void in criminal jurisdiction over civilians serving with the armed forces abroad.”<sup>56</sup>

Drafted in 2000, the Act applies to contractor employees of the Department of Defense (DOD) who “[engage] in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.”<sup>57</sup>

In the strictest sense, the Act applies only to DOD employees and excludes those affiliated with other government departments and non-government agencies.

The 2007 incident in Baghdad’s Nisour Square involving a Blackwater/State Department security detail, which left seventeen civilians dead, is a prime example of MEJA’s limited reach. Early efforts to extend the Act beyond the DOD ultimately proved futile. Instead, the United States Department of Justice charged four of the Blackwater guards with manslaughter in the

<sup>54</sup> Guardian.co.uk, *UN Denies Complicity in Congo War Crimes*, November 11, 2009

<sup>55</sup> International Government Contractor, *Analysis: New U.N. Draft International Convention On the Regulation, Oversight And Monitoring Of Private Military And Security Companies*, J. Chris Haile, partner at Crowell & Moring LLP, September 2009, p. 4

<sup>56</sup> Military Extraterritorial Jurisdiction Act of 2000, *Letter from Douglas A. Dworkin, Acting General Counsel*, February 28, 2000, pp. 22-23

<sup>57</sup> *Ibid.*, p. 24



case, applying an anti-machine gun law that carries 30-year mandatory prison sentences.<sup>58</sup> As noted earlier, the case was subsequently dismissed by a Federal District Court Judge on New Year’s Eve 2009 based on the finding that incriminating testimony had been elicited in exchange for immunity.<sup>59</sup> All but one of the victims’ families have since settled out of court.<sup>60</sup>

The “legal precedent for using MEJA and other laws” in prosecuting personnel “remains slim.”<sup>61</sup> As a possible model for U.N. legislation, adoption of a similar act would likely be lost in endless discussion and contentious debate.

### **E. Summary**

The prevalence of private security companies in forward areas and their increasing use in UN-led peace enforcement actions has forced the hand of institutions and some governments to consider their regulation.

Most of the proposed best practices for contractors as well as states appear substantive and reasonable. The chief obstacle, however, is fashioning a universally-acceptable enforceable code that considers the nature of the alleged crime, and not only its scale. A single life taken by violent design beyond the theater of war is a scandal to all of humanity for which the accused, regardless of position or rank, must be held accountable.

## **III. ACCOUNTABILITY AND THE “BLUE HELMET” DATABASE OF PRIVATE SECURITY COMPANIES**

War does not always wait for conventions to be ratified or documents to be redrafted; it rages of its own accord.

In surveying the terrain of proposed rules and regulations, it is clear that in the immediate term attaining consensus among U.N. member states will remain an elusive enterprise. Yet the question of contractor accountability will not diminish over time, but rather intensify with each call for action under Chapter VII, Article 42 of the Charter.

Even the demand for non-enforcement security services to protect U.N. facilities and guest houses worldwide is escalating.

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<sup>58</sup> Associated Press, *US to drop shooting case against Blackwater guard*, November 21, 2009

<sup>59</sup> The New York Times, *Iraqis Angered as Blackwater Charges are Dropped*, January 2, 2010

<sup>60</sup> CNN.com, *Most families in [Nisour] Square killings join Blackwater settlement*, January 10, 2010

<sup>61</sup> The Economist, *The underside of war; CIA interrogations and the Blackwater affair*, August 29, 2009



The deteriorating situation at the United Nations Assistance Mission in Afghanistan (UNAMA), which recently forced the temporary evacuation of 600 staff from the country,<sup>62</sup> prompted Secretary General Ban Ki-moon to request an additional \$75 million in security funding.<sup>63</sup>

The best and perhaps only viable option available at this juncture for exerting a requisite level of command and control and, by extension, accountability, is a performance-driven one.

From the perspective of a private security company, conflict and instability are business opportunities. In acknowledging this view, the Secretary General should seize the initiative to create a “Blue Helmet” database **requiring** all companies seeking business to register through the U.N.

A template for the kind of data that would form part of a company’s permanent record in “Blue Helmet” is found in the Montreux Document of September 17, 2008.<sup>64</sup>

Core competencies may include but are not limited to the following terms of contract:

- a) Past conduct
- b) Financial and economic capacity
- c) Possession of [other] required registration, licenses or authorizations
- d) Personnel and property records
- e) Training
- f) Lawful acquisition and use of equipment, in particular weapons
- g) International organization and regulation and accountability
- h) Welfare of personnel (labor law compliance, employee health & safety policies, etc.)

Under the proposed Montreux Document and Draft Convention, the onus for conducting a thorough assessment of private security companies falls to individual member states. It is a fundamentally flawed, non-binding process that invites an arbitrary application of international humanitarian and human rights laws by belligerents in a dispute.

The “Blue Helmet” database would collect, analyze, and rate each company based largely on past performance while saving states the time and cost of identifying suitable candidates. Contracting states would be **required** to choose from among those companies listed in the database that meet or exceed compliance measures.

The United Nations “Blue Helmet” team would be comprised of military and civilian representatives who have extensive, impeccable backgrounds in force command, international humanitarian law, and enforcement-mission management.

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<sup>62</sup> Reuters, via MSNBC.com, *U.N. to evacuate 600 staff from Afghanistan*, November 5, 2009

<sup>63</sup> New York Times, *\$50 Million Sought to Protect U.N. Facilities Worldwide*, October 30, 2009

<sup>64</sup> Montreux Document, *Good Practices for Contracting States (VII. Monitoring Compliance and Ensuring Accountability*, p. 22

In the final analysis, the recommended “good practices” of Montreux and the Convention provide a solid foundation for contractor accountability. *“Blue Helmet” would be the gateway through which only those companies may pass that have exhibited excellence in the field, under fire, while demonstrating respect for international law that is unequivocal and unwavering.*

#### IV. CONCLUSION

The voluntary adoption by member states of binding, uniform standards governing the use of private security companies in United Nations peace enforcement operations remains a remote possibility.

Consensus is a primary barrier to adoption. In-theater and institutional command and control present significant obstacles as well, conditioned by the nature of the conflict, the caliber of personnel involved, and the limits of existing laws.

The “Blue Helmet” database of private security companies offers a more feasible and effective means of ensuring accountability.

Rightly understood and appropriated, performance-driven market forces are powerful allies that member states can employ in selecting private security companies to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”<sup>65</sup>

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<sup>65</sup> Charter of the United Nations, *Chapter VII, Article 42*, United Nations Department of Public Information, p. 28

## APPENDIX: CATEGORIES OF CONTRACTORS PROVIDING MILITARY- RELATED AND SECURITY SERVICES<sup>66</sup>

- *External Support Contractors*: Provide mission support or “rear area” services (e.g. logistics, supply, transportation, medical services).
- *In-Mission Support Contractors*: Provide area-specific services (e.g. minor construction, general cleaning, waste removal, security).
- *System Support Contractors*: Provide support for specific materiel and information technologies systems (e.g. vehicles, aircraft, command and control, infrastructure, communications equipment, special equipment and assets—UAV’s).
- *Private Military Companies (PMCs)*: Provide full suite of military consulting services to senior military leadership in affected state, newly-established military and police forces, governmental military oversight bodies, and parliamentary oversight committees. N.B. PMCs have no operational capacity.
- *Private Security Companies (PSCs)*: For-profit enterprises that provide security services and expertise to private as well as and public clients. In a recent report by the Congressional Research Service, PSCs were divided into two major (product) categories: armed services and unarmed services. Armed services include static or site security for areas and buildings, convoy security, security escorts for individuals and personal security details for high-ranking individuals. Unarmed services include operational coordination for command, control, and communications operations centers, intelligence analysis (data collection and threat analysis), hostage negotiations, and security training for domestic and international forces.<sup>67</sup>

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<sup>66</sup> Colonel Karl Farris, US Army (retired); Thesis Advisor, Peace Operations Training Institute, Williamsburg, VA

<sup>67</sup> Moshe Schwartz, *The Department of Defense’s Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*, Congressional Research Service, September 29, 2009, p. 2

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