

Why Contractor Fatalities Matter

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The true US death toll in Iraq and Afghanistan recently reached the 6,000 threshold. But that is not what the media are reporting and as a result, the public remains generally unaware. At the end of July 2008, mainstream media reported that 4,673 service members have died in Operations Iraqi Freedom and Enduring Freedom. Counting only military fatalities, however, understates the human cost of America's engagements in these regions by nearly a fourth. On the modern, outsourced battlefield, contractors are sustaining injuries and fatalities in increasing numbers. Specifically, the losses chronicled in *The Washington Post's* ongoing "Faces of the Fallen" series¹ fail to recognize the little-known fact that, as of 30 June 2008, more than 1,350 civilian contractor personnel had died in Iraq and Afghanistan in support of US military and political operations. Another 29,000 contractors have been injured; more than 8,300 seriously.² Yet contractor fatalities (and injuries) remain generally outside the public's consciousness.³

Given the extent of the military's reliance upon contractors in the combat zones, a combined number of fatalities that exceeds 6,000 is a more accurate tally of the fallen. Apprising the American public of the human cost associated with military operations is critically important. This is especially true as the United States prepares for a post-election transition; transparency will inform discussions regarding the extent to which Americans are willing to outsource in fulfillment of the government's mandate, at home and abroad.

Why Count Contractors?

The total number of casualties is important, because the public and Congress not only care deeply about these fatalities, they routinely rely on

body count as a measure of success or failure. President George W. Bush's 31 July 2008 statement highlighted the perceived importance of fatalities and the potential for obfuscation. The President trumpeted that "[v]iolence is down to its lowest level since the spring of 2004," apparently relying solely upon military casualties as the significant measure of the violence.⁴

Meanwhile, neither the American public nor Congress fully grasp the extent of the military's reliance upon contractors in the combat zones. In 2006 and 2007 the contractor death rate climbed dramatically in Iraq. At least 301 civilian contractors died there in 2006. During 2007, some 353 contractors died in Iraq, compared with 901 US military personnel. In other words, in 2007, contractors accounted for more than one in four deaths associated with ongoing operations. In the second quarter of 2008, at least 61 additional contractor employees died in Iraq and Afghanistan. The Government Accountability Office recently reported that contractor deaths in Iraq and Afghanistan during fiscal year 2007 and the first half of 2008 were a minimum of 455.⁵

This result should not be surprising. Today, the heavily outsourced US military cannot effectively function or sustain itself without an enormous contractor presence. Particularly in Iraq, the US government employs—directly and through subcontracts—more contractors than military. Most experts agree that there are at least 190,000, and as many as 196,000, contractor personnel in Iraq, compared to fewer than 170,000 military personnel. In Iraq and Afghanistan, contractors provide a variety of support, including food, transportation, postal, sanitation, housing, and morale, welfare, and recreation services. They also gather intelligence, maintain weapons, train troops, and handle interrogations. The Comptroller General observed that "there are more private security contractors in Iraq today than the total number of contractors [of any type] (about 9,200) that were deployed to support military operations in the 1991 Gulf War."⁶

Military doctrine increasingly reflects the nearly unlimited scope of contractor integration. In describing "contractors as a force-multiplier," Army Field Manual 3-100.21 explains:

[C]ontractor support . . . should be understood . . . [as] more than just logistics; it spans the spectrum of combat support (CS) and combat service support (CSS)

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functions . . . [and] traditional goods and services support, but may include interpreter, communications, infrastructure, and other non-logistic-related support. It also has applicability to the full range of Army operations, to include offense, defense, stability, and support within all types of military actions from small-scale contingencies to major theater of wars.⁷

While a massive contractor presence and a near-total dependence upon contractors in the Middle East increasingly reflect normal business for the government in the post-millennial era, the enormity of change from historical norms is still largely unknown. The Congressional Budget Office explained that “the ratio of about one contractor employee for every member of the US armed forces in the Iraq theater is at least 2.5 times higher than that ratio during any other major US conflict, although it is roughly comparable with the ratio during operations in the Balkans in the 1990s.”⁸

At the same time, Congress and executive leadership mull whether the government has become too dependent upon contractors. On 10 July, Defense Secretary Robert M. Gates asked the Chairman of the Joint Chiefs of Staff: “[W]hy have we come to rely on private contractors to provide combat or combat-related security training for our forces? . . . [A]re we comfortable with this practice and do we fully understand the implications in terms of quality, responsiveness, and sustainability?”⁹ We are still waiting on the answer.

While they represent a relatively small portion of the contractor population, private security contractors have received the most media and congressional attention. The industry has mushroomed with a disconcerting number of private contractors on the ground in Iraq, many of whom are armed. In describing the modern-era “soldiers for hire” phenomenon, analyst Peter Singer explained that “the wholesale outsourcing of US military services since the 1990s is unprecedented.”¹⁰

On 30 July, Senators John Kerry (D-Mass.) and Bob Casey, Jr. (D-Pa.) wrote to Secretary of State Condoleezza Rice: “Blackwater’s decision [to move away from private security contracting] highlights longstanding concerns about the wisdom of relying so heavily on security contractors to perform overseas personnel protection missions.” The letter highlighted the statement of Patrick F. Kennedy, Under Secretary of State for Management, that “[i]f the contractors were removed, we would have to leave Iraq.”¹¹ Accordingly, the Senators asked whether:

State prepared any other risk mitigation plans in the event . . . private security contractors are unable or unwilling to fulfill their contracts? . . . As the [United States] reduces its troop presence in Iraq, do you anticipate increased military resources . . . to provide for the security of diplomatic personnel . . . or do you anticipate this . . . responsibility will continue to fall to private security

contractors? [. . . What] line . . . divides permissible conduct by private security contractors from their performance of “inherently governmental” functions? How have recent negative incidents in Iraq and Afghanistan informed your views . . . on this subject?

These are important questions. But they remain too far removed from the public’s view to meaningfully inform their opinions.

Outsourcing: Policy or Triage?

As the military and, for that matter, the government, struggle to determine the appropriate limits for outsourcing missions, it is disconcerting that the public does not know the extent to which contractors have made the ultimate sacrifice. Equally troubling is how often it seems that, when presented with the facts, many simply do not seem to care. In groups ranging from graduate students to senior leaders and officials, few appear to consider the deaths of contractors relevant or significant.

It is not just that these groups appear not to be overly concerned regarding contractor fatalities. Rather, it seems that they are not able to place a real value on contractors’ contribution to the overall mission. When asked why, some individuals mention the high salaries contractors earn. Others explain that contractor employees have the option of quitting and going home, while soldiers cannot. Conversely, many concede that they perceive contractor personnel, particularly in Iraq, as expendable profiteers, adventure-seekers, cowboys, or rogue elements, not entitled to the same respect or value due the military.

If one accepts the assertion that an element of truth underlies most stereotypes, then we should expect that there are miscreants amongst the legions of contractors the government employs in Iraq and Afghanistan. But the majority of these contractors are performing tasks that, only a generation ago, would have been performed by uniformed service members. A significant number of these contractors are former military personnel who believe they are answering the same call had the crisis arisen when they were on active duty.

These perceptions only add to the broader outsourcing debate, rooted in the sustained, unplanned, and unchecked privatization of military and support functions in an era of downsized government. As the Brookings Institution’s Paul Light explained in *The True Size of Government*, despite a generation of bipartisan efforts to portray a small government to the public, government mandates continue to increase, leaving agencies no choice but to increasingly rely upon contractors to provide mission-critical services.¹² Federal procurement spending has nearly doubled from \$219 billion in 2000 to

more than \$436 billion in 2007. It is not just that goods and services cost more; the government is purchasing significantly more, with the most dramatic growth being in services contracting (as opposed to military hardware or construction). In the last decade, the cumulative rate of increase in federal procurement spending has been approximately five times the rate of inflation.

As a result of policies spanning both the Clinton and Bush administrations, the government has no other short-term option but to rely on contractors for the diverse array of tasks that it lacks personnel, resources, and expertise to perform. Defense experts recognize that without contractors, the US military simply cannot project its superiority abroad.

A number of highly publicized incidents—whether it be the prisoner abuse at Abu Ghraib,¹³ the shooting of civilians by a private military company (Blackwater USA), or the alleged cost control failings of the Army’s massive logistics contractor, Kellogg, Brown, and Root (KBR)—all raise fundamental questions related to the tasking of contractors and oversight of their performance.¹⁴ A litany of criticism—from Congress, the media, and the public—calls for a larger government footprint, an expanded military, or more agency oversight. Such an approach idolizes, or at the least expresses respect for, both the ethos of public service and public servants in general. This criticism reflects rising support for keeping public functions in the public realm. At the same time, it reflects the citizenry’s unease with contractors playing such a high-profile role in the projection of American power. People are finding it troubling that contractors appear to be both visible and invisible—and all too often, insufficiently accountable.

Why then has outsourcing become the norm? Advocates assert that for-profit organizations are more than capable of performing a majority of the government’s work and, if properly motivated and managed, can outperform government employees in terms of quality of service and price. The private sector’s exposure to market forces, and the related corporate objective of pursuing profit, permits (and arguably requires) a more diverse array of employee incentives. These tools include various forms of compensation (e.g., attractive salaries and increases, bonuses, stock incentives, etc.); opportunity for advancement; and, of course, the risk of termination. The government can employ similar tools, but a heavily constrained personnel system, coupled with de facto tenure, dilutes effectiveness. Ultimately, the private sector enjoys the flexibility to offer greater economic rewards and more credible sanctions. While various agencies and branches of government aspire to reform the civil service system, doing so remains a daunting task.

Outsourcing permits organizations to focus on what they do best, while relying on more efficient entities to provide the goods, services, and

support necessary. It makes sense for the government to seek experience, innovation, and capacity from the private sector. The civil side of the American business community and industry possesses nearly unlimited surge capacity, flexibility, and innovation. Additionally, they offer the ability to meet government agency needs using far fewer government personnel and resources. Indeed, a number of the benefits of outsourcing—particularly in terms of delivery speed, quality of service, and customer satisfaction—have been demonstrated by the US Army’s global use of the Logistics Civil Augmentation Program, recognizable through its primary contractor, KBR.

Contractors offer the government the ability to supplement limited resources far more quickly, efficiently, and effectively than the use of existing federal employees or acquisition regimes will permit. The government can call on contractor personnel in the event of war or natural disaster, without maintaining excess manpower on the payroll. This is especially advantageous when viewed in terms of the long-term responsibilities inherent in retirement and healthcare. Whether in Baghdad or New Orleans, contractors offer speed and geographic flexibility when deploying expertise.

Privatizing may also offer greater flexibility in terms of technology, talent, and differing approaches than those found in the traditional government workforce. In an era of downsizing, contractors are capable of providing what government may lack—skill, expertise, and innovation. Contractors are a critical resource for government agencies and departments struggling to fulfill their missions with reduced resources. By assuming ancillary responsibilities, contractors enable agency staff to focus on core responsibilities, typically described as increasing the military services’ “tooth to tail ratio.”

In Iraq, contractors also are capable of providing consistency, experience, and institutional knowledge. The turnover of government personnel is a constant. The military, for example, is under pressure to shorten tours of duty, from 15 to 12 months. Civil servants, meanwhile, frequently served for periods as short as four to six months. Even though contractor personnel will rotate in and out of theater on a semi-regular basis, the large number who remain for extended periods provide valuable dividends.

High Risk Outsourcing

For all its potential advantages, outsourcing is complicated and, accordingly, risky, both from a business and a public policy viewpoint. Any organization may face a number of challenges if it relies extensively on external resources. Government outsourcing requires detailed planning and competent management, as organizations deal with complex policy questions and risks.¹⁵

At the basic level, reliance on contractors often begs the question of what tasks or functions of government should be “inherently governmental.”¹⁶

Legislators and policymakers long have applied controls to a regime in which the government or military enjoys a monopoly on the use of force, but at the same time the legal regime continues to struggle with guiding behavior and accountability. Americans have become increasingly comfortable with “rent-a-cops” patrolling shopping malls, schools, and sporting venues, yet they recoil at the sight of armed contractors guarding ambassadors, members of Congress, and government officials abroad. While Iraqis may have mixed feelings about having American soldiers in their cities, the highly visible and aggressive personal security contractors are anathema, evoking nearly unanimous condemnation. Private security contractors aggressively driving large sport utility vehicles and piloting helicopters personify what the Iraqis most despise about the American presence. Security contractors also tend to polarize opinion at home. “[Blackwater’s] Little Birds [helicopters] can symbolize all that’s right or wrong with the war. To the enemy, they are an evil to be struck from the sky. To an ally in trouble, their inbound buzz is the blessed sound of a second chance.”¹⁷

What’s remarkable is how little progress has been made since 2004, when Peter Singer wrote with regard to oversight and employment of contractors:

This expansion [in the use of private military contractors] arose not out of a well-planned strategy, but from a process . . . best . . . described as ad hoc. The public and Congress remain largely unaware, and the senior military leadership is in denial about the size and scope of such firms, but many in the military’s junior and field ranks have begun to ask questions about what such outsourcing will mean in the long term . . . [T]he professional war college system ha[s] asked: How does such outsourcing so many of its core tasks affect the health of the military institution? Does dependence on the marketplace bring new vulnerabilities in war zones? . . . Is the military even equipped to be a business-savvy client and an efficient regulator?¹⁸

At every level, the integration of contractors into the battle space poses a challenge. In addition to maintaining a cohesive organizational culture and instilling shared values across a “blended workforce,” difficulties arise in the planning, funding, negotiating, managing, and overseeing of contracts. At a minimum, government planning is required to reinforce an understanding of the objective and tasks that the contractor is to provide. To successfully plan for such outcomes, the government should maintain a sufficiently educated, experienced, and motivated acquisition cadre. Unfortunately, today’s procurement officials are often overworked and undersupported.¹⁹ As a result, this critical

planning function is extremely limited or, at times, simply delegated to contractors.

To succeed, privatization requires selecting qualified contractors in an expeditious manner, negotiating cost-effective agreements, and drafting precise contracts that contain effective incentives and profit mechanisms. Failure to meet any of these standards impacts the very nature of the government's delegation. Increasingly, agencies have become so dependent upon contractors that they lack the independent ability to solve problems or evaluate the solutions proposed by outside contractor organizations.²⁰

Once contracts are awarded, the government needs to maintain the ability to successfully manage relationships, while providing the appropriate level of oversight if it is to ensure the best value for its money. At best, poorly managed outsourcing dramatically reduces the likelihood of the best return on the taxpayers' investment. At worst, it renders the public's expenditures susceptible to inefficiency, waste, fraud, and abuse.²¹

DOD's primary challenges have been to provide effective management and oversight, including failure to follow planning guidance, an inadequate number of contract oversight personnel, failure to systematically capture and distribute lessons learned, and a lack of comprehensive training for military commanders and contract oversight personnel. These challenges have led to negative operational and monetary impacts at deployed locations.²²

Congress continues to flounder in its efforts to hold contractors accountable for crimes or torts committed abroad. This has proven particularly problematic with regard to the private security firms. The military commander's influence over these security contractors is diluted primarily because contractual relationships fail to mirror the chain of command. Additionally, many private security firms do not work directly for the Department of Defense. For example, a number of these firms work for the State Department, not to mention the number of firms that are subcontractors in the battle area. "The type of client most common among [private security] companies is actually other private companies[.]"²³

Congress has attempted to close some of the existing loopholes with legislative initiatives, such as the Military Extraterritorial Jurisdiction Act (MEJA), amendments to MEJA, and expansion of the Uniform Code of Military Justice (UCMJ).²⁴ At the same time, the military departments, the Department of State, and the Justice Department have generated a recent infusion of audit, investigative, and prosecutorial resources and procedures. While these steps are necessary, they may be too late to deter, let alone avoid, the isolated, scandal-inducing, instances of contractor misbehavior and corruption.

Undercounting: Opacity or Obfuscation?

It is critical that any new administration critically analyze the extent of government reliance upon contractors and its impact of the accompanying policies on the battlefield and at home. While contractor deaths are a single metric, they should play a prominent role in calculating the cost/benefit-ratio associated with outsourcing. This again brings us back to the fact that the number of contractor deaths—1,354 and counting—is largely understated.

The Defense Department does not publicly report contractor fatalities. Indeed, the Government Accountability Office recently reported that:

DOD, State, and USAID were unable to provide complete or specific information on the number of contractor personnel who had been killed or wounded in Iraq or Afghanistan [T]hat information . . . was not systematically maintained or tracked in a manner that would allow agencies to provide us reliable or complete data.²⁵

Rather, the US Labor Department generates the data quarterly, but only makes it available through Freedom of Information Act requests. The Labor Department's involvement derives from standard government contract clauses, the Defense Base Act, and the War Hazards Compensation Act, which make contractor employees eligible for worker's compensation benefits pursuant to the Longshore and Harbor Workers' Compensation Act.²⁶ These benefits apply when a contractor or subcontractor employee dies, sustains injuries, or is captured while working outside the continental United States. Contractors are required to provide Defense Base Act insurance, which falls under this program. The Labor Department's data reflects insurance claims filed with its Division of Longshore and Harbor Workers' Compensation. As the Labor Department concedes, if a contractor's family or employer fails to seek compensation, that death is not included.

Unfortunately, the Labor Department's statistics do not organize deaths by function or nationality, so the public is unable to discern what services these contractors provided or how many were actually Americans. It is safe to assume that many of the victims are Iraqis and other foreign nationals working under US government contracts. At a macro level, the Congressional Budget Office estimated that "just under 40 percent of [the 190,000 contractors working on US-funded contracts in the Iraq theater] are citizens of the country where the work is being performed (primarily Iraq); about 20 percent are US citizens."²⁷ But those numbers may not correlate to the Labor Department's fatality and injury statistics. It seems reasonable to assume that American contractor employees and their families are more aware of the benefits regime, and better equipped to file claims.²⁸

Whether those who perish are American citizens or not, they are performing functions previously accomplished by soldiers. It is disingenuous to dispute the premise that, were the US military less dependent upon contractors, these fatalities likely would have been military. Not surprisingly, the larger companies have experienced the heaviest losses. For example, more than 135 of L3-Titan employees (or subcontractor employees) have died in Iraq. At least 122 of KBR's oft-maligned employees (or subcontractor employees) have died. KBR reports that, through July 2008, in addition to 87 "hostile fatalities," its employees suffered 22 vehicular fatalities, 13 workplace fatalities, and approximately 850 "hostile injuries" in the Middle East.²⁹ More than two dozen firms have reported the loss of eight or more employees (or subcontractor employees).³⁰ In any event, there is little doubt that the allied death toll, when contractors are included, is significantly higher than previously reported.

Unpleasant Choices

Despite the topic's importance, it is no surprise that the public did not hear presidential candidates debating the nuances of government outsourcing, the privatization of the battle area, or the wisdom of a policy that led to more than 1,350 contractor deaths. For the American public, the topic remains obscure.

The root cause for the utilization of contractors lies in the imbalance between military manpower reductions and current national security policies. "Since 1991, the use of the private sector has allowed the United States to downsize its military from 2.1 million to 1.4 million while simultaneously expanding its national commitments and influence abroad."³¹ Accordingly, three obvious courses of action appear viable: (1) The government could reduce its military commitments, (2) it could expand the size of the military, or (3) it can continue to rely upon contractors. Advocacy favoring the withdrawal of American forces from Iraq rarely begins with concern for the government's limited military resources (although analysts increasingly fret that the Army is stretched too thin). While criticism of contractors remains a popular practice, many in positions of authority have not aggressively articulated the need for a significantly larger armed force and the accompanying growth in government employment required to meet the nation's commitments. Nor have the presidential candidates prepared the American public for what to expect if their government is to dramatically reduce services. Candidates certainly cannot advocate for mandatory public service, let alone a draft. As a result, the prospect for "hollowing out" of the military and federal government—in terms of personnel and expertise—continues apace.

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This dilemma presents Americans with a critical issue involving the separation of power between the legislative and executive branches. The Constitution grants to Congress the power “[t]o raise and support Armies . . . [t]o provide and maintain a Navy . . . [t]o make Rules for the Government and regulation of the land and naval Forces”³² Yet increased reliance upon contractors has permitted the executive branch to expand the size of the operational force, despite existing personnel caps. Even if Congress appears unwilling or unable to curtail this practice, what could be more important than answering the fundamental question: to what extent is the federal government willing to delegate its power, as a sovereign authority, to the private sector?³³

Democracy Requires Transparency

That question is exactly why publicly acknowledging contractor fatalities is so critical. In an election year, the citizenry of a nation is expected to express its support or opposition to government policy. Citizens form their opinion based on the best information available in terms of the dollars spent, number of forces deployed, and casualties sustained—and weigh these against the perceived benefits of military action.

When attempting to quantify the cost of the conflicts in Iraq and Afghanistan,³⁴ most Americans’ perception of military success or failure derives from two statistics: the number of forces deployed and how many are killed or wounded. The government’s reliance on contractors in Iraq and Afghanistan has artificially reduced both numbers. Of all the measures of military success in these combat zones, the number of troop fatalities resonates most strongly with the public. These casualty figures are the public’s proxy for the human “cost” of a military engagement, the value that an individual’s service and sacrifice provided to the nation. Yet the figure remains obscured by a lack of readily available information related to contractor casualties in Afghanistan and Iraq.

Since [World War II], western public opinion has shown an increasing unwillingness to accept the costs of conflict, especially the death and personal loss

which war entails . . . often referred to as “Vietnam syndrome,” or its updated variant “Mogadishu syndrome”. . . . Aegis chief executive Tim Spicer has acknowledged: “The impact of casualties is much more significant if they’re sovereign forces as opposed to contractors.”³⁵

It is unrealistic to expect the American people to understand the nuances associated with the military’s personnel system, strength analysis, and forecasting; nor should the public be expected to be overly concerned, at a micro-level, with the management of civilian military personnel. The current level of contractor presence permits the administration to suggest to the public that the requirement of US forces is in actuality much smaller than what it actually is. President Bush recently announced plans to reduce, by 8,000, the number of forces in Iraq, or less than ten percent of the troops in theater.³⁶ No mention was made as to whether contractor staffing would proportionally decline, remain at current levels or, as Senators Kerry and Casey anticipate, expand to fill a void created by the withdrawal.

The number of contractor casualties suggest that the reported human cost of our efforts in Iraq—when combined with military casualties—is artificially low. Thus, an accurate tally is critical to any discussion of the costs and benefits of the military’s efforts in these theaters. The public needs to be cognizant of the fact that their government has increasingly delegated to the private sector the responsibility to stand in harm’s way and, if required, die for America.

The media’s failure to bring contractor deaths more clearly into the public consciousness is inexcusable. Generations of Americans have been exposed to the harsh realities of armed combat by stark images of flag-draped coffins arriving at military mortuaries. That, however, is not true today with contractors. “Hiding these images [military and contractor] from the public—or, worse, failing even to record these respectful moments—deprives all Americans of the opportunity to recognize their contribution to our democracy, and hinders policymakers and historians in the future from making informed judgments about public opinion and war.”³⁷

Recently Congress began to require the Pentagon, State Department, and Agency for International Development to track how many contractors are working in Iraq and Afghanistan, along with the number killed and wounded.³⁸ In a representative democracy, public awareness of the human cost of our nation’s security and foreign policies is critical. If the United States is going to continue tallying the human cost associated with military operations then the American public deserves a full accounting.

NOTES

1. “Faces of the Fallen: U.S. Service Members Who Died in Operation Iraqi Freedom and Operation Enduring Freedom,” *The Washington Post*, <http://projects.washingtonpost.com/fallen/>.

2. Freedom of Information Act Response, from Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, US Department of Labor, 18 July 2008 (on file with author).

3. Few newspapers, and none of the major national newspapers, have covered the story. For a rare example of coverage, see David Ivanovich, "Contractor Deaths up 17 Percent Across Iraq in 2007," *The Houston Chronicle*, 10 February 2008, A1.

4. George W. Bush, "President Bush Discusses Iraq" (Washington: The White House, 31 July 2008), <http://www.whitehouse.gov/news/releases/2008/07/20080731.html>.

5. Government Accountability Office, *Contingency Contracting: DOD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan* (Washington: Government Accountability Office, October 2008), <http://www.gao.gov/new.items/d0919.pdf>, 39.

6. David M. Walker, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight* (Washington: Government Accountability Office, 11 March 2008), <http://www.gao.gov/new.items/d08572t.pdf>; Congressional Budget Office, *Contractors' Support of U.S. Operations in Iraq* (Washington: Congressional Budget Office, August 2008), <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>, 1.

7. Department of the Army, Field Manual 3-100.21, *Contractors on the Battlefield* (Washington: Headquarters Department of the Army, January 2003), http://www.afsc.army.mil/gc/files/fm3_100x21.pdf, 1-1.

8. Congressional Budget Office.

9. "Contractor-Provided Training of Military Forces," Memorandum for Chairman of the Joint Chiefs of Staff, from Robert M. Gates, Secretary of Defense, 10 July 2008.

10. Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, N.Y.: Cornell Univ. Press, 2003), 16. See also, Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007); Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (New York: Cambridge Univ. Press, 2005).

11. James Risen, "Iraq Contractor in Shooting Case Makes Comeback," *The New York Times*, 10 May 2008, A1.

12. Paul C. Light, "The New True Size of Government," New York University, Robert F. Wagner Graduate School of Public Service, Research Brief No. 2, August 2006, http://wagner.nyu.edu/performance/files/True_Size.pdf; Paul C. Light, *The True Size of Government* (Washington: Brookings Institution Press, 1999).

13. Steven L. Schooner, "Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government," *Stanford Law & Policy Review*, 16 (2005).

14. See generally, Steven L. Schooner and Daniel S. Greenspahn, "Too Dependent on Contractors? Minimum Standards for Responsible Governance," *Journal of Contract Management*, 9 (Summer 2008); Government Accountability Office, *Military Operations: High-Level DOD Action Needed to Address Long-Standing Problems with Management and Oversight of Contractors Supporting Deployed Forces* (Washington: Government Accountability Office, December 2006), <http://www.gao.gov/new.items/d07145.pdf>; Katherine V. Schinasi, *Rebuilding Iraq: Continued Progress Requires Overcoming Contract Management Challenges* (Washington: Government Accountability Office, 28 September 2006), <http://www.gao.gov/new.items/d061130t.pdf>; David M. Walker, *Contract Management: Contracting for Iraq Reconstruction and for Global Logistics Support* (Washington: Government Accountability Office, 15 June 2004), <http://www.gao.gov/new.items/d04869t.pdf>; Government Accountability Office, *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans* (Washington: Government Accountability Office, June 2003), <http://www.gao.gov/new.items/d03695.pdf>.

15. See, e.g., Scott Schofield, "The Risks of Department of Defense Outsourcing," *Contract Management*, 48 (September 2008).

16. Steven L. Schooner, "Competitive Sourcing Policy: More Sail Than Rudder," *Public Contract Law Journal*, 33 (Winter 2004), 263 (discussing revisions to Office of Management and Budget Circular A-76); see also Office of Management and Budget, "Circular No. A-76 (Revised)," 29 May 2003, http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf; and the Federal Activities Inventory Reform Act of 1998, Pub. L. No. 105-270, and implementing regulations at title 48, Code of Federal Regulations, subpart 7.5.

17. Joanne Kimberlin, "Blackwater's 'Little Birds' of Baghdad Pack Quite a Sting," *Virginian-Pilot*, 1 March 2007, A1, excerpted at <http://blackwaterbirds.blogspot.com/2007/10/blackwaters-little-birds-pack-sting-in.html>.

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19. *Urgent Reform Required: Army Expeditionary Contracting*, Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations, 31 October 2007 (describing the need for extensive personnel, training, restructuring, and additional legislative, regulatory, and policy reforms), http://www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf, 44-45.

20. Consider, e.g., the use of Lead Systems Integrator strategies. See generally, Government Accountability Office, *Coast Guard: Challenges Affecting Deepwater Asset Deployment and Management and Efforts to Address*

Them (Washington: Government Accountability Office, June 2007), <http://www.gao.gov/new.items/d07874.pdf>. (“Over the past several years, GAO has expressed concerns about the Coast Guard’s ability to manage and oversee the Deepwater program. Specifically, the program has faced challenges in terms of management, contractor accountability, and cost control.”) See also, generally, Daniel I. Gordon, “Organizational Conflicts of Interest: A Growing Integrity Challenge,” *Public Contract Law Journal*, 35 (Fall 2005).

21. See, generally, Steven L. Schooner, “Fear of Oversight: The Fundamental Failure of Businesslike Government,” *American University Law Review*, 50 (February 2001).

22. Walker, *Defense Management*.

23. J. J. Messner and Ylana Gracielli, *State of the Peace and Stability Operations Industry: Second Annual Survey 2007* (Washington: Peace Operations Institute, 2007), http://peaceops.org/poi/images/stories/poi_rp_industrysurvey2007.pdf, 20.

24. See, generally, 10 U.S.C. § 801, et seq.; 18 U.S.C. § 3261, et seq.

25. Government Accountability Office, *Contingency Contracting*.

26. See, generally, Jeffrey L. Robb, “Workers’ Compensation for Defense Contractor Employees Accompanying the Armed Forces,” *Public Contract Law Journal*, 33 (Winter 2004); “About Longshore,” US Department of Labor, Employment Standards Administration, Division of Longshore and Harbor Workers’ Compensation, <http://www.dol.gov/esa/owcp/dlhwc/index.htm>.

27. Congressional Budget Office, 1.

28. See, e.g., Form LS-203, “Employee’s Claim for Compensation,” US Department of Labor, Employee Standards Administration, Office of Workers’ Compensation Programs, <http://www.dol.gov/esa/owcp/dlhwc/ls-203.pdf>; and Form LS-262, “Claim for Death Benefits,” <http://www.dol.gov/esa/owcp/dlhwc/ls-262.pdf>.

29. KBR Middle East Region – Casualty Summary: January 2003 – July 2008 (on file with author).

30. Reports from the US Department of Labor, Employment Standards Administration, Division of Longshore and Harbor Workers’ Compensation (on file with author).

31. *Privatized Military Operations Industry*, Spring 2008 Industry Study (Washington: National Defense Univ., Industrial College of the Armed Forces, 2008), <http://www.ndu.edu/ICAF/Industry/reports/2008/pdf/icafe-is-report-pmo-ay08.pdf>.

32. US Constitution, article 1, section 8.

33. See, generally, Paul R. Verkuil, *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What We Can Do About It* (New York: Cambridge Univ. Press, 2007); Laura A. Dickinson, “Public Law Values in a Privatized World,” *Yale Journal of International Law*, 31 (Summer 2006); Martha Minow, “Outsourcing Power: How Privatizing Military Efforts Challenges Accountability, Professionalism, and Democracy,” *Boston College Law Review*, 46 (September 2005); Daniel Guttman, “Public Purpose and Private Service: The Twentieth Century Culture of Contracting Out and the Evolving Law of Diffused Sovereignty,” *Administrative Law Review*, 52 (Summer 2000).

34. “From 2003 through 2007, US agencies awarded \$85 billion in contracts for work to be principally performed in the Iraq theater.” Congressional Budget Office; see also, generally, Office of the Special Inspector General for Iraq Reconstruction, <http://www.sigir.mil/>, particularly, Special Inspector General for Iraq, *Lessons in Contracting and Procurement* (July 2006).

35. War on Want, *Corporate Mercenaries: The Threat of Private Military and Security Companies* (London: War on Want, November 2006), <http://www.waronwant.org/download.php?id=488>, 11, also citing, at 10, Daniel Nelson, former professor of civil-military relations at the George C. Marshall European Center for Security Studies, for the proposition that: “Private military corporations become a way to distance themselves and create what we used to call ‘plausible deniability’ . . . It’s disastrous for democracy.”

36. George W. Bush, “President Bush Visits National Defense University’s Distinguished Lecture Program, Discusses Global War on Terror” (Washington: The White House, 9 September 2008), <http://www.whitehouse.gov/news/releases/2008/09/20080909.html>:

Over the next several months, we’ll bring home about 3,400 combat support forces—including aviation personnel, explosive ordnance teams, combat and construction engineers, military police, and logistical support forces. By November, we’ll bring home a Marine battalion that is now serving in Anbar Province. And in February of 2009, another Army combat brigade will come home. This amounts to about 8,000 additional American troops returning home without replacement. And if progress in Iraq continues to hold, General Petraeus and our military leaders believe additional reductions will be possible in the first half of 2009.

37. “Return of the Fallen,” National Security Archive Electronic Briefing Book No. 152, 28 April 2005, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB152/index.htm>.

38. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 861(b)(4)(B)(iii) and § 863(a)(2)(H); see, e.g., Government Accountability Office, *Contingency Contracting*.