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## Strategic Insights: Five Myths Associated With Employing Private Military Companies

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## Strategic Insights: Five Myths Associated With Employing Private Military Companies

April 5, 2019 | Dr. C. Anthony Pfaff, Dr. Edward Mienie

### INTRODUCTION

In August of 2017, Blackwater founder Erik Prince offered a plan for privatizing the war in Afghanistan, where he would replace the approximately 23,000 multinational forces (of which 15,000 are U.S. troops) and 27,000 contractors with 2,000 special forces and 6,000 security contractors who would embed with the Afghan National Army. Though the administration apparently rejected the plan at the time, multiple media outlets report there may be renewed interest, especially given the United States remains unable to resolve the conflict despite adopting a new, more aggressive strategy. Predictably, and justifiably, this interest has sparked a great deal of concern. Both former Secretary of Defense James Mattis and Chief of Staff John Kelly, in addition to a host of others, are reportedly opposed to the plan.<sup>1</sup> With their departure, another opportunity to reconsider Prince's proposal may arise.

Despite the potential good Prince's offer represents, even after years of employing contractors in war zones, opposition to it is widespread. This opposition arises largely out of legal and moral concerns that only legitimate authorities, such as states, should be empowered to use violent force, and even then, killing people for reasons of self-interest, especially when that interest is financial, is always wrong.<sup>2</sup> However, as in Afghanistan and other poorly governed areas of the world, efforts by the international community have consistently failed to bring about stability. These persistent failures—of capability or of will—suggest states need to expand the means available to impose a just order in these fragile spaces and should consider how private military companies (PMCs) can support their efforts.

There are, of course, other problems. A number of PMC critics raise concerns about legal and moral accountability, lack of transparency, and the fact that even though using PMCs lowers the political and physical costs of war, it also lowers the threshold for war. Inferred in these objections is the idea that privatizing the provision of a public good like security is illegitimate. It is acceptable for private companies to complement police and military forces to provide security for individual persons and places; however, it is not acceptable when they provide such services in lieu of those forces. The former does not challenge the government's monopoly on force, while the latter does, or at least can.

Much of this concern, however, is misplaced. Throughout its history, the United States has frequently relied on private military expertise. In its struggle for independence, the new U.S. Government hired professionals such as Marquis de Lafayette of France, Baron von Steuben of Prussia, Count Casimir Pulaski of Poland, and several others to aid the cause.<sup>3</sup> The contributions of these paid contractors transformed George Washington's forces from militia bands to a "small standing army based on the model of eighteenth-century European militaries."<sup>4</sup> Without such an army, it is not likely the United States would have achieved its independence.

There are, of course, more recent examples of private military contractors employed to good effect. South African-based Executive Outcomes (EO), for example, was instrumental in defeating the rebels in Sierra Leone in the 1990s.<sup>5</sup> EO also played a crucial role in ending the decades-long war in Angola, only for the international community to insist on its withdrawal. Ironically, the international community then protected, armed, and encouraged the rebels, fighting as the National Union for the Total Independence of Angola, to return to war after EO left Angola. In 2015, Specialized Tasks, Training, Equipment and Protection International (STTEP), an offshoot of EO, was widely accredited with facilitating successful Nigerian Army operations against Boko Haram.<sup>6</sup> A number of stakeholders, including Prince, have argued PMCs could conduct peacemaking and peacekeeping operations, especially in places like Darfur, where the international community has so far been unable to intervene effectively.<sup>7</sup>

Despite the successes, the question remains whether PMCs are a corrupting influence on or an underutilized asset for global security and stability, especially in fragile states and ungoverned areas where states are either unwilling or unable to commit their own professional military forces. To answer this question, it will be important to address the myths and misunderstandings associated with their employment. Doing so will enable a better understanding of what PMCs can and cannot do so that states can better employ them to improve security, governance, and quality of life in underserved areas.

## MYTHS

### Myth One

Professional state-sponsored militaries are always more capable than PMCs in partnering with local forces and conducting combat operations.

#### *Response*

Not really. While a major power like the United States obviously has a greater capacity for providing personnel, equipment, and training to its foreign partners, it cannot always effectively tailor its assistance to meet local needs. The U.S. military equips and trains itself to fight a range of adversaries from near-peer competitors to insurgents, but it does so in a way that smaller and more fragile states cannot effectively absorb. In addition to employing complex weapons and equipment that are beyond the effective capability of developing armies, powerful states also rely on doctrine and tactics that do not always translate well into other cultures. As a result, there is often a misalignment between the capabilities that U.S. forces bring with them and what the partner forces can actually use. As Anthony Cordesman and Sam Khazai observe, “Part of the problems the [Iraqi security forces] faced after US withdrawal were the result of the fact that the US had tried to impose too many of its own approaches to military development on an Iraqi structure, and Iraq lacked the internal incentives—and checks and balances—necessary to make them function once US advisors were gone.”<sup>8</sup>

On the other hand, PMCs can more effectively tailor support to specific clients because they not only can hire personnel with precisely the right combination of technical and cultural skills but also integrate equipment into client operations more easily. A good case in point is STTEP’s assistance to Nigeria. Originally hired to recover the more than 200 girls kidnapped by Boko Haram at Chibok, STTEP’s mission expanded within 30 days to assist Nigerian Army units, which were fighting Boko Haram forces near Maiduguri.<sup>9</sup> When the Nigerian Government hired STTEP,

they had already received security assistance and training from the United States and Britain, who also offered assistance to retrieve the Chibok girls. The fact that the Nigerian Government turned to STTEP raised questions at the time regarding the effectiveness of U.S. and British assistance.<sup>10</sup>

In those 3 months, STTEP tailored tactics, training, and doctrine to reflect both the threats and capabilities of the Nigerian forces. For example, they provided live-fire weapons training, which the Nigerian troops they were working with had never done, and assisted in mounting heavy weapons onto vehicles already in the Nigerian inventory. The PMC then assisted in developing campaign strategy and designing operations, and supported command and control for the subsequent operation. Though their contract was not renewed by the Nigerian Government, in 1 month of fighting, they helped the Nigerian Army free a swath of territory the size of Belgium from Boko Haram control.<sup>11</sup>

Part of what made STTEP effective was its ability to hire contractors who not only had specific skills the Nigerian forces could use but also had the ability to effectively integrate into Nigerian units in ways that were difficult for more conventional militaries. Contractors from STTEP became a part of the Nigerian armed forces to the point of wearing their uniforms, living and eating with the soldiers they advised, adopting their rank structure, and submitting to their disciplinary code and doing so greatly improved their ability to influence Nigerian military operations positively.

## **Myth Two**

The employment of PMCs will undermine the state's monopoly on the use of force and delegitimize operations in which they are employed.

### *Response*

Not necessarily. The authorization of force is different from its provision. As long as the state retains the former, it is free to delegate the latter, as long as it does so in a way that retains the legitimacy the state authorization affords. In this regard, James Pattison argues that morally legitimate security providers must meet four conditions: 1) be effective at both fighting just wars and deterring unjust ones; 2) be subject to democratic control; 3) be fair to its personnel by prioritizing their health, safety, and welfare over profit; and, 4) have a positive effect by reinforcing the bonds within the defended community.<sup>12</sup> While the ability of any particular security force to meet these conditions will vary, to the extent they meet all of them, they will enjoy a cumulative legitimacy regarding the provision of force. In this context, Pattison recognizes PMCs could meet each of these conditions and argues public militaries are always going to be in a better position to meet them; thus, they are always preferable.<sup>13</sup>

The difficulty with Pattison's argument is that while there may be no PMCs that can compete with a democratic, state-sponsored military for this kind of cumulative legitimacy, such companies can often compete with the militaries of fragile states. It would not be hard to imagine a PMC that is more effective, more democratic, treats its own personnel better, and makes a greater contribution to communal bonds than the Afghan National Army. This point suggests cumulative legitimacy, as an enabling principle, may permit weak states with developing militaries to hire PMCs that can transfer expertise from more professional militaries. Moreover, if employed properly, private military contractors can contribute to the cumulative legitimacy of a host military force by ensuring the capabilities it provides meet the standards of international humanitarian law. Rather than judging a PMC's legitimacy by virtue of competition for cumulative legitimacy, it is better to evaluate their contribution to their client's legitimacy.

As the example of STTEP in Nigeria suggests, while PMCs may not be as effective at fighting and deterring wars as a modern state-sponsored military, they can be more effective at building those capabilities in developing militaries. In building those capabilities, however, PMCs will have to do so with client legitimacy in mind. This awareness is due to the growing body of regulation that provides oversight as well as incentives for PMCs to take their and their client's legitimacy seriously.

### **Myth Three**

The employment of PMCs will reduce accountability, transparency, and the rule of law when it comes to the use of force.

#### *Response*

While these concerns certainly characterize a number of PMC operations, much has been done to emplace legal and regulatory structures to ensure greater accountability. This point is not to say that there have not been abuses. Among the more notable ones were DynCorp International personnel facilitating human trafficking in the Balkans and Defense Service Logistics personnel giving information regarding local citizens who opposed BP energy operations in Colombia to military forces who would then kidnap, kill, and torture the individuals.<sup>14</sup> Neither group was ever held fully accountable. However, since then, a number of regulatory structures have emerged.

Most notable is probably the *Montreux Document*, which represents a collection of relevant legal norms and best practices states can employ in the regulation of PMCs.<sup>15</sup> The document makes clear that PMCs are accountable to the law of armed conflict and international humanitarian law where applicable. In response to this document, a number of PMCs, in cooperation with the Swiss Government, signed on to a code of conduct for private security service providers that accounts more fully for the legal and ethical obligations of PMCs toward clients.<sup>16</sup>

For those PMCs that are subject to U.S. jurisdiction, a number of laws can also now apply to regulating PMC operations. These include the USA Patriot Act, which extends the jurisdiction of U.S. Federal courts to crimes committed by or against a U.S. national on lands or facilities designated for use by the U.S. Government; the Alien Tort Claims Act, which allows foreign nationals to challenge nonstate actors, including corporations, in U.S. courts for certain violations of international law; the War Crimes Act of 1996, which makes it a felony under U.S. law to commit grave breaches of the Geneva Conventions if the crime was committed by or against a U.S. national or member of the U.S. Armed Forces; the Uniformed Code of Military Justice, which was broadened in 2007 to apply to private contractors and other civilians supporting U.S. forces in declared wars or contingencies; and the Military Extraterritorial Jurisdiction Act, which allows U.S. Courts to prosecute individuals employed by or accompanying the military who commit an act that would constitute a federal criminal offense that would have a sentence of at least 1 year.<sup>17</sup>

Certainly, much more needs to be done, but given the potential utility of PMCs, it seems worthwhile for governments to improve regulations and oversight so that they can more effectively employ PMCs. It is worth noting in this context that many concerns associated with PMCs apply as well to regular government-sponsored military forces. So if there can be a sufficient structure regulating the employment of these forces, there is nothing in principle to suggest similar regulatory and oversight structures cannot be extended to PMCs.

## **Myth Four**

Private military contractors are paid a great deal more than their military counterparts are. Employing these personnel on a broader scale would encourage soldiers to quit and work for higher paying PMCs.

### *Response*

Depends on how you look at it. Private contractors, whatever their role, tend to bring with them several years of experience and capabilities that may not be available at comparable levels in a state-sponsored military. For example, a private military contractor who may have left the military as a staff sergeant and has several years' experience as an adviser is not comparable to an active duty staff sergeant with only active duty experience. Moreover, adviser positions are often filled by senior enlisted personnel or officers that makes a comparison even more difficult. The average pay of a contractor likely corresponds to the level of the role in which he or she may be functioning.<sup>18</sup>

While statistics are difficult to come by, contractors reportedly earn between \$9,000 to \$22,000 per month depending on the nature and location of the duty.<sup>19</sup> This seems significantly more than an unmarried private who earns approximately \$1,638 per month. However, a married captain with 8 years' experience earns closer to \$7,800 per month when pay and basic allowance for housing are taken into account.<sup>20</sup> With danger pay and tax exemptions, while deployed, a captain's salary is likely comparable to the lower end of the contractor range.<sup>21</sup>

Even where there is a perceived disparity in incomes, there does not appear to be a significant impact on military retention rates. Despite the fact that 70 percent of lower-ranking officers and 60 percent of younger troops serving in the Iraq war perceived private contractors made significantly more money, service members tended to stay in the military at approximately the same levels before September 11, 2001, and after the U.S. Government significantly increased its reliance on contractors.<sup>22</sup>

## **MYTH FIVE**

PMCs are less costly because governments do not have to pay for health care and retirement costs.

### *Response*

Not necessarily. Private contractors often come back from war zones with the same mental and physical problems soldiers do. However, since their medical insurance coverage often terminates with the contract, they may not have access to the health care best suited for those conditions. To the extent they deplete their funds on this care, costs can then get passed back to the government in the form of other support services.

Unfortunately, few statistics exist on how often private military contractors rely on host-governments or other sources of support so we can understand the scope of the problem. According to a 2007 *New York Times* report, however, the rate of contractors experiencing post-traumatic stress disorder (PTSD) was comparable to that of soldiers.<sup>23</sup> A 2013 RAND study amplified this point, observing that contractors experienced not only slightly higher rates of PTSD than soldiers but also experienced comparable rates of depression and alcohol abuse. Overall, only 28 percent

of those with probable PTSD and 34 percent of those with probable depression reported receiving mental health treatment.

Additionally, 53 percent of U.S. contractors reported suffering from physical health problems. Of these health issues, 10 percent were related to traumatic brain injuries, and 39 percent involved other health problems including respiratory issues, back pain, and hearing problems. While 80 percent of contractors reported having health insurance while they were deployed, many found insurance was not available to treat symptoms after the duty ended. The report concluded there is a “significant unmet need for health care.”<sup>24</sup>

The point is, that when calculating the total cost of war, one needs to account for not only the long-term health care for wounded and disabled veterans but also the long-term care of the thousands of contractors who suffer from many of the same issues. While it may not be the case that the government foots the entire bill for contractor health care, it often provides public programs for former contractors who need assistance. Perhaps more to the point, even when the government does not pay health care costs, someone else is, whether it is the insurance company, the employer, or the individual contractor. Those funds could be used for other things.

## CONCLUSION

Given the potential utility represented by PMCs, it makes sense to avoid general policies that prohibit their use. Given the enduring failure of U.S. and partner governments to defeat groups like Boko Haram and the National Union for the Total Independence of Angola, it is clearly time to try alternative approaches, including PMCs. Nevertheless, if we are to take proposals like Prince’s seriously, it is important to have a realistic view of what PMCs can reasonably be expected to do, what sort of oversight and regulatory structures are necessary to ensure they do it well, and what the total costs will be.

What should be apparent from the above analysis is that an effectively regulated private military and security industry could fill critical security gaps in ungoverned and undergoverned areas. Making space for the companies to do so does not mean wholeheartedly embracing a private sector approach to public problems. The concerns raised here—effectiveness, accountability, transparency, and cost—are very real and need to be addressed by not only individual clients and security providers but also the international community.

## ENDNOTES

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