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Private Military Companies in the US Stabilization Operation in Iraq

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No. 9, AUGUST 2008

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In the last two decades, the issue of private military companies and the privatization of the sphere of international security, have been addressed by political decision-makers in many countries, military experts, as well by the media and non-governmental organizations (NGOs). It seems that the controversies and sometimes very categorical opinions which have emerged concerning these issues have several sources. Firstly, the relatively sudden appearance of a new type of non-public actor in the military sphere, which traditionally was the exclusive activity of the state, was associated with consternation caused by negative connotations with historic, still pre-Westphalian international order where significant roles were played by private armies and other mercenary forces (e.g. condottieres, corsairs). Secondly, the activities of these types of firm have caused a number of problems. For example, to this day, not all the circumstances have been explained regarding the participation by several firms in conflicts in Africa and the Balkans in the 1990s, while the media are still reporting various irregularities and incidents involving such enterprises. Thirdly, this specific business has developed with enormous dynamism, continuously generating profits and extending both the geographical scope of activities and the profile of the services provided.

The political and military operation to stabilize and reconstruct Iraq, ongoing since 2003, and commanded by the United States, has become the latest powerful stimulus to renewed debate on the significance of such private military firms in the defence sphere in modern states. As it is often emphasized by the American media, analysts and representatives of the government and the army, this sphere is highly dependent on this type of company. At the same time, it has been pointed out that a lot of data concerning the activities of private military firms in Iraq (their tasks, numerical strength, losses, methods of combat, value of contracts etc.) cannot be accessed, so hampering an accurate evaluation of the actual situation. Additionally, news concerning operations in Iraq has regularly reported serious purported malfeasances at the junction of these particular businesses and the state administration, as well as of various incidents involving the employees of these firms. These reports fuel further the discussion taking place in the USA as to the advisability of using the services of such companies, and also concerning the ethics of the activities undertaken by private military firms. This discussion has continued for quite some time and has already extended beyond the military and civilian defence experts. The conclusions drawn from such discussions by the US authorities will perhaps affect the future forms of American military operations. For this reason, it is worthwhile examining various aspects of the private military firms operating in Iraq and point out the most important issues associated with them.

The objective of this analysis is to provide a comprehensive review of the activities of private military firms in the American operation to stabilize and reconstruct Iraq. Familiarizing oneself with the concepts and presenting the most important problems associated with private military firms shall allow these considerations to be set in a wider context. The following issues will be discussed: initial conditions determining a wide use by the USA of services offered by private firms carrying out operations in the military sector within Iraq, types of tasks carried out by these entities, and the problems that have emerged as a result of their activities. This analysis should enable conclusions to be drawn, concerning the factual importance of military companies participating in the US stabilization and reconstruction of Iraq, as well as their forms and manifestations. The final section will include general remarks pertaining to the future of the use of such firms by the United States.

Private military firms—general issues

Definition

The existence and operations of private military firms are a sign of the process involving the privatization of the sphere of international security.¹ The common understanding of the term *privatization* involves a change in ownership arrangements, i.e. the transfer from state ownership to private ownership (either a natural or legal person). Privatization concerns a facility—most often an industrial plant or other state property, or sometimes even a whole branch of the economy, previously exclusively controlled by the state.

¹ Particularly in the English-language body of references, the use of a general term *privatisation of security* in the context of using the services of private military companies by governments is overwhelming. The term is most often construed as entrusting military tasks to outside private entities. The SIPRI definition: www.sipri.org/contents/conflict/privatesecurity.htm. Cf. D.D. Avant, *The Market for Force. The Consequences of Privatizing Security*, Cambridge University Press, Cambridge 2005, pp. 25–26.

The decision on privatization is always taken by the state authority which creates the suitable legal framework for the exercise. Obviously, the sphere of international security is not a sector of the economy, but rather a sector where a given country exercises its political/military influence abroad. The authorities of the state control this sphere exclusively, retaining a monopoly for applying various instruments designed to secure the national interest. As a rule, private entities do not have access to this sector, although they indirectly affect it through their autonomous actions on the international stage and their interaction with the authorities. For this reason, the narrowly understood concept of *privatization* may not concern the sphere of international security of the state, because the classical understanding of stakeholder relationships which are subject to change does not apply to this area.

The term “privatization of security” should thus be read as a mental shortcut, which means that a state has entrusted the performance—in return for relevant compensation—of certain security functions, to private entities.² It is just these entities which are given the name of *Private Military Firms* (PMFs) or *Private Military Companies*,³ although various researchers in this field have added an entire array of derived terms, which will be referred to later in this text. In compiling the definitions presented in the references for this topic, one can say that PMFs are private entities, having legal personalities, which are registered and that operate within their relevant national legislative systems pursuing permanent commercial activities. These firms operate under a hierarchical structure and a system of official subordination. PMFs accept orders only under contracts regulated by law. These firms are very often component parts of transnational holdings (capital groups) and their operations are transnational as well. A characteristic which distinguishes them from other business entities is a specific profile of activity i.e. the tasks they undertake.

Profile of activities

Historically, the first tasks entrusted by armies to private companies were responsibilities for engineering and logistics. During times of conflict, the potential of the private sector was harnessed to provide auxiliary services, e.g. transportation, construction of various facilities, creating transport infrastructure in the field, and delivery of supplies. These relationships of the military with the private sector (dating back to at least as early as World War I) in the second half of the 20th century, resulted in the emergence of the first PMFs, providing logistic services, almost exclusively to their own national army. A fairly new phenomenon, principally appearing from the 1970s onwards, has been the undertaking by private firms of some tasks traditionally performed by the army, such as, for example, operating complex electronic weapon and telecommunications systems (also under combat conditions), training soldiers, gathering information, advisory services and preparing tactical and operational analyses. In the 1990s,

² It should be emphasized that some authors use this term to describe the phenomenon of organized application of force by entities other than the relevant state services, i.e. rebels, insurgents, militias, forces of local clan leaders or by organized crime groups. See B. Moller, “Privatization of conflict, security and war,” *DIIS Working Paper* 2005, No. 2, www.diis.dk/graphics/Publications/WP2005/bmo_privatisation_of_conflict.pdf. This is only seemingly new issue in the domain of security. See M. Madej, “Użycie siły przez podmioty pozapaństwowe jako “nowy” problem studiów strategicznych,” [in:] R. Kuźniar, E. Haliżak, G. Michałowska, S. Parzymies, J. Symonides, R. Zięba (eds.), *Stosunki międzynarodowe w XXI wieku. Księga Jubileuszowa z okazji 30-lecia Instytutu Stosunków Międzynarodowych Uniwersytetu Warszawskiego*, Scholar, Warszawa 2006.

³ In Polish (by the way, rather scarce) body of references on this topic, both terms are usually applied as synonyms. See M. Madej, “Użycie siły...,” *op.cit.* However, in the English-language references the abbreviation PMF (describing all firms providing military services) is sometimes applied interchangeably with PMC—*Private Military Company* and PSC—*Private Security Company* (or *Private Security Contractors*). It is rather erroneous approach because the term PMC is also sometimes applied to the firms dealing with combat, offensive tactical tasks, whereas PSC—to firms providing “passive” protection of persons and facilities of their employers. See e.g. S. Makki (et al.), “Private Military Companies and the Proliferation of Small Arms: Regulating the Actors,” www.smallarmssurvey.org/files/portal/issueareas/security/security_pdf/2001_Makki_et_al.pdf. Generally, the US administration also applies the term PSC only in relation to firms providing security services. See e.g. Memorandum No. 17 of the Coalition Provisional Authority in Iraq, www.iraqcoalition.org/regulations/20040626_CPAMEMO_17_Registration_Requirements_for_Private_Security_Companies_with_Annexes.pdf.

within the context of conflicts in Sierra Leone and Angola,⁴ another very controversial issue regarding PMFs tasks appeared. It was reported, that certain companies were conducting combat missions not alongside but actually replacing non-existent armed forces of the country commissioning the services. In the same period, the *Private Military Companies* embraced various types of security firms, providing “passive” security services for facilities or persons in unstable regions, but whose employees were nevertheless armed not only with small firearms but often also heavier guns, armoured vehicles or helicopters. It should also be noted, that the increase in numbers of PMFs and their extended activities has resulted in their co-operation not only with governments, but also with private entities (mainly with transnational corporations, and also with non-governmental humanitarian-aid organisations), operating in dangerous regions and confronting armed violence.

The nature of the tasks carried out by a firm is the most important shared characteristic of all types of military enterprises, proposed by experts dealing with this problem. Hence, when a series of sub-types of PMFs are listed, the following criteria are most often taken into account: the degree of the involvement of a firm in tactical combat, and the level of the force of arms applied by their employees (so-called division according to the “proximity to the battlefield” criterion⁵). Additional classifications are also proposed, namely according to the type of client for whom the firm works (public/private).⁶ However, for some years, a number of companies have been offering a wide range of services—often of a very diverse nature—to both governments and private entities. That is why some sources concerning this topic postulate the classification of particular contracts (i.e. they should be categorized rather by individual contracts as to their nature and tasks) rather than the firms as such.⁷ For the purpose of the analysis in this paper, a simplified working classification will be sufficient according to the duties envisaged in the contracts for the PMFs; namely:

- operating combat (weaponry) systems as well as supporting systems (e.g. communications) belonging to the military,
- carrying out logistic and maintenance tasks (including administering military facilities and providing the security for them),

⁴ In both civil conflicts, a significant role was played by the RSA-registered firm Executive Outcomes. It was hired in Autumn 1993 by the Angolan government to train soldiers but most probably it was actively participating in combat with UNITA rebels. The firm was present in Angola till the end of 1995. It is pointed out that its involvement has had an essential effect on forcing the rebels to sign a peace agreement (its further course has been actually much complicated; it has not put a definite end to civil war in the country). In spring 1995, the same firm was hired by the then authorities of Sierra Leone, and this time to contract openly referred to fighting the RUF rebels. The contract expired after two years but the activities of the firm stirred much controversy particularly because of the issue of illegal trade in diamonds from mines using forced labourers. See J. Spear, “Market forces. The political economy of private military companies,” pp. 25–40, www.fao.no/pub/rapp/531/531.pdf.

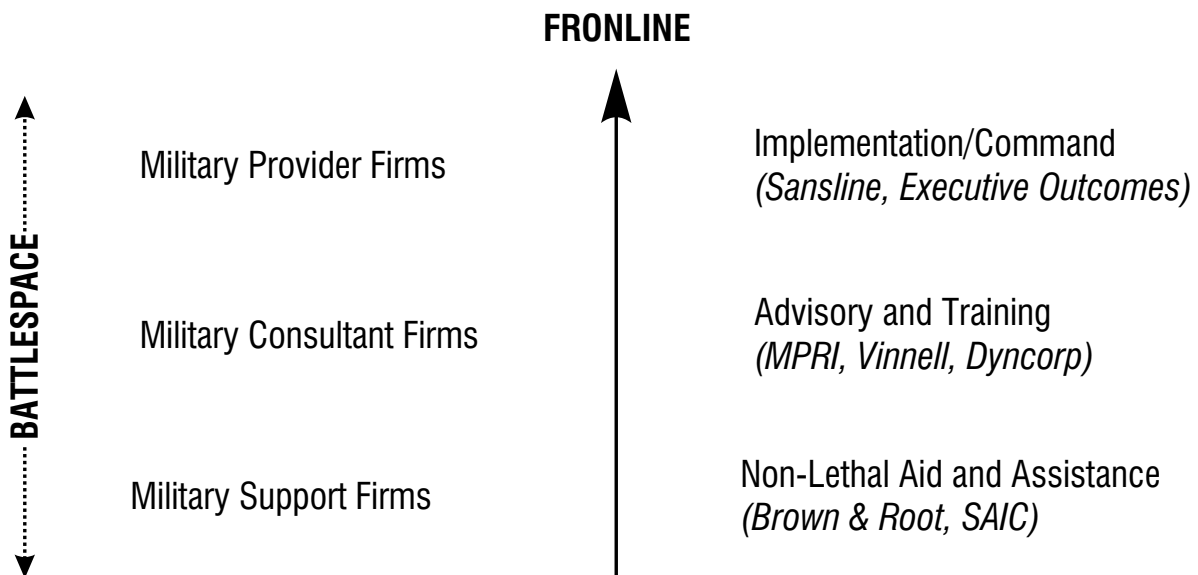
⁵ It is the division, very popular in publications in this field, proposed by an American researcher of these issues, Peter Warren Singer. He has distinguished the firms offering combat services (*Military Provider Firms*), fighting in the battlefield either beside or in place of the client’s units, the consulting/advisory firms in the military sphere (*Military Consultant Firms*), firms running educational and training programmes, restructuring the army of their client, and the firms providing broadly understood logistic support for the army of their client (*Military Support Firms*). See P.W. Singer, “Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security,” *International Security* 2001–2000, no. 3, pp. 198–202.

⁶ This markedly more complicated typology of PMFs has been suggested by Christopher Kinsey. In his opinion, it allows to include in the classification of PMFs both the security companies, operating under commission from private clients, often applying a non-typical high level of force as for protection services, as well as ephemeral firms established *ad hoc* in order to discharge combat duties under commission from individual clients, e.g. leaders of criminal groups or “warlords.” See Ch. Kinsey, *Corporate Soldiers and International Security. The Rise of Private Military Companies*, Routledge, London–New York 2006, pp. 8–34.

⁷ Such a division, related to the nature of contact and taking into account just “the distance from the battlefield” (similar to the typology of P.W. Singer), is presented by Deborah D. Avant. Additionally, she introduces two main branches: police (by assumption, therefore, of less offensive role), and military (i.e. strictly military). See D.D. Avant, *The Market for Force... , op.cit.*, pp. 16–22.

- rendering special services for the armed forces like analytical, advisory and training services (including programmes for restructuring of the armed forces),
- implementing comprehensive programmes for both the security of persons and facilities, rendered to both public and private clients,
- conducting tactical combat duties commissioned by governments.

Fig. 1
“Tip of the Spear” Typology Firms distinguished by range of services, level of force



Source: P.W. Singer, *Corporate warriors. The Rise of the Privatized Military Industry*. Cornell University Press, Ithaca 2004, p. 93.

It is therefore, a fairly broad spectrum of duties which may be discharged in different forms and with varying degrees of force. Providing food supplies to military units in your home country is somewhat different than providing security to facilities or convoys in a foreign country, particularly in the midst of an ongoing armed conflict. The security duties alone will vary with the degree of risk—in the areas where the situation is particularly unstable, there may be even the need to use armoured vehicles and heavy weapons.

Conditions of the market development

The intensive increase in numbers and values of the contracts concluded by private military firms occurred primarily in the 1990s, around the end of the Cold War period, and was affected by a number of factors.⁸ Like any other market, this one is governed by economic rules, so its development depends upon shifts in demand and supply. The factors which boosted the supply of services offered by PMFs in this period, included:

- demobilization of highly elaborated armies—the emergence in the labour market of a considerable number of former often highly skilled soldiers,
- the end of the arms race and major deregulation of the market in weaponry providing easy access to weapons (particularly to post-Soviet army surplus equipment), including both small firearms and more complex systems, and
- the increasing popularity of a neo-liberal approach to management of the public sector, prevailing in many countries—including political favours and suitable legislative measures supporting privatisation of activities traditionally performed by the state.

The increased demand for services in the PMF sector depends on the following factors:

⁸ Detailed discussion of the causes for the boom in PMF market in the 1990s, see P.W. Singer, *Corporate Warriors. The Rise of Private Military Industry*, Cornell University Press, Ithaca 2004, pp. 49–73.

- end of the major powers' engagement in some regions of the world—the emergence of a “security vacuum,” which forced many countries to quickly develop local military capabilities,
- outbreaks of ethnic, social, and religious conflicts previously suppressed during the colonial and cold War times—which resulted in a rapid increase in demand for military services and military advisory services,
- modernization, specialization and numerical reduction of armies in highly developed countries—outsourcing to the private sector of some support duties (logistics) or even combat duties (operating sophisticated weapon and support systems).

The issue of mercenaries

When discussing private military firms, one cannot avoid the issue of mercenaryship—as the employees of PMFs are often considered contemporary mercenaries. According to many analysts in the defence matters, the features of PMFs (corporate and business character) clearly distinguish their employees from independent mercenaries or their groups, usually only hiring themselves out for tactical combat operations on the basis of clandestine, informal agreements.⁹ Other researchers of this subject point out, that in many of these firms there is no permanent executive personnel, and only administrative members of staff are employed on salaries. When they succeed in concluding a contract, the process of recruiting persons suitable to conduct contracted tasks starts. Usually former soldiers, including also former members of elite special operations forces, are the most favourable employees. The media have often reported on the negative consequences of such a recruitment process, which is often completed hastily without detailed checks on qualifications and histories of candidates.¹⁰ In theory, there is a possibility that unsuitable candidates will be rejected (e.g. those with criminal records or who have been dismissed from the army on disciplinary grounds), thus increasing the quality and reliability of actions undertaken by employees. In practice, the decision depends often only on the good will of the firm's managers and their sense of responsibility.

It should be emphasized that the definition of mercenaryship is fairly accurately described in the provisions of international law currently in force.¹¹ In the light of this definition, the PMF employees may not be regarded as mercenaries, even though they share one of the principal characteristics with them—the intent to gain economic benefits through engaging in armed conflict. However, the prerequisite for regarding someone as a mercenary is above all their participation in direct combat, which is not the case for the majority of PMF employees. When we consider, however, the firms which fight under a contract concluded with the government, or provide security services in combat regions, this condition of commitment could be met, and therefore, in certain circumstances, the employees of such PMFs could be treated as mercenaries. This issue evokes a number of legal doubts and has not been adequately addressed in international law; furthermore, the solution is not expected to emerge in the near future either. Nevertheless, “mercenaryship” in its classic meaning should not be equated with the activities of the PMFs.

⁹ Such position is presented e.g. by Ch. Kinsey, who strongly emphasise that comparing mercenaries and the employees of PMFs is groundless. See Ch. Kinsey, *Corporate Soldiers...*, *op.cit.*, pp. 111–134.

¹⁰ The media repeatedly reported the facts of PMF's hiring former soldiers of special units in the countries where they could have operated in violence of human rights e.g. in Chile (during the rule of Augusto Pinochet) and RSA (during the apartheid period). See e.g. P. Brownfeld, “Military Contractors Shoulder Heavy Burden in Iraq,” 18 April 2004, www.foxnews.com/story/0,2933,117239,00.html; J. Franklin, “US contractor recruits guards for Iraq in Chile,” *The Guardian* of 5 March 2004, www.guardian.co.uk/world/2004/mar/05/iraq.chile.

¹¹ An exhaustive definition of a mercenary is given in Article 47 I of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts. This definition is repeated in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted in 1989.

PMFs' activities in the US stabilization mission in Iraq

Preconditions

Intensive activities of private military firms in the US led operation aimed at the stabilizing and reconstruction of Iraq have their background in certain historic, cultural, political, and economic preconditions. Major roles have also been also played by the US military doctrine, the characteristics of the world market for PMFs' services, as well as the internal security environment in Iraq, and by the objectives of the stabilization operations carried out in that country.

The first factor influencing the activities of PMFs in Iraq stems from the traditional relationships between the private sector and the US Army. The relationships of commercial entities with the armed forces first strengthened in the first half of the 20th century (because of the participation of the US in both World Wars) and later intensified during the Cold War arms race. In the US, the so-called military industry complex emerged then,¹² where powerful private firms, such as, for example: Chrysler, Boeing, Douglas, Lockheed, IBM, Kellogg, and Booz Allen provided designs for the manufacture of modern weapon systems, as well as rendered logistic services.¹³ The US army has therefore started to co-operate closely with the private sector, although its sheer size at the time still permitted it to carry on operational tasks by itself. It should nevertheless be noted at this point, that as early as during the conflicts in Korea and Vietnam, private firms have been responsible for logistics¹⁴ to a noticeable degree. As a rule, the civilians co-operating with the Army did not carry arms and were not in direct contact with combat operations at a tactical level, since they mostly remained behind the front line.

Above all, however, the aftermath of the Vietnam conflict has brought about the reluctance on the part of American society (hence politicians too) towards the compulsory military draft, as well as making it sensitive to the deaths of its own soldiers fighting abroad. After the traumatic Vietnam experience, the necessary minimum requirement for public support for possible US military operations was to be assured by the so-called Abrams doctrine, assuming a closer relationship between the National Reserve Forces and the National Guard with the overseas missions carried out by the Army.¹⁵ As some experts point out, using the services of private entrepreneurs has become an informal supplementation of this doctrine.¹⁶ Two more reasons for the attachment of US military and political decision-makers to co-operation with PMFs thus become clear: the first resulting from the willingness to minimize the negative psychological effect associated with loss of soldiers' life (it is facilitated by the policy of secrecy surrounding the contracts and activities of the firms, including their casualties), and the second resulting from the conviction that it is necessary to bound the society (and thus business) closely to the activities of the Army.

The fact that weaponry and electronic systems supporting the military have become increasingly sophisticated as a result of the Revolution in Military Affairs (RMA) which began in the US Army in the late 1970s, can be regarded as the latest factor which explains the increasing use of civilian personnel by the US Army. Introducing state-of-the-art weapons or telecommunication systems as well as managing the logistics, based on the information and communications technologies (ICT) and satellite systems, has resulted in the necessity to employ civilian specialists to operate them (principally because of the cost and time needed to train soldiers to the equal level). This, in turn, has led to civilians becoming increasingly involved at the tactical level. The modern weapons, telecommunications, and navigation systems for supporting armies has proven their usefulness in the battlefield in the 1991 Desert Storm operation. It has

¹² See Ch. Kinsey, *Corporate Soldiers...*, *op.cit.*, pp. 94–111.

¹³ The American PMFs, set up as a result of the above processes are sometimes termed *proxy military companies*, indicating that from their beginnings they adjusted resources and profiles of activities to the requirements of the US Army, and also recruited their personnel (including management) from it. See *ibidem*.

¹⁴ See D.D. Avant, "The privatization of security. Lessons from Iraq," *Orbis* 2006, No. 2, pp. 327–342.

¹⁵ Also known as *total force concept*. The name of the doctrine is taken after its author, General Creighton Abrams. See e.g. J.J. Carafano, "The Army Reserves and the Abrams Doctrine: Unfulfilled Promise, Uncertain Future," *Heritage Lectures* of 18 April 2005, www.heritage.org/Research/NationalSecurity/hl869.cfm.

¹⁶ See P.W. Singer, "Can't win with'em, can't war without'em. Private military contractors and counterinsurgency," September 2007, www3.brookings.edu/fp/research/singer200709.pdf.

been assessed, that the combat operations of the coalition of the US Army and several other countries, numbering approximately 500 000 soldiers, were supported in the field by 5-10 000 civilians.¹⁷ The civilian employees participated also in the subsequent NATO missions by US forces in the Balkans in the 1990s.¹⁸

The end of the Cold War left the USA with a very large army, which was not compatible with the sudden change in the political climate. For this reason, in the 1990s, there were a series of reductions in the numbers of army personnel and equipment, based on doctrine of “two theatres;” namely, the capability to carrying out a maximum of two simultaneous operations similar to that of Desert Storm. The next change in doctrine occurred during the first term of George W. Bush, when—in response to the events of 11 September—a new tactic was adopted; namely the creation of highly specialized mobile units, equipped with the latest weapons and ICT techniques,¹⁹ capable of responding quickly to asymmetric threats (transnational terrorism, irregular operations, etc.²⁰). In this doctrine, the use of commercial companies of various types has become more widespread than ever (going beyond the commonplace logistical support and operating the ICT systems), and includes also the active combat support on tactical level, as an additional pillar of the military capacity of the USA. The private sector, understood as something broader than the industrial-military complex, was to actively support the US Army, increase its capacity for action and mobility, thereby allowing it to specialize and maximize its combat effectiveness.²¹ It is this assumption, consistently implemented by the Bush’s administration, which has provided the impetus for involving the unprecedented high number of PMFs in Iraq.

The last essential factor for permitting the use of private military firms in Iraq, are US legal regulations. As early as in the 1950s, executive regulations were in place governing services and products procurement by the administration from the private sector. It was decided that the government was under obligation to use the assistance of private entrepreneurs because it stimulated the national economy. The Circular A-76, pertaining to the issues discussed above, has been amended several times since then and it is today providing a framework for government authorities when establishing commercial relationships with private entities.²² The Circular is based on legislative acts which set out the competences and principles underpinning activities conducted by government entities in this sphere. The practical effect of the presence of such legal solutions is e.g. the LOGCAP military programme,²³ set up in the mid-1980s. Its objective is to extend the possibilities of using commercial enterprises by the US Army in logistic support, both within the United States and abroad. The programme allows for rapid addition of some civilian services to military operations (from an agreed list), which may be needed in a given situation; the comprehensiveness of the list is an advantage because it allows simultaneous contracting of a number of additional resources. Since 1997, a similar programme (Air Force Contract Augmentation Program, AFCAP) has also been implemented by the US Air Force.

The above factors have been operating in the US in both directions. On the one hand they generated state demand for services in the PMF sector, whilst on the other hand they have stimulated the establishment and development of this type of company. Although the beginnings of the first PMFs in the US, operating first in the sphere of logistical and engineering services for the Army, e.g. Brown & Root (at

¹⁷ The sources give different figures, the reason of the variance probably lies in the method of counting the employees. See D.D. Avant, “The privatization...,” *op.cit.*

¹⁸ For more on the use of private firms by the US Army in the Balkans, see G. Cahlink, “Army of contractors,” *Government Executive Magazine* of 1 February 2002, <http://govexec.com/features/0202/0202s5.htm>.

¹⁹ The fundamental assumptions of the US Army transformation were presented by the US Secretary of Defense Donald Rumsfeld. D. Rumsfeld, “Transforming the military,” *Foreign Affairs* 2002, No. 3, pp. 20–32.

²⁰ On the understanding of the concept of asymmetric threats in the US military doctrine, see M. Madej, *Zagrożenia asymetryczne państw obszaru transatlantyckiego*, PISM, Warszawa 2007, pp. 44–45.

²¹ See e.g. J. Scahill, “Bush’ Shadow Army,” *The Nation* of 2 April 2007, pp. 11–12.

²² This policy was introduced as early as in 1955 in the bulletins of the presidential Budget Office. Circular A-76 was first issued by the Office of Management and Budget (OMB) in 1966, and henceforth amended several times (the last time in 2003). The text of the document is available at the website of the Defense Logistics Agency: www.dla.mil/j-3/a-76/OMBCircularA-76New.html.

²³ The full name of the programme is Logistics Civil Augmentation Program. More in: J.E. Althouse, “Contractors on the battlefield: what doctrine says and doesn’t say,” *Army Logistician*, November/December 1998, www.almc.army.mil/alog/issues/NovDec98/MS323.htm.

present Kellogg Brown & Root, KBR), DynCorp International LLC or CACI International, dates back to the early Cold War period (the 1950s and 60s), but the real development, particularly of smaller firms dealing in the provision of security, training and advisory services, occurred later in the 1990s. Among them, there are following companies active in Iraq: Blackwater Worldwide (established 1997) being the most controversial, what will be discussed later in the paper, Custer Battles (2002) and Triple Canopy (2003). In the same period and for the same reasons as in the USA, the firms registered in the United Kingdom developed considerably (which are presently among the major contractors benefiting from US contracts in the PMF sector). They are: Aegis Defense Services Limited (2002), Erinys International (2001), and the Olive Group (2001). So, as early as in the planning phase of the Iraq operations by the US authorities, the potential for PMF services was in place and ready to use, in both the US and the global market.

The conditions for widespread use of PMFs had already existed in the USA (and on the global market) even before the decision was taken to invade Iraq. Nevertheless, the use of the services of military companies and on a such large scale in Iraq, is the result of a number of additional factors. Above all, as many experts suggest, the Bush administration has not really taken into account the perspective of such a long term presence in Iraq, in terms of effective control and stabilization of the country.²⁴ That is why, during the combat phase with Saddam Hussein's army, the major part of the auxiliary tasks (logistics) were to be completed by private firms which, by lessening the burden on the Army, would allow it to efficiently and quickly finish the principal stages of the operation.²⁵ In the subsequent phase, i.e. Iraq's stabilization, it was assumed that PMFs would be even more involved, not only in terms of logistic support but also through active provision of security in spheres other than immediate priorities (e.g. protecting US civilian staff members or private companies active in the reconstruction of infrastructure in Iraq, or the organising and training Iraqi security forces), but which could still require the attention of those military forces which could be then not involved in current direct operational activities (fighting paramilitary groups).²⁶

Together with an unexpected exacerbation of internal conflicts and an outbreak of violence on a terrible scale, the state of security in Iraq has deteriorated markedly. This development has required a change in US military and civilian strategy towards that country—the US military units whose strength has been increased by ca. 25%, have had to concentrate even more on combat duties.²⁷ It also worth noting that Iraq was to become, to a certain degree, a new area for the activity of American business, particularly in petrochemical and engineering sectors, not only at the re-building stage of the economy but also in the longer term. In turn, the condition for development of any business is, among other things, a certain basic level of public security which was not guaranteed in Iraq, either by the local Iraqi forces nor by the coalition armed forces. Therefore it is natural, that private companies operating in Iraq resorted to commercial services to provide security for staff and property. The above reasons helped to boost demand for PMF in other sectors, which had hitherto been neglected. It is often pointed out, that without the PMFs, the US would have to beef up the numbers of their own forces stationed in Iraq (even declaring a universal draft) or would have to

²⁴ The assumptions made by the administration of G.W. Bush on the Iraq campaign can be discussed at length. The body of publications present a prevailing opinion, that despite strong criticism, the administration expected—after a rapid overthrow of Saddam Hussein's regime—a fast and effective reconstruction of the political structures and economy of Iraq. It seems that the possibility of an outbreak of internal conflicts between Iraqi religious, ethnic, and political fractions, all on a great scale, wasn't taken into account. An interesting summary of the American vision of the Iraq operations is presented by Gilles Kepel, a researcher of the Middle East issues. See G. Kepel, *Finta. Wojna w sercu islamu*, Wydawnictwo Akademickie DIALOG, Warszawa 2005, pp. 179–215 (published in English: *The War for Muslim Minds: Islam and the West*, The Belknap Press of Harvard University Press, 2004).

²⁵ It is confirmed by the fact that the KBR company starting their preparation in Kuwait, as early as in the autumn of 2002, to provide support to the US invasion of Iraq. See P.W. Singer, "The Private Military Industry and Iraq: What Have We Learned and Where to Next?," *DCAF Policy Paper*, Geneva, November 2004, www.dcaf.ch/_docs/pp04_private-military.pdf.

²⁶ See D. Isenberg, "A government in search of cover: PMCs in Iraq," Proceedings of the conference *Market Forces: Regulating Private Military Companies* of 23–24 March 2006, www.basicint.org/pubs/Papers/pmcs0603.pdf.

²⁷ A new US strategy in Iraq was introduced in January 2007, as a result of a landslide increase in internal violence in this country in the second half of 2006. The most important step was to increase the number of soldiers by some 30 thousand, and shifting the profile of their actions towards more active deployment. See "New way forward," www.whitehouse.gov/news/releases/2007/01/20070110-3.html.

internationalise the operations still more. Both these solutions would be politically very inconvenient if not impossible.²⁸

The place of PMFs in the operation of stabilization of Iraq and the duties performed

In order to describe and indicate the position of private military firms in the US mission to stabilize and reconstruct Iraq, a review of all the commercial entities which are active in this country in connection with the stabilization operation carried out there should be completed first. This group could be defined as follows: it includes private companies of various trades, implementing tasks commissioned by public institutions and financed from public funds (of the United States, and—to a certain degree—also of Iraq). In practice, these are mainly transnational corporations or companies being components of holdings (capital groups) primarily controlled by US or UK-based entities, but also regional ones, e.g. Saudi, Turkish. They perform a number of duties—from projects to improve Iraq's infrastructure to the promotion of the principles of democracy and civic society among local people.

The number of employees of these firms was very high from the outset of the operation, although difficult to estimate. Over time, the companies have intensified their activities in Iraq still further despite the escalating level of risks. It happened not only because of the increased needs of the US Army (increased numbers of soldiers and a change in strategy in January 2007), but also because of the formulation of new objectives in the terms of the stabilization and reconstruction of Iraq (e.g. progress in developing its own forces of law and order and the army, agreeing the principles for operating local autonomies, speeding up constitutional and legal reforms).²⁹ Halfway through 2007, it was estimated that the number of employees of all private firms in Iraq, who were either directly or indirectly paid from US public funds, amounted to over 180 000 staff from over 600 various companies, which exceeded the number of soldiers in the regular combat units of the USA and other coalition countries.³⁰ Approximately 60% of these employees were Iraqis, hired and trained on the spot, less than 25% were citizens of third countries, and the remaining 15% were Americans.³¹ The death toll among the staff of private firms amounted to more than 1 000, whereas over 13 000 were wounded.³² These data illustrate the scale of involvement of the private sector in the US operation in Iraq.

Private military firms are an essential component of the group of considered companies, and they are distinguished by the tasks they perform, which are characteristic for private military companies. Under the conditions prevailing in Iraq, they consist primarily of: logistic support for US Army units (managing bases, supplying food and other necessities, including munitions and fuel), operation of the Army's modern combat systems (chiefly in the Air Force and the Navy), running training and education courses for the Iraqi security forces, performing risk analyses and providing possible counter protection measures and physical security to persons, road convoys, and various important facilities. These companies operate in Iraq under business contracts governed by their relevant national laws (most often of the USA), concluded with the number of employers of various disciplines, which are chiefly public institutions: the authorities of the US administration, above all the Department of State and Department of Defense (including various institutions of the US Army), as well as specialised agencies reporting to them e.g. USAID.³³ Up until mid-2004, the Coalition Provisional Authority (CPA) had been one such employer, but after it was disbanded, the Iraqi government became one. It should be emphasised that PMFs are also contracted by non-public entities, i.e. other private commercial companies, primarily transnational corporations, who have concluded with

²⁸ P.W. Singer, "Can't win...", *op.cit.*, p. 3.

²⁹ In the context of stabilisation in Iraq, there is often talk about eighteen objectives drawn in spring of 2007 by the US Congress, and for the achievement of which the President would be held accountable. See the Report on this topic (IBAR) of September 2007 at www.whitehouse.gov/news/releases/2007/09/20070914.html.

³⁰ T.C. Miller, "Private contractors outnumber US troops in Iraq," *Los Angeles Times* of 4 July 2007, www.commondreams.org/archive/2007/07/04/2284/.

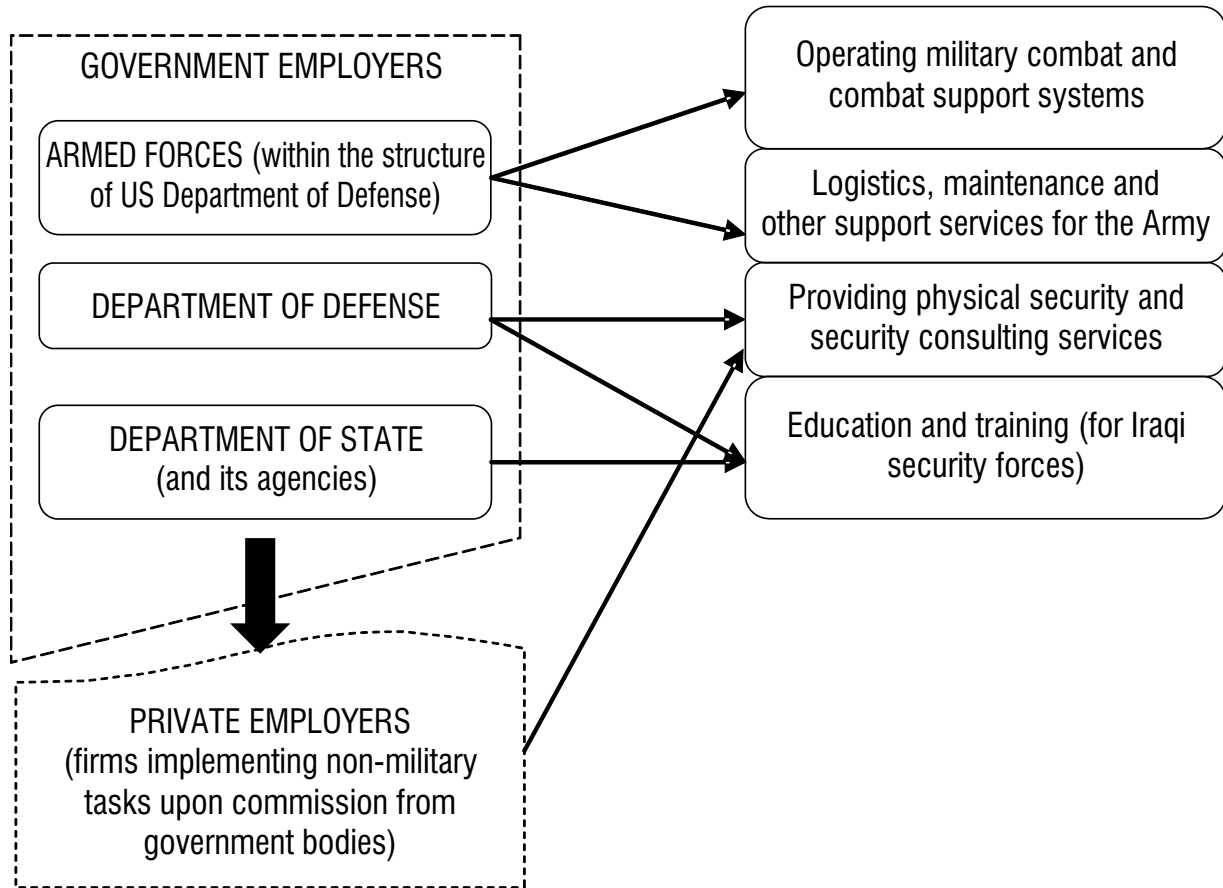
³¹ See J.K. Elsea, N.M. Serafino, "Private Security Contractors in Iraq: background, legal status and other issues," *CRS Report for Congress*, 11 July 2007, www.fas.org/sgp/crs/natsec/RL32419.pdf.

³² P.W. Singer, "Can't win...", *op.cit.*, p. 4.

³³ United States Agency for International Development is a special government agency for the management of US foreign aid. See www.usaid.gov.

the US or Iraqi governments separate contracts for re-building infrastructure, extracting oil resources or running education and assistance social programmes. Such companies are using the PMFs for providing security to their own employees.

Fig. 2.
US employers of PMFs in Iraq and nature of their contracts



Because many details of functioning PMFs in Iraq are classified, it is difficult to provide credible data on the employees of these firms. For this reason, the number of armed employees carrying out security duties is evaluated to be anything from ca. 10 000, through 25 000, to ca. 50 000. Such a remarkable divergence results from various ways of defining a PMF, the policy of secrecy pursued by many companies, and the ever increasing scope of activities undertaken by these companies in recent years. Lower figures correspond with the official, perhaps understated, data supplied by the Department of Defense and the Department of State, and concern the firms directly contracted by them. Higher figures represent estimates given by the PMFs themselves or independent experts, and may be overstated as they probably take into account unarmed employees, engaged primarily in administrative activities.³⁴ Moreover, in media reports and government releases, the term *Private Security Contractors* is applied often without explaining whether it covers exclusively the armed personnel of security companies or also those staff employed in the PMFs but

³⁴ Director of the Association of Private Military Firms in Iraq in 2006, reported the number of 48 000 employees of 181 different firm. See W. Solis, "Rebuilding Iraq. Actions Still Needed to Improve the Use of Private Security Providers," *Government Accountability Office report for the US Congress* of 12 June 2006, www.gao.gov/new.items/d06865t.pdf. In 2007, the American media quoting government sources repeated most often 20–30 000 figures. See e.g. S. Fairnau, S. al-Izzi, "U.S. security contractors open fire in Baghdad," *The Washington Post* of 27 May 2007, www.washingtonpost.com/wp-dyn/content/article/2007/05/26/AR2007052601394.html. Next, according to the regional unified US command (CENTCOM) it is slightly over 10 000 of 21 different companies (also in 2007). See T.C. Miller, "Private contractors...", *op.cit.*

who is carrying out administrative duties. An attempt to estimate the numbers of PMF staff that support the US Army with broadly defined logistic services also poses considerable problems. The Department of Defense maintains that a total of some 120 000 civilians employed by private companies are working on its behalf in Iraq (but without specifying how many of them are PMF employees).³⁵ Bearing in mind, however, that the largest firm rendering such services for the US Army (Kellogg Brown & Root, KBR) gives its own evaluation of ca. 50 000, one can assume that the truth lies somewhere in the middle, with companies supporting the US Army logistically in Iraq, probably employing somewhere in the region of 70 000 to 80 000 persons. Similarly, the estimates of the number of firms range from 20 to as many as 180. It seems that the problem consists in defining PMFs and in identifying principal contracts and subcontracts where the dividing line does not permit for an easy audit of the entities conducting commissioned duties in the field.

PMFs operating in Iraq and their contracts

In order to outline the picture presenting the scale and nature of the use of private military firms by the USA in the stabilization operation in Iraq, a number of exemplary contracts are discussed below, divided by the nature of duties performed by PMFs. These are either the largest agreements or those covering the most important or difficult tasks. Some of these contracts have been available since the time of conclusion, whilst others have been brought to the attention of the general public as a result of media reporting of various irregularities or abuses of force associated with the presence of the PMFs in Iraq. It should therefore be noted, that the data presented below are not exhaustive because it is difficult to obtain details, often secret, concerning the values of contracts, their timeframes, and the scope of duties performed under these contracts.

Logistic tasks

In view of the enormous scale of their involvement, the Kellogg Brown & Root Corporation (KBR, a subsidiary of the Halliburton holding company) provides an important example of the activity of a military company in the US stabilization operation in Iraq. Its contract with the US Army was concluded under the framework of the LOGCAP programme (therefore in compliance with the procedures of the US Army), prior to the outbreak of war in March 2003. KBR provides a comprehensive range of auxiliary logistic services, such as: transportation, supplies, maintaining military bases and their sanitary facilities, food supplies, and even entertainment facilities. The firm is also responsible for almost all consignments of fuel, ammunition and equipment for the US Army. In order to discharge these responsibilities, the firm maintains very extensive facilities in Kuwait, above all at the Camp Doha military base, which was of key importance in the success of the invasion of Iraq in March 2003. In Iraq, the KBR is responsible for maintaining several bases, e.g. Camp Victory in Baghdad, as well as Camp Anaconda—the largest US base in Iraq situated near Balad airport, 100 km north of Baghdad. There are ca. 35 000 US troops at any given time, under a rotation scheme, as well as nearly 8 000 civilian employees who are responsible for the social facilities in the base, as well as for provision of supplies (even the popular American fast food restaurant chains, bars, gaming houses, etc. are present).³⁶ It is worth noting, that the company hires various corporate subcontractors to fulfil certain functions, envisaged in the contract with the US Army; these include major regional companies such as the Kulak Construction Co. of Turkey, and Projects International of Dubai, based in the United Arab Emirates. The KBR and its subcontractors employ over 50 000 people, principally hired from among local people and non-US residents, to work in over 150 sites.³⁷ In 2003 alone, the firm presented the US government with invoices worth some USD 4.3 billion and the overall cost of its services, in the first half of

³⁵ Data from the hearing in the US Congress, after: J.K. Elsea, N.M. Serafino, "Private Security...", *op.cit.*, p. 3.

³⁶ *Private warriors*, directed by M. Smith (a correspondent for PBS station), a documentary (released 2005) of the PBS TV network in the *Frontline* series, www.pbs.org/wgbh/pages/frontline/shows/warriors/view.

³⁷ Statement by George Seagle, Director of Security for KBR's Middle East operations before the Committee on Oversight and Government Reform. See <http://oversight.house.gov/documents/20070216102943-12797.pdf>.

2007 is estimated at ca. USD 20 billion.³⁸ It should be noted that the KBR enjoys, across its range of activity, the active protection of US Army units and as such does not usually arm its employees. Given the scale of this company's involvement, the US military presence in Iraq would be difficult to sustain, without support from this and other military firms responsible for logistics and support. Particularly striking is the fact that the US Army units functioning in Iraq are almost completely dependent on this single private company and its subcontractors.

Security tasks

The Department of State utilizes the PMF's for typical protection-related measures. Under the programme, called WPPS,³⁹ designed to protect the personnel working outside the USA, contracts are concluded for the provision of physical protection to employees of the Department, securing facilities which they use in Iraq, principally within the so-called 'Green Zone' in Baghdad, where Iraqi authorities, diplomatic missions of various countries, and Iraqi offices of the most important US institutions are sited. Also included is the protection of persons—politicians and official representatives of various US government agencies present in Iraq on a permanent or temporary basis. Under the conditions prevailing in Iraq this protection takes the form of armed bodyguards, specially armoured and armed vehicles to convoy persons, and even helicopters to patrol the protected areas. The Department reports that under this programme in Iraq, some 1 400 staff from three firms are *in situ*: Blackwater Worldwide (ca. 1 000 persons and 85% of the total value of all WPPS contracts), DynCorp International LLC, and Triple Canopy. There is also a separate additional contract, outside the WPPS, with the Triple Canopy firm for the same type of services. Its implementation involved approximately another 1 200 staff.⁴⁰ This company deals particularly with the protection of diplomatic missions, not only in Iraq but (in accordance with the contract of July 2005) also in other countries.⁴¹

Another firm intensively involved in Iraq under a contract with the Department of Defense is the British company, Aegis Defence Services Limited. Since 2004, it has carried out a range of tasks, providing physical protection for persons involved in the re-building process, as well as carrying out training courses and preparing analyses on the security situation, for the US institution which co-ordinates the re-building of Iraq—PCO⁴² and the US Army Corps of Engineers.⁴³ The company provides active assistance in dangerous situations (e.g. in convoys) and constantly monitors the security situation in particular regions of the country, mounting intelligence operations and preparing special reports which are also made available to other PMFs. One may say that the firm runs a comprehensive programme to monitor the security situation in the areas of Iraq entrusted to it, in order to maintain unimpeded efforts towards re-building the infrastructure of that country. It should be noted that, under terms of the contract, the firm also performs a function of co-ordinator for other PMFs, sharing information, e.g. on recent attacks or protection strategies against Iraqi paramilitary groups.⁴⁴ The contract worth of ca. USD 300 million and involving at least 1 000 employees expired in 2007, after which the Department signed a follow up agreement with Aegis worth of ca. USD 475 million, so assuring the continuation of this co-operation.⁴⁵

Another firm which is similarly committed in securing the re-building of Iraq is Erinys International. Since the end of 2003, this firm has had a contract worth ca. USD 175 million to protect Iraq's oil installations,⁴⁶ employing throughout the country over 16 000 private security guards (recruited mainly from among the

³⁸ P.W. Singer, "Can't win...", *op.cit.*, p. 2.

³⁹ WPPS, Worldwide Personal Protective Services. *Ibidem*.

⁴⁰ *Ibidem*.

⁴¹ R. Merle, "Embassy Security Firms Chosen," *The Washington Post* of 17 May 2005, www.washingtonpost.com/wp-dyn/content/article/2005/06/16/AR2005061601675.html.

⁴² Iraq Project and Contracting Office, http://iraq.usembassy.gov/iraq/iraq_pco.html.

⁴³ U.S. Army Corps of Engineers, www.usace.army.mil.

⁴⁴ J.K. Elsea, N.M. Serafino, "Private Security...", *op.cit.*, p. 8.

⁴⁵ "Aegis wins contract renewal," a release posted at the official website of the firm, www.aegisworld.com/news.aspx.

⁴⁶ S. Fainaru, A.R. Paley, "Private Guards Fire on Taxi; Three Iraqis Hurt, Police Say," *The Washington Post* of 19 October 2007, www.washingtonpost.com/wp-dyn/content/article/2007/10/18/AR2007101802420.html.

local residents), which it trained and equipped itself. The company also undertakes other guard duties related to the re-building of Iraq, e.g. protecting convoys in the “Green Zone” in Baghdad.⁴⁷

The use of the services of private military firms offering protection to American government facilities, convoys as well as diplomatic representatives and business in Iraq may seem unusual or outright unnecessary when a large number of troops from the US and other countries are stationed in the country. However, in view of excessive burden placed on the military, this measure is fairly understandable. Entrusting the security duties to PMFs lessens the load on the US army and lets it concentrate on combat functions, i.e. fighting paramilitary and terrorist groups, securing the main routes, and on other operations important, for the general state of security in Iraq.

Another large and non-transparent group of employers of PMFs are business entities active in the rebuilding effort of Iraq, exploitation of its resources, or the implementation of assistance and educational social projects. They operate usually on the basis of contracts concluded with specialised agencies of the US or Iraqi governments, which have nothing to do with the military sphere. Considering the lack of security and continuing threat from paramilitary groups, these business entities have to ensure protection of their employees. The solution is the PMFs offering security services. One such firm is, for example, the Unity Resources Group, employed by the US corporation RTI International (contract value ca. USD 50 million), to provide physical protection for its employees, who implement a contract in Iraq devoted to the promotion and teaching of the fundamentals of democracy, civic society and local government.⁴⁸ Next, Olive Group, a British PMF, protected the staff of the Bechtel Corporation which, under a commission from the US government, worked during the period 2003–2006 on the infrastructure re-building programme (power industry, airports, water supply systems).⁴⁹ Another British PMF—ArmorGroup—has confirmed, that it performs a number of various tasks, in the area of security provision for a number of private employers, e.g. CAPE corporation, involved in the re-building of Iraq’s infrastructure, American United Logistics (AUL) firm, who organise supplies, as well as TetraTech and the ECC Group, which are responsible for the disposal of Iraqi arms depots and clearing of old minefields.⁵⁰ The large number of various employers makes ArmorGroup the single largest PMF, responsible for the security of road convoys in Iraq (in these tasks, a total of 1 200 members of staff are involved, who protect ca. 30% of all convoys in Iraq).⁵¹ As a result of the insufficient level of security in Iraq, the activities of such PMFs are of utmost importance. Definitely, without them it would be extremely difficult to attract the interest of businesses to handle contracts, even very valuable ones, in a country with an unstable, dangerous environment swept by violence.

Training and specialist services

A certain number of firms, closely associated with the Department of Defense, or generally with the US Army, perform non-typical specialist services. For example, L-3 Communications (part of Titan Group) can be listed here, providing the services of translators and interpreters for the military (the issue of employing an insufficient numbers of persons proficient in the Arabic language and having knowledge of the culture became clear after the attacks of 2001, when the need to analyse profoundly the phenomenon of Islamic fundamentalism emerged), intelligence, analytical, and training services (in the field of modern ICT systems). The company employs ca. 6 000 staff in Iraq.⁵² Also at the time of the scandal concerning the inhumane treatment of Iraqi prisoners in Abu Ghraib, the involvement of several PMFs in this affair came to light. It turned out that a certain group of investigators and interpreters—employed to meet the needs of the

⁴⁷ A. Klein, “Firms Protest Exclusion From Iraq Security Bid,” *The Washington Post* of 2 May 2007, www.washingtonpost.com/wp-dyn/content/article/2007/05/04/AR2007050402113_pf.html.

⁴⁸ S. Fairnau, “Iraqis detail shooting by guard firm,” *The Washington Post* of 26 November 2007, www.washingtonpost.com/wp-dyn/content/story/2007/11/25/ST2007112501661.html.

⁴⁹ C. Freeman, “UK security guard killed in Iraq,” 29 March 2004 r., <http://news.scotsman.com/iraq/UK-security-guard-killed-in.2515762.jp>.

⁵⁰ Information posted on the firm’s official website: www.armorgroup.com/globalreach/middleeast/case/.

⁵¹ “Teaming agreement signed with AUL in Iraq,” 23 May 2007, www.armorgroup.com/files/news/9580/AUL_teaming_final.pdf.

⁵² T.C. Miller, “Private contractors...,” *op.cit.*

Army—was provided by two private firms: Titan⁵³ and CACI.⁵⁴ The employees of these companies not only supported the administration of the prison, but also participated actively in the interrogations alongside US soldiers.

DynCorp International LLC firm has a separate and completely different type of contract concluded with the Bureau of International Narcotics and Law Enforcement Affairs,⁵⁵ which operates within the structure of the US Department of State. The contract covers the implementation of a comprehensive restructuring programme for the Iraqi police. The programme envisages a modern police force following the model of those operating in democratic countries. It foresees comprehensive training and educational courses (covering a broad range of topics: from the basics of law, through forensic techniques, to the methods of hand-to-hand combat or crowd control measures), as well as providing Iraqi police with the requisite infrastructure (e.g. building facilities). The value of the contract is estimated at ca. USD 1.3 billion. The implementation of the programme has to-date involved at least 2 000 persons.⁵⁶

The importance of this type of specialized services for the Iraq operation is considerable. From the point of view of the future functioning of Iraq, the programme for restructuring the police is particularly essential. Entrusting the implementation of the programme to a private company is a necessity, as involving military specialists needed on the battlefield, in civilian training and education activities is implausible. Turning to PMFs for such services again lessens the burden on the US Army. It also simplifies the structure of the whole mission, as it replaces an additional and probably fairly numerous contingent of police, which would have to be sent in place of PMFs to perform training tasks for the Iraqi security forces.

Problems related to the activity of PMFs in Iraq

A lot of controversies have emerged around the activities of private military firms, particularly in the most recent period, when the world and the American media have reported on many irregularities and incidents involving PMFs operating in Iraq. The considerable involvement of PMFs in the US operation for the stabilization and re-building of Iraq highlighted a lot of ambiguities associated with the work of such companies under the conditions of armed conflict.

Legal responsibility of PMF staff members

The most important is the legal status and the issue of civil and criminal responsibility of PMF employees. Many of the authors dealing with these topics emphasize the fact, that persons employed by PMFs when working in the field, operate in a “legal vacuum,⁵⁷” which is implied by several reasons. Firstly, in the realities of an armed conflict, resulting in the absence of effective authority over a given territory, the principle of territorial jurisdiction cannot be practically implemented. It means that although foreigners in Iraq should be subject to Iraqi law and observe the standards provided therein on equal terms with Iraqi citizens,⁵⁸ in practice, the situation does not permit an effective functioning of the law enforcement and judiciary system. This, in turn, prevents the enforcement of responsibility even for common offences.

⁵³ See e.g. J. Kwok, “Armed Entrepreneurs,” *Harvard International Review*, spring 2006, p. 36.

⁵⁴ The company explains in detail its role in the abuses in the Abu Ghraib prison on its website: www.caci.com/iraq_faqs.shtml.

⁵⁵ Bureau of International Narcotics and Law Enforcement Affairs, www.state.gov/p/inl.

⁵⁶ D. Hedgpeth, “Iraq Contract Documents In ‘Disarray,’ Inspector Says,” *The Washington Post* of 23 October 2007, www.washingtonpost.com/wp-dyn/content/article/2007/10/22/AR2007102201793.html.

⁵⁷ Many authors write about the “legal gray zone” in which the PMF staff operate. See P.W. Singer, “The Private Military Industry...,” *op.cit.*, pp. 11–14; M. Mathiopoulos, “Prywatyzacja aktywności wojskowej,” *Sprawy Międzynarodowe* 2007, No. 1, pp. 96–102.

⁵⁸ The principle stating that the respective national laws apply to aliens present on the territory of a given country, is a recognised principle/customary rule of international law, confirmed numerous times through the jurisprudence of international courts and in a number of bi- and multi-lateral agreements. It does not mean, however, an unconditional application of all national provisions to aliens; some of such provisions are either annulled or changed by special bi- and multilateral agreements, and—additionally, in cases under civil law, private international law applies. See e.g. R. Bierzanek. J. Symonides, *Prawo międzynarodowe publiczne*, LexisNexis, Warszawa 2002, pp. 260–262.

Secondly, when an armed conflict erupts in a given area, or when an occupation of a country is ongoing, that is the time for international humanitarian law to come into effect. This law differentiates combatants (members of armed forces) and non-combatants (civilians), but considers also an additional category—civilian persons accompanying the armed forces (i.e. the civilians employed by the army).⁵⁹ All these groups have their rights and obligations clearly stipulated. However, in many cases, the employees of PMFs cannot be correctly categorised. It is possible, therefore, that the enemy may treat them in different ways: either as legal or illegal combatants, including—in specific cases—even as mercenaries.⁶⁰ Obviously, one should remember that paramilitary rebel and terrorist groups operating in Iraq most often do not observe any international war rules or customs just as they do not differentiate between civilian and military targets, or recognize the status of POWs. For these reasons, in Iraqi conditions, the issue of the correct classification of PMF employers (in accordance with the law of armed conflicts) loses much of its significance—in the event of capture by a paramilitary or terrorist group they are treated in a discretionary way, and very often they are killed. In addition, it is not clear whether the situation in Iraq permits application of the law governing armed conflicts, particularly after the formal transition of power in the country from the CPA (provisional authority) to the new Iraqi government in mid-2004.

Thirdly, there is a special status of the PMF employees in Iraq, guaranteed by the so-called Order No. 17, issued by the CPA back in June 2004.⁶¹ It excludes civilians employed by private firms and implementing tasks commissioned by the US authorities from Iraqi jurisdiction (jurisdiction immunity) in matters relating to the terms and conditions of such contracts. This provision, which has not been repealed after disbanding the CPA, has become part of Iraqi law, and its operation is tantamount to preventing the Iraqi administration of justice from conducting effective proceedings against the persons covered by this special status. This is so, because the US authorities can block the case at any time, stating that this particular jurisdiction immunity applies to the actions under investigation.⁶² At the same time, the CPA has introduced a legal regime concerning the principles governing the arming of PMF staff and of their operations, which envisages their licencing by the Iraqi Ministry of Internal Affairs, as well as covering all other spheres other than contracts they are subject to Iraqi law setting rules for the use of firearms.⁶³ In view of the subordination of Iraqi authorities to the USA, any attempts to withdraw a licence, to amend the regulations or even enforce them in accordance with the letter of law, seem unlikely in the current climate.⁶⁴

Fourthly, the issue of civil and criminal responsibility of PMF staff members should also be viewed from the angle of the law of the United States. In the US legal system, there are grounds under which staff members, employed by external companies to perform duties under a government contract outside US territory (i.e. also the staff of PMFs), can be brought to justice. Civilians, except for those persons remaining under formalised relationships with the Army, are covered by the so-called Special Maritime and Territorial

⁵⁹ See e.g. F. de Mulinen, *Podręcznik prawa wojennego dla sił zbrojnych*, Warszawa 1994, p. 35ff.

⁶⁰ M. Mathiopoulos, "Prywatyzacja...", *op.cit.*, p. 97.

⁶¹ "Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their Contracts, including licensing and registering employees, businesses and corporations; provided, however, that Contractors shall comply with such applicable licensing and registration laws and regulations if engaging in business or transactions in Iraq other than Contracts." The full text of the Order <http://dosfan.lib.uic.edu/ERC/cpa/english/regulations/index.html# Regulations>.

⁶² J.K. Elsea, N.M. Serafino, "Private Security...", *op.cit.*, p. 16.

⁶³ It concerns Annexes to Order No. 17 and so-called Memorandum No. 17 together with Annexes. *Ibidem*.

⁶⁴ The most emphatic example can be seen in the case of a shooting in Baghdad on 16 September 2007, involving employees of Blackwater Worldwide. Immediately after the incident, the Iraqi authorities announced that the licence of the company was being revoked, effectively banning its operations, as well as declaring their intention to judge the perpetrators according to the Iraqi law. The decision has never been carried out in practice. The US authorities expressed regret and promised to supervise closer the activities of the PMF and, after some time, the Iraqi government quietly dropped the matter. See e.g. S. Behn, "Unlicensed security," *The Washington Times* of 19 September 2007, www.washingtontimes.com/news/2007/sep/19/unlicensed-security/; S. Raghavan, T.E. Ricks, "Private security puts diplomats, military at odds," *The Washington Post* of 26 September 2007, www.washingtonpost.com/wp-dyn/content/article/2007/09/25/AR2007092502675.html.

Jurisdiction,⁶⁵ which permits the enforcement of US federal law (mainly its criminal provisions) outside US territory, e.g. on board vessels or aircraft registered in the United States, and also in the facilities situated in other countries which are in possession of US diplomatic or consular missions, as well as other government representative offices, agencies, and their personnel. This jurisdiction is, however, spatially restricted, as it does not apply to deeds committed outside the above-mentioned premises. This gap is filled partly by a separate act, the so-called Special Military Extra-territorial Jurisdiction,⁶⁶ which operates only with respect to civilians employed by the US armed forces (or others, implementing tasks commissioned by the Department of Defense, and the subcontractors of principal contractors) or accompanying such forces. This issue could be solved in the near future through a relevant amendment to the legislation. Attempts have also been made to enable the application of the Uniform Code of Military Justice—UCMJ,⁶⁷ to civilian employees of firms which are engaged by the Department of Defense. The opponents of this solution suggest, however, that any proceedings against a civilian person before a military court would justifiably be deemed unconstitutional.⁶⁸ Despite this, the Department of Defense, after a fairly recent (2006) amendment to the UCMJ, issued directives indicating the possibility of applying the Code, also with respect to the employees of PMFs co-operating with the Army.⁶⁹ The final element relating to the actions of PMF employees in Iraq are those pieces of US internal legislation, which penalize any war crimes and other severe breaches of human rights, in accordance with the definitions included in the Geneva conventions, and, e.g. in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷⁰

A large number of legal acts, theoretically applicable against persons employed by military firms, who commit torts have not been translated into practice. Analysts estimate that since the beginning of the war, at least several dozen US soldiers have been court-martialled, accused of causing the wrongful death of Iraqi civilians. At the same time, no single employee of a PMF has been brought to justice for similar deeds, even though there were grounds for it.⁷¹ This situation is well illustrated by the scandal connected with the inhumane treatment of Iraqi prisoners in Abu Ghraib, which emerged in 2004. The US soldiers involved in these actions were quickly court-martialled (by mid 2007—11 persons were sentenced), while the employees of the PMF, although suspected of committing similar actions, have not been made responsible to criminal charges.⁷² The injured Iraqis have brought several civil actions before US civilian courts against the firms involved in the Abu Ghraib scandal. The outcomes of these actions have not been determined yet, and it is not at all certain that the trials will commence at all.⁷³

Another example illustrating the lack of enforcement of the liability with respect to PMF employers is the widely reported incident involving a convoy run by Blackwater Worldwide of September 2007. The incident occurred at Nisur Square in Baghdad. The employees of the firm, driving in a convoy, opened fire allegedly in response to their vehicles being fired at. As a result, more than ten Iraqi bystanders were killed. The witnesses maintained from the outset, that the shooting was unprovoked. Hence the wave of protests against the activities of PMFs, which subsequently fuelled discussions in the USA on how the actions of these type of firms could be controlled. Under public pressure, both the US and Iraqi governments tried to

⁶⁵ Special Maritime and Territorial Jurisdiction (SMTJ). See e.g. J.K. Elsea, N.M. Serafino, “Private Security...,” *op.cit.*, p. 17.

⁶⁶ Military Extraterritorial Jurisdiction Act (MEJA). See e.g. *ibidem*, p. 19.

⁶⁷ Uniform Code of Military Justice (UCMJ). See *ibidem*, p. 20.

⁶⁸ More on UCMJ (also on SMTJ and MEJA), see “Q&A: Private military contractors and the Law,” www.hrw.org/english/docs/2004/05/05/iraq8547_txt.htm.

⁶⁹ For information on the implementation of the UCMJ provisions allowing civilians to be brought to justice, see “US military court-martialing civilian contractor Ali while DOJ slumbers,” 19 May 2008, <http://jurist.law.pitt.edu/hotline/2008/05/us-military-to-court-martial-ali-while.php>.

⁷⁰ For an extensive discussion of the present US legislative solutions and possibilities of their being applied to the employees of PMFs, see “Private Security Contractors at War. Ending the Culture of Impunity,” 16 January 2008, www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf, pp. 27–36.

⁷¹ See J. Scahill, “Contract justice,” *The Nation* of 6 April 2008, www.thenation.com/doc/20080421/scahill.

⁷² See *ibidem*, pp. 57–58.

⁷³ C. Kolker, “Former Abu Ghraib Prisoner Accuses CACI, L-3 of Torture in Suit,” 6 May 2008, www.bloomberg.com/apps/news?pid=20601116&sid=aN5bbh5efPOA&refer=Africa.

clarify the case, as well as bring the participants in the incident to justice.⁷⁴ Early in 2008, there were some signals indicating that actions would probably not commence in the USA, because of serious legal doubts concerning the competence of the courts and the questionable grounds for filing an indictment.⁷⁵ In turn, the Iraqi authorities, several months after the event, and despite an initial declaration (e.g. there have been even threats to revoke the firm's licence) did not take any steps against Blackwater Worldwide. Perhaps it resulted from their weak political position and the need to retain the protection provided by this company to high-ranking Iraqi officials. Despite controversies and a number of ongoing procedures designed to clarify the incident and determine its legal consequences (hearings before Congress and a Grand Jury, an FBI investigation, special actions undertaken by the Department of Justice), the Department of State extended the contract with Blackwater Worldwide for another 12-month period, justified by the lack of alternatives for discharging the duties carried out by this firm.⁷⁶

Financial transparency of contracts

Another important subject associated with the activities of PMFs is the issue of costs and the lack of financial transparency in the contracts. Originally, private companies were engaged by governments in order to reduce expenditures for carrying out military operations. The arguments presented to support this idea included proving how uneconomical it is to use well-trained soldiers to conduct simple auxiliary tasks, such as transportation, providing supplies, or maintaining order. The Army, freed from the burden of organising its own logistics, and performing purely guard duties, would automatically become cheaper and more efficient as a result.

In reality however, these claims have proved difficult to verify. As appears from the examples presented earlier, the values of the largest contracts concluded with the US government, by the largest and most capable PMFs, are considerable and expressed in hundreds of millions of USD.⁷⁷ At the same time, paradoxically, the tendering procedure is often guarded by confidentiality clauses, as are the details of the contracts themselves. It is also the case that contracts are often awarded without tenders, with opaque procedures.⁷⁸ Also of importance are the option clauses generating automatic extensions of the basic contract and corresponding increases in its value, and *cost-plus* clauses, which effectively provide incentives to the firm to be inefficient in their operations, as profit is generated as a percentage of the costs.⁷⁹ Additionally, taking into account the controversies that have recently emerged concerning the PMFs activities in Iraq, the details of or the contracts themselves, were, in principle, to remain confidential; neither the firms nor their employers, generally—the US government, have an incentive to be open even in relation to very general issues. The issue of the transparency of contracts tends to arise in the case of subcontracts concluded with PMFs (principally concerning security duties), by other commercial businesses implementing non-military tasks in the effort to reconstruct Iraq. Because of the relatively smaller scale and value of these contracts, they are implemented by less known firms, which do not have any information policy and keep all details of the contract secret. For their part, the representatives of the USA admit that they do not control the provisions of the contracts under which these contractors operate,

⁷⁴ See e.g. A. Kami, "Iraq revokes security contractor license after shootout," a wire of Reuters agency of 18 September 2007, www.reuters.com.

⁷⁵ See J. Risen, D. Johnston, "Justice Dep. cites obstacles in Blackwater case," *The New York Times* of 16 January 2008, www.nytimes.com/2008/01/16/washington/16blackwater.html.

⁷⁶ See J. Risen, "Iraq contractor in shooting case makes comeback," *New York Times* of 10 May 2008, www.nytimes.com/2008/05/10/world/middleeast/10blackwater.html.

⁷⁷ See Chapter "PMFs operating in Iraq and their contracts," pp. 43–46 of this paper.

⁷⁸ See e.g. P.W. Singer, "Outsourcing war," *Foreign Affairs* 2005, No. 2, p. 132.

⁷⁹ Practical examples of the operation of option and cost-plus clauses, are the contracts with Aegis and Erinys, mentioned earlier. The first company signed a contract with the Iraq PCO as early as in May 2004, for ca. USD 90 million; ultimately, as a result of options and cost-plus clauses, by mid-2007, the US government had paid the company ca. USD 380 million. The contract of the second firm had initially (concluded also in 2004) been agreed for the sum of ca. USD 15 million. However, by the mid-2007, Erinys company had received ca. USD 170 million. All this has been implemented in compliance with the terms and conditions of the contracts. See S. Fairnau, "U.S. Pays millions in cost overruns for security in Iraq," *The Washington Post* of 12 August 2007, www.washingtonpost.com/wp-dyn/content/article/2007/08/11/AR2007081101378.html.

nor do they have any influence over the actions undertaken by the latter.⁸⁰ All this creates a nebulous and unsupervised complex network of principal contracts and subcontracts. As a result, public opinion and sometimes also political decision-makers learn of some details of the activities of certain firms only from media reports (i.e. when civilian casualties resulting from the use of force or financial abuses etc. emerge).

All this hinders any external, independent, diligent, and multi-dimensional evaluation of both the justification of the engagement of private firms to implement certain contracted tasks, as well as the terms and conditions, and—ultimately—the final price for the services rendered.⁸¹ The situation has been conducive to abuses by the firms and indeed this has been showcased in a series of scandals associated with PMFs inflating their costs. For example, the contracts concluded under the LOGCAP programme with KBR, a firm mentioned earlier, have been analysed, as a result of suggestions of unwarranted expenditures to the tune of over USD 2 billion.⁸² These consisted in inflating the cost of services provided, several fold, or even invoicing for fictitious services.⁸³ Blatant examples included bills for the transport of goods not actually moved at all, maintaining inventories of facilities which have been closed and abandoned, or charging for the provision of non-existent meals.⁸⁴ The firm refuted the charges, maintaining that most of the expenditures had been justified, and these evidently unnecessary costs stemmed from formal and procedural mistakes, or possibly frauds by individuals. Also an USD 1.2 billion worth contract with DynCorp International LLC was to be audited in detail, but the procedure was discontinued after the government auditors found major shortages in documentation.⁸⁵ It should be emphasized that it is not only particular contracts that come under scrutiny, but also the scale of government expenditure on the private firms supporting the US mission in Iraq. Some authors even suggest that the private sector accounts for as much as 40% of US expenditures towards the stabilisation and re-building of Iraq,⁸⁶ although analytical sources close to the US government put the figure somewhere between 7–22%, but even that means USD tens of billions.⁸⁷ At the beginning of 2008, the Chairman of one of the US Congress subcommittees dealing with federal finances, declared that the audits of the contracts concluded in Iraq by the Department of Defense, found a lack of proper documentation for contracts worth around USD 10 billion. The investigations driven by allegations of possible offences covered ca. 80 contracts valued at USD 5 billion.⁸⁸

Co-ordination of military operations and PMF activities

The next issue pertaining to the activities of PMFs in Iraq involves the lack of co-ordination on tactical, operational, and strategic levels, with the army operations undertaken in parallel. At the tactical and operational levels, the civilian employees of PMFs are not subordinated in most cases (except for PMFs closely co-operating with the Army and performing logistical tasks for it) to the military chain of command, but because of the contracts which they carry out, they are present in the combat zone. There are no general rules concerning the possibility of co-operation of the armed forces and PMFs, as well as mutual

⁸⁰ A Member of the House of Representatives, the Chairman of the Oversight and Government Reform Committee stated: “It’s remarkable that the world of contractors and subcontractors is so murky and that we can’t even get to the bottom of this, let alone calculate how many millions of dollars taxpayers lose at each step of the subcontracting process,” quote after: J. Scahill, “Bush’ Shadow Army,” *op.cit.*, p. 16.

⁸¹ Above all, see S. Percy, “An overview of the Industry and the need for regulation,” *Adelphi Papers* 2006, No. 384, pp. 15–23.

⁸² P.W. Singer, “Can’t win...,” *op.cit.*, p. 2.

⁸³ See G. Witte, “Documents Trace KBR Billing Problems,” *The Washington Post* of 29 March 2006, www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032801766.html.

⁸⁴ See M. Kelley, “Largest Iraq contract rife with errors,” *USA Today* of 16 July 2007, www.usatoday.com/news/world/iraq/2007-07-16-iraq-auditors_N.htm.

⁸⁵ D. Hedgpeth, “Iraq Contract Documents...,” *op.cit.*

⁸⁶ Statement by Member of the US House of Representatives Janice Schakowsky, quoted in: J. Scahill, “Bush’ Shadow Army,” *op.cit.*, p. 18.

⁸⁷ J.K. Elsea, N.M. Serafino, “Private Security...,” *op.cit.*

⁸⁸ Statement by US Senator Thomas R. Carper quoted in: W. Pincus, “U.S. Cannot manage contractors in wars, officials testify on Hill,” *Washington Post* of 25 January 2008, www.washingtonpost.com/wp-dyn/content/article/2008/01/24/AR2008012403384.html.

rights and obligations.⁸⁹ For these reasons, it is possible that the actions of army units and activities of PMF employees could overlap with dangerous consequences. For example, the army could mistakenly fire on a firm's vehicles and employees, PMF units could fire at an Army vehicle and soldiers, a PMF vehicle may accidentally appear in the battlefield (which in itself may cause chaos), or army units could be committed to provide necessary assistance to attacked staff members of PMFs.⁹⁰ These types of cases have already been described by the media, and the issues have stirred much controversy among the commanders of US Army units.⁹¹

The strategic level, however, is of even more importance; it involves meshing the PMFs activities into the more general, political strategy aimed at conflict solution. In the case of Iraq, the main task of the coalition forces is to stabilize the country, i.e. above all, the elimination of various paramilitary groups. The way to achieve this objective is not only to fight them, but also to undermine their local support (which is a basis for the strategy of combating guerrilla groups). It succeeds only when a thoughtful and consistent policy of winning the confidence of the local population is followed. For this reason, US armed forces, apart from performing their combat duties, conduct special operations to support the civilian population (e.g. projects within the CIMIC⁹² framework). As indicated by the analysts, and even the military experts themselves, this US effort has been wasted to a certain extent by the sometimes damaging, uncoordinated actions of private military firms, and particularly those implementing security tasks.⁹³ As reported by the media, the employees of such firms, when discharging their duties, often behave arrogantly and aggressively, use firearms excessively, do not comply with regulations (e.g. traffic rules), or do not observe local customs and social standards to which people raised in Arab culture are particularly sensitive.⁹⁴ Undoubtedly, all this antagonises the people of Iraq even more so, because more often than not they equate the staff of private firms with coalition soldiers. This issue is surely one of the factors undermining the impact of the stabilization efforts.

Summary

The experience gained in connection with the activities of private military firms in the US operations aimed at stabilising and reconstruction of Iraq in the years 2003–2007, allow to draft conclusions on several issues. Above all, in what way do the above-described phenomena affect both the willingness of the USA to use the services of PMFs in future, and the ways of using such firms, i.e. types, importance and scale of tasks entrusted to them, and the methods of supervising contracts and co-operation with the Army.

⁸⁹ In December 2007, the Department of State and Department of Defense signed an agreement, concerning closer control by the US Army over PMFs, designed to facilitate better co-ordination of the actions of military units and private companies. It is considered to be the first step on the way to controlling the activities of PMFs in Iraq. See "Private Security Contractors at War...", *op.cit.*, pp. 24–25.

⁹⁰ Detailed description of several incidents connected with erroneous firing on military units by PMF employees, see *ibidem*, pp. 16–17, 51.

⁹¹ The most publicised case of the significant impact of PMF activities upon military operations, was the incident involving employees of Blackwater Worldwide, who were ferrying a private convoy in Fallujah shortly before the planned operation to take this town under the control of US armed forces. The convoy was attacked and the firm's staff members killed, resulting in several days of rioting and which culminated in a siege lasting several days and the taking of the town by force. See "Private military contractors in Iraq, an examination of Blackwater's actions in Fallujah," A report for the US House of Representatives' Oversight and Government Reform Committee, www.c-span.org/pdf/blackwater100207.pdf. See also: "Private Security Contractors at War...", *op.cit.*, pp. 54–56.

⁹² CIMIC, Civil-Military Cooperation.

⁹³ The attitude of the Army to PMF employees can be illustrated by the remark made by Brigadier General Karl R. Horst, Deputy Commanding General, 3rd U.S. Infantry Division, back in 2005: "These guys run loose in this country and do stupid stuff. There's no authority over them, so you can't come down on them hard when they escalate force. [...] They shoot people, and someone else has to deal with the aftermath." J. Finer, "Security Contractors in Iraq Under Scrutiny After Shootings," *The Washington Post* of 10 September 2005, www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090902136.html.

⁹⁴ See P.W. Singer, "Can't win...", *op.cit.*, p. 5ff. See also: M. Smith, *Private warriors*, *op.cit.*

The key question which is brought to mind after an analysis of PMF activities in Iraq can be formulated as follows: from the US perspective, is the large scale of commitment of private military companies the inevitable outcome of the simultaneous emergence of many factors favouring this option, or does it testify to a permanent trend? In other words, will the Iraq experience solidify the tendency to co-operate with PMFs in military operations or will this contribute to a major shift in the approach of the US administration to this issue? The answer to such a question is by no means simple or unambiguous. On the one hand, intensive use of PMFs services in Iraq has brought measurable benefits to the US, which allow one to view positively the advantages of turning to such companies in the future. On the other hand, however, many analysts argue that the number of controversies surrounding the use of PMFs undermines its justification.⁹⁵

Among the advantages, there is certainly the relieving of front-line units of the army from the logistic and security-related duties. One should not forget that the exercise—implemented because of the deteriorated state of security in Iraq at the turn of 2006—of numerical strengthening US forces by ca. 25% (30 000 soldiers, under the new so-called “surge” strategy of the Bush administration) has been met with public criticism and, additionally, has exposed the personnel limitations of the US Army. It was indicated that sending such an additional number of soldiers, in the context of the US commitment in Afghanistan, effectively means that the operational capacity of the Army in its present structure has been reached.⁹⁶ Therefore, had the US authorities given up completely on using PMFs services in the logistic and security spheres as early as at the planning stage of the Iraq operation, retaining simultaneously the current objectives and nature of the mission, would have necessitated sending many more soldiers to Iraq. This would have been enormously difficult if not impossible. However, giving up on the use of PMFs services while retaining the current strength of US forces stationed in Iraq would have been associated with a radical change in the form, nature and aims of the whole operation. One should keep in mind that the number of employees of the broadly defined private sector (not only the PMF branch) exceeds that of US soldiers and all other national contingents of the coalition supporting the USA in Iraq. A major proportion of the staff members perform services of a nature essential to the overall success of the operation, as it is hard to imagine effective actions by combat units deprived of supplies, fuel, or ammunition. Moreover, the number of killed or wounded PMF employees is several times higher than any other non-US military contingent stationed in Iraq. All this supports the notion, that the private sector shoulders a considerable portion of the burden of the reconstruction of Iraq and of the responsibility for its stabilisation. For this reason, various publications refer to the PMFs as *de facto* the single most important “coalition partner” of the United States in this operation.⁹⁷ Recalling this expression, one may ask another question—would it be possible for the US to undertake any future operation of a similar scale and objectives (stabilization of a major country, comprehensive rebuilding of its political structures and economy) without such an important “coalition partner”? If the US Army is to retain its present form, i.e. unless a major restructuring to increase numbers is completed (what is currently highly unlikely), then the carrying out of such operations without the assistance of PMFs would be greatly impeded.

There are some premises indicating that both the nature of the operation in Iraq and the related level of the PMFs’ commitment are unique, and that in the near future, private military firms will not assume such a major significance in US political-military operations. From the outset, the political context of the Iraq operation and the objectives set for it have been enormously important factors which have influenced the decision to use PMF services in this mission. In view of the still vivid traumatic experience of the 11 September 2001 attacks, as well as the experience of the Vietnam War and, to a lesser extent, controversial interventions in Somalia and Kosovo in the 1990s, the Iraq operation had, in the opinion of the Bush administration, to end with a convincing victory. This meant there was enormous political pressure for a quick (and spectacular) end to the fighting with the Iraqi army, and then—an efficient transition to the

⁹⁵ P.W. Singer, an analyst working for the Brookings Institution is the best known critic of the intensive use of PMFs services by the U.S. government.

⁹⁶ Even military sources have indicated, that the units sent to Iraq under the new strategy of strengthening the U.S. contingent in this country, were the last personnel resources of the U.S. Army which could be used without invoking extraordinary procedures for calling up reserve personnel. See e.g. B. Bender, “Analysts say surge can’t last past Aug. ’08,” *The Boston Globe* of 30 August 2007, www.boston.com/news/nation/washington/articles/2007/08/30/analysts_say_iraq_surge_cant_last_past_aug_08/.

⁹⁷ See P.W. Singer, “Can’t win...,” *op.cit.*

stage of rebuilding the political and economic structures of the country. Despite the unexpected outbreak of internal violence and impossibility of political consolidation of Iraq, American politicians still expected a positive outcome of the processes of stabilisation and re-building. They emphasised that the role of the new Iraq is to become a strategic partner of the USA in the Middle East region (as well as a very important destination for US investment and the source of profits for US businesses). These ambitious objectives, have translated firstly into the amount of US public funds allocated in subsequent years towards the stabilisation and reconstruction operation and, secondly, into a specific approach by the US decision-makers to rapidly proliferating problems—these were to be solved as quickly as possible, irrespective of costs, by shifting responsibility for them away from the politicians and the army.

The private military firms took full advantage of this state of affairs and responded to the increased demand by increasing the resources available. To put it succinctly—in response to the decisions of the US authorities and the “security vacuum” emerging in Iraq—the PMF sector has been seduced by the prospect of a gold rush; namely the chance to profit from huge public funds allocated to the stabilisation and re-building of Iraq, with various companies persuaded to commit resources in the broadly defined sphere of military and paramilitary services. For these reasons, both the scale and nature of PMFs commitment are by and large a particular phenomenon resulting from unique conditions.

Much controversy and adverse experiences associated with the activities of PMFs in Iraq support the belief, that the US authorities will introduce better accountability and with regard to this specific area. One may therefore expect steps to be taken in order to regulate the most important issues governing legal status, the obligations and rights of both individual staff members of PMFs and the firms themselves, as well as improved supervision of contracts in progress. It seems that the US authorities will move further in this direction, as transparency in this area could reduce unnecessary costs and limit criticism (from the political opposition and public opinion) raised in the cases of abuse or incidents related to the PMFs. This assumption is further supported by the fact, that three months following the incident with the Blackwater Worldwide convoy of September 2007, the Departments of State and of Defense agreed on a special agreement concerning the activities of PMFs in Iraq. Its essence is to manage these firms with tighter control mechanisms, designed above all to ensure better co-ordination of their actions with the combat activities of the US army units. Hence, the PMFs have been obliged to agree the routes and timing of their convoys with the US military, and to observe minimum standards of training for their staff, as well as the principles to be adopted when using force and firearms (requirements to attend to the safety of bystanders), and publishing all available details of any incidents where force was applied. It is worth noting, that the agreement covers a very extensive group of PMFs, contracted by the two Departments and the government agencies reporting to them, as well as the subcontractors (implementing military tasks) engaged under contracts of a non-military nature.⁹⁸ It can thus be seen, that the US government wants to tighten control over the most important activities of the PMFs, although the agreement has not solved most of the discussed issues. It cannot be excluded therefore, that this sphere will intentionally be left in an incomplete state, which has the advantage of allowing the maximum flexibility and effectiveness of the PMFs activities.

As regards the legal liability of the employees of private firms, the principal obstacle in enforcing their liability in tort, is the lack of political will to put effective mechanisms in place. Issuing Order No. 17 is not a special phenomenon, it is a manifestation of traditional US policy, preventing its citizens (and officials in particular) from being brought before any foreign or international court. It does not rule out in advance the possibility of bringing any PMF staff active in Iraq to justice where this is justified. A number of legislative acts previously referred to, particularly under the common law system, provide legal grounds for at least instituting proceedings, and later for setting a relevant precedence. Apart from the latter, there is also a legislative path via US Congress open. For these reasons, it seems that the major obstacle in the way of comprehensive regulation, in terms of the issue of responsibility of PMF staff members, is the lack of political will resulting from the intention to permit private military firms to operate in Iraq as freely as it is desirable by US government and the Army (in view of the structural problems and the security in this country) and also from the issue of the public image of USA (unwillingness of the Bush administration to admit any more failures, and a strong drive to improve the situation in Iraq).⁹⁹ This situation can undergo

⁹⁸ For more on this agreement see “Private Security Contractors at War...,” *op.cit.*, pp. 24–25.

⁹⁹ Such conclusions are included in Human Rights First report, *ibidem*, pp. 37–39.

certain changes in the near future, as indicated by the first steps taken by the US administration in this direction. Although by June 2008, no charges had been brought against any PMF employee for abuse of force against Iraqi civilians, in April 2008 an action was instituted which might nevertheless be of importance as a legal precedent. A Canadian citizen of Iraqi origin, employed by L3 Communications as an interpreter in the US base in al Anbar province, has been charged by a US military prosecutor for murdering a co-worker of his.¹⁰⁰ In the event of a final and valid sentence under martial law procedure (which itself raises serious constitutional doubts), this case may become a precedent allowing the US to bring the employees of PMFs to justice also for torts committed also against the citizens of Iraq.

As regards the lack of transparency of agreed contracts and improper supervision of their execution, the factors which determined the abuses that occurred should remember the special nature of the Iraq operation, i.e. very high level of funds allocated to the restructuring and re-building of the country, and the political pressure to obtain positive results and fix problems quickly.

There has been a lack of will to carry out credible (and time consuming) feasibility studies and analyses of the effectiveness of the use of PMFs and to formulate clear and effective principles for monitoring contract execution. It should also be remembered, that the subject-matter of at least some of the contracts is relatively new, so the lack of experience of the government side was highlighted as was the inadequacy of the bureaucratic procedures in force. In many cases, all these factors have resulted in an inability of behalf of government officials to properly safeguard the interest of the state in contracts concluded with PMFs. It should again be underscored that these type of problems emerging in business relationships between commercial entities and public administration are nothing new—there are faced both in the US and in other democratic states with market economies. The states with stable democratic systems usually strive to prepare exhaustive legal regulations covering all aspects of contracts so as to prevent financial malfeasances, wastefulness or corruption. Thus, it can be expected that the US authorities will draw conclusions from the negative experiences faced in Iraq and will promote more effective regulation of these issues.

A similar position pertains to the standards of work in PMFs, i.e. qualifications of their personnel and the creation of more effective relationships with the Army or civilian authorities in the country in which they are operating (co-ordination of actions, sharing information). The source of the problems in this field which emerged in Iraq (e.g. the allegations concerning hiring persons with a criminal record or with negative psychological conditions, as well as the effects of some PMFs actions being detrimental to military operations), were the same factors which encouraged the financial abuses. It may therefore be expected, that this state of affairs is going to change through the modification of the policy for using PMFs services, and tighter legal regulations. Particularly in the area of relations in the interface between the Army and employees of PMFs, one can expect that relevant regulations will be in place enabling the US military commanders to exert more control over the activities of the private firms. It is necessary from the viewpoint of the efficiency of any military operation, and the fact that the agreement of December 2007 was concluded between the Departments of State and of Defense, seems to confirm that the efforts of the US administration and the military are heading in this direction.

In the near future, the private military companies will still constitute an important element of the US policy in the domains of defense and security. The Iraq-related experience confirms the fact, that giving up the use of PMFs, particularly in the field of logistics and other services supporting the Army, would require the US to embark upon a serious restructuring of the Army, changing its current direction, which does not seem very likely for several years to come. It should be also remembered that the United States have in all their large military operations (e.g. in the Balkans), used the services rendered by PMFs. It is just an evident, solidified trend, whose manifestations could also be seen in the mission carried out before the end of 2001 in Afghanistan, while some notable differences appear (the smaller scale of PMFs commitment). These

¹⁰⁰ For more on this see “U.S. Military court-martialing civilian contractor...,” *op. cit.*

seem to be related to different objectives of the mission, its great internationalisation, and the different features of these two countries and their security problems.¹⁰¹

Therefore, in the near future a rapid reversal of these established trends and abandoning of the policy of using the services of private military firms by the United States, is not envisaged. It should be emphasised, however, that the activity as large-scaled as in Iraq, is somewhat exceptional and results from specific conditions which are not likely to be repeated in the near future. Although PMFs will certainly play a part in US political and military operations, it is not expected to be on the same scale as occurred in Iraq.

¹⁰¹ Private military firms have been present in Afghanistan from the time US forces first arrived there (autumn 2001). In 2007, an estimate was made, indicating that some 18–20 000 PMF employees from ca. 140 different companies are present there. This includes the largest US companies: Blackwater Worldwide, DynCorp International LLC, Triple Canopy, USPI (protecting e.g. President Hamid Karzai or members of the Afghan government), as well as major British firms: ArmorGroup and Aegis. As in Iraq, they perform a number of tasks covering not only protection services but also providing advisory, training and logistical support. Specific for this country is the emergence of local PMFs, established by former tribal guerilla commanders, who were till very recently, active in warfare against the Taliban under the Northern Alliance; they operate on the fringes of law, often involving themselves in the illegal arms trade or drug smuggling. These pose a major challenge to the government as they represent the latest challenge to the Afghan security environment. For more on PMFs in Afghanistan, see “Private Security Companies and Local Populations. An exploratory study of Afghanistan and Angola,” November 2007, www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/PSC_01.pdf, pp. 14–27, 71–73.