



The Modern Use of Contractors in Peace and Stability Operations

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THE USE OF CONTRACTORS TO support international policies overseas is not a recent phenomenon. However, increased reliance on the private sector to operate in roles traditionally carried out by government and the military in Afghanistan and Iraq has created apprehension in some academic and policy circles. This essay provides an overview of the modern use of contractors by looking at the different roles that contractors play in support of U.S. foreign policy—such as the contentious use of private security companies (PSCs) in Iraq and Afghanistan, security sector reform in post-conflict nations, logistics and camp servicing for the all-volunteer U.S. military, and rule of law consulting and development aid delivery. It will then address a number of concerns that have been raised in the academic and policy communities.

Much of the existing literature demonstrates a failed understanding or ideologically driven interpretation of the role and incentives of the private sector, contributing to a flawed analysis from critics. Contractors do not lead—they follow. They do not create policy, but they are critical to implementing important aspects of it, as outlined in comprehensive contracts designed and guided by governments or international organizations. Finally, this article will address the issue of extraterritorial accountability, discussing domestic and international legal frameworks and arguing that the stability operations industry benefits from effective legal frameworks. The industry is essential to international poli-

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cies, and an honest understanding of its role and limitations is crucial to any accurate analysis.

THE ROLE OF PRIVATE SECTOR CONTRACTORS

The crucial role of the private sector in international policy, especially in international operations, is not new but has evolved greatly over recent decades. Where once massive conscript armies were supplemented by relatively small

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numbers of private individuals providing expertise and specialized services, today conscript armies are increasingly rare. Instead, highly trained volunteers serve in more professional militaries working in partnership with the private sector. Interstate conflict is now less frequent, while stability operations such as state-building—which by their very nature require far more than specialized martial skills—have become widespread. However, one vital distinction must be borne in mind. Private sector contractors do not make policy decisions. They do not lead. They are hired to make governmental and intergovernmental policy decisions succeed.

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It is unlikely that there will ever be a return to the mass conscript armies of the past. Smaller militaries are less expensive, more professional, and have proven to be more flexible. The private sector that supports military operations and international policies has thus grown to fill two basic demands: support for all-volunteer military units and assistance for reconstruction and development experts rebuilding post-conflict states. Support services include logistics, construction, training, and protective security services. These services allow relatively small militaries to focus on key security missions, freeing up military personnel and making operations significantly more efficient and effective. Highly trained military personnel are no longer expected to peel potatoes or stand guard over sewer reconstruction sites; those roles are better contracted to civilians. The private sector offers many of the skill sets required to stabilize post-conflict societies and support burgeoning democracies, including infrastructure development, institutional capacity-building, security sector reform, development of educational systems, agricultural development, health systems, and unexploded ordnance disposal. Even the largest militaries and governments of the past did not possess this broad spectrum of capabilities.

Thus, the private sector offers policy makers capabilities and capacities never before available. Private sector capabilities have swiftly expanded to meet demand in recent decades, engendering some discomfort among pundits and journalists

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schooled in mid-twentieth-century traditions and thinking. Developments in private sector dependence have accelerated, and many have been unprepared to accept a beneficial, innovative, and entrepreneurial role in war zones. Indeed, the realities and demands of post–Cold War and post–9/11 stability operations have prompted a rapid evolution of the private sector, which has grown to meet the requirements of new policies, in support of both military operations and state-building exercises. The rapid post–Cold War demobilization and move away from conscript-based structures—compounded by high operational requirements of Western militaries in the post–9/11 era—created a demand for military capacity that simply no longer exists. This has required more significant private sector support in a broader variety of capabilities and expertise than in the past. The stability operations industry is ultimately shaped and driven by this demand and by the policies of those who require their services.

OVERVIEW OF THE STABILITY OPERATIONS INDUSTRY

The greater operations industry can be broken into four broad categories: logistics and support organizations; private security companies (PSCs); security sector reform and development organizations; and industry support firms.¹

Competition in the industry is fierce and profit margins tend to be surprisingly thin, starting at one percent for some cost-plus contracts and rarely getting into the teens for the high-risk, firm-fixed-price contracts.² While media reports tend to emphasize industry growth, organizations in the stability operations industry regularly grow and shrink depending on demand and relatively short-term contracts. Once the conflicts in Afghanistan and Iraq have settled, the number and size of available contracts will necessarily contract as well. Industry size is dependent on available contracts so expect it to return to approximately the size it was before 9/11 when the primary sources of business were African Union and United Nations peacekeeping operations around the world.

PERSONNEL

The companies comprising the industry are often founded and staffed by former military and police personnel. In an industry that is all about “risk management,” it makes sense to have executives with experience in conflict and post-conflict environments even if their service is something normal and common, such as water purification or power generation. Performing these kinds of tasks safely in areas of elevated risk is key to success in the industry.





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Although most of the media focuses on the Westerners who operate many of the companies, local nationals hired in the area of operation in fact make up the majority of the personnel. Locals usually require training, but their employment is also far more cost-effective than transporting, housing, and providing the logistical support for “Third Country Nationals” (TCNs) from other countries or Westerners, who are more expensive in terms of salary and support requirements.³ In addition, there are substantial policy benefits to employing locals, including capacity-building and economic development. Hiring locals also makes sense because they know the language and the lay of the land. Though government client contracts sometimes restrict the numbers of locals due to the potential risk of insurgent infiltration, locals are generally the first choice of industry organizations in areas where they can be employed.

From a practical point of view, private sector contracting has become a vital tool for national governments and international organizations in peacekeeping, state-building, post-conflict reconstruction, and development work around the world. The private sector is involved in a broad spectrum of activities bridging many different aspects of field work, such as de-mining; logistical support; heavy-lift aviation; medical supply and treatment; transport; security; security sector reform (SSR); disarmament; demobilization and reintegration (DDR); helicopter leasing; security training; and briefing for international non-governmental organizations (INGOs).

TYPES OF INDUSTRY ORGANIZATIONS

Logistic and support organizations (LSOs) make up the bulk of the industry by far in terms of value and number of personnel. They include organizations that provide services that might be considered mundane in peaceful environments. These include construction, logistics, vehicle fleet maintenance, aviation services, medical services, power generation, and even unexploded ordnance disposal. What makes these organizations unique is their ability to quickly provide these services on short notice and in dangerous and austere environments. Personnel working for these organizations are rarely armed. These organizations make up perhaps 80 percent of the industry. To put the industry in perspective, the giant LOGCAP III contract that provided logistics services for the U.S. Army in Iraq and Afghanistan between 2001 and 2009 involved over \$36 billion dollars in total work, whereas the largest private security contracts in Iraq worked out to about \$235 million in the busiest years.⁴

Security Sector Reform and Development organizations (SSR&Ds) are





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organizations that provide long-term strategic solutions to weak and failed states. They assist with the creation of governmental and societal stability and structure that will ultimately allow international interventions to be scaled back and concluded successfully. These organizations provide development services, long-term training, and security reforms. These reforms are aimed at permanent improvements in a state's capability, capacity, and strategic planning. SSR&Ds usually work for governments or international organizations to train militaries, police forces, and prison and border guards; create ministries of defense; or provide military forces with peacekeeping skills. These companies also provide structural services to governments reforming ordinary but vital governmental functions, including educational and financial systems.

Industry Support Organizations (ISOs) sustain other organizations within the private security industry by providing services such as insurance, legal coverage, government affairs, human resources, and public affairs. They do not necessarily deploy to the field because their focus is on support rather than on the mission itself.

Private Security Companies (PSCs) represent the more controversial edge of the contracting spectrum, but one of the greatest flaws of analysis by critics of the contracting world has been the overemphasis placed on their use. Their role is only a small corner of a far bigger picture. At their peak, PSCs made up about 20 percent of the industry in terms of value and personnel numbers. Normally, the percentage is less than 10 percent.⁵

PSCs have served as the focal point for critique when it comes to contracting in the stability operations field. Employees of PSCs often carry arms and may be mandated to use force in limited circumstances. However, PSCs, unlike the military, act defensively. Their mandates generally involve the protection of objects or persons, such as compounds, convoys, ships, officials in the field, refugee camps, and events. Typically composed of recruits from the ranks of former national militaries, PSCs offer skill and expertise in providing protective services in hostile environments. The missions in Iraq and Afghanistan have relied heavily upon PSCs to relieve military staff from protection and guard duties, which has allowed them to perform crucial military roles.⁶

Concerns have arisen over the ability to regulate the behavior of PSCs in these roles. Although most PSC employees come from military backgrounds, they operate outside the chain of command in the theater. Thus, the transparency, accountability, operative control and authority, and underlying incentives of PSCs have been questioned.





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MODERN HISTORY

Use of the private sector has become a tool of not only U.S. foreign policy but also major international organizations such as the United Nations and the African Union. Global community support for peace operations has exceeded the willingness and capacity of international organizations to perform mandated activities without employing the private sector.

As the conflict dynamic shifted in the wake of Cold War polarity, violent civil wars broke out in many parts of the world. Although the UN has backed peacekeeping missions, Western states with larger, more developed military powers have proved reluctant to become involved by making substantial ground-troop commitments. There have been rare instances of small troop deployments under domestic command. The main bulk of peacekeepers has thus come from less-developed nations and their often under-resourced militaries.

Despite important contributions made by these peacekeepers, their capabilities lag far behind those of first world countries. A lack of skills, training, and equipment has meant that many mission-essential activities, such as air- and sea-lift, logistics, intelligence gathering, and specialized DDR and SSR programs have been contracted to fill the gaps. National governments, external counterparts, and international organizations increasingly rely on the private sector because in-house capabilities are limited. Budgetary and staffing constraints have forced the organizations to look for new alternatives to bridge gaps and ensure service delivery.

Since the public sector has sought private sector solutions to these demands,

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tension and resistance have mounted in policy, NGO, and academic circles as activities traditionally undertaken solely by not-for-profit agencies and organizations have been contracted to for-profit companies. (Caution and oversight are vital to the correct use of contracting to assuage concerns.) In an age where INGOs and government agencies seek to operate more and more like companies, coping with new dynamics in stabilization programming will require an adjustment in thinking.

Perhaps the strongest critique leveled at the stability operations industry is against the legal accountability of the industry. Most interventions necessarily involve some kind of immunity from local prosecution in the host state. In U.S. interventions, there are complaints that there have not been comprehensive





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prosecutions for all the alleged crimes committed by contractors. Critics have claimed that contracting allows governments to operate outside the bounds of domestic and international law by using companies to carry out their dirty work without an appropriately functioning accountability framework. While these are valid concerns, there are more means of accountability than is generally understood.

Contrary to much of the hype and vilification of the contracting world, companies are incentivized to ensure good behavior and high standards. Negative press from a contractor's poor behavior damages a company's bottom line and the industry as a whole. Companies understand the importance of having well-maintained contracts because it impacts their ability to continue securing contracts in the future. Mature companies thus seek to employ qualified, specially trained staff; operate to a high degree of professionalism; report incidents to relevant authorities; keep detailed accounts of contract progress; and appropriately censure staff when concerns arise. In fact, despite the increase in the number of contractors and intense scrutiny of the industry, the number of incidents reported in the media has fallen. For some of the more publicized industry "failures," it is clear to serious analysts that the companies took action (firing problematic individuals, improving controls) even prior to the publication of incidents.⁷

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LEGAL JURISDICTION

A clearer view of legal jurisdiction issues can be gleaned by separating out the international and domestic legal frameworks covering contractor work in the field.

HOST STATE JURISDICTION

Normally, host state jurisdiction covers organizations operating within their territory. For local and national employees, this is always the case. However, war-torn or post-conflict states where contractors operate are frequently characterized by institutional failure and a poorly functioning judicial architecture. This limits the possibility of fair trial. For example, in post-conflict Liberia in 2006, over 95 percent of the prison population was pre-trial due to poor management of court dockets by unqualified judicial officers and overwhelmed and under-resourced courts—a clear violation of the right to due process.⁸ Intervening governments, the UN, and other international actors generally negotiate some form of im-





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munity for international employees carrying out missions. This has been the case in Iraq, for example, where the Coalition Provision Authority orders stated that contractors can only be subject to Iraqi law should they be engaged in activities falling outside the terms of their contracted work.⁹ This should not result in a failure to prosecute in cases where improper conduct is alleged. Contracting state domestic law and international law thus become applicable.

INTERNATIONAL LAW

Contractors working for U.S. government agencies in Iraq, Afghanistan, and elsewhere are non-combatants. This means that they possess no combat immunity should they engage in hostilities in the field. However, their position in support of U.S. Armed Forces in the field grants them the protections of international humanitarian law. The Geneva Conventions provide for Prisoner of War (POW) status for civilians captured by enemy combatants while accompanying armed forces. However, some opacity exists as to whether this is applicable to employees of PSCs who engage in hostilities, even if only defensively.¹⁰

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The Geneva Conventions of 1949 and the two Additional Protocols of 1977 also prohibit certain forms of hostilities whether state or non-state actors carry them out.¹¹ Common Article 3 to the Geneva Conventions outlines that “all parties to the conflict” must refrain from engaging in such hostilities. Additional Protocol II covers armed conflicts that “take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”¹² While there is limited recourse under the international law system for minor criminal cases, international criminal law can be used to hold non-state actors involved in hostilities accountable for war crimes, genocide, and crimes against humanity. Individual contractors could be held accountable for serious crimes through this mechanism.¹³

U.S. DOMESTIC JURISDICTION

In response to the increased reliance on contractors by U.S. agencies in carrying out foreign policy abroad, the United States has further developed regulations to establish a spectrum of criminal accountability tools. Traditionally, private contractors have been treated as civilians under domestic legislation rather than





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governed by the criminal laws of the U.S. military justice system. It is understood that it would be unconstitutional to try U.S. civilians militarily in the absence of a formal declaration of war.¹⁴ In spite of this, Congress passed legislation in 2006 that sought to place PSCs under the jurisdiction of the Uniform Code of Military Justice (UCMJ) under a limited set of circumstances. Section 552 of the John Warner National Defense Authorization Act for fiscal year 2007 amends the UCMJ, extending military court jurisdiction over military contractors “serving with or accompanying an armed force in the field” to situations involving “contingency operations” in addition to situations of declared war that would place PSCs under the authority of the UCMJ in some circumstances.¹⁵ Human Rights Watch, Amnesty International, and the Industry Stability Operations Association (ISOA) have questioned the appropriateness of trying civilians before military courts.

The Military Extraterritorial Jurisdiction Act (MEJA) authorizes U.S. federal courts to carry out the prosecution of contractors working abroad for U.S. federal government agencies.¹⁶ MEJA can be used to prosecute U.S. citizens and people of other nationalities, but not local nationals in the area of operation. Enforcement of MEJA, passed in 2000 and revised in 2004, is dependent on referral of cases by contracting agencies to the Department of Justice (DoJ) in pursuing prosecutions. Empowering federal civilian judges to exercise jurisdiction over crimes carried out by contractors in-theater removes some of the constitutional concerns involved with using the court martial procedure of UCMJ prosecutions. Although DoJ has been unwilling to share the total figure of MEJA prosecutions carried forward in recent years, it is understood that the figure is in excess of 60.¹⁷

The Civilian Extraterritorial Jurisdiction Act (CEJA) was introduced in 2009 to further address concerns about contractor accountability. Spearheaded by U.S. Representative David Price (D-NC), the legislation expands upon the base built by MEJA, directing the Department of Justice to set up a dedicated investigations unit. It would allow federal agents to arrest alleged offenders outside U.S. territory and obligate the Attorney General to report to Congress annually regarding progress and any prosecutions.¹⁸ CEJA has yet to be passed by Congress.

INDUSTRY REGULATION

The industry recognizes the importance of accountability. Even if ethical incentives are in doubt, there is a clear commercial value to responsible industry





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behavior. While self-policing cannot substitute for the role of governments and the courts, it has a unique and irreplaceable value for operations in weak and failed states. The ISOA has maintained, improved, and enforced its own code of conduct for more than a decade.¹⁹ The original ISOA Code of Conduct was drafted in 2001 by NGOs, human rights organizations, and academics.²⁰ The ISOA's complaint system ensures that anyone can bring a complaint against an ISOA member company based on the Code of Conduct for review by the ISOA Standards Committee. The ISOA's bylaws allow the Association to expel members that refuse to address problems, but it is hoped that expelling member companies will never be necessary as companies work hard to address problems and stay in the Association's good graces. The goal of the Code is to work with problematic firms to ensure they return to compliance. Complaints are handled in confidence with only the complainant and the accused organization apprised of progress. While this high level of confidentiality has been frequently criticized, it allows companies to freely provide information and, if necessary, address the issues with little fear that their candor will end up splashed across the headlines.

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The ISOA Code and accountability mechanism can never replace governments and legal courts, but a robust enforcement of its principles demonstrates that the industry can have a useful and effective role in self-policing operations for weak and failed states where normal legal structures are feeble or absent altogether.²¹ Member organizations receiving complaints have proven to be extremely responsive and anxious to address the concerns. Many ISOA members include their ISOA membership and adherence to the Code in their business-development efforts since it offers an extra level of confidence for potential clients.

Although critics often overlook the effort, the stability operations industry continues to support other international accountability efforts as well. This includes advocacy for the creation of the groundbreaking Montreux Document, an initiative led by Switzerland and the International Committee of the Red Cross (ICRC).²² More than thirty governments including Afghanistan, Iraq, and the United States have publicly affirmed the Montreux Document. The Montreux Document clarified international law as it applies to international personnel working for contingency contractors and also elucidated which government is responsible for enforcing international law.

The next step is the International Code of Conduct for Private Security Providers (ICoC), a follow up to the Montreux Document that focuses specifically on PSCs.²³ What makes the ICoC so revolutionary is that the largest clients—including the governments of the United States and the United

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Kingdom—have indicated that they will only hire PSCs that have signed the ICoC and agreed to submit to the accountability system. The ICoC process has achieved multistakeholder buy-in with participation from the human rights and NGO communities. The actual accountability mechanism for the ICoC is still under development. There are many aspects of the process that have yet to be designed, but the goal is to finish in 2011. The ICoC will incentivize both PSCs and international clients to provide higher quality services. The ICoC is intended to expand beyond just PSCs and to cover the entire industry in the future.

While the ISOA Code predates the ICoC by ten years, the ICoC has far more international recognition. Scores of PSCs have already signed their acceptance. At some point, the ICoC may even replace the ISOA Code of Conduct, but the ISOA intends to continue to maintain and improve its code until then.

It should also be noted that the ISOA and other industry organizations have consistently supported effective accountability mechanisms for international civilians working in weak and failed states. The ISOA has publicly supported expansions of MEJA—the primary tool for holding civilian contractors accountable for contingency operations on scores of cases addressed by the U.S. Department of Justice since 2001—and CEJA, which has yet to be passed in Congress but has been strongly supported by Human Rights First.²⁴ CEJA will expand to fill some of the loopholes left by MEJA.²⁵

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CONCLUSION

Ultimately, the private sector will continue to have a central role in stability operations, not with decision making but with implementation. For policy makers, the private sector offers vast global capacity and expertise, providing support in operations overseas and filling vital gaps.

Critics of the industry must offer real alternatives to private actors working in conflict, post-conflict, and disaster operations. Many nations, especially Western countries, are increasingly reluctant to contribute their own soldiers and police to international peacekeeping and stability efforts. The resulting capacity and expertise gaps have been filled with remarkable success using private sector resources.

Despite the vitriol directed at the industry, it is a key player in stability operations. Ensuring proper guidelines, oversight, and legal accountability is essential. Legislation exists to hold contractors accountable for crimes committed while in-theater. In reality, governments—not companies—are responsible for bringing forth prosecutions. Industry organizations have also worked with





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INGOs, human rights organizations, governments, and stakeholders to develop codes of conduct to regulate the industry, notably the ISOA Code of Conduct and the newly developed International Code of Conduct for Private Security Providers. Companies recognize the importance of accountability. Even if their ethical incentives are in doubt, the commercial value of good behavior and high industry standards is clear.

Global realities have formed and shaped working partnerships between the public and private sector, which are growing in strength with time and practice. Ultimately, appropriate use of the industry in combination with such positive partnerships will continue to play a key role in ensuring effective international responses to conflict, post-conflict, and disaster relief operations. 

NOTES

1. The monetary value of the industry has been a point of contention among analysts. Some academics and journalists have provided much larger, more sensational numbers in the hundreds of billions of dollars. If analysis is limited to actual services in the field in contingency operations, the numbers are far more modest. The Commission on Wartime Contracting in Iraq and Afghanistan estimates the total amount of contracting from 2002 to 2011 to be \$206 billion. See: Commission on Wartime Contracting in Iraq and Afghanistan, *Transforming Wartime Contracting: Controlling costs, Reducing risks – Final Report to Congress* (U.S. Government Printing Office, August 2011), 22.

2. Cost-plus guarantees contractors a given percentage of profit on top of their costs, allowing a great deal of flexibility for the clients, who can ask for services, equipment, and structures on short notice. Fixed-price contracts put more of the risk on the contractors, who must perform a service or task within specific guidelines of time and quality, but they also compensate for the additional risk by allowing a greater opportunity for profit than cost-plus. Also, see: Russell Gold, "The Temps of War: Blue-Collar Workers Ship Out for Iraq," *Wall Street Journal*, February 5, 2004.

3. Third Country Nationals come from countries that may have nothing to do with the conflict that they work in. In most cases, they are significantly less expensive than Westerners. Westerners operating in high-risk environments often expect to earn twice as much as they could at home; TCNs may earn as much as ten times their national average income, however because of international economic differentials they are still usually less expensive to clients.

4. Alec Klein, "U.S. Army Awards Iraq Security Work To British Firm," *Washington Post*, September 14, 2007; Elise Castelli, "Auditor: 'Unprecedented' fraud in LOGCAP III," *Federal Times*, May 11, 2009. Note that KBR's maximum profit margin in LOGCAP III is a remarkably minuscule three percent.

5. A good source for this is the CENTCOM Quarterly Contractor Census Reports - http://www.acq.osd.mil/log/PS/CENTCOM_reports.html. While the reports focus on U.S. Department of Defense Contractors, they offer a valuable perspective on proportions and numbers. In less dangerous environments (e.g., Haiti, the Democratic Republic of the Congo) the proportion of security contractors is much lower than Afghanistan and Iraq.

6. Moshe Schwartz, "The Department of Defense's Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis, and Options for Congress," Congressional Research Service, May 13, 2011.

7. Samuel Brinkley, "Testimony of Samuel Brinkley Before the Commission on Wartime Contracting," *Commission on Wartime Contracting: Hearing on State Department Oversight And Contractor-Employee Conduct*, September 14, 2009, <http://www.wartimecontracting.gov/index.php/hearings/commission/hearing20090914>.

8. See: International Crisis Group, "Liberia: Resurrecting the Justice System," *Africa Report*, no. 107, April 6, 2006, 18, <http://www.crisisgroup.org/-/media/Files/africa/west-africa/liberia/Liberia%20Resurr>

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9. See: “Coalition Provisional Authority Order Number 17 (Revised), Status Of The Coalition Provisional Authority, MNF - Iraq, Certain Missions And Personnel In Iraq,” CPA, June 27, 2004. The CPA closed in 2004 when sovereignty was returned to Iraqis. The order on contractor immunity was rescinded as of 1 January 2009.

10. *Geneva Convention Relative to the Treatment of Prisoners of War*, article 4, October 21, 1950, 6 U.S.T. 3316.

11. *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, August 12, 1949, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31; *Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea*, August 12, 1949, 6 U.S.T. 3217, T.I.A.S. 3363, 75 U.N.T.S. 85); *Geneva Convention Relative to the Treatment of Prisoners of War*, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; *Convention Relative to the Protection of Civilian Persons in Time of War*, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287; Additional Protocol I, *supra* note 4; *Additional Protocol II to the Geneva Convention Relative to the Protection of Victims of Non-International Armed Conflicts*, August 12, 1949, 16 I.L.M. 1442 [hereinafter “Additional Protocol II”].

12. *Additional Protocol II*, *supra* note 6, art. 1.

13. *Convention on the Prevention and Punishment of the Crime of Genocide*, article 4, January 12, 1951, 78 U.N.T.S. 277 (“[p]ersons committing genocide ... shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”) and *Rome Statute of the International Criminal Court*, article 7, July 17, 1998, 2187 U.N.T.S. 90.

14. See: *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 248 (1960), which prohibits military jurisdiction over civilian dependents in time of peace, regardless of whether the offense was capital or noncapital. See also: *Grisham v. Hagan*, 361 U.S. 278, 280 (1960), which holds civilian employees committing capital offenses not amenable to military jurisdiction. See also *McElroy v. United States ex rel. Guagliardo*, 361 U.S. 281, 283-84 (1960), which expands Grisham to include non-capital offenses. See also: *Reid v. Covert*, 354 U.S. 1, 40- 41 (1957), which holds that civilians cannot be tried in time of peace by court-martial for capital offenses.

15. See: UCMJ, 64 Stat. 109, 10 U.S.C., Chapter 47; Section 552, John Warner National Defense Authorization Act for fiscal year 2007 (Pub. L. 109-364) (FY07 NDAA), amending 10 U.S.C. § 802(a)(10).

16. “Statutes: Military Extraterritorial Jurisdiction Act,” United States Department of Justice, <http://www.justice.gov/criminal/hrsp/statutes/meja.html>.

17. The “60+” number was made by a knowledgeable Department of Justice figure at an off-the-record logistics event in 2008 and has subsequently been confirmed by other DoJ officials, although all have refused to go on the record despite pressure from industry.

18. “Civilian Extraterritorial Jurisdiction Act (CEJA) of 2010,” *Open Congress*, <http://www.opencongress.org/bill/111-s2979/show>.

19. The latest version is available on the ISOA web page. *International Stability Operations Association (ISOA)*, <http://www.stability-operations.org>.

20. For information on the origins of the ISOA Code of Conduct, see: Doug Brooks, “History of the Code of Conduct,” *ISOA*, <http://ipoaworld.org/eng/codeofconducthistory.html>.

21. Molly Dunigan discusses the ISOA Code of Conduct, its capabilities, weaknesses, and potential improvements in *Victory for Hire: Private Security Companies’ Impact on Military Effectiveness* (Stanford: Stanford University Press, 2011), 167-8.

22. Switzerland Federal Department of Foreign Affairs, “Montreux Document,” <http://www.eda.admin.ch/psc>.

23. ICoC information is located online at <http://www.icoc-psp.org/>.

24. For a good understanding of the origins of MEJA, see: Joseph R. Perlak, “The Military Extraterritorial Jurisdiction Act of 2000: Implications for Contractor Personnel,” *Military Law Review* 169 (September 2001); Human Rights First, “Legislation Addresses Accountability Gap for Private Military Contractors,” February 2, 2002, <http://www.humanrightsfirst.org/2010/02/02/Legislation-Addresses-Accountability-Gap-for-Private-Military-Contractors>.

25. Information on CEJA can be found on the Human Rights First web site. See: “Senate Judiciary





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