

## Private Military Contractors: Deplore or Deploy?—Lessons from the ‘Blackwater Scandal’ in Iraq <sup>1</sup>

Caspar ten Dam



*It was a deadly concoction: cascades of money, high-powered weapons, legal indemnity, [and] a war against a ruthless and culturally alien enemy*

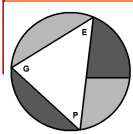
John F. Burns, ‘Q and A: Private Military Contractors’ — At War Blog *New York Times* 19 October 2009

*Old and new Blackwater logos*

**Abstract** *The so-called ‘Blackwater scandal’ – a reference to the seventeen Iraqi civilians killed on Nisour Square by security guards of the private military company (PMC) Blackwater in September 2007 – puts into question the proposition that private military contractors or ‘mercenaries’ could be relied upon to act effectively and responsibly in peacekeeping and other international operations. Arguably, Blackwater’s frequently observed callousness, if typical of other Private Military Companies (PMCs), gravely undermines this proposition. After closely analysing the Nisour Square incident and the Blackwater company in a wider context of revealed patterns of violence by the personnel of multiple PMCs, the article concludes that the use of ‘mercenaries’ is in principle still possible, doable and defensible – after the necessary reforms and improvements have been made. Yet it remains doubtful whether a sufficient number of PMCs and their personnel are or will become (self-)disciplined, well-trained and trustworthy enough for large, complex and dangerous operations. One certainly should strengthen the (pre) conditions for deploying these ‘contractors’ in both international military missions which involve combat duties and operations, and international civilian missions with a military component focused on (body)guard and sentry duties only.*

### Introduction

The so-called ‘Blackwater scandal’, if characteristic of other Private Military Companies (PMCs), puts into question the proposition that private military contractors or ‘mercenaries’<sup>2</sup> could be relied upon to act effectively and responsibly in peacekeeping and peace-enforcement operations, and in humanitarian interventions with or without UN Security Council approval to rescue defenceless people. Despite the International Peace Operations

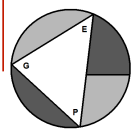


Association (IPOA) established in April 2001 to self-regulate and improve the image of the private military industry, 'private military firms' often "walk a fine line of legality, with potentially illegitimate clients, business practices, and employees with dark pasts".<sup>3</sup> The hope of some analysts that the 'shadowy' PMCs would become part of a "mature branch" with "possibilities for control and thus prevention of excesses" through "registration, supervision, controlled training, [and] transparency of operations" has yet to materialise.<sup>4</sup> On the other hand, moral imperatives may clash with legal ones: thus helping without any UN or state approval defenceless people or lightly armed rebels against repressive and murderous regimes easily crosses the 'fine line of legality' in current international law.

To some, humanitarian interventions by states—let alone by non-state volunteers and mercenaries—in another state to prevent or stop genocide and other mass atrocities already violate international law—certainly so if the UN Security Council gives no approval for such intervention under Chapter VII of the UN Charter. Thus to many analysts, the initial intervention in March 2011 with air sorties and attacks against the military forces and infrastructure of Colonel Muammar el-Qaddafi's regime in Libya, by a "coalition of the willing" led by France and the United Kingdom, helped the rebel forces of the Libyan National Council—and thereby violated international law. By 'taking sides', the interveners supposedly went far beyond the remit of UN Security Council Resolution 1973, which called on member states to use "all necessary measures" short of ground invasion to protect civilians in Libya. However, even if humanitarian intervention is 'illegal' in the sense of violating international law (i.e. state sovereignty), it still may be morally defensible and practically doable. This paper deals with the related question whether humanitarian intervention by or with the use of mercenaries is or can be legal, moral and/or doable, in cases like the current uprising and civil war in Syria.<sup>5</sup>

Clearly, the rebellion in Libya—which according to some sources began as early as 15 February 2011 with peaceful protests, which only weeks later morphed into an armed uprising in reaction to the brutal crackdown by Qaddafi's regime—and the later uprising in Syria—which also started after peaceful protesters were gunned down by forces of Assad's regime—are both part of the so-called "Arab Spring" of either largely peaceful or violent civic movements against dictatorial regimes across the Middle East. The Arab Spring started in Tunisia, when people took to the streets to demand the resignation of President Zine el-Abidine Ben Ali and the removal of his entire regime, after the suicide of the fruit-seller Mohamed Bouazizi in December 2010 due to relentless harassment and humiliation by the police, who made his livelihood impossible. After numerous protests and over 300 fatalities, Ben Ali's regime fell in January 2011, followed by free elections in October of the same year.<sup>6</sup>

The largely peaceful "Revolution of Dignity" in Tunisia quickly became a powerful example to others, fuelled and sustained by quick and easy communication through mobile phones, social networking websites and blogs on the internet. It thus ignited the fuse in the socio-political powder-keg of the Middle East. Now we face the question whether any military intervention—including sincere humanitarian intervention to save people's lives—could (ever) do more good than harm in such a sensitive, explosive, easily sectarian powder-keg. This paper deals with the 'subsidiary' question whether any mercenaries could do more good



than harm—could do any good at all, for that matter—in other words, could and should participate in such humanitarian and/or geostrategic interventions, or even play leading roles in these military missions. A good place to start on this question is by analysing one private military company, and its involvement in an atrocious event in Iraq six years ago.

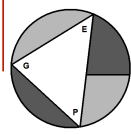
### Blackwater and the Nisour Square killings

On 16 September 2007 security guards of the private military company *Blackwater U.S.A.* (est. 1997, renamed *Blackwater Worldwide* in October 2007), hired by the U.S. State Department to protect diplomats, killed seventeen and injured twenty-four to twenty-seven Iraqi civilians, including children, at a traffic intersection on Nisour Square in Baghdad. Believing it to be a suicide attack on their convoy carrying American diplomats (evacuated from a meeting after a bomb went off near them, thus the tension), they fired at a car which reportedly refused a stop sign, killing a man and his mother. In the ensuing chaos—the guards threw non-lethal sonic bombs to disperse a crowd—nearby Iraqi soldiers and Blackwater personnel in helicopters covered the intersection with gunfire, killing bystanders and passers-by; Blackwater guards even shot some of those fleeing in the back of their heads. After the convoy continued north, the same contractors reportedly fired at other cars, killing one and wounding two people. Blackwater and the State Department claimed that a roadside bomb went off, the convoy came under gunfire (damaging one car), and so on. These diverging, misleading and unconvincing accounts, even if containing a kernel of truth, cannot justify the killing spree. Iraqi and American investigators found credible Kurdish and other Iraqi witnesses saying that the firing was unprovoked, and found damning evidence, like exclusively American-made bullet casings on the scene.

Blackwater was a small player with never more than one thousand personnel in Iraq. Yet the State Department was so dependent on it for protecting its diplomats, that the company resumed its operations in a low-key manner less than a week after the Nisour Square killings—and got its contract renewed in early April 2008.

The private military industry has become a big player overall, as post-Cold War “downsizing and increased employments have left U.S. forces stretched thin”.<sup>7</sup> The same is true for the Dutch armed forces, whose 1,200-strong force in the Afghan province of Uruzgan has relied on private contractors for logistics, supply and convoy-protection of fuel and food; during 2007 as many as 250 Afghan contractors guarded the outer rings of its bases there.<sup>8</sup> Defense expert J.M.D. van Leeuwe—who also refers to the “250 individual Afghans (the *Afghan Security Guard*)” guarding the “outer ring of the Dutch bases in Uruzgan”—is worried about this “relatively large deployment of private companies” in the Dutch military’s logistical concept, with possibly “serious political, military as well as judicial and ethical risks” as a consequence.<sup>9</sup>

Outnumbering its own troops there, the Pentagon hired 137,000 of the 180,000 foreign and local civil and military contractors in Iraq, many of whom fell under the Military Extraterritorial Jurisdiction Act (MEJA), including those involved in intelligence gathering



and hostage negotiations. The largest defense contractor with forty-thousand employees in Iraq was *Kellogg, Brown & Root*, a subsidiary of *Halliburton* once led by U.S. Vice President Dick Cheney. However, just 7,300 of the Pentagon's contractors, and twenty- to thirty-thousand contractors overall, did security and combat duties. Between 2003 and 2008 the United States spent a whopping \$ 100 billion (a conservative estimate) on all its contractors in Iraq, a fifth of their overall costs in occupying the country. Reportedly the Bush Administration decided on 'privatising' the occupation in order to avoid the draft. This strategic decision seems to have been made without fully anticipating the military, political and moral drawbacks.

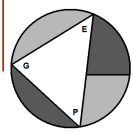
### Last drop in the bucket

The Iraqi government under prime minister Nuri Kamal al-Maliki had had enough: it cancelled Blackwater's license, and demanded a trial of its personnel involved in the Nisour Square shootings, preferably in Iraq; the company's removal from the country; and \$ 8 million in damages to the victims' families. An interior ministry report recommended replacing all fifty foreign security companies with Iraqi counterparts (forty already active and registered). Half of those, including Blackwater, already had failed to renew their licenses due to Iraqi officials deliberately slowing down the process. For the first time, the authorities arrested on 19 November 2007 forty-three contractors of the Dubai-based company *Almco* (ten Iraqis, two Americans and thirty-one other foreigners) involved in a shooting incident wounding one Iraqi woman.

A year later Baghdad revoked the June 2004 immunity law for foreign contractors and military personnel, first decreed as 'Order No.17' by American administrator L. Paul Bremer III of the Coalition Provisional Authority. A new law holding them accountable under domestic criminal law came into force on 1 January 2009 as part of the new Iraqi-American security accord regulating the continuing presence of American troops.

It must be said that the United States responded swiftly to the Iraqi anger. On 4 October 2007, Congress voted 389 to 30 for a law making it possible to prosecute 'civilian' contractors hired by the State Department in both civil and military criminal courts, for violating humanitarian and human rights laws or any rules of engagement (ROE). Until then 'civilian' mercenaries hired by 'civilian' bodies had been virtually immune, falling outside American, Iraqi or any other military jurisdiction. Yet even the Pentagon had prosecuted few if any misbehaving 'mercenaries' on its payroll—not even after Congress in 2006 brought them firmly under the Uniform Code of Military Justice.

Nevertheless, the Blackwater scandal's uproar forced Washington DC to deal head on with 'mercenary accountability'. The United States was strenuously seeking a victory or a way out of Iraq. Yet the damage Blackwater and other contractors inflicted was "incalculable, in terms of engendering a fear and loathing of the American occupation".<sup>10</sup> The Bush Administration could hardly afford to antagonise Iraq's government or its people with any more mistakes and excesses by people in its employ. The abuse by some American personnel in Abu Ghraib



prison, a scandal which broke in April 2004, had already damaged its standing in Iraq and across the world. The insurgents milked these scandals through propaganda messages; their effect was dampened only by their own, more blatant terrorist outrages against civilians.

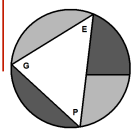
### History of excessive force by Blackwater—and others

Whatever the consequences of the Blackwater scandal for the American-led mission in Iraq, it seems to represent endemic, wanton callousness by self-proclaimed 'professionals' of private military companies, at least among their rank-and-file. This undermines their bosses' claim that they have progressed far beyond the amateurish, unreliable and brutal 'soldiers of fortune' of old.

Blackwater's trigger-happiness certainly typified its Iraq and Afghanistan operations, for which it was paid nearly \$ 1 billion since 2001. The Nisour Square killings typify a rather common overreaction to imagined attacks when on duty. Since 2005, Blackwater's private contractors fired first in 84% of 195 'escalation of force' incidents in Iraq, leading to at least sixteen fatalities. The contractors usually fired from moving vehicles, without stopping to secure the scene and verify the results of their barrage, let alone help injured bystanders. To its credit, Blackwater provided these unsettling figures in its own incident reports. These figures help to explain why its personnel managed to kill dozens, perhaps hundreds, of civilians. The company was notorious for questionable or prohibited use of force, weaponry and riot-control agents like CS gas just to force traffic out of the way, and for ill-prepared, badly armed and organized operations.

The most fateful operation led to the lynching of four Blackwater employees escorting a convoy in Fallujah on 31 March 2004, triggering a spiral of escalating violence between occupation and insurgent forces: two of their bodies were hung from a bridge, shocking the American public and triggering a large-scale assault by U.S. forces on Fallujah.<sup>11</sup> Conceivably, this incident may have contributed to excesses by Blackwater personnel against the local population, out of revenge for their killed comrades. A drunken Blackwater contractor, later identified as Andrew J. Moonen, even killed a bodyguard of the Iraqi vice president Adil Abd-al-Mahdi on 24 December 2006. He was fired yet not prosecuted; the victim's family received just \$ 15,000 in compensation. From February till August 2007 he worked on logistics for *Combat Support Associates*, under the Defense Department, in Kuwait.

Also Blackwater's involvement with the Central Intelligence Agency (CIA), at least since 2002, raises serious questions, particularly its role in the agency's 2004 assassination programme against *Al-Qaeda* leaders (cancelled by the Obama Administration in June 2009) and Predator drone attacks on them and their Taliban counterparts. Former Blackwater and CIA operatives also revealed in December 2009 that the private company had participated in CIA's secret raids against insurgents in both Iraq and Afghanistan, particularly between 2004 and 2006. Even though CIA's assassination programme reportedly failed to capture or kill a single terrorist leader (officials claimed it was never implemented), other secret operations and the drones have killed 'targets' and innocent bystanders, probably violating the laws of

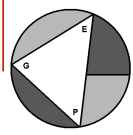


war against them both in these incidents. Thus drone attacks may constitute 'extrajudicial executions' if military necessity is lacking, or if the targeted individuals could have been apprehended instead.

The American military, and contractors like those of the British *ArmorGroup International*, distanced themselves from their Blackwater colleagues, claiming that the latter were amateurish and brutish, not reflecting the overall quality of the private military sector. Some American officers already said so well before 2007. However, *DynCorp International* and *Triple Canopy*, two other PMCs hired by the State Department, fired first in 62% and 83% of their 'escalation of force' incidents respectively. They thus were nearly as trigger-happy as Blackwater. Though "Blackwater reports more shooting incidents than the other two contractors combined"<sup>12</sup> this may be due to it operating in more dangerous areas than its competitors—and these incidents, it must be said, were a relatively small part of its 1,800 'escort missions' in 2007 alone. Other contractors behaved equally badly, as the following examples show:

- In August 2007 a *Triple Canopy* supervisor was accused in a Virginia civil court of shooting randomly into two civilian cars in Baghdad the previous year, after telling his mates he wanted to 'kill somebody' before going on vacation.
- On 9 October 2007 contractors from the Australian *Unity Resources Group* (URG) killed two 'suspicious' Iraqi women in a car nearing their convoy; they turned out to be Christians.
- The *Special Operations Consulting-Security Management Group* (SOC-MG), recruiting Namibians and other 'Third Worlders' for as little as € 500 per month, less than five percent of the salaries for British, American and other Western mercenaries, had 1,500 Ugandese contractors in Iraq accused of cruelty and trading in drugs.<sup>13</sup>
- In September 2009 whistleblowers revealed that *ArmorGroup North America* had for years understaffed and otherwise shirked its duties while 'guarding' the U.S. embassy in Afghanistan, hiring prostitutes and forcing recruits into lewd hazing rituals. Sixteen guards and supervisors were fired or resigned, which the State Department deemed sufficient to renew its contract (it hung in the balance for many months). Only by mid- June 2012 had *Aegis Defense Services LLC*, an American branch of *Aegis Ltd.*, taken over security duties at the embassy.

Blackwater's bad track record merely exemplifies the widespread lack of professional restraint among 'mercenaries'. Some senior American officers have acknowledged this, yet with little effect. One could go on and on recounting dubious actions by private military companies other than Blackwater—also beyond Iraq. Thus many of the fifty-nine registered and twenty-five unregistered PMCs in Afghanistan during 2007 alone were suspected of armed robbery, murder and excessive force; Kabul expelled at least a dozen of those companies. All these scandals expose a private military industry gone astray, with few internal and external oversights and sanctions.



Blackwater and their employers in the dock—sort of

Early reactions from Blackwater—apart from some former and active employees admitting anonymously to the press that something went ‘horribly wrong’ at Nisour Square—hardly indicate a willingness to acknowledge errors and discipline its members, despite its assurance at the time that it “supports accountability and transparency” through the *International Peace Operations Association* (IPOA).<sup>14</sup>

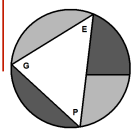


Blackwater’s founder and CEO Erik D. Prince, a former Navy Seal, claimed on 2 October 2007 before the U.S. House of Representatives’ Oversight and Government Reform committee chaired by Democrat Henry A. Waxman, that on 16 September his men acted appropriately in a ‘complex war zone’. Soon after the hearing his company started an unsuccessful propaganda *blitzkrieg* with lawyers, lobbyists and public-relation firms to clear its name before the public, body politic, and the court against lawsuits by families of killed employees lacking protective armour (and since 2009 against lawsuits by families of the Iraqi victims). Yet the committee’s Blackwater Memorandum contains reliable witness accounts that ‘Prince’s men’ fired without provocation, without any attack on the convoy. This debunks Prince’s claim. Worse, this makes a mockery of the company’s ‘core value’ to protect “*under all circumstances .. the defenseless and provide a safe environment for all*”.<sup>15</sup>

Waxman’s committee (barring its Republican members) accused the State Department of frustrating its investigation and belittling, even covering up, the incidents, helping contractors to avoid prosecution and minimise compensation payments. Thus State Department investigators promised, prematurely and on dubious legal grounds, immunity to Blackwater personnel involved in the September 2007 killings.

Nevertheless, the Federal Bureau of Investigation (FBI) took charge of the investigation, without offering immunity, though it is unclear whether they interviewed the American diplomats in the convoy. In late October 2007 U.S. Secretary of State Condoleeza Rice promised to implement the committee’s recommendations to create a common oversight with stricter rules for PMCs, including obliging them to give their personnel ‘local culture and sensitivity’ training, and allow Department monitors and Arabic translators on their patrols.

In mid-November 2007 the FBI concluded that at least fourteen of the Nisour Square fatalities were victims of disproportionate force which violated already extensive contractor ROEs; indictments were still a long way off given the legal complexities of prosecuting contractors under American criminal law. The FBI’s investigation was yet incomplete, barred access to the State Department’s original Blackwater interviews. Still, a few days later federal prosecutors issued grand jury subpoenas to some Blackwater employees on the Nisour case.



Eventually, in early December 2008, the Justice Department charged (under MEJA) five other Blackwater guards—all decorated military veterans—of manslaughter and misuse of firearms against unarmed civilians on Nisour Square. A sixth (former) guard pleaded guilty; his testimony underpinned the case against the others. Blackwater itself escaped prosecution, partially because it eventually cooperated with the FBI. The actual trial was set to begin in February 2010, whereby prosecutors intended to prove a ‘pattern of reckless behaviour’ including widespread intention to harm and kill Iraqis ‘for sport’.

However, on 31 December 2009 a federal judge in Washington DC dismissed the case, as prosecutors had violated the defendants’ constitutional rights by relying on statements that the guards had been compelled to make before the very State Department investigators who had offered them immunity (carrot). Crucially, the latter threatened to fire them if they did not talk, as contractors were obliged to fully report to their employers (stick).

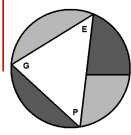
In January 2010, during a visit to Iraq when its government started preparing with American lawyers a lawsuit against Blackwater, U.S. Vice President Joseph R. Biden Jr. announced that the Obama Administration would appeal the judge’s decision through the Justice Department. Eventually, in April 2011 an appellate court reinstated the charges against the five former Blackwater guards who had not pleaded guilty in the first trial. In June 2012 the U.S. Supreme Court refused a final appeal by four of the defendants to dismiss the charges against them, so that the retrial could finally go ahead. Even so, the first trial’s dismissal shows how difficult it is to prosecute mercenaries under current law and rules on admissible evidence.<sup>16</sup>

### Why Blackwater and other ‘Mercs’ went on the rampage

Blackwater’s achilles heel has been its overzealous expansion into activities beyond its expertise and experience. Originally it was specialised in training American law enforcement and military personnel in ‘bodyguard’ duties at home. After *Al-Qaeda*’s ‘9-11’ attack and the consequent War on Terror, the U.S. State Department urgently sought its services to protect its and ‘allied’ diplomats abroad, culminating in the first ‘indefinite quantity’ contract in June 2004 (renewed two years later). Blackwater’s bodyguards—each paid on average over \$445,000 per year—found themselves doubling as combat soldiers in Afghanistan and Iraq. Most of them, even former soldiers, lacked up-to-date ‘urban counter-insurgency’ training. Most of the Blackwater employees emptying their guns on Nisour square were young former U.S. Marines with little ‘crowd control’ and combat experience.

In some operations, like the one on 24 November 2004 to secure a mosque—Blackwater assisted the U.S. military especially during that year, in apparent violation of their State Department contract—its contractors exhibited professional restraint, firing warning shots at a suspect vehicle rather than riddling it with bullets. Unfortunately, such rare accomplishments derived from individual qualities rather than overall policy and training. Thus at Nisour square a couple of guards tried to stop their colleagues from continuing firing on civilians, even pointing their weapons at the former; yet their disciplining attempts were





in vain. Still, just five or six of the convoy's nineteen guards fired their weapons according to FBI investigators, not the picture of a 'gun culture' completely gone haywire. Between 2005 and 2007 Blackwater fired (though protected them from prosecution) 122 personnel for brutalities and lesser misdeeds, a sizable chunk of its personnel in Iraq.<sup>17</sup>

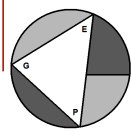
A possible, almost incredible contributor to Blackwater's excesses was the alleged rightwing 'Crusading' ideology expounded by Prince and other leading company executives, pressuring the rank-and-file to share their zeal. On 3 August 2009 a former Blackwater employee, and a former U.S. Marine who worked as a freelance operative for the company, anonymously submitted sworn affidavits to a Virginia federal court, accusing Prince of murdering or facilitating the murder of former employees cooperating with federal authorities investigating Blackwater. The former employee also alleges that Prince "views himself as a Christian crusader tasked with eliminating Muslims and the Islamic faith from the globe," and that Prince's subsidiary companies "encouraged and rewarded the destruction of Iraqi life".<sup>18</sup> In other words, Blackwater guards were ordered to kill Iraqi civilians once in a while in order to destabilise Iraqi society—and thereby Islam in the region. This could explain why some people fleeing from Nisour square were deliberately shot, execution-style. Obviously, Blackwater spokespersons dismissed these allegations as ridiculous slander.

Prince and his associates certainly are Neoconservatives who had close links with the Bush-Cheney Administration; some former government officials now work for the company, nicknamed the 'Republican Guard'. However, one should be careful about the Crusader allegations; it remains uncertain whether this 'conspiracy theory' has any merit.

External influences certainly undermined Blackwater's ethos. Particularly excesses by some American and Allied military gave a bad example. Think of the excesses in prisons, like Guantanamo Bay, Abu Ghraib, and Bagram in Afghanistan. Think of the excesses in active engagements, like the 12 July 2007 attack by Apache helicopters that killed two Reuters reporters (a photographer and a chauffeur) and at least seven other, apparently unarmed people in Baghdad. This spurred an American intelligence officer in Iraq, U.S. Army Private First Class Bradley Manning, to funnel a cockpit-video of this incident and a massive amount of over 700,000 secret documents (diplomatic cables, operations in Afghanistan, etcetera) to the whistleblower group Wikileaks.org which released the video in April 2000 and many of the documents at different points in time.

Subsequently the U.S. military authorities arrested, indicted, and eventually sentenced Manning on espionage and related charges—but not on the most serious charge of aiding the enemy—in late July 2013 for up to 136 years in prison (precise number of years still to be determined) minus 112 days due to "unduly harsh treatment" during his detention.<sup>19</sup> To my eyes, this presents an unbalanced, unfair state of affairs: military and civilian whistleblowers receive relatively harsh sentences, while soldiers proven to have committed atrocities, typically receive relatively light sentences—if at all.

Crucially, Blackwater's rules of engagement (ROE) were an almost exact replica of the 'shoot-first-ask-later' ROEs of American soldiers during Iraq's early occupation years, born from the priority assigned to 'force protection' through quick 'escalation of force' even if that leads to



'collateral damage'. Stricter rules came into force after U.S. Marines reportedly massacred twenty-four civilians at Haditha in November 2005—but not for the contractors. All this made them believe that they could get away with almost anything. Uncertain jurisdiction over and hazy liability of mercenaries solidified this belief and made it a reality, at least until September 2007. In contrast, enlisted soldiers committing (war) crimes can be court-martialled, and occasionally were, like in the Abu Ghraib scandal—while contractors hired by the CIA to carry out 'robust' interrogations in that prison went scot-free.

End game: back to base?

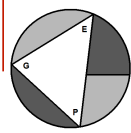
Alarmed by the fallout of the scandal, Blackwater announced on 21 July 2008 that it would refocus on its old expertise of private security training and assistance. It received hardly any new 'soldiering' contracts anyway. On 30 January 2009 the U.S. State Department, exasperated by the company's excessive use of force, overcharging, arms smuggling and other fraud<sup>20</sup>, communicated to Blackwater that it would not renew its contract in Iraq. It also had little choice as Baghdad revoked the company's license a few days earlier. However, in late March most of the company's local employees went over to Triple Canopy, which kept its license and got an enlarged contract to take over the rival's security tasks. It seems that nothing much has changed, though the contractors now have to operate under stricter rules.



On 23 February 2009 Blackwater announced it would rename itself *Xe* ('Xe Services LLC' in full), eager to get rid of the negative associations attached to the word 'Blackwater'. In December 2011, it changed its name again to *Academi*, reportedly in order to have a more "boring" (and thus more reliable) image—and thereby help it to regain an operating license in Iraq.<sup>21</sup>

Perhaps in an attempt to help the company to revamp its image and reputation, Erik Prince already had relinquished his CEO position in early March 2009, and gave up his Chairmanship in December 2009. Intriguingly, Prince then reportedly established a PMC called *Reflex Responses* based in the United Arab Emirates (U.A.E.) in early 2011, to set up amongst other things a foreign battalion to aid the U.A.E government in its internal security tasks—though the *New York Times* later had to retract the 'allegation' that Prince was the founder of that company.<sup>22</sup>

Prince continued to stir controversy with his alleged undertakings and public comments. Thus he openly supported and allegedly mediated, with financial backing from the U.A.E. government, for the plan by the South-African PMC *Saracen International* (effective successor of *Executive Outcomes*, active in the 1990s—see next section) to expand its operations in Somalia, by protecting government leaders, training government troops and security personnel in their fight against the Islamists, and battling the pirates.



Reportedly, Saracen was already present and active in Somalia, like training a 1,000-strong antipiracy militia, the *Puntland Marine Police Force* (PMPF), in the autonomous region of Puntland since early 2010.<sup>23</sup>

This training programme seems to have been quite effective – since then, piracy has been practically absent in or from Puntland (but whether Saracen can be credited for this remains disputed). Yet Saracen was forced to rebrand itself as *Sterling Corporate Services* (SCS) in early 2012, due to reports that Puntland’s government used its expertise and presence—which according to the UN already violated the 1992 arms embargo on Somalia—against the domestic opposition, against infiltrations by *Al-Shabab*, the *Al-Qaeda* affiliated Somali Islamist group, and against Somaliland regarding a border dispute. These reports compelled the U.A.E. to withdraw its funding for Puntland’s anti-piracy militia PMPF in June 2012, whereafter the SCS became effectively bankrupt and had to dissolve—though a skeleton crew of former SCS-contractors stayed behind to support the militia, quietly funded by the U.A.E from November 2012 onwards.<sup>24</sup> Prince’s role in all these subsequent developments remains murky; he seems to have kept his distance.

Be as it may, one should be sceptical of *Xe*’s claim at the time that it recruits “highly qualified .. personnel”, looking for “people of the utmost caliber” with “accountability, integrity, and respectability” as “mandatory requirements”.<sup>25</sup>



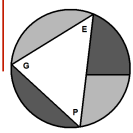
**International Stability Operations Association**

For one thing, it was not listed as a member of IPOA, nor when IPOA renamed itself as the *International Stability Operations Association* (ISOA)<sup>26</sup> in October 2010—until the beginning of August 2013, when ISOA welcomed *Academi* (Blackwater under its second new name) as a new member.<sup>27</sup>

Generally, determining a PMC’s real name, ownership and associate memberships are difficult undertakings, given the industry’s notorious labyrinth of overarching, affiliate and subsidiary companies. One should monitor the future operations of the former Blackwater company so as to determine whether the company finally takes seriously Blackwater’s old ‘core value’ to protect the ‘defenseless and provide a safe environment for all’.<sup>28</sup> For some reason, *Xe* failed to reiterate these and other core values on its website.<sup>29</sup>

Fortunately, *Academi*’s website today prominently stresses ‘guiding principles’ like “integrity in every aspect of what we do ... instilling professional and ethical behavior in all our employees, teammates and associates”, and to “honor the rights and beliefs of our fellow associates, our customers, our employees and the communities in which we operate”. The company’s repeated insistence that “we treat others with dignity and respect” could be a (over)compensation and implicit *mea culpa* for its past sins, with a burning desire to become (or just seem?) the most decent kid on the block in the mercenary community.<sup>30</sup>

However, one should beware of taking these ‘guiding principles’ at face value. In the final analysis, one must judge the company—any private military company—on its actions, not its words.



### Preconditions for employing 'mercenaries'

Despite the worrying findings about Blackwater and their counterparts, one should not give up on the idea to employ and deploy mercenaries or private contractors for peacekeeping—and enforcement missions and humanitarian interventions, for two basic reasons:

**ÆGIS** First, some major companies seem to operate professionally and decently. Thus Lt. Col. Tim Spicer's *Aegis Defence Services* (ADS), at least in 2005 the largest private military contractor in Iraq, contributing up to 20,000 personnel ranging from bodyguards to intelligence gatherers, seems to have upheld a good reputation.

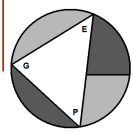
Stricter contractor ROEs introduced after the Nisour incident already resulted in "a more professional security operation and .. curtailment of overly aggressive actions".<sup>31</sup> In the future one may urgently need private military companies that are not just morally and operationally reliable, but also capable to operate independently from large state armies. Alas, apart from brutal civil wars like the one in Syria nowadays, there probably will be genocides like the one in Rwanda in 1994, as outside states refuse to intervene to rescue people from misery and annihilation, due to perceived geostrategic complexities and risks and the consequent reluctance to put one's own soldiers in harm's way.

Second, mercenaries are willing to take risks and pay with their lives, often more so than many soldiers sent to do peacekeeping or peace-enforcement in countries without sufficient understanding of their mission or the country they are in. Many Dutch soldiers in the Dutchbat contingent were woefully unprepared (lacking the required insights and training), numerous individual exceptions notwithstanding—as tragically revealed during the July 1995 massacre in the UN-designated 'safe area' of Srebrenica, Bosnia, of 9,210 men and boys (estimate of the Yugoslav Tribunal in The Hague) by the Bosnian-Serb army.

One may well ask oneself whether the "to-be expected scale of the crimes is essential for one's judgment on the actions of the UN-battalion" in that enclave; certainly many experts disagree with the conclusion in the 2002 Srebrenica report of the Netherlands Institute for War Documentation (NIOD) that the genocidal massacre was "atypical of the Bosnian war, and thus an unforeseeable event for the 'Dutchbatters' and other military and decision-makers involved".<sup>32</sup>

Even if the military sent abroad do grasp their mission and environment, and are willing to fight, they are hampered by the home state's and public's "intolerance for casualties in conflicts that do not directly threaten the core of the nation".<sup>33</sup> Consequently, when the going gets tough, or seems going to get tough, there is no guarantee that states who claim to uphold peace and international security will embark upon humanitarian intervention, indeed any military mission, in cases that seem to require it. They hesitate to send their own troops beyond their own borders—even if the horrors of impending or actual war and genocide elsewhere are self-evident, and/or the geostrategic interests are obviously endangered by such calamities.

By the time of the Nisour Square tragedy in September 2007, over a thousand contractors (at least a hundred on security and combat duties) had lost their lives in Iraq, their deaths often



unreported and uncounted in casualty figures. There is “no avoiding the fact” that they “do work that is both extremely hazardous, and indispensable”—no American diplomat has ever been killed while under Blackwater’s protection or that of its competitors.<sup>34</sup> The challenge must be to maintain this achievement without resorting to premature and disproportionate force. Therefore, mercenaries or private military contractors can help to save a people or a country, or even help to safeguard regional and international security, but only under the following four preconditions and circumstances:

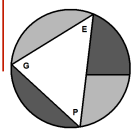
1. Strengthen and clarify the definition, rights and duties of mercenaries under international law

One should not perceive mercenaries as actors occupying a ‘grey area’ between combatants and non-combatants, as so many experts seem to do.<sup>35</sup> Mercenaries, i.e. private contractors engaged in security-protection and direct-combat tasks and operations, are combatants, just like the military and other armed actors. It is deplorable that a “mercenary shall not have the right to be a combatant or a prisoner of war” (art. 47.1 Protocol I Geneva Conventions), giving it as few rights as ‘enemy combatants’ in the so-called War on Terror. Geneva’s well-structured yet misconceived definition (art. 47.2) presumes that all mercenaries are motivated by a “desire for private gain”. The 1989 Convention Against the Recruitment, Use, Financing and Training of Mercenaries reflects the same biases and erroneous assumptions.

A more objective definition would be that mercenaries are *combatants paid through a contract by one or more state or non-state parties for whatever reason, and accept this pay to fight or otherwise assist their employer for whatever reason, for as long as the contract counts or lasts; private gain may not be the sole or primary motivation, yet the pay is such that this can be satisfied.*

Probably most mercenaries are motivated by private gain, yet that can be said of many soldiers, rebels and other fighters as well. True, the former may endanger the state’s monopoly of violence or at least the state-military’s prerogative to apply it. Yet that can be no reason to withdraw from them the “legal protections that soldiers enjoyed in warfare”.<sup>36</sup> Rebels and other non-state armed actors endanger this monopoly just as much, if not more so. Yet Common article 3 and additional Protocol II of the Geneva Conventions still grant the latter combatant status, with full rights and obligations. *One should extend these provisions to mercenaries as well.*

Blackwater’s security guards squarely are combatants. State and non-state employers should be able to discipline, hold accountable or prosecute contractors for *jus-in-bello* (justice-in-war) violations, and be judged themselves for any *jus-ad-bellum* (justice-of-war) violations. Unfortunately, international law is largely mute on the responsibilities of mercenaries and their employers, and by whom they can be tried if in they commit war crimes.



### 2. Strengthen the disciplining powers of accredited Private Military Companies

Blackwater's chief Eric Prince had a point when he argued before Waxman's investigative committee, in response to a question why the man who killed the bodyguard of Iraq's vice-president on Christmas Eve 2006 was ferreted out of the country, that "we, as a private company, cannot detain him. We can fire, we can fine, but we can't do anything else".<sup>37</sup> In principle, the self-regulating International Peace Operations Association (IPOA) and its later incarnation the International Stability Operations Association (ISOA) should have given the assurances one needs. After all, IPOA's one-time yet diminished focus to alleviate the suffering of "innocent civilians" in "low-intensity conflicts", and "bringing long-lasting solutions to these conflicts", seems just what the doctor ordered. Unfortunately, many observers dismiss the trade association as an ingenious, self-serving lobby firm for the private military industry, despite its claim that it was founded by "individuals .. in the non-governmental, academic and business sectors who recognized the benefits brought by the private sector to the victims of conflict".<sup>38</sup>

Even if its founders were and are selflessly motivated, and even if presentday ISOA could contribute to "international peace, development and human security", subscribed companies like Blackwater repeatedly have flouted its Codes of Conduct. IPOA's founding member and president Doug Brooks initiated this Code with lawyers and aidworkers, all impressed by how between 1997 and 2000 mercenaries from especially *Executive Outcomes* (EO) and *Sandline International* held together the UN peacekeepers in Sierra Leone and beat back the atrocious Revolutionary United Front (RUF).<sup>40</sup>

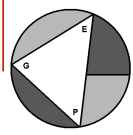
However, neither IPOA's Code of Conduct nor its non-binding enforcement mechanism (art. 11.2) for complainants could punish violators beyond dismissal, fining, and judicial cooperation and referral to "relevant authorities". The association's sanctions could hardly go beyond expulsion of a member company (enforcement section 5); it is up to the latter to discipline its own personnel if they wish to keep their membership.<sup>41</sup>

Nowadays, ISOA's Code of Conduct still refers the most "serious infractions" to the "relevant authorities", though the Signatories should take "legally appropriate action if their personnel engage in [lesser] unlawful activities", implying at least dismissal and other disciplinary measures.<sup>42</sup>

Generally, private military companies and their associations should be able and willing to discipline their own, including temporary confinement for extradition to a proper court. One should bring the worst cases before the International Criminal Court (ICC) even if this requires treaty adaptations in mandate and judicial procedure.

### 3. Use mercenaries as auxiliaries only—unless there is no other way

In any true peace-keeping mission or humanitarian intervention to rescue defenceless people, the main force should preferably consist of either soldiers, insurgents or outside volunteers – think of the *International Brigade* in the Spanish Civil War of 1936-1939: even



though “many volunteers” apparently “went to Spain partly in search for excitement, .. the selflessness of the International Brigaders’ motives cannot be doubted”.<sup>43</sup> Mercenaries should form the force’s nucleus only if other combatants can insufficiently be found—and certainly if they happen to be the best and most decent fighters available. Obviously, all humanitarian combatants should behave impeccably. Cruel, disproportionate and other immoral means will blemish the most hallowed ends, especially in humanitarian interventions.

#### 4. Create, recruit and deploy ‘humanitarian warriors’ for lower yet decent wages

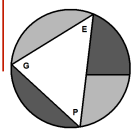
The questionable track records of Blackwater and so many other PMCs make one despair that one could ever rely on them fully—especially in humanitarian interventions. If necessary, one should create separate companies for humanitarian tasks and purposes. This conceivably could be done, if one can establish a new type of warrior, an amalgam of the traditional mercenary and volunteer: the man or woman willing to fight the ‘good war’ not just for “material compensation .. in excess of that .. paid to combatants of similar ranks and functions” (Geneva art. 47.1, Protocol I).

This *humanitarian warrior* fights not for any state, nation or group per sé, but for the best cause imaginable: the protection of *any* defenceless people against slavery, other grave humiliations, and pain, torture and death. Admittedly, this proposition may seem to the reader far-fetched, downright utopian, even positively hair-brained. Nevertheless, this revolutionary proposition should be made, if only to offer food for thought and elicit further debate. Personally, I deem it thinkable and defensible to ‘violate’ the state’s monopoly on violence in extremely exceptional cases.

Non-state actors like PMCs may be able to prevent or stop genocide and other atrocities—even or especially when intergovernmental organisations (IGO’s) are unable or unwilling to timely and forcefully intervene. Unfortunately there is no space here to discuss this sensitive, controversial issue more extensively, but I will do so in future publications.<sup>44</sup> Suffice to say here that humanitarian intervention by mercenaries and/or volunteers independent from any state support is not totally unprecedented: think again of the International Brigades in the Spanish Civil War (admittedly unsuccessful in the end)<sup>45</sup>, and of *Sandline International*, apparently dormant since April 2004.

Almost uniquely, Sandline did have the guts to offer its services to “genuine, internationally recognised and supported liberation movements” (company profile 2004), a line which is auspiciously absent from its more mainstream successor *Aegis Defence Services* (ADS).<sup>46</sup> The challenge is to contact any of Sandline’s founders and former employees<sup>47</sup>, or any company like it, to ascertain whether they would ever contemplate any such interventions in the foreseeable future.

If it ever becomes reality, humanitarian warriors must be decently provided for in order to fight wholeheartedly, without them having to worry about how to feed themselves and their kin. They deserve a decent wage beyond the pittance given to both traditional volunteers and



mercenaries from poor countries (apparently in violation of IPOA code art.6.8, yet perhaps not of ISOA code art.6.1).<sup>48</sup> Incidentally, mercenaries usually lack health-care benefits and pensions, though ISOA code art.7 demands health and life insurance.

Decent pay is not such that private gain is satisfied or replaces the humanitarian cause as a prime motive. Obviously, any state or rebel actor can recruit such warriors—even outside non-governmental organisations (NGOs) can do so. International and humanitarian (aid) organisations already have been hiring mercenaries outside “the portal of a national authority”<sup>49</sup>, mostly from IPOA-accredited companies in accordance with article 9.3 of its February 2009 Code of Conduct, and nowadays ISOA-accredited companies in accordance with article 10.2 of its October 2011 Code of Conduct. Yet they primarily protect the former’s personnel, property and aid materials to endangered people—not the endangered people themselves.

Sooner or later, someone in the ‘aid industry’ will take the ‘small’ step from protection of aid workers to protection of aid recipients. A hybrid of these possibilities is a standing United Nations army. Yet such an army can intervene only even-handedly, and where and when most needed, if UN decision-making is drastically reformed so that spurious, self-interested and partisan vetoes become rare or impossible. Such reform is so far-off that NGO-organised intervention may happen before the former ever does.

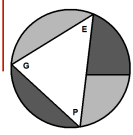
Currently, private military companies, even the most reliable ones, are ill-suited to provide humanitarian warriors. Their profit motive and commercial outlook drive them to recruit personnel for much higher wages, and make their employers pay much more than strictly necessary. Last but not least, they remain dependent on host governments. Indeed, IPOA “does *not* seek to have the current leadership role of international and government organizations supplanted by private sector entities”.<sup>50</sup>

Crucially, contracts “shall not be predicated on an offensive mission unless mandated by a legitimate authority in accordance with international law” (IPOA code art.8.2).<sup>51</sup> Currently, ISOA formulates this condition in even stricter terms: operations—not just offensive missions—“shall be predicated on missions mandated by a legitimate authority in accordance with international law” (ISOA code art.8.2).<sup>52</sup> Presently, the association would never allow its members to intervene independently or be contracted by non-state actors to save ‘other’ people.

### Conclusion

Private military companies have come under renewed scrutiny, criticism and wholesale condemnation. At the very least, the Blackwater and other contractor scandals suggest that private companies are often unable or unwilling to regulate themselves regarding proper conduct in and out of combat. State entities like the U.S. State Department and the Pentagon often fail to control them and punish misdeeds, like that of private contractors in the Abu Ghraib prison.





Measures like requiring contractors to adopt less trigger-happy ROE—as the American government soon did after the Nisour Square incident—are welcome to help engender a culture of restraint and proportionate violence in combat missions. One must create transparent jurisdiction over the privateers, i.e. establish who can discipline and persecute them for violations of humanitarian and human rights law. Non-state entities should gain more disciplining powers as well. Yet there should be balance and fairness: the more mercenaries i.e. private military contractors can be held accountable, the more rights and recognition they should get in return.

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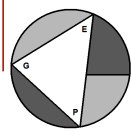
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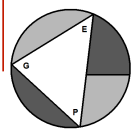
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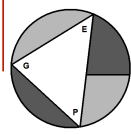
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### Endnotes

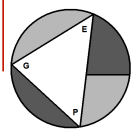
1. Earlier versions of this paper are available at <http://europeanreview.webs.com> (February 2010 version), and since the beginning of 2013 at [www.academia.edu](http://www.academia.edu) (June 2010 version).
2. Though the term 'mercenary' is a pejorative term—especially nowadays, which accounts for the objection by PMCs to be labelled as such—I occasionally apply it so as to stress the controversy surrounding the phenomenon.
3. Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* Ithaca, NY/ London: Cornell University Press, 2003, pp.viii (IPOA),ix (quote). Singer prefers the term 'Privatized Military Firms' (PMFs), as PMCs just refer to combat and other 'tactical' services (p.8, note 19). I stick to the widely used PMC term, however.
4. R.R.K Hiemstra, 'Krijgsmacht in Krijgstreep: Implicaties van de private militaire industrie voor westerse krijgsmachten (Soldier in Stripesuit: Implications of the private military industry for western armies)' *Militaire Spectator* Vol.174 No.7/8, 2005, p.308; quote translated from Dutch.
5. See further my forthcoming paper 'Actual and Possible Interventions in Libya, Syria and Mali: Assessing the Pro's and Con's of Outside Interference in the Arab Spring to Save Civilian Lives, Fight Terrorists, Induce Regime Change or Realise other Humanitarian and/or Geostrategic Objectives'.
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7. P. W. Singer, *Corporate Warriors* Cornell University Press, 2003, pp.15(quote)-16.
8. Frank Kuitenbrouwer, 'Onder wie valt het schaduwleger?' (Under whom falls the Shadow army?) *NRC Handelsblad* (New Rotterdam Courier—Trades' Paper, Dutch quality newspaper) 5 Aug 2008 ([kuitenbrouwer@nrc.nl](mailto:kuitenbrouwer@nrc.nl)). NRC, 'Missie in Uruzgan leunt op privéhulp ([Dutch military] Mission in Uruzgan [Afghan province] depends on private military contractors)' *NRC* 14 Dec 2007.
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10. John F. Burns, 'John Burns Q and A: Private Military Contractors' (part I)—At War Blog *New York Times* (NYT) 19 Oct 2009 ([www.nytimes.com](http://www.nytimes.com)).
11. Congress of the United States, House of Representatives, *Memorandum—Additional Information about Blackwater USA* Committee on Oversight and Government Reform, Democratic Majority Staff report 1 October 2007 ([www.oversight.house.gov](http://www.oversight.house.gov)), pp.1-2,6-7,9-12 (Dec 2006 incident). The



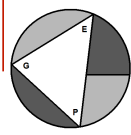
- same committee investigated the Fallujah incident, with a hearing in February 2007. At the beginning of 2012, families of the four Blackwater men killed at Fallujah settled their lawsuit against Blackwater (by then renamed Academi) for putting the men at risk without proper protection like armoured vehicles, for an undisclosed amount of damages in return for not pursuing a public investigation: *BBC*, 'Falluja lawsuit: Blackwater families settle case' 7 Jan 2012 ([www.bbc.co.uk](http://www.bbc.co.uk)).
12. US Congress, House of Representatives, *Memorandum Blackwater USA*, 1 Oct 2007, pp.2(quote),7.
  13. NRC, 'Namibië zet ronselaars VS land uit (Namibia deports US recruiters)' *NRC* 15 Oct 2007.
  14. <http://www.blackwaterusa.com> (accessed 16 March 2007). Blackwater: "we conduct ourselves .. with honor and integrity. As members of and partners with the International Peace Operators Association, we accept and daily abide by our collective Code of Conduct" (ibid). Yet its operations rarely honoured this impressive clause.
  15. Ibid; italics added. Variant in 'Mission': "protect those who are defenseless and provide a free voice for all".
  16. The Blackwater defendants and their superiors conceivably could be charged with 'obstruction of justice' by giving false or misleading information—even in the former's original, 'inadmissible' statements.
  17. Esp. *Memorandum Blackwater USA*, 1 Oct 2007, pp.8-9,13-4 (2004 incident description from a Blackwater report).
  18. Jeremy Scahill, 'Blackwater Founder Implicated in Murder' *The Nation* 4 Aug 2009 ([www.thenation.com](http://www.thenation.com)).
  19. For an interesting analysis on the chilling effects of Manning's treatment and sentencing on future whistle-blowers, and the consequences for present fugitive whistle-blowers like Edward Snowden, former analyst at the National Security Agency (NSA), and Wikileaks-founder Julian Assange, see Elias Groll's 'With Manning Trial Over, Assange Sees Himself as the Target' *Foreign Policy* (FP) 26 Jul 2013; and 'What Does the Manning Verdict Mean for Edward Snowden?' *FP* 30 Jul 2013 ([www.foreignpolicy.com](http://www.foreignpolicy.com)).
  20. Blackwater and (former) employees were indicted on such fraud charges throughout 2009 and 2010, while in subsequent years the former Blackwater company settled most of these charges by paying hefty fines in return for not facing criminal prosecution on these charges; these cases are not discussed here.
  21. Nathan Hodge, 'Company Once Known as Blackwater Ditches Xe for Yet Another New Name' *The Wall Street Journal* 12 Dec 2011 ([www.wsj.com](http://www.wsj.com)). The renamed 'Blackwater' company evidently believed it had realistic chances to re-enter Iraq, as the "demand for security contractors in Iraq has surged" (ibid) by late 2011 due to the progressive withdrawal of U.S. regular forces from that country.
  22. Mike Baker, 'Erik Prince, Blackwater Founder, Cutting Ties With Company' *The Huffington Post* 2 Dec 2009 ([www.huffingtonpost.com](http://www.huffingtonpost.com)). Emily B. Hager & Mark Mazzetti, 'United Arab Emirates Confirms Hiring Blackwater Founder's Firm' *NYT* 15 May 2011; "Correction: June 7, 2011: An article on May 15 about efforts to build a battalion of foreign mercenary troops in the United Arab Emirates referred imprecisely to the role played by Erik Prince ... . He worked to oversee the effort and recruit troops. But Mr. Prince does not run or own the company Reflex Responses, which has a contract with the government of the U.A.E. to train and deliver the troops". See also Reuters, 'UAE prince hires Blackwater founder to set up foreign force' *Washington Post* (WP) 16 May 2011.
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  24. James Bridger & Jay Bahadur, 'The Wild West in East Africa' *Foreign Policy* (FP) 30 May 2013 ([www.foreignpolicy.com](http://www.foreignpolicy.com)).



25. <http://www.xecompany.com>, link 'professional resources' (accessed 2 October 2009). Its retreat from combat operations at the time is evident: "Xe operates in nine countries delivering critical assistance to clients focused on post conflict and post disaster stabilization efforts" (link 'About us'; italics added).
26. IPOA changed its name to ISOA in order to "better represent the broad mission and clientele of the industry as a whole": *PRNewswire-USNewswire*, 'International Stability Operations Association: IPOA's New Name', 25 Oct 2010, [www.prnewswire.com](http://www.prnewswire.com) (acc. 23 July 2013).
27. Xe was not shown among the 61 IPOA members: <http://ipoaworld.org/eng/ipoamembers.html> (accessed 23 October 2009). Whether it left IPOA voluntarily, was 'disbarred', or hid under another name remains unclear. Neither was it shown among the 41 ISOA members as Xe or later *Academi*: <http://www.stability-operations.org> (link 'Membership', acc. 23 July 2013)—until 1 August 2013: <http://www.stability-operations.org/news/134965/-ISOA-Welcomes-ACADEMI-to-the-Membership.htm> (acc. 2 August 2013).
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29. <http://www.xecompany.com>, 'professional resources'; the 'core values' and 'ethics' paragraphs of the old 'blackwaterusa' website were entirely absent.
30. <http://academi.com>, homepage & link 'About us' —'guiding principles' (quotes) & an extensive, downloadable 'code of conduct' (acc. 22 July 2013): *Code of Business Ethics and Conduct*, Revised March 2013, s\_800\_13\_en\_t\_-\_code\_of\_cond.pdf. One of the services it offers, "high-threat protection" (link 'Protect', acc. 22 July 2013), appears to potentially involve combat operations once more.
31. Harold W. Geisel, State Department's acting inspector general, in: Scott Shane, 'Iraq May Ban Blackwater' *NYT* 18 Dec 2008.
32. Erna Rijdsdijk, 'Srebrenica, genocide en de reterritoralisering van de internationale verantwoordelijkheid (Srebrenica, genocide and the reterritorialisation of international responsibility)' *Vrede en Veiligheid* (Peace and Security) Vol.32 No.3, 2003, p.316; translated from Dutch. Rijdsdijk: the Bosnian war was a "genocidal war—of which the signs were observed long before the fall of the enclave" (p.317; *ibid*).
33. Singer, *Corporate Warriors*, 2003, p.58. Intervention "requires the willingness to make real sacrifices, but such readiness is no longer in ready supply. This opens greater leeway for PMFs [private military firms]" (*ibid*).
34. John F. Burns, 'Risky Business: The Deadly Game of Private Security' *NYT* 23 Sep 2007.
35. Eg. Frank Kuitenbrouwer, 'Controleer militaire 'uitzendkrachten' (Curb military 'temps') *NRC* 13 Dec 2007.
36. Singer, *Corporate Warriors*, 2003, p.42; loss 'public monopoly of war': pp.6-8,18. I disagree that combat mercenaries only fight for "economic gain" and for "employers other than their home state's government" (p.40). One should just stick with the provision that they are "recruited locally or abroad in order to fight in an armed conflict" (Geneva art.47.2(a) Protocol I). Otherwise one could not call Blackwater's American employees as such!
37. J. M. Broder, B. Knowlton a.o., 'Blackwater Chief Defends Employees Before House Panel' *NYT* 2 Oct 2007.
38. Quotes from <http://ipoaonline.org>, 'Mission' and 'History' (acc. 17 Mar 2007). IPOA speaks obliquely of "enhancement of international peace, development and human security", having dropped emotive claims to help protect 'innocent civilians': <http://ipoaworld.org/eng/aboutipoa.html> (acc. 23 Oct 2009).



39. Quote from <http://www.stability-operations.org>, 'Mission Statement' (acc. 2 Aug 2013).
40. <http://ipoaworld.org/eng/codeofconducthistory.html>. See further David Shearer, *Private Armies and Military Intervention* Adelphi Paper 316: International Institute for Strategic Studies (IISS) – Oxford University Press, 1998.
41. <http://ipoaworld.org/eng/codeofconduct/87-codecodeofconductv12enghtml.html>, artt.3.2-3. IPOA is “not a .. judicial organization, and will not attempt to prove the guilt or innocence of a member company in a criminal or civil legal case”: <http://ipoaworld.org/eng/enforcementv01eng.html>, Preamble.
42. <http://www.stability-operations.org/?page=Code>, art.3.3 (acc. 2 Aug 2013). The same webpage has a link to a downloadable “printable version” of the *ISOA Code of Conduct*, version 13, 20 October 2011 (original version, 1 April 2001): *Academi\_CodeofConduct\_03.01.2013.pdf*. The “ISOA Enforcement Mechanism, the complaint system available to the public at-large” (ibid, art. 14.2) may be a beefed-up version of its IPOA predecessor, yet is unclear if and to what extent this is the case (I was only able to locate the relevant webpage by using its search engine).
43. Antony Beevor, *The Spanish Civil War* London: Cassell & Co, Cassell Military Paperbacks edition 1999 (first edition and publication by Orbis Publishing, 1982), p.182.
44. See further the November 2009 version of this paper titled *Mercenaries in muddled waters: Lessons from the Blackwater scandal* at <http://www.ichuminterv.org> (link ‘Current humanitarian catastrophes’—or ‘Reports’ at the refurbished website). My analyses as chairperson of the International Committee for Humanitarian Intervention (ICHI) are (even) more radical and polemic than those in the present paper.
45. Due to their frequent amateurism and political bickering (worsened by the increasing grip of Soviet advisers), and their relatively small size—never more than 18,000 foreign volunteers in total at any one time (and less than half that number by mid 1938)—the International Brigades were incapable of altering the course of the Spanish civil war. Their story and role “became distorted in many ways”, not only “exaggerating their role out of all proportions to that of Spanish formations”, but also, amongst other things, creating the impression that the Brigades primarily “consisted of middle-class intellectuals and ideological Beau Gestes”. Thus “almost 80 per cent of the volunteers from Great Britain were manual workers who either left their jobs or were unemployed”: A. Beevor, *The Spanish Civil War* London: Cassell & Co, 1999 (1st ed. Orbis Publishing, 1982), pp.180 (numbers of volunteers), 181 (quotes). Still, the size, impact and example of the International Brigades were nearly unprecedented, and without them the Republican government would have lost the war much quicker—and might not have had any chance of winning it at all without these volunteers.
46. See on ADS: [www.aegisworld.com](http://www.aegisworld.com) (acc. 24 July 2006; revisited 6 Aug 2013). See on Sandline: <http://www.sandline.org> (no longer active; can be revisited through search-engines like Google). Apparently, only *Cosmos*, a shady February 2000 merger between the onetime *Executive Outcomes* (or part of it) with *Minotaur Information Systems*, obliquely offered “personnel skills audits to corporates, governments and *parastatals*” (emphasis added).
47. Think of the famous (or notorious) Lt. Col. Tim Spicer, chief executive and founder of ADS in 2002.
48. ISOA's statement that “payment of different wages to various nationalities shall be based on merit and national economic differential, and shall not be based on racial, gender or ethnic grounds” (<http://www.stability-operations.org/?page=Code>, art.6.1.3 (acc. 2 Aug 2013) ), seems somewhat contradictory. After all, low wages due to a “national economic differential” may result from discriminatory practices in the personnel's home countries. Moreover, individual contractors from poor countries frequently operate outside their home countries, and carry the same risks and



- burdens as their colleagues from rich(er) countries: why should the former then receive much lower wages than the latter?
49. R.R.K Hiemstra, 'Krijgsmacht in Krijgstreep (Soldier in Stripesuit)' *Militaire Spectator* Vol.174 No. 7/8, 2005, p.307; quote translated from Dutch. Hiemstra deems it "desirable to limit direct contracting by NGO's and .. even .. IGO's", whereby "only (national) military organisations are allowed to hire PMC's" (p.307; translated).
  50. <http://ipoaworld.org/eng/ipoafaqs.html>, FAQ 16. Rather, IPOA's goals were "better supervision of private companies operating under the umbrella of UN or government-led operations and better coordination between private organizations, government, NGOs and international organizations" (ibid).
  51. <http://ipoaworld.org/eng/codeofconduct/87-codecodeofconductv12enghtml.html>. Signatories "shall only work for legitimate, recognized governments, international organizations, non-governmental organizations and lawful private companies" (art. 4.1). See also art. 2.3 against any disclosures violating "applicable law". One could argue that art. 9.4.3 against violating UN arms embargos is morally questionable; such embargos on Bosnia and Sierra Leone in the 1990s benefited the worst aggressors in these conflicts.
  52. <http://www.stability-operations.org/?page=Code>, art. 8.2. ISOA art.4 is the same as IPOA art.4.1; ISOA art.2.3 is the same as IPOA art.2.3 regarding "applicable law"; and ISOA art.12.3 prohibits the violation of UN arms embargos, just like IPOA art.9.4.3 (see preceding note).

### First Critical Response to Caspar ten Dam's "Private Military Contractors: Deplore or Deploy?"

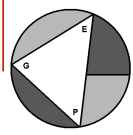
#### *Are private military contractors the way to go?*

The real question in Caspar Tristan ten Dam's comprehensive review of the pros and cons of private military contractors (PMCs) is: are they sufficiently effective and efficient to justify the takeover of certain functions of the military in situations of conflict and are the inevitable risks entailed worth the government's potential savings?

Ten Dam's response to the question is a qualified yes, provided international law clearly defines their rights and duties and strengthens their regulatory and disciplinary regimes. He argues further that PMCs should be used exclusively as auxiliary forces and, interestingly, suggests their deployment as 'humanitarian warriors' in emergency situations.

To be fair, the absence of those definitions and regimes and the resulting PMC excesses rooted in a belief that they have a blank check to do whatever they deem necessary is the result of short-sighted, not thought through policies and politicians' expediency. One immediate solution might be subjecting PMCs to existing military code.

In arguing for a legal and regulatory environment, Ten Dam however is attempting to come up with a practical solution to an otherwise intractable problem. It would be tough to reason in favor of the eradication of a significant sector of the economy in an environment in which the economic focus is job creation and reduction of public expenditure and in which the



public post-Iraq and Afghanistan has grown war-weary and more critical of what constitutes national interest. Those considerations may shape responses, but hardly allow for an impartial answer to the question.

Yet, the very nature of the type of personnel PMCs in contrast to professional militaries attract makes it unlikely that they will ever be able to be held up to the same standards despite Ten Dam's rightfully pointing to the fact that some companies have established a decent, non-controversial track record.

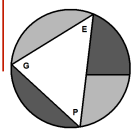
Fact of the matter is that military recruits join the armed forces for a broad combination of reasons, including some notion of patriotism coupled with the prospect of educational and social advancement as well as the security of a job, as opposed to a need or desire to capitalize on skills obtained during military service in the private sector or a decision to embark on a risky career out of necessity or a sense of adventurism. While there is much to be learnt from PMCs whose performance has largely been laudable, the argument is in many way analogous to the Biblical notion of the ten righteous people in the story of Lot.

The divergence of leitmotifs for a professional military in contrast to a private company by definition means that the two will approach missions very differently. Militaries are about serving their countries; they are institutions that take pride in their defense, security, social and economic roles. Private companies are driven by the desire and need to turn a profit and satisfy shareholders. As a result, a private company seeks to exploit opportunity for money.

The question is whether a private military company would have given Israeli Prime Minister Yitzhak Rabin in the early 1990s the same advice he got from Israel's military command with regard to the Intifada, the Palestinian uprising against Israeli occupation. The military advised Rabin that while it could squash the revolt, it could not do so at a moral price it or Israel would be able and willing to accept and that it therefore was a political problem Rabin needed to resolve politically. The answer to the question is probably no. That answer is the very reason why regimes like Bahrain and the United Arab Emirates who are willing to ensure their survival irrespective of material and human cost opt to either populate the ranks of their militaries with foreign mercenaries or contract PMCs, particularly ones with a track record of ruthlessness and lack of scruple.

This difference in organizational ethos between a military and a PMC dictates an individual's willingness to lay down his or her life in the line of duty as well as the individual's motivation to do so. The ethos of a military is one of national duty coupled with personal ambitions; that of a PMC is organizational and individual advancement. That gap is however narrowed by an implicit consensus in differentiating between the value of life of one's own as opposed to that of the other. It puts militaries and PMCs perilously on thin ice in an environment that cannot be divorced from the post 9/11 trauma reinforced by Islamist and jihadist activity that feeds bigoted caricatures of the enemy and its domestic feeding ground.

The result is that militaries are not immune to committing the kind of abuse that has come to be synonymous with PMCs as is evident in the US military's treatment of Iraqi prisoners in Abu Ghraib in 2004.



In noting that moral imperatives may at times clash with legal provisions when implementing the right to protect without government or United Nations approval, Ten Dam opens the door to an as yet little explored avenue: the use of PMCs in cases where governments may want to ensure plausible deniability. This is particularly relevant in politically and strategically sensitive cases as well as in terms of public perceptions of what constitutes a core national interest.

The bitter civil war in Syria is an example. Western governments, despite their political support for the rebel push to unseat President Bashar al-Assad, have so far been unwilling to be seen to be supplying them with the arms that would give them a fighting chance. Instead, they have relied on Gulf states and Turkey to do so within limits. The field is open for PMCs who would be able to provide the training and strategic and tactical advice that Gulf states and Turkey might not be able or willing to offer.

Syria may be a more interesting example than Ten Dam's discussion of the issue on the basis of criticism that the deployment of the air force against Libyan Col. Moammar Qaddafi's forces in the spring of 2011 constituted a violation of international law. Critics of the Libyan intervention, spearheaded by Russia, were happy to cloak their opposition in legal terms. Senior Russian officials and pundits leave however little doubt that their criticism has little to do with legality and everything to do with a deep-seated suspicion of the United States rooted in US policy towards Russia that prompts an anti-American Pavlov's reflex.

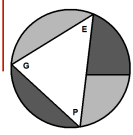
Ten Dam's notion of the 'humanitarian warrior' who is both mercenary and volunteer combining idealism and personal gain is one that is both creative and naïve but no doubt worth further deliberation. Those warriors would have to be embedded in credible non-governmental organizations (NGOs) with established track records and on-the-ground expertise and knowledge. However one structures the notion, it would offer opportunity to a small fraction of the army of mercenaries available on the market. It doesn't resolve the basic question: whether the PMCs and their rank and file?

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### Second Critical Response to Caspar ten Dam's "Private Military Contractors: Deplore or Deploy?"

This article has the potential to make a valuable contribution to the debate on the use of private contractors in contemporary conflicts. However I feel that, as it stands, this article needs substantial work ... . There are critical issues that need serious investigation. First of all, some sections seem disconnected: just to mention the introduction, both the inclusion of the Libyan revolution and the use of drones in conflictual areas. And to stick with the





introduction, the author should also clearly state what the paper aims at for there is no need to repeat twice what the paper wants to deal with: one clear statement would have been enough. The author needs to engage seriously with the historiography and to look at the overall idea of 'cost tolerance' (starting with Rosen and Rosen and Jones political militaristic war theory and their critics and above all the account on 'willingness to suffer'). Furthermore, there is no reference to the huge body of literature on the right to conduct or to wage a war, as well as on the role of American lobbies in the so called 'war on terror', and on exit strategies (starting with O'Leary's work). Such an inclusion would avoid reductive statement and generalizations. The author should also address the complexity of the representation of violence via some anthropological account (e.g., Riche, Feldman, Humphrey and their critics) on 'body horror' as a core strategy to 'terrorize' a given audience.

A key methodological weakness is that narratives and stories related to a single episode can yield grand generalizations about Western intervention and, by implication, recent Iraqi history in general. A words such as 'Crusading' needs substantiation; words such as 'carrot' and 'stick' need contextualization and a deep theoretical articulation otherwise they would be seen as a weak and simplistic dichotomy; and, finally, a sentence like 'had had enough' may be misleading.

These reservations touch a major problem with this article, that is, it does not provide primary sources for many of the arguments it makes, many of which are highly contentious. It is not also clear what methodology was used. And it even makes generic points about the US led invasion of Iraq.

To sum up. We are not told how much fieldwork was done, or when, or with whom exactly. The secondary material is also based on a very partial selection of writings on Iraq. The conceptual framework is thus weak and the article is not sufficiently grounded in the literature, either historically or in terms of primary data collection. The article makes however many good points. ... (This review is presented here in slightly abbreviated form. Ed.)

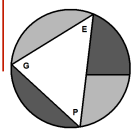
- Anonymous

### Author's Reactions to the Critical Responses

I appreciate James M. Dorsey's insightful comments and suggestions on my article, including those expressing healthy scepticism about the wisdom and suitability of "private military contractors (PMCs)" in taking over "certain functions of the military in situations of conflict".

Nevertheless, I do have some reservations and doubts about Dorsey's argument that PMCs are inherently inferior to the "professional militaries" of a recognised nation-state, and that "laudable" mercenaries are far and few in between.

First, Dorsey implicitly speaks of the professional militaries of Western and other developed states with stable, advanced democratic control over the militaries. Many armed forces in the world, however, are just hired thugs in the service of dictatorial, repressive regimes—not just



“foreign militaries or contract PMCs” on which Bahrain and the United Arab Emirates rely on, but also, or rather mainly, vigilantes, militia’s and military recruits who are loyal to the ruling elite because of self-protection, greed or belonging to the same clan, tribe or ethnicity of that elite.

When Dorsey speaks of militaries as institutions “serving their countries”, who “take pride in their defense, security, social and economic roles” he clearly speaks of militaries belonging to Western and other democratic states, and particularly of the United States’ armed forces—even though he recognises that even such militaries are “not immune to committing the kind of abuse that has come to be synonymous [I would rather say: associated] with PMCs”.

Now, many a PMC would rather be compared with truly professional militaries. Still, one should bear in mind that the ‘professional’ militaries of dictatorial regimes are not much better, or rather even worse, than even the most rash, greedy and brutal mercenaries

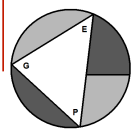
Second, Dorsey’s observation that even professional PMCs are inferior to professional militaries because “private companies are driven by the desire and need to turn a profit and satisfy shareholders” may be a reflection of a dominant trait among current PMCs, but is not a universal one—nor a trait that is necessarily detrimental to professionalism, restraint and honourable motives in the field.

Thus my suggestion that PMCs or NGOs with volunteer fighters only need to make a decent living rather than make excessive profits, in order to act as “*humanitarian warriors*” might become a reality in the future.

Furthermore, one can point to many examples, in distant history, recent history or in present days, of states behaving secretly or openly as private companies seeking “profit” for their “shareholders”, like gaining control over natural resources by or for major companies and their elites. Many powerful states and their militaries exhibit such a ‘greedy’ *leitmotif* in foreign missions and occupations, both in Colonial and Post-colonial times. According to many analysts this motive played a role or even constituted the primary drive in the U.S. occupation of Iraq (the question whether this has been the case, and if so, to what extent, will be addressed in some of my future publications).

In short, I believe Dorsey overstates the supposed “difference in organizational ethos between a military and a PMC”.

Third, Dorsey’s estimations that only “some” PMCs have a “decent, non-controversial track record”, and that humanitarian volunteers and mercenaries could be forged from only a “small fraction of the army of mercenaries”, underestimates the prevalence of decency and professionalism among private military contractors nowadays, and underestimates the number of honourable mercenaries one could deploy in humanitarian emergencies. I do believe that decent and professional men and women constitute at least a sizable, significant minority, and probably a large majority, in the PMC world. With further education and (re) training, a solid majority of them could become *humanitarian warriors* when the need arises, as I daringly envision in my article.



In emergencies of incipient or raging genocide, or other mass killings and atrocities, many (tens of) thousands of them would be required if no coalition of countries is willing to intervene with their militaries.

I also wish to respond to some of the points made by the anonymous reviewer. First, it must be said that the reviewer's final recommendation, that he or she would "encourage the author to revise this contribution and, then, considering re-submitting for publication", shows that he or she does not fully grasp the purpose of a Critical Response in this journal: to critically review the (main) article of a current or forthcoming issue of the journal, an article that already has been approved for publication.

Admittedly, the editorial review may be hampered or complicated somewhat in the event that the (main) article is written and submitted by one of the journal's editors—as is the case here. Still, the other editors seriously review any article submitted by one of their colleagues. If both they and *all* the reviewers or critical responders are highly critical, then the article would normally be published only after major revisions.

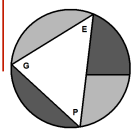
Even if all the reviewers are highly critical, however, the editorial board as a whole or a majority (in case the author is one of the journal's editors) has the final say on whether to publish the article, with perhaps minor or major revisions. Evidently, the majority of the editorial board did not consider any limitations or shortcomings of my article such as to preclude its publication.

Second, a Critical Response may touch upon theoretical, empirical and/or methodological issues, but should primarily concern the article's arguments and conclusions that (are intended to) elicit debate. Incidentally, pejorative or historically sensitive words like 'Crusading' are from cited sources, and are not my own chosen terms.

True, any argument and conclusion should preferably and ultimately be based on thorough and well-grounded research. I do appreciate and acknowledge the reviewer's comments in that regard. Nevertheless, a polemic, debate-eliciting article such as mine, focused on one scandal involving mercenaries in Iraq, though put in the wider context of apparent (un)suitability of PMCs in military missions, is ill-suited for covering a "huge body of literature" on, for instance, "the right to conduct or to wage a war", as the anonymous reviewer suggest I should have done. Covering such literature would have made the article top-heavy with references that may have shown my erudition, but would *not* have been directly or immediately relevant to the article's main questions and arguments.

Again, I do acknowledge that any wider and more extensive study of the mercenary phenomenon would require more field and other original research, and the use of (many of) the anthropological and other sources the anonymous reviewer indicates.

Actually, I already use many of these and kindred sources, like David Riches' edited *Anthropology of Violence* (1986), and Bettina E. Schmidt & Ingo W. Schröder's edited *Anthropology of Violence and Conflict* (2001), on the 'war on terror' and related issues in my



ongoing research on armed conflicts, forms of violence, and *brutalisation* i.e. increasing violation of local and/or international norms of violence. I hereby refer to my Feud and Rebel Series in the peer-reviewed journal *Iran and the Caucasus* (Brill) and my forthcoming book *Conceptualising Brutality and Violence* (Cambridge Scholars).

The current article's aim and approach is much more modest, however, and is simply and primarily intended to elicit debate on the practical and ethical roles current PMCs might play ever since the so-called Blackwater scandal in Iraq. It has never been my intention in this article to give an exhaustive account of, for instance, the "representation of violence" by mercenaries and other armed actors.

Now, the tension between polemics and (any lack of) "contextualization and a deep theoretical articulation" may be there—and may never be fully resolvable in any article whose generalisations are intended to elicit debate and further research, rather than to represent fully corroborated findings of existing research.

I do admit that the latter findings may eventually modify or perhaps even invalidate (some of) my generalisations and daring statements. I certainly do intend to produce a more grounded, contextualised and nuanced analysis of the mercenary phenomenon in the foreseeable future. But again, the present article's approach and aim are much more modest than such an undertaking, and should be viewed and judged accordingly.

- Caspar ten Dam (Conflict studies and Political history), University of Leiden

NB: do you have any comments on Caspar ten Dam's article and/or the critical responses? Please send these to [europeanreview@gmail.com](mailto:europeanreview@gmail.com), or post these on <http://www.europeanreview.webs.com>.

Some of these comments the Editorial Board may publish as Critical Responses (maximum 3,000 words) in the next issue of the journal.