

HIDDEN COSTS: US PRIVATE MILITARY AND SECURITY COMPANIES AND THE RISKS OF CORRUPTION AND CONFLICT

By Michael Picard and Colby Goodman



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LIST OF ACRONYMS IN REPORT

AANES	Autonomous Administration of Northeast Syria	IHL	International Humanitarian Law
ADAC	Abu Dhabi Aviation Company	ITAR	International Traffic in Arms Regulation
BESC	Babylon Eagles Security Company	IW	Integrated information warfare
BIS	Bureau of Industry and Security	IGWG	Intergovernmental Working Group
BRI	Belt and Road Initiative	JAC	Joint Aviation Command
CBO	Congressional Budget Office	KRG	Kurdistan Regional Government
DASD	Deputy Assistant Secretary of Defense	MbZ	Sheikh Mohammed bin Zayed al-Nahyan
DDTC	Director of Defense Trade Controls	MEJA	Military Extraterritorial Jurisdiction Act
DDTC	Directorate of Defense Trade Controls	NATO	North Atlantic Treaty Organization
DoT OFAC	Department of Treasury's Office of Foreign Assets Control	NDAAs	National Defense Authorization Act
DS	Federal Acquisition Regulation System	PMSC	Private Military and Security Companies
DTAG	Defense Trade Advisory Group	PSC	Private Security Contractors
EAIG	Emirates Advanced Investments Group	SDF	Syrian Democratic Forces
EAR	Export Administration Regulations	SIGAR	Special Inspector General for Afghanistan Reconstruction
EW	Electronic Warfare	SIPRI	Stockholm International Peace Research Institute's
FARS	Federal Acquisition Regulation System	TAA	Technical Assistance Agreements
FY	Fiscal Year	TCNs	Third-Country Nationals
GAO	Government Accountability Office	UAE	United Arab Emirates
GDI	Government Defence Integrity Index	UK	United Kingdom
ICoC	International Code of Conduct	UNWG	United Nations Working Group
ICoCA	International Code of Conduct Association	UPDF	Ugandan People's Defense Force
ICRC	International Committee of the Red Cross	USML	US Munitions List
IGG	International Golden Group	WPS	Worldwide Personnel Protective Services

1.0 EXECUTIVE SUMMARY

As the United States transitions away from wars in Iraq and Afghanistan, US private military and security companies (PMSCs) are seeking new opportunities and foreign clients. Some of these new contracts with foreign governments have resulted in corruption-related scandals and challenges. In 2012, a former CEO of a major US PMSC pled guilty to bribing Nigerian officials for a US\$6 billion contract to develop hydrocarbon infrastructure in the conflict-affected Niger Delta.¹ In 2017, a US PMSC provided combat training to the Saudi operatives who would later gruesomely murder Jamal Kashoggi, a dissident journalist, in an attempt to quell perceived political opposition against the ruling Saudi royal family.² In 2020, another US PMSC launched a botched incursion into Venezuela, reportedly seeking to topple the regime of Nicolas Maduro on behalf of local dissidents.³ A former US defense official has raised concerns about a US PMSC's commercial activities in Somalia creating potential conflicts of interest with its US Government contract to train military units in Somalia.⁴

Many governments around the world argue that PMSCs fill critical, security capability gaps quickly with relatively minimal costs. US PMSCs undoubtedly have provided essential services to the US Government. In Afghanistan and Iraq, for example, US PMSCs successfully guarded senior US officials and provided critical weapons maintenance services. Some of the US PMSCs have strengthened US partner nation military's knowledge of combat tactics and military ethics. However, governments' use of PMSCs has led to significant costs overruns and underperformance in US military operations.⁵ One US Government watchdog estimated that the United States lost almost one-third of its Afghan reconstruction funds to waste, fraud, and abuse, much of which involved contractors.⁶ The watchdog's report closely examined one such contractor – a PMSC called TigerSwan – which appears to have significantly overcharged the US Department of State.⁷ There have also been serious concerns about a PMSC overcharging the United Arab Emirates (UAE) for the delivery of weaponized civilian helicopters.⁸

It is less well known that PMSCs have played a role in fueling corruption and conflict in foreign countries. In 2020, the US Department of Justice ordered DynCorp to pay “[US]\$1.5 million to settle fraud allegations that stemmed from a scheme in which DynCorp officials received kickbacks from subcontractors in return for Iraqi police training subcontracts.”⁹ In another case, US PMSCs reportedly hired local subcontractors with suspicious connections to armed groups, including adversaries of the United States.¹⁰ In 2010, an Afghan PMSC owned by a relative of the Afghani president reportedly engaged in fake firefights, and even paid local insurgents to attack a NATO supply convoy.¹¹ These actions, along with the US Government's support of political and military leaders who participated in or turned blind eye to corruption, led many local Afghans to assume the United States approved the corruption.¹²

Spurred on by the US government's normalization of PMSCs, US PMSCs are growing their services by working in many fragile countries around the world. US PMSCs account for a leading share of the estimated

1 Baltimore, Chris. 2012. 'Ex-KBR CEO gets 30 months for Nigeria scheme.' Reuters. 23 February.

2 Mazzetti, Mark, Julian Barnes & Michael LaForgia. 2021. 'Saudi Operatives Who Killed Khashoggi Received Paramilitary Training in U.S.' *The New York Times*. 22 June.

3 Goodman, Joshua. 2020. 'Ex-Green Beret led failed attempt to oust Venezuela's Maduro.' *AP News*. 1 May.

4 Sperber, Amanda. 2020. 'The Danab Brigade: Somalia's Elite, US-Sponsored Special Ops Force.' *Pulitzer Center*. 11 August.

5 Hartung, William. 2021. *Profits of War: Corporate Beneficiaries of the Post-9/11 Pentagon Spending Surge*. Washington DC: Center for International Policy. 13 September.

6 Gul, Ayaz. 2020. 'US Reportedly Lost \$19 Billion To Fraud, Abuse in Afghanistan.' *Voice of America*. 20 October.

7 Special Investigator General for Afghanistan Reconstruction (SIGAR). 2020. *Department of State's Afghanistan Flexible Implementation and Assessment Team Program: Audit of Costs Incurred by TigerSwan LLC*. 20-48 Financial Audit. Arlington: Special Investigator General for Afghanistan Reconstruction. August.

8 The NorthStar helicopter's estimated unit price is US\$9 million, compared to US\$2.8 million for the civilian variant. A comparable McDonnell Douglas MD 500 Defender costs around US\$3.5 million. Airforce Technology. 2016. 'NSA 407MRH Multi-Role Helicopter.' *Airforce Technology*. 14 February; Pope, Stephen. 2011. 'Bell 407GX.' *Flying*. 9 June; AeroCorner. N.d. 'MD 500 MG Defender.' *AeroCorner*.

9 Hartung 2021.

10 Kopplin, Zach. 2021. How the Pentagon Accidentally Funnel Millions to Iraqi Militia Groups It's Also Fighting.' *The American Prospect*. 25 March.

11 Filkins, Dexter. 2010. 'Convoy Guards in Afghanistan Face an Inquiry.' *The New York Times*. 6 June.

12 Chayes, Sarah. 2021. 'Afghanistan's Corruption Was Made in America.' *Foreign Affairs*. 3 September.

total annual sales of PMSCs globally, which was nearly US\$224 billion in 2020, and is expected to grow to US\$457 billion by 2030.¹³ An internal study by the US Department of Defense found that only 10-20 percent of US PMSC contracts are with the US Government or its North Atlantic Treaty Organization (NATO) allies.¹⁴ As they modernize their military, intelligence, and surveillance capabilities, countries in the Persian Gulf such as Saudi Arabia and the UAE have become major clients of US PMSC services. In one of the case studies in this report, a former US military officer employed by an UAE company, Knowledge Point, likely played a role in Emirati combat operations in Yemen. US PMSCs are also selling their services in Africa, Asia, and Central America. Some large US PMSCs have a relatively weak commitment to anti-corruption and transparency standards. Other countries, like China, India, Israel, Russia, and Turkey, are making increasing use of their own private military companies.

Despite the end of US involvement in Afghanistan, the US Government's reliance on PMSCs will likely remain robust as PMSCs are now an integral part of US foreign military operations and foreign policy activities. The US Government is the largest client of US PMSC services, which include weapons maintenance, armed physical security, military and police training, intelligence collection, cybersecurity, and more. These services are delivered both domestically and abroad. The US Government regularly spends US\$500 million a year simply on guard services overseas.¹⁵ In Fiscal Year (FY) 2022, the State Department proposed to spend over a billion dollars in foreign military and police training to more than 60 countries through funding accounts that often use PMSCs to deliver such aid.¹⁶ The Defense Department regularly signs multi-million-dollar contracts with PMSCs for military aircraft maintenance, military base security, and logistics. Some US defense analysts are also encouraging the use of US PMSCs in Ukraine to support the maintenance of US delivered weapons systems.¹⁷

The growth and diversification of the US PMSC industry present profound corruption and conflict risks. Many US PMSCs now operate in countries with weak defense sector institutions and a culture of secrecy around national security issues, all of which provide a fertile environment for corruption to thrive. There are also

serious regulatory and transparency gaps in US oversight of US companies and persons engaging in PMSC services for US or foreign governments. In particular, based on our research, US PMSCs run the risk of fueling corruption and/or conflict in the following ways (some of which are illegal in the United States):

- Serving as an advisor to a foreign military or police force unit that procures services for PMSC activities;
- Inflating threat perceptions or security needs in order to secure or prolong contracts, which can encourage authorities to take unnecessarily aggressive action;
- Improving the coercive capabilities of foreign military and security forces in highly corrupt governments, which can intensify repression and strengthen foreign military actions;
- Partnering with foreign government officials who also own private companies providing PMSC services;
- Capturing valuable natural resources, which can drive violent resource competition among local or foreign actors;
- Pushing foreign companies to pay kickbacks to a US PMSC to receive US Government-funded contracts;
- Paying bribes to government officials to influence government decisions or actions, which can inflame corruption dynamics that weaken and undermine state institutions;
- Brokering the sale of foreign PMSCs to fight on behalf of a foreign government in a conflict zone;
- Supporting or strengthening private, local organizations that feed into sectarian or criminal violence; and,
- Engaging in illicit economies such as arms trafficking.

There can also be substantial costs to US foreign policy interests and American lives when US PMSCs engage in corrupt or irresponsible actions, including when foreign citizens believe the US Government condones such actions. Former US intelligence officials working for an Emirati intelligence contractor, DarkMatter, helped spy on foreign and domestic critics of the UAE, including American citizens.¹⁸ The shooting of unarmed civilians by Blackwater employees in Nissour Square, Iraq,

13 McFate, Sean. 2014. *The Modern Mercenary: Private Armies and What they Mean For World Order*. Oxford: Oxford University Press, pp. 8-15; ASD News. 2020. 'Private Military & Security Services Market to Total \$457.3 Bn in 2030.' *ASD News*. 19 February.

14 Interview with former senior DoD contracting official, 22 January 2021.

15 Stockbruegger, Jan. 2021. 'US Strategy and the Rise of Private Maritime Security.' *Security Studies*, Vol. 30(4), pp. 578-602. 20 September.

16 Security Assistance Monitor, Security Aid Database, Peacekeeping Operations (PKO), International Narcotics and Law Enforcement (INCLE), and Nonproliferation, Anti-terrorism, Demining, and Related programs (NADR), www.securityassistance.org, accessed in April 2020.

17 Cancian, Mark. 2022. *The Next Step in U.S. Aid to Ukraine: Operational Contractors*. Washington DC: Center for Strategic and International Studies. 2 May.

18 Bing, Christopher & Joel Schechtman. 2019. 'Special Report: Inside the UAE's secret hacking team of U.S. mercenaries.' *Reuters*. 30 January.

complicated the US government's efforts to establish an agreement with the Iraqi government on the stationing of US military forces in Iraq.¹⁹ The Venezuelan government reportedly accused the United States of supporting the US PMSC that allegedly led an effort to topple the current president.²⁰ In Afghanistan, US PMSCs' corrupt actions likely contributed to local Afghan resentment towards the US Government and to a weakened legitimacy of the Afghan police.²¹ PMSCs can also inflame conflict dynamics in countries key to US foreign policy by supporting conflict actors, strengthening corrupt officials, and capturing contested natural resources.²²

The United States now has a new opportunity to improve key types of governance and oversight of US PMSCs activities abroad to reduce serious corruption risks. In June 2021, the US Government initiated a new combating corruption strategy, recognizing the role that corruption plays in degrading economic development, undermining citizens' faith in government, and driving conflict.²³ This strategy specifically calls on the US Government to start "reviewing and re-evaluating criteria for government-to-government assistance, including around transparency and accountability."²⁴ It also encourages efforts to work with "the private sector to improve the international business climate by encouraging the adoption and enforcement of anti-corruption compliance programs by U.S. and international companies."²⁵ This new initiative provides a critical moment to strengthen oversight of both US PMSC contracts with the US Government and with foreign governments.

The United States will need to address key gaps in regulation and transparency of US PMSC's contracts with foreign governments. The State Department's Director of Defense Trade Controls (DDTC) requires US PMSCs to obtain their approval (via a license) to provide some types of PMSC-related services, such as military training for foreign governments or entities through its arms export regulations. These regulations, however, have wide gaps in oversight when US PMSCs or US persons working with foreign PMSCs seek to provide direct combat support to foreign entities abroad. The US Department of Commerce's Bureau of Industry and Security (BIS) does not require US PMSCs to seek approval for armed, close personal protection of foreign officials, training of foreign law enforcement, and surveillance support to

most countries, unless the export includes classified information or controlled technology. Both State and Commerce Department annual reports to Congress include very little or no information to effectively oversee US PMSC exports.

There are some critical gaps in US oversight of PMSCs who contract with the US Government. As the world's single largest consumer of PMSC services, the US Government still has considerable influence over the PMSC industry. However, the development of regulations and policies to oversee PMSCs over the past 15 years has largely been done in a staggered manner. Different US agencies maintain different controls and different degrees of oversight over PMSCs. The State Department's guidance documents for contracting officers overseeing PMSCs lack critical information on certain corruption risks, ranging from conflicts of interest to kickbacks to help mitigate corruption. Chronic undertraining and understaffing also inhibit the ability of US agencies to assess corruption risks and hold contractors fully accountable when problems or violations exist.

Finally, the US Government's efforts to address key challenges in regulating US PMSCs will not be fully effective unless it pushes foreign countries to adopt stronger national laws on their PMSCs. Many US PMSCs hire employees from all over the world, including from Africa, Asia, Europe, and Latin America. US individuals are also working for foreign PMSCs. However, many countries have not signed or implemented key non-binding international agreements, such as the Montreux Document and the International Code of Conduct (ICoC). This has created gaps in international and national regulatory efforts. It makes it more difficult and riskier for US PMSCs to vet foreign nationals working for them and for US persons to assess the risks of working for foreign PMSCs that have not implemented the Montreux Document standards. The United States can address these gaps by pushing more countries to agree to the ICoC and by working within the UN Intergovernmental Working Group on PMSCs efforts to establish a new international framework for PMSCs. The United States could also use UN discussions regarding Russia's invasion of Ukraine to raise concerns about Russian PMSCs. Some of the key recommendations for improving US PMSC oversight are outlined below.

19 Erik Prince, *Civilian Warriors: The Inside Story of Blackwater and the Unsung Heroes of the War on Terror*, chapter 13, pages 207-231

20 Casey, Nicholas & Ernesto Londono. 2018. 'Venezuela Accuses U.S. of Plotting Coup Against Maduro.' *The New York Times*. 8 September.

21 Chayes 2021.

22 United Nations, "Evolving Forms, Trends and Manifestations of Mercenaries and Mercenary-related Activities," Working Group on Mercenaries, July 28, 2020.

23 United States Office of the Press Secretary. 2021a. 'Fact Sheet: U.S. Strategy on Countering Corruption.' *The White House*. 6 December; United States Office of the Press Secretary. 2021b. 'Summit for Democracy Summary of Proceedings.' *The White House*. 23 December.

24 United States Office of the Press Secretary 2021a.

25 Ibid.

1.1 Selected Recommendations

1.1.1 Building a Stronger US Government Contracting Regime for PMSCs

- Strengthen senior level US Government oversight of PMSCs.** The Defense Department should re-appoint a senior official to oversee policy guidance, coordination within it and other US Government agencies, and full implementation of legal and regulatory requirements regarding PMSC oversight. This official could also support efforts to strengthen international standards and foreign national laws on PMSCs. The State Department should also appoint or select a senior official within the Bureau of Management to help oversee State Department contracts with PMSCs. Senior level officials within State Department Bureaus designing foreign military and police training should also have responsibility to review the risks of hiring certain PMSCs.
- Enhance training and guidance on corruption risks and counter measures.** The Defense and State Departments provide materials, guidance, and training that specifically identify and address the role of and opportunities for corruption in government contracting. However, the State Department policy guidance lacks sufficient information to identify and mitigate corruption. Guidance documents for contracting PMSCs to provide foreign military or police training or armed security should be updated to provide a wider typology of different forms of contractor corruption, as illustrated above as well as guidance on how to identify and address these practices. The State Department should also use this updated guidance in reviewing all types of government-to-government sales of PMSCs services.
- Require contractors to report the beneficial ownership information for their subcontractors.** Prime contractors should be required to report on all subcontracting when submitting invoices. At the very least, this should include the names of all subcontractors (including those beyond the first and second tier), their business registration and beneficial ownership status, as well as the itemized value of subcontracted services. The definition of beneficial ownership as included in the Corporate Transparency Act should be used.²⁶ The prime contractors should also submit all information on all potential subcontractors when contractors are submitting their bids for new US contracts. The US Government should make input of this subcontractor information into the

publicly available USAspending.com database, which currently only includes information on prime contractors and excludes subcontractors.

- Mandate agency reporting on PMSC use.** The US Government should provide annual reports to Congress on the value, scope, and composition of PMSCs contracted overseas. At least one DoD geographic combat command – CENTCOM – does so through quarterly reports on PMSC contractor levels in Iraq, Syria, Afghanistan, and throughout its area of operation. Such reporting can be expanded to include the firms hired – particularly those of US origin – as well as the values of their contracts. Other combatant commands should provide similar reports, as well as the various bureaus of the State Department that hire PMSC services. Equally, the State Department should provide annual reports to Congress on the PMSCs it has contracted for work overseas.

1.1.2 Bolstering US Oversight of PMSCs Sales to Foreign Governments

- Expand oversight of US companies or persons engaged in combat activities abroad.** The State Department's DDTC should urgently work to propose a rule change to the International Traffic in Arms Regulations (ITAR) requiring US companies or persons to apply for a license (US Government approval) if they wish to participate in combat operations abroad. This license requirement should include in the definition of combat activities US companies or persons services in support of strategic, tactical, and operational activities. The definition could also include intelligence gathering, logistics, and cyberwarfare activities in support of combat operations. DDTC should also add policy guidance to indicate that in most cases a license would be denied.
- Strengthen scrutiny on subcontracting and beneficial ownership.** As part of DDTC's requirements for US companies or persons seeking to export some types of PMSC services, US companies must submit foreign-owned signatories to disclose the nature of their ownership. The same should be required for US signatories. DDTC should also stipulate that license applications include information on all potential subcontractors, their business registrations, and beneficial ownership status, as well as the itemized value of subcontracted services. The definition of beneficial ownership as included in the Corporate Transparency Act should be used.²⁷

²⁶ Corporate Transparency Act, Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, January 1, 2021). Section 6403 in the CTA enacted section 5336 in title 31 of the U.S. Code, requiring beneficial ownership transparency. <https://www.law.cornell.edu/uscode/text/31/5336>

²⁷ Corporate Transparency Act, Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, January 1, 2021). Section 6403 in the CTA enacted section 5336 in title 31 of the U.S. Code, requiring beneficial ownership transparency. <https://www.law.cornell.edu/uscode/text/31/5336>

- **Enhance reporting on exports of PMSC services.** DDTC publishes annual reports to Congress on authorized exports of defense articles and services. These reports, often referred to as the 655 reports, provide critical insights into the scope and impact of the US arms trade. Yet, the information on defense services is severely limited by over-summarization by aggregating distinct categories together, such as combining data on sales of license manufacturing, offshore warehousing, and defense services into one amount for each country. This aggregation prevents Congress and the public from performing any type of oversight of PMSC services. Several years ago, DDTC provided more detailed reports on exports of defense services. DDTC should expand on these previous reports and list the specific types of defense services by country.
- **Expand export license requirements for armed security and intelligence service exports (outside of direct support to combat operations).** Given the risks to US national security from companies providing armed security and intelligence services abroad, Congress should explore ways in which the State and Commerce Departments could strengthen oversight of US PMSCs contracts with foreign governments and entities with weak anti-corruption standards and practices. Current Commerce Department regulations do not require US companies or individuals to apply for a license to actively engage in types of surveillance and countersurveillance for foreign intelligence agencies or companies in most countries. Congress should also consider expanding oversight of US companies that provide protective services to foreign politicians or elites accused of corruption, particularly in fragile or conflict-ridden countries.
- **Push the US PMSC industry to adopt stronger anti-corruption and transparency measures.** Some large US PMSCs score relatively low on supply chain transparency, conflicts of interest, and oversight of agents and joint ventures, according to Transparency International's Defence Companies Index. These low scores mean higher risks of PMSCs unknowingly working with individuals or companies who have previously engaged in corrupt or illegal actions. These companies also run the risk of the US Government being misled or defrauded. The State and Defense Departments should work with the PMSC industry to strengthen company compliance systems and transparency in these areas and others to reduce corruption risks. The US Government

should also press companies to adopt an explicit policy of non-retaliation against whistleblowers in all circumstances, as well as establish accessible whistleblowing channels and regularly monitor their use, at a minimum.²⁸ The United States must also press defense companies to provide license-by-license reports to the US Government on political contributions, commissions, and lobbying of foreign clients.

1.1.3 Creating Stronger International Controls on PMSCs

- **Encourage more countries to fully implement the International Code of Conduct for PMSCs.** The International Code of Conduct (ICoC) offers strong standards for regulating PMSCs. As a strong early supporter of the ICoCA, the United States is in a good position to encourage other US security partner countries that are increasingly using PMSCs – such as the UAE, India, Egypt, and others – to agree to and adopt these standards as a means to expand controls over PMSCs in these countries and increase funding for ICoCA. At the same time, the United States should explore ways to encourage more US companies to join ICoCA by requiring US PMSCs seeking a contract with the Defense Department to be an ICoCA member. There is also a critical need to increase funding for ICoCA's efforts to monitor potential problems with ICoCA membership companies and support strong company whistleblower protections.
- **Rejoin the UN Intergovernmental Working Group on PMSCs discussion on establishing an international framework on PMSCs.** The Working Groups' renewed efforts to establish an international framework on PMSCs provides the United States another key opportunity to push foreign countries to establish stronger national controls on PMSCs. The United States can raise some of the concerns they have about the actions of foreign PMSCs by calling for clear restrictions on states hiring PMSCs with a record of engaging in corrupt activities or human rights abuses. Critically, the United States should encourage the Working Group to incorporate a broader definition of PMSCs to include intelligence and cybersecurity activities. The United States could also use this opportunity to talk about some of the ways the PMSC industry has grown and diversified as well as the challenges the US Government has faced in regulating US PMSCs.

28 Linney, Charlie. 2021. *Defence Companies Index on Anti-Corruption and Corporate Transparency 2020: Key Findings*. London: Transparency International – Defence & Security. November.



Military Professionals as Contractors (Photo Credit: US Army)

Box 1

What is a PMSC?

The private military security industry is a broad, nebulous sector lacking firm definition.²⁹ Competing terms and definitions relating to PMSCs complicate efforts to effectively survey the industry. This report defines a PMSC as “*private agents or business entities that are contracted to use, possess, direct, train, or enable lethal force or coercive cyber capabilities within or in relation to conflict, fragile, or otherwise unstable environments.*” This definition is designed to capture the diversity of services within the sector, while also incorporating the relevance of cyberspace in defense and security domains. This report occasionally uses shorthand stand-ins like “contractor” or “security firm”.

According to the UN Working Group on Mercenaries, PMSCs are “*private business [entities], irrespective of how they describe themselves*” that deliver two distinct categories of services “*on a compensatory basis.*”³⁰ One entails security services, which includes the provision of “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.”³¹ The other set entails uniquely military services, which can include the provision of “specialized services related to military actions including strategic planning, intelligence, investigation, reconnaissance, flight operations, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities, whether on land, in the air or at sea, or whether in cyberspace or space”³²

While there are several clearly identifiable PMSCs with an explicitly military/security orientation, many companies also straddle the boundaries of PMSC definitions. Many firms that deliver PMSC services present themselves as general government contractors, and they are often hired to provide adjacent services in stabilization missions, such as infrastructure engineering and construction, project monitoring, and facilities support. This report identifies a company as a PMSC when its sales include a significant amount of PMSC services. It generally tries to exclude companies that focus on manufacturing weapons systems; although, some of them have acquired PMSCs over the last 20 years.

29 Schneider, Andrea & Elke Krahmman. 2016. *Policy Paper on Private Military and Security Companies: Capacity Gained - Accountability Lost? Establishing a Better Political and Regulatory Framework*. London: Transparency International – Defence & Security. January.

30 Office of the High Commissioner for Human Rights (OHCHR). 2022. *Revised Zero Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight Over the Activities of Private Military and Security Companies*. Geneva: United Nations Office of the High Commissioner for Human Rights

31 Ibid.

32 Ibid.

2.0 PRIVATE MILITARY AND SECURITY MARKET AND CORRUPTION RISKS

The global PMSC industry has grown and diversified extensively since the US-led wars in Afghanistan and Iraq. It has grown from an estimated value of US\$100 billion in 2003 to US\$224 billion in 2020.³³ Many US PMSCs now operate all over the globe and are increasingly selling their services to governments in the Persian Gulf and Africa. Some major US companies that offer PMSC services have subsidiaries in countries such as Egypt, Lebanon, Singapore, and Saudi Arabia. However, many of these companies have relatively weak anti-corruption and transparency standards. Many PMSCs provide services traditionally carried out by state military and intelligence agencies. At the same time, foreign PMSCs in Europe, Asia, and the Middle East are significantly expanding their operations domestically and internationally. The industry's explosive growth and normalization over the past 20 years reveals numerous corruption risks, which can inflame conflict, undermine the rule of law, and put US citizens in danger.

2.1 Birth of the Modern PMSC

In the late 1990s, some US defense analysts began to raise concerns about US companies staffed by former defense, military, intelligence, or law enforcement officials selling their skills in fragile countries and conflict zones.³⁴ One such company, MPRI, reportedly provided combat training to local Croatian forces that went on to indiscriminately attack Serbian communities.³⁵ In 2002, another company, DynCorp, settled charges brought by a whistleblower concerning a “sex [trafficking] ring” in Bosnia.³⁶ The US-led wars in Afghanistan and Iraq greatly expanded the national debate on US PMSCs. The US Government used PMSCs extensively in military operations for operational support, intelligence analysis, threat assessments, and personal and physical security.³⁷ The United States also relied heavily on PMSCs to

train military and police forces in Afghanistan and Iraq. However, US officials did not appear to be prepared for some of the ways PMSCs contributed to corruption.

The US Government channeled billions of dollars into the PMSC industry, leading to a massive expansion in both the size and quantity of such companies. According to the US Congressional Budget Office (CBO), the United States “obligated between [US]\$3 billion and [US]\$4 billion to PSCs [Private Security Contractors] to acquire security services” in Iraq between 2003 and 2007.³⁸ Blackwater, which was founded by former US Navy Seal, Erik Prince, grew from providing firearms training to US law enforcement solely in the United States, to playing a key role in guarding CIA officials in Afghanistan and US Department of State personnel in Iraq.³⁹ From 2003-2004, the company's profits rose by 600 percent. Triple Canopy, another US PMSC providing armed security in Iraq, was founded soon after the Iraq war began.⁴⁰ The US Department of Defense also hired foreign PMSCs such as Aegis Defence Services Limited, Erinys International, and ArmorGroup Services Ltd.⁴¹ NATO allies such as Germany and the UK also expanded their use of PMSCs in overseas military operations.⁴²

“Blackwater, I figured, could be the FedEx to DoD’s US Postal Service,” said Erik Prince⁴³

Although the US Government does not know exactly how many PMSCs supported US operations in Afghanistan and Iraq, the information we do know is staggering. In 2008, the Congressional Research Service stated that the US Government contracted 20 different PMSC firms with around 30,000 employees in Iraq.⁴⁴ Most of the employees were from “western countries—such as the United States or British Commonwealth countries—with experience in the military or law enforcement.”⁴⁵ The PMSC firms also hired third-country nationals (TCNs) from countries such as Chile, Fiji, Nepal, and Nigeria as well as in-country nationals

33 Avant, Deborah. 2005. *The Market for Force*. Cambridge: Cambridge University Press, p. 8; ASD News 2020.

34 Amnesty International. 2002. *Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces*. New York: Amnesty International USA. January.

35 Wayne, Leslie. 2002. ‘America’s For-Profit Secret Army.’ *The New York Times*. 13 October.

36 Ibid.

37 Eisea, Jennifer, Moshe Schwartz, Kennon Nakamura. 2004. *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*. Washington DC: Congressional Research Service. 28 May.

38 Ibid.

39 Prince, Erik. 2013. *Civilian Warriors: The Inside Story of Blackwater and the Unsung Heroes of the War on Terror*. New York: Penguin Random House.

40 Eisea et al. 2004.

41 Ibid.

42 Schneiker & Krahnmann 2016.

43 Prince 2013.

44 Eisea et al. 2004.

45 Ibid.



The shooting of many unarmed civilians in Nissour Square, Baghdad by Blackwater contractors significantly escalated this resentment and contributed to souring relations between the United States and the Iraqi Government.



from Iraq.⁴⁶ In 2011, the Defense Department employed an estimated 90,000 contractors in Afghanistan.⁴⁷ This includes PMSC contractors and other types of private support to the US Government in Afghanistan.

The US Government accounts for its extensive use of PMSCs with the belief that market competition could provide essential services at reduced cost and increased speed, though many analysts raised serious concerns. Some members of Congress and US military officials said that the extensive use of PMSCs concealed the political costs of engaging in foreign military actions. In 2002, US Representative Jan Schakowsky asked: “Are we outsourcing in order to avoid public scrutiny, controversy, or embarrassment?”⁴⁸ Some US military officials were concerned that US PMSCs were contributing to Iraqi resentment against United States after reports of attacks on unarmed civilians and torture by US PMSCs.⁴⁹ The shooting of many unarmed civilians in Nissour Square, Baghdad by Blackwater contractors significantly escalated this resentment and contributed to souring relations between the United States and the Iraqi Government.⁵⁰ There were also concerns that “the lack of public information on the terms of the contracts, including their costs and the standards governing hiring and performance,” obscured inefficiencies and led to cost overruns.⁵¹

After 20 years of US operations in Afghanistan and Iraq, many of these early concerns were well justified. Some US PMSCs contributed to serious waste, fraud, and

abuse of US Government funding. The US Government, for example, awarded million-dollar contracts to DynCorp to train local police in Afghanistan and Iraq. However, in 2016, the US Department of Justice alleged that DynCorp “knowingly submitted inflated claims” on such contracts.⁵² There were also serious concerns about the effectiveness of DynCorp’s Afghan police training; tens of thousands of participating Afghans deserted the police force by 2010. According to US Ambassador Richard Holbrooke, the Afghan National Police was “an inadequate organization, riddled with corruption.”⁵³

US officials did not fully grasp how PMSCs fueled corruption and conflict in Afghanistan and Iraq. In some cases, US PMSCs encouraged local companies to engage in corrupt activities to receive US Government contracts. According to the Justice Department, DynCorp employees reportedly received kickbacks from subcontractors in return for Iraqi police training subcontracts.⁵⁴ One US PMSC operating a major Iraqi airbase reportedly hired security guards affiliated with an Iran-backed militia, and it used subcontractors controlled by an Iraqi general with suspected links to sectarian armed groups.⁵⁵ In 2010, an Afghan PMSC owned by a relative of the president reportedly engaged in fake firefights, and even paid local insurgents to attack a NATO supply convoy as a means of inflating threat perceptions and securing new contracts.⁵⁶ These actions, along with US support for corrupt political leaders, led many locals to assume the US Government approved the corruption.⁵⁷

46 Ibid.

47 Schwartz, Moshe. 2011. *The Department of Defense’s Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis, and Options for Congress*. Washington DC: Congressional Research Service. 13 May.

48 Wayne 2002.

49 Elsea et al. 2004.

50 Prince 2013.

51 Elsea et al. 2004.

52 Hartung 2021.

53 Ibid.

54 Ibid. US Department of Justice, “DynCorp Pays \$1.5M to Resolve Kickback Allegations,” press release, January 23, 2020.

55 Kopplin, Zach. 2021. ‘How the Pentagon Accidentally Funnels Millions to Iraqi Militia Groups It’s Also Fighting.’ *The American Prospect*. 25 March; Butler, Desmond & Lori Hinnant. 2017. ‘US company turned blind eye to wild behavior on Iraq base.’ *AP News*. 3 May.

56 Filkins, Dexter. 2010. ‘Convoy Guards in Afghanistan Face an Inquiry.’ *The New York Times*. 6 June.

57 Chayes 2021.

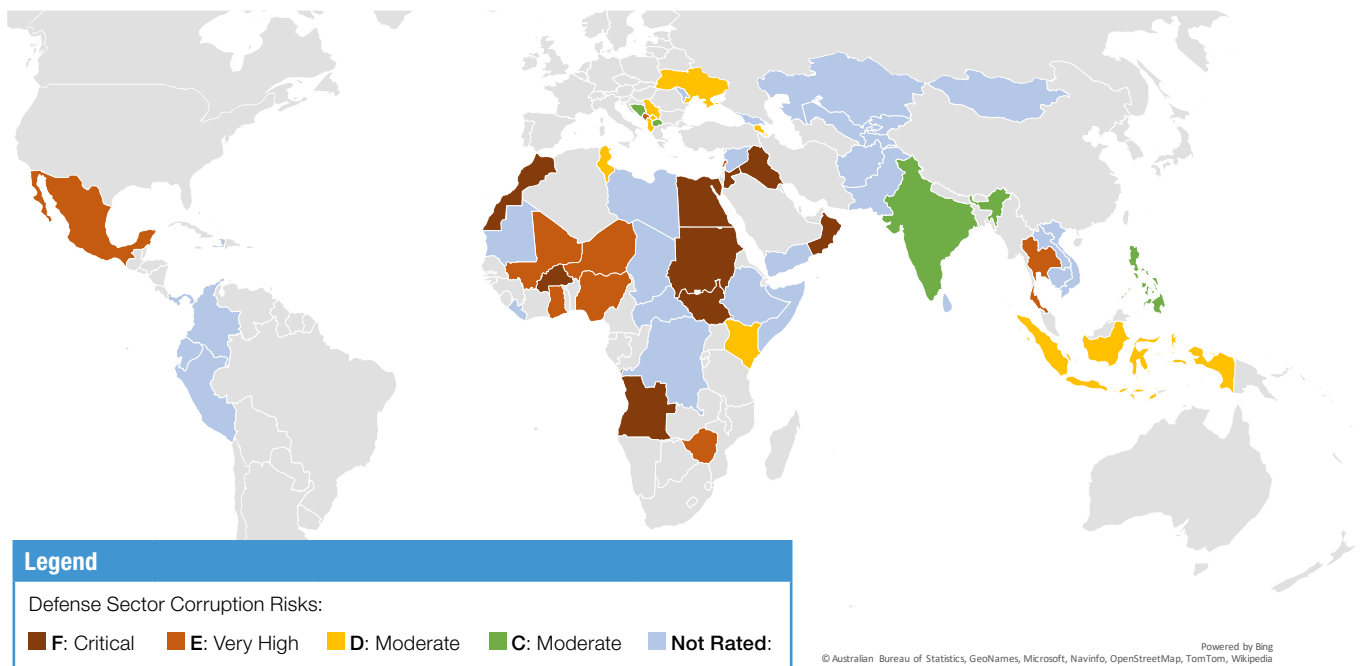
2.2 US PMSC Global Market

The US PMSC industry is a multibillion-dollar industry with an extensive presence throughout the world. US companies account for a leading share of the estimated total annual sales of PMSCs globally and are projected to reach more than US\$80 billion in annual sales in the near future.⁵⁸ According to Aerospace and Defense News, the global PMSC industry grossed nearly US\$224 billion in 2020 and is expected to make US\$457 billion by 2030.⁵⁹ This includes PMSC services ranging from “the provision of armed guards, to the maintenance of weapons systems to the training of local forces and security personnel,” but it does not fully include cybersecurity sales.⁶⁰ Some analysts estimate global cybersecurity services to be worth US\$218 billion in 2020.⁶¹ The US Government dominates the US market, utilizing PMSC services domestically and abroad. US companies are also increasingly pursuing direct commercial sales with foreign governments and entities. This presents clear risks when the recipient country is highly vulnerable to corruption or when the PMSC lacks serious anti-corruption safeguards.

2.2.1 US and Foreign Government Demand

The US Government continues to be a large consumer of US PMSC services abroad. The US Government mainly employs such companies for armed security, weapons maintenance, logistics support, and intelligence. In FY2020, more than 20 US Government agencies obligated US\$500 million for private “security guards and patrolling services” abroad.⁶² In March 2022, Triple Canopy was awarded a US\$1.3 billion contract to provide protective services for the State Department in Iraq over a 10-year period.⁶³ In FY2022, the State Department authorized US\$1.6 billion through just three funding accounts for foreign military and police training to more than 60 countries.⁶⁴ Many of these countries have defense and security sectors that are highly or critically at risk of corruption, according to Transparency International - Defence and Security’s Government Defence Integrity Index (GDI) (see Figure 1).⁶⁵ Some of this training is provided by US PMSCs. For example, in 2020, the US PMSC Bancroft Global Development provided reconnaissance training to the Ugandan People’s Defense Force (UPDF) in Somalia.⁶⁶ The US company Bellator Group Inc. was awarded a contract by the State Department in FY 2020 to deliver anti-terrorism training or equipment to Tunisian security forces.⁶⁷

Figure 1: US Recipients of Military and Police Training and Related Corruption Risk Level



58 Centre for Land Warfare Studies. 2020. *Private Military Companies: Indian Outlook*. New Delhi: Centre for Land Warfare Studies. 28 August.

59 ASD News 2020.

60 Ibid.

61 Stockbruegger 2021.

62 Search for security guards and patrolling services awards in countries other than the United States at the website <https://www.usaspending.gov/>

63 Constellis. 2022. *Press release: Constellis company Triple Canopy wins \$1.3 billion State Department WPS III Baghdad contract*. Herndon: Constellis. 25 March.

64 Security Assistance Monitor, Security Aid Database, Peacekeeping Operations (PKO), International Narcotics and Law Enforcement (INCLE), and Nonproliferation, Anti-terrorism, Demining, and Related programs (NADR), www.securityassistance.org, accessed in April 2020.

65 Transparency International Defence and Security, Government Defence Integrity Index 2020, <https://ti-defence.org/gdi/>

66 <https://www.state.gov/wp-content/uploads/2022/03/10-Volume-I-Section-IV-Part-IV-I-Africa.pdf>

67 USAspending.gov, advanced search for state department funded contracts in Tunisia.

The Defense Department is also a major client of US PMSCs. Some of the highest dollar-value contracts are to repair and maintain weapons systems both domestically and internationally. In 2019, KBR was awarded a US\$530 million contract to provide maintenance and supply chain services for the US Marine Corps in Kuwait and on ships in the Asian Pacific.⁶⁸ Triple Canopy received a US\$198 million contract from the Defense Department in 2020 to provide security support to US military bases in Kuwait.⁶⁹ The US military also hires PMSCs to provide intelligence analysis for military operations and to enhance electronic warfare skills and capabilities. In 2021, CACI International Inc. received a task order worth up to US\$785 million from the US Army Special Operations Command to support “integrated information warfare (IW) and electronic warfare (EW) solutions, training, readiness, and modernization.”⁷⁰ Some US defense analysts are also encouraging the use of the US Government to send PMSCs to Ukraine to support the maintenance of US delivered weapons systems and the logistics of getting weapons to the frontline.⁷¹

However, the US Government’s influence over the US PMSC market has declined since the mid 2010s. An internal study by the Defense Department found that only 10-20 percent of PMSC contracts are with the US Government or its NATO allies.⁷² The State Department requires US companies to seek approval before selling defense services abroad, which can include weapons maintenance and various types of direct training to foreign militaries. The State Department is not required to approve sales for armed security and for training of law enforcement and intelligence agencies unless PMSCs also sell controlled technology. In FY2011, the State Department authorized roughly US\$7 billion worth of defense service sales.⁷³ This value has likely increased in recent years because of the growth of private PMSC sales to foreign clients. Some of these sales are to countries with weak institutional structures for combating corruption.

Several countries in the Persian Gulf appear to be key clients of US PMSCs. In 2019, the State Department authorized

US companies to provide US\$1.7 billion in defense services, licensed manufacturing, and offshore warehousing (collectively known as technical assistance agreements, or TAAs) in Saudi Arabia and the UAE.⁷⁴ Over the past few years, the UAE has hired US companies and US citizens to strengthen their offensive military, intelligence, and cyber capabilities. In 2017, a US PMSC provided military training to the Saudi operatives who would go on to murder Jamal Kashoggi, a dissident journalist.⁷⁵ In another case, former US intelligence officials working for an Emirati intelligence contractor, DarkMatter, supported a program that actively spied on foreign and domestic critics of the UAE.⁷⁶ This included foreign journalists, US citizens, and local dissidents, including a prominent human rights activist who was subsequently sentenced to 10 years of solitary confinement for “speech” crimes.⁷⁷

Some US PMSCs have also found opportunities within African countries. Erik Prince reportedly played a role in helping the UAE send PMSCs to Libya and Somaliland (see Knowledge Point case study). The US company, Global Guardian, provides emergency security for private companies and individuals operating throughout Africa.⁷⁸ Another US company, AdvanFort Co., appears to provide anti-piracy maritime protection for clients in east and west Africa.⁷⁹ An Israeli subsidiary of the US company, Verint Systems Inc., reportedly provided surveillance equipment and services from 2015 to 2017 to the South Sudanese government, which has allegedly illegally detained individuals and infringed on press freedoms.⁸⁰ Academi (formerly Blackwater) reportedly provided security services in Sudan without the required State Department approval.⁸¹ In 2012, a former CEO of KBR Inc. pled guilty to bribing Nigerian officials for a US\$6 billion contract to develop hydrocarbon infrastructure in the conflict-affected Niger Delta.⁸²

US PMSCs are also active in Latin America, including Honduras, Mexico, Nicaragua, Venezuela, and Ukraine.⁸³ In 2020, a US PMSC launched a botched incursion into Venezuela, reportedly seeking to topple the regime of Nicolas Maduro on behalf of local dissidents.⁸⁴

68 KBR, Inc. 2019. *Press Release: KBR Continues to Fortify U.S. Military Readiness Abroad with \$950M USMC Contract*. Houston: KBR, Inc. 5 June.

69 Constellis. 2020. *Press Release: Constellis Receives \$198M DOD Task Order for Security Support Services in Kuwait*. Herndon: Constellis. 29 July.

70 CACI International, Inc. 2021. *Press Release: CACI Wins \$785 Million Task Order with U.S. Army Special Operations Command*. Reston: CACI International, Inc. 9 November.

71 Cancian 2022.

72 Author interview with former senior DoD contracting official, 22 January 2021.

73 Author interview with former State Department official in 2014. This official said that about 5% of defense services authorizations in the past few years were associated with PMSC services. Here is one of the annual State Department reports on export defense articles and services during this timeframe. https://www.pmdotc.state.gov/dotc_public?id=dotc_public_portal_news_and_events&cat=Report&p=2

74 US Department of State, Annual 655 Report on exports of defense articles and services, 2019, https://www.pmdotc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=3b39303bdb1414105c3070808c9619e6

75 Mazzetti, Mark, Julian Barnes & Michael LaForgia. 2021. Saudi Operatives Who Killed Khashoggi Received Paramilitary Training in US.’ *The New York Times*. 22 June.

76 Bing, Christopher & Joel Schechtman. 2019. Special Report: Inside the UAE’s secret hacking team of U.S. mercenaries. *Reuters*. 30 January.

77 *Ibid*; Stork, Joe. 2019. *Unrelenting Repression in the UAE*. Washington DC: Carnegie Endowment for International Peace. 21 May.

78 Global Guardian. N.d. *Robust Global Coverage*. McLean: Global Guardian

79 AdvanFort. N.d. *Services: Counter Piracy Solutions*. Herndon: AdvanFort.

80 Amnesty International. 2021. *South Sudan - “These walls have ears”: The chilling effect of surveillance in South Sudan*. New York: Amnesty International. 2 February. <https://www.amnesty.org/en/latest/news/2021/02/south-sudan-abusive-surveillance-by-national-security-service-climate-of-fear/>

81 Ingram, David. 2012. ‘Company formerly called Blackwater to pay sanctions fine.’ *Reuters*. 9 August.

82 Baltimore Chris. 2012. ‘Ex-KBR CEO gets 30 months for Nigeria scheme.’ *Reuters*. 23 February.

83 Allied Universal. N.d. *Allied Universal Office Locations*. Conshohocken: Allied Universal.

84 Goodman, Joshua. 2020. ‘Ex-Green Beret led failed attempt to oust Venezuela’s Maduro.’ *AP News*. 1 May.

Global Guardian has helped protect Americans from extortion attempts in a South American country.⁸⁵ The Mozart Group, which was founded by a retired colonel in the US Marine Corps, is training Ukrainian Special Forces in skills such as sniper training, spotting improvised explosive devices (IEDs), and other tactical capabilities in response to the Russian invasion of Ukraine.⁸⁶ The US Government, however, has been imploring Americans supporting combat operations in Ukraine to leave the country immediately out of concern that Americans could be targeted or mistreated by Russian forces.⁸⁷

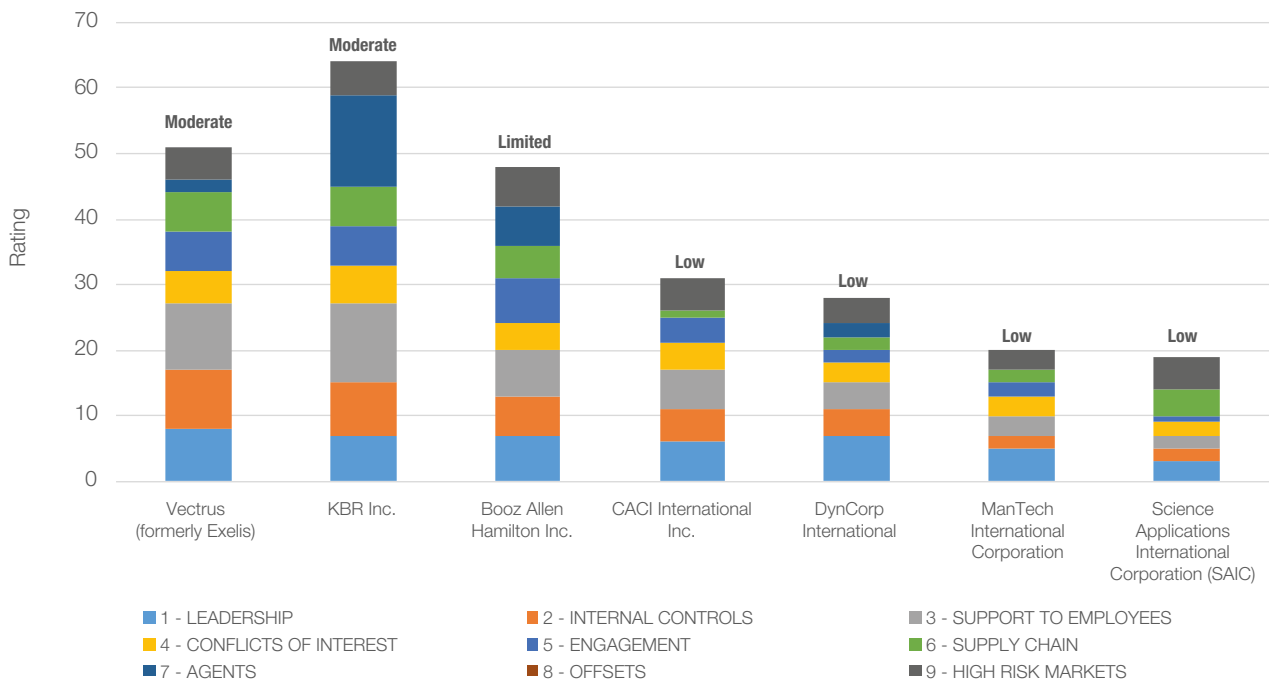
2.1.2 US PMSC Structure and Market

The US PMSC industry includes large corporations making over US\$4 billion in annual sales. Several US companies that provide PMSC services are now included in the Stockholm International Peace Research Institute's (SIPRI) top 100 arms-producing and military services companies list.⁸⁸ Some of these include Amentum (incl. DynCorp), Booz Allen Hamilton, CACI International, KBR Inc., ManTech International, SAIC, and Vectrus. Booz Allen Hamilton, a management consulting firm specializing in intelligence, defense, and cybersecurity, reportedly played a key role in helping the UAE “build its own high-tech spy agency.”⁸⁹ Booz Allen Hamilton has subsidiaries all around the world, including in Singapore, UAE, Egypt,

Lebanon, Saudi Arabia, Tanzania, and Indonesia.⁹⁰ According to a US federal court, ManTech International, which provides support services to the defense and intelligence communities, was accused by a whistleblower of “improperly billing the US Army under a [US]\$3 billion contract for mine resistant vehicles.”⁹¹

Most of these large firms appear to have a limited or low commitment to corporate transparency and anti-corruption standards, according to Transparency’s International Defense Company Index (see Figure 2).⁹² DynCorp, ManTech, CACI, and SAIC all scored low on their overall commitment while KBR and Vectrus scored a moderate commitment based on publicly available information. The low scores on supply chain transparency, conflicts of interest, and agents are the most concerning given the context in which US PSMCs operate around the world. Conflicts of interest may arise when former government employees use their contacts to unduly influence government decisions.⁹³ Companies with poor conflict of interest controls run greater risks of misleading or defrauding clients, including the US Government. Weaknesses in the supply chain could result in US PMSCs unknowingly working with individuals or companies who have previously engaged in corrupt or illegal actions. A lack of reporting to the Executive Branch, Congress, and the public about defense company

Figure 2: Top US PMSCs Commitment to Transparency and Anti-Corruption Standards



85 Global Guardian, “Global Guardian Successfully Halts Extortion Attempt in Peru”, https://www.globalguardian.com/case-studies_emergency-response-peru

86 Jack Dutton “Who are the Mozart Group? Former US Marine Training Ukrainians War,” *Newsweek*, April 20, 2022.

87 Dave Phillips, “I just Can’t Stand by’: American Veterans Join the Fight in Ukraine”, *New York Times*, March 5, 2022.

88 Marksteiner, Alexandra, Lucie Béraud-Sudreau, Nan Tian, Diego Lopes da Silva & Alexandra Kuimova. 2021. *The SIPRI Top 100 Arms-Producing and Military Services Companies, 2020*. SIPRI Factsheet. Stockholm: Stockholm International Peace Research Institute. December.

89 Rosenberg, Matthew. 2016. ‘At Booz Allen, a Vast U.S. Spy Operation, Run for Private Profit.’ *The New York Times*. 6 October.

90 Booz Allen Hamilton, Inc. N.d. *International*. McLean: Booz Allen Hamilton, Inc.

91 Seiden, Daniel. 2020. ‘ManTech Must Face Fraud Suit Involving \$3 Billion Army Contract.’ *Bloomberg Law*. 28 January.

92 Transparency International – Defence & Security. 2020. *Defence Companies Index*. London: Transparency International – Defence & Security.

93 Ibid.

political contributions, commissions, and lobbying to foreign customers may also hide bribes and conflicts of interest.

PMSCs frequently merge, rebrand, and rename themselves. These practices can obscure who leads or benefits from the company as well as past associations with controversial actors. Importantly, it can contribute to impunity for companies and those who lead them. When there is significant consolidation of companies, it can result in monopolies that “place individual governments in a weakened negotiating position over costs and timelines.”⁹⁴ Several US companies that provide armed physical security and close protection merged into a large corporation called Constellis. Some of the companies under this umbrella include Academi, AMK9, Centerra, Edinburgh International, Olive Group, and Triple Canopy.⁹⁵ In the past few years, CACI International acquired companies in the United States and the United Kingdom (UK) with expertise in cyber solutions, data mapping, and other information technology services.⁹⁶ Blackwater changed its name to Xe and then Academi before merging into Constellis.⁹⁷ The now shuttered company Total Intelligence Solutions, which reportedly ran spy rings for the US Government overseas, appears to be connected to OODA through an organizational weblink.⁹⁸

The workforce of the US PMSC industry is typically ex-military and heavily internationalized. Most PMSCs are owned and operated by military veterans. However, for contracts delivered abroad, such companies will typically assign Western managers to oversee TCNs or local nationals, who are cheaper to staff the contract.⁹⁹ For example, former employees of US PMSCs describe working with nationals from Latin America and Africa.¹⁰⁰ Bancroft Global Development reportedly hired British, European, and South African staff to work with Americans in training the Somali military.¹⁰¹ A former US defense official has raised concerns about Bancroft’s other commercial activities in Somalia creating potential conflicts of interest with US foreign policy.¹⁰² Many Americans are also working for foreign PMSCs in countries such as the UAE.

2.3 Foreign PMSCs and their Activities

Spurred on by the US-led wars in Afghanistan and Iraq, foreign PMSCs are expanding their sales and activities around the world. Some of the PMSCs with the highest annual sales are based in the United Kingdom and other European countries. While it is unclear whether the Wagner Group is a private entity or a clandestine front for the Russian government, they are now operating in more than 18 countries in Africa alone.¹⁰³ Chinese PMSC sales are expected to triple by 2030. Chinese PMSCs also operate throughout Africa. Several countries in the Middle East are expanding their use of PMSCs to quell political opposition and pursue foreign interests. There continues to be demand for PMSCs in parts of Latin America. The expanded use of foreign PMSCs has also reportedly led to controversial, corrupt, or illegal activities, such as attacks on civilians, illegally training militias, trafficking in firearms, and spying on political dissidents.

There are several prominent PMSC companies in the United Kingdom and other European countries. The largest PMSC in the world in terms of annual revenue is G4S, making an estimated US\$9.7 billion in 2019.¹⁰⁴ G4S “offers a range of services, including the supply of security personnel, monitoring equipment, response units, and secure prisoner transportation” and is based in the United Kingdom with subsidiaries all over the world.¹⁰⁵ G4S has repeatedly been accused of charging migrant workers exorbitant recruitment fees, a practice that often results in debt bondage.¹⁰⁶ The British company, International Intelligence Limited, provides command, control, and intelligence services for militaries and competitive intelligence and counter espionage services for corporate clients.¹⁰⁷ Prosegur is Spain’s largest private security company with over US\$3.7 billion in annual sales in 2020 and is operating in over 26 countries.¹⁰⁸ The German company Xeless Group provides military camp support for NATO countries.¹⁰⁹

94 Transparency International – Defence & Security. 2021. *Defence Industry Influence on European Policy Agendas: Findings From Germany and Italy*. London: Transparency International – Defence & Security. May.

95 Constellis. N.d. *Who We Are: History*. Herndon: Constellis.

96 CACI International, Inc. N.d. *News*. Reston: CACI International, Inc.

97 Hartung 2021

98 McFate 2014, p. 15. It appears Total Intelligence Solutions has now closed its operations. When one clicks on the URL for Total Intelligence Solutions, you are sent to a page that lists OODA group LLC. https://en.wikipedia.org/wiki/Total_Intelligence_Solutions

99 McFate 2014.

100 McFate 2014.

101 Sperber 2020.

102 Ibid.

103 See the organization called All Eyes on Wagner at www.alleyesonwagner.org/

104 G4S, Plc. 2021. *Annual Report and Accounts for the year ended 31 December 2020*. London: G4S, Plc, p. 72.

105 SecurityDegreeHub.com. N.d. ‘30 Most Powerful Private Security Companies Around the World.’ *SecurityDegreeHub.com*.

106 Zahariadis, Zoe Ann. 2021. ‘Diligence is Due in Qatar: How do we ensure fair recruitment?’ *The Graduate Press*. 12 December; Pattison, Pete. 2021. ‘G4S migrant workers ‘forced to pay millions’ in illegal fees for jobs.’ *The Guardian*. 18 January.

107 International Intelligence, Ltd. N.d. *Home*. London: International Intelligence, Ltd.

108 Prosegur Compañía de Seguridad, SA. N.d. *About Prosegur*. Madrid: Prosegur Compañía de Seguridad, SA

109 Xeless Group. N.d. *Military Camp Support*. Cologne: Xeless Group.

Ostensibly private Russian entities like the Wagner Group support the Kremlin's proxies and clients all over the world, even directly engaging in combat against US troops in Syria.¹¹⁰ Wagner-affiliated contractors are engaged in Russia's violent invasion of Ukraine.¹¹¹ They also operated or are currently operating in at least 18 countries in Africa, including Mali, Central Africa Republic, Libya, and Sudan.¹¹² Many of these operations appear to be motivated by mineral wealth and have generated reports of egregious human rights violations. In Libya, Wagner operatives reportedly "plant[ed] explosive booby traps in residential areas and comit[ted] summary executions in support of a warlord vying for control of the country."¹¹³ Wagner operatives apparently teamed up with Sudanese soldiers to violently suppress anti-regime protests in exchange for gold mining rights.¹¹⁴

The PMSC industries in Australia, China, and India appear robust. Chinese PMSC sales are projected to grow from US\$13 billion in 2020 to nearly US\$39 billion in 2030.¹¹⁵ Since 2010, Chinese PMSCs have operated in Africa, first to protect its maritime vessels from pirates and now to support its Belt and Road Initiative (BRI).¹¹⁶ Chinese PMSCs such as Beijing DeWe Security Service protect railways in Kenya and natural gas projects in Ethiopia and Djibouti.¹¹⁷ Some of these PMSCs worked directly with the Sudanese military to rescue kidnapped Chinese workers.¹¹⁸ Chinese citizens have also reportedly been arrested in Zambia for "illegally training local military forces in military tactics."¹¹⁹ In India, local private security companies are some of the largest employers in the country. Bombay Intelligence Security Ltd., which provides armed guarding, surveillance services, and electronic security for companies, has some 45,000 employees.¹²⁰ Australian PMSCs such as Unity Resources Group have provided security for the Australian embassy in Iraq.¹²¹ Some Australian citizens are supporting the UAE's armed forces.¹²²

PMSCs often operate in developing countries and regions. South African PMSCs provide services throughout the African continent, including in Libya and Nigeria. In 2016, South African PMSCs reportedly played a direct role in Nigerian combat operations against Boko Haram.¹²³ The Turkish PMSC SADAT International Defence Consultancy said it aims to "establish a Defense Collaboration and Defense Industry Cooperation among Islamic Countries to help Islamic World take the place where it merits among Superpowers by providing Strategic Consultancy, Defense and Security Training and Supply Services to Armed Forces and Internal Security Forces of Islamic Countries."¹²⁴ There are reports of PMSCs in Latin America engaging in trafficking and extortion. For example, Brazil's Federal Police found that almost a third of all firearms held by local security firms in Rio de Janeiro were trafficked to criminals.¹²⁵ In El Salvador, a police investigation found that the MS-13 gang used private security guards to collect extortion rents.¹²⁶ Several of the Colombian contractors allegedly involved in the assassination of Haitian president Jovenel Moise claimed they were deceived about the true purpose of their employment.¹²⁷

Several countries in the Middle East are also increasingly turning towards new technology, including surveillance software and spyware, to suppress legitimate political dissent. In some cases, these countries have turned to companies that provide powerful cyber intrusion software. Israeli intelligence firms such as the NSO Group have been embroiled in international scandals, from proliferating powerful cyberweapons to spying on and harassing foreign anti-corruption officials.¹²⁸ The countries of Saudi Arabia and the UAE have reportedly used this software to target political dissent domestically and internationally.¹²⁹

110 McFate, Sean. 2019. *Mercenaries and War: Understanding Private Armies Today*. Washington DC: National Defense University Press. December.

111 Tondo, Lorenzo, Isobel Koshiw, Emma Graham-Harrison & Pjotr Sauer. 2022. 'Alleged Wagner Group fighters accused of murdering civilians in Ukraine.' *The Guardian*. 25 May.

112 Paquette, Danielle. 2022. 'Moscow's Influence Spreads in Africa.' *Washington Post*. 15 March.

113 Ibid.

114 Ibid.

115 Aerospace and Defense News, "Private Military & Security Services (PMSC) Market Report 2020-2030," free sample pages online.

116 ADF. 2022. 'China Turns To PMCs To Protect Its Workers And BRI Investments In Africa.' *ADF*. 5 January.

117 Ibid.

118 Ibid.

119 Ibid.

120 Bombay Intelligence Security, Ltd. N.d. *Services*. Mumbai: Bombay Intelligence Security, Ltd.

121 Mendes, Jessica & Scott Mitchell. 2010. 'Who is Unity Resources Group?' *ABC News*. 14 September.

122 Survey of publicly accessible professional profiles of International Golden Groups conducted online by Transparency International – Defence & Security in October 2021.

123 Swed, Ori & Daniel Burland. 2020. *The Global Expansion of PMSCs: Trends, Opportunities, and Risks*. New York: Office of the United Nations High Commissioner for Human Rights.

124 SADAT International Defense Consultancy Construction Industry and Trade Inc., "Our mission," <https://sadat.com.tr/en/about-us/our-mission.html>. Powers, Matt. 2021. 'Making Sense of SADAT, Turkey's Private Military Company.' *War on the Rocks*. 8 October.

125 Gagne, David. 2016. 'Security Firms are Big Source of Weapons for Rio Criminals.' *InSight Crime*. 23 May.

126 Cawley, Marguerite. 2013. 'El Salvador Gang Members Use Security Guard Posts for Extortion.' *InSight Crime*. 16 April.

127 Rivers, Matt, Natalie Gallón & Etant Dupain. 2021. "We were cheated, framed, and scammed" - Jailed for the killing of Haiti's president, five suspected assassins say they're innocent.' *CNN*. 18 December.

128 Necsutu, Madalin. 2022. 'Intelligence Firm Bosses Plead Guilty in Romania Surveillance Case.' *Balkan Insight*. 8 February; Bergman, Ronan & Mark Mazzetti. 2022. 'The Battle for the World's Most Powerful Cyberweapon.' *The New York Times*. 28 January; DeSombre, Winnona, James Shires, JD Work, Robert Morgus, Patrick Howell O'Neill, Luca Alodi & Trey Herr. 2021. *Countering cyber proliferation: Zeroing in on Access-as-a-Service*. Washington DC: Atlantic Council. 1 March.

129 Bing & Schechtman 2019; Bergman & Mazzetti 2022.

3.0 CASE STUDY: KNOWLEDGE POINT

Knowledge Point is an Emirati company that contracts out former US military personnel to the UAE's armed forces. PMSCs like Knowledge Point play a critical enabling role in the UAE's defense sector as brokers and suppliers of US military services. Many US and Western veterans have embedded within the UAE's armed forces are trainers, advisors, technicians, operators, commanders, and even combatants through PMSCs like Knowledge Point. Yet, these contractors operate in an opaque defense sector, tightly controlled by the UAE's supreme leader, that poses serious risk of fueling corruption and regional conflict. This defense sector puts PMSCs – whether as contracted firms or hired individuals – in clear conflict of interest situations. Furthermore, US citizens working for Emirati PMSCs (as well as US PMSCs) may support controversial UAE foreign interventions in places such as Yemen, Libya, and eastern Africa. US citizens are required to receive US government authorization for some types of military services to the UAE, but it appears some Americans are going beyond their authorization or not seeking authorization at all.

3.1 An EDGE Company

At the center of the UAE's defense industry is EDGE, a state-owned defense conglomerate. The UAE's supreme leader and commander of the armed forces, Sheikh Mohammed bin Zayed al-Nahyan (or MbZ) founded EDGE in 2019.¹³⁰ The creation of EDGE is part of a broader Emirati effort to develop a semi-indigenous defense industry with three strategic objectives: to diversify its economy away from oil production; to achieve greater autonomy in arms procurement; and to support its regional political and military ambitions.¹³¹ State-owned investment funds, such as Tawazun Economic Council and Mubadala Investment Company, collectively hold owning stakes in most of the industry's companies, though nominally private funds like YAS Holding also have a stake in the industry.¹³²

MbZ established EDGE to consolidate 25 national defense companies into five mission “clusters” – platforms and systems, missiles and weapons, cyber defense, electronic warfare and intelligence, and mission support.¹³³ He awards the leadership of Emirati defense companies to loyal confidantes, who also hold positions within state councils and government bodies.¹³⁴ There are apparently few limits within the Emirati defense sector to prevent such conflicts of interest as well as no external oversight of government defense spending.¹³⁵ EDGE ostensibly generates US\$5 billion in revenue annually and employs 12,000 people.¹³⁶ EDGE's employees are overwhelmingly foreign in order to fill gaps in Emirati human capital, military expertise, and military capability. Even in EDGE's most *Emiratized* subsidiary, only 27 percent of the workforce are UAE citizens.¹³⁷

Knowledge Point is part of the mission support cluster.¹³⁸ The company was originally funded by Emirates Advanced Investments Group (EAIG – now YAS Holding) in 2009.¹³⁹ According to its website, Knowledge Point provides training, consulting, and education services for military, intelligence, and law enforcement agencies throughout the Gulf, but mostly in the UAE. Its consulting expertise ranges from the development of military doctrine to cybersecurity.¹⁴⁰ Knowledge International is the US-based sister company of Knowledge Point, which helps the company comply with US arms export controls.¹⁴¹ A survey of online profiles of Knowledge Point employees revealed more than 40 former US military personnel, ranging from senior sergeant majors to colonels and generals, embedded with the UAE military.¹⁴² Knowledge Point has also employed Americans who previously worked with the Federal Bureau of Investigation (FBI) and US defense contractors.

The Americans working for Knowledge Point support the UAE armed forces at the highest level, ranging from advising senior Emirati commanders to training combat

130 Helou, Agnes. 2019. 'UAE launches 'Edge' conglomerate to address its 'antiquated military industry.' *Defense News*. 6 November.

131 Saab, Bilal. 2014. *The Gulf Rising: Defense Industrialization in Saudi Arabia and the UAE*. Washington DC: Atlantic Council. May; Cohen, Naomi. 2020. 'The UAE Is Turning Into the World Capital for Weapons Makers.' *Foreign Policy*. 20 October; Intelligence Online. 2015. 'Abu Dhabi tries to cast off ITAR yoke.' *Intelligence Online*. 11 March.

132 Formerly known as Emirates Advanced Investment Group, YAS and other private investment funds are associated with influential Emirati families. Intelligence Online. 2014. 'Battle in UAE defence corridors.' *Intelligence Online*. 26 November.

133 Valopolini, Paolo. 2019. 'EDGE CEO looking at expanding opportunities and increasing turnover.' *European Defence Review*. 6 November.

134 GAN Integrity. 2020. *United Arab Emirates Corruption Report*. New York: GAN Integrity. August.

135 Transparency International Defence & Security (TI-DS). 2020. 'United Arab Emirates.' *Government Defence Index*. London: Transparency International Defence & Security.

136 Helou 2019.

137 Global Aerospace Logistics (GAL). N.d. *About Abu Dhabi: Global Aerospace Logistics*.

138 Arabian Defense. 2021. 'Knowledge Point – Transformative Solutions.' *Arabian Defense*. 25 February.

139 Additional information gathered from an archived 2016 job posting. Intelligence Online. 2018a. 'Knowledge steps in to help UAE army.' *Intelligence Online*. 30 May.

140 Knowledge Point. N.d. *About Abu Dhabi: Knowledge Point*.

141 Intelligence Online 2018a.

142 Survey of publicly accessible professional profiles conducted online by Transparency International Defence and Security in October 2021.

A survey of online profiles of Knowledge Point employees revealed

> 40 FORMER US MILITARY PERSONNEL

ranging from senior sergeant majors to colonels and generals, embedded with the UAE military



units. A former two-star general helped develop the UAE armed forces' logistics capability. A former lieutenant colonel mentored the Land Forces' senior-most military intelligence officer and served as counsel to one of MbZ's advisors. Another former colonel developed doctrine and training guidelines for senior Emirati military staff, while another is responsible for training artillery units at the brigade level. Knowledge Point's Chief Operating Officer is a retired US Navy rear admiral, a former director of Lockheed Martin, and directly advised the UAE armed forces' command staff. A former colonel currently serves as the direct advisor to the commander of the UAE's Land Forces (analogous to the US Army).

US military veterans provide high-level support to the Emirati defense sector through other EDGE companies as well. A former US Air Force commander is a director at EDGE's cyber defense and intelligence subsidiary, Beacon Red.¹⁴³ He was previously a vice president of ManTech, and he operated Beacon Red's predecessor firm, DarkMatter, which infamously recruited former US intelligence officials to spy on Emirati regime critics.¹⁴⁴ Many of Beacon Red's employees formerly worked for DarkMatter, which targeted foreign journalists, US citizens, and local dissidents, including a prominent human rights activist who was subsequently sentenced to 10 years of solitary confinement.¹⁴⁵ Beacon Red also appears to employ former US special forces personnel,

FBI agents, as well as various other US veterans who worked for various US, Saudi, and Emirati PMSCs.¹⁴⁶

Despite EDGE's centrality, it closely coexists with a network of ostensibly privately-owned Emirati defense companies and PMSCs. Such companies are often owned by elite families with close ties to the monarchy and positions in government bodies.¹⁴⁷ They are nevertheless managed and run by Western military and security professionals.¹⁴⁸ These PMSCs appear to play diverse roles for the Emirati government: they act as state-appointed brokers for major defense procurements; they supply embedded contractors to the armed forces; they act as offset partners for foreign defense suppliers; and they operationalize covert aspects of the UAE's militarized foreign policy.¹⁴⁹ For example, Erik Prince reportedly brokered agreements between PMSCs and the UAE government for foreign military activities in Libya and Somalia.¹⁵⁰

Knowledge Point is connected with some of these privately-owned UAE defense companies such as International Golden Group (IGG) and Maximus Air Cargo. IGG is reportedly the largest supplier of the UAE armed forces and was initially run by the military's deputy chief of staff.¹⁵¹ IGG, like Knowledge Point, also embeds Western military contractors in the UAE armed forces, and it employs Australian, British, French, Spanish, Italian, and US citizens.¹⁵² Maximus Air Cargo

143 Additional information gathered from LinkedIn. Intelligence Online. 2021. 'Successor to Mohamed bin Zayed's cyberattack outfit DarkMatter teams with ex-Mossad chief's startup.' *Intelligence Online*. 1 November.

144 Bing, Christopher & Joel Schectman. 2019. 'Special Report: Inside the UAE's secret hacking team of U.S. mercenaries.' *Reuters*. 30 January.

145 Stork, Joe. 2019. *Unrelenting Repression in the UAE*. Washington DC: Carnegie Endowment for International Peace. 21 May.

146 Survey of publicly accessible professional profiles conducted online by Transparency International Defence and Security in October 2021.

147 Intelligence Online 2014.

148 For example, see Trust International Group, which is owned by Tahnoun bin Zayed al-Nahyan (brother of the UAE's supreme leader) and run by a former US Army officer. Intelligence Online. 2018b. 'Tahnoun bin Zayed, Abu Dhabi spymaster, fashions security and investment empire.' *Intelligence Online*. 2 May.

149 For example, see International Golden Group, discussed below.

150 Cole, Matthew. 2019. 'The Complete Mercenary: How Erik Prince Used the Rise of Trump to Make an Improbable Comeback.' *The Intercept*. 3 May.

151 Intelligence Online. 2013. 'IGG thinks big in Abu Dhabi defence.' *Intelligence Online*. 13 March; International Golden Group. 2019. 'International Golden Group announced largest IDEX Participation.' *Zawya*. 13 February.

152 Survey of publicly accessible professional profiles conducted online by Transparency International Defence and Security in October 2021.

is a contractor of IGG and is run by close associates of MbZ.¹⁵³ The president of Knowledge Point's mission cluster is a board member of Maximus Air Cargo.¹⁵⁴ Knowledge Point's current CEO was formerly a director at IGG. Furthermore, both Knowledge Point and IGG were founded through the same elite fund (EAIG/YAS Holding).¹⁵⁵ IGG is also part owned by Tawazun, which owns/controls EDGE; the CEO of Tawazun sits on the board of IGG.¹⁵⁶ These connections demonstrate that much of the Emirati defense industry is interconnected and punctuated by overlapping leadership roles that generate conflicts of interest.

3.2 Conflicts of Interests

These questionable interconnections within the UAE defense sector appear to extend to some of the US contractors working in the Emirati defense sector. Some of the Americans working for Knowledge Point seem to act as buyer and seller of military services as well as advisor and commander within the Emirati military. This blurring of the lines between usually separated roles poses significant risks of procurement abuse and illicit enrichment. It could also implicate Americans in irresponsible or illegal foreign military actions. One such example is Stephen Toumajan, a former US Army aviator and lieutenant colonel. Toumajan reportedly commanded both the UAE's combat helicopter wing (the Joint Aviation Command, or JAC) and its search and rescue service.¹⁵⁷ Toumajan appears to have had command influence over the JAC, which extends to procurement programs.¹⁵⁸ Yet Toumajan is reportedly an employee of Knowledge International (Knowledge Point's US sister company) and seconded to the UAE armed forces.¹⁵⁹

According to official documents acquired by *BuzzFeed News*, the US Department of State authorized Toumajan

as a "Chief Aviation Adviser" to "directly support the UAE [then-]Deputy Supreme Commander," or MbZ.¹⁶⁰ However, it appears that Toumajan plays more than an advisory role. While Toumajan insisted to the press that he is a civilian contractor without rank or command in the Emirati military, he identified himself as the "*commanding general of the Joint Aviation Command in the UAE*" in a video produced and posted by the US Department of Defense.¹⁶¹ He holds the title of "Major General" within the UAE armed forces and wears its uniform.¹⁶² Toumajan reportedly said he 'does not wear a UAE military uniform' but 'does wear the rank insignia for good order and discipline for the unit.' US court documents as well as colleagues interviewed by the press seem to corroborate that he held command influence in the JAC.¹⁶³

Regardless of how he characterizes himself, Toumajan is involved in JAC procurement decisions while also serving as a board member for several of the companies that JAC contracts. Toumajan's official online biography states that he sits on the board of directors for several EDGE companies, including Knowledge Point, Horizon Flight Academy, and AMMROC.¹⁶⁴ Civil complaint documents in a US court case relating to an internal dispute of an Emirati defense supplier, NorthStar Aviation, suggests that Toumajan oversaw contracts on behalf of JAC (Toumajan is not a party in the court case).¹⁶⁵ JAC contracted NorthStar to supply weaponized civilian helicopters while Horizon Flight Academy ordered a training variant of the same system.¹⁶⁶ JAC is also a buyer of Knowledge Point and AMMROC services.¹⁶⁷

Toumajan's apparent influence in procurement decisions could present a clear conflict of interest. In the US defense sector, such relationships are strictly prohibited on the basis that Toumajan's command influence could provide these contractors with proprietary knowledge and an unfair advantage when competing for contracts.¹⁶⁸

153 Intelligence Online 2014; Maximus Air Cargo. 2017. *Business Agreement between Maximus Air Cargo & International Golden Group*. Abu Dhabi: Maximus Air Cargo. 19 February.

154 Additional information gathered from LinkedIn. EDGE. N.d. *Khalid Al Breiki: President – Mission Support, EDGE & Chairman of the Board at AMMROC*. Abu Dhabi: EDGE.

155 Intelligence Online 2018a; Oxford Business Group. 2013. *The Report: Abu Dhabi 2013*. London: Oxford Business Group, p. 174

156 Forrester, Charles. 2021. *Tawazun boosts investments after reshuffling businesses*. London: Janes. 23 September; Yahsat. N.d. *HE Tareq al-Hosani*. Abu Dhabi: Al Yah Satellite Communications Company.

157 National Search & Rescue Center (NSRC). N.d. *Director General's Message*. Abu Dhabi: National Search & Rescue Center.

158 NSRC, n.d.

159 Roston, Aram. 2018a. 'This American Is A General For A Foreign Army Accused Of War Crimes In Yemen.' *Buzzfeed News*. 7 May.

160 *Ibid.*

161 While Toumajan insisted to the press that he is a civilian contractor without rank or command in the Emirati military, he identified himself as the "*commanding general of the Joint Aviation Command in the UAE*" in a video produced and posted by the US Department of Defense. Defense Visual Information Distribution Service. 2017. *UAE at NTC*. Arlington: US Department of Defense. 17 October.

162 NSRC, n.d.

163 Roston 2018a.

164 Horizon is a flight school for helicopter pilots that also provides training to military helicopter aviators. AMMROC is the UAE's military aviation maintenance, repair, and overhaul (MRO) provider and originated as a joint venture between Sikorsky, Lockheed Martin, and Mubadala. NSRC, n.d.

165 US District Court for the Eastern District of Virginia. 2018. *Deposition of Lyle Becka, NorthStar Aviation LLC et al. v. Alberto et al.* ED Va Case No. 1:18-cv-191-TSE/JFA. 6 November

166 US District Court for the Eastern District of Virginia. 2018. *Complaint, NorthStar Aviation LLC et al. v. Alberto et al.* ED Va Case No. 1:18-cv-191-TSE/JFA. 20 February.

167 Sophia, Mary. 2015. 'AMMROC secures Dh2.3bn contract with UAE JAC.' *Gulf Business*. 28 February.

168 Standards of Conduct Office. 2019. *Ethics Counselor's Deskbook – Conflicts of Interest*. Arlington: US Department of Defense.

Such conflicts of interest can lead to a variety of corrupt acts. Contractors may use their insider knowledge to unfairly win procurement requests. They can also result in price gouging and unnecessary defense purchases as the procurement officer stands to gain from such transactions. The NorthStar court case is centered on mutual accusations by its two co-directors – one a former US Navy SEAL with ostensible links to Erik Prince, and the other a member of the al-Nahyan royal family – that the other mismanaged the company and received excessive compensation.¹⁶⁹ NorthStar’s militarized helicopters are reportedly believed to have been sold to the UAE at more than three times the price of the basic system – far more expensive than comparable purpose-built military helicopters.¹⁷⁰

Toumajan’s position within the JAC also embeds him within a defense procurement process with no external oversight that is vulnerable to exploitation by government officials with stakes in defense companies.¹⁷¹ For example, JAC signed a contract in 2021 worth over US\$47 million with a local aviation conglomerate, Abu Dhabi Aviation Company (ADAC), for support services.¹⁷² ADAC is comprised of several individual aviation companies that contract prominently with the Emirati Government, and it is 70 percent owned by private individuals based in Abu Dhabi (the Abu Dhabi Government owns the remaining stake).¹⁷³ Knowledge Point’s cluster president is a board member of an ADAC subsidiary, while a close advisor to MbZ sits on the board of ADAC itself.¹⁷⁴ This raises the possibility that contractors like Toumajan (and the JAC) are vulnerable to influence and can direct state procurement contracts toward connected elites.

Toumajan’s role as commander of the JAC also puts him at risk of supporting irresponsible or illegal UAE military actions abroad.¹⁷⁵ The State Department generally prohibits US citizens from providing “direct command

functions, combat troops, combatants, or mercenaries,” as a matter of unofficial policy.¹⁷⁶ Yet Toumajan’s official bio says he is “specifically responsible for the combat readiness and execution of all aviation missions and training for UAE forces.”¹⁷⁷ Although Toumajan denies he had any involvement in Yemen, his role likely engaged him in JAC actions in the country, where its helicopters were deployed.¹⁷⁸ Toumajan reportedly said the UAE’s forces ‘are under a completely separate and distinct commands structure not under the Joint Aviation Command,’ for operations in Yemen. However, *Buzzfeed News* quoted a former CIA official as saying Toumajan was key to Emirati operations in Yemen.¹⁷⁹ The UN documented a 2017 incident where a combat helicopter – likely Emirati – indiscriminately targeted and killed dozens of civilians in the Gulf of Aden.¹⁸⁰ Despite Toumajan’s denial of any involvement in this incident, investigators noted the munitions used match those of the UAE, while the UAE admitted it had forces in the area at the time of the attack.¹⁸¹

3.3 Regional Conflicts

The UAE regularly uses foreigners, including Americans, to support foreign military interventions and foreign forces in Yemen, Libya, and throughout East Africa, (see Figure 3). PMSC services provided by US citizens are at risk of enabling these often controversial (even illegal) UAE interventions.¹⁸² Erik Prince reportedly brokered deals for the UAE to hire private military contractors from all over the world for several of these interventions, one of which is likely a violation of US arms export control laws.¹⁸³ US personnel even participated in Emirati combat operations throughout the region.¹⁸⁴ Furthermore, Emirati PMSCs that employ US (and otherwise Western) personnel are linked to controversial arms transfers to regional proxies that apparently violate international arms embargoes and US sanctions.¹⁸⁵

169 *NorthStar Aviation LLC v. Alberto*, 2018.

170 The NorthStar helicopter’s estimated unit price is US\$9 million, compared to US\$2.8 million for the civilian variant. A comparable McDonnell Douglas MD 500 Defender costs around US\$3.5 million. Airforce Technology. 2016. ‘NSA 407MRH Multi-Role Helicopter.’ *Airforce Technology*. 14 February; Pope, Stephen. 2011. ‘Bell 407GX.’ *Flying*, 9 June; AeroCorner. N.d. ‘MD 500 MG Defender.’ *AeroCorner*.

171 TI-DS 2020.

172 Emirates News Agency (WAM). 2021. ‘UAE Armed Forces sign AED 17.913 billion worth of deals in three days at IDEX and NAVDEX.’ *Emirates News Agency*. 23 February.

173 Information gathered from ADAC website.

174 Additional information gathered from LinkedIn. EDGE, n.d.

175 Hamilton, Rebecca & Sarah Knuckey. 2018. ‘Time to Dust Off the War Crimes Act?—for an American ex-soldier now in command of UAE forces.’ *Just Security*. 9 May.

176 Roston, Aram. 2018a. ‘This American Is A General For A Foreign Army Accused Of War Crimes In Yemen.’ *Buzzfeed News*. 7 May.

177 NSRC, n.d.

178 Roston 2018a.

179 *Ibid.*

180 United Nations Security Council (UNSC). 2018. *Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council resolution 2342 (2017) addressed to the President of the Security Council*. S/2018/68. New York: United Nations. 26 January, pp. 237-247.

181 Roston 2018a.

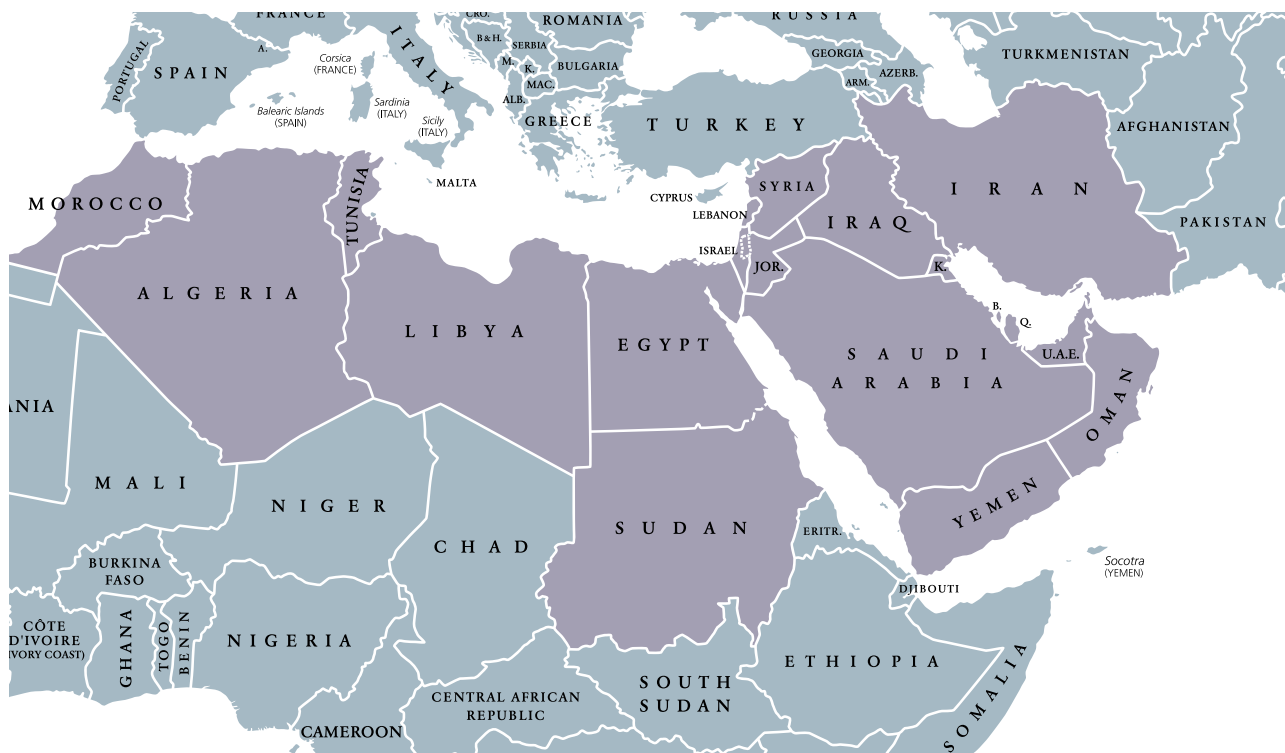
182 Wood, Josh. 2018. ‘Outsourcing war: How foreigners and mercenaries power UAE’s military.’ *Middle East Eye*. 13 July.

183 Cole, Matthew. 2021. ‘FBI Investigation of Failed Mercenary Plot Delves Into Role of Erik Prince.’ *The Intercept*. 30 October.

184 Roston, Aram. 2018b. ‘A Middle East Monarchy Hired American Ex-Soldiers To Kill Its Political Enemies. This Could Be The Future Of War.’ *Buzzfeed News*. 16 October.

185 Amnesty International. 2017. *From London to Juba: a UK-Registered Company’s Role in One of the Largest Arms Deals to South Sudan*. London: Amnesty International; UNSC. 2021. *Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council*. S/2021/229. New York: United Nations. 8 March, pp. 306-334.

Figure 3: Map of Middle East and North Africa



Around 2010, MbZ commissioned Erik Prince to recruit a rapidly deployable combat battalion composed largely of Latin American veterans to face down internal and external security threats.¹⁸⁶ MbZ reportedly specified that recruits should be non-Muslim, believing that Muslims could not be trusted to carry out violence against other Muslims.¹⁸⁷ This force was reportedly deployed to Yemen following devastating attacks that killed dozens of Emirati soldiers, suggesting such forces help conceal military losses overseas and minimize political costs.¹⁸⁸ In 2015-2016, the UAE also hired a group of Western veterans (including former US special forces operators) to kill and capture political opponents in Yemen.¹⁸⁹ The UAE provided them with weapons and temporary ranks within the armed forces' command structure.¹⁹⁰

In Libya, the UAE is a prominent sponsor of non-state militias in the country's east, particularly the warlord Khalifa Haftar. A 2021 UN report described two connected operations in 2019 and 2020 conducted by

a UAE-based PMSC, Lancaster6.¹⁹¹ The "Project Opus" operations, which ultimately failed, were meant to supply Haftar with a team of hired commandos – equipped with helicopters, drones, boats, and cyber capabilities – who would conduct assassinations and kidnappings.¹⁹² Lancaster6 reportedly received at least US\$80 million for the operations.¹⁹³ This team included a US citizen, and it appears Erik Prince brokered the operation to Haftar.¹⁹⁴ Prince also appears to have supplied several of the militarized aircraft used in the operation, though he denies any involvement.¹⁹⁵ While the extent of the UAE's role in facilitating this operation is unknown, the UN report found that the PMSC planned to use Emirati equipment during the second operation in 2020.¹⁹⁶ Furthermore, the UAE refused to cooperate with the UN investigators despite being in a unique position to provide critical information on Lancaster6's corporate and financial connections.¹⁹⁷

186 Mazzetti, Mark & Emily Hager. 2011. 'Secret Desert Force Set Up by Blackwater's Founder.' *New York Times*. 14 May

187 Cole 2019.

188 Krieg, Andreas. 2021. 'The UAE's 'dogs of war': boosting a small state's regional power projection.' *Small Wars & Insurgencies*, Vol. 12. December; Hager, Emily & Mark Mazzetti. 2015. 'Emirates Secretly Sends Colombian Mercenaries to Yemen Fight.' *New York Times*. 25 November.

189 Roston 2018b.

190 *Ibid.*

191 The PMSC in fact operated through 3 interlinked companies: Lancaster 6 DMCC, L-6 FZE, and Opus Capital Asset Limited FZE. UNSC 2021, pp. 306-334.

192 *Ibid.*, p. 307.

193 *Ibid.*, p. 306.

194 *Ibid.*, p. 307.

195 *Ibid.*

196 *Ibid.*, pp. 31-32.

197 *Ibid.*, p. 324.

The UAE's use of PMSCs in Libya extends well beyond the failed Project Opus operations. In 2020, the US Defense Intelligence Agency assessed that the UAE provided financing for Wagner Group operations in Libya to support Haftar-aligned forces.¹⁹⁸ Wagner Group appears to have focused on seizing and controlling Libyan oil infrastructure, and it is accused by the UN of committing war crimes.¹⁹⁹ In a separate instance, a Human Rights Watch investigation revealed that the UAE recruited hundreds of Sudanese contractors under a false premise of security jobs in the Emirates, before deploying them to Libya as rearguards in the country's eastern provinces.²⁰⁰

In East Africa, the UAE funded a privately trained militia for the regional government of Puntland (an autonomous region of Somalia) in 2012.²⁰¹ The Puntland Maritime Security Force was trained by Sterling Corporate Services, a PMSC registered in Dubai, in an arrangement that was reportedly brokered by Erik Prince.²⁰² A UN monitor alleged that this training mission violated an arms embargo on Somalia, and it also documented a number of human rights abuses at the hands of this force.²⁰³ If true, Erik Prince would have also likely violated US arms export control laws. The UAE agreed to similarly train Somaliland's security forces

in March 2018 as part of a broader plan to develop a military (later civilian) logistics hub in the region.²⁰⁴ Somaliland is a separatist region of Somalia that has regularly clashed violently with the central government. Around the time of the training agreement, Somaliland's armed forces were engaged in deadly border skirmishes with Puntland that threatened a broader war.²⁰⁵

Beyond providing, brokering, and training additional boots on the ground, US and Western citizens working for Emirati PMSCs also support more subtle Emirati interventions in regional conflicts. Planes owned by Maximus Air Cargo have flown supply missions to military bases in Eritrea, Ethiopia, Libya, and Yemen either in direct support of the UAE armed forces or for Abu Dhabi's allies and proxies. For example, the aforementioned UN report on Libya documented numerous flights by Maximus Air Cargo in support of Khalifa Haftar, likely ferrying arms.²⁰⁶ "Associated Press connected several Maximus flights to the UAE's drawdown of the Assab military base in Eritrea."²⁰⁷ Maximus aircraft have also been documented supporting a military air bridge to Ethiopia.²⁰⁸ An interview with a British employee indicates Maximus has flown supply missions to Yemen.²⁰⁹



In 2020, the US Defense Intelligence Agency assessed that the UAE provided financing for Wagner Group operations in Libya to support Haftar-aligned forces. Wagner Group appears to have focused on seizing and controlling Libyan oil infrastructure, and it is accused by the UN of committing war crimes.

198 Department of Defense. 2020. *East, North, and West Africa Counterterrorism Operation, Lead Inspector General Report to the United States Congress, July 1, 2020 - September 30, 2020*. Arlington: US Department of Defense. October, p. 37.

199 Faucon, Benoit & Jared Maslin. 2020. 'Russian Oil Grab in Libya Fuels U.S.-Kremlin Tensions in Mideast.' *Wall Street Journal*. 26 July; Nebehay, Stephanie. 2021. 'Libya's warring sides, including Russian mercenaries, may be guilty of crimes – UN.' *Reuters*. 4 October.

200 The company that hired these men, Black Shield Security Services, is reportedly owned by Daien Saif Muaded al-Kaabi, who was a colonel in the armed forces and the UAE's defense attaché to Russia. It is unknown if he is related to any of the other al-Kaabi clan members mentioned in this report. Zayadin, Hiba. 2020. *Recruited as Security Guards in the UAE, Deceived into Working in Conflict-Ridden Libya Instead*. New York: Human Rights Watch. 1 November.

201 Cole 2019.

202 This company is closely linked to Saracen International, a South African PMSC. UNSC. 2012. *Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council*. S/2012/544. New York: United Nations. 13 July, pp. 21-22.

203 In 2011, the US Department of State amended US arms export control regulations to make it a policy to deny requests by US Citizens or permanent residents to provide defense articles or services to Somalia because of the United Nations arms embargo on Somalia, see US Federal Register/Vol. 76, No. 152 August 8, 2011, pages 47992-3; Mazzetti, Mark & Eric Schmitt. 2012. 'Private Army Formed to Fight Somali Pirates Leaves Troubled Legacy.' *New York Times*. 4 October.

204 Cornwell, Alexander. 2018. 'UAE to train Somaliland forces under military base deal: Somaliland president.' *Reuters*. 15 March.

205 International Crisis Group. 2018. *Averting War in Northern Somalia*. Crisis Group Africa Briefing N°141. Brussels: International Crisis Group. 27 June.

206 UNSC 2021, pp. 267-268.

207 Gambrell, Jon. 2021. 'UAE dismantles Eritrea base as it pulls back after Yemen war.' *AP News*. 18 February.

208 Al Jazeera. 2021. 'UAE air bridge provides military support to Ethiopia gov't.' *Al Jazeera*. 25 November. See also Twitter post dated 23 November 2021 by 'Gerjon.'

209 Airline Routes & Ground Services. 2018. 'Handling the complicated.' *Airline Routes & Ground Services*. 5 June.

4.0 CASE STUDY: TIGERSWAN

TigerSwan is a US PMSC based in North Carolina. It was founded in 2005 by veterans of the US Army's elite Delta Force unit, particularly a former lieutenant colonel named James Reese. Under Reese's leadership, TigerSwan and its affiliate companies received over US\$60 million in US Government contracts, almost US\$46 million of which were for services delivered abroad.²¹⁰ Within the US, TigerSwan provided security for major oil pipeline projects. Outside of the US, TigerSwan provided security or construction oversight for the US Government in countries such as Afghanistan, Iraq, and Syria.

However, TigerSwan has reportedly engaged in various questionable or controversial practices in connection with several of its projects. The most significant of these accusations includes inflating threat perceptions, concealing its affiliations, cost inflation, and working with questionable local partners. Some of these alleged practices have resulted in civil or criminal court cases, including one case involving the bribing of US law enforcement officials. Some of these issues present risks to TigerSwan supporting corruption, fraud, and excessive use of force against civilians. TigerSwan has said many of these accusations are based on "one-sided complaints, disproven allegations, biased 'news' outlets, and other unreliable sources."²¹¹ TigerSwan continues to provide support for US Government-funded prime contractors in countries such as Syria.²¹²

TigerSwan has reportedly engaged in various questionable or controversial practices in connection with several of its projects.

In 2019, Reese apparently used his connections through TigerSwan to co-found a separate company, Delta Crescent Energy, to refurbish oil fields in Northeast Syrian and help sell the oil abroad. The US Government supported this endeavor, and it provided Delta Crescent with a unique sanctions waiver to trade Syrian oil. However, it appears Delta Crescent did not accomplish its goals in part due to pervasive local corruption. Delta Crescent denies that corruption played a role in its failure of the project in Syria and raised concerns about many factual statements in this case study.²¹³

4.1 US Oil Pipelines

During Reese's time running TigerSwan, the PMSC was hired by Energy Transfer Partners (ETP) to provide security services in support of their oil pipeline construction projects in Louisiana, Pennsylvania, North Dakota, and elsewhere. The company or its employees reportedly engaged in various questionable or contentious practices that received negative media and legal attention while working for ETP. TigerSwan has been accused of exaggerating threat perceptions of the anti-pipeline protesters.²¹⁴ An investigation by *The Intercept* described how TigerSwan employees appear to have used fake identities to infiltrate protest camps and orchestrated social media campaigns denouncing anti-pipeline protesters.²¹⁵ TigerSwan also reportedly encouraged law enforcement to take more punitive actions against the protesters. Civil rights groups have accused law enforcement of excessive force against the protesters. Hundreds of protesters were injured and arrested. Some law enforcement and National Guard personnel were also injured.

Some national media, local private security contractors, and protesters accused TigerSwan of inflating threat perceptions about the protesters in North Dakota.²¹⁶ Based on internal documents leaked from a TigerSwan contractor, *The Intercept* reported that TigerSwan compared protesters to 'jihadist fighters'.²¹⁷ TigerSwan also said 'currently there is no information to suggest

210 USASpending. N.d. *USASpending.gov*. Washington, D.C.: U.S. Office of Management and Budget.

211 Parker Poe, letter to Transparency International, regarding TigerSwan, June 28, 2022.

212 Harp, Seth. 2018. 'A Year After the End of ISIS Control in Raqqa, a Ruined City Looks to Rebuild.' *The New Yorker*. 5 December.

213 Kay Griffin, letter to Transparency International, regarding Delta Crescent, June 30, 2022.

214 Brown, Alleen, Will Parrish & Alice Speri, 2017 'Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to "Defeat Pipeline Insurgencies."' *The Intercept*. 27 May. Murphy, Jack. 2018a. 'TigerSwan: Former Delta Operator Sought to Incite Violence at the Dakota Access Pipeline.' *SOFRP*. 26 February. Murphy 2018; Hagen, CS. 2017. 'Former DAPL Security Speaks Out, Damning TigerSwan Tactics.' *High Plains Review*. 8 June.

215 Brown et al. 2017.

216 Brown et al. 2017. Murphy, Jack. 2018a. Murphy 2018; Hagen, CS. 2017.

217 Brown et al. 2017

terrorist[-]type tactics or operations' by the protesters, but stated 'with the current limitation on information flow out of the camp, it cannot be ruled out,' according to a leaked TigerSwan situation report.²¹⁸ Major US media outlets describe conflicting accounts of tensions between law enforcement and protesters with law enforcement saying protesters were 'very aggressive' and protestors arguing that law enforcement used 'excessive force'.²¹⁹ However, none of these news outlets provide confirmed reports of protesters regularly engaging in targeted violence towards civilians.²²⁰ Local private security contractors also accused TigerSwan of staging violent actions that would frame protesters as a more pronounced threat.²²¹ One of these contractors alleged that the company made millions from the chaotic situation, and that it even overcharged ETP by claiming costs for personnel who were not present.²²² TigerSwan has raised concerns about the accuracy of some of the leaked documents and the one-sided nature of the above accusations.²²³

TigerSwan also received scrutiny for orchestrating questionable or misleading public media campaigns in support of pipeline projects. In 2017, James Marks, a retired general and then-chairman of TigerSwan's advisory board, spoke at public meetings in favor of pipeline projects, published pro-pipeline op-eds, and voiced opposition to protesters in news outlets, without disclosing his affiliation with TigerSwan.²²⁴ According to leaked documents obtained by *The Intercept*, TigerSwan employees appear to have used fake identities to infiltrate protest camps and orchestrated social media campaigns denouncing anti-pipeline protesters, which TigerSwan denies.²²⁵ The Center for Constitutional Rights (CCR) – a US civil rights NGO – revealed that a Louisiana sheriff visited Standing Rock in support of the pipeline and publicly likened protestors to "terrorists" without

disclosing that he was president of an association to which TigerSwan was a major donor.²²⁶

TigerSwan's or its employees used several methods in an apparent effort to influence law enforcement in support of ETP. In December 2019, two TigerSwan employees were criminally charged in Pennsylvania for bribing local constables to guard another ETP pipeline construction site.²²⁷ According to the criminal complaint, ETP's security manager (who oversaw TigerSwan) stated in an email that it was the company's "unwritten policy" to hire law enforcement officials as guards, which TigerSwan facilitated.²²⁸ In February 2021, a judge allowed the charges against the two employees to be dismissed as a result of their cooperation with investigators and agreement to participate in a diversionary program for first-time offenders. In North Dakota, TigerSwan embedded liaisons within local police departments and supplied sheriffs with regular situation reports regarding anti-pipeline protests.²²⁹ Much of this information was reportedly gathered by TigerSwan employees who had assumed false identities and infiltrated protest camps.²³⁰ Reese denied such methods were approved, though leaked documents obtained by *The Intercept* appear to substantiate that such methods were used.²³¹ TigerSwan reportedly urged police officers to employ more punitive measures against protestors, including arresting protestors and increasing fines for those arrested.²³² According to CCR, some of these practices can blur the line between public safety and private security.²³³

The American Civil Liberties Union – another American civil rights organization – argued that TigerSwan's business practices likely led to excessive violence and harm against private citizens, especially those from minority backgrounds, practicing their civil rights.²³⁴

218 Brown et al. 2017.

219 Derek Hawkins, "Activists and police trade blame after Dakota Access protester severely injured," *The Washington Post*, November 22, 2016.

220 Survey of news articles on Dakota pipeline protests from *The New York Times*, *Wall Street Journal*, and *The Washington Post*.

221 Murphy 2018; Hagen, CS. 2017.

222 *Ibid.*

223 Parker Poe, letter to Transparency International Defence and Security regarding TigerSwan, June 28, 2022. Brown, Alleen. 2020. 'In the Mercenaries' Own Words: Documents Detail TigerSwan Infiltration of Standing Rock.' *The Intercept*. 15 November.

224 Richardson, Valeria. 2016. 'North Dakota draws Iraq comparison as pipeline protests rage.' *Washington Times*. 20 November. Marks, James. 2017. 'Here's why Pa. should be wary of professional pipeline protesters: James 'Spider' Marks.' *PennLive*. 24 May. InsideSources. 2017. 'Retired Army Gen. James "Spider" Marks on Pipelines and National Security' [Video]. *Youtube*. 13 February.

225 Brown et al. 2017; US District Court for the Middle District of Pennsylvania. 2017. *Complaint, Gerhart et al. v. Energy Transfer Partners et al.* MD Pa Case 1:17-cv-01726-YK. 25 September

226 Champagne, Greg. 2016. 'Facebook post dated 1 November 2016.' *Facebook*. 1 November. Center for Constitutional Rights (CCR). 2017. *Press Release: Human Rights Attorneys Sue Louisiana Sheriff for Records Related to Pipeline Opposition*. New York: Center for Constitutional Rights. 13 December.

227 Phillips, Susan. 2019. 'Chester County DA charges Energy Transfer security manager, others in scheme to use constables for Mariner East pipeline security.' *National Public Radio*. 3 December; Vella, Vinny. 2021. 'A once-touted Mariner East pipeline bribery case is poised to end with no convictions.' *The Philadelphia Inquirer*. 18 February.

228 Phillips, Susan. 2019. 'Chester County DA charges Energy Transfer security manager, others in scheme to use constables for Mariner East pipeline security.' *National Public Radio*. 3 December.

229 Brown et al. 2017.

230 *Ibid.*

231 Brown, Alleen. 2020. 'In the Mercenaries' Own Words: Documents Detail TigerSwan Infiltration of Standing Rock.' *The Intercept*. 15 November.

232 *Ibid.* Brown et al. 2017.

233 CCR 2017.

234 Dakwar, Jamil. 2017. *Why Did a Private Security Contractor Treat Standing Rock Protesters Like 'Jihadists'?* New York: American Civil Liberties Union. 2 June.

Standing Rock protesters have said law enforcement agencies confronted them with excessive force, culminating in over 300 wounded and hundreds more arrested.²³⁵ There were reports of “six law enforcement officers and North Dakota Guard soldiers” being injured.²³⁶ In 2017, several Pennsylvania residents opposed to pipeline construction on their property filed civil claims against TigerSwan and its employees for orchestrating a disinformation campaign against them, publishing personal information, trespassing on their property, and conducting invasive surveillance.²³⁷ Several of the plaintiffs were arrested by law enforcement officials on charges that ultimately were not prosecuted, leading to accusations of false arrest.²³⁸ While TigerSwan and the employees denied these allegations and motioned to have them dismissed, the court refused on most charges; as of July 2022, the trial is ongoing.²³⁹

4.2 Afghanistan, Iraq, and Syria

It appears TigerSwan has also used controversial business practices in Afghanistan and Iraq. In Afghanistan, the company reportedly concealed ownership of a subcontractor and failed to justify millions of dollars of costs in a reconstruction project, according to an audit by the Special Inspector General for Afghanistan Reconstruction (SIGAR). TigerSwan also reportedly failed to conduct due diligence in choosing local partnerships in Afghanistan. In Iraq, TigerSwan subcontracted a local PMSC run by an Iraqi government official whose family reportedly engaged in suspicious financial transfers of money outside of the country. The above activities increase the risk of price-gouging on US Government contracts, supporting local corrupt actors, and potentially inflaming local conflict dynamics.

In 2020, a SIGAR audit found that TigerSwan engaged in several misleading practices while overseeing the implementation of construction projects funded by the US Department of State in Afghanistan. It found that

TigerSwan subcontracted a company that it had a majority stake in without disclosing this relationship.²⁴⁰ The company also failed to prove that its local subcontractors weren’t disqualified or banned from receiving US funds.²⁴¹ The audit also found that TigerSwan failed to justify its costs with verifiable price analyses, and it selected subcontractors without a competitive bid process. As a result, about half of the costs incurred on a US\$7 million contract were deemed questionable due to poor subcontractor oversight and that the US Government “*may have paid more in costs than is reasonable or appropriate*” for what it received.²⁴² While TigerSwan disputed the findings and denied any wrongdoing, the company failed to provide sufficient evidence to the contrary when given the chance to do so by the auditing entity.²⁴³

The creation of separate, but connected businesses, runs the risk of PMSCs inappropriately winning government contracts. In 2010, several companies protested the awarding of a US\$7 million US Navy training contract to a company they alleged was controlled by TigerSwan, which was not eligible for the contract due to its size.²⁴⁴ In the course of the company’s appeal against these protests, a court found that TigerSwan’s founders created the company, put it into an opaque corporate holding arrangement in which they were minority (49 percent) shareholders, and that the company was taken over by a fellow Delta Force veteran.²⁴⁵ It also found that the company shared a business address with TigerSwan, and that its only previous business was as a subcontractor for TigerSwan.²⁴⁶ The company disputed that it was controlled by TigerSwan, arguing these factors alone did not constitute “economic dependence,” that the address had changed, and that its previous work for TigerSwan was too limited to infer a deeper affiliation, which the court accepted.²⁴⁷ In an ongoing court case, the US Government accused TigerSwan and DynCorp of misrepresenting TigerSwan’s role in a multi-billion dollar contract to provide Arabic translators for US military operations in Iraq.²⁴⁸ TigerSwan’s motion to dismiss the

235 CCR 2017; Hawkins, Derek. 2016. ‘Activists and police trade blame after Dakota Access protester severely injured.’ *Washington Post*. 22 November.

236 Steve Munroe, “Dakota Access Pipeline Protesters Arrested,” *Wall Street Journal*, January 19, 2017.

237 US District Court for the Middle District of Pennsylvania. 2017. *Complaint, Gerhart et al. v. Energy Transfer Partners et al.* MD Pa Case 1:17-cv-01726-YK. 25 September.

238 Sturgis, Sue. 2017. ‘Federal lawsuit says Texas pipeline firm ‘strong-armed’ landowners, protesters.’ *Facing South*. 29 September.

239 US District Court for the Middle District of Pennsylvania. 2020. *Memorandum, Gerhart et al. v. Energy Transfer Partners et al.* MD Pa Case 1:17-cv-01726-YK. 30 March.

240 *Ibid.*

241 Special Investigator General for Afghanistan Reconstruction (SIGAR). 2020. *Department of State’s Afghanistan Flexible Implementation and Assessment Team Program: Audit of Costs Incurred by TigerSwan LLC*. 20-48 Financial Audit. Arlington: Special Investigator General for Afghanistan Reconstruction. August.

242 *Ibid.*

243 *Ibid.*

244 US Small Business Administration Office of Hearings and Appeals (SBA). 2011. *Size Appeal of Argus and Black Inc.* SBA No. SIZ-5204. 22 February.; USASpending, n.d.

245 *Ibid.*, pp. 1-3. Additional information gathered from LinkedIn.

246 *Ibid.*, pp. 2-3.

247 *Ibid.*, pp. 3-7.

248 US District Court for the District of Maryland Southern Division. 2016. *Complaint, Fadlalla et al. v. Dyncorp International LLC*. Case No. 8:15-cv-01806-PX. 25 March.

charges was denied in September 2019; as of July 2022, the trial is still ongoing.²⁴⁹

TigerSwan has also hired subcontractors in Iraq with questionable ties to government officials, which runs the risk of supporting corrupt actors or activities. In 2018, TigerSwan subcontracted a local logistics firm called PowerGate, which is run by a relative of an Iraqi provincial governor, while providing security for an American firm overseeing third party projects in Syria funded by the US Agency for International Development.²⁵⁰ The governor's province, Duhok, lies on the border with Syria and is a prominent part of the autonomous Kurdish region of northern Iraq. Given the corruption concerns within Northern Iraq, (see Box 2), there is a risk that US government funds could inadvertently strengthen corrupt actors or networks in the region.



A civilian contractor from Xe Services instructs Afghan Border Police officers prior to conducting vehicle patrol exercises at the ABP Border Center in Spin Boldak, Afghanistan. (Photo Credit: US Army)

Box 2

Corruption in the Iraqi Kurdistan

Northern Iraq, which is predominantly Kurdish, is run by the autonomous Kurdistan Regional Government (KRG). The KRG is ruled essentially by two political parties that are closely associated with prominent political families. Nepotism and cronyism are common as these families reward their patronage networks with jobs in the public service, state contracts, and exclusive access to resources.²⁵¹ Foreign companies are required to subcontract local firms run by connected businessmen at inflated rates.²⁵² The Barzani family, which holds both the KRG presidency and the premiership under the KDP, dominates key sectors of the KRG economy – including the oil sector and cross-border trade into Syria – through crony monopolies and through state control.²⁵³

As such, foreign companies like TigerSwan are highly vulnerable to extortion and corruption when operating in the KRG. The Barzani family is said to control the cross-border economy and access into Northeast Syria.²⁵⁴ Politically affiliated traders monopolize cross-border commerce, especially for key commodities where high tariffs can be levied by the KRG.²⁵⁵ Furthermore, the KRG security agency responsible for issuing security authorizations to PMSCs like TigerSwan is accused of being highly politicized and loyal to the Barzanis' political party.²⁵⁶ Observers note that the KRG's Prime Minister, Masrour Barzani, has become increasingly authoritarian in his rule, resulting in increasing violence, repression, and emigration from the region.²⁵⁷

249 US District Court for the District of Maryland Southern Division. 2019. *Memorandum, Fadlalla et al v. Dyncorp International LLC*. Case No. 8:15-cv-01806-PXGJH-15-1806. 4 September.

250 Harp, Seth. 2018. 'A Year After the End of ISIS Control in Raqqa, a Ruined City Looks to Rebuild.' *The New Yorker*. 5 December.

251 Hatahet, Sinan. 2019. *The Political Economy of the Autonomous Administration of North and East Syria*. Fiesole: European University Institute. 29 November.

252 Kopplin, Zack. 2020. 'Why Is the Pentagon Still Paying \$10 a Gallon for Gas?' *The New Republic*. 6 May.

253 US Department of State (DOS). 2006. 'Corruption in the Kurdish North.' *Wikileaks*. 16 February.

254 Hatahet 2019; Saleem, Zmkan Ali & Mac Skelton. 2021. 'Searching for Ghosts: Fighting Corruption at Iraq's Border Crossings.' *London School of Economics Middle East Center Blog*. 24 February.

255 Hatahet 2019.

256 Barawi, Aras. 2018. 'Security service Asayish of Duhok is corrupted in Iraqi Kurdistan.' *eKurd*. 3 August.

257 Cornish, Chloe. 2021. 'Iraqi Kurdistan's authoritarian turn: western ally 'discards idea of democracy.' *Financial Times*. 11 May; Rubin, Michael. 2020. 'Why Masrour Barzani Should Resign From Leading Iraqi Kurdistan.' *The National Interest*. 11 December; Amnesty International. 2021. *Kurdistan Region of Iraq: Arbitrary arrests and enforced disappearance of activists and journalists*. London: Amnesty International. 15 June; Kullab, Samya. 2021. 'Iraqi Kurds cite work, graft as reasons behind Minsk gamble.' *Associated Press*. 24 November.

Figure 4: Map of Northern Syria and Iraq



In other parts of Iraq, TigerSwan partnered with an Iraqi politician named Mudhar Shawkat, who owned a local PMSC called Babylon Eagles Security Company (BESC) and whose family engaged in questionable financial transfers.²⁵⁸ This partnership supplied TigerSwan with local manpower for its Iraqi operations, which included the provision of armed security and logistics support to the US Government and private clients.²⁵⁹ It appears Shawkat also connected TigerSwan to Iraqi security institutions through his political clout.²⁶⁰ Shawkat claims he was “a department head in the Iraqi Ministry of National Defense” during the Saddam era and served in high level government positions after the 2003 Iraq invasion.²⁶¹ He was reportedly responsible for securing Iraq’s national telecommunications infrastructure – a task that was carried out by BESC in an apparent case of self-dealing.²⁶² Leaked emails also show that Shawkat’s family moved over US\$170 million outside of Iraq in 2009 through an elaborate corporate mechanism that a financial services provider found “suspicious.”²⁶³

Such partnerships can also divert US Government funds into nebulous patronage networks that empower local armed groups, including US adversaries and barred actors. In Iraq, Shawkat attempted to form a Sunni militia led by Saddam-era military officers, with the goal of establishing an autonomous Sunni region out of former Islamic State territory in 2014.²⁶⁴ Though Shawkat (unsuccessfully) sought out US support for this militia, other US PMSCs in Iraq have become entangled with more hostile actors through the patronage networks of their local partners. In 2017, a US PMSC that operated a major Iraqi airbase reportedly purchased fuel at inflated rates from a vendor connected to the base’s commander.²⁶⁵ This commander is apparently related to the leader of a militia aligned with Iran. Members of this militia stole electrical equipment from the PMSC with the alleged approval of the airbase’s commander.²⁶⁶

258 TigerSwan. 2009. ‘TigerSwan Announces Strategic Alliance with Iraqi Security Company.’ PR Web. 24 April.

259 Johnson, Trevor. 2013. ‘TigerSwan Escorts Medical Provider to Baghdad on Journey of Compassion.’ *Business Wire*. 18 March; Loe, Matt. 2010. ‘Industry Talk: TigerSwan Awarded U.S. DoD Iraq Security Contract.’ *Feral Jundi*. 4 March.

260 United States Court of Federal Claims (CFC). 2014. *TigerSwan, Inc. v. The United States*. CFC No. 12-62C.

261 US Department of Justice (DoJ). 2015. *Foreign Agent Registration Statement*. Washington, DC: United States Department of Justice. 15 October, p. 5.

262 *Ibid.*

263 International Consortium of Investigative Journalists (ICIJ). N.d. ‘Mudhar Ghassan Shawkat.’ Offshore Leaks Database. Washington, DC: International Consortium of Investigative Journalists.

264 Harris, Shane. 2015. ‘D.C.’s New Push: Use Saddam’s Men to Fight Obama’s ISIS War.’ *The Daily Beast*. 22 July.

265 Kopplin, Zach. 2021. ‘How the Pentagon Accidentally Funnels Millions to Iraqi Militia Groups It’s Also Fighting.’ *American Prospect*. 25 March.

266 *Ibid.*

4.3 The Delta Crescent Arrangement

In Northeast Syria, James Reese appears to have used his local connections in Iraq and Syria through TigerSwan to secure oil rights in an arrangement that posed risks to US goals in the region. In 2019, he co-founded an oil company called Delta Crescent Energy, which secured rights with the Kurdish-led Autonomous Administration of Northeast Syria (AANES) to refurbish the region's damaged oil infrastructure and broker the output internationally.²⁶⁷ To do so, Delta Crescent received a unique license from the US Government, exempting it from US sanctions on Syria.²⁶⁸ Former administration officials argued that the arrangement would provide the US-allied AANES with extra revenue, deny the Assad regime oil access, and give the US leverage over Russia in future negotiations.²⁶⁹ However, it appears that some of these expectations may have been undermined by pervasive corruption within the region.

According to the *Daily Beast*, Reese claims the idea for the company was his originally.²⁷⁰ The *Financial Times* reported that he learned of the opportunity through his TigerSwan connections with the Kurdish leadership.²⁷¹ In a 2018 trip on behalf of TigerSwan, Reese met with Nechirvan Barzani, the KRG president and cousin of the Prime Minister, and also visited Northeast Syria. However, Reese says the meeting with Barzani and the KRG had nothing to do with Delta Crescent.²⁷² According to the *Daily Beast*, Reese says that he introduced the idea to Mazloum Abdi, head of the SDF, around this time.²⁷³ Shortly after, Reese partnered with two people who, according to the Washington Institute, were well-positioned within the US political establishment and oil industry to initiate the idea and win US support.²⁷⁴

James Cain, a prominent donor and former committeeman within the Republican Party, was reportedly well-connected within Washington, while John Dorrier, who ran the oil company that previously operated the oil fields in question, could guide the technical aspects of the arrangement.²⁷⁵

In order to refurbish the Syrian oil fields, Delta Crescent received a license from the US Department of Treasury's Office of Foreign Assets Control (DoT OFAC) exempting it from a blanket ban on Syria's oil trade.²⁷⁶ It appears that through their collective connections, the three Delta Crescent founders won special support within the US political establishment, including from US Senator Lindsey Graham and the US Government's main envoy to Syria.²⁷⁷ According to former US administration officials, they supported the Delta Crescent license for three key reasons. Firstly, they believed the arrangement would provide needed revenue to the AANES, following the Administration's sudden decision to end its "stabilization assistance" to the Syrian Kurds.²⁷⁸ Secondly, the Administration believed the arrangement would prevent the SDF from selling crude oil to the Assad regime.²⁷⁹ Third, they believed the arrangement

In Northeast Syria, James Reese appears to have used his local connections in Iraq and Syria through TigerSwan to secure oil rights in an arrangement that posed risks to US goals in the region.

267 Zaman, Amberin. 2020. 'US oil company signs deal with Syrian Kurds.' *Al-Monitor*. 30 July.

268 *Ibid.*

269 Tabler, Andrew J. 2021. 'The Search for a Syria Strategy What Biden Can Learn From Trump's Successes and Failures.' *Foreign Affairs*. 27 July.

270 Rosen, Kenneth. 2021. 'The Inside Story of How Trump 'Kept the Oil' in Syria and Lost.' *The Daily Beast*. 31 May; Cornish et al. 2021.

271 Cornish, Chloe, Asmaa al-Omar & Katrina Manson. 2021. 'American entrepreneurs wade into murky Syrian oil business.' *Financial Times*. 24 January.

272 Kay Griffin PLLC, Letter to Transparency International, regarding Delta Crescent, June 30, 2022.

273 Rosen 2021.

274 Wilder, Calvin & Kenneth Rosen. 2021. *Delta Crescent Energy: Refining U.S. Stabilization Strategies in Northeast Syria*. Washington DC: The Washington Institute for Near East Policy; Cornish et al. 2021.

275 The company, Gulfsands Petroleum, is now owned by a Russian oligarch with links to the Kremlin. While CEO of Gulfsands, Dorrier dealt with Rami Makhlof, a Syrian business magnate later sanctioned by the United States for oil sector corruption. Hamidi, Ibrahim. 2020. 'British Company Concerned over its Oil 'Rights' in Northeastern Syria.' *Asharq Al-Awsat*. 13 September; Gulfsands Petroleum PLC. 2007. 'Placing of new ordinary shares to raise £11.6m.' *Investigate*. 26 June; Fairbanks, Waylon. 2018. 'UK Firm Gulfsands Vies To Outlast Syria Sanctions.' London: Middle East Economic Survey. 18 May; Wilder & Rosen 2021.

276 Zaman 2020.

277 *Ibid.* Zaman, Amberin. 2021. 'Biden Administration Poised to Ax US Oil Company's Waiver for Kurdish-Led Northeast Syria.' *Al-Monitor*. 21 May.

278 Tabler 2021.

279 *Ibid.*

May 2021

Delta Crescent reportedly secured two contracts worth about

US\$2.3 billion



to “sell and transport” the oil outside of Syria

would give US leverage over Russia in future negotiations over the Syria conflict.²⁸⁰

By April 2021, Delta Crescent said it had imported and installed US-origin technology on oil infrastructure in Northeast Syria.²⁸¹ Its local partner in Northeast Syria is Jazeera Oil Company, which operates the oil fields.²⁸² Delta Crescent claimed it had an established presence, including an office with 10-15 staff, in a town called Rmelan.²⁸³ Although it appears TigerSwan employed several hundred personnel in the KRG and Syria around this time, there is little evidence they directly provided security services to Delta Crescent.²⁸⁴ TigerSwan and Delta Crescent have also told Transparency International that they have not had any business relationship with each other. In May 2021, Delta Crescent reportedly secured two contracts worth about US\$2.3 billion to “sell and transport” the oil outside of Syria.²⁸⁵

However, it appears Delta Crescent struggled to gain the expected revenue due to substantial, unexpected resistance from the neighboring KRG.²⁸⁶ Several scholars, experts, and researchers note that the Barzani family, which dominates KRG politics and holds many of the region’s executive functions, controls the flow of Syrian

oil into the KRG and dominates the local oil industry.²⁸⁷ Citing insider conversations, the *Daily Beast* reported that Mansour Barzani, the brother of the KRG’s Prime Minister, reportedly demanded 70 percent of the revenue from the Syrian oil, leading to a dispute with Delta Crescent and the AANES.²⁸⁸ Scholars note that the Barzani family effectively controls the border crossings linking the two regions, and the *Daily Beast* reported that because they already acquire oil from Northeast Syria at very low prices, they are well-positioned to extort Delta Crescent into granting an excessive cut of the deal’s revenues.²⁸⁹ Delta Crescent reportedly sought to bypass the KRG and export AANES oil through non-Kurdish Iraq, though similar dynamics of patronage and extortion are well-documented in these regions as well.²⁹⁰

It also appears the Delta Crescent arrangement did little to stop AANES oil from reaching the Assad regime as the US Government had hoped it would. Much of the oil produced by these fields is reportedly sold to the Syrian regime at well below the market price through local smuggling networks.²⁹¹ Hossam al-Qaterji, who is a regime-aligned business magnate, is said to facilitate much of this smuggling.²⁹² OFAC sanctioned al-Qaterji in November 2020 due to his role in sustaining the

280 Panel discussion with Amb. James Jeffrey, Andrew Tabler, and Caroline Rose on security in Syria, held at Johns Hopkins University School of Advanced International Studies in Washington DC on 5 November 2021.

281 Delta Crescent Energy LLC 2020; Delta Crescent Energy LLC. 2021. *Arrival and Installation of Solar Powered Equipment in Northeast Syria*. Houston: Delta Crescent Energy, LLC.

282 Delta Crescent would receive \$1 for every barrel of oil sold according to the production-sharing agreement. Rosen 2021.

283 Zaman 2021.

284 TigerSwan. 2018a. ‘Facebook post dated 7 November 2018.’ *Facebook*. 7 November.

285 Zaman 2021.

286 Rosen 2021; Wilder & Rosen 2021.

287 Zangana, Goran, Michael Rubin & George R Wilkes. 2020. ‘How KRG Officials Scammed a Canadian Oil Company and British Charity for Profit.’ *1001 Iraqi Thoughts*. 23 September; Hatahet 2019.

288 Rosen 2021.

289 Saleem & Skelton 2021; Kopliin, Zack. 2020a. ‘How Mike Pompeo Built a Blood-for-Oil Pipeline.’ *The New Republic*. 7 August; Rosen 2021.

290 Rosen 2021; Wahab, Bilal. 2015. *Oil Federalism in Iraq: Resource Curse, Patronage Networks and Stability*. Fairfax: George Mason University.

291 Seifan, Samir & Mahmood Alhosain. 2021. *The destruction of the energy sector in Syria during the war 2011-2020*. Doha: Harmoon Center For Contemporary Studies, pp. 33-37.

292 *Ibid.* Hatahet, Sinan. 2019. *The Political Economy of the Autonomous Administration of North and East Syria*. Fiesole: European University Institute. 29 November.

A 2020 investigation by independent Syrian journalists found that the Assad regime was a key recipient of AANES oil through al-Qaterji's smuggling network.

Assad regime with wheat and oil supplies.²⁹³ A 2020 investigation by independent Syrian journalists found that the Assad regime was a key recipient of AANES oil through al-Qaterji's smuggling network.²⁹⁴ Al-Qaterji's fuel trucks have also reportedly transported oil from Northeast Syria to regime-controlled areas during the time period Delta Crescent was operating.²⁹⁵ James Reese and Delta Crescent have said that the Delta Crescent operations did not directly or indirectly support the Assad regime.²⁹⁶

Furthermore, it appears the deal threatened to escalate the conflict over Northeast Syria's resources, as it invited confrontation with the Assad regime and Russia. The Assad regime reportedly awarded rights for the same fields to Russian companies in exchange for Russia's military support.²⁹⁷ According to *Al-Monitor*, Russian forces exposed the AANES to Turkish military action in March 2021 by temporarily withdrawing its military presence from the region, apparently to "press the SDF to continue supplying the [Assad] regime with oil."²⁹⁸ Furthermore, Russia is reportedly supportive of al-Qaterji, and it has provided protection to al-Qaterji's oil trucks moving through insecure territory.²⁹⁹ Al-Qaterji also owns a local security company that reportedly provides support to Russian troops in the region.³⁰⁰

As a result of the above challenges, it appears the Delta Crescent arrangement accomplished few, if any, of the goals laid out by the US Government. Observers also note that the arrangement could expose the US to war crime accusations relating to pillage.³⁰¹ In May 2021, the US Government indicated that it would not renew Delta Crescent's OFAC license.³⁰² Former US officials indicated that Delta Crescent continued to operate until at least the end of 2021 as the company was allowed to wind down operations before the end of the year.³⁰³ In May 2022, the Treasury Department announced it "authorized some foreign investment in areas of northern Syria that are outside government control" for the purpose of "defeat[ing] Islamic State through economic stabilization."³⁰⁴ This authorization reportedly includes the sale of oil products originating from beyond the Assad regime's area of control.³⁰⁵

293 US Department of the Treasury. 2020. *Treasury Imposes Sanctions on Petroleum Network, Senior Syrian Officials, and Syrian Entities*. Washington DC: United State Department of the Treasury. 9 November.

294 Seifan 2021; Jesr Press. 2020. 'Syria's Al-Jazeera Oil Revenues: \$1 Billion to Feed the PKK, Breastfeed (ISIS) and the Local Population Epidemic [in Arabic].' *Jesr Press*. 15 January.

295 Etana. 2021. 'Syria Military Brief: North-East Syria – 01 July 2021.' *Etana*. 1 July.; Syria Observatory for Human Rights (SOHR). 2020. *Hiding from US drones: Qaterji oil trucks camouflage while transporting crude oil from SDF to regime areas*. London: Syrian Observatory for Human Rights. April 21; The Syrian Observer. 2021. 'Qaterji Militia Resumes Oil Transfer from SDF to Regime.' *The Syrian Observer*. 15 September.

296 Kay Griffin PLLC, letter to Transparency International, regarding Delta Crescent, June 30, 2022.

297 Cornish et al. 2021.

298 Al-Khateb, Khaled. 2021. 'Is Russia extorting SDF in northeast Syria?.' *Al-Monitor*. 1 March.

299 Rosen 2021.

300 Al-Khair, Waleed Abu. 2021. 'Private security companies provide facade for Russian hegemony in Syria.' *Diyaruna*. 4 February.

301 Al-Ghadhawi, Abdullah. 2020. *Implications of the Oil Deal for the Kurds in Syria*. London: Chatham House, the Royal Institute of International Affairs. September; Welna, David. 2019. 'If U.S. Takes Syrian Oil, It May Violate International Laws Against Pillage.' *National Public Radio*. 30 October; Çitlioglu, Ercan. 2020. *A Turkish Perspective on Syria*. Berlin: Konrad Adenauer Stiftung. 27 October.

302 Zaman 2021.

303 Panel discussion with Amb. James Jeffrey, Andrew Tabler, and Caroline Rose on security in Syria, held at Johns Hopkins University School of Advanced International Studies in Washington DC on 5 November 2021.

304 Pamuk, Humeyra & Daphne Psaledakis. 2022. 'U.S. permits some foreign investment in northern Syria despite sanctions.' Reuters. 12 May.

305 *Ibid*.

5.0 US ACTIONS TO REGULATE PMSCS AND RELATED GAPS

The US Government has recognized the serious risks of PMSC activities in fragile and conflict environments. It has participated in some multilateral efforts to develop a normative framework governing the international use of PMSCs and neglected other international efforts on mercenaries. The United States has also developed several laws and regulations to oversee PMSC contracts with the US Government, as well as foreign clients. However, this approach spreads oversight throughout the US Departments of Defense, State, and Commerce. There are major differences between the State and Defense Departments on how to award and oversee contracts with PMSCs. The State and Commerce Departments' efforts to control US PMSC sales abroad are limited in scope and exclude major PMSC services. These limitations and loopholes can be exploited by PMSCs engaged in corrupt activities or with corrupt clients. By examining these US efforts to regulate PMSCs, the main weaknesses in the US regulatory approach to PMSCs can be identified.

5.1 US Multilateral Efforts to Regulate PMSCs

Over the past 30 years, the United States supported some international efforts to regulate PMSCs while neglecting others. The international community generally opposes the use of mercenaries in armed conflicts. In 1989, many countries agreed to the UN Mercenary Convention to expand restrictions on the use of mercenaries, though the United States never ratified the Convention. The United States, however, has agreed to a non-binding agreement, the Montreux Document, which establishes good practices for regulating PMSCs in armed conflicts. Though these efforts produced some positive results, they are beset by challenges. There are only a few countries that have agreed to the international accreditation standards established in the Montreux Document. These standards also struggle to meet the modern PMSC industry's rapid proliferation and diversification of activities and contexts. The United Nations is seeking to address these gaps through a new international framework.

International law addresses the use of mercenaries. The foundational documents are Article 47 of the 1977 *Protocol I Additional to the Geneva Conventions* (part of International Humanitarian Law, or IHL) and the 1989 *International Convention against the Recruitment, Use, Financing and the Training of Mercenaries* (also known as the UN Mercenary Convention). Article 47 defines mercenaries as a person who is recruited to fight in an armed conflict, engages in direct hostilities, and is paid more than the local military. While IHL does not explicitly ban the use of mercenaries, it defines their status as persons who are not entitled to the rights of combatants, such as those afforded to prisoners of war. The UN Mercenary Convention, on the other hand, bans the recruitment, training, use, and financing of mercenaries by signatory states.³⁰⁶ This document importantly covers situations outside of armed conflicts, such as using mercenaries to overthrow elected governments. Though the United States never formally ratified the UN Mercenary Convention, these documents form the normative basis for subsequent international efforts to regulate PMSCs.³⁰⁷

The US Government supports efforts to distinguish PMSCs from mercenaries and carve out a regulated space in which PMSCs can operate.³⁰⁸ In 2008, an initiative led by the Swiss Government and the International Committee of the Red Cross (ICRC) produced the Montreux Document. This US government-supported, non-binding agreement clarifies the legal obligations of PMSCs under IHL and provides recommended good practices for countries that host and contract such companies.³⁰⁹ These practices include ensuring that countries do not hire PMSCs that have a record of engaging in bribery and corruption, among other crimes. The Montreux Document defines PMSCs as "private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings, and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel."³¹⁰ There are now 58 countries that have stated their support for this agreement.³¹¹

306 *International Convention Against the Recruitment, Use, Financing and Training of Mercenaries*. New York. 4 December 1989, *United Nations Treaty Series*, vol. 2163, No. 37789, p. 75.

307 McFate, Sean. 2019. *Mercenaries and War: Understanding Private Armies Today*. Washington DC: National Defense University Press. December, pp. 15-16.

308 Jezdimirovic Ranito 2019, pp. 31-39.

309 ICRC & the Federal Department of Foreign Affairs of Switzerland (FDFA). 2008. *The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*. August.

310 *Ibid.*

311 Swiss government's Federal Department of Foreign Affairs (FDFA), "Participating of the Montreux Document" <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html>

Similar but separate to the Montreux Document, the 2010 *International Code of Conduct for Private Security Service Providers* (ICoC), which lays out principles of conduct that participating PMSCs must abide by.³¹² The ICoC includes PMSC services like maritime security, crowd management, and “operational and logistical support for armed or security forces, including training and advice, intelligence, surveillance and reconnaissance activities.”³¹³ The ICoC is administered by the International Code of Conduct Association (ICoCA), a Swiss NGO that also acts as a certification body. Association membership is granted to PMSCs who comply with a set of accredited industry standards, allow external review by ICoCA, and submit regular reports.³¹⁴ The US Government is a participating state in ICoCA and provides funding to support it. Only 10 US PMSCs are members or are affiliated with the mechanism.³¹⁵

The UN plays a prominent role in these efforts under the Office of the High Commissioner on Human Rights (OHCHR). Specifically, the Working Group on the Use of Mercenaries (UNWG) is a group of independent experts mandated to monitor mercenaries and mercenary-related activities in all their forms and manifestations. As such, the UNWG monitors and studies PMSC activities, reports on relevant human rights abuses and humanitarian law violations, and communicates with relevant government and PMSC actors.³¹⁶ Parallel to this, an Intergovernmental Working Group (IGWG) on PMSCs acts as the official forum and dialogue process for states on the norms of PMSC use.³¹⁷ This working group is in the early stages of drafting a new international agreement that would establish common principles for regulating international PMSC use, but the United States has not been an active participant of this process. The IWG cooperates with the UNWG, ICoCA, and the Montreux Document Forum.³¹⁸

In practice, several weaknesses undermine the effectiveness of this international framework. The definition of mercenaries contained in Article 47 has

been criticized for being overly narrow and difficult to apply.³¹⁹ Key states like the United States, Russia, and China never ratified the UN Mercenary Convention, greatly limiting its international weight.³²⁰ Meanwhile, the Montreux Document and ICoC’s definition on PMSC services excludes activities such as cybersecurity and some intelligence activities. ICoCA membership was supposed to act as a stamp of quality control and therefore provide participating PMSCs with a competitive advantage.³²¹ However, ICoCA participation membership stagnated with less than 70 participating companies and only seven participating governments – none of which are located in conflict-affected countries.³²² This stagnation of ICoCA members, as well as the lack of funding streams for their type of activities, has led to a funding shortfall that severely restricts the body’s ability to monitor PMSC activities and detect abuses.³²³ Finally, the scope of the Montreux Document only applies to armed conflict situations, though there are serious concerns about PMSCS activities in non-conflict countries.

5.2 US Oversight of PMSC Contracts with the US Government

Government contracting is the most direct means in which the US Government regulates the PMSC industry. Yet contracting regulations arose in a reactive manner, responding to high-profile abuses by contractors in Iraq and Afghanistan. Efforts to boost contracting regulations helped expand government control over PMSCs and promoted some accountability measures. However, there are still weaknesses within this regulatory mechanism that undermine contractor accountability. These loopholes could become more pronounced as the United States transitions away from the Global War on Terror and the industry grows and diversifies.

312 International Code of Conduct Association (ICoCA). 2010. *International Code of Conduct for Private Security Service Providers*. Geneva: International Code of Conduct Association. 9 November.

313 *Ibid.*

314 ICoCA. 2020. *ICoCA Membership and Affiliate Requirements*. Geneva: International Code of Conduct Association. July; Jezdimirovic Ranito 2019, p. 36.

315 These companies are K2 Solutions, American K9 Detection Services, MSA Security, Meridian Global Consulting, Janus Global Operations, Patriot Group International, Reed International, SOC, Sallyport Global Holdings, and Triple Canopy.

316 Office of the High Commissioner for Human Rights (OHCHR). N.d. *About the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*. Geneva: United Nations Office of the High Commissioner for Human Rights.

317 OHCHR. N.d. *Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies*. Geneva: United Nations Office of the High Commissioner for Human Rights.

318 *Ibid.*

319 McFate, Sean. 2019. *Mercenaries and War: Understanding Private Armies Today*. Washington DC: National Defense University. December.

320 Mackie, Will. 2021. Soldiers of Fortune: Why US Mercenaries Should Not Be Legal. *War on the Rocks*. 26 August.

321 Jezdimirovic Ranito 2019.

322 Kinsey, Christopher & Chris Mayer. 2022. ‘A step too far: how the ICoCA actions could unintentionally help to privatize war (Part One).’ *Defence-In-Depth*. 31 January.

323 Author interview with current ICoCA board member in June 2022.

5.2.1 Main US regulatory actions on PMSCs

Following the 2007 Nissour Square Massacre, the US Government sought to improve oversight of the PMSCs it hires. The US Congress developed a framework for regulating contracted PMSCs in the 2008 National Defense Authorization Act (NDAA).³²⁴ It mandates that the US Department of Defense (DoD), in coordination with the US Department of State (DoS), develop a management system for monitoring and controlling the activities and standards of contractors in designated combat zones. Specifically, Section 862 requires that the Secretary of Defense establishes PMSC training and vetting standards for all US Government agencies contracting PMSCs in designated combat zones, develops a registry for contractor personnel and equipment (now known as SPOT-ES) as well as an incident reporting mechanism, conducts independent reviews and investigations of contractors when misconduct is identified, and makes agency-specific policy guidance readily available.³²⁵ This framework also added obligatory contract clauses to the Federal Acquisition Regulation System (FARS).³²⁶

Stemming from this framework, PMSCs must possess industry accreditation to compete for US Government contracts. This entails a certification called ANSI PSC.1 (known as ISO 18788 internationally), which certifies that a PMSC has a proven quality management system that is in line with national and international laws, including International Humanitarian Law (IHL). PMSCs are subject to external audits to acquire and maintain accreditation. In the United States, this accreditation is administered by an industry-oriented certification body that is run as a private company and is funded by the PMSC industry through membership fees. ANSI PSC.1 addresses corruption, bribery, and conflicts of interest: accredited PMSCs must maintain a code of ethical conduct that forbids corrupt practices; address conflicts of interest with subcontractors; provide staff training on ethical and

humanitarian issues that can include corruption; and keep auditable records.³²⁷

The Defense Department assigned several offices with oversight of PMSC contracts and issued updated regulations on inherently governmental roles that cannot be contracted out. The Office of the Under Secretary for Defense for Acquisition and Sustainment plays a key oversight role by issuing guidance on and monitoring the visibility of PMSCs.³²⁸ Geographic Combatant Commanders are tasked with developing area-specific requirements for the internal vetting, training, and conduct of contracted PMSC personnel.³²⁹ They must also track and monitor the personnel and weaponry deployed by PMSCs in their areas of responsibility, and investigate PMSC-related incidents when they occur.³³⁰ Individual military units and DoD offices must identify their contracting needs and ensure they do not include inherently governmental functions.³³¹ Contracting officers and their representatives assigned to these units or offices establish the contract clauses and monitor contracts with PMSCs.³³²

In 2008, the State Department, Defense Department, and USAID made a conscious effort to coordinate contracting processes in designated combat zones, culminating in the adoption of a joint memorandum of understanding.³³³ In such areas, US Government agencies can coordinate contracting requirements, harmonize vetting and data collection standards, and operate joint databases.³³⁴ Despite localized coordination efforts, different agencies nevertheless maintain different standards and protocol of contractor oversight at the departmental level. For example, the State Department requires that any PMSC contracted in a security role must be a member of ICoCA and accredited with ANSI PSC.1, whereas the Defense Department only requires the latter.³³⁵

There are also many offices within the State Department that oversee PMSCs. Two key offices are the Office of

324 Jezdimirovic Ranito 2019, p. 42.

325 *National Defense Authorization Act for Fiscal Year 2008*. Public Law 110–181. 2008.

326 *Federal Acquisition Regulations*. 'Subpart 25.3 - Contracts Performed Outside the United States.' 2021.; *Federal Acquisition Regulations*. '52.225-26 Contractors Performing Private Security Functions Outside the United States.' 2021.; *Defense Federal Acquisition Regulations Supplement*. '225.302 Contractors performing private security functions outside the United States.' 2021.; *Defense Federal Acquisition Regulations Supplement*. '252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.' 2021.; *Defense Federal Acquisition Regulations Supplement*. SUBPART 209.4 —Debarment, Suspension, and Ineligibility.' 2021.

327 ASIS International. 2012. *American National Standard: Management System for Quality of Private Security Company Operations-Requirements with Guidance*. ANSI PSC.1. Alexandria: ASIS International. 5 March.

328 Government Accountability Office (GAO). 2021. *Private Security Contractors: DoD Needs to Better Identify and Monitor Personnel and Contracts*. GAO-21-255. Washington DC: United States Government Accountability Office. July

329 DoD (US Department of Defense). 2009. *Instruction 3020.50: Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises*. Arlington: United States Department of Defense. 22 July.

330 *Ibid.*

331 GAO 2021.

332 *Ibid.*

333 This MoU lays out the interagency coordination and operationalization of the 2008 NDAA: it provides some basic common definitions, a classification structure for contracts in Iraq and Afghanistan, general authorities and responsibilities, as well as basic prescriptions for a joint contractor database. DoD (US Department of Defense). 2008. *Memorandum of Understanding Between the US Department of Defense and the US Department of State and the US Agency for International Development Relating to Contracting in Iraq and Afghanistan*. Arlington: United States Department of Defense. July; Jezdimirovic Ranito 2019, p. 117.

334 DoS (US Department of State). 2020a. *14 FAM 240 Contingency Operations and Critical Environment Contracting*. Washington DC: United States Department of State. 11 September.

335 DoS. 2020b. 'Worldwide Protective Services III (WPS III) Contract Solicitation.' *System for Award Management (SAM)*. Washington DC: General Services Administration. 6 February.

Acquisition Management of the Bureau of Administration and the Office of Overseas Protective Operations of the Bureau of Diplomatic Security (DS). The former is responsible for the administration of PMSC contracts while the latter operationalizes them.³³⁶ The Office of Protective Operations within DS oversees the implementation of Worldwide Personnel Protective Services (WPS) contracts, which covers countries like Afghanistan, Iraq, Israel (specifically, Jerusalem). Beyond providing security to US missions abroad, State Department bureaus such as the Bureau of Political Military Affairs and Bureau of International Narcotics and Law Enforcement oversee PMSC contracts to train foreign military, intelligence, and law enforcement personnel on a range of security issues. The Office of Foreign Assistance reports to Congress and the public on the total number of foreign forces trained.

PMSCs hired by the US Government are subject to special laws that extend US jurisdiction over criminal acts committed in designated combat zones. The Military Extraterritorial Jurisdiction Act of 2000 (MEJA) extends criminal liability to all civilian contractors working for the US Government in designated combat zones or on US military bases.³³⁷ The Uniform Code of Military Justice can also be used to punish contractor abuse in some situations³³⁸ However, no equivalent law exists for PMSCs contracted by the US Government outside of such contexts. Despite congressional efforts to pass a law covering US PMSCs outside of military operations (the Civilian Extraterritorial Jurisdiction Act, or CEJA), this proposed law failed ostensibly due to resistance emanating from the intelligence community.³³⁹

5.2.2 Key gaps in US oversight

There are several important gaps in US efforts to effectively oversee PMSC contracts with the US government. Staff reductions within both the US Departments of Defense and State pushed some PMSC oversight functions to less qualified personnel over the last few years. From 2017-2020, the Defense Department eliminated the Office of the Deputy Assistant Secretary of Defense (DASD) Program Support, which oversaw interagency coordination with other US government

agencies to ensure that DoD contractor policy and regulations were consistent with the overall US national security strategy.³⁴⁰ It reduced the main DoD policy office tasked with PMSC contracting in combat zones to two civilian staff (with contractor support).³⁴¹ As a result, PMSC oversight fell overwhelmingly on low level contracting officer representatives, who are often overtasked and inadequately trained for this role. It also led to a breakdown of critical oversight functions, such as the verification that senior commanders had developed and implemented PMSC contracting guidance in their areas of responsibility. A 2019 report by the State Department Inspector General also found that staff overseeing State Department contracts suffered from manpower shortages and undertraining.³⁴²

The creation of different standards and guidance for the Defense and State Departments poses challenges to effectively identifying and mitigating corruption risks both before and after a contract is awarded. The Defense Department contracting officer handbook provides extensive guidance on identifying and preventing various corrupt practices (conflict of interest, bribery, corruption, etc.) among contractors. Furthermore, internal Defense Department regulations describe several examples of contractor conflicts of interest that oversight staff can use. By contrast, the State Department contract officer guidance documents just briefly mention corruption types and provide scant guidance on corruption examples (see table 1). Furthermore, the State Department requires PMSCs to be a member of ICoCA and receive ANSI PSC-1 accreditation whereas the Defense Department only requires ANSI PSC-1 accreditation.

There continues to be key gaps in how the Defense and State Departments vet subcontractors. According to a review by the Government Accountability Office (GAO), 12 percent of PMSC personnel hired as security guards by the Defense Department were from companies that did not have proper certification for this role.³⁴³ The Defense and State Departments rely on prime contractors to do the vetting of second and third-tier subcontractors. US regulations require prime contractors to only show their first-tier subcontractors to the Defense Department when bidding for a government contract.³⁴⁴

336 Jezdimirovic Ranito 2019, p. 50.

337 *Ibid.*, pp. 41-42.

338 Singer, Peter. 2007. *Frequently Asked Questions on the UCMJ Change and its Applicability to Private Military Contractors*. Washington DC: The Brookings Institution. 12 January.

339 Interview with former senior DoD contracting official, 22 January 2021; Doyle, Charles. 2012. *Civilian Extraterritorial Jurisdiction Act: Federal Contractor Criminal Liability Overseas*. Washington DC: Congressional Research Service. 15 February.

340 Author interview with former senior DoD contracting official, 22 January 2021.

341 Author interview with former senior DoD contracting official, 22 January 2021.

342 Office of the Inspector General (OIG). 2019. *Inspector General Statement on the Department of State's Major Management and Performance Challenges*. OIG-EX-20-02. Washington DC: United States Department of State, pp. 21-22.

343 GAO 2021.

344 *Federal Acquisition Regulations*. '9.104-4 Subcontractor responsibility.' 2022; DPC (Defense Pricing and Contracting). 2017. *Defense Contingency Contracting Handbook Version 5*. Arlington: United States Department of Defense. April.

Table 1: Comparison of US Government guidance on anti-corruption measures by agency

	DoD Contingency Contracting Officer Handbook	DoD Contingency Contracting Officer's Representative Handbook	DoS Logistics Management Manual	DoS Contracting Officer's Representative Handbook
Guidance on Internal Conflicts of Interest	Y	Y	N	Y
Guidance on Contractor Conflicts of Interest	Y	Y	N	N
Guidance on fraud, waste, and abuse	Y	Y	Y	N
Guidance on pricing evaluation	Y	Y	N	Y
Guidance on gifts	Y	Y	N	Y
Guidance on agents	Y	Y	N	N
Defines corruption terminology	Y	N	N	N
Gives theoretical examples of corruption	Y	N	N	N
Gives real-world examples of corruption	Y	N	N	N
Mentions of conflict of interest	57	47	4	16
Mentions of kickbacks	10	10	0	0

Sources: US Department of State. 2022a. *14 FAH-2 Contracting Officer's Representative Handbook*. Washington DC: United States Department of State; US Department of State. 2022b. *14 FAM Logistics Management*. Washington DC: United States Department of State; Defense Pricing and Contracting. 2017. *Defense Contingency Contracting Handbook Version 5*. Arlington: United States Department of Defense. April; Defense Pricing and Contracting. 2012. *Defense Contingency COR Handbook*. Arlington: United States Department of Defense. September.

As seen in TigerSwan’s contracts in Afghanistan and Iraq, prime contractors can apparently fail to conduct effective due diligence. Relying on them to do these checks can create subcontractor dependence on the prime contractor, facilitate corruption, and hide conflicts of interest and dangerous partnerships. The 2021 NDAAs added a requirement for US Government contractors and subcontractors accused of malfeasance (criminal or administrative proceedings, fines, etc) to disclose their beneficial ownership.³⁴⁵ This new requirement could improve oversight, but it is still narrow.

It also appears there are flaws in the use of private organizations for accrediting PMSCs. As noted above, in order to contract with the US Government, PMSCs must possess an industry accreditation that attests to a code of ethics, quality assurance, and recognition of IHL.³⁴⁶

However, the private associations that administer such accreditation are funded in part by PMSCs, presenting clear conflicts of interest.³⁴⁷ This potentially waters down the value of such certification, as contentious PMSCs like TigerSwan are able to receive accreditation despite numerous legal issues.³⁴⁸ Furthermore, the international protocols endorsed by the United States are voluntary, non-binding instruments that have little impact on the PMSCs and clients that do not ascribe to them. For example, membership in ICoCA is stagnant, with only 66 PMSCs and 7 participating governments (none of which are conflict-affected, fragile states) in December 2021.

Lastly, the US government lacks an effective means for monitoring its overall use of PMSCs between government agencies and geographic areas of operation. The Defense Department is the only agency that generates

345 National Defense Authorization Act for Fiscal Year 2021. H.R.6395 § 885. 2021.

346 This accredited standard is known as ANSI PSC.1, and ISO 18788 internationally. Jezdimirovic Ranito 2019.

347 ASIS International. 2012. *American National Standard: Management System for Quality of Private Security Company Operations-Requirements with Guidance*. ANSI PSC.1. Alexandria: ASIS International. 5 March.

348 TigerSwan, LLC. 2018. *Statement of Conformance*. Apex: TigerSwan, LLC.

regular data on its use of PMSCs, though even this is fragmented as the various structures within the agency maintain their own datasets with differing definitions, indicators, and categorizations. This makes data aggregation on PMSC use impossible beyond mission-specific and geographic contexts. Furthermore, while most federal contracts are publicly reported through searchable databases like USASpending.gov, this database only shows the prime contractors. The lack of information on subcontractors obscures potential conflicts of interest in the subcontractor supply chain and conceals the true extent to which PMSCs receive US Government funding as subcontractors.

5.3 US Oversight of PMSCs Contracts with Foreign Entities

The US Government also regulates certain commercial sales by US PMSCs directly to foreign entities through both the State and Commerce Departments. These regulations largely focus on controlling the US export of military and sensitive technology, but there are specific instances in which US companies or US persons are required to seek US Government approval to export services. The US Government's focus on controlling the export of technology, however, has resulted in clear gaps in US oversight of PMSC sales of military training, combat activities, armed guarding, and intelligence services abroad. Ambiguity in how the US Government monitors and verifies the end-use of such services also weakens oversight. There are few, if any, checks on subcontractors of PMSC services by the US Government and hardly any relevant information on PMSC sales is provided to Congress in State and Commerce Departments' annual reports.

5.3.1 Main US regulatory actions on PMSCs

The United States has sought to reduce oversight of some PMSC exports, such as military training, while strengthening oversight of others, such as combat and intelligence services, to foreign clients over the past ten years. These initiatives have focused on the types of PMSC services that would require US Government pre-approval (a license) before export. The State Department provides oversight of US companies and US persons (US citizens or permanent residences) that want to export defense articles and services as defined in the International Traffic in Arms Regulation (ITAR; see below for definition) and the US Munitions List (USML). PMSC services that fall within the definition of defense services include training and advice to foreign militaries and



Dyncorp Police Trainers Prepare to set up Academy in Helmand in Southern Afghanistan (photo credit: John Moore/Getty Images)

repairing and maintaining weapons systems. DDTC has also narrowed the circumstances in which it requires US companies and US persons to obtain approval or a license through changes to the definition of brokering in ITAR. The Commerce Department regulates US companies that want to export certain surveillance technology and goods and services to military intelligence agencies.³⁴⁹

From 2011 to 2015, the State Department's Directorate of Defense Trade Controls (DDTC) proposed several changes to the ITAR definition of defense services.³⁵⁰ Notably, these proposed changes would have limited the circumstances in which PMSCs would need a DDTC license to sell military training and weapons maintenance services directly to foreign entities (see table 2). For instance, a US company would not need a license to provide training on the basic operations of a US weapons system to foreign entities under the proposed rule change. However, the definition changes would have also strengthened oversight of US persons seeking to provide direct combat skills to foreign governments or entities.

While these definition changes were ultimately not approved, the Defense Trade Advisory Group (DTAG), a group of defense industry and other experts that formally advises the DDTC, continues to push for similar changes. In a 2018 DTAG White Paper, they proposed

349 Descartes Visual Compliance. 2021. 'U.S. expands military end-use export control law to cover 'military intelligence' in countries of concern.' *The Export Compliance Journal*. 1 April.

350 US Federal Register, International Traffic in Arms: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions proposed rule by the State Department, June 3, 2015.

Table 2: Comparison of Current and Proposed Definitions of Defense Services

Current Definition	Excerpts from Proposed Definition in 2015
The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.	The furnishing of assistance (including training) to a foreign person, whether in the United States or abroad, in the production, assembly, testing, intermediate- or depot-level maintenance, modification, demilitarization, destruction, or processing of a defense article, by a U.S. person or foreign person in the United States, who has knowledge of U.S.-origin technical data directly related to the defense article that is the subject of the assistance, prior to performing the service.
The furnishing to foreign persons of any USML-controlled technical data, whether in the United States or abroad.	The furnishing of assistance (including training) to a foreign person, whether in the United States or abroad, in the development of a defense article, or the integration of a defense article with any other item regardless of whether that item is subject to the ITAR or technical data is used.
Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.	The furnishing of assistance (including training) to a foreign person, regardless of whether technical data is used, whether in the United States or abroad, in the employment of a defense article, other than basic operation of a defense article authorized by the U.S. government for export to the same recipient.
N/A	Participating in or directing combat operations for a foreign person, except as a member of the regular military forces of a foreign nation by a U.S. person who has been drafted into such forces.

Sources: US Department of State, International Traffic and Arms Regulations, 22 CFR 120.9, access online on June 16, 2022. US Federal Register, International Traffic in Arms: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions proposed rule by the State Department, June 3, 2015.

a new definition of defense services that would exclude US companies from applying for a license to train foreign entities on basic level maintenance of a US weapons system and the installation of any parts or components.³⁵¹ US companies or persons would also not need DDTTC approval to provide training to a foreign military based simply on their knowledge, training, or work experience. DTAG pushed to limit the definition of combat operations to just foreign governments rather than any foreign person.³⁵² In a separate White Paper in 2021, DTAG encouraged DDTTC to change the way defense companies must report any political contributions, commissions, and marketing fees in connection with a proposed export of defense articles or services from license-by-license reporting to annual reporting.³⁵³

The State Department reduced its regulations and coordination on arms brokering, weakening US oversight of some PMSC activities abroad. In 2019, the State Department exempted US PMSCs providing defense

services for US Government contracts from DDTTC export licensing requirements.³⁵⁴ In an earlier regulation change, the State Department also limited the circumstances in which individuals covered by ITAR would need prior DDTTC approval to connect buyers and sellers (often referred to as brokering) of some PMSCs services.³⁵⁵ For instance, a person or company would only need DDTTC authorization if they were brokering a foreign PMSC service to a foreign government or entity as Erik Prince did for the UAE in Somalia. In contrast, Erik Prince would not need approval to broker the sale of PMSC services originating in the United States with a foreign government.

By comparison, the Commerce Department has added new elements to its Export Administration Regulations (EAR) to improve oversight of US companies exporting cyber intrusion tools and goods and services to certain foreign intelligence agencies. The Commerce Department, for instance, announced a rule in October 2021, requiring US companies to obtain a license from

351 US Department of State, Defense Trade Advisory Group (DTAG), "Defense Services Working Group-White Paper," February 1, 2018, https://www.pmdtcc.state.gov/sys_attachment.do?sys_id=b104ef1bdbabd7803b1272131f961959

352 Ibi

353 DTAG propose to raise the threshold for when defense companies must do this reporting from a sale worth US\$500,000 to a sale worth US\$1million or more. They also suggested annual reporting on political contributions, commissions, and marketing fees instead of transactional reporting. US Department of State, Defense Trade Advisory Group, White Paper on Part 130 Reporting, May 20, 2021, https://www.pmdtcc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=5da285dc1be9b410d11ea02f54bcbe7

354 US Federal Register, "International Traffic in Arms Regulations: Transfer Made by or for a Department or Agency of the US Government," proposed by the US Department of State, April 19, 2019, <https://www.federalregister.gov/documents/2019/04/19/2019-07696/international-traffic-in-arms-regulations-transfers-made-by-or-for-a-department-or-agency-of-the-us>

355 US Department of State, International Traffic and Arms Regulations, 22 CFR 129, <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-129>

the Commerce Department's Bureau of Industry and Security (BIS) for the export of certain intrusion software or IP network communication surveillance to many countries.³⁵⁶ This requirement is in addition to other restrictions on the export of surveillance equipment found in the Commerce Control List.³⁵⁷ The Commerce Department also put restrictions on US companies working with US and foreign companies engaged in irresponsible cyber intrusion activities, such as the NSO Group (Israel), Candriu (Israel), Positive Technologies (Russia), and Computer Security Initiative Consultancy PTE. LTD (Singapore).³⁵⁸ In 2021, the Commerce Department strengthened regulations requiring US companies to seek a license before entering into or supporting business relationships with military intelligence agencies from ten countries such as Belarus, China, Iran, Russia, and Syria.³⁵⁹

5.3.2 Key Gaps in US Oversight

The State and Commerce Departments still face several major gaps in their efforts to effectively oversee US PMSC sales to foreign entities. These gaps cover US regulations, vetting, and congressional and public reporting. The State Department does not have the regulations to effectively control US companies and US persons that want to engage in direct combat activities abroad. It also appears to give short shrift to vetting proposed PMSC sales of military training and weapons maintenance to foreign governments or entities. There is no requirement for PMSCs applying for a license to list all of their subcontractors. The Commerce Department's new efforts to regulate US exports to certain foreign military intelligence agencies is laudable, but the regulations are limited to too few countries. The Commerce Department does not require PMSCs to obtain a license before providing armed security or police training to many highly corrupt officials, (see Table 3).

At the moment, there is no US law or regulation that requires all US persons to obtain US Government approval before engaging in combat activities in a foreign country.³⁶⁰ Former US military personnel are required to seek approval from the US Department of State's Bureau of Political and Military Affairs before working for a foreign government. However, the legal requirements for

applying for this type of approval are much weaker than the legal requirements for obtaining a license from DDTC to export defense services.³⁶¹ There is no requirement for US persons who have not served in the military to receive any type of State Department approval. This regulatory gap poses serious risks to US foreign policy interests. As seen in the case study on Knowledge Point, US citizens participated in or supported Emirati combat activities in Yemen and possibly Libya; at the same time, the United States has sought to avoid involvement in these conflicts. There is also a risk that Americans fighting in foreign conflicts could spark anger towards the United States or misperceptions about US involvement.

The State and Commerce Departments have several other large blind spots in overseeing US PMSCs working abroad. While DDTC requires US companies or persons to apply for a license to train a foreign military, there is no requirement for a US PMSC to train foreign law enforcement and intelligence services or provide personal or physical security for a foreign person or company unless the activities involved the export of USML-controlled technology, technical data, or classified information. In the latter case, there are serious risks of PMSCs intentionally or unintentionally injuring or killing foreign persons, as seen in Iraq. There is also a clear risk that US PMSCs could provide close protection for autocratic leaders and foreign kleptocrats. These scenarios could significantly increase animosity toward the United States and undermine US efforts to reduce corruption. The exemptions for training police and intelligence bureaus have also made it too easy for US PMSCs to provide training to strengthen the UAE's efforts to spy on political dissidents and American citizens.³⁶²

The DDTC has a comprehensive system to vet proposed sales of defense articles, but it does not appear that they assess any subcontractors that PMSCs may use in the sale of defense services. When US companies or persons apply for a license to export defense services, they must submit a TAA, which is essentially a contract that addresses the nature, scope, and duration of the contracted defense service, between the principal supplier(s) and the end-user. They must also submit a transmittal letter that explains the purpose and context of the agreement; relevant exhibits, appendices, annexes, and supporting documentation; and a letter from a

356 See this source for information on areas of surveillance related technology export controls. US Department of Commerce, "Index to the Export Administration Regulation," Bureau of Industry and Security, <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

357 <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

358 United State Department of Commerce. 2021. *Press Release: Commerce Adds NSO Group and Other Foreign Companies to Entity List for Malicious Cyber Activities*. Washington DC: United States Department of Commerce. 3 November.



359 US Department of Commerce, Control Policy: End-User and End-Use Based, Section 744.22, Export Administration Regulations, <https://www.bis.doc.gov/index.php/documents/regulations-docs/2343-part-744-control-policy-end-user-and-end-use-based-2/file>

360 Mackie, Will. 2021. 'Soldiers of Fortune: Why US Mercenaries Should Not Be Legal.' *War on the Rocks*. 26 August.

361 When applying for a DDTC license, for instance, a US company must certify that it has not been indicted or convicted for a full range of US laws and must provide information on foreign buyers and subsidiaries.

362 Fisher, Marc, Ian Shapira & Emily Rauhala. 2018. 'Behind Erik Prince's China venture.' *The Washington Post*. 4 May; Bing & Schechtman 2019.

Table 3: Which PMSC Services Require a US Government Export License?

Which PMSC Services Require a US Government Export License?	
 Services that require a US government license	 Services that DO NOT require a US government license
Military training, weapons maintenance and repair, how to use defense articles, support to military intelligence agencies and 10 countries such as China and Russia, and the transfer of technical data or classified information	Intelligence training and services for most countries, armed protection of people and property, police training, how to use semi-automatic firearms, and direct combat activities

representative designated by the supplier certifying the supplier’s good legal standing and contracting eligibility. All US companies supporting the contract must co-sign the TAA and the principal applicant must declare any parent/subsidiary relationships with any of the other cosignatories. However, the principal is not required to disclose subcontractors – foreign or domestic – unless they are being licensed to directly use USML-controlled technology.³⁶³

As mentioned in the previous sections on US PMSC contracts with the US Government, subcontractors are a critical conduit for embezzlement, self-dealing, and bribery. DDTC already scrutinizes other key pathways for corruption, such as offset arrangements, commissions, fees, political contributions, foreign ownership, and brokering. This scrutiny must extend to subcontracting as well, regardless of whether the subcontracted entities are foreign or domestic. In general, ownership information should be required of all TAA parties – including subcontractors – as the foreign ownership of a company is relatively easy to obscure through convoluted ownership chains. In some countries, the purchasing government may require the PMSC to hire a politically connected subcontractor as a way to channel government funds to a political leader’s close supporters.

DDTC employs Blue Lantern verification checks to assess risks in proposed defense sales, but there is no evidence that they conduct these checks for defense services. A Blue Lantern check verifies that the names listed in a proposed sale are not on the DDTC’s watch list, which includes over 200,000 names of suspect

suppliers, brokers, and buyers.³⁶⁴ DDTC may also send State Department officials to the purchaser’s or recipient’s address in a foreign country to verify information given in the license application. They could also check with the recipient during or after the delivery to verify compliance with US regulations and contract requirements. However, DDTC does not publish information on Blue Lantern checks for defense services in recent annual reports to Congress.³⁶⁵ These checks would help prevent PMSCs from participating in unauthorized activities.

Finally, Congress does not receive the critical information it needs to oversee US PMSC exports. DDTC sends annual reports to Congress regarding all US defense exports for that year.³⁶⁶ These reports provide Congress and the public with summary information on the types of exports DDTC has authorized. While it is possible to see the categories of weapons approved for countries, there is very little disaggregation regarding approved defense services. The report only shows a total dollar amount of authorized agreements (license manufacturing, offshore warehousing, or defense services).³⁶⁷ This may be in part why US Senator Bob Menendez (D-NJ), Chairman of the US Senate Foreign Relations Committee, proposed last year an amendment to the National Defense Authorization Act for FY2022 for the State Department to send a report on all authorizations of US persons engaged in mercenary activities abroad.³⁶⁸ This amendment was not included in the final law, but there will likely be new efforts in the NDAA for FY2023.

363 *Ibid.*, pp. 18-19, 78.

364 Goodman, Colby. 2019. *Holes in the Net: US Arms Export Control Gaps in Combatting Corruption*. London: Transparency International – Defence & Security. November.

365 United States Department of State. 2020. *FY 2020 Report to Congress on End-Use Monitoring of Defense Articles and Defense Services 22 USC 2785(c): End-Use Monitoring of Defense Articles and Defense Services*. Washington DC: United States Department of State.

366 https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=06f22f571be4bc90c6c3866ae54bcb3e

367 See this example of a State Department annual report on exports defense articles and defense services. US Department of State, Annual 655 Report, https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=06f22f571be4bc90c6c3866ae54bcb3e

368 SCFR (US Senate Committee on Foreign Relations). 2021. *Chairman Menendez Announces NDAA Amendments to Hold Turkey and Azerbaijan Accountable*. Washington DC: United States Senate. 4 November.

6.0 CONCLUSION

The US-led wars in Afghanistan and Iraq irreversibly changed the PMSC industry and the way the United States and other governments conduct foreign military operations and foreign policy. US PMSCs grew and expanded their services to meet the demands of military operations and counterterrorism efforts around the world, providing extensive support for intelligence analysis, weapons maintenance, military and police training, as well as physical security. They are now integral parts of many US operations and efforts to strengthen foreign military and police forces. Yet US PMSCs have not scaled back their global services since the US Government has downsized its operations around the world. Instead, estimated annual sales are expected to grow to more than US\$80 billion in the near future. They are also providing between 80 to 90 percent of their sales to governments and entities outside of the United States and NATO allies. Many foreign PMSCs are expanding their sales and services as well. These changes have introduced significant new challenges to curbing corruption and conflict dynamics, but these challenges can be minimized if the United States reprioritizes oversight of PMSCs.

As US PMSCs seek new opportunities to maintain or gain profits, they are providing their services to countries that have weak institutional structures and processes for curbing corruption in the defense sector. A case in point is the UAE's massive push to hire foreign PMSCs and former US military, intelligence, and law enforcement contractors to strengthen its domestic military and intelligence capabilities which presents significant risks. These include enhancing the capabilities of the Emirati government to engage in foreign conflicts and spy on dissidents, including US citizens. US companies or their foreign subsidiaries are also supporting repressive governments in Africa with surveillance techniques and physical protection of corrupt actors. The proclivity of some PMSCs to exaggerate threat perceptions or ignore conflict dynamics to win or maintain a contract – as it appears happened with TigerSwan – is another major risk and something the US Government must monitor.

The US Government, however, does not have the tools it needs to oversee US PMSCs working with foreign clients. The laws, regulations, and policies used by the State and Commerce Departments to oversee PMSCs are largely focused on controlling the export of military goods rather than services. This focus needs to be expanded to include key PMSCs services. There are still large loopholes in US regulations for PMSC contracts to foreign governments or entities for combat activities, law enforcement and intelligence service training, personal or building security, and surveillance support. There are very limited efforts to ensure US PMSCs engage in corrupt actions while providing military training or weapons maintenance to foreign governments. Some US officials and industry experts argue that one can effectively

control PMSCs services by controlling the export of technology. PMSCs, however, can still provide dangerous services without exporting controlled technology by using foreign technology already in the country. Focusing on the technology can also hamper US law enforcement investigators trying to establish clear violations of US export regulations.

The US Congress increasingly seeks to enhance oversight of PMSC sales to foreign governments, but these efforts need to be expanded. Congress was instrumental in pushing the Commerce Department to adopt new regulations on US sales of goods and services to military intelligence agencies in a select few countries such as China and Russia, which improved US oversight. Some congressional members also sought reports from the State Department on certain types of PMSC exports abroad, but apparent concerns about the release of proprietary information that could impact companies' competitiveness often prevent the release of such information or reports. This challenge can be overcome by increased pressure from Congress or with new legislation. Congress must reverse the trend within the State and Commerce Departments to only provide broad summary information on exports of services, which essentially provides limited or no meaningful information on PMSC sales to foreign countries.

The US policy community has given significant attention to the risks of US PMSCs inflating costs and attacking unarmed civilians when PMSCs contract directly with the US Government. However, there is less focus on the risks of PMSCs fueling corruption in foreign countries or on side businesses conflicting with US interests.



In one case, a US PMSC encouraged local companies to engage in corrupt activities to receive US Government funds by requesting kickbacks from the local companies. In the case of TigerSwan, it partnered with an Iraqi official who reportedly moved over US\$170 million outside of Iraq through an elaborate corporate mechanism that a financial services provider found “suspicious.” There are also concerns about PMSC commercial activities in countries where they are associated with the US Government. US PMSCs have also enhanced foreign military and police units’ combat skills, which can be used to repress minorities or political opposition groups. These actions too often contribute to corruption dynamics that inflame or perpetuate conflicts. They can also increase resentment towards the United States.

The US Government increasingly recognizes the critical role of corruption in fueling global instability. However, it has yet to fully develop or implement laws, regulations, and policies needed to oversee PMSCs acting on its behalf with foreign governments. At the root of the problem, the US Government relies too much on PMSCs to regulate themselves and follow US and international laws and standards. The US Government needs to take more ownership over PMSC oversight. The interests of PMSCs do not always align with US foreign policy interests. The Defense and States Departments have increasingly pushed oversight of PMSCs performing risky national security and foreign policy roles to under-trained and understaffed personnel who may be incentivized to ignore problems for advancement within the US Government. A critical way to remedy this situation is by elevating the oversight of PMSCs to senior officials within the Defense and State Departments and by giving all officials the needed tools and information for oversight. These senior officials must also work with other governments and multilateral institutions to strengthen oversight of PMSCs.

US Government efforts to address key challenges emanating from PMSCs will not be fully effective unless they push for stronger foreign national laws on PMSCs. Many US PMSCs hire employees from countries all over the world, including from Africa, Asia, Europe, and Latin America. US individuals are also working for PMSCs in the UAE. However, many countries from these regions have not signed the Montreux Document nor participate in the ICoCA mechanism. These gaps can make it more difficult and riskier for US PMSCs to vet foreign nationals working for them. US persons working for non-participant countries run more risks of engaging in corrupt actions or human rights abuses. The United States can address these gaps by pushing more countries to use the ICoCA certification process and by working within the UN IGWG on PMSCs’ efforts to establish a new international framework for PMSCs.

The activities of Russian PMSCs such as the Wagner group have ignited new efforts to create an international framework for regulating PMSCs within the UN IGWG on PMSCs. Some countries (within Europe in particular) are increasingly open to such a framework, and intergovernmental dialogue about regulating PMSCs is increasingly fruitful. The United States must rejoin these UN discussions to address the challenges mentioned in the previous paragraph and to help put pressure on the actions of the Wagner Group to better comply with international legal obligations. While discussions within the UN system are still at an early stage, the United States could use this opportunity to increase support for national and international restrictions on using PMSCs that have engaged in human rights abuses and corrupt actions. This effort could also help level the playing field for US PMSCs operating in an increasingly competitive environment with foreign actors.

7.0 RECOMMENDATIONS

7.1 Building a Stronger US Government Contracting Regime for PMSCs

7.1.1 For the Executive Branch

- Strengthen senior-level US Government oversight of PMSCs.** The restructuring and downsizing of offices and personnel within the Defense Department weakened key US oversight functions of PMSCs contracts with the Department. The Defense Department should re-appoint a senior official to oversee policy guidance, coordination within the Defense Department and other US Government agencies, and full implementation of legal and regulatory requirements regarding PMSC oversight. This official could also support efforts to strengthen international standards and foreign national laws on PMSCs. It makes the most sense to be within the Office of the Under Secretary for Defense for Acquisition and Sustainment. The State Department should also appoint or select an official within the Bureau of Management to help oversee State Department contracts with PMSCs. Agencies should assess their contract management needs – particularly as the US now transforms its role in the conflicts of the past two decades – and establish a baseline of personnel needs and indispensable roles to ensure contracts are properly managed and enforced.
- Enhance training and guidance on corruption risks and counter measures.** While the Defense and State Departments provide materials, guidance, and training that specifically identify and address the role of and opportunities for corruption in government contracting, the State Department policy guidance lacks sufficient information to identify and mitigate corruption. The Defense Department’s policy guidance includes robust examples on the many ways contracting officers may see corruption. Contracting Officer and Contracting Officer Representative handbooks should be updated to provide a wider typology of different forms of contractor corruption as well as guidance on how to identify and address these practices. Contract oversight bodies must train their
- staff to recognize the detrimental effects of security sector corruption in host nations and in the domestic establishment. The State Department should also use this updated guidance in reviewing all types of government-to-government sales of PMSCs services.
- Require reporting on beneficial ownership and subcontracting.** Extensive supply chains provide corrupt contractors with opportunities to siphon off funds through obscure subcontractors. Subcontractors can serve as fronts for bribes or self-dealing or be connected to actors working against US national security interests. Prime contractors should be required to report on all subcontracting when submitting invoices. At the very least, this should include the names of all subcontractors (including those beyond the first and second tier), their business registration and beneficial ownership status, as well as the itemized value of subcontracted services. The definition of beneficial ownership as included in the Corporate Transparency Act should be used.³⁶⁹ The prime contractors should also submit all information on all potential subcontractors when contractors are submitting their bids for new US contracts. The US Government should make this subcontractor information publicly available on the USAspending.com database, which currently only includes information on prime contractors and excludes subcontractors. Contract oversight bodies should take full advantage of the 2021 NDAA which mandates a beneficial ownership database maintained for all US-registered companies.
- Improve coordination and database management of PMSC contracts.** The Defense and State Departments have many offices that hire and oversee PMSCs for various needs. Without coordination, this results in different approaches and mechanisms to oversee and manage PMSCs contracts with the US Government. Many of these offices maintain databases with different information and metrics. These differences make it harder for contracting officers from various offices to assess the risks of hiring potential PMSCs because they cannot see potential problems with other US offices. As such, a PMSC that could be disqualified from competing for one contract with one office could qualify for another office. The Defense and State Departments also have

369 Corporate Transparency Act, Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, January 1, 2021). Section 6403 in the CTA enacted section 5336 in title 31 of the U.S. Code, requiring beneficial ownership transparency. <https://www.law.cornell.edu/uscode/text/31/5336>

difficulty pulling together reports on department wide use of PMSCs. US agencies should jointly assess the utility of developing interagency, interlevel databases as a means of enhancing information sharing on suspect contractors and vendors.

7.1.2 For the Legislative Branch

- Monitor the implementation of anti-corruption measures in NDAA contracting requirements.** The 2008 NDAA mandates training and vetting requirements in private security contracting. These requirements must be updated and integrated with subsequent understandings of the national security threat posed by corruption as well as the evolving nomenclature and skillset of the PMSC field. The 2021 NDAA provides a robust new tool for combating corruption in the form of a beneficial ownership database. Congress can make the most of this critical resource by studying its use in government contracting processes. Furthermore, the 2008 NDAA requirements are specifically geared toward private security functions. The scope of these requirements must be expanded to cover the services integral to the PMSC industry, such as military training and consulting.
- Mandate agency reporting on PMSC use.** US agencies are legally required to report on certain critical national security aspects, such as defense exports. Congress could require US government agencies – namely Defense and State Departments – to provide annual reports on the value, scope, and composition of PMSCs contracted overseas. At least one DoD geographic combat command – CENTCOM – does so through quarterly reports on PMSC contractor levels in Iraq, Syria, Afghanistan, and throughout its area of operation. Such reporting can be expanded to include the firms hired – particularly those of US origin – as well as the values of their contracts. Other combatant commands should provide similar reports, as well as the various bureaus of the State Department that hire PMSC services. Finally, USAID should provide reporting on the degree to which its funding goes to private security subcontracts.
- Expand contract transparency.** The US Government already maintains a useful and accessible database on its contracting activities – USAspending.gov. This website is an invaluable investigative tool and means of monitoring the direct contracting history of particular firms. However, this

database maintains a critical blind spot in terms of subcontracting. Congress can legislate contract reporting requirements relating to subcontracts, which could be accommodated on this public database. This would provide a critical level of visibility into how public funds are disseminated beyond the principal contract awardee and would discourage abuse. This database could also be improved by providing the initial call for proposals/invitation to bid associated with each contract.

7.2 Bolstering US Oversight of PMSCs Sales to Foreign Governments

7.2.1 For the Executive Branch

- Expand oversight of US companies or persons engaged in combat activities abroad.** The US Government has gaping holes in its oversight of US PMSCs that contract directly with foreign governments or persons to engage in combat services. The State Department should urgently work to propose a rule change to International Traffic in Arms Regulations (ITAR), requiring US companies or persons to apply for a DDTC license if they wish to participate in combat operations abroad for a foreign person. This license requirement should include in the definition of combat activities US companies or persons services in support of strategic, tactical, and operational types of combat activities. This definition could also include intelligence gathering, logistics, and cyberwarfare activities in support of combat operations. DDTC should also add policy guidance to indicate that in most cases a license would be denied.
- Strengthen scrutiny on subcontracting and beneficial ownership.** The DDTC requires US companies and persons to submit detailed information when applying for a defense export license. As part of the Technical Assistance Agreement (TAA), DDTC only requires foreign-owned signatories to disclose the nature of their ownership; the same should be required for US signatories. Furthermore, DDTC should stipulate that license applications include information on all potential subcontractors, their business registrations, and beneficial ownership status, as well as the itemized value of subcontracted services. Once again, the

DDTC should take full advantage of the 2021 NDAA, which mandates a beneficial ownership database maintained for all US-registered companies. The definition of beneficial ownership as included in the Corporate Transparency Act should be used.³⁷⁰

- **Elevate Blue Lantern checks on defense services.** Over the past few years, there have been several examples in which US PMSCs provided risky sales to countries in the Persian Gulf. This includes the US company that trained the Saudi operatives who later murdered Jamal Khashoggi. DDTC should revisit its risk assessment methodology for selecting when to conduct a Blue Lantern check and determine what types of defense services should be included in these checks. This risk assessment review should factor in the likelihood that PMSCs could fuel corruption, conflict, and human rights violations. The proposed export of defense services to Saudi Arabia and the UAE should receive particular scrutiny, including the connections between the PMSC requesting a license and other PMSCs in the country to prevent supporting nefarious actors.
- **Push the US PMSC industry to adopt stronger anti-corruption and transparency measures.** Some large US PMSCs score relatively low on supply chain transparency, conflicts of interest, and oversight of agents and joint ventures, according to Transparency International's Defence Companies Index. These low scores mean higher risks of PMSCs unknowingly working with individuals or companies who have previously engaged in corrupt or illegal actions. These companies also run the risk of the US Government being misled or defrauded. The State and Defense Department should work with the PMSC industry to strengthen company compliance systems and transparency in these areas and others to reduce corruption risks. They should also press companies to adopt an explicit policy of non-retaliation against whistleblowers in all circumstances, as well as establish accessible whistleblowing channels and regularly monitor their use, at a minimum.³⁷¹ The United States must also continue press defense companies to provide license-by-license reports to the US Government on political contributions, commissions, and lobbying of foreign clients

7.2.2 For the Legislative Branch:

- **Expand export license requirements for armed security and intelligence service exports (outside of direct support to combat operations).** Given the risks to US national security from companies providing armed security and intelligence services abroad, Congress should explore ways in which the State and Commerce Departments could strengthen oversight of US PMSCs contracts with foreign governments and entities with weak anti-corruption standards and practices. Current Commerce Department regulations do not require US companies or individuals to apply for a license to actively engage in types of surveillance and counter surveillance for foreign intelligence agencies in most countries. Congress should also consider expanding oversight of US companies that provide protective services to foreign politicians or elites accused of corruption, particularly in fragile or conflict-ridden countries.
- **Enhance reporting on exports of PMSC services.** DDTC publishes annual reports to Congress on authorized exports of defense articles and services as well as Blue Lantern verification checks. These reports, often referred to as the 655 reports, provide critical insights into the scope and impact of the US arms trade. Yet the information on defense services is severely limited by over-summarization through aggregating distinct categories together, such as combining data on sales of license, manufacturing offshore warehousing, and defense services into one amount for each country. This aggregation prevents Congress and the public from performing any type of oversight of PMSC services. Critically, it is nearly impossible to monitor the types of defense services exported to specific countries. Congress has also struggled getting basic information on specific types of defense services sales abroad. Several years ago, DDTC provided more detailed reports on exports of defense services. DDTC should expand on these previous reports and list the specific types of defense services by country.

370 Corporate Transparency Act, Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, January 1, 2021). Section 6403 in the CTA enacted section 5336 in title 31 of the U.S. Code, requiring beneficial ownership transparency. <https://www.law.cornell.edu/uscode/text/31/5336>

371 Transparency International Defence and Security, "Defence Company Index Key Findings," November 2021, <https://ti-defence.org/wp-content/uploads/2021/11/DCI-Key-Findings-Report.pdf>

- **Pass the Civilian Extraterritorial Jurisdiction Act and Mandate Reporting on Enforcement of the War Crimes Act.** The US relies on MEJA to hold PMSCs and other contractors assigned to support US military operations accountable. However, no comparable law exists outside of military operations, meaning that PMSCs working for the US Government in other contexts operate in a gray area of accountability. Additionally, the investigation of alleged war crimes by US contractors has historically not been prosecuted under the War Crimes Act even though that statute provides jurisdiction over such crimes no matter where they occur. Congress should revive and reassess the Civilian Extraterritorial Jurisdiction Act so that PMSCs operating outside of US military operations are held to a similar degree of accountability.
- **US persons comply with ICoC standards.** Congress should legislate that any US PMSC must comply with ICoC standards at all times, regardless of whether the PMSC is contracting with the US Government or any other entity. Congress should further legislate that any US citizen or permanent legal resident can only be employed by PMSCs that are in full compliance with ICoC standards. Anyone employed, subcontracted to, an agent of, or otherwise conducting PMSC activity with firms which do not meet these standards should be considered to be engaged in mercenary activity.

7.3 Creating Stronger International Controls on PMSCs

- **Share intelligence information on PMSCs engaged in illicit activities.** The activities of the Wagner Group in many countries in Africa and other parts of the world are increasingly alarming. The United States should consider working bilaterally or in small groups with countries that share these concerns to identify ways to help stem their egregious human rights abuses and corrupt activities. There may be other equally concerning PMSCs engaged in similar

behavior. This effort could also encourage more countries to adopt targeted sanctions and restrictions on those individuals that are financing and supporting bad actors. The United States should also consider expanding the number and seniority of US embassy staff in key US partner countries in Africa.

- **Encourage more countries to fully implement the International Code of Conduct for PMSCs.** The International Code of Conduct offers strong standards for regulating PMSCs. As a strong supporter of the ICoCA, the United States is in a good position to encourage other US security partner countries that are increasingly using PMSCs – such as the UAE, India, Israel, and Egypt – to agree to and adopt these standards as a means to expand controls over PMSCs in these countries and increase funding for ICoCA. At the same time, the United States should explore ways to encourage more US companies to join ICoCA by requiring US PMSCs seeking a contract with the Defense Department to be an ICoCA member. There is also a critical need to increase funding for ICoCA's efforts to monitor potential problems with ICoCA membership companies and support strong company whistleblower protections.
- **Rejoin the UN Intergovernmental Working Group on PMSCs discussion on establishing an international framework on PMSCs.** The Working Group's renewed efforts to establish an international framework on PMSCs provides the United States with another key opportunity to push foreign countries to establish stronger national controls on PMSCs. The United States can raise some of the concerns they have about the actions of foreign PMSCs, by calling for clear restrictions on states hiring PMSCs with a record of engaging in corrupt activities or human rights abuses. Critically, the United States should encourage the Working Group to incorporate a broader definition of PMSCs to include intelligence and cybersecurity activities. The United States could also use this opportunity to talk about some of the ways the PMSC industry has grown and diversified and the challenges the US Government has faced in regulating US PMSCs.

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