

Blackwatergate: Changing the Piper's Tune

James Cockayne

Governments can do more to shape private military contractors' behavior. And they are beginning to, with international talks in New York making considerable progress.

For anyone following the story of private security companies in Iraq and Afghanistan over the last few years, the recent scandal around the alleged killing of Iraqi civilians by Blackwater contractors has been a long time coming. Yet with all the attention focused on what Blackwater personnel did or did not do, and whether or not they can be held accountable for it, one crucial question is being overlooked: exactly what did the government contract them to do? If Blackwater was playing the tune it was paid to play, who should we be holding accountable, exactly? The piper, or those that contracted him?

“Blackwatergate,” as it is now being dubbed, is not just a story of gun-toting cowboys running amok in a modern-day Wild West, as many would have us believe. The reality is that most of the private security companies in Iraq have signed highly detailed contracts with the national governments, many running into the hundreds of pages. Even the contractors involved in the Abu Ghraib atrocities were under such a contract. The problem is that contracts have imposed only weak restraints on contractors' behavior, particularly regarding use of force and respect for human rights.

Lax monitoring and enforcement are partly to blame. The announcement by the State Department recently of new arrangements to monitor Blackwater's performance is an admission as much. And the bill passed by the House of Representatives extending federal criminal jurisdiction to a wider group of battlefield contractors is certainly a welcome clarification of enforcement arrangements.

But contractual enforcement and criminal remedies alone are inadequate. Few federal prosecutors will be inclined to spend time and resources gathering evidence of contractor misconduct in a war-zone, when they could be taking on more straightforward local cases. And even if such investigations and prosecutions do emerge, they will only deal with misconduct after it has already occurred, injuring innocent Iraqis, innocent U.S. taxpayers, and America's national interest. Our goal should be to prevent such misconduct even before it occurs – not to wait until it has taken place and then react.

This is where contracting comes back in. Governments use contracting standards with great sophistication to shape the behaviour of service-providers in many areas affecting the public interest, from healthcare to prisons. In some cases they even create rights for affected third parties to enforce contractual standards directly against the service-provider, hitting them where it really hurts: in the hip pocket.

Government contracts with private security companies are rudimentary by comparison. They say little about the standards that govern contractors' use of force, and even less about their obligations to train their personnel to respect the law that applies to them. They almost never give affected parties enforcement rights, or create mandatory penalties

for the failure of personnel to respect human rights. Is it any wonder that contractor personnel are sometimes undisciplined, when their employers are so weakly disciplined by the governments that employ them?

Tragically, this may be the ‘upside’—of sorts—to Blackwatergate. While governments could believe that the real costs of contractor misbehaviour were being externalized, there was little incentive for them to impose more stringent contractual standards, and even less incentive for many contractors to accept them. In the wake of Blackwatergate, it is becoming all too clear how such contractor misconduct eventually comes back to hurt whoever is footing the bill—and the image of the broader industry.

As a result, many governments and private security companies are ready to talk about more stringent contracting arrangements. Last week, the International Peace Academy, in cooperation with the Swiss government, convened consultations among government contracting experts from the U.S., Europe, and beyond, to identify good practice in government contracting of private military and security companies. The talks made considerable progress, identifying good practice in the areas of vetting contractors and their personnel, training, contract management and oversight, and contract enforcement.

While there is still a way to go before these practices are concluded, this is a positive sign that the private military and security industry is maturing. But we are still a long way from governance arrangements that would restore the public’s fast-ebbing trust in this industry. Yet without ongoing attention from civil society and the mainstream media, this issue could all too easily slip off governments’ agenda. If we want to ensure the pipers are playing a better tune, talking to those that are paying them is a good place to start.

James Cockayne is an Associate at the International Peace Academy.