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**CONTRACTORS:  
THE EVER INCREASING ROLE IN TODAY'S WARFARE**

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**Introduction**

The issue of private contractors, as is the commonly used phrase, has come to the forefront of news due to incidents which make reference to companies, namely, Blackwater. Due to these occurrences, as well as various others to be discussed within the confines of this paper, debate has heated up as to whether private contractors are an ethical and viable option on today's battlefields. The main example used in this paper will be the current war the United States has waged in Iraq. As war becomes more complex and technologically advanced, one must wonder whether private companies will be able to do a more efficient job than state run entities. However, raising this issue also raises a number of others. Are contractors threatening the sovereignty of states? What potential problems may arise when one has a dependence on armies which do not answer to a nation's government, rather, the bottom line in the corporate world? Is it ethical to pay corporations to send private

civilians in place of military personnel, and who are these private civilians are answering to, international law or corporate bylaws?

Let us begin with the fundamental question of terminology. First, there is a large difference between mercenaries and contractors, as well as many similarities. The United Nations has a very specific definition of mercenary (Table 6), but falls short of defining contractors. As Mr. Brady Kiesling, diplomatic advisor, put it “all mercenaries are contractors, but not all contractors are mercenaries” (Personal Communication, 2008). The definitions of these two words are often used interchangeably, yet, in other instances seem to be miles apart. When employing the term “mercenary”, one thinks of hired killers which were used not only in ancient times, such as the Vikings and Mongols, but also more recently, such as in numerous wars in Africa (Table 3) and former Yugoslavia. Contractors are also used for other various tasks, not exclusively on the battlefield. During the Revolutionary War in the United States, contractors were used to tend horses and transport food and supplies.

In order to clarify the similarities and differences between contractors and mercenaries, definitions of both must be thoroughly understood. According to dictionary.com, a mercenary is one who is “working or acting merely for money or other reward; venal”(Dictionary.com, 2008). A contractor is defined by the same source as “a person who contracts to furnish supplies or perform work at a certain price or rate” (Dictionary.com, 2008). Now, it would seem that these two definitions are parallel. However, psychologically speaking, the term “mercenary” has a negative connotation, whereas the term “contractor” seems to be more palatable. The foremost difference between these two terms is very modern indeed. The mercenary has no one to answer to, and is hired purely for self gain. On the other hand, a contractor has

the corporate world to answer to, but is still working purely for self-gain. Private Militarized Firms, PMFs, also known as Private Military Security Companies, PMSCs, are in charge of hiring and must answer to a Board as well as their general stockholders. Therefore, it is imperative for these PMFs to maintain legitimacy and integrity in order to be hired. The basic structures of these two differing forces, mercenaries and contractors, are alarmingly similar, and yet miles apart (Tables 1 + 2).

It is necessary to understand the increasing role of private military firms, as stated by Mr. Jose Luis Gomez del Prado (2008), President of the Working Group on the use of mercenaries as means of violating human rights and impeding the rights of peoples to self-determination, for the United Nations, is that, “ Private military and security companies are gradually taking over functions that, until recently constituted the basis of the sovereignty of the State as the single holder of the monopoly over the legitimate use of force”(Del Prado, 2008). Being that the role contractors are playing is ever increasing, it is necessary for the world to understand what it is they are being hired to do. This paper is going to explore the combatant contractors, those being used to train, equip and fight for the client. Hereafter, the “client” will be used to describe the person hiring the contractors. The contractor is, self-explanatorily, the person being hired by the client. The companies that hire these contractors will also be addressed as they are the ones who are pulling these private citizens’ expertise together.

## **History**

Contractors have been seen as far back as the Roman and Ottoman Empires, some even before that. As Jeffrey Herbst wrote in The Regulation of Private Security

Forces, “[t]he private provision of violence was a routine aspect of international relations before the twentieth century”(Herbst, 1997). According to Larry Taulbee, author of Reflections on the Mercenary Option, the first “official historic reference ... of mercenaries [are those] who served in the army of King Shulgi of Ur (ca. 2094 – 2047 B.C.E.). ... [An example is] the battle of Kadesh (1294 B.C.E.) ... the first great battle in history of which we have any detailed account. ... In this fight... the Egyptians fought the Hittites [and] the army of Pharaoh Ramses II included units of hired Numidians”(Singer, 2003). In the Bible, the tale of Pharaoh chasing the Israelites out of Egypt included hired foreigners, while David (when ...on the run from Saul) was employed in the Philistine army of Achish. Alexander the Great also utilized hired forces. His forces evolved primarily from Macedonian forces into one primarily made up of hired soldiers. This army also contracted a navy of 224 ships from the Phoenicians.

Rome was in a similar position, although some believe otherwise. Many say that Rome was known for having a large citizen army. However, this was not always the case. Hans Delbruck, author of History of the Art of War: Within the Framework of Political History, states that “even during the Republic period, [Rome] relied on hired units to fill such specialties as archers and cavalry. ...They...usually recruited...Numidians, Balearics, Gauls, Iberians and Bretans during the Punic Wars. ...As the empire grew ...towards the end of the third century C.E. the imperial army was more Germanic than Roman” (Delbruck, 1975). Greece, which was known for such patriotic armies as the Spartans, made up only of citizens, was also available for hire. The “most notable ...[was] Xenophon’s famous “Ten Thousand” [which] was a unit of out-of-work Greek soldiers who were hired to fight in a Persian civil war (401-



400 B.C.E.). ...When their employer, a contender for the Persian crown, was killed in the initial battle, they were stranded without pay and had to fight their way back across Asia Minor” (Singer, 2003).

Jumping ahead in time to the 17<sup>th</sup> and 18<sup>th</sup> centuries, soldiers for hire became out of vogue and were no longer the preferred military force. The Treaty of Westphalia in 1648 solidified the age of sovereignty and no longer were armies loyal to a single ruler, or waiting to be contracted out, but wished to fight for their nation instead. The importance of sovereignty became apparent as the leading concept of nationalism emerged stronger than ever. The major turning points were the French Revolution and the Napoleonic wars which signaled the end of hired soldiers playing a serious role in warfare, at least for the next two centuries. People fought for their countries and for their pride with patriotism in their hearts. The role of profiteering from war was looked down upon and mercenaries were delegitimated under these new conceptions, although it must be noted that mercenaries were still used from time to time, just not as frequently. One of those rare times is illustrated when “Great Britain hired nearly 30,000 German mercenaries to help fight the rebellious American colonies” in the late 1700s (European Security and Private Military Companies: The prospects for Privatized “Battlegroups”).

Fast forwarding to the twentieth century, during World War I and World War II, the presence of mercenaries was lacking due to the fact that “the conflict was global and required the armed forces of the nations under attack to use what ever tactics necessary to avoid capture and submission” (Rizwam, 2004). However, after World War II, “a large number of Germans ended up fighting for their old adversaries in the

postcolonial wars (for example, more than 80,000 Germans, mainly ex-Waffen SS, served with the French in Vietnam and Algeria)” (Singer, 2003). The Central Intelligence Agency, CIA, once called the American company Vinnell Corporation “our own private mercenary army in Vietnam”(O’Brian, n.d.). The reason for the influx of privatized warriors was due to the “end of the Cold War [where] it is reckoned that six million servicemen ... [had] been thrown on to the employment market [due to the downsizing of military personnel]... the US military [became] 60% the size [it was] a decade ago, the Soviet collapse wrecked the colossal Red Army... the East German military melted away, the end of apartheid destroyed the white officer class in South Africa...[and] the British armed forces...are [currently] at their smallest since the Napoleonic wars” (Traynor, 2003). During the de-colonialization period in the 1950s and 1960s, the primary player in the private military market became the individual ex-soldier. One of the most notable examples was during the war in Congo from 1960 to 1964. During this time, private units were hired by mining firms and known by the nickname “Les Affreux” (The Terrible Ones). These groups included such notorieties as the Irish-born commando “Mad” Mike Hoare and Frenchman Bob Denard. Denard later led a series of violent coups in the Comoros Islands and the Seychelles from the 1970s on and his last coup attempt was as recent as 1995. Even today, different nations around the world still hold forces together consisting of other nationals. Included in these are the French government which maintains the Foreign Legion as one of its elite forces, and Gurkha regiments, which are made up exclusively of soldiers hired from Oman, Yemen, Jordan, Pakistan, and Great Britain. Likewise, the Solomon Islands hire soldiers from Fiji and Great Britain.

## **Current Issues**

In 2004, a firm by the name of Blackwater, was brought into the spotlight due to an incident where four employees were killed and their “corpses mutilated by a mob in Fallujah, Iraq” (CNN.com, 2007). When this story first broke, the majority of Americans were unaware as to what these contractors were doing in Iraq and were even more unaware that they were there in the first place. Since then, contractors have brought about extensive debate and controversy among the private sectors. After further investigation into the 2004 Blackwater incident, Iraqi officials determined that “Blackwater guards opened fire without provocation in Baghdad’s Nissor Square and killed 17 Iraqi citizens”(Hurst, 2007). Adding to this, the “Iraqi government investigative report said Blackwater guards had killed 21 other Iraqi citizens and wounded 27 in a total of seven previous incidents, including a shooting by a drunken Blackwater employee after a 2006 Christmas party”(Hurst, 2007). The Iraqi government demanded that the company’s license be revoked and that they leave Iraq immediately. However, there were two problems with this demand. The first being that the company did not “actually have a license with the Ministry...[and] secondly, confusion over the legal status of the contractors led many to conclude that they were exempted from Iraqi law, due to the existence of an Order left over from the Coalition Provisional Authority”(Singer,2007a).

The Coalition Provisional Authority, CPA, was established by the United States government two months before the 2003 invasion of Iraq. This Authority was established as a transitional government following the invasion of Iraq and was answerable to the United States Government, not the Iraqi people. The CPA authorized itself with “executive, legislative and judicial authority over the Iraqi

government” (Coalition, 2008). One of the powers included in this self appointed authority was that the Program Review Board, with an “eleven member board that consisted of ten staff members from the CPA and one member from the Iraqi Governing Council”, charged itself with the “responsibility to review and make recommendations to the CPA Administrator on which contracts should be awarded” and to whom (Coalition, 2008).

One of the most controversial actions the CPA enacted was Order 17, Section 4, which states that “Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and condition of their Contracts”(CPA, n.d.). Order 17 goes on to say that “Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto”(CPA, n.d.). In addition to this, it is written that “[s]ending States may contract for any services, equipment, provisions, supplies, material, other goods, or construction work to be furnished or undertaken in Iraq without restriction as to their choice of supplier or Contractor” (CPA, n.d.). The CPA was dissolved on June 28, 2004, but it seems that Private Military Firms are continuing to adhere to CPA Orders and refusing to recognize the laws of sovereign Iraq.

Being that the Orders of the CPA are still believed to be relevant, firms, such as Blackwater, are still allowed to disrespect the laws of the nation they are working in. On Nov. 18<sup>th</sup>, 2007, Rear Admiral Smith and Mr. Phil Reeker were answering questions in Baghdad on behalf of the United States concerning such issues. One question raised was from Omar Saleh from al-Jazeera English. He asked for an update concerning the Blackwater investigation as well as what the United States

Embassy would respond “to remarks made by the Iraqi government spokesman who said that the Blackwater incident was a criminal act, and they should stand trial” (Smith & Reeker, 2007). Mr. Phil Reeker was quick to respond in the following manner:

... as you know, we are waiting for a report from the Federal Bureau of Investigation, the FBI. That report has not come out yet, and so we’ll need to wait until we hear the findings that they have made. This is a matter on which we keep very engaged with the government of Iraq. As you know, we formed a joint U.S.-Iraq commission to look at the subject of personal security details, of the companies and private contractors that are involved in that very important work I would note that allows to accomplish the mission that we’re here to do (Smith & Reeker, 2007).

A follow up was asked by Larry Kaplow from Newsweek. He asked, “...Mr. Reeker, when I read through the articles that the CPA set out and then were adopted for granting immunity to some of these...to certain contractors, it looks to me like the contracting authority, in this case the Embassy, has the option of submitting these people to Iraqi courts. Is that the way that you all have read it” (Smith & Reeker, 2007)? The thoughtful, yet straightforward answer that Mr. Reeker gave is as follows: “I am not familiar with what lawyers may have determined...I’m afraid I can’t give you a sort of legal advice at this point...that’s something that would belong in the office of the legal advisor in Washington” (Smith & Reeker, 2007). Three years after the Fallujah incident, there have still been no prosecutions or arrests. The immunity that the CPA had set forth before it was dissolved is still followed as the standard by which contractors work.

### **Pick a Number, Any Number**

Currently, there are only guesstimates concerning the number of contractors employed in Iraq. The companies are not required to report the number of employees and are also not required to notify the government upon the death of an employee. Therefore, not only are the deaths not included in the official death toll in Iraq, but the American public is left in the dark concerning the number of Americans dying overseas. The most reliable method one is able to utilize in order to find the number of contractors that have died in Iraq is by studying the statistics of each PMF's insurance providers. Reuters reported in July of 2007, 917 contractors have been killed in Iraq and "about 10,500 had been injured there through March 2007", not only Americans, but many other nationalities as well (Wasserman, 2007). The United Nations believes that "1,000 persons [are dead] and 13,000 injured" (Del Prado, 2008).

In 2006, the United States Central Command estimated that the total number of contractors in Iraq to be around "100,000 (that it turned out to be such a perfectly round figure indicated that the estimate was actually what researchers call a 'WAG', short for 'wild ass guess')" which, subsequently, in 2007, changed when the Department of Defense census stated that 180,000 private contractors were present in Iraq (Singer, 2007a). It was speculated by yet another source that the number of private contractors in Iraq was more, "almost 200,000" (O'Neill, 2007). Whichever figure you may choose to believe, one thing is certain, the specific number of soldiers, as stated by Congress in February of 2007, was 150,000 (Ifill, 2007). If one believes the number of contractors estimated in 2006, which has more than likely grown by now, the ratio of contractors to soldiers is less than placatory. Senator Jim Webb, in

October of 2007, put this in perspective when he stated that the estimate of contractors in Iraq is 180,000 while the number of troops is at 160,000 (Aivaz, 2007). It is also important to note that by many estimates, contractors are receiving pay “anywhere from \$350 a day to \$1,500 a day” (CNN.com, 2007), which is funded by American citizens’ tax dollars.

### **Liberation or Occupation**

On March 18<sup>th</sup> of 2008, it was reported that Camp Bucca, located in Iraq, was expanding. This expansion will include an increase of “gym space to 5,700 square feet [as well as] a multi-sport field, boxing ring, new office space, ice factory, wastewater treatment plant, improvements to the chapel and a new housing area called Knoxville” (Multi-National Force, 2008). Since the inception of the war, in 2002, the American people have been told that this is a temporary situation and as soon as the Iraqi people are trained, they will take over their sovereign nation and govern in the way that suits them best. As Mr. Donald Rumsfeld said in 2003, “any war with Iraq would be swift and not require a full US mobilization”, however, as we are now in 2008, it is clear that these words were an under statement at best (BBC News, 2003). So, does this mean that the expansion and building of permanent structures in Iraq is the new public policy produced by the White House? If so, then not only will the number of permanent or semi-permanent troops increase, but this will also call for the number of contractors to increase as the liberation forces morph into occupying forces.

One of the main arguments against using PMCs, especially when discussing long-term use, is that the corporations offer a scapegoat for the United States to enter into

unpopular warfare without having to answer to the American public. Contractors currently account for at least 50% “of the Pentagon’s budget”, which allows the current administration to enter into conflict without informing the public (Krauss, 2008). This is in direct contrast to the Abrams Doctrine. The Abrams Doctrine, “led by then Army Chief of Staff General Creighton Abrams...wanted to ensure that the military would not go to war without the sufficient backing and involvement of the nation” (Singer, 2007a). This Doctrine was established after the Vietnam War and was recognized as being essential to keep the United States government in check when wishing to declare war on sovereign nations. However, with PMCs in the scheme of things, the United States government is able to go to war without calling in extra troops, which means the support of its citizens will be obtained more easily. The use of private contractors, which are not counted as troops, enables the government to invade nations without paying heed to public opinion. As stated by Leslie Wayne, writer for the New York Times, “contractors ... allow the administration to carry out foreign policy goals in low – level skirmishes around the globe – often fueled by ethnic hatreds and a surplus of cold war weapons – without having to fear the media attention that comes if American soldiers are sent home in body bags.” (Wayne, 2002).

Enabled with this strategic escape route, the White House has an unlimited amount of time as well as ability to disregard criticism. Without PMFs, a “full-scale call-up of the National Guard and Reserves” would have been necessary for going in to Iraq (Singer, 2007a). An expansion of military force would have required permission from Congress as well as creating a situation filled with trade-offs concerning other wars the United States is currently involved in, such as Afghanistan. This would have been



highly disruptive to the plans of the White House, so the path to be taken seemed clear. Without such disruption as the death of soldiers, public outcry is kept to a minimum. An example of this is what happened when “at least five DynCorp employees [were] killed in Latin America, with no public outcry [to be heard]... denial is easier for the government when those working overseas do not wear uniforms” (Wayne, 2002). Being that a timetable in Iraq is currently non-existent, troops are rotated and contractors are used to supplement the numbers.

### **Private Military Firms and the Government**

The United States is not the only nation whose companies are profiting from the contracting business. Firms located in England, France and Germany, just to name a few, are also utilizing the popularity private contracting is enjoying in order to maximize profits (Table 4). However, the United States government in particular has quite a cozy relationship with PMFs. The top contractors, as rated by contract totals in dollars, have an alarming history of campaign contributions as shown in Table 5. This not only brings concern as to what the motive for these corporations being awarded contracts is, but also shows just how involved the United States politicians are with these companies.

The Bush Administration has been accused of favoring specific companies, such as the Carlyle Group and Halliburton, due to the political influence these companies possess. An example of this power can be demonstrated through the Carlyle Group which is based in Washington D.C. and is a “private equity firm that employs numerous former high-ranking government officials with ties to both political parties...[and] was the ninth largest Pentagon contractor between 1998 and 2003”

(Ismail, 2004). The Carlyle Group describes itself as a manager of investments, and the “vast majority of [their clients,] whose identities are not disclosed to the Securities and Exchange Commission or other government bodies”, have surrounded themselves in a shroud of secrecy (Ismail, 2004). The political influence comes from the plethora of former government officials that have “recent or current ties to the firm [which] include former British Prime Minister John Major and former Philippines President Fidel Ramos; former Office of Management and Budget director Richard Darman; former Clinton chief of staff Thomas F. “Mack” McLarty; former Securities and Exchange Commission chairman Arthur Levitt and former Federal Communications Commission chairman William E. Kennard; former Secretary of State James Baker works for the firm as did his former boss, President George H.W. Bush” (Ismail, 2004).

Under the “leadership of former Defense Secretary Frank Carlucci – first as a managing director, from 1989 to 1993, and as chairman from 1993 to 2003...Carlyle grew from a small private equity to a global investment giant, and became a major player among defense contractors” (Ismail, 2004). The ties between Mr. Carlucci, Former Defense Secretary Donald Rumsfeld and Former Secretary of State Colin Powell, have been questioned by many, including Fortune Magazine and Dan Briody, author of The Iron Triangle: Inside the Secret World of the Carlyle Group. These three men have been linked since “Mr. Rumsfeld and Mr. Carlucci went to college together...and Mr. Powell was Carlucci’s deputy on the National Security Council in the mid-1980s” (Ismail, 2004). Mr. Briody states that “[i]f you look at the relationship that Frank Carlucci still maintains with Don Rumsfeld and Colin Powell and the reach that he has to those folks-and he has in fact used that reach in the past

and tried to influence decisions those folks were making, decisions that could directly or indirectly affect Carlyle's fortune" (Ismail, 2004). Chris Ullman, a spokesperson for the Carlyle group "dismisses the notion that Carlucci or any other former government or military leader on its payroll has any conflicts of interest. 'All they [Carlyle critics] do is, they say: 'Oh, Carlucci used to work in the government and he went to college with Donald Rumsfeld, and Carlyle has defense investments, and now Secretary Rumsfeld is secretary of defense. Therefore, there is a conflict of interest'" (Ismail, 2004). Mr. Ullman seems to have summed up exactly what the public believes and has indeed affirmed these assumptions.

### **United States Domestic Legislation**

The only legislation that the United States Congress has passed was recently voted upon by the House of Representatives. This bill addressed the issue of accountability and "would make all private contractors working in Iraq and other combat zones subject to prosecution by U.S. courts. Democrats called the 389-30 vote an indictment in connection with a shooting incident there that left 11 Iraqis dead. Senate Democratic leaders said they planned to follow suit with similar legislation and send a bill to President Bush as soon as possible. 'There is simply no excuse for the de facto legal immunity for tens of thousands of individuals working in countries' on behalf of the United States, said Rep. Sheila Jackson-Lee, D-Texas" (Flaherty, 2007).

When discussing the military stance on how contractors are to act and what duties allotted to them, there is an Army field manual which explains. The ironic part is that the United States Army contracted a company, MPRI (of which is discussed in further detail below), to write this manual and which itself is engaged in support "on the

battlefield” (Singer, 2003). Therefore, one would only assume that this manual would not be entirely without bias. Furthermore, in 1996, the “Army began the process of privatizing the Reserve Officer Training Corps (ROTC)...[where] former Army personnel were hired by MPRI to work at colleges as professor[s] of military science[s] and administrative noncommissioned officers...formerly filled by active military personnel... they are actually private-sector employees, these MPRI instructors still wear uniforms...the irony still remains; the next generation of U.S. Army leaders will be introduced to the force through the services of a private firm. Indeed, with a pilot program just launched to privatize regular recruiting to MPRI and Resources Consulting Inc., the same may hold true for future U.S. armed forces enlisted personnel as well”(Singer, 2003).

Yet another defining factor between private contractors and military personnel is that “soldiers, at all times and all locations, are subject to the Uniform Code of Military Justice (UCMJ)”, this is not the case with contractors (Campbell, 2000). However, as Gordon L. Campbell argues, if contractors were made answerable to the UCMJ, it would create “conflict between the UCMJ and Government Contract Law” and no longer would contractors be necessary (Campbell, 2000). If private citizens were answering to military personnel, would that not alter the course of the contract? Shouldn’t the United States just simply employ troops to do the work in the first place? This crosses the line into the private citizen’s life and no longer would the UCMJ be only for military personnel, but for everyone and anyone involved in warfare abroad, including the “everyday” contractors in use for non-combatant roles.

On May 5<sup>th</sup>, 2005, the United States Department of Defense added a clause to their rules entitled “Contractor Personnel Supporting a Force Deployed Outside the United States” (Davis, 2005). This new rule is applied when “contractor personnel deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States [in] contingency operations, humanitarian or peacekeeping operations [or] other military operations or exercises designated by the combatant commander...[this new rule added] military operations or exercises... to replace the term combat operations so as to increase flexibility to the ‘scope’ of the clause and to allow for use of the clause ‘in a wide range of military operations’” (Davis, 2005). The interesting stipulation that this new rule utilizes is that “[it] does not cover contractor personnel providing support from outside the theater of operations...nor ... does the rule apply to nation-building activities generally or to Iraq reconstruction specifically, as stated in the DOD commentary” (Davis, 2005). Therefore, the new rule makes it clear that contractors are not “combatants [and] shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces” (Davis, 2005). Of course, this new rule is null and void when speaking of contractors involved, as previously stated, to nation-building activities generally or when referring specifically to Iraq reconstruction.

### **International Legislation**

Regarding international legislation, it is necessary to mention the United Nations and their stance regarding private military firms. Currently, the Human Rights Council has taken the reins in regards to defining and regulating private military firms. Current international standards are located in Article 47 of the 1977 Additional Protocols to the Geneva Conventions and the 1989 UN International Convention

Against the Recruitment, Use, Financing, and Training of Mercenaries, which “focus[es] on individuals recruited to fight in a specific conflict rather than the regular employees of an established company hired by a recognized government( European Security Page, 121). In Bogotá, Columbia on January 19, 2007, the Regional Consultation of the Special Representative of the Secretary General of the United Nations called on the Secretary General and the Human Rights Council of the United Nations to adopt the following measures:

- Create and adopt a human rights normative framework which is obligatory for companies, as the best way to respect and guarantee the human rights of persons and communities who have been affected by the actions or omissions of business enterprises;
- Promote adequate and effective access to judicial recourses and protections in cases where companies threaten or negatively impact human rights;
- Exhort States to establish mechanisms to prevent, investigate, sanction, and compensate for abuses committed by companies;
- Establish vigilance mechanism to monitor the compliance of companies to the human rights normative framework afore mentioned;
- Measure the impact that the actions or omissions of companies, financial groups, and the international finance system in general have on the enjoyment of human rights;
- Continue to promote the active participation of civil society, prioritizing the involvement of directly affected communities, both in the Special Representative’s mandate as well as in the discussion and drafting process of new international standards related to human rights and companies;
- Recognize, respect, and enforce the collective rights of indigenous peoples, in conformity with the norms established by Convention 169 of the International Labor Organization (Declaration, 2007).

The Working Group under the auspices of the Human Rights Council of the United Nations, found that the current regulations, which are less than adequate, are being updated by few individual nations. The most current developments in this regard was the adoption of a Model Law of the Commission of Independent States Inter-Parliamentary Assemble which has been enacted in South Africa. In addition to this the “Private Security Regulations Act, 2001, and the Regulation of Foreign Military Assistance Act, 1998” has also been adopted in order to regulate private military firms within the nation (Benavides, 2006). France has also enacted very strict measures concerning PMFs. The “Répression De L’Activité De Mercenaire” of April 2003 “effectively bans military provider firms as well as individuals from direct participation in combat” (European Security, Page 124). Another participant in the regulation of PMFs is the United Kingdom. In February of 2002 the “Green Paper” was released and recommends that “private companies be expressly prohibited from direct participation in armed combat operation” (European Security, Page 124). However, the Green Paper also states that “ A strong and reputable private military sector might have a role in enabling the UN to respond more rapidly and effectively in crises”, but that a regulatory agency was necessary in order to “eliminate many of the concerns about accountability, lack of transparency, and illegality in the private military sector” (European Security, Page 124).

Some recommendations given to the United Nations Human Rights Council include, but are not limited to, “on the regional level...organizations such as the European Union and the Organization of American States study the possibility of establishing a common system for State parties with a view to regulating the activities of private military and security companies” (Del Prado, 2008). While the “private military and security companies and their employees fall into a gray area not specifically covered

by the 1989 Convention” they should still be considered bound by “obligations in the Universal Declaration of Human Rights” (Del Prado, 2008). There is currently no framework in which to prosecute violators of Human Rights, so offenders are left to the mercy of their employers and are usually either fired or sent home, facing no legal action and holding no accountability for their actions. On January 9, 2008, the Working Group presented a General Report concerning their findings in regards to Private Military Security Companies, PMSCs. This report was written in order to better understand the privatization of warfare and security as well as the transnational issues that are arising due to this privatization. The findings of this group (Table 7) outline just how rapidly these corporations are growing as well as pointing out the lack of accountability and oversight that they encounter<sup>1</sup>. Some issues which have arisen, are situations such as Plan Columbia, Afghanistan and Abu Ghraib in Iraq, which will be discussed in further detail below.

Private Military Firms have been taking advantage of their financial freedom and the lack of oversight. It has been indicated that Halliburton “severely overcharged the U.S. Army [for] four of its seven original functional responsibilities...[while] Sandline is reputed to have charged above market rates to the tiny country of Papua New Guinea” (Singer, 2003). Military Professional Resources Incorporated, MPRI, was contracted for Plan Colombia, but the contract was ended prematurely in May 2001 after “Columbian military leaders expressed dismay that the company had staffed its Bogotá office with no Spanish speakers...[however] MPRI was still paid [in full] for its services” (Singer, 2003). MSNBC reported on October 23<sup>rd</sup>, 2007, that

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<sup>1</sup> According to the findings of the Working Group, “Self-regulation is promoted by both [International Peace Organization Association, IPOA, and British Association of Private Security Companies] IPOA and BAPSC, which “have both adopted a voluntary code of conduct”. Both groups are charged with promoting and regulating the interests of PMSCs. “Promotion and Protection” Page 14.



DynCorp, a company that was supposed to train and equip Iraqi police, had their books in such “disarray” that the State Department didn’t “know how most of the money in the billion-plus-dollar program was spent” (Roston, 2007). After renegotiating “some old invoices with DynCorp...the company ... dropped its price by about \$116 million” (Roston, 2007). After the audit, it was found that this company had spent \$4.2 million “on ‘unauthorized’ work – that is, on projects that were not approved by the State Department ...[which] included building a U.S. taxpayer-funded Olympic-sized swimming pool near the Adnan Palace in Iraq even though the State Department never approved it” (Roston, 2007).

Europe is taking its own path concerning the demand for more military power. The “Headline Goal 2010” has been endorsed by the European Council in June of 2004. This states that the “EU will respond to crises throughout the world- including humanitarian missions, rescue tasks, peacekeeping, and disarmament operations- with forces ready to implement their mission within ten days of a decision to deploy. ...A key feature of the Headline Goal is the proposal to create up to thirteen self-sustaining, rapidly deployable battalion-sized combined arms ... France, the United Kingdom... Italy, and Spain have indicated that they will each supply a battle group... [but] concerns have also been expressed about ‘straining the budgets and capabilities of the smaller member states’” (European Security, Page 109).

### **Private Contractors in the World**

Throughout the world, various contractors are carrying out orders issued to them by the United States government, vicariously through the Private Military Firms that hire them. Currently in Colombia, “Plan Colombia” is under way. The United States has sent private military contractors to this country to destroy the crops of coca plants,

which are used to produce cocaine in a “\$7.5 billion strategy” (Singer, 2003). Being that the United States does not have the authorization to send its own military, it is able to sidestep these rules by sending private contractors. Private contractors working under Plan Colombia can “neither be investigated nor judged...[and] the Government of Colombia would not be able to submit to the jurisdiction of the International Criminal Court (ICC), [any] United States armed forces personnel and private contractors working for transnational private security companies who have committed crimes against humanity” (“Promotion and Protection”, n.d.). Concerning Afghanistan, employees of private military companies are hiring South Africans to train and provide “support to the ... police who served earlier in the South African police and army during the former apartheid regime, some of whom have committed crimes against humanity” (“Promotion and Protection”, n.d.). In the case of Abu Ghraib in Iraq, gross violations of human rights occurred and no legal sanctions have been pursued, despite the assurances of the United States Government. In accordance with its “don’t ask, don’t tell” policy, the “United States Army does not accept to receive complaints for abuses which may have been committed by employees of PMSCs” (“Promotion and Protection”, n.d.).

The continent of Africa has numerous examples of how private contractors have been used to turn the tide, so to speak, concerning various types of warfare. First, let us examine the history of Angola. Endowed with natural resources, the main being oil and diamonds, Angola has been at war for the last three decades. In 1993, we first see the presence of private military firms, namely, Executive Outcomes. Executive Outcomes, EO, was officially dissolved in 1999 and was comprised of military personnel and combatants from South Africa. Before they were disbanded, EO was hired, although the specifics of the 40 million dollar contract is still unknown, to rid

the country of the rebel forces called UNITA (Random House, n.d.). Rather than receiving cash for payment, after training the state army and operating on the front - line, the “Angolan government gave EO lucrative diamond concessions and the company’s commercial network was born: Heritage Oil and Gas, Branch Energy, Diamond Works and Branch Minerals...the mercenaries were multimillionaires” (Random House, n.d.).

Sierra Leone, in the 1990s, was ranked last in the U.N. Human Development Report. As the population suffered, the government and elite were enjoying a life of ease and luxury. In 1991, a rebel group began fighting in opposition to the current regime. The lack of a state army allowed the rebel group to progress steadily towards the capital. The story evolves as follows:

...the leader of the government, Valentine Strasser ( a 26-year-old army captain, who had taken over after the former president fled), had first heard about the company [EO] from articles in Newsweek and Soldier of Fortune magazines, illustrating how the firm’s public approach worked to its benefit ... the government could not afford to pay EO’s startup fee, so [Anthony] Buckingham [whose Branch - Heritage mining company had operations in Sierra Leone] agreed to bankroll the operation in exchange for future diamond mining concession in the Kono region. The original one -year contract called for a total of 160 EO personnel to be deployed on the ground. It was later supplemented by contracts for additional manpower that brought the total costs to \$35 million, about \$1.5 million per month for the 21 months that the firm was in the country... Within ninety

days, the EO force had not only stopped the rebel advance, but sent them back 126 kilometers into the jungle interior (Singer, 2003).

Yet another example of private combat can be found again in Sierra Leone. The United States in 1998, used an Oregon based company called International Charter Incorporated of Oregon, ICI, which has also been active in conflicts in Haiti and Liberia (Peterson, 2002). According to interviewed team members, “ICI personnel inevitably and often were shot at and forced to return fire” (Peterson, 2002). American firms are not the only aggressors to exist in Africa. The Embassy of Eritrea in Moscow has lodged complaints with the Russian Government saying that “over 70,000 Eritreans...were cleansed and deported with most savage violations of human rights, the Russian government refused to make the slightest protest against it, despite repeated appeals to voice its moral indignation” (“Facts on Russian Role”, 2000). The lack of government outcry is not the disturbing factor. As Charles Smith, reporter for WorldNetDaily.com, states, “Russian ‘mercenary’ pilots are flying advance fighter jets for Ethiopia in its conflict with Eritrea...[and] the Eritrean government ...through its Embassy in Moscow informed the Russian government that it has incontrovertible material evidence at hand of the direct participation of Russian senior military advisors” (Smith, 2000). However, the Russian government refuses to comment and no actions have been taken.

Now, let us turn our attention towards the Balkans. There have been two primary firms that have impacted the outcomes of disputes in this region. First, we start with the firm Military Professional Resources Incorporated, MPRI. MPRI is best known for its operations in former Yugoslavia “where it helped alter the entire course of the war” (Smith, 2000). This firm has recruited a plethora of top retired military

personnel. International recognition came to this company while training the Croat army, with whom the United States had given their support. Being that the United States had approved, in the Security Council of the United Nations, an international embargo which prohibited military training and advisory, as well as a 1991 United Nations arms embargo that prohibited the sale of any weapons to “warring parties”, there needed to be other ways to bolster the army that the United States had supported (Smith, 2000). In order to create a Croatian force to be reckoned with, the “Pentagon referred MPRI to Croatia’s defense minister, who hired the company to train its forces”(Wayne, 2002). To be clear, MPRI claims that the contracts they were awarded by the Croatian government included no type of military assistance. They were awarded a total of two contracts, one in September of 1994 and the other in April of 1995.

Prior to MPRI being hired, the Croatian defenses were unorganized, as a military force, and losing ground. In August of 1995, the Croat forces “launched a massive offensive, called “Operation Storm,” whose scales and sophistication caught everyone in the region off guard. In a shocking fashion, the Croat army revealed that it had transformed from a ragtag militia into a highly professional fighting force. The Krajina Serb defenses crumbled and, within a week, the entire territory was seized” (Wayne, 2002). This operation has been described as “one of the bloodiest episodes of ‘ethnic cleansing’ in the Balkans ... [and] drove more than 100,000 Serbs from their homes in a four-day assault” (Wayne, 2002). Due to this, MPRI remains the only private military firm that has been referred to the International War Crimes Tribunal, which meets in The Hague. The International War Crimes Tribunal has contacted the Pentagon for more information concerning this company. The ongoing

investigation of this firm is due to the “widespread and systematic matter [which the] Croatian troops committed murder and other inhumane acts”(Wayne, 2002).

Yet another example concerning the Balkan region has to do with a company called Brown & Root, which is a holding of the larger and perhaps better known Halliburton. In 1999, Brown & Root Services, BRS, was hired to build numerous buildings and living quarters to the effect of “192 barracks, which housed over 7,000 troops, thirteen helipads, two aviation-maintenance facilities, and 37 temporary bathing facilities. At the same time of this intensive construction effort, the firm also supplied U.S. forces with the whole range of necessary logistics services, including delivering 1,134,182 high-quality meals, 55,544,000 gallons of water, and 383,071 gallons of diesel fuel. The contractor also serviced 671 latrines a total of 31,037 times, collected 89,228 cubic meters of trash and loaded and offloading 4,229 containers ...BRS [also] provided U.S. forces in the Balkans with 100 percent of their food, 100 percent of the maintenance for tactical and non tactical vehicles, 100 percent of hazardous material handling, 90 percent of water provision, 80 percent of fuel provision, and 75 percent of the construction and heavy equipment transfers” (Singer, 2003). Done within a couple of months, from the ground up, it would be safe to say that without contracting this company, the United States military would have been unable to move into the area so quickly and efficiently, therefore, changing the outcome of warfare. To say that BRS made some money off the trouble stricken Balkan area would be an understatement. This firm has also joined in a “\$283 million project with the U.S. Defense Threat Reduction Agency to assist the Russian government with the dismantling of intercontinental ballistic missiles...[with] this synergy between the military and non military sectors ... the overall company [is allowed] to remain profitable” (Singer, 2003).

## **Conclusion**

Today's face of warfare is ever evolving. The inclination of nations towards hired soldiers rather than using their own citizens is not a new phenomenon, but this does not mean that it is not important to regulate this industry. As Geoff Thale from the Miami Herald put it, "It may be tempting to pay others to take risks for us. ... It may be particularly tempting to pay people from foreign countries such as El Salvador, Columbia or Chile, so that we don't experience the human cost of casualties or deaths ourselves. ... But it's not morally acceptable" (Corporate Mercenaries: The threat of private military and security companies, Pg. 11). The lack of oversight as well as the void of rules and regulations make PMFs an entity which has the ability to make their own rules as they go along. The existing legislation does not begin to cover the necessary issues in order to ensure that PMFs are held to the same standards on the battlefield as soldiers. The difference between the term mercenary and contractor, as previously discussed, is allowing these companies to bypass international regulations and have the ability to make its own rules.

The situation in Iraq, as well as other nations such as Afghanistan and Columbia, shows just how vulnerable the world is to these corporations. The rules, which are being written by the very same people they are supposed to regulate, are inadequate at best. Although contractors are in no way a new concept, they are increasingly becoming a part of modern warfare, whether it be on the battlefield, or involved in the logistics, contractors are now here to stay. Therefore, governments which are hiring these companies must be held accountable for the behavior of those being hired, as well as the companies themselves for their employees.

The disturbing fact that the debate concerning PMFs is ongoing with no end in sight shows just how little the western governments want to regulate these industries. The scapegoat they offer is just too convenient to be resolved. Being that war seems to be inevitable, with no universal peace coming into play in the near future, contractors are offering governments a chance to fulfill their international obligations and treaties while still being able to attack the parties they wish to. In order for the international community to decide upon a universally accepted set of bylaws, they must first be willing to regulate this industry, which does not seem to be the case. The sovereignty of nations attacked is at risk while the contractors performing combatant acts are left to their own devices and do as they please, with no legal repercussions. This is a highly dangerous and explosive situation which needs to be addressed by all nations immediately.



Table 1<sup>2</sup>

### **What Makes A Mercenary?**

Seven essential characteristics distinguish modern-day mercenaries from other combatants and military organizations:

*Foreign:* A mercenary is not a citizen or resident of the state in which he or she is fighting.

*Independence:* A mercenary is not integrated (for the long term) into any national force and is bound only by the contractual ties of a limited employee.

*Motivation:* A mercenary fights for individual short-term economic reward, not for political or religious goals.

*Recruitment:* Mercenaries are brought in by oblique and circuitous ways to avoid legal prosecution.

*Organization:* Mercenary units are temporary and ad-hoc groupings of individual soldiers.

*Services:* Lacking prior organization, mercenaries focus on just combat service, for single clients.

Table 2<sup>3</sup>

### **How are PMFs Different?**

*Organization:* Prior Corporate Structure

*Motives:* Business Profile-Driven, Rather than Individual Profit-Driven [such as individual mercenaries].

*Open Market:* Legal, Public Entities.

*Services:* Wider Range, Varied Clientele.

*Recruitment:* Public, Specialized.

*Linkages:* Ties to Corporate Holdings and Financial Markets.

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<sup>2</sup> Singer, P.W. "Corporate Warriors, The Rise of the Privatized Military Industry". 2003, Cornell University Press.

<sup>3</sup> Ibid,

Table 3<sup>4</sup>**Top U.S. Contractors in Iraq**

<b>CONTRACTOR</b>	<b>Value</b>	<b>Agency</b>
KELLOGG, BROWN & ROOT (HALLIBURTON)	\$10,832,000,000.00	Department of Defense
Parsons Corp.	\$ 5,286,136,252.00	Department of Defense
Fluor Corporation	\$ 3,754,964,295.00	Department of Defense
Washington Group International	\$ 3,133,078,193.00	Department of Defense
Shaw Group/Shaw E&I	\$ 3,050,749,910.00	Department of Defense
Bechtel Group Inc.	\$ 2,829,833,859.00	USAID
Perini Corporation	\$ 2,525,000,000.00	Department of Defense
Contract International Inc.	\$ 2,325,000,000.00	Department of Defense
Tetra Tech Inc.	\$ 1,541,947,671.00	Department of Defense
USA Environmental Inc.	\$ 1,541,947,671.00	Department of Defense
CH2M Hill	\$ 1,528,500,000.00	Department of Defense
Odebrecht-Austin	\$ 1,500,000,000.00	Department of Defense
American International Contractors, Inc.	\$ 1,500,000,000.00	Department of Defense
Environmental Chemical Corporation	\$ 1,475,000,000.00	Department of Defense
Explosive Ordnance [sic]Technologies Inc.	\$ 1,475,000,000.00	Department of Defense

Table 4<sup>5</sup>**Foreign Contractors (Partial List)**

<b>Country</b>	<b>Contractor</b>	<b>98-03 Contract Totals</b>	<b>Rank</b>
Bahrain	Bahrain Maritime & Mercantile	\$128,060,326.00	593
Bahrain	Bahrain Petroleum Co.	\$ 291,158,883.00	283
Belgium	FN Herstal	\$ 319,350,995.00	254
Bermuda	Tyco International	\$ 1,006,250,942.00	91
Canada	Government of Canada	\$ 2,207,393,181.00	42
Denmark	Maersk Inc.	\$ 1,913,819,561.00	52
England	BP	\$ 2,107,226,427.00	44
England	Rolls-Royce	\$ 1,893,580,507.00	53
England	BAE Systems	\$ 4,814,022,157.00	22
France	CFM International	\$ 443,688,964.00	182

<sup>4</sup> "Windfalls of War: Contractors : Iraq". [The Center for Public Integrity](http://www.publicintegrity.org/wow/bio.aspx?act=pro&fil=IQ). September 9, 2007.  
<http://www.publicintegrity.org/wow/bio.aspx?act=pro&fil=IQ>.

<sup>5</sup> "Foreign Contractors". [The Center for Public Integrity](http://www.publicintegrity.org/pns/list.aspx?act=foreign). February 9, 2007.  
<http://www.publicintegrity.org/pns/list.aspx?act=foreign>

France	Total Fina Elf SA	\$ 376,773,336.00	226
France	Publicis Groupe SA	\$ 417,174,465.00	202
Germany	Philipp Holzmann AG	\$ 1,723,275,972.00	59
Germany	Siemens	\$ 376,121,672.00	227
Germany	Federal Republic of Germany	\$ 1,671,428,334.00	63
Greece	Motor Oil (Hellas)	\$ 744,127,512.00	114
Greenland	Greenland Contractors I/S	\$ 258,745,272.00	301
Israel	Elbit Systems	\$ 127,402,358.00	595
Italy	ENI SpA	\$ 207,153,925.00	373
Japan	Sunitomo Heavy Industries	\$ 396,844,691.00	211
Japan	Okinawa Electric Power Co.	\$ 259,287,702.00	300
Kuwait	Kuwait Petroleum Corp.	\$ 651,366,569.00	125
Netherlands	Royal Dutch Shell	\$ 1,476,146,182.00	71
Sweden	Saab AB	\$ 284,000,743.00	287
Switzerland	Nestle SA	\$ 180,232,330.00	429

Table 5<sup>67</sup>

**Top Contractors (1990-2003) and Campaign Contributions (1990 – 2002) [in the United States]**

<b><u>Contractor</u></b>	<b><u>Total Contract Amount</u></b>	<b><u>Total Contributions</u></b>
Raytheon Co.	\$ 39,904,717,897.00	\$89,645.00
General Electric	\$ 10,600,007,101.00	\$ 8,843,884.00
Science Applications International Corp.	\$ 10,598,835,883.00	\$ 4,704,909.00
Halliburton Co.	\$ 6,768,728,331.00	\$ 2,379,792.00
Bechtel Group	\$ 4,407,883,109.00	\$ 3,310,102.00
DynCorp	\$ 4,144,957,980.00	\$ 1,218,944.00
Johnson Controls	\$ 2,033,875,329.00	\$ 464,995.00
Parsons Corp.	\$ 1,692,331,604.00	\$1,403,508.00
Washington Group International	\$ 1,358,513,193.00	\$1,185,232.00
Unisys Corp.	\$ 1,187,394,747.00	\$ 626,2393.00
Tetra Tech Inc.	\$ 974,375,724.00	\$ 223,770.00

<sup>6</sup> "Top Contractors by Dollars". The Center for Public Integrity. September 2, 2007. [www.publicintegrity.org/pns/list.aspx?act=top](http://www.publicintegrity.org/pns/list.aspx?act=top).

<sup>7</sup> "Campaign Contributions of Post-war Contractors: From 1990 through fiscal year 2002". The Center for Public Integrity. September 2, 2007. <http://www.publicintegrity.org/wow/resources.aspx?act=contrib>

Table 6<sup>8</sup>

For the purposes of the present Convention,

1. A mercenary is any person who:
  - a. Is specially recruited locally or abroad in order to fight or who participates in an armed conflict;
  - b. Is neither a national of a party to the conflict nor a resident or territory controlled by a party to the conflict;
  - c. Is not a member of the armed forces of a party to the conflict; and
  - d. Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
  
2. A mercenary is also any person who, in any other situation:
  - a. Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
    - i. Overthrowing a Government or otherwise undermining the constitutional order of a State; or
    - ii. Undermining the territorial integrity of a State;
    - iii. Denying self-determination, or maintaining racist regimes or foreign occupation;
  - b. Is neither a national nor a resident of the State against which such an act is directed;
  - c. Has not been sent by a State on official duty; and
  - d. Is not a member of the armed forces of the State on whose territory the act is undertaken.
  
3. The definition of a mercenary in article 1 of this Convention is without prejudice to the constituent elements of the definition of a mercenary, including private material gain, as defined under article 47 of Protocol I Additional to the Geneva Conventions of 1949. Nothing in this Convention shall affect the status, treatment or obligations of mercenaries and of the parties to the conflict under international humanitarian law.

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<sup>8</sup> "THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION". Economic and Social Council. [United Nations](#). Commission on Human Rights, Fifty-ninth session, Item 5 of the provisional agenda.

Table 7<sup>9</sup>

[Partial Use of Document]

8. The Working Group held a consultation with the International Peace Operations Association (IPOA), a trade association representing some 30 PMSCs. The representative noted the self-regulatory sets of voluntary codes of conduct developed within the industry, which in general would support also further regulation to bring certainty and protection to serious firms...
  
24. The globalization of the world economy and the shifting from centralized government to diffused “governance” or “ungovernance” together with the downsizing of regular armed forces of States, which have had important reductions in the public sector both in developed and developing countries are some of the causes behind the rapid development of the privatization of violence.
  
25. The outsourcing of a number of basic functions which traditionally were carried out by national armies or police forces, known as the top-down privatization, has blurred the borderlines between the public services of the State and the private commercial sector creating a dangerous “grey zone”.
  
26. Private military and security companies fill the vacuum mainly left in three types of unstable situations: (i) in zones of low-intensity armed conflict (the new asymmetrical wars) where the armies are not fully deployed or in post-conflict situations with a high level of insecurity; (ii) in armed conflicts when international organizations do not intervene; and (iii) in troubled areas in developing countries where there is no presence of the State and extractive transnational corporations operate ... Furthermore, in exchange for providing security services to some African Governments, PMSCs have in some cases received concessions for the exploitation of natural resources.

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<sup>9</sup> Promotion and Protection. Page 10-

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