

McCormick Tribune Conference Series

---

# Understanding the Privatization of National Security



Sponsored by:

---

 McCormick Tribune  
Foundation

---

**The McCormick Tribune Conference Series is sponsored by the McCormick Tribune Foundation.**

**For more than 15 years, the McCormick Tribune Conference Series has fostered collaboration between the Foundation and other organizations to address issues consistent with the Foundation's mission. The mission of the McCormick Tribune Foundation is to advance the ideals of a free, democratic society by investing in our children, communities and country.**

**The McCormick Tribune Conference Series aims to:**

- Create impact on public policy or academic investigation by facilitating balanced and challenging discussions of issues critical to communities and the nation.**
- Bring together people of diverse backgrounds and perspectives to reach new levels of understanding and develop long-term solutions.**

**McCormick Tribune Conference Series**

---

# **Understanding the Privatization of National Security**

Sponsored by the McCormick Tribune Foundation

Understanding the Privatization of National Security

Published by the  
McCormick Tribune Foundation  
435 North Michigan Avenue  
Suite 770  
Chicago, Illinois 60611  
312-222-3512  
E-mail: [info@McCormickTribune.org](mailto:info@McCormickTribune.org)

All rights reserved

Copyright © 2006  
McCormick Tribune Foundation

## **Table of Contents**

---

<b>Foreword</b>	4
<b>Executive Summary</b>	5
<b>Introduction</b>	8
<b>Chapter 1: Factors that are Driving Privatization</b>	10
<b>Chapter 2: Homeland Security: Where Does Privatization Fit In?</b>	15
<b>Chapter 3: Bright Lines: Should There Be Limits to Outsourcing?</b>	20
<b>Chapter 4: Ensuring Accountability</b>	25
<b>Chapter 5: A Myriad of Legal Issues</b>	30
<b>Chapter 6: Other Issues and Implications</b>	36
<b>Chapter 7: Next Steps and Recommendations</b>	42
<b>Participant List</b>	46

---

## Foreword

---

Over the course of my 30 years of service in the U.S. Army, I held a range of positions and participated in missions that took me to all ends of the world. Many of these assignments required close collaboration with private contractors who supported the military through countless tasks, from security to logistical support.

Today, as our military becomes increasingly stretched by the wars in Afghanistan and Iraq, as well as the Global War on Terror, the demand for private contractor services has grown at an unprecedented pace raising a number of new legal, logistical and humanitarian concerns.

Most anyone who has experienced the complexities of the military-private contractor relationship during military operations will appreciate the urgent need for an ongoing national dialogue on the privatization of functions traditionally handled by the military and federal security agencies. Understanding the Privatization of National Security, a McCormick Tribune Foundation conference held on May 11 and 12, 2006 at the Foundation's Cantigny Park estate in Wheaton, is a first step in that direction.

We thank the American Bar Association Standing Committee on Law and National Security and the National Strategy Forum for partnering with us to craft the agenda for this very important discussion and for selecting the expert group of legal scholars, first responders, military personnel, private contractors and government sector representatives whose ideas are captured in this report.

Through our Conference Series, the McCormick Tribune Foundation strives to influence public policy by facilitating balanced and challenging discussions among people of diverse backgrounds and perspectives, reach new levels of understanding between stakeholders, and develop long-term solutions to critical and timely issues.

We believe this is an extremely important topic and hope that you can use the crucial information gathered here to better inform decision-making in your field.

Please do not hesitate to share with us your comments, questions or feedback on this conference report.

Sincerely,



BG, David L. Grange, USA (Ret.)  
President & CEO

# Executive Summary

---

*During most of the twentieth century, a strong and well-funded military had limited need for private contractors. But, post-Cold War cuts in defense spending and staffing along with the changing nature of national defense gave rise to the critical need to turn to Private Military Contractors (PMCs) to offer expertise and supplement U.S. military resources.*

*Determining the appropriate roles for both government resources and PMCs was the topic of discussion at the McCormick Tribune Foundation's conference on "Understanding the Privatization of National Security," held at Cantigny Park in Wheaton, Ill., on May 11-12, 2006. Forty distinguished legal scholars, first responders, military personnel and other representatives of the private and government sectors were on hand to define and refine the key issues.*

*Two main areas of concern framed the discussion. First, the roles assumed by PMCs and their resulting responsibilities and, second, the legal and humanitarian concerns that arise from private contractors assuming certain tasks.*

## **Why outsource?**

- **Smaller military and the need for surge capacity:** When government resources are inadequate, private contractors play an important role in achieving national security objectives and ramping up the government's capability to respond quickly in a crisis or emergency situation.
- **Ease and speed of deployment:** Government bureaucracy is often the root cause behind the decision to outsource. Private contractors can quickly pull together highly qualified people and respond to a situation.
- **High-tech skills and subject-matter expertise:** Historically, the government has turned to private contractors for certain complex tasks that require specific technical, regional or tactical expertise. Today, with military equipment and systems constantly evolving, those skills continue to be more readily available through PMCs.
- **Reducing political costs:** Outsourcing can reduce the political costs to policymakers. Injuries and fatalities among PMCs are not judged by the public as severely as injuries and fatalities among soldiers.
- **Flexibility:** PMCs can be more easily used for short-term projects.
- **Cost:** Depending on the situation, deploying PMCs can be less expensive than military.

## **Can private-sector motives be reconciled with the need for security and allegiance to the U.S. Government?**

In whose hands does the security of the country belong? Should there be limits to outsourcing? While conferees agreed that contractors play a critical role,

## Executive Summary

---

controversial areas include intellectual capital, governance, policy-making and oversight.

On the domestic front, conference participants focused on three key areas of homeland security:

- **Protecting our critical infrastructure:** With as much as 90 percent of the critical infrastructure in the private sector, the questions to address are: What is their competency for internal security? What are the standards? Who has the responsibility for making that evaluation?
- **Catastrophic terrorism incidents and living in a post-9/11 world:** Do U.S. communities have the capacity to deal with the threat of terrorism locally? To what extent should private contractors replace sworn officers in the homeland security role? How do we preserve civil liberties while balancing the need to gather intelligence? Is homeland security a public good, or a commodity to be purchased on the market?
- **Natural disasters:** Large-scale disasters don't stop at the state or local level, and participants agreed that both national and regional responses are critical and require close coordination.

### **What are the legal and ethical implications of using PMCs?**

There is no shortage of laws governing the military and armed conflict on foreign soil. Yet, when it comes to private military contractors, ambiguity still exists regarding which laws could and should apply. The evolving role of PMCs and the changing nature of warfare add complexity to the challenge because the line separating the duties of military and private personnel has blurred significantly in recent years.

Among the many questions that need answers:

- Are there clear deterrents – and stated consequences – for unethical or unlawful behavior by PMCs abroad?
- Should PMCs be classified as civilians or combatants? Under international law, the U.S. Government is responsible for PMC actions. However, on the battlefield there's a serious problem of oversight: Does the PMC answer to his or her employer, or to military officers?
- How should contractual disputes be settled?

### **Concluding thoughts and next steps**

In the face of ever-escalating violence in the Middle East and continuing threats to America's homeland security, conferees agreed that the need to use private contractors to supplement government resources is sure to increase. Participants felt that the



## Understanding the Privatization of National Security

---

conference had advanced the thinking on this important issue, but also recognized the need for further discussion and examination. Recommendations include the necessity for:

- An evaluation of what missions or functions are core military capabilities and should be protected and performed only by the military, as well as a consideration of the future of using PMCs not only in military missions, but also nation-building and peacekeeping operations. This work includes the development of a coherent, uniform government policy to be used as a common resource across the State Department, FBI, CIA, Department of Homeland Security, Department of Health and Human Services, and other appropriate government agencies.
- Common standards of performance and measures of success to be applied to the use of both government personnel and PMCs.
- Better collaboration across the public and private sectors to ensure the appropriate balance of oversight and accountability.
- Improvement in the government's contracting policy, procedures and oversight. A recommendation was made to create a specific acquisition arm within the military to hire private contractors and manage contracts.
- A reliable system of industry accountability and self-regulation. Important elements include developing industry standards, implementing best practices, and establishing a code of conduct.
- Increased cross-training and communication in an effort to break down cultural barriers, improve trust, and foster the feeling and commitment of a shared mission.
- A formalized mechanism for clear command and control in the battlefield.
- An examination and clarification of the legal status of private contractors working abroad.

# Introduction

---

**W**ho is conducting certain types of specialized training for U.S. troops, protecting U.S. citizens and interests abroad, gathering intelligence and coming to the rescue during natural disasters? Increasingly, the answer is private contractors, as millions of dollars from local, state and federal budgets are set aside for outsourcing homeland security, disaster response and military operations.

With the downsized military post-Cold War, global terrorism and natural disasters like Hurricane Katrina stretching all levels of government beyond their limits, the need for outsourcing traditionally government tasks continues to grow. One example: the war in Iraq, where as many as 100,000 civilian contractors and approximately 20,000 private security forces are engaged and on America's payroll, outnumbering all non-U.S. forces combined.

Although private contractors and civilian firms have been stepping into government's shoes since the Revolutionary War, the complexity of the issues raised by privatization and its long-term implications have never been so profound. Those closest to the issues say the stakes are as high for society as a whole as they are for firms capitalizing on the trend. Recently, the debate began to crystallize for the American public—from the furor over the potential sale of U.S. ports to a Dubai company, to news of the gruesome killing of four U.S. contractors in Fallujah, Iraq.

On May 11-12, 2006, the McCormick Tribune Foundation brought together key players from the public and private sectors to explore issues surrounding privatization and make a meaningful contribution to the national dialogue. The conference, "Understanding the Privatization of National Security," was held at Cantigny Park in Wheaton, Illinois. The conference was organized and moderated by the American Bar Association Standing Committee on Law and National Security (ABA SCOLANS) and the National Strategy Forum. Attendees included high-ranking military personnel, senior executives from private military contractors, leaders in law enforcement and the intelligence community, public health officials, first responders and legal scholars.

Participants engaged in lively, often passionate discussions about national security and privatization, tackling questions not only about today's issues, but also thinking a decade ahead to the ideal mix of roles performed by military members, civilian government employees and private contractors. They discussed privatization as a public policy issue and debated how one draws the line on what functions—for the good of the country's future—should never be outsourced.

## Understanding the Privatization of National Security

---

Thought-provoking topics as well as discussions that revealed core issues, included: How do we balance private corporations' profit motives with our country's security goals? How do we ensure accountability, transparency and the proper oversight of private contractors? Is it ethical to outsource tasks the government cannot do because of political or diplomatic reasons? How do we guard against outsourcing becoming a way to work covertly – with less regulation or accountability to Congress and others? How do we stay on top of legal issues?

This report captures the essence of conference discussions. All direct quotes were made by conference participants during the meeting. To encourage candor, conference ground rules stated that conferees' remarks were to be considered off the record and not for attribution.

"Understanding the Privatization of Nation Security" is part of the McCormick Tribune Foundation's Conference Series, which seeks to influence public policy by facilitating balanced and challenging discussion of critical issues by bringing together people of diverse backgrounds and perspectives to examine vital topics, reach new levels of understanding and develop long-term solutions. Special thanks to Suzanne Spaulding, a member of the American Bar Association Standing Committee on Law and National Security, who moderated the conference.

# Chapter 1

## Factors Driving Privatization

---

The use of private contractors on the battlefield is nothing new. In the U.S., the practice dates back to the Revolutionary War, where private citizens, including officers from other countries, contributed to the defense of the nation.

What is new, however, is the unprecedented scope and scale of military outsourcing today. From Afghanistan and Iraq to American airports, civilian contractors are providing everything from troop meal preparation to bodyguard protection to actual law enforcement. In Iraq alone, there are nearly 50,000 contractor employees performing functions traditionally done by the government, according to some estimates.

What are the reasons behind this growing trend? And what are the advantages of using private contractors? To help better understand the issue, conferees discussed the drivers of privatization and the factors that are fueling the government's growing dependence on contractors to get the job done.

### Downsizing of the Military

During most of the twentieth century, a strong and well-funded U.S. military had limited need for outsourcing. But post-Cold War cuts in defense spending and staffing helped spark the growth of today's private military contractor (PMC) industry.

---

***“What private contractors can do very well is pull together highly qualified people and hand-pick them and task-organize them, and do it very quickly. And this is an enormous asset to our country.”***

---

When the U.S. faced Saddam Hussein the first time in 1991, the Army had about 700,000 active-duty troops. By the time the second U.S. war with Iraq was underway, the troop number had been reduced by about one-third and the demand for private contractors grew. With fewer troops on the ground, the military focused on its core competency—warfighting—and it outsourced mundane functions such as doing laundry and

preparing meals, along with other more complex logistical support functions that it didn't have the resources or expertise to handle.

“One of the reasons there's an economy involved here is because the United States government has made a policy decision that they will have a smaller, highly professional military and contract out all those other functions,” noted an industry consultant.

By doing away with the draft, “we have a military that is smaller than [at] the end of Cold War,” added a PMC leader, “but at the same time I would argue it's a lot more effective.”

Not everyone agreed. As one legal expert pointed out, it is somewhat ironic that “in a time when people are talking about stress and strain and the need to use private people in the battlefield, the Air Force is cutting 40,000 people.”

Still, most participants acknowledged that a smaller military is here to stay. “Can we bring back the draft? Are we going to add 100,000 to the ranks?”

## Understanding the Privatization of National Security

---

Good luck with that,” said a retired military official. “That’s just not the direction we’re going to go.”

As a direct result, “the realities are that our country is stretched,” an executive from a private military firm concluded. “Our friends overseas are stretched. There is a finite ability to do the key tasks that need to be done.” And therefore the government turns to contractors to fill that void.

### Changing Nature of War

The increased use of unconventional warfare by our enemies is another key driver of privatization. “How do you fight a global war on terror?” asked a participant. The government is “doing the right thing by being very entrepreneurial. Just like any corporation, you would bring in experts on short-term contracts.”

PMCs are often better suited to respond to asymmetric threats. “Al-Qaeda is basically a new war-making entity,” noted a law enforcement expert. “This is in fact a new form of warfare that’s evolving. It’s not state-on-state conventional warfare, but the new form of warfare that’s developing with non-state actors.”

---

***“Al-Qaeda is basically a new war-making entity. This is a new form of warfare that’s evolving.”***

---

“This is a global change,” concurred another law enforcement official, “where you see crime and war blurred. You see domestic and foreign blurred. And this has particularly important ramifications.”

One ramification is the need for better intelligence. “During the Cold War, information was hard to come by,” noted one expert. “Power came from the control of information. The world is becoming increasingly complex ... and the intelligence function above all has to be accurate and it’s got to be fast. [The government] can’t cover everything.” As a result, contractors are increasingly being employed in the intelligence field.

One industry leader noted that another big change is the increased need for peacekeeping missions. “The military, of course, hates doing peacekeeping,” he stated. “So what are we going to do about that? Well, we’re probably going to go to the private sector again. Do you need to send a hundred 1st Airborne to eastern Congo to do peacekeeping operations? Not necessarily.”

### Cost Savings

Perhaps the number one reason behind the outsourcing trend is “the hope to achieve cost savings,” suggested a conferee. Many argued that the private sector can do the job more effectively and cost efficiently.

Others, however, didn’t totally agree with that assertion. “[The] implication is that private industry can always accomplish a mission better and cheaper than the military, and I reject that,” countered one legal expert.

“We take it as an article of faith that private concerns can do stuff better and cheaper than the government can,” an academician added. “But on the matter of

## Factors Driving Privatization

---

cost effectiveness, I wonder if we can achieve that with our persistent reliance on no-bid and cost-plus contracts.”

Several conferees pointed out that there is little hard data available on what the government is actually spending on private contractors, not to mention a meaningful analysis of whether outsourcing is actually saving taxpayers’ money. “I bet anybody here can give me 20 examples of a contractor doing something faster, cheaper and better, and I can give you 20 examples of where the government did a better job. All of that’s interesting, but it’s not analysis,” noted a retired military official.

“[If] you want to look at the value of the private sector doing [a function] versus government, [there needs to be] some true activity-based costing,” argued a PMC executive. “What does it cost the military to do airlift? What does it cost the U.S. Air Force to airlift one pound of goods from the United States to its final destination in Iraq? What does it cost them to field a battalion of stability operations people? If you really looked at those costs, it’s staggering.”

Participants were in strong agreement that there’s a need for a cost-study analysis, although some acknowledged the difficulties in determining a true apples-to-apples comparison. For instance, should you factor in government pensions, corporate benefits, and training costs?

“Cost is extremely relevant,” emphasized a think tank leader. “At some point, the taxpayer gives you a finite amount of resources in order to accomplish your mission. And if you’re not watching your costs, you can’t get there.

“[I’m a] big endorser of full-cost accounting,” he added, “because frankly, we lie to ourselves. And until you get to that full-cost accounting in terms of what this stuff is really costing, you can’t make those strategic decisions of, what do I want to keep versus not?”

While cost is obviously a key factor, one conferee cautioned, “Cost alone can’t be the issue.” Others agreed that the real issue is value versus costs, but until there is better cost and performance data available, it’s challenging to make a thoughtful value assessment.

## Surge Capacity

One area where cost is perhaps less relevant is when the government has an immediate mission and quickly needs “surge capacity.” “It’s a question of getting it done,” noted moderator Suzanne Spaulding. “It’s the need for speed,” added a private sector executive.

Whether it’s responding to Hurricane Katrina, a bio-terrorism event, or an outbreak of violence in Iraq, private contractors play an important role in supplementing government capabilities during a crisis or emergency situation. “What private contractors can do very well is pull together highly qualified people and hand-pick them and task-organize them, and do it very quickly. And this is an enormous asset to our country,” noted a public policy expert.

## Understanding the Privatization of National Security

---

“We have chosen not to have a military draft,” added a defense industry expert. “Therefore, when there is a surge in demand... there’s an inevitability toward our use of contractors.”

### **Ease and Speed of Deployment**

Participants noted that government bureaucracy is often the root cause of outsourcing decisions. Because it’s difficult and time-consuming to get approvals through military bureaucracies and government agencies, contractors can often get the job done more quickly and easily—and they are also more flexible in responding to changing conditions.

“A lot of the reason we’ve gone to contractors is because our civil service system is dead on arrival,” suggested one military expert. “I don’t know how many meetings I’ve sat in when they ask, ‘Why are you contracting?’ and they said, ‘Because it is too hard, number one, to hire, and it’s too hard to fire.’ It’s just become a reality to get around the problems with our own system.”

“There are many great people in the Pentagon,” a PMC executive added. “But they’re trapped in layers and layers of bureaucracy.”

He added, “You can’t expect a company like General Motors or Ford to get better unless they have some foreign competition that constantly raises the bar and gives them a benchmark to run against to make them better, smarter and faster, and that’s what we’re about. We’re not going to replace; we’re going to help it run better, smarter and faster by showing an outside way that they can operate, that they can innovate and move fast.”

A private sector executive urged the group to keep in mind that “essentially the industry is demand-driven. Somebody says, ‘Can you do this better? Can you do this faster?’ ”

### **High-Tech Skills and Subject Matter Expertise**

Historically, the government has always turned to private contractors when there’s a need for high-tech weapon systems or extremely complex tasks, noted one industry expert. “When the technological change is so fast, typically I don’t have the technical expertise inside government,” he explained.

Military equipment has become much more complex and requires expertise more readily available through PMCs. “The reason the industry’s here is that they have the skill sets to do it,” according to one national security expert. Others noted that contractors are beneficial whenever there’s a need for any type of subject matter expertise or specialized knowledge.

### **Reducing Political Costs**

Some conferees suggested that outsourcing reduces the political costs to policymakers. Citing what he called the “CNN Factor,” a law enforcement expert

## Factors Driving Privatization

---

commented that, “If you lose 50 contractors, it’s not going to stop the mission like if you lose 50 soldiers.”

Others noted that most of the American public isn’t even aware of the significant number of civilian contractors in Afghanistan or Iraq. Indeed, contractors typically aren’t included in the total number of forces or death tolls reported by the media.

“It’s a sad fact that contractor deaths don’t get the coverage, the interest or the reaction,” commented a legal expert. “The public doesn’t have the stomach for sending its sons and daughters to clean up some of these messes. They will tolerate a contractor and they will tolerate the death toll.”

Another participant noted that when dealing with humanitarian issues overseas, it’s easier to hire a private contractor than to send U.S. soldiers. “We can ramp up foreign policy without extending military assets.”

Added an industry leader, “We can do humanitarian missions with contractors that we couldn’t politically manage with the regular military. It is politically lower profile. It’s not secret, but it’s something politicians can do without having to make it a major policy issue.”

---

***“If you lose 50 contractors, it’s not going to stop the mission like if you lose 50 soldiers.”***

---

***“The political cost of what we contract out is probably as important, if not more important, than the actual fiscal monetary issue. These are policy decisions.”***

---

Building on that point, some conferees suggested that the desire to avoid oversight and public debate is an underlying motive in hiring contractors. As one legal expert put it: “Some say that our real motivation for moving more toward privatization is to enable us to do [things] using private contractors that the government couldn’t do, either for political or diplomatic reasons, or because the work can be done covertly, out of the public eye, or because of less regulation or less accountability to the Congress or others.”

While others disagreed with this assessment, there was general consensus that political realities factor into many outsourcing decisions. “The political cost of what we decide to do and what we contract out is probably as important, if not more important, than the actual fiscal monetary issue,” argued a military official. “We have to be conscious that these are political decisions we’re making, not fool ourselves into thinking, well, we’re doing this because it’s cheaper and more effective. These are policy decisions.”

## Concluding Thoughts

One private sector executive summed up the situation: There are “requirements to do many, many more things and have many more skill sets than we had 10 or 15 years ago... at the same time that we have shrunk our force and gotten rid of a lot of those very specific capabilities. So there is a need to outsource, and the expertise is out there and, in many cases, we’re using it very effectively.”



## Chapter 2—Homeland Security: Where Does Privatization Fit In?

---

The stakes couldn't be higher. From guarding the nation's airports, borders and ports to protecting Americans in the face of a pandemic, bio-terrorism or natural disaster, homeland security is a challenge of monumental scale and complexity. Its impact crosses federal, local, public and private lines.

Even as private sector contractors take on a growing role, the privatization of homeland security is still in its infancy. Important questions are at the forefront of the debate. Is the country prepared for the next Katrina? Would there be enough medicine to treat up to 10 million people for anthrax or other bacterial infections? How should billions of tax dollars be distributed to states to strengthen their capacities to respond to bio-terrorism and other public health emergencies? And what role should private contractors play in supporting homeland security efforts?

With federal, state and local agency resources stretched to the limit in the post-9/11 environment, private contractors are increasingly stepping in to fill the void and provide necessary skills and services. "If you're talking about intelligence, early warning, border security, critical infrastructure, emergency preparedness and response, and domestic counter terrorism, there are contractor applications in all those functions," argued one think tank expert.

But some conference participants questioned: In whose hands does the safety of the country belong? The recent public outcry over the Bush administration's plans to allow a Dubai-owned company to oversee six U.S. ports is just one example of the American people's hesitation to outsource key aspects of homeland security.

"As soon as you start talking about anything national security related, people's red flags go up," a national security expert cautioned. "The general public becomes very concerned."

Conference participants focused on three key areas of homeland security:

- Protecting our critical infrastructure;
- Catastrophic terrorism incidents and living in a post-9/11 world; and
- Natural disasters and lessons from Katrina.

Following are highlights and key themes from the discussion.

### **Protecting Our Critical Infrastructure**

"From securing the Hoover Dam to running temporary prison facilities, there's more to the issue of privatization than the mission in Iraq," observed one participant. "A lot of the critical infrastructure of the United States is now being handled by private entities."

Indeed, since 9/11, private security companies have been guarding some of America's most sensitive military installations, such as Fort Bragg in North Carolina, the White Sands Missile Range in New Mexico and the Picatinny Arsenal in New Jersey. Other conferees cited new and surprising examples of privatization,

## Homeland Security: Where Does Privatization Fit In?

---

including the Chicago Skyway Bridge (a 7.8 mile toll road connecting a Chicago expressway to the Indiana tollway) and the city's Midway Airport.

"As much as 90 percent of the critical infrastructure is in the private sector rather than the public sector," estimated one nonprofit executive. "So the question then becomes, what is their competency for their internal security? What are the standards? Who has the responsibility for making that evaluation?" The group agreed that more government oversight is critical.

Where to draw the line between government and private responsibility for critical infrastructure protection is hazy at best, and has not been put to the test in the context of homeland security. Yet there may not be room for trial and error.

"If we are talking about the possibility of using private armed security [personnel] for patrolling our borders, this has to be approached with great trepidation and hesitation and much more careful planning," argued one security expert. "The

---

***"If you can't depend on the government to protect your border, then what's the point of having a country in the first place?"***

---

idea of protecting the border strikes most people as much more an inherently governmental function than, say, protecting a power plant or a railway switching yard. If you can't depend on the government to protect your border, then what's the point of having a country in the first place?"

Not all agreed. Some felt border protection and immigration control are appropriate places to employ the special skills of private contractors. "The war in Iraq has everybody's attention, but it's the war on the border of Mexico that's kept me up at night for the last 10 years," a private sector executive commented. "It's a complex skill set that's needed, and it's the private firms that have it."

Whether it's a government agency or a private firm protecting our nation's borders and critical infrastructure, "what has become very apparent is the total interdependency of one sector to the other," noted a nonprofit official. "For example, to get food on your shelves, to get medical supplies, you have to rely wholly on the transportation sector, so there's this interdependency. And if there's a failure of internal security in one area, that becomes the weak link and the whole operation closes down."

### **Catastrophic Terrorism Incidents and Living in a Post-9/11 World**

Does each and every community have the capacity to deal with the threat of terrorism locally? To what extent should private contractors replace sworn officers in the homeland security role? How do we preserve civil liberties while balancing the need to gather intelligence? And is homeland security a public good, or a commodity to be purchased on the public market? These were just a few of the issues that participants tackled as they discussed the realities of living in a post-9/11 world.

## Understanding the Privatization of National Security

---

### Public Health's 9/11

The first shocking anthrax incident of Sept. 19, 2001, brought the risks and consequences of bio-terrorism into clear focus. It also pointed to the need for homeland security resources from every sector to work together.

"We needed to integrate local, state and federal actors, and very quickly realized it had to be not just intelligence and law professionals, but public safety, public health professionals and private sector professionals," noted a law enforcement expert.

"Public health had never worked with law enforcement before," noted one official. "Public health had always shunned the guns. Forensic epidemiology training [after the anthrax incident] was a way of bringing law enforcement and public health people into the same room."

Also helping to transform the way that various agencies work together are the TOPOFF (short for Top Officials) simulation exercises, which have been mandated by Congress. Held in cities throughout the U.S., they bring together officials from various government agencies and the private sector for practice drills that focus on how well we are prepared for a possible terrorist attack.

"When we started, there was a dearth of knowledge in the local community and in many states on the dynamics of terrorism," a conferee commented. "We quickly developed a different view for how intelligence is processed, more akin to military intelligence," he added. "Now local police departments are getting involved with intelligence versus just federal."

---

***"As much as 90 percent of the critical infrastructure is in the private sector. So the question then becomes, what is their competency for internal security? What are the standards? Who has the responsibility for making that evaluation?"***

---

### Bringing Down the Walls Between Agencies

It's a huge culture change for law enforcement, CIA and FBI personnel to be working side by side. Add private sector specialists to the mix and you sometimes get a culture clash. "I think there's a dynamic that if you bring too many contractors into the cooperative effort, your cops and firefighters become heavily resentful," noted one first responder. "I've seen it first-hand."

"Post-9/11, we saw a bringing down of the wall between intelligence and law enforcement," noted one intelligence official. The next step, added a homeland security expert, "is to develop some new paradigms that allow the police departments, the state and locals, to work in a more hand-in-glove fashion with the Feds and the traditional intelligence community. That's not something that is going to happen next week or next month, but it's going to develop over time."

Ensuring that contractors support—but not drive—policy, was another issue raised by participants. There was general agreement that having a strong strategy

## Homeland Security: Where Does Privatization Fit In?

---

for homeland security is critical before private sector contractors can effectively be integrated.

### Natural Disasters—Lessons from Katrina

In the realm of national disasters, Katrina was unprecedented. How can the hard lessons learned shape better preparedness plans for future catastrophic emergencies?

### Closing the 72-Hour Gap

“If you don’t get the first 72-hours right, you don’t get a second chance,” emphasized one conferee. “In a catastrophic disaster, state and local governments are overwhelmed at the outset, and you have tens of thousands of lives, maybe hundreds of billions of dollars at stake. And that normal 72-hour cushion that

---

***“In a catastrophic disaster, if you don’t get the first 72 hours right, you don’t get a second chance.”***

---

you have when the local guys held the fort until everybody else could get there, that disappears. So the first issue, if you’re the government, is how do you close the 72-hour gap?

“The second thing is credibility,” he added, “because the one thing that government brings to the table in the immediate aftermath of a crisis is

credibility. And the data on this is very, very clear. If people perceive that civil society and governance are still there, they react very positively. They take orders. They actually take care of themselves. They self-organize, and it’s not a problem. On the other hand, if they think that government has absolutely, totally failed them, and it’s chaos in the streets, then they also act accordingly.”

Several conference participants noted that in the case of Katrina, it was often the private contractors—not government personnel or local agencies—who were able to cut through the bureaucratic red tape and quickly respond. Some cautioned, however, that there are drawbacks to the use of private contractors in emergency situations.

“One thing that’s different on the domestic side is the case of widespread destruction,” a government official pointed out. “If your contingency plans are relying on private contractors to come in and support you in those events, they may be wiped out themselves and have concerns for their families. Contractor employees can walk, National Guardsmen—when they’re activated—are not in that situation.”

Countering that point, a private security firm executive explained how his company surged 145 people in 36 hours in the first few days following Katrina. “We got calls from everyone—retail, insurance companies, oil and gas, telecom, hotels and private residences. They desperately wanted security because some of the New Orleans Police Department had walked off the job, and the National Guard wasn’t there yet. Believe me, it stretched our organization, but we did it, moving with our own aircraft and motorcades, trucks, everything else. It was kind

## Understanding the Privatization of National Security

---

of a commando mission initially. We were literally dropping two- and four- and twelve-man elements around the state.”

Several participants noted that the National Guard is stretched too thin, between its overseas mission in Iraq and its domestic duties with homeland security. “If you look at Katrina, one of the reasons the Guard could not respond is because a very large percentage of them were in Iraq. They weren’t even home,” said an executive from a private military contracting firm. Some conferees suggested there’s a need to rethink the role of the National Guard, but in the meantime, the reality is that their capacity is limited.

One issue that everyone agreed upon is the need for better regional cooperation during a crisis. Federal, state and local agencies need to coordinate more effectively with each other—and with private partners. “You need a regional response for large-scale disasters, because it doesn’t stop at the state or local line,” summed up one expert. “My lesson from Katrina is, the larger the scale of disaster, the more that decentralized execution is necessary and essential.”

---

***“My lesson from Katrina is, the larger the scale of disaster, the more that decentralized execution is necessary and essential.”***

---

### Concluding Thoughts

Given the magnitude of homeland security, the conferees agreed that they had only begun to scratch the surface of the many issues at stake. “The debate and discussion about privatizing homeland security is generally not as well developed [versus the discussion about the use of private military contractors overseas]. I think it’s because this industry is still in its infancy,” noted Moderator Suzanne Spaulding. “One of the things we can conclude is that this is an area where we need to do a lot more thinking and talking and, perhaps, have a follow-up conference.”

## Chapter 3—Bright Lines: Should There Be Limits to Outsourcing?

---

**W**here should we draw the line on the use of private contractors? While most participants agreed that combat was—and should remain—a solely military function, there was a lively and sometimes hotly debated discussion about which roles are appropriate to be outsourced.

“Should some areas be exclusively government functions?” Moderator Suzanne Spaulding asked the group. “Or should we recognize that there are no bright lines and take each case as it comes? If the capability seems appropriate, should we go ahead and use it?”

Some participants challenged whether such so-called “bright lines” should even exist. “I would argue against boundaries,” said one private sector representative. “For example, some people say we shouldn’t outsource intelligence-gathering or interrogation. If the alternative is to not collect the intelligence in the time we need,

---

***“Are people going to be killed because I chose not to bring in a qualified contractor to interrogate a detainee?”***

***“If we don’t decide with Congress and the American people what the bright line is before the fact, it gets defined for us after the fact, when something goes wrong.”***

---

would they still say they don’t want to outsource it? Are people going to be killed because I chose not to bring in a qualified contractor to interrogate a detainee?”

Others, however, argued strongly that the time is now for the government to set clear guidelines and parameters on what should—and should not—be outsourced. “If we don’t decide with Congress and the American people what the bright line is before the fact, it gets defined for us after the fact, when something goes wrong,” said a government official. “People want to know what went wrong, why did it go wrong,” and, for example, in the instance of Abu Ghraib, “why was a contractor doing that as opposed to a government employee?”

Noting the complexity of the issue, a retired military official pointed out, “We’re going to have an extraordinarily difficult time deciding where that bright red line goes, because it moves, and it moves for good reasons.”

“The guidance would be, undertake no private security function that would destabilize public trust or jeopardize public links to the government,” said one national security expert.

### **Appropriate Private Military Contractor Roles**

Some activities and skills clearly need to come from the private sector. Globalization and specialization drive this need. “If you’re going to do work around the world, you’re simply never going to have a large enough cadre of language-skilled people,” noted a legal expert. “You need interpreters and people who know the local languages and customs. You can’t afford to have them

## Understanding the Privatization of National Security

---

on the payroll for 20 to 30 years because you're not going to be focused on that area for 20 to 30 years."

Private military contractors (PMC) are also necessary to provide high-tech skills and services. For example, "Big satellites can't be built by government employees. We don't expect the government to retain the engineering and scientific expertise that's needed to build satellites and their sophisticated payloads," noted one intelligence expert.

There was general agreement among participants that logistics, medical support, munitions response and foreign troop or security officer training are suitable activities to outsource. There was also discussion about a contractor's critical role in humanitarian and peacemaking missions.

When it comes to intelligence activities, participants acknowledged that private contractors are already playing a big role, both overseas and domestically. "[In the past], I would have said much of what is done can't be outsourced," noted a former CIA employee. "Now I will tell you that much of that can be outsourced, because we have transferred from a Cold War model, where power is secrecy, to a model where friends and America's allies need to exchange information and be cooperative. And the private sector has a role to play in this—a supporting role."

---

***The private sector has way outperformed the government, and always will, in vast parts of intelligence.***

---

"The private sector has way outperformed the government, and always will, in vast parts of intelligence," added a law enforcement expert. "Open source intelligence exploitation is done better. Geospatial intelligence was tied up, but now there are commercial off-the-shelf private capabilities that are efficient and effective. All of these are rational policy choices."

### Controversial Missions

Most participants agreed there should be a red line that restricts the outsourcing of accountability and responsibility. "You don't outsource governance, policymaking and oversight," a national security expert suggested. "If you are not held responsible, then you simply cease to have the legitimacy of governance. That's a clear line you can't breach."

High-risk activities that require tremendous amounts of oversight should also probably not be outsourced, argued an academician. "The way to find bright lines is to look where abuses have been in the past and the ways laws have evolved to limit opportunities to abuse namely civilians, or noncombatants, or prisoners of war. Prisons, detention centers and interrogation should never be outsourced because those activities, whether domestic or overseas, have such a high propensity for abuse."

Intellectual capital is another area that some conferees believe should not be outsourced, even though the practice is already widely occurring. "Doctrine-

## Bright Lines: Should There Be Limits to Outsourcing?

---

writing is almost all outsourced,” a participant pointed out. “Military education is largely outsourced. ROTC is completely outsourced. That’s very destructive and shortsighted. That decision was based mostly on cost and little else.

“When you lose the capacity to understand your profession, you have destroyed yourself as a profession,” he cautioned.

Adding that there is a “dimension of enculturation,” an academic expert suggested that only those in uniform should conduct core military training. “The military ought to train its own,” agreed another conferee. “We all appreciate the fact that when we do training, we also learn. We have groomed corporals, sergeants and lieutenants to do the activities that we call on them to do later on.

---

***“You don’t outsource governance, policy-making and oversight. That’s a clear line you can’t breach.”***

***“If I had a choice between keeping the intellectual capital of [the] military or the job of dropping bombs, I’d give up dropping bombs.”***

---

We want them to take that independence and skill into the field. The military ought to be able to do these things.”

“There are some things that are fundamentally military and should be taught by military members, because we are teaching a culture, we’re teaching discipline, we’re teaching standards, codes of ethics and all those sorts of things that should remain in the province of military members,” underscored one military official. “We can outsource how to fire a gun, but we should teach rules of engagement and rules for the use of force. We shouldn’t outsource that because that’s our responsibility as a nation.”

“If I had a choice between keeping the intellectual capital, of making sure military people understood, taught and rose up people through their profession, or the job of dropping bombs, I’d give up dropping bombs. That’s the thing I worry about most,” stated a national security expert.

On the domestic side, some of the most debated assignments were critical infrastructure protection, natural and public health disaster response and quarantine enforcement.

### Expanding Role for PMCs Overseas?

The bright line debate eventually led to a discussion of whether private military contractors should provide their services to other countries, or to private companies based overseas.

“Think Hotel Rwanda. There’s going to come a time very soon when the [owner] of that hotel chain calls one of us,” predicted one contractor. “We frequently receive calls from ambassadors [asking], for example, ‘Can you help put down an uprising in Uganda?’ It actually isn’t a question of whether the demand is there but, rather, should we do this? What should we do to address this need?”



## Understanding the Privatization of National Security

---

Another industry leader noted that there are many private sector companies that are willing to “go and do peace operations and make sure that the U.S. goals and missions are actually carried out.”

Questioned about whether some PMCs are promoting their services for offensive missions, one executive noted that was not the case, but he did suggest that these contractors can fulfill a critical need overseas by providing humanitarian assistance and defensive capability at the request of the U.S. for “internationally validated customers” such as the UN or Darfur. “So it’s actually far removed from for-hire offensive,” the executive emphasized. “If I were going to be a mercenary, I’d be out in Angola. We’re here to provide a service that is validated by the United States government.”

“There are lots of places in the world that the U.S. wants to assist allied nations, and they are not able to send big blue Air Force planes or battalions of Marines or soldiers,” added another conferee. “Private contractors can go assist, train and accompany some of those indigenous, sovereign forces into the field and advise them or provide technical assistance for various weapons. And if that qualifies as offensive operations, I think that that is a good use of a PMC.”

One contractor noted that the “red line of what the private sector will be allowed to do and not to do is driven by the immediacy of the events. The U.S. is involved in a four-generation war now. The U.S. military really likes to fight third-generation war. In long-term counter-insurgency fights, we don’t have a great track record, whether it’s Vietnam, Lebanon, Somalia, and now in Iraq and Afghanistan. So the private sector has the ability to tailor the right package for the mission and to stay there for as long as it needs to get done.”

Also recognizing the importance of speed in responding to unfolding situations, a PMC executive said, “I routinely get calls from government contracting officers on a Monday that say, ‘I need a concept by Wednesday.’ Or I’ll get a call on Friday that says, ‘Can you have 30 guys in Rwanda by Sunday?’”

Yet, participants agreed that the realities of making on-the-spot outsourcing decisions must always be balanced by the government’s need to step back and consider the long-term, big picture.

---

***“The more interesting question is not, ‘Where’s that bright line?’ it’s, ‘What is the mechanism the government uses to make that decision?’”***

---

### **The Need for a Decision Model**

Conferees agreed that a decision model or risk assessment tool would be helpful in determining whether or not something should be outsourced. As one retired military official noted, “I think the more interesting question is not, ‘Where’s that bright line?’ it’s, ‘What is the mechanism the government uses to make that decision?’”

## Bright Lines: Should There Be Limits to Outsourcing?

---

“We don’t have a good analytical decision model that answers, ‘How do I waive the cost-benefit analysis? What are the long-term issues? How do we do this?’ We tend to get locked into specific episodic examples. I think it would be much more useful if we spent some time talking about what’s the process to do that,” he suggested.

One participant recommended that there should be a continuum or spectrum on which to evaluate outsourcing decisions. “We need to assess things in light of what are the implications of particular activities and what you are asking the contractor to do, as opposed to whether they can do it faster, cheaper or better, or to fill a particular niche nicely at a given time,” a military official noted. Others agreed that the long-term implications of outsourcing decisions are typically overlooked in favor of short-term expediency, and that an analytical decision model would help remedy the situation.

### Public Policy Objectives Should Drive Outsourcing Decisions

Overall, conference participants pointed to a need for less ad-hoc decision-making and more focus on fulfilling the country’s national security objectives.

---

***“One of the most useful things we can do is think ahead where we, as a nation, ought to be 10 years from now, in the mix of things that are done by military members, by civilian government employees and by private contractors.”***

---

Outsourcing decisions should be driven by mission goals, not simply costs. “One of the most useful things we can do is think ahead to where we, as a nation, ought to be 10 years from now, in the mix of things that are done by military members, by civilian government employees and by private contractors,” suggested a national security expert.

“Just because people will offer to do [something] for a price doesn’t mean we should,” he added. “We need to focus on accomplishing national and public policy objectives.”

Over time we’ve learned that it is wise to have some amount of standing armed forces, concluded a military official. “The real issue is in the definition of its core functions and its capabilities, and that is a decision for Congress. It’s a political/policy decision on what we want our armed forces to be able to do. That’s an ever-changing debate.”

The decision on what we should and shouldn’t outsource comes down to two key questions, summarized one legal expert: “What will the American people pay for? What will the American people stand for?”

## Chapter 4

# Ensuring Accountability

---

One of the thorniest and most hotly debated issues surrounding the use of private military contractors is accountability. To whom are contractors primarily accountable? What measures are needed to ensure adequate oversight and transparency? Does industry do self-policing work? And who is responsible when a problem arises?

“This is one of the most important discussions we’ll have at the conference,” Moderator Suzanne Spaulding commented. She added that accountability is ultimately about “preserving the relationship between the governed and the government,” and challenged participants to consider the importance of maintaining that public trust.

Participants agreed that improving industry oversight should be a top priority. “The public believes that the government should be accountable for any contractors that are out in the battlefield, and we have to figure out how to better ensure that accountability,” suggested a legislative branch representative. “To the extent that we can make some recommendations on whether or not any changes are needed to our current laws or practices, I think that would be very helpful.”

---

***“The public believes that the government should be accountable for any contractors that are out in the battlefield, and we have to figure out how to better ensure that accountability.”***

---

### **Toward a Common Framework for Accountability**

“Accountability means holding people to standards that are identifiable” and which recognize “all points on the spectrum, from total failure at one end, to total success at the other,” noted an academician. Encouraging the group to “broaden our thinking about accountability, lest we focus too quickly just on contractors,” he suggested that the discussion needed to focus on the role of three distinct groups:

- Government agency employees (including those writing and overseeing contracts);
- Military personnel (including commanders in the field); and
- Private contractors.

“Since all three groups operate on behalf of the people of the United States, there ought to be more comparability for the standards, [rather] than different standards among them,” he argued.

Others agreed that a key issue is the discrepancy between contracting officers’ and field commanders’ definitions of accountability. “If you ask a contracting officer, ‘What is it you want me to be accountable for?’ that contracting officer will almost always tell you that you meet all the deliverables in the timelines, and you don’t spend a dime more than I’m contracted for. That’s the measurement of standard, period,” explained one private military contractor.

“If I go to the program officer or battalion commander that I’m supporting, his measure of standard is, ‘You do everything I ask you to do, you don’t cite the contract back to me, and you give me the flexibility and responsiveness I need if something changes.’ Those are two completely different standards. They’re not

## Ensuring Accountability

---

conflicting, but they're not the same."

One conferee with a government agency background added yet another perspective on accountability. "Accountability to me, sitting in the executive branch in Washington, D.C., means something different. It means, 'Who's to blame?' Any government entity that contracts with someone takes a chance that they will have to testify on Capitol Hill or talk to the General Accounting Office [sic] about what happened. And when something goes wrong, a rule is passed to try to keep it from ever going wrong again."

Noting the contrast in how the government and industry approach accountability and standards of performance, an industry executive observed, "Accountability within the government structure generally means, 'Whose fault is it?' That drives us to a system designed to prevent the five percent of evildoers from doing badly. But that also drags the other 95 percent through the same wickets.

---

***"Accountability within the government structure generally means, 'Whose fault is it?' That drives us to a system designed to prevent the five percent of evildoers from doing badly. But that also drags the other 95 percent through the same wickets."***

---

"It's the opposite in business, where the system assumes that if I've done everything right, I have good people doing good work. The bad apple will pop up, and I'll fire him the same day."

But as Spaulding pointed out, the government cannot afford to be lax in its oversight function, because just "one mistake is so damaging.... If you're talking about people holding guns, that upfront compliance becomes a heck of a lot more important."

### Is Industry Self-Regulation Enough?

Many conference participants argued that business imperatives provide a strong incentive for contractor accountability. "Everybody in our company, from president down, is on an at-will contract. [If] you do something that reflects badly on the company or hurts the U.S. Government, you're gone the same day, period," noted a retired military official who currently works for a private security firm. "I never had that kind of accountability when I was in the government."

Another private security executive concurred that market forces work quite effectively in weeding out the bad apples. "I will tell you right now, when you're dealing with contractors in Iraq, if you're out there being cowboys, you're not going to last very long. You're going to lose the contract.

"It's still a business," he added, "It still has to be governed by what will keep you profitable, what will keep you in the business. And the simple truth of the matter is, if you're not professional over there in Iraq right now, you're going to be out of Iraq pretty quick."

Citing his firm's extensive employee training program and policy of "zero tolerance for transgressions," another PMC executive pointed out, "The Arthur Andersen situation

## Understanding the Privatization of National Security

---

is not lost on any professional services organization trying to provide a high level of service and support for clients. It's also a very effective deterrent to unethical behavior."

Others, however, expressed reservations about whether industry self-policing is sufficient. "I don't doubt the sincerity of the reputable companies that are around this table. But I think there's only so much you can do with a Code of Conduct," cautioned a not-for-profit executive. "You can fire people and you can kick people out of an association, but you cannot hold them criminally liable."

Despite its limitations, participants agreed that industry self-regulation is a necessary and important first step in ensuring better accountability and standards of performance. "Policing our own is, in my opinion, the most important leg of that [accountability] stool," argued a private security executive.

Self-regulation will also help the industry to legitimize itself in the public eye, a PMC executive added. "The more oversight we have in the industry, the more the really top professional firms are going to do well, and the more we may find contractors who are held to a [higher] standard."

"I think there's a real role here for industry regulation of standards," concluded a retired Navy official. "We have a model that we can look to—the nuclear power industry. After Three Mile Island, a self-regulating organization was set up, funded and run by the industry. It has brought the entire industry up to operate in a professional way. It's not punitive. It's a positive way of raising standards rather than saying, 'If you screw up, we're going to punish you.' The good companies will welcome this, and the low-bidder, fly-by-night guys will perish."

---

***"There's only so much you can do with a Code of Conduct. You can fire people and you can kick people out of an association, but you cannot hold them criminally liable."***

***"The more oversight we have in the industry, the more the really top professional firms are going to do well, and the more we may find contractors who are held to a [higher] standard."***

---

### The Media's Oversight Role

Looking beyond self-regulation, participants noted that the media can serve as an important vehicle for ensuring accountability. "The press sometimes gets it wrong and abuses the power," commented a national security expert. "But that doesn't mean there isn't a legitimate role for the press to play in terms of transparency and visibility."

Participants commented on the lack of military knowledge among the general public. "One of the primary reasons that the public is military illiterate is very few reporters and editors have any connection with the military; certainly never been in it. This is the first generation that this applies to," noted a Washington insider.

Part of the media's role should be to educate the public about the private military contracting industry, conferees suggested. "I believe there is a fairly negative perception in the media in terms of private contractors, and specifically in private security

## Ensuring Accountability

---

contractors,” commented an industry consultant. “Numerous books and documentaries are coming out, and none of them are good. They go for sensationalism, with contractors shooting down cars.”

### Questions Arise About Chain of Command

One serious issue that needs to be addressed is where private contractors fall within the military chain of command. Citing a recent Government Accountability Office (GAO) report, one government official pointed out that combatant commanders often didn’t know the contractors who were in their area of operation. As a consequence, coordination and communication might be hampered.

“We had a big discussion about this, and the Marine Corps brought up, ‘What is the commander’s duty of caring?’ Theoretically, if you are a commander, and you have contractors working in your area, you don’t control them.

“If something happens in the commander’s immediate area and he needs to take care of the people who are there, who don’t work directly for him, does he have an obligation to do that?” questioned the official. “I don’t think we have sorted out the roles for him—or her—and you need a whole infrastructure to manage and be accountable for what happens when you’re actually out on the field.”

The scenario depends on the individual contract, conferees noted. “I have seen contracts where the unit commander actually has the contract employees assigned to the unit,” a lawyer pointed out. “He commands them just like anybody else in his unit. So it depends on what the contract says.”

Field commanders clearly need to have better knowledge of the private contractors operating within their area of command, as well as some level of oversight. “Contractors want oversight, want to have rules of the road in which our people are responsive to the combatant commander,” emphasized a PMC executive. “It’s something that should be encouraged to be done.”

### Getting the Government House in Order

Participants agreed that the U.S. Government does not do a good enough job in contracting. “I don’t think we train our government officials near well enough to effectively write a request for proposal, to write requirements and to oversee particularly large, complex contracts,” said a conferee. “And that’s a big part of the problem.”

“I’m disturbed at how many purchasing agents for the government come up from the ranks of secretaries and receptionists,” commented a private security firm executive. “In some federal agencies, 24- and 25-year-old former receptionists are deciding key security roles for overseas, sensitive government locations. You have to do a better job of professionalizing the acquisition core in the military and the government.”

Several PMC executives noted that the best way to achieve better accountability and visibility—and for taxpayers to get better value—is to ensure contract officers are smarter, more professional and wield more authority. “Then hold vendors that don’t meet the grade accountable by firing them,” urged a private sector executive.

## Understanding the Privatization of National Security

---

There was general consensus that the government needs to keep better track of contractor performance and share information across all agencies. “Two of our competitors have been terminated by one federal agency for defaulting. Still, other parts of the federal government are hiring them without reservation,” noted a PMC executive. “That lowers the standards and doesn’t incentivize us to do better. If people working out of the trunk of their car with a laptop can operate as a security company, why do we want to invest and build and spend money to raise our standards and capabilities?”

“The government has to get its own acquisition house in order,” agreed a federal agency official. She added that program managers, who will be working directly with contractors, also need to ensure training doesn’t lag.

---

***“The government’s job doesn’t end when the contract is signed.”***

---

Another problem she noted is that, “The different services have different standards for what they allow contractors to do. Some want to let them carry weapons, some don’t. We’ve been doing it now for years, but we never codified what we wanted to do as a department. Different services had their own regulations, so they never actually communicated to the people who were building the contracts. You had big holes, and the contractors didn’t really know what to do in a lot of cases.”

“Recently the Department of Defense has instructed commanders on how they can use contractors and is standardizing how the services employ contractors on the battlefield,” she added. “There’s still work to be done, but that’s the first step. Let’s at least have some standards that contractors can bid to and regulate against.”

An industry consultant noted that a lot of the contracts issued in Iraq had involvement from both the Department of State (DoS) and the Department of Defense (DoD). “Unfortunately, they have completely different standards. These challenges, complexities and lack of enforcement of existing mechanisms led to perceptions of no accountability by contractors.”

One industry leader boiled the issue down by stating that contractors need to have “better clients who pay attention and have contractor officers coordinated with each other and on the same page, so when you have a DoD contract officer and you hand it over to the DoS, you essentially have the same rules.”

A PMC executive urged his government colleagues to require contractors to live up to industry standards. “If you’re in the government contracting business, I implore you to start putting in your contracts that you want to see professional standards of membership of the contractors that do this work. Help us make that important to the rest of the industry.”

“The government’s job doesn’t end when the contract is signed,” concluded a government official. “I think that’s something we’ve lost. We tend to think once we’ve got a contract on paper, we can transfer all responsibility to the contractor.”

Ultimately, participants agreed there needs to be better collaboration across the public and private sectors to ensure the appropriate balance of oversight and accountability.



## Chapter 5

# A Myriad of Legal Issues

---

There is no shortage of laws governing the military and armed conflict on foreign soil. Yet, when it comes to private military contractors, ambiguity exists regarding which laws could and should apply. The evolving role of PMCs and the changing nature of warfare add complexity to the challenge because the line separating the duties of military and private personnel has blurred significantly in recent years. As one conference participant concluded, “The law lags reality.”

### **Criminal Behavior and Consequences**

Some of the most serious questions surround the criminal legal accountability of private companies and their employees. If a grave offense is committed by a PMC employee overseas, it’s seldom clear where the authority rests to detain and discipline the offending individual. Legal recourse is additionally ambiguous in cases of third-party nationals working for U.S. contractors. One lawyer offered this scenario:

“Let’s say a private contractor is guarding an Iraqi government official and, in defending that official, shoots an Iraqi family by mistake. [Let’s assume] it doesn’t happen on a U.S. base, but on a road in Iraq. The likelihood is that the person who was shooting is a third-country national or a local national, and therefore it’s not clear to me there’s arrest authority to get them back to the United States, even if you wanted to charge them. What is the status of this contractor? Is there a ‘status of forces’ agreement that covers the contractor? It seems to me we have a gap in two ways: One is that the contractor is unlikely to be subject to local law because there’s probably some agreement that makes that happen; and two, we haven’t really filled in what law we want to attach to them.”

Recent reports of abuse by military contractors raise a number of important legal issues under both international and U.S. law. Though contractors are subject to domestic criminal law, participants debated whether that was sufficient.

For example, contractors are not subject to military law under the Uniform Code of Military Justice (UCMJ) when accompanying U.S. forces, except during a declared war. Practically speaking, this means that civilians are only subject to court-martial if there’s a declared war—which, as one participant pointed out, has not happened since World War II.

Some participants argued that contractors should be subject to court-martial. “I think that would be a good idea, because it gives the commanders back the tools that they need for effective command and control,” argued a participant familiar with the realities of the battlefield. He added that this could also potentially prevent war crimes, by giving field commanders more authority to enforce order and discipline.

Contractors working for the Department of Defense might also be prosecuted under the Military Extraterritorial Jurisdiction Act of 2000 (MEJA). However, a military official noted its limitations: “While MEJA does impose felony criminal liability



## Understanding the Privatization of National Security

---

on contractors who are supporting the defense mission, covering very serious crimes like rape and murder, it doesn't cover a whole host of things that we cover in the military forces. AWOL, failure to go, failure to perform, negligent performance, insubordination, disobedience of orders—there is a whole range of things that we have in place in the military system that compel soldiers and airmen to perform their duties, so that when the going gets tough we have a way to make them hang around.”

Building on this point, one legal expert noted that the three key applicable criminal accountability laws—the War Crimes Act, MEJA, and the Patriot Act extension—all put jurisdiction into the federal criminal courts. “And that doesn't solve the problem for the military commander in the field, in the midst of the battle,” he noted. “The use of the federal district courts in the United States is not the same as far as its efficiency or the ability to give that commander a quick response.”

“Is it enough to say that the law takes care of criminal conduct?” a PMC executive questioned. “Do we want something to address conduct that's less than criminal but not in accordance with the government standards, much the same way that the government has internal disciplines in both the military and the imposed less-than-criminal sanctions? Or, in fact, are we satisfied that the commercial sanction, the self-regulation of the industry, the firing of the bad contractor is enough? At the present, I don't know that the government has any way formally to hone in on one person.”

Recognizing that many PMC employees are retired military, one former military officer suggested recalling retired military members to active duty for purposes of standing trial by court martial. This remedy, while limited, “was used perhaps most significantly with regard to a murder that took place in Riyadh, Saudi Arabia, in the early 1990s, allegedly committed by a retired U.S. Army sergeant major who was employed there as a civilian.”

Whatever the legal mechanism or remedy, fairness is a chief concern of contractors. “The main thing I hear from our companies is, they just want to make sure they have some sort of internationally recognized, fair legal system for their per-

---

***“I see two different aspects of law that are struggling to come to grips with the private security world,” noted a conference participant. “One is military law and the Geneva Conventions, laws of war that have long been developing on the ground. And then the other is civil law and contract law, as it operates within the government, but also as it operates within multinational corporations. Private security forces seem to bring those two forms of law together – the rights-based laws of the Geneva Convention and the laws of war, and the more business/economic relationship laws of contract law. It's not always a happy marriage.”***

---

## A Myriad of Legal Issues

---

sonnel. They don't want their personnel going into kangaroo courts," an industry leader said. "The U.S. Government, that's one thing, but what about eastern Congo and Darfur? What sort of legal structure do you use there?" One idea offered was to put in place a civilian court that would apply both to peacekeepers and their contractors.

### **Contractual Remedies are Often Untimely and Inadequate**

All PMCs operate on a contractual basis. However, consensus among participants was that those contracts often are inadequate to meet the day-to-day realities of a wartime environment. "The reality of contract law," noted an industry leader, "is that it's not designed for a chaotic environment."

Expanding on that point, another contractor commented: "I think most of the people here would say we provide services to the government. Contracting law seems still to lag a bit behind, because most of the contracts I deal with seem to

---

***"The reality of contract law is that it's not designed for a chaotic environment."***

***"In a theater where battle is ongoing, contractual remedies are fine as far as they go, but they oftentimes do not deal with the immediacy of a problem that a commander faces now, when someone fails to perform."***

---

assume that I am providing a good. It's assumed you are delivering a good that the government can test and accept. I would expect to see requirements for formal assurances about training and about supervision; that's in some contracts, but not in all. Is this a deficiency in our existing contracting laws, or is it just bad contract-writing?"

That sentiment was echoed by a current military officer, who suggested: "We have a system that's somewhat moribund because it's so heavily regulated and suited to a different kind of contract. The reality is, we have lots of personal services contracts. We really don't have very good mechanisms in place, and we aren't necessarily writing the contracts in a way that best addresses the situation. I do think we need to reform the way we write some of these and to develop the framework that will try to deal with the gaps that

exist. As long as we're doing things in terms of a contractual relationship, I think that is very much an area that requires attention."

One contractor pointed out that the State Department imposes "draconian fines" on PMCs who don't live up to their contract. While that's fine after the fact, a military official noted, it doesn't help much in the heat of battle. "In a theater where battle is ongoing, contractual remedies are fine as far as they go, but they oftentimes are not sufficient because they do not deal with the immediacy of a problem that a commander faces now, when someone fails to perform.

"There was one example of soldiers in Iraq that had to go a couple extra months without hot showers or hot food because the contractor decided that it was too dangerous, and they left, or wouldn't come, as the case may be. The

## Understanding the Privatization of National Security

---

contractor was supposed to perform and they failed to. While there may be contractual remedies, that doesn't much answer the questions of the soldier or the commander on the ground who, had those been military forces, would have had the ability to compel them to stay and perform. He lacked any kind of enforcement authority to require activity."

Providing the PMC point of view, one industry leader noted that contractor safety and support are issues that have often come up in Iraq. "I know that at one point KDR refused to do a run. The military said it was a lot of 'yellow road,' but the contractors said, no way, it's too dangerous; it's a 'black road.' So the military was forced to actually come and clear the road before the contractors ran."

In the end, participants agreed that putting contractors under the military chain of command would improve coordination and relieve much of the tension that currently exists in the field. Others suggested putting contract officers with each military unit.

"I think what we're seeing is a residue of some lack of planning and thought," concluded one participant. "What we need to think about is a standard form of contract, as it sounds like the State Department may have finally come up with, which deals with the issues on the battlefield. It should put responsibility for the contract far down the chain of command with the local unit commanders, or at least with major unit commanders in the field."

---

***"What we need to think about is a standard form of contract. It should put responsibility far down the chain of command with the local unit commanders in the field."***

---

### **Civilians or Combatants? The Legal Status of Contractors on the Battlefield**

Perhaps the most critical issue involving private military contractors is their somewhat ambiguous legal status. The Laws of War state that civilians are not to engage in military conflict and should not be targeted. However, these lines are blurred when PMCs work side by side with soldiers and carry out traditionally military tasks.

As one military official explained, "One of the bedrock principles of the Law of Armed Conflict is that civilians are not to engage directly or participate in hostilities. That is premised on the principle of distinction, so that on the battlefield you can tell who the enemy combatant is [and] can narrow the scope of the violence to those who are lawfully engaged in hostilities. If you introduce civilians who could mistakenly appear to be engaging in hostilities, or actually are engaging in hostilities, then you put other civilians at risk because the enemy can no longer determine who actually is their combatant. As a nation, we have an obligation to conform our conduct to that which the international law requires."

If contractors carry weapons and act on behalf of the U.S. Government, under the Fourth Geneva Convention they are considered combatants. But, if they're not wearing uniforms and don't answer to military authority, they are not "lawful com-

## A Myriad of Legal Issues

---

batants” under the Third Geneva Convention. Contractors wearing quasi-military uniforms and body armor further blur the distinction.

“The tasks that private military contractors are starting to undertake are becoming closer and closer to actual participation in hostilities,” observed a conferee. “If you contract out tasks that amount to participating in hostilities without integrating these people in your armed forces, what are you actually creating? You could make

---

***“If you introduce civilians who could mistakenly appear to be engaging in hostilities, then you put other civilians at risk because the enemy can no longer determine who actually is their combatant.”***

***“The rise of the criminal soldier, the non-state soldier, is a done deal. That soldier rejects international law and does not care if [he] kills soldier or civilian.”***

---

an argument that’s an unlawful combatant. I think it’s a fundamental question.”

Focusing on the protection of PMC employees, one executive noted that, “There is an interest for the contractors themselves to be integrated, to the extent that they receive the protection under the Third Geneva Convention in case they are captured.”

“Protection does not matter when you are dealing with these folks,” countered a law enforcement expert. “The old style of warfare—the Laws of War—is breaking down with the rise of the criminal soldier.”

Indeed, contractors are increasingly finding themselves to be the targets of insurgents. As one PMC executive stated, “It’s not like we’re expecting Geneva Convention treatment in Afghanistan or Iraq. They have no regard for any law or treaty or humanity anyway.”

While the legal status of PMCs remains unresolved, some pointed to a need to rethink international laws such as the Geneva Conventions. “International law based on state-on-state warfare nicely divides the world into soldiers and civilians, combatants and noncombatants. [But today] we are looking at the blurring of crime and war at the operational level, and the state’s loss of its monopoly on warfare,” concluded a law expert. “The rise of the criminal soldier, the non-state soldier, is a done deal. That soldier rejects international law and does not care if [he] kills soldier or civilian.”

### Congressional Oversight

Participants also touched upon the possible use of PMCs to circumvent Congressional authority. “Whether it’s inadvertent or intentional, you have the ability through the use of private military contractors to do covertly what other-

## Understanding the Privatization of National Security

---

wise you may not be able to do, or might not be able to secure the authority to do from Congress,” a member of the military noted. “You can in essence create somewhat of a shadow foreign policy, if you will, that is not as easily overseen or monitored by Congress or even the public. So, I think there are some constitutional implications in the use of contractors that need to be addressed and I think can be avoided by the appropriate kinds of checks and systems and visibility and oversight, if we can get there.”

A legal expert agreed. “There are important separation-of-powers questions raised by the growing practice of reliance on private military contractors. To the extent that Congress is not directly involved in approving the use of private forces, then what we see is a shift of power without accountability, away from Congress and toward the Executive [branch].”

## Chapter 6

# Other Issues and Implications

---

**H**aving discussed the key legal and accountability issues involved in using private military contractors, conference participants moved on to examine some of the other short-term issues and long-term implications of outsourcing. “What are the key issues that we should be talking about and worrying about and thinking about?” asked moderator Suzanne Spaulding. “And how can we go about addressing those key issues?”

### Diminishing Pool of Military Talent

Some conferees argued that privatization is luring away the military’s best and brightest with the promise of higher salaries. “Right now the joke in the beltway is, ‘If you’ve got a clearance and a heartbeat, we can get you a job,’” noted a Washington insider. “Everybody’s drawing on the same resource.

---

***“Sitting around and debating whether there should be contractors on the battlefield or in New Orleans is not a debate that’s really very useful. What I would like to see out of this conference is to address ... what kind of nation is that going to make us in 20 or 30 years? What are the implications for society?”***

National security expert

---

***“Right now the joke in the beltway is, ‘If you’ve got a clearance and a heartbeat, we can get you a job.’ Everybody’s drawing on the same resource. There is a diminishing pool of these people.”***

---

“In my own organization, probably 95 percent of the contractor personnel that we have are ex-military,” he added. “There is a diminishing pool of these people.”

Several government officials expressed concern that the military is losing its investment in training, especially with the loss of many Special Operations and CIA employees. But a private sector leader pointed out that talent retention is a key issue in any highly specialized industry. “This is not unique to the military. Having come out of many years in the IT industry, you’ve got thousands of government employees that go to contractors, often to the same or very similar jobs, at three or four or five times the pay. The fact is, the government does not pay market rates for its employees.”

The competition for talent is inevitably driving up compensation costs of military personnel, according to one military official. “In order for us to retain them, we have to pay them more and more. So that is a problem for us.”

But pay is only part of the retention issue, some argued. “I’ve got to tell you, I think [this issue] is a red herring,” responded a private sector executive. “The money is part of it, but they’re not leaving the armed forces because we’re paying better. I’ve literally hired hundreds of guys over the last 10 years. I’ve never

had one highly specialized guy walk in and say, ‘You’re paying more. I’d rather do that.’ It’s normally a combination of factors. He’s just had his third six-month tour in four years. His family says, ‘That’s enough.’ It’s usually a package of things.”

## Understanding the Privatization of National Security

---

Building on this point, another conferee noted that the private sector can often offer more career opportunity and job satisfaction. “It’s very difficult to work in a large hide-bound organization like the Pentagon or the regular military. And so I think it’s actually more satisfying to work for a small, start-up organization.”

Conferees generally agreed that from a long-term perspective, privatization has the potential to dilute professional skills in core areas of military competency. In response, the government needs to strategically identify what core military skills are critical to maintain and which can be outsourced. As one PMC executive argued, “We continue to erode our capabilities. Nobody has really looked ahead 10 years and asked the question, ‘What should our military be? And what core military capabilities should we protect?’ Then [we need to] budget and sustain that.”

“The current contractor solution is not one of long-term security,” asserted one participant. “To me, long-term security is a group of people who are looked after, who are trained, who are paid.”

---

***“Nobody has really looked ahead 10 years and asked the question, ‘What should our military be? And what core military capabilities should we protect?’”***

---

### **Culture Clash and the Need to Build Trust**

Throughout the discussion, conferees kept coming back to the cultural differences between contractors and the uniformed military. Misperceptions often get in the way of a strong working relationship, observed a law enforcement official. “A lot of our domestic SWAT [Special Weapons and Tactics] folks have the belief that the project security guys are cowboys.”

“There still exists a double standard in how the active-duty military views contractors,” concurred a PMC executive. “I think they view us as second-class citizens.”

To illustrate, he shared a recent incident: “I was visiting one of my guys in the hospital earlier this week. He is a retired Special Forces senior enlisted who had a traumatic amputation from an IED recently in Baghdad. We heard the doctors arguing outside about when he should have surgery, and their answer was, ‘Oh, no, put him off for later; he’s just a contractor.’ And, you know, I do take issue with that, because he came to work for us right out of the military. And that kind of attitude still persists.”

The tension is “real,” agreed a government official. “We can assign blame in different ways, but the bottom line is, right now [it] exists, and it’s a hindrance.”

One solution put forth is to set up opportunities for cross training and relationship building. “Any military mission depends on morale, discipline, cohesion and trust,” noted a retired military official. “Down there where the rubber meets the road, these guys have to trust each other. We’re throwing these [people] together on an ad-hoc basis, so somehow in all of this there has got to be the ability to forge that relationship on fairly short notice.”

## Other Issues and Implications

---

Other conferees noted there's a need to put contractors under the direct chain of the command in the field, which would go a long way to build cohesion and cooperation. It would also help if contract officers were better trained and understood the realities of today's chaotic military environment.

"The traditional contractor-to-government mechanism of, 'You're a vendor and I'm a contracting officer' just is not dynamic enough to keep up with the kind of things we're doing," noted a participant. "I'd like to see us help the government [to] get an understanding for how this process should work and how they can do the interface. To simply say one is a customer and one is a deliverer of services just has not kept up with the dynamics of what we're trying to do."

The growing interdependence between contractors and the government translates into the need for new ways of working together, noted a law enforcement expert.

"There is no longer a meaningful distinction among these folks," he observed. "In my own organization, we have a mix of contractors and government personnel, and what we are discovering is that we can't separate those functions very easily or usefully. So the differentiation between who's us and who's them requires flexibility."

---

***"There still exists a double standard in how the active-duty military views contractors. I think they view us as second-class citizens."***

---

As one conferee concluded, "People are going to realize that we're all on the same team."

## Use of Foreign National Employees Creates Concerns

"Oftentimes the 800-pound gorilla in the room is the fact that 80 percent of the employees of private security firms are not from the First World," noted one participant. "So a company recruits from six different countries, takes them to a third country, and either trains or utilizes the forces there. The implications of labor law, transit law, are staggering. And I think it's very incumbent upon the companies, if they are to avoid the perception of the old term of 'mercenary,' to do this in the most professional fashion possible, to have the most enlarged degree of transparency possible.

"Eighty percent of the individuals employed by these companies are working from third countries, and that puts their citizenship at issue," he added. "It creates a public perception issue."

"The other problem that is a red flag," added an academician, "is the training of the third country nationals that are being employed by so many of these companies. I know that when I've checked and done research on the British firms that employ third country nationals, when they ask for background checks, they are asking the country of origin to do [them]. And oftentimes the country of origin has a high interest in not doing a full background check or not fully revealing information about those people, because it's in their interest for those ex-military officers



## Understanding the Privatization of National Security

---

or ex-police officers to be earning money abroad and sending it home, and for them to have them out of the country.”

Best practices and better industry standards would address this issue, some suggested. And private sector executives in attendance noted that their firms are already taking the necessary precautions. “Less than 10 percent of our deployed people are non-U.S. citizens,” said a PMC leader, adding that his company has instituted a rigorous training program. “We put them through a very heavy vetting period on the front end and then we push them hard for eight weeks. And it’s every bit as hard or more difficult than any U.S. military Special Operations school.”

He also noted that for third country nationals, “the way it works for our government customers is, they have to have what’s called a high public trust clearance. So we submit that individual’s name back through the U.S. embassy, where it’s vetted through the regional security officer, who works with local law enforcement and his own State Department employees to vet to make sure that that person is not a war criminal or domestic criminal. So they’re vetted. From that sense, we know we’re not employing bad guys. Then they have to be trained by us, vetted and trained, and we have to get a TAA, a Technical Assistance Agreement, a license to do that, from the State Department.”

Others questioned what will happen if private contractors employ multinationals. “We’re doing it with the first generation now. What happens when we have a second generation that’s more multinational? Where does the loyalty lie at that point? They’re caught between two countries.”

### The Loyalty Issue

Some conference participants debated whether private contractors can have the same allegiance to the U.S. Government as military personnel. As one legal expert put it, “Why don’t contractor personnel take an oath to uphold and defend the Constitution and laws of the United States?”

In some cases they do. “All of our officers, most of our staff and all of our personnel that are deployed with clearances, all swear the same oath that an Army, Navy, Air Force or Marine swears, to support and defend the Constitution,” noted one private sector executive. But do all PMCs do this? Should they?

“I have no problems with the loyalty of the PMCs right now, but I don’t want to create Frankensteins 50 years from now,” argued a law enforcement official. “I’d like to see us make sure that we ensure the loyalty of these PMCs to the state over the long term.”

Conferees also discussed whether the commercial interests of private military contractors could ever conflict with the national interests of the U.S. Government. “I wonder how the ordinary profit motives of private corporations can be squared with the security goals of the United States?” asked a legal expert.

## Other Issues and Implications

---

Private sector representatives noted that their business interests and loyalty are already aligned with the U.S. Government, since there's a business imperative to meet the needs of the government as a customer. "At the end of the day, I think any company has responsibilities to three groups: their customer, which is the U.S. Government in this case; their employees; and, if you're a publicly held company, the shareholders," noted a retired military official. "If I'm doing functions for the government, and I'm doing it under government direction and with taxpayer money, absolutely, I have accountability [to the U.S. Government]."

### Lingering Perceptions Die Hard

Finally, the participants discussed the use of the word "mercenary" and if it is applicable when used to describe private military contractors. A retired military officer observed, "The use of a term that is loaded with historical and emotional baggage tends to cloud the discussion and the thought process, rather than illuminate it."

---

***"I have no problems with the loyalty of the Private Military Contractors right now, but I don't want to create Frankensteins 50 years from now. I'd like to see us make sure that we ensure the loyalty of these PMCs to the state over the long term."***

---

An industry leader agreed that the term "mercenary" is pejorative, and that "there's really no useful legal definition. Ultimately what I came up with is the term means essentially foreigners and business people we don't like. That's what a 'mercenary' is."

Because the term is so emotionally laden, the meeting participants collectively agreed that the word "mercenary" has a negative image and that it should not be used. As one public policy expert noted, "I think that's probably, of all the things we could talk about, the least useful and productive." Conferees also agreed that the industry needs to do a better job of educating the public about the role of

private contractors to help counter sensationalized media reports and lingering negative perceptions.

Increased industry self-regulation and oversight will also help to weed out the bad companies that tarnish the industry's reputation, noted one law expert. "I would just encourage when people speak in public and they say there needs to be more oversight, I think you also have to acknowledge that there has been a lot of progress made, especially in the last two years, to put that kind of oversight and regulation in place." It's a long-term process, he added. "We want to move in that direction. That's the public perception of what we're trying to accomplish."

### Concluding Comments

“I suspect at the end of the conference, we’re going to find the machinery is not bad,” a conferee concluded. “The industry itself has gotten remarkably healthier and smarter in the last couple years, and we’re getting better at what we do. We’re getting better at weeding out companies and individuals that shouldn’t be there.”

***“This industry is relatively new,” Spaulding added. “It’s as important to the players in the industry as it is to everyone else in society to get it right, to make sure that we have thought through the key issues, so that we employ this capability in the best possible way.”***

## Chapter 7

# Next Steps and Recommendations

---

One of the hallmarks of the McCormick Tribune Foundation Conference Series is that “we try to get tangible results at the end of our two-day conferences,” noted David Grange, president and CEO of the McCormick Tribune Foundation. After a day and a half of debate and discussion on the privatization of national security, conferees agreed that they had indeed advanced the thinking on this important issue. However, they also identified a number of next steps for further work and analysis. The recommendations include the need for:

### **A better system of industry accountability and self-regulation**

The necessity for a more formalized level of accountability was emphasized. “It is in the interests of contractors to have oversight and accountability,” noted a private sector executive. “We are doing everything

---

*“One of the most useful things conferences like this can do is try to think ahead, ‘Where ought we be, as a nation, 10 years from now?’ ”*

*“This is a phenomenon that is here to stay. The issue is, how do we get this right? How do we make appropriate use of the capability?”*

---

we can to encourage it, but we cannot invent it overnight. It is something that is a collaborative effort.” Important elements include:

- Industry standards and best practices;
- Training;
- Code of Conduct; and
- Private military contractors (PMCs) should be required to pass independent industry accreditation.

“The good companies will welcome that and prosper,” asserted one PMC executive. “And some of the fly-by-nights will drop off of the table, and everybody will be better for it.”

### **A formalized reporting and dissemination system for tracking Private Military Contractors performance**

“You need the equivalent of a Better Business Bureau or a vendor scoring system,” argued one company executive. For example, “Chrysler has a vendor scoring system for their quality, their value, their on-time delivery, their ethics, their environmental program.” A formalized reporting system would facilitate the improvement of industry professional standards.

A need was also identified for an industry ombudsman to register complaints. Several people suggested that the IPOA (International Peace Operations Association) could serve in that leadership role.

**Better education of the American public, policymakers, media and international community about the role of private military contractors, to help encourage a better-informed and broader public discussion and debate**

## Understanding the Privatization of National Security

---

Participants agreed that Americans need to be better educated in order to remedy the public's dated perceptions and improve the industry's image. "The political parameters within which policymakers can operate are going to be largely defined by how the public perceives and understands the issue," said an official.

Others suggested that there is a need to reach out not just to the American public, but also to the international community. "In the Third World, in the Arab world, in the Middle East, the deeds or the misdeeds of a private military contractor could in many cases be equated to U.S. Government policy," cautioned a conferee.

### **A more formalized mechanism for clear command and control by the military**

There was consensus that contractors need to be under the field commander's chain of command when in the theater. "It gives the commanders back the tools that they need for effective command and control," noted a participant.

"The public believes that the government should be accountable for any contractors that are out in the battlefield, and we have to figure out how to better ensure that accountability," said a conferee.

---

***"In the Arab world, in the Middle East, the deeds or the misdeeds of a private military contractor could in many cases be equated to U.S. Government policy."***

---

### **Cross-training to encourage trust and a shared mission**

There needs to be clear channels of communication between the military and PMCs. The group also recommended common training to help break down cultural barriers, improve trust, and unify military and contractors as "one team."

"Any military mission depends on morale, discipline, cohesion and trust," noted a retired military official. "There has to be the ability to forge that relationship."

### **Improvements in the government's contracting policy, procedures and oversight**

The recommendation was made for a specific acquisitions arm within the military to hire contractors and manage contracts. "The government has to get its own acquisition house in order," noted a federal agency official. Streamlining of personnel and acquisition policies in the government will hopefully lead to a more seamless process.

The importance of having a coherent, uniform government policy regarding the use of PMCs was also emphasized, to help ensure more consistency across the State Department, CIA, Department of Homeland Security, Department of Health and Human Services, and the Department of Defense. "Let's have some standards that contractors can bid to and regulate against," suggested a conferee.

## Next Steps and Recommendations

---

The need for better training of contract officers was also noted, as well as the significance of ongoing monitoring and oversight. “The government’s job doesn’t end when the contract is signed,” a government official concluded.

### **An examination and clarification of the legal status of private contractors overseas**

In order to protect contractors and ensure accountability, there needs to be a more thorough analysis of the legal status of PMCs and the remedies available when there are abuses or misdeeds. “The law lags reality,” conferees agreed.

### **An evaluation of what missions or functions are core military capabilities that should be protected and performed only by the military, and a consideration of the future of PMCs as military missions shift from armed conflict to nation building and peacekeeping.**

The group suggested that a broad-based commission with an independent charter should help define what core military capabilities are necessary for the nation’s future and what role PMCs should play in enhancing and supporting the military. The commission needs to be a collaboration of key players, includ-

---

***“The government has to get its own acquisition house in order.”***

***“Let’s have some standards that contractors can bid to and regulate against.”***

---

ing the Defense Department, State Department, Homeland Security, law enforcement public policy-makers, private military contractors and private security contractors. Ideally, it should address the question, “Where should we be five years down the road, 10 years down the road?”

***“The concern is that the decisions are being made on an ad-hoc basis based on expediency and not on a long-term vision or planning,”***

explained a conferee. “It ought to be a thoughtful process. It ought to reflect some long-term, strategic thinking about areas in which we need to build up core capabilities within the government, and areas in which it makes a lot of sense to contract out.”

### **Continuing examination of whether or not to outsource domestic tasks, such as emergency response and homeland defense**

Conferees agreed that on the domestic side, the industry is still in its infancy. “This is an area where we need to do a lot more thinking and talking and, perhaps, have a follow-up conference,” noted moderator Suzanne Spaulding.

Given that as much as 90 percent of the nation’s critical infrastructure is in the private sector, a suggestion was made that the government needs to more carefully examine security standards and protection.

## Understanding the Privatization of National Security

---

In addition, one issue that everyone agreed upon is the need for better regional cooperation during a crisis. TOPOFF exercises are an excellent example of how federal, state and local agencies need to partner more effectively with each other and with the private sector to ensure the country is prepared for an emergency or crisis.

### Concluding Thoughts

Overall, participants agreed that private contractors are essential to America's national security, and that the substantive conversations held at this McCormick Tribune Foundation conference should be revisited to develop greater collaboration between the private and public sectors.

***“This should be the start of the dialogue—certainly not the end,” noted one military official.***

# Conference Participants

---

**Thomas K. Adams**  
ManTech/Grayhawk

**Paul Behrends**  
C&M Capitolink

**Cofer Black**  
Blackwater USA

**Doug Brooks**  
International Peace Operations  
Association

**Robert J. Bunker**  
National Law Enforcement Corrections  
Technologies Center West

**James Jay Carafano**  
The Heritage Foundation

**Richard Warner Carlson**  
Foundation for the Defense  
of Democracies

**Kateri Carmola**  
Middlebury College

**Pierre Chao**  
Center for Strategic and  
International Studies

**William R. Clontz**  
Military Professional Resources, Inc.  
(MPRI)

**John S. Cooke**  
Federal Judicial Center

**Stephen Dycus**  
Vermont Law School

**Frank Fountain**  
New York Law Firm

**Richard E. Friedman**  
National Strategy Forum

**Donald M. Gilberg**  
Security Accelerator LLC

**Albert C. Harvey**  
Thomason, Hendrix, Harvey,  
Johnson & Mitchell, PLLC

**David Isenberg**  
British-American Security  
Information Council

**Darrell L. Jennings**  
SOC-SMG, Inc.

**Alane Kochems**  
Heritage Foundation

**Andres C. Kruesi**  
International Committee of the  
Red Cross



## Understanding the Privatization of National Security

---

**Charles R. Larson**

Via Global Group

**John R. Ponce**

SOC-SMG, Inc.

**Elizabeth J. Latham**

United Nations Association

**Erik D. Prince**

The Prince Group LLC

**Melker Mabeck**

International Committee of the  
Red Cross

**Jarisse J. Sanborn**

US Air Force  
Scott Air Force Base

**Joseph Mayo**

Consultant

**Scott L. Silliman**

Duke University Law School

**Gail H. McGinn**

US Department of Defense

**Suzanne Spaulding**

Bingham Consulting Group

**Judith W. Munson**

Public Health Consultant

**John P. Sullivan**

Los Angeles Sheriff's Department

**Wyndee Parker**

House Permanent Select Committee  
on Intelligence

**Jack Thomas Tomarchio**

US Department of Homeland Security

**Robert Young Pelton**

Author/Filmmaker

**Stephen Clay Volland**

EOD Technology, Inc.

**F. Whitten Peters**

Williams & Connolly LLP

**Alison Weir**

Office of the Director of National  
Intelligence

**Albert C. Pierce**

National Defense University

**Michael J. Woods**

Athena Innovative Solutions, Inc.

## **About the McCormick Tribune Foundation**

---

The McCormick Tribune Foundation is one of the nation's largest charitable organizations and encompasses:

- Five grantmaking programs: citizenship, communities, education, journalism and special initiatives
- Cantigny Park & Golf
- Three world-class museums: Cantigny First Division Museum, the Robert R. McCormick Museum and the new McCormick Tribune Freedom Museum

A focus on children, communities and country unites the foundation and its many parts and keeps us true to our mission of advancing the ideals of a free and democratic society.

For more information about the foundation and its efforts, please visit [www.McCormickTribune.org](http://www.McCormickTribune.org).

# **McCormick Tribune Conference Series Call for 2008 Conference Proposals**

---

The McCormick Tribune Foundation constantly seeks to build on the quality and tradition of our Conference Series by addressing a range of timely and challenging issues.

Academic institutions, policy experts, and public, nonprofit and private sector professionals from all fields are welcome to submit a proposal for our next conference season.

For detailed submission guidelines and application instructions, please visit our website at: <http://www.rrmtf.org/mtf/conference/rfp.pdf>

Proposals must be received no later than July 2, 2007 to be considered for conference support.

Please direct all questions to [Conferences@McCormickTribune.org](mailto:Conferences@McCormickTribune.org).

We look forward to your ideas!

For a downloadable version of this report, or to order a hard copy of a previous conference report, please visit: <http://www.rrmtf.org/citizenship/pubsandprods.htm>

## About the McCormick Tribune Conference Series

For more than 15 years, the McCormick Tribune Foundation has partnered with local, national, and international experts to convene top-quality discussions on a range of subjects.

### **Recent McCormick Tribune Foundation conferences include:**

- *Challenges to U.S. National Security - Interests, Threats, Strategy and Forces*  
In partnership with the U.S. Military Academy, the U.S. Naval Academy and the U.S. Air Force Academy
- *Philanthropy and the Media*  
In partnership with The Center on Philanthropy at Indiana University
- *Next Steps in Election Reform*  
In partnership with The League of Women Voters
- *Law Amid the Ruins: Doing Business After Disaster*  
In partnership with the National Strategy Forum and the American Bar Association
- *The Military-Media Relationship 2005: How the Armed Forces, Journalists and the Public View Coverage of Military Conflict*  
In partnership with the Center for Media and Security
- *The Field of Early Childhood Education Professional Development: Implications for Teaching, Research and Policy*  
In partnership with the Erikson Institute