

# Private military firms, the American precedent, and the Arab Spring.

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## INTRODUCTION

Among the important, but largely overlooked, developments arising out of the anti-government protests across the Arab world is the expanded role played by foreign military contractors. These contractors have reportedly endeavored to keep incumbent, autocratic regimes afloat. For instance, Colonel Gaddafi relied heavily on foreign military personnel in his ultimately unsuccessful effort to quell the rebel insurgency in Libya. (1) Bahrain's royals, beset by domestic uprisings of their own, have similarly turned to the marketplace, employing foreign security teams to take on a host military and police duties. (2) Moreover, the leadership of the United Arab Emirates has worked with Erik Prince, the founder of Blackwater, to set up its own private special operations force. (3) That force might, too, be pressed into service in the event the undemocratic Emirates likewise experiences domestic unrest. (4)

Concerted efforts to import foreign soldiers-for-hire--reportedly less hesitant than domestic military and police forces to violently crack down on citizen-protestors (5)--warrant careful scrutiny. After all, with calls for regime change continuing to ring across the Maghreb, (6) the Levant, (7) the Persian Gulf, (8) and the Arabian Peninsula, (9) it is quite possible that Libya, Bahrain, and the UAE represent just the tip of the iceberg. To the extent there are new rounds of protests--particularly as promises of reform and liberalization offered to appease the first wave of Arab Spring protesters (10) go unfulfilled (11)--other regimes might (if they're not already doing so) follow suit. That is, they too will solicit outside help to deter and, if necessary, suppress dissent and rebellion.

These regimes' use of armed contractors no doubt invites comparison with recent U.S. experiences involving hundreds of thousands of private actors supporting the American military efforts in Iraq and Afghanistan. (12) But contractors' involvement in the Arab Spring promises to deviate sharply from those American experiences. This contribution, part of the *Stanford Journal of International Law's* annual symposium, considers how the use of military contractors in bolstering the incumbent regimes across the Arab world raises distinct questions about (1) democratic legitimacy and (2) U.S. foreign policy. (13)

## I. THE U.S. PRECEDENT: RESURRECTING THE USE OF PRIVATE MILITARY FORCES

In light of the U.S. Government's extensive use of military contractors today, it might be hard to remember that not too long ago private armies were a dying breed. Long rendered irrelevant, or at least illegitimate, by the advent of modern citizen-armies, (14) the status of such privateers

was, until quite recently, toxic. (15)

Despite the international repudiation of privateers in the post-WWII era, (16) the industry expanded in the 1990s. The expansion was in large part a byproduct of the post-Cold War peace dividend. (17) The downsizing of national militaries increased the supply of soldiers-for-hire. Equally important, the end of the Cold War and dissolution of the Soviet Union did not bring about an end to international conflict. Forced to confront new, unfamiliar threats, nations that had downsized their militaries suddenly found themselves shorthanded. They needed to supplement their now-modest, in-house capabilities.

In the 1990s, the United States employed private military personnel sparingly. Contractors aided U.S. counternarcotics efforts in Latin America. (18) They also served in the Balkans during the years of protracted civil strife surrounding Yugoslavia's breakup. (19) But it was not until the 2000s when American military contractors rose to far greater prominence. These contractors played a central role in U.S. operations in Iraq and Afghanistan. (20) Indeed, during the latter half of this past decade, the number of military contractors in Iraq and Afghanistan often rivaled, and at times exceeded, the number of U.S. troops dispatched to those countries. (21) (And, importantly, the number of armed military contractors in those countries was spiking just as President Obama made headlines by announcing his intention to order record numbers of U.S. servicemen and women home. (22)

Along the way, military firms under contract with the United States have (either intentionally or serendipitously) helped presidents evade American and international law, including congressionally imposed troop caps and arms embargos. (23) Their presence has also freed both President Bush and Obama from having to make more politically costly decisions in pursuing their foreign-policy objectives. That is, without a ready supply of contractors, the presidents would have had to scale back our overseas engagements, press military personnel into longer and more frequent combat tours, seek to reinstitute a civilian draft, or solicit more substantial outside support from a broader coalition of willing international partners. (24) Evidently, none of these alternatives proved more attractive than continued reliance on private firms. Finally, because contractors lower the number of U.S. troops needed overseas (25) and because the government has not traditionally recorded and published contractor casualties (of which there are many) with the same precision that attaches to military injuries and fatalities, (26) the presence of contractors dilutes the apparent costs of war. The electorate, in turn, is lulled into a false sense of comfort, believing that the scope of the military conflicts and corresponding casualty numbers are more modest than is actually the case. (27)

The strategic, political, and operational benefits that these contractors provide apparently are more than enough to overcome the fact that their at-times undisciplined, even abusive, behavior (28) has complicated the U.S. Government's counterinsurgency efforts, (29) alienating (if not radicalizing) local communities and infuriating our ostensible partners in Baghdad and Kabul. (30)

## II. THE AMERICAN PRECEDENT AS PROLOGUE

Regardless what one thinks of the United States' decision to employ private military outfits, presumably leaders across the Arab world facing domestic opposition and possibly rebellion are at least attracted to the idea of having such firms at their disposal. Their engagement of private military outfits raises, at the very least, two sets of questions. First, how does their use of

contractors affect grass-roots democratization efforts? And, second, how does their use of military contractors affect U.S. foreign policy, both in the Arab world and more generally?

#### A. Military Contractors, National Armies, and Democratic Upheaval in the Arab World

Gaddafi imported foreign personnel in part on the assumption that he could not count on Libyan soldiers to fire on fellow citizens. (31) Reports confirmed Gaddafi's suspicions. Contingents of the Libyan military abandoned their posts. Others went a step further, joining the rebel insurgency. (32)

Similar accounts played out across the Arab world. Reports out of Tunis concluded that the Tunisian army's refusal "to fire on protesters" was "decisive in the fall of [then-President] Ben Ali." (33) In Yemen, then-President Saleh's grip on power eroded in part because many soldiers (including top military commanders) refused to shoot protesters. (34) Instead, sizable numbers defected. (35)

Egypt, in turn, suggests two reasons why contractors might be especially prized. First, as in Tunisia and Yemen, one of apparent reasons for President Mubarak's relatively quick resignation was the Egyptian army's reluctance to fire on protestors. (36) And, second, given what transpired in the wake of that resignation--namely, that the army seized the reins of government and has since demonstrated a reluctance to relinquish that authority--contractors serve as a counterweight to the military leadership, possibly deterring the military from staging its own coup. (37)

The situation in the Persian Gulf, though to date not nearly as volatile as in North Africa or Yemen, is also potentially explosive. There is much popular unrest in Bahrain, so much so that in 2011 both the Saudi military and UAE police forces intervened on behalf of the threatened monarchy. (38) It is therefore not surprising that Bahrain and its UAE neighbors alike are contracting with private military outfits to, among other things, help protect the ruling regimes. (39)

Whereas the United States could be viewed as using contractors in a way that undermines democratic engagement and accountability at home, (40) the employment of private security forces by the likes of Libya, Bahrain, and the UAE represents a more overt affront to popular sovereignty. Throughout the Arab world, many citizen-soldiers have refused to fire on protesters. Some have gone a step further, defecting to the rebels' side. Their doing so sets them apart from foreign contractors, who've shown no such divided loyalties. Unlike the foreign contractors, these dissenting citizen soldiers are more likely to harbor grievances against the government not dissimilar to those that precipitated the civilian protests. They are also more likely to count friends and family among those protesting. In short, by engaging in acts of civil disobedience and outright insurrection, citizen-soldiers provide an important, independent check on autocratic government power.

I do not mean to uncritically extol these citizen-armies as paragons of democracy and human rights. They might well be channeling the democratic zeitgeist of the Arab Spring. But they might simply be exploiting an opportunity to weaken the government and seize the reins of power for themselves. (41) My claim, therefore, is much more modest. I am suggesting that citizen-armies are stakeholders in the future of their countries in a way that cannot be said about foreign military contractors. Contractors are less likely to identify with or concern themselves with the street

protesters--and thus are more reliable agents of the ruling regime. (42)

## B. The United States' Role in Legitimizing Private Military Operations

The United States' reaction to the Arab Spring has been one of cautious support for the pro-democracy movements. (43) By no means has this support been unwavering. (44) Rather, it seemingly turns at least in part on our geostrategic interests in the region--including oil, counterterrorism, and containment of Iran--and not just on any deontological commitment to self-determination and democracy. (45)

The introduction of contractors--especially ones with (1) little loyalty either to the regimes they are propping up or to the citizens they might well be called upon to repress or (2) with close ties to the United States--poses additional complications.

Make no mistake: we enabled the use of contractors. (46) There is undoubtedly a long, sordid tradition of heads of states employing mercenaries to, among other things, thwart popular insurrections. (47) But that tradition was fading and increasingly illegitimate (48)--until the United States played the leading role in reinvigorating the practice, albeit with markedly different objectives in mind. We did so in two ways.

First, we made contractors tolerable, if not respectable, again. (49) Having employed hundreds of thousands of military contractors in high-profile engagements this past decade, there is little ground for the United States to condemn their employment by other sovereign states. After all, the United States government has routinely renewed contracts with controversial contractors (50) and has brushed aside requests from the Iraqi and Afghan governments to discipline or remove wayward contractors. (51) We have continued to do so notwithstanding contractors' involvement in prisoner abuses, (52) wanton killings of civilians, (53) and their spearheading of a controversial assassination program for the CIA. (54) Given the U.S. precedent, it will be difficult for our government to make a legal or moral claim to curtail the use of contractors by other governments, notwithstanding the fact that those other governments employ chiefly foreign contractors and use them to deter or suppress domestic, democratic movements. (55)

Second, we have nurtured and subsidized the private military industry. By hiring contractors and awarding them billions of dollars in contracts, we enlivened and emboldened a fledgling industry--enabling it to gain experience and professional contacts while in our employ. Of note, we have also permitted ostensibly reputable corporate contractors to subcontract with local but often highly unreliable warriors, (56) thus helping to spawn a discount market for seemingly less professional military services. Having made so much money in Afghanistan and Iraq, neither the corporate outfits nor their subcontractors are likely now--as those engagements draw to a close--to fade into the sunset. To the contrary, there is now a dynamic market of entrepreneurs seemingly primed to look beyond Washington for new business opportunities. (57)

## CONCLUSION

Most probably, the United States will continue to use contractors. We will surely also continue to promote our strategic interests abroad, and those might well be furthered by our allies having highly trained military contractors on retainer. But in the long run, it is not apparent that the United States will find the proliferation of military contractors at all advantageous--because of the role many contractors play in suppressing democratic movements and because we might well find at

least some version of these private firms aligned against us in future struggles.

For those who find military privatization objectionable, perhaps the Arab Spring's struggles with contractors are the best hope for an American reversal in course. If the imperative to reverse course were not apparent from our own experiences trying to keep military contractors in check, (58) it might be the case that a little perspective--that is, seeing their corrosive and destabilizing effects on their employers and targets alike (when they are not primarily in our employ)--or simply seeing them aligned against our interests will be enough to remind us why privateers were, just a few decades ago, well on their way to extinction.

(1) See Joe Lauria, Prosecutor Pursues Gadhafi Regime, WALL ST. J. (May 5, 2011), <http://online.wsj.com/article/SB10001424052748704322804576303193731426616.html> (noting that "the Gadhafi regime, watching rebellions in Egypt and Tunisia, brought mercenaries into Libya as early as January to prepare for possible demonstrations in the country"); Con Coughlin, Libya: Col. Gaddafi 'has spent 2.1m [pounds sterling] on mercenaries', TELEGRAPH (UK) (Apr. 20, 2011), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8464254/Libya-Col-Gaddafihasspent2.1m-on-mercenaries.html>; Jennifer Rubin, Algerian Mercenaries Join Gaddafi, WASH. POST (Apr. 11, 2011), [http://www.washingtonpost.com/blogs/right-turn/post/algerian-mercaneries-joingaddafi/2011/03/29/AFRLwHLD\\_blog.html](http://www.washingtonpost.com/blogs/right-turn/post/algerian-mercaneries-joingaddafi/2011/03/29/AFRLwHLD_blog.html); Edward M. Gabriel, Mercenaries in Libya: Gadhafi's Hired Terrorists, THE HILL (May 16, 2011), <http://thehill.com/blogs/congress-blog/foreign-policy/161459-mercenaries-in-libya-gadhafis-hired-terrorists>.

(2) See Bruce Riedel, The New Bahrain-Pakistan Alliance, NAT'L INTEREST (Aug. 2, 2011), <http://nationalinterest.org/commentary/bahrain-calls-mercenaries-silence-protestors-5689>; see also Nicholas D. Kristof, Bahrain Pulls a Qaddafi, N.Y. TIMES, Mar. 17, 2011, at A35; Avi Issacharoff, Bowing to Opposition, Bahraini Military Pulls Out of City Square, HAARETZ (Feb. 20, 2011), <http://www.haaretz.com/print-edition/news/bowing-to-pposition-bahraini-military-pulls-out-of-citysquare-1.344480>; Ishaan Tharoor, A History of Middle East Mercenaries, TIME (Feb. 23, 2011), <http://www.time.com/time/world/article/0,8599,2053107,00.html>.

(3) See Mark Mazzetti & Emily B. Hager, Blackwater Founder Forms Secret Army for Arab State, N.Y. TIMES, May 15, 2001, at A1, available at <http://www.nytimes.com/2011/05/15/world/middleeast/15prince.html?pagewanted=all>; Mark Mazzetti & Emily B. Hager, United Arab Emirates Confirms Hiring Blackwater Founder's Firm, N.Y. TIMES, May 16, 2011, at A4; see also Amy Davidson, Mercenaries in the Desert, NEW YORKER (May 16, 2011), <http://www.newyorker.com/online/blogs/cloread/2011/05/mercenaries-in-the-desert.html>.

(4) The initial agreement between the UAE and the private firm (called Reflex Responses) predates the Arab Spring. It seems likely, however, that even if the deal did not anticipate immediate domestic opposition, the special forces unit could now be mobilized to deter protesters or possibly assist in quelling internal strife. See Spencer Ackerman, Blackwater Founder Builds Mideast Mercenary Army To Put Down Revolts', WIRED (May 15, 2011), <http://www.wired.com/dangerroom/2011/05/blackwaterfounder-building-mercenary-army-to-put-down-arab-revolts/#more-46980>.

(5) Peter Finn, Gaddafi Said To Use Paramilitary Forces Foreign Fighters in Crackdown, WASH. POST, Feb. 24, 2011, at A9 ("Reports emanating from Libya suggest that foreign

mercenaries have been among the most brutal forces sweeping through the streets of Tripoli, the capital, and other cities."); Sudarsan Raghavan, *Libyan Regime Launches Brutal Crackdown*, WASH. POST, Feb. 22, 2011, at A1 (characterizing "heavily armed mercenaries hunting down demonstrators" and contrasting them with government officials "resign[ing] in outrage" and soldiers "fle[eing] their units and join[ing] the opposition" in "outrage over the attacks against civilians"); Davidson, *supra* note 3 (indicating that the UAE-sponsored force is comprised of non-Muslims, presumably less likely to be adverse to opening fire on the UAE's Muslim population); Abigail Hauslohner, *Among Libya's Prisoners: Interviews with Mercenaries*, TIME (Feb. 23, 2011), <http://www.time.com/time/world/article/0,8599,2053490,00.html> (noting that foreign troops were imported out of concern that Libyan soldiers would not take orders to attack Libyan protesters); see also Kareem Fahim, *In the Cradle of Libya's Uprising, the Rebels Learn to Govern Themselves*, N.Y. TIMES, Feb. 25, 2011, at A13 (noting that among the casualties were reportedly "soldiers who were executed and then burned by their commanders after they refused to fire on civilians"); Katherine Marsh, *Syrian Soldiers Shot for Refusing to Fire on Protestors*, GUARDIAN (UK) (Apr. 12, 2011), <http://www.guardian.co.uk/world/2011/apr/12/syrian-soldiers-shot-protest>; see also *infra* notes 31-35 and accompanying text.

(6) David D. Kirkpatrick, *Tunisia Leader Flees and Prime Minister Claims Power*, N.Y. TIMES, Jan. 15, 2011, at A1; Craig Whitlock, *Mubarak Steps Down, Prompting Jubilation in Cairo Streets*, WASH. POST, Feb. 13, 2011, at A1.

(7) Neil MacFarquhar, *Frustrated Protesters Fill Streets in Syrian Capital*, N.Y. TIMES, Feb. 19, 2012, at A6 (describing hundreds of protesters "brav[ing] scattered gunfire" as they "burned posters of [President] Assad and chanted for him to step down"); Anthony Shadid, *Syrian Protesters Defy Crackdown and Gain Momentum*, N.Y. TIMES, May 21, 2011, at A4; Anthony Shadid & Ethan Bronner, *Protests Unsettle Jordan While Most Other Neighbors Stay Calm*, N.Y. TIMES, Jan. 29, 2011, at A13.

(8) Mark Landler & David E. Sanger, *US Follows Two Paths on Unrest in Iran and Bahrain*, N.Y. TIMES, Feb. 16, 2011, at A11.

(9) Oliver Holmes, *Yemen's Big Protests: Saleh's Opponents Get Critical Mass*, TIME (Feb. 25, 2011), <http://www.time.com/time/world/article/0,8599,2055571,00.html>.

(10) Marc Fisher & Liz Sly, *Pressure for Change Builds Across Arab World*, WASH. POST, Feb. 28, 2011, at A1 ("Governments across the region have scrambled to offer concessions to their citizens."); Mark Landler & Helene Cooper, *Trying to Pick the Winners in the Mideast*, N.Y. TIMES, Feb. 25, 2011, at A1 (noting political and economic concessions made by leaders trying to appease domestic protesters); *Jordan's King Bends, Promises Democratic Reforms*, CBS NEWS (June 12, 2011), <http://www.cbsnews.com/stories/2011/06/12/501364/main20070728.shtml>.

"Arab Spring" is the popularly used term for the pro-reform movements that arose in early 2011 across much of North Africa and the Middle East. See, e.g., Lisa Anderson, *Demystifying the Arab Spring*, FOR. AFF., May/June 2011, at 2; Garry Blight & Shelia Pulham, *Arab Spring. An Interactive Timeline of Middle East Protests*, GUARDIAN (UK) (May 3, 2011), <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline>.

(11) Kareem Fahim, Jordanian Police Break Up a Peaceful March with Beatings, N.Y. TIMES, July 16, 2011, at A6 (describing clash between protesters and Jordanian police as "a sign of rising tension over the slow pace of political reform in the kingdom").

(12) See, e.g., PETER W. SINGER, CORPORATE WARRIORS (2003); Jon D. Michaels Privatization's Pretensions, 77 U. CHI. L. REV. 717 (2010); Jon D. Michaels, Beyond Accountability: The Constitutional, Democratic, and Strategic Problems with Privatizing War, 82 WASH. U.L.Q. 1001 (2004); Martha L. Minow, Outsourcing Power." How Privatizing Military Efforts Challenges Accountability, Professionalism, and Democracy 46 B.C.L. REV. 989 (2005).

(13) Given how quickly events are unfolding in the Middle East and North Africa, this contribution can serve only to initiate what I hope will, over time, broaden into a wider, more informed conversation about contractors, democratic legitimacy, and international relations.

Moreover, this contribution does not wade into the legal debate in international law over the status of mercenaries and private military contractors or the debate over whether there is a meaningful distinction between mercenaries and contractors. Those are important questions, see generally Michael Scheimer, Note, Separating Private Military Companies from Illegal Mercenaries in International Law, 24 AM. U. INT'L. L. REV. 610 (2009), but are beyond the scope of this project.

(14) SINGER, supra note 12, at 42 ("[T]he private military market was delegitimized by the end of the 1800s.... The practice of hiring foreign soldiers was universally condemned and legislated against, culminating in Geneva Conventions that withdrew from mercenaries the legal protections that soldiers enjoyed in warfare...."); Janice E. Thompson, State Practices, International Norms, and the Decline of Mercenarism, 34 INT'L STUD. Q. 23, 26-27, 34 (1990); Juan Carlos Zarate, The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New Worm Disorder, 34 STAN. J. INT'L L. 75, 87 (1998) (describing post-World War II mercenaries as a "shocking anachronism").

(15) For the most part, modern privateers were highly dangerous and disreputable rogues, working mainly for and against fledgling governments in the developing world. See SINGER, supra note 12; JANICE E. THOMSON, MERCENARIES, PIRATES AND SOVEREIGNS (1994). Consider the case of the infamous French mercenary Bob Denard. In the mid-1970s, Denard was hired by opposition forces to oust the President of the Comoros Islands, which he and his associates did. A few years later, the deposed president contracted with the very same Denard to topple his ousters. Apparently, the ousted president's check cashed as well, so Denard switched sides, reinstated the president and assumed for himself the role of defense minister and chief of police. See THOMSON, supra, at 93.

(16) See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 47, June 8, 1977, 1125 U.N.T.S.

(17) Michaels, Beyond Accountability, supra note 12, at 1020-21. At the same time and once it was apparent that they had no governmental role to play post-Apartheid, former South African paramilitary outfits transformed themselves into armies-for-hire. See, e.g., SINGER, supra note 12, at 102; David Shearer, Outsourcing War, FOR. POL'Y, Autumn 1998, at 68-81; Zarate, supra note 14.

(18) See Michaels, *Beyond Accountability*, supra note 12, at 1024-29.

(19) See id.

(20) See Minow, supra note 12, at 996.

(21) See MOSHE SCHWARTZ, CONG. RES. SERV., R40764, DEPARTMENT OF DEFENSE, CONTRACTORS IN IRAQ AND AFGHANISTAN: BACKGROUND AND ANALYSIS (2010); Joshua Partlow, Karzai Wants Private Security Firms out of Afghanistan, WASH. POST (Aug. 17, 2010), <http://www.washingtonpost.com/wpdyn/content/article/2010/08/16/AR2010081602041.html?sid=ST2010081700028>, <http://www.washingtonpost.com/wpdyn/content/graphic/2010/08/16/GR2010081605677.html?sid=ST2010081700028> (accompanying graph); T. Christian Miller, Contractors Outnumber Troops in Iraq, L.A. TIMES (July 4, 2007), <http://articles.latimes.com/2007/jul/04/nation/na-private4>.

(22) See SCHWARTZ, supra note 21, at 16; Derrick Z. Jackson, Editorial, End of Combat Yields Surge of Contractors, BOS. GLOBE, Sept. 4, 2010, at 11; James Glanz & Andrew W. Lehren, Use of Contractors Added to War's Chaos in Iraq, N.Y. TIMES (Oct. 23, 2010), <http://www.nytimes.com/2010/10/24/world/middleeast/24contractors.html?pagewanted=all> ("The use of security contractors is expected to grow as American forces shrink."); see also Michael R. Gordon, Civilians Take U.S. Lead After Military Leaves Iraq, N.Y. TIMES, Aug. 19, 2010, at A1 (emphasizing that contractors, and not military personnel, will stay in Iraq because a continued military presence "runs counter to [the Obama Administration's] political argument that we are getting out of these messy places").

When President Obama took office in January 2009, there were fewer than 4,000 armed contractors in Afghanistan. By August 2010, approximately 19,000 armed contractors were on the ground. See Joshua Partlow, Afghans Rebuff Security Contractors: Karzai Wants Companies Out, U.S. Calls 4-Month Deadline "Very Challenging," WASH. POST, Aug. 17, 2010, at A1; Partlow, Karzai Wants Private Security Firms Out of Afghanistan, supra note 21. Available data for Iraq isn't as detailed, but we do know that in the early part of 2009, there was a sizeable increase in armed security contractors in Iraq, and the numbers were expected to double in 2011 as the military departs. Gordon, supra.

The emphasis I place on armed security personnel reflects concerns about high concentrations of contractors vis-a-vis U.S. troops serving at the proverbial "tip of the spear." See, e.g., Lisa L. Turner & Lynn G. Norton, *Civilians at the Tip of the Spear*, 51 A.F.L. REV. 1, 22-23 (2001).

(23) Michaels, *Beyond Accountability*, supra note 12, at 1024-29. When we think beyond battlefield contractors, the legal evasions that can be accomplished by using contractors instead of U.S. government personnel rise significantly. See Michaels, *Privatization's Pretensions*, supra note 12, at 734-39; Jon Michaels, *Deforming Welfare: How the Dominant Narratives of Devolution and Privatization Subverted Federal Welfare Reform*, 34 SETON HALL L. REV. 573, 640-59 (2004).

(24) Michaels, *Privatization's Pretensions*, supra note 12, at 722, 756.

(25) Charles Tiefer, *The Iraq Debacle: The Rise and Fall of Procurement-Aided Unilateralism as a Paradigm of Foreign War*, 29 U. PA. J. INT'L L. 1, 28 (2007) (suggesting the U.S.

government's use of contractors comported with its "ardent[] desire[] ... to keep the illusion of a low number of troops").

(26) Renae Merle, *Contract Workers Are War's Forgotten. Iraq Deaths Create Subculture of Loss*, WASH. POST, July 31, 2004, at A1 ("The Pentagon does not keep an official count, and many companies do not announce when their employees in Iraq are killed."); Steven Schooner, *Remember Them, Too: Don't Contractors Count When We Calculate the Costs of War?*, WASH. POST, May 25, 2009, at A21.

(27) Michaels, *Privatization's Pretensions*, supra note 12, at 754-56.

(28) See, e.g., COMM. ON ARMED SERVICES, CONTRACTING IN A COUNTERINSURGENCY: AN EXAMINATION OF THE BLACKWATER-PARAVANT CONTRACT AND THE NEED FOR OVERSIGHT, S. DOC. NO. 111-571 (2d. Sess. 2010), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_senate\\_hearings&docid-f:57827.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_senate_hearings&docid-f:57827.pdf); Article 15-6 Investigation of the 800th Military Police Brigade ("Taguba Report"), available at [http://www.npr.org/iraq/2004/prison\\_abuse\\_report.pdf](http://www.npr.org/iraq/2004/prison_abuse_report.pdf); Article 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade ("Fay Report"), available at <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>; Steven L. Schooner, *Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government*, 16 STAN. L. & POL'Y REV. 549 (2005); Charles Tiefer, *No More Nisour Squares: Legal Control of Private Security Contractors in Iraq and After*, 88 ORE. L. REV. 745 (2009); August Cole, *US Contractors Fired at Kabul Car*, WALL ST. J., May 16, 2009, at A7; Mark Mazzetti, *CIA Sought Blackwater's Help To Kill Jihadists*, N.Y. TIMES, Aug. 20, 2009, at A1; Sudarsan Raghavan, *Iraqi Probe Faults Blackwater Guards: 17 People Killed Without Provocation at Baghdad Square, Officials Conclude*, WASH. POST, Oct. 8, 2007, at A12; Adam Goldman & Matt Apuzzo, *CIA Waterboarding Legal Defense: \$5 Million ShieM .for Pair of Contractors*, HUFFINGTON POST (Dec. 17, 2010), [http://www.huffingtonpost.com/2010/12/17/cia-waterboarding-legal-defense\\_n\\_798568.html](http://www.huffingtonpost.com/2010/12/17/cia-waterboarding-legal-defense_n_798568.html).

(29) Contractors' violent, offensive, and arbitrary behavior--ranging from shooting civilians to drunken debauchery--endangers missions, fuels civilians' distrust and galvanizes support for insurgents. See supra note 28 and accompanying text; see infra note 30 and accompanying text. Indeed, the U.S. Army's much-celebrated Counterinsurgency Field Manual emphasizes the importance of dealing civilly and humanely with foreign nationals when carrying out strategic initiatives. DEPT. OF THE ARMY, COUNTERINSURGENCY: FM 3-24, Dec. 2006, available at <http://www.fas.org/irp/doddir/army/fm3-24.pdf>; see also Ganesh Sitaraman, *Counterinsurgency, The War on Terror, and the Laws of War*, 95 VA. L. REV. 1745 (2009); Jeffrey S. Thumher, *Drowning in Blackwater: How Weak Accountability over Private Security Contractors Significantly Undermines Counterinsurgency Efforts*, ARMY LAW 64, 74-77, (2008); Gordon Lubold, *A Drawdown of Contractors in Iraq*, CHRISTIAN SCI. MONITOR (Mar. 4, 2009), <http://www.csmonitor.com/USA/Military/2009/0304/p03s03-usmi.html> (reporting on the top U.S. military commander in Iraq directing his deputies to scale back reliance on contractors); Pierre Tran, *NATO Commander: Too Many Contractors in Afghanistan*, FED. TIMES (Apr. 20, 2010), <http://www.federaltimes.com/article/20100420/DEPARTMENTS01/4200307/1001>; Editorial, *Privatized War, and Its Price*, N.Y. TIMES, Jan. 11, 2010, at A16. Cf SARAH K. COTTON, ET AL., HIRED GUNS: VIEWS ABOUT ARMED CONTRACTORS IN OPERATION IRAQI

FREEDOM (2010), available at <http://www.randproject.com/content/dam/rand/pubs/monographs/2010/RAND-MG987.pdf>; Jon D. Michaels, Deputizing Homeland Security, 88 TEX. L. REV. 1435 (2010) (describing, among other things, the complications that arise in the process of involving private individuals and businesses in domestic counterterrorism initiatives).

(30) Dexter Filkins & Scott Shane, Afghan Leader Sees Plan to Ban Private Guards, N.Y. TIMES, Aug. 17, 2010, at A 10; Monte Morin, Iraq Rescinds License for Blackwater Security Firm, L.A. TIMES, Jan. 30, 2009, at A4; Partlow, Karzai Wants Private Security Firms Out of Afghanistan, *supra* note 21, A1; Alissa Rubin, Karzai Orders GuardFirms to Disband, N.Y. TIMES, Aug. 18, 2010, at All; Craig S. Smith, The Intimidating Face of America, N.Y. TIMES, Oct. 13, 2004, at A4; Sabrina Yavernise, U.S. Contractor Banned by Iraq over Shootings, N.Y. TIMES, Sept. 18, 2007, at A1 ; Adam Zagorin & Brian Bennett, Iraq Limits Blackwater's Operations, TIME (Sept. 17, 2007), <http://www.time.com/time/world/article/0,8599,1662586,00.html>.

(31) See *supra* note 5 and accompanying text; Petra Cahill, How Gadhafi Could Find Mercenaries, WORLD BLOC FROM NBC NEWS (Feb. 25, 2011), [http://worldblog.msnbc.msn.com/\\_news/2011/02/25/6132143-how-gadhafi-could-find-mercenaries](http://worldblog.msnbc.msn.com/_news/2011/02/25/6132143-how-gadhafi-could-find-mercenaries) ("If you talk about using mercenaries, at least I tend to assume, that they are going to show less restraint firing on people than say the Egyptian forces did with respect to Egyptians.") (quoting Middle East expert); Huma Khan & Helen Zhang, Moammar Gadhafi's Private Mercenary Army "Knows One Thing: To Kill," ABC NEWS (Feb. 22, 2011), <http://abcnews.go.com/International/libya-benghazi-doctor-gadhafi-foreign-mercenaries-quell-protests/story?id=12972216> (describing foreign contractors as showing "no hesitancy to fire on civilian protestors" and characterizing them as more reliable than Libyan troops in terms of "loyal[ty] to Gadhafi"); Peter Gwin, Former Qaddafi Mercenaries Describing Fighting in Libyan War, ATLANTIC (Aug. 31, 2011), <http://www.theatlantic.com/international/archive/2011/08/former-qaddafi-mercenaries-describe-fighting-in-libyan-war/244356/> (describing foreign contractors' role in countering domestic upheaval in Libya).

(32) Jim Michaels, Libyan Rebels Committed to Cause, USA TODAY (Mar. 7, 2011), [http://www.usatoday.com/news/world/2011-03-07-1ibyairebels07\\_ST\\_N.htm](http://www.usatoday.com/news/world/2011-03-07-1ibyairebels07_ST_N.htm) (underscoring that the "rebel force includes commanders and soldiers who defected from the Libyan army"); Associated Press, Libyan Air Force Jets in Malta, Pilots Seek Asylum, CHI. SUN-TIMES (Feb. 21, 2011), <http://www.suntimes.com/news/3936673-418/libya-air-force-jets-in-malta-pilots-seek-asylum.html>; Libyan Military Attache Joins Rebel Ranks. Report, REUTERS, May 12, 2011, available at <http://www.reuters.com/article/2011/05/12/us-libya-emirates-idUSTRE74B65920110512>.

(33) Roula Khalaf, Tunisia: After the Revolution, FIN. TIMES (May 6, 2011), <http://www.ft.com/cms/s/2/9272ed50-76b9-11e0-bd5d-00144feabdc0.html#axzzIN6uMBSq8>.

(34) Hakim Almasmari, Hundreds Defect .from Yemen's Military, CNN (Nov. 19, 2011), [http://articles.cnn.com/2011-11-19/middleeast/world\\_meast\\_yemen-unrest\\_l\\_unarmed-youth-protests-government-troops?\\_s=PM:MIDDLEEAST](http://articles.cnn.com/2011-11-19/middleeast/world_meast_yemen-unrest_l_unarmed-youth-protests-government-troops?_s=PM:MIDDLEEAST) ("We will stand with the will of the people and will not kill unarmed youth. We are here to defend the people and we will do that.") (quoting one soldier); Yemen Military Defectors Battle Troops Loyal to Saleh in Fresh Fighting, TELEGRAPH (UK) (Sept. 21, 2011),

<http://www.telegraph.co.uk/news/worldnews/middleeast/yemen/8775873/Yemen- military-defectorsbattle-troops-loyal-to-Saleh-in-fresh-fighting.html>. See generally Dexter Filkins, *After the Uprising*, NEW YORKER (Apr. 11, 2011), [http://www.newyorker.com/reporting/2011/04/11/110411 fa\\_fact filkins](http://www.newyorker.com/reporting/2011/04/11/110411 fa_fact filkins) (quoting a top general announcing his and his "partner commanders and soldiers[]" support and "peaceful backing of the youth revolution").

(35) Ahmed Al-Haj, *Yemeni President To Step Down, Calling Deal a Coup*, S.F. CHRON. (May 22, 2011), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/05/21/MNJ11JJA7B.DTL>; David Blair, *Yemen's President Steps Down After 33 Years*, TELEGRAPH (UK) (Nov. 23, 2011), <http://www.telegraph.co.uk/news/worldnews/middleeast/8910946/Yemens- president-steps-down-after33-years.html> (emphasizing the anti-Saleh role played by the former military chief who "defected in March, splitting the army and taking the 1st armoured division into the opposition camp").

(36) See David D. Kirkpatrick, *Mubarak's Grip on Power Is Shaken*, N.Y. TIMES, Feb. 1, 2011, at A1 (describing the weakening of President Mubarak's position in light of statements by the Egyptian army that "it would not use force against protesters"); Wendell Steavenson, *Who Owns the Revolution?*, NEW YORKER, Aug. 1, 2011, at 38; see also *How Gadhafi Could Find Mercenaries*, supra note 31.

(37) See *Egypt Crisis: President Hosni Mubarak Resigns as Leader*, BBC NEWS (Feb. 12, 2011), <http://www.bbc.co.uk/news/world-middle-east-12433045> ("[T]he army takeover looks very much like a military coup.... [O]fficially it should be the speaker of parliament who takes over, not the army leadership."); Leita Fadel, et al., *Egypt's Military Leaders Call for Stand Against Protests*, WASH. POST (July 12, 2011), [http://www.washingtonpost.com/world/africa/egypts-military-leaders- warn-they-will-take-all-necessary-measures-against-protesters/2011/07/12/gIQAUKPcAI\\_story.html](http://www.washingtonpost.com/world/africa/egypts-military-leaders- warn-they-will-take-all-necessary-measures-against-protesters/2011/07/12/gIQAUKPcAI_story.html); Ernesto Londono & Leila Fadel, *Pressure Mounts on Egypt's Military Rulers*, WASH. POST (Nov. 21, 2011), [http://www.washingtonpost.com/world/violent-clashes-in-egypt- prompt-candidates-to-halt-campaigns/2011/11/21/gIQADrbMhN\\_story.html](http://www.washingtonpost.com/world/violent-clashes-in-egypt- prompt-candidates-to-halt-campaigns/2011/11/21/gIQADrbMhN_story.html).

(38) Ethan Bronner & Michael Slackman, *Saudi Troops Enter Bahrain To Help Put Down Unrest*, N.Y. TIMES, Mar. 15, 2011, at A1; David S. Cloud & Neela Banerjee, *Saudi Arabian, Gulf Forces Enter Bahrain*, L.A. TIMES (Mar. 15, 2011), <http://articles.latimes.com/2011/mar/15/world/la- fg-bahrain-troops-20110315>.

(39) See supra notes 2-3 and accompanying text. Ishaan Tharoor writes:

A significant segment of [Bahrain's] security personnel are Sunnis brought in from countries like Syria, Iraq, Jordan and Pakistan to buttress the ruling dynasty's authority. It's a policy that Shi'ites say is symbolic of widespread institutional discrimination in Bahrain, and it played a key role in clashes earlier this month when uncompromising--and often foreign security forces violently dispersed protesting crowds, killing at least six.

Tharoor, supra note 2.

(40) See supra notes 23-27 and accompanying text.

(41) See supra note 37 and accompanying text. It isn't clear, however, that the rank-and-file share their superiors' ruling ambitions.

(42) One may hasten to inquire how Libya's use of African mercenaries or the UAE's use of American and Colombian contractors is different from, say, Bahrain relying on Saudi troops or the Libya rebels relying on NATO air strikes. That is a fair and important question, one that turns substantially on the fact that the nation-states might pay a high political price--at home and internationally--for their overseas interventions, in a way that has little bearing on corporate enterprises. See, e.g., Saudi Shi'ites Protest, Support Bahrain Brethren, REUTERS, Mar. 16, 2011, <http://www.reuters.com/article/2011/03/16/us-bahrain-saudi-protests-idUSTRE72F8ZB20110316>; Karen Leigh, Bahrain: Caught Between Saudi Arabia and Iran, TIME (Mar. 15, 2011), <http://www.time.com/time/world/article/0,8599,2058992,00.html> (noting Iranian opposition to the Saudi intervention); Public Wary of Military Intervention in Libya, PEW RESEARCH CENTER (Mar. 14, 2011), <http://pewresearch.org/pubs/1927/strong-opposition-us-involvement-libya-military-overcommitted>.

As such, we might assume that the bar for foreign government intervention is much higher, likely influenced not just by monetary but also by political and legal considerations. But drawing a categorical distinction between a nation-state and a corporation is not, however, an entirely satisfactory response. Saudi Arabia, for example, might care little about how its intervention is perceived by the Bahraini people, the U.N. General Assembly, or even its own citizens. With that in mind, it might simply be the case that any outside intervention complicates popular sovereignty questions, and the difference (with regard to armed intervention) among a foreign democratic government, a foreign autocratic government, and a multinational corporation might better be framed as one of degree than kind.

(43) See, e.g., President Barack Obama, A Moment of Opportunity (May 19, 2011), <http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-barack-obama-prepared-delivery-moment-opportunity> (explaining that the policy of the United States is "to promote reform across the region, and to support transitions to democracy").

The United States' armed intervention on behalf of the Libyan rebels stands out as perhaps the most forceful expression of support. See President Barack Obama, Remarks by the President in Address" to the Nation on Libya, (Mar. 28, 2011), <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

(44) See Mark Landler, Cultivating a Prince To Coax an Ally To Change, N.Y. TIMES, June 10, 2011, at A10 ("President Obama has turned on repressive Arab governments in different ways and at different speeds."); Steven Lee Myers, Arab Hopes, U.S. Worries, N.Y. TIMES, Sept. 18, 2011, at A1 (noting criticism of Obama administration for failing to condemn Bahrain's efforts to suppress the popular uprising); Adam Entous & Joe Parkinson, U.S. Backs Bahrain Royalty, Varying Playbook on Revolt, WALL. ST. J. (Mar. 1, 2011), <http://online.wsj.com/article/SB10001424052748703409904576174830538031352.html>. The United States initially backed President Saleh's efforts to remain in power, notwithstanding his unpopularity at home. Despite Saleh's support for U.S. counterterrorism initiatives, the anti-Saleh sentiment within Yemen ultimately became too great for the United States to ignore. See Laura Kasinof & David E. Sanger, US Shifts" To Seek Removal of Yemen's Leader, an Ally, N.Y.

TIMES, Apr. 4, 2011, at A1; Steven Lee Myers, Clinton, in Cairo's Tahrir Square, Embraces a Revolt She Once Discouraged, N.Y. TIMES, Mar. 17, 2011, at A16 (describing criticism of U.S. government support for "autocratic rulers" in the Arab world).

(45) Mark Landler & Helene Cooper, Trying To Pick the Winners in the Mideast, N.Y. TIMES, Feb. 25, 2011, at A1 (emphasizing the Obama Administration's realpolitik effort to retain friendly relations with long-standing allies, "even those who lead the most stifling governments," and acknowledging the strategic partnerships the United States has had with the governments of Saudi Arabia and Yemen and how those partnerships might compromise President Obama's support for democratic movements); Joby Warwick, Protest Movements Swelling in Mideast, WASH. POST, Jan. 28, 2011, at A1 (noting U.S. government concerns that protest movements and domestic upheaval will further destabilize an already tumultuous region, opening opportunities for Iran and al-Qaeda); Nick Turse, Is US Aid Suppressing Yemen's Freedom Struggle?, NATION (Apr. 28, 2011), <http://www.thenation.com/article/160255/usaid-suppressing-yemens-freedom-struggle?page=0,1>; Alfred W. McCoy & Brett Reilly, Washington in a Bind as Local Despots Fall, SALON (Apr. 25, 2011), [http://www.salon.com/news/foreign\\_policy/?story=/politics/war\\_room/2011/04/25/us\\_foreign\\_policy\\_exposed](http://www.salon.com/news/foreign_policy/?story=/politics/war_room/2011/04/25/us_foreign_policy_exposed); David Schenker, Step Assad, NEW REPUBLIC (Apr. 9, 2011), <http://www.tnr.com/article/86465/syria-assad-bush-obama-pentagon>; Thomas Fuller, Bahrainis Fear the U.S. Isn't Behind Their Fight for Democracy, N.Y. TIMES, Mar. 5, 2011, at A7; Ellen Barry & Michael Schwartz, Russian Says Western Support for Arab Revolts Could Cause a "Big War," N.Y. TIMES, Jan. 19, 2012, at A4; Saira Mohamed, Taking Stock of the Responsibility to Protect, 48 STAN. J. INT'L L. 319, 333-35 (2012).

(46) Perhaps it could also be said that U.S. foreign and economic policy also played a hand in allowing repressive autocrats to climb to power and retain it for decades. Such considerations are well beyond the scope of this essay.

(47) See THOMSON, *supra* note 15.

(48) See *supra* notes 14-15 and accompanying text.

(49) There is now even a popular video game involving military contractors operating out of a "fictional North African town." Owen Good, Real-Life Mercenaries to Star in Blackwater, the Video Game, WIRED (June 7, 2011), <http://www.wired.com/dangerroom/2011/06/real-life-mercenaries-to-star-in-blackwater-the-video-game>.

(50) Over the past few years, the U.S. government has continued to award new contracts to Blackwater (under a variety of its refashioned spinoffs--themselves perhaps necessitated by Blackwater's tarnished international reputation). See James Risen & Mark Mazzetti, 30 False Fronts Won Contracts for Blackwater, N.Y. TIMES, Sept. 4, 2010, at A1; Jeff Stein, CIA Hires Xe, Formerly Blackwater. To Guard Facilities in Afghanistan, Elsewhere, WASH. POST, June 24, 2010, at A 11; Mark Landler & Mark Mazzetti, U.S. Still Using Security Firm, the Former Blackwater, That It Publicly Broke With, N.Y. TIMES, Aug. 22, 2009, at A6; Spencer Ackerman, Exclusive: Blackwater Wins Piece of \$10 Billion Mercenary Deal, WIRED (Oct. 1, 2010), <http://www.wired.com/dangerroom/2010/10/exclusive-blackwater-wins-piece-of-10-billion-merc-deal>; Blackwater Firm Gets \$120M U.S. Gov't Contract, CBS NEWS (June 18, 2010), [http://www.cbsnews.com/8301-31727\\_162-2000823810391695.html](http://www.cbsnews.com/8301-31727_162-2000823810391695.html).

(51) See *supra* note 30 and accompanying text. But see Kal Raustiala, *Iraq Withdrawal--Not So Fast*, L.A. TIMES (Jan. 3, 2009), <http://articles.latimes.com/2009/jan/03/opinion/oe-raustiala3> (describing Iraq's insistence on being able to prosecute U.S. contractors for criminal misconduct as part of the U.S.-Iraq Status of Force Agreement).

(52) See Schooner, *supra* note 28; Taguba Report, *supra* note 28; Fay Report, *supra* note 28.

(53) See Tiefer, *supra* note 28; Raghavan, *supra* note 28.

(54) See Mazzetti, *supra* note 28.

(55) An analogy can be drawn to concerns over the United States' determination that the Geneva Conventions do not apply to the conflict in Afghanistan. Among others, then-State Department Legal Adviser William H. Taft IV argued that denying the Conventions' applicability would jeopardize international adherence to the Conventions going forward--and put members of our armed forces at grave risk. What might have made sense in the moment (whether it be disregarding the Geneva Conventions or hiring military contractors) could prove disastrous in the long-run. See, e.g., *Comments on Your Paper on the Geneva Convention*, Memorandum from William H. Taft, IV, Legal Adviser, U.S. Dep't. of State to the Counsel to the President (Feb. 2, 2002), <http://www.fas.org/sgp/othergov/taft/pdf> ("A decision that the Conventions do not apply to the conflict in Afghanistan in which our armed forces are engaged deprives our troops there of any claim to the protection of the Convention in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts."); Lionel Beehner, *The United States and the Geneva Conventions*, COUNCIL ON FOREIGN RELATIONS (Sept. 20, 2006), <http://www.cfr.org/internationallaw/united-states-geneva-conventions/p11485> (quoting authorities as indicating that the "U.S. reinterpretation of the Geneva Conventions sets a bad precedent and could spark other states to follow suit, which undermines the effectiveness of these conventions").

There is, however, the possibility that the Arab regimes' use of foreign contractors (in what would otherwise be a civil affair) makes it easier, as a matter of international law, for other governments--which haven't themselves employed military contractors--to intervene. I thank Saira Mohamed for suggesting this possibility.

(56) See *INQUIRY INTO THE ROLE AND OVERSIGHT OF PRIVATE SECURITY CONTRACTORS IN AFGHANISTAN*, U.S. SENATE COMM. ON ARMED SERVICES, 111TH CONG. (Comm. Print Sept. 2010); James Risen, *Afghans Linked to the Taliban Guard U.S. Bases*, N.Y. TIMES, Oct. 8, 2010, at A1; *WARLORD, INC.: EXTORTION AND CORRUPTION ALONG THE U.S. SUPPLY CHAIN IN AFGHANISTAN*, REPORT OF THE MAJORITY STAFF REP. JOHN F. TIERNEY, CHAIR SUBCOMM. NAT'L SEC. & FOREIGN AFFAIRS, COMM. ON OVERSIGHT & GOV'T REFORM, U.S. HOUSE OF REPRESENTATIVES (June 2010), available at [http://www.cbsnews.com/htdocs/pdf/HNT\\_Report.pdf?tag=contentMain;contentBody](http://www.cbsnews.com/htdocs/pdf/HNT_Report.pdf?tag=contentMain;contentBody); see also Dexter Filkins, *With U.S. Aid, Warlord Builds Afghan Empire*, N.Y. TIMES, June 6, 2010, at A1.

(57) See, e.g., Mark Mazzetti & Eric Schmitt, *Blackwater Founder Said to Back Mercenaries*, N.Y. TIMES, Jan. 21, 2011, at A4; Jeremy Scahill, *Blackwater's Black Ops*, NATION (Oct. 4, 2011), <http://www.thenation.com/article/154739/blackwaters-black-ops>.

(58) See supra notes 28-30 and accompanying text (describing abuses perpetrated by military contractors and the ways in which those contractors have undermined U.S. efforts in Iraq and Afghanistan).

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