

The *Jus ad Bellum* Adherence of Private Security Operations:
An Empirical Study in Afghanistan

Just war theory remains a central framework for assessing the ethics of war, yet recent scholarship has largely retained a state-centric focus despite the extensive use of private security companies (PSCs) in contemporary conflicts. This article applies jus ad bellum principles to private security operations in Afghanistan between 2003 and 2009. It asks whether PSC operations were authorised by legitimate authorities and pursued just causes with right intentions, proportionality, a reasonable likelihood of success, and as a last resort. It challenges the common assumption that private armed forces are inherently unable to meet these standards.

Scholars have frequently expressed scepticism about the possibility that operations conducted by private armed forces could ever be considered ethically just (Ettinger 2014). Nick Fotion characterises private contractors as “loose cannons” and considers them less likely to adhere to the tenets of just war theory than states and state-based armed forces (Fotion 2008). Dimitrios Machairas, similarly, argues that “One of the most persistent moral objections against the use of private military force is the claim that PMCs lack a socially acceptable cause for participating in an armed conflict. The idea is that killing in warfare can only be justified if it involves attachment to a higher cause, depending, of course, on the morals of the given society or era under consideration,” (Machairas 2014). C. A. J. Coady, likewise, argues that the very nature of private warfare makes it unjust: “[s]omeone who hires his gun to the highest bidder or, less dramatically, fights predominantly for money will

typically lack the motive appropriate to war,” (Coady 1992). These claims, like many others about the morality of modern private security operations, are likely influenced by longstanding attitudes towards traditional mercenaries, who ravaged polities in the medieval, early modern, and post-Second World War eras (Fabre 2012). Contrary to these expectations, the evidence examined here shows that all but two of the private security operations under study fully adhered to *jus ad bellum* requirements. Blackwater and DynCorp failed to meet the principles of just cause and right intention because some of their operations were offensive rather than purely defensive, but the remaining firms satisfied all six tenets.

Given that private armed forces have recently been employed by governments, businesses, international organisations, and non-governmental organisations to provide offensive and defensive security services in Ukraine, Afghanistan, Iraq, across Africa, and in numerous other states, it is crucial for their clients and opponents to understand whether, and to what extent, these firms can operate ethically during their security activities. Similarly, it is essential for scholars, journalists, members of the private security industry, and other interested parties to have a solid empirical foundation for evaluating the ethics of employing private security companies in modern conflicts for roles such as personnel and site protection, counterinsurgency, and peacekeeping.

To assess how effectively private security operations adhered to the *jus ad bellum* principles of legitimate authority, just cause, right intention, proportionality, likelihood of success, and last resort, this study analyses operations undertaken by nine private security companies that were involved in 2,601 documented violent incidents during the War in

Afghanistan between 2003 and 2009 documented in the Private Security Company Violent Incident Dataset (PSCVID), which was developed by the author in 2012.¹ While these endeavours represent only a fraction of the total number of private security operations that took place during this conflict, they were chosen as a representative sample. The selection includes operations conducted by large firms, such as Blackwater, USPI, and Compass, medium-sized firms like DynCorp, and smaller firms such as Blue Hackle. The sample also encompasses operations involving a range of defensive and offensive security services provided to a range of clients, including government agencies, international organisations, and private companies. Furthermore, it features operations that took place across multiple regions of Afghanistan.

By providing an empirical assessment of PSC operations, the article tests claims that have often been advanced on largely speculative grounds. It proceeds by reviewing the just war literature on private armed forces, assessing the Afghanistan cases against the jus ad bellum principles, and discussing the implications for debates about the ethics and regulation of private security companies.

Literature Review

The volume of scholarship on the ethics of armed conflicts involving private security companies has increased significantly since the start of the wars in Iraq and Afghanistan. Much of the current literature applying just war theory to private security operations applies

¹ The PSCVID includes information on the date, location, actors and equipment involved, behaviour exhibited, use of force, and casualties suffered in each violent incident.

jus ad bellum principles; however, it tends to rely on anecdotal examples to support the authors' arguments rather than evaluating whether the security operations that took place during modern conflicts tended to adhere to these principles (Barnes 2017; Feldman 2016). Employing passing references to medieval mercenary campaigns and then-recent operations of Executive Outcomes and Military Professional Resources Incorporated, Coady argues in *Morality and Political Violence* that private armed forces are unlikely to adhere to the tenets of just cause and right intention (Coady 2008). In "The Good Mercenary?," Tony Lynch and A. J. Walsh examine whether profit-driven private armed forces can adhere to the principles of just cause, right intention, and last resort when they choose to engage in a foreign conflict (Lynch and Walsh 2000). In contrast to Coady, they conclude, though on the basis of little evidence, that private armed forces are probably little different from state-based armed forces in these respects and that, therefore, the former should not be deemed ethically inferior to the latter. In "The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes," Deane-Peter Baker and James Pattison argue, again on the basis of scant evidence, that private humanitarian interventions may be considered just because the CEOs of private security companies may, at least occasionally, be driven by a sufficiently right intention, such as a desire to help avert humanitarian catastrophes (Baker and Pattison 2012). Pattison, likewise, largely focuses on *jus ad bellum* principles in his "Just War Theory and the Privatization of Military Force," and *The Morality of Private War* (Pattison 2008, 2014). In all of these works he utilises anecdotal examples to illustrate his well-reasoned assertions that private armed forces may be able to adhere to most, if not all, *jus ad bellum* tenets.

Works by Machairas, Aaron Ettinger, Amy Eckert, and Cecile Fabre analyse *jus ad bellum* principles in the context of the recent widespread use of private armed forces in Afghanistan, Iraq, and multiple African states, though with disparate results (Machairas 2014; Eckert 2016; Fabre 2012; Ettinger 2014). Ettinger, Eckert, and Fabre argue that private armed forces can probably adhere to at least some of the *jus ad bellum* tenets. Machairas, in contrast, asserts that “the mercenary motive poses for PMCs and their personnel a significant moral challenge, which cannot be easily bypassed;” put differently, he argues that private armed forces are unlikely to meet the right intention tenet (Machairas 2014). Regardless of their position in debates about whether private armed forces can adhere to the tenets of just war theory, the well-reasoned arguments put forward by these authors are largely speculative because they draw on very limited empirical data.

Scott Fitzsimmons’ “Just War Theory and Private Security Companies” is one of the only empirical studies of how well twenty-first century private security operations adhered to tenets of just war theory (Fitzsimmons 2015). Like the present study, it uses data on private security operations to assess adherence to tenets. However, it focuses on operations during the Iraq War and assesses how well the employees that took part in these operations adhered to *jus in bello* just war principles, like discrimination and proportionality. This study, in contrast, undertakes an empirical assessment of how well the private security operations that were undertaken by nine firms in Afghanistan adhered to *jus ad bellum* tenets and, thus, represents a significant contribution to knowledge about these actors.

Just War Theory

Just war theory identifies two main sets of principles for judging whether armed conflict is ethically just (Hurka 2005). The *jus ad bellum* principles assess the justice of resorting to force, including legitimate authority, just cause, right intention, proportionality, likelihood of success, and last resort (Rhodes 2009). The *jus in bello* principles assess combatants' conduct during conflict. Some scholars also identify *jus post bellum* principles concerning the ethics of postwar reconstruction. Since this study examines the nature of private security operations in Afghanistan, rather than the conduct of individual personnel or post-conflict peacebuilding, it focuses solely on *jus ad bellum*.

Legitimate Authority

The legitimate authority principle holds that only actors with the proper authority to declare war can justly start a war (Dower 2009; Lackey 1989). Since the mid-twentieth century, most scholars of just war theory have argued that only the governments of nation states and the United Nations Security Council (UNSC) have sufficient legitimacy to be considered legitimate authorities and that these actors should, therefore, be the sole authorisers of warfare (Sussmann 2013; Fotion 2008). This study's interpretation of how the legitimate authority principle should apply to private security operations is conservative and based on the rationale that PSCs that are hired to conduct private security operations derive their authority to use violence from the clients that hire them (Morton 2013). If PSCs are hired by governments, or major security-focused international organisations, like the United Nations (UN), North Atlantic Treaty Organization (NATO), or the European Union (EU), or by clients who were themselves hired by governments or one of these organisations to provide

services in a conflict zone, then the private security operations carried out by these firms adhere to the principle of legitimate authority since they were directly or indirectly authorised by widely recognised legitimate authorities. On the other hand, if PSCs are hired by a client that does not fit this description, such as, for example, a drug cartel, terrorist group, or other form of criminal organisation, then the operations they carry out for these clients would not adhere to this principle (Eckert 2016). Likewise, given the aversion to the notion that a non-political non-state actor can self-authorise the use of violence, PSCs that conduct operations in the absence of a client would also fail to adhere to this principle (Bottoms 2009). This position is consistent with Edwin Morton's belief that "PMCs that are hired as agents of humanitarian intervention derive their authority from the principal that hires them, since they act on behalf of that principal. The PMC has an obligation, however, to ensure that the principal possesses right authority," (Morton 2013). It also furthers Pattison's assertion that "contractors should agree to fight wars only for a legitimate state (and which the state deems just)," by explicitly including certain international organisations as legitimate authorities alongside states (Pattison 2010).

All of the firms under study relied largely on contracts with governments and international organisations or with entities, such as logistics companies, that were hired by governments or international organisations to carry out reconstruction work. Therefore, at least according to this measure, all of the firms adhered to the legitimate authority principle during their security operations in Afghanistan. 4 Horsemen was hired by the US and Afghan governments and a firm called Three Bullets International that held contracts to transport fuel and other goods for coalition governments (Inside Gov.com 2008). ArmorGroup worked

for the US, United Kingdom (UK), and Canadian governments, the EU, as well as the Environmental Chemical Corporation (ECC), which was hired to undertake reconstruction work by the US government (G4S 2008). Blackwater's clients included the US and Afghan governments (Prince 2014). Blue Hackle was hired by the US, Canadian, and Afghan governments as well as companies like Black & Veatch that undertook reconstruction work funded by the US government (Spearin 2015). Compass worked for the US, UK, and Australian governments, the UN, and a company called Supreme that was hired to transport fuel, vehicles, and other goods and equipment for coalition governments (Forsberg and Kagan 2010; Senate Armed Services Committee 2010). DynCorp worked for the US and Afghan governments (Beaumont 2002). Global Risk Strategies worked for the US government, the UN, the Organization for Security and Co-operation in Europe (OSCE), and NGOs and private companies, such as Deloitte Consulting, that carried out projects funded by the US government (Office of the Inspector General 2010). Hart's clients included the Canadian and Australian governments, the EU, and private firms like Checchi, Chemonics International, and the Louis Berger Group that conducted reconstruction work funded by the US government (Office of the Inspector General 2010; Crowe Horwath 2013; Spearin 2015). Finally, USPI was hired by the US and Japanese governments, the UN, and several organisations that performed reconstruction work funded by the US government, including the Louis Berger Group, Chemonics International, Development Alternative Inc., and Black & Veatch (Office of the Inspector General 2010; Schulman 2009).

Just Cause

The principle of just cause maintains that an armed conflict may only be launched for a very good reason (Eckert 2016; Coppieters, Ceulemans, and Hartle 2008). Coppieters et al. argue, for instance, that “having a just cause is essentially about the correction and/or the punishment of an injustice that has been done, or about the pre-emption of an injustice that is about to happen.... A basic element in the definition of just cause is the presence (actual or in the near future) of an injustice,” (Coppieters, Ceulemans, and Hartle 2008). Virtually all just war scholars accept that defending one’s own territory and citizens from an invasion or external armed attack represents a just cause, and most also accept the practice of defending others, such as one’s allies, against invasions and attacks (Dower 2009). Just war scholars have increasingly come to accept that “defensive” causes need not be restricted to the defence of one’s own or one’s ally’s citizens. Rather, many scholars now accept that practices like humanitarian intervention, which involves the use of deadly force to protect the lives of people within the borders of another state, should also be considered a just defensive cause because, as with the traditional concept of self-defence, force is being used to defend people from great danger (Dower 2009; Sussmann 2013). The role of the intervener in these situations is to provide the resources – in the form of personnel, weapons, and other equipment – to defend people who cannot defend themselves in the absence of this assistance. The circumstances facing the kinds of actors that tend to hire PSCs, such as government agencies, international organisations, and private businesses, are similar to those facing the recipients of assistance in a humanitarian intervention, since these actors are often violently attacked because of their mere presence in a particular piece of territory and frequently lack viable alternative ways to protect themselves from

harm. Scholars have also shown a considerable degree of agreement about the notion that defensive uses of force can only be considered just if they are employed in response to attacks that are already underway or that appear imminent (Sussmann 2013; Dower 2009).

Taking this into account, the standards by which this study gauges PSCs' adherence to the just cause principle are straightforward: if a PSC's client hires the firm to conduct operations that are restricted to defending the client's personnel and property from deadly threats, such as ongoing or seemingly imminent insurgent attacks, then the firm's operations adhere to the just cause principle. If, on the other hand, a PSC's client hires the firm to conduct offensive operations, such as, for example, preventive attacks against suspected insurgent IED factories or assassinating a suspected insurgent leader, then these operations do not adhere to the just cause principle.

Most, though not all, of the firms under study adhered to the just cause principle in Afghanistan. 4 Horsemen's convoy protection operations were entirely defensive (Inside Gov.com 2008). ArmorGroup conducted defensive security operations for its clients by, for example, guarding the US, British, and Canadian embassies in Kabul and their staff when they needed to travel elsewhere in Afghanistan and protecting the personnel and facilities associated with the European Union Police Mission (EUPOL) (G4S 2008; Inside Gov.com 2011; ArmorGroup International 2006). Blue Hackle, similarly, provided defensive security services for US Army facilities, the Canadian Forces' Joint Coordination Centre in Kandahar City, at least one Governor of Kandahar, and personnel and assets who worked for Black & Veatch (Spearin 2014; Commission on Wartime Contracting 2011). Compass' major operations included guarding Supreme's logistics convoys from insurgent attacks as well as

defensive security operations for its government clients (Forsberg and Kagan 2010). Global Risk Strategies' operations, such as guarding UN personnel and facilities, the Kabul and Kandahar airports for the US-led coalition, the OSCE election support team, employees of the Asian Network for Free Elections, US Army Corps of Engineers staff and assets, and large quantities of currency as part of the National Currency Exchange Program, were, likewise, entirely defensive (Asian Network for Free Elections 2005; Global Strategies Group 2016). Hart also conducted defensive security operations for its clients, such as guarding the Canadian Forces' Strategic Advisory Team, EUPOL's headquarters in Kabul, and the staff and assets of Checchi and its other corporate clients (**Crowe Horwath 2013**). Finally, USPI's operations for its government and non-governmental clients were defensive in nature, and typically involved providing armed personnel to guard convoys, VIPs, construction sites, and compounds (Schulman 2009; Office of the Inspector General 2010).

Although most of Blackwater and DynCorp's operations in Afghanistan were defensive in nature, they did not confine themselves to purely defensive operations in that state. For example, Blackwater provided guards to protect visiting members of Congress, USAID personnel, US Ambassador Karl Eikenberry, and other State Department employees and facilities, such as the US consulate in Herat, from attack (Prince 2014; Special Inspector General for Afghanistan Reconstruction 2009; Griffin 2007). Its employees also guarded CIA facilities in Kabul and several other locations in Afghanistan, and conducted mobile defensive security operations to protect CIA employees during their intelligence gathering missions. However, Blackwater also conducted offensive "snatch and grab" and assassination operations against insurgent targets on behalf of the CIA and both firms

conducted offensive poppy eradication operations during which the firm's personnel, and the Afghan police officers they led, were authorised to use lethal force against any armed actor who tried to prevent them from destroying poppy fields (Prince 2014; Bergen and Lalwani 2007). DynCorp, similarly, largely conducted defensive security operations, such as protecting US dignitaries and diplomatic staff and facilities as well as Afghan president Hamid Karzai (Griffin 2007; Beaumont 2002). However, it also provided armed air support for offensive antinarcotics operations (United States Department of State and the Broadcasting Board of Governors Office of Inspector General 2010). Consequently, these two firms failed to adhere to the just cause principle.

Right Intention

Unlike the other just war principles, the subject matter of the right intention principle is a state of mind, attitude, or belief (Rhodes 2009; Dower 2009). Although a combatant may have a just cause for fighting a war, such as the need to mount a defensive use of force in response to an invasion of its territory, it can still fail to adhere to the right intention principle if its leaders maintain an improper motivation for participating in the conflict (Lackey 1989; Rhodes 2009). There is little agreement among just war scholars on what constitutes a right intention other than to try to accomplish the cause that started the war in the first place, provided it is just, or to "do good," or as Bill Rhodes puts it, "attacking and defeating moral evil," (Coppieters and Kashnikov 2008; Regan 2013). There is a greater degree of agreement about motives that should not be considered right intentions, such as baseless hatred of one's enemies or enjoyment of violence for its own sake (Rhodes 2009; Regan 2013).

Douglas Lackey rightly notes that “The real difficulty with the demand for idealistic motives is that people usually have more than one motive for each of their actions, which makes it difficult or impossible to specify *the* motive for the act,” (Lackey 1989). He goes on to argue that, “If it is too much to insist that political leaders take decisions solely on moral grounds or even primarily on moral grounds, we can insist that desire for what is morally right be at least *one* of their motives.... They may not act primarily or solely for the right, but they must have some reason... for thinking that they are acting for the right, among other things,” with “acting in the right” meaning acting to fulfil the just cause that is driving the conflict (Lackey 1989). In explaining this liberal interpretation of the right intention principle, Coppieters and Boris Kashnikov note that “there is little or no need to examine the relative weights of the various intentions to determine whether the just cause intention and any other supporting intentions are stronger than the bad ones,” (Coppieters and Kashnikov 2008).

Critics of the use of PSCs and other private armed forces in warfare frequently argue that a desire for financial gain should be considered an intention so wrong that it automatically disqualifies operations conducted by private armed forces from being considered just (Pattison 2010; Machairas 2014). This perspective is well-summarised in Machairas’ claim that “it is not financial motivation per se that is morally problematic here, but rather its coincidence with the application of military force, which normally entails causing harm to others,” (Machairas 2014). Ettinger, in contrast, argues that “this claim is weak. There is nothing inherently wrong about doing something strictly for profit (provided that the task is not egregiously immoral),” (Ettinger 2014). Therefore, anyone who can accept

fighting for a just cause to be an ethically legitimate activity should not automatically consider private security operations conducted in pursuit of a just cause by people who want to be paid for their efforts to be inherently unjust. Taking this into account, a straightforward way to interpret this principle is to connect it closely with the just cause principle and maintain that, in order for a combatant to adhere to the right intention principle, it must be motivated, at least in part, by a desire to achieve the just cause behind the conflict (Morton 2013; Fotion 2008). If a PSC appears to be motivated, at least in part, by a desire to protect its clients from harm (the just cause behind its operations), then it adheres to this principle. On the other hand, if a firm appears to be motivated purely by an enjoyment of violence for its own sake or an unjustified hatred of its enemies, then it fails to adhere to this principle.

All but two of the firms that operated in Afghanistan appear to have been purely motivated by a desire to protect their clients from harm in hostile environments. Therefore, according to this measure, most of these firms adhered to the right intention principle. To highlight a few examples, 4 Horsemen's mission statement is to "Provide the most cost-effective, quality products and services to our clients. In so doing, we empower our clients to perform their operational requirements in the safest manner," (Four Horsemen International 2016). ArmorGroup proclaims itself to be "a leading provider of defensive, protective security services to national governments, multinational corporations and international peace and security agencies operating in hostile environments," (Military.org 2007). Blue Hackle's website highlights the firm's emphasis on "Full-spectrum Close Protection Personnel Security Details," which "consist of tailored and experienced security

teams capable of operating in any threat environment to safely escort VIPs to and from their assigned places of duty, without incident or loss,” (Blue Hackle 2016e). Compass, similarly, declares that it “operates a wide range of commercial security activities, from static site security and convoy protection through to secure logistic services and cash-in-transit,” (Gulf Talent.com 2016).

Blackwater emphasised defensive security services in its mission statement: “To support national and international security policies that protect those who are defenseless and provide a free voice for all with a dedication to providing ethical, efficient, and effective turnkey solutions that positively impact the lives of those still caught in desperate times,” (King 2007). However, since this firm also readily admitted to conducting offensive operations, it failed to adhere to this principle. DynCorp depicted its approach to conducting its security operations as “threat avoidance,” and claimed that it only uses force for defensive purposes to protect its clients (Ryder 2010). However, its website also states plainly that the firm assists in offensive operations conducted by “the Department of State and friendly governments in the Western Hemisphere and Afghanistan,” such as “their efforts to eradicate illegal coca and opium-poppy crops and disrupt trafficking,” (DynCorp 2006). Therefore, like Blackwater, this firm’s intentions were not entirely defensive.

Proportionality

The *jus ad bellum* proportionality principle requires combatants to do more good – in terms of achieving the just cause that motivated the conflict in the first place – than harm through their use of force (Lackey 1989; Regan 2013). Therefore, a conflict, even one that produces

substantial harm, could be proportional if a persuasive case can be made that it produced even more good than harm and prevented greater harm from occurring if the conflict had not been waged. This principle is usually applied in a forward-looking manner, even when it is applied after a conflict has concluded, in order to discern whether the good that an armed conflict will likely produce outweighs the harm, such as casualties and damage, it will likely produce (Rhodes 2009; Eckert 2016). As Carl Ceulemans puts it, “The proportionality analysis is not about comparing the *actual* amount of good with the *actual* amount of damage observed in a ‘post factum’ way, but is essentially about assessing and comparing *possible* benefits and *possible* costs associated with the conducting of” an armed conflict (Ceulemans 2008).

Applying the proportionality principle to real-world armed conflicts involves a three-step process: first, identify the value of the good – that is, the just cause that purports to justify using force in the first place; second, identify the likely harm, in terms of casualties, that launching the armed conflict is likely to produce; finally, determine the relative value of achieving the just cause and inflicting the harm (Regan 2013; Lackey 1989). All three components of this analysis will be subjective and imprecise, but making a general, empirically-grounded case for or against a combatant’s ability to adhere to the principle of proportionality is still possible. When applying this principle to private security operations, assessments should focus on the value of achieving the objectives that the firms were hired to help their clients safely accomplish, the tangible harm the firms would likely inflict during their security operations, and the relationship between the two. This analysis must involve examining the capabilities of the PSCs and their probable opponents and, at least in a broad

sense, the behaviour they are likely to exhibit during their operations to predict how this is likely to affect the good and harm they might inflict (Walzer 2004). If it seems clear that a firm's operations will likely produce more good than harm, then they adhered to the principle.

All of the firms that undertook operations in Afghanistan adhered to the *jus ad bellum* principle of proportionality because the value of the objectives the firms' clients were trying to accomplish outweighs the harm the firms were likely to inflict during their security operations. 4 Horsemen protected Three Bullets International logistics convoys carrying fuel and other goods essential to ISAF units engaged in stabilisation and reconstruction (Inside Gov.com 2008). ArmorGroup's clients performed valuable diplomatic, policing, and reconstruction work: the diplomatic staff and property it protected helped maintain relations with Afghanistan and oversee stabilisation and reconstruction efforts; EUPOL trained Afghan police, prosecutors, and Ministry of Interior staff; and ECC expanded Shindand Airbase, a key ISAF facility (G4S 2008; Inside Gov.com 2011; ArmorGroup International 2006). Blackwater's clients, likewise, pursued important objectives. By protecting members of Congress, USAID personnel, Ambassador Karl Eikenberry, State Department employees and facilities, CIA facilities, and CIA personnel conducting intelligence missions, the firm enabled diplomatic, reconstruction, and security work (Prince 2014; Special Inspector General for Afghanistan Reconstruction 2009; Griffin 2007). Its assistance with CIA "snatch and grab" and assassination operations was also intended to help neutralise insurgent threats (Prince 2014).

The work performed by Blue Hackle, Compass, and DynCorp was also valuable. Blue Hackle guarded US military facilities, thereby freeing American soldiers for external operations, while its other clients helped coordinate responses to security threats in Kandahar, administer and reconstruct the province, and expand reliable electrical power through projects such as the Tarahkil Power Plant (Spearin 2014; Commission on Wartime Contracting 2011). Compass protected American, British, Australian, and UN diplomatic staff, enabling diplomatic and reconstruction work, and guarded Supreme logistics convoys transporting fuel, military vehicles, and other equipment to ISAF units (Forsberg and Kagan 2010). DynCorp protected US diplomatic staff and President Hamid Karzai, helping Afghanistan's government function, and its poppy eradication work sought to undermine an illicit revenue stream available to anti-government and anti-ISAF forces (Beaumont 2002; Bergen and Lalwani 2007).

Global Risk Strategies, Hart, and USPI, similarly, supported valuable objectives. Global Risk Strategies protected diplomatic, reconstruction, election, and military work undertaken by UN personnel, the US Army Corps of Engineers, ISAF members, the OSCE election support team, and the Asian Network for Free Elections during the 2004 Afghan presidential election (Asian Network for Free Elections 2005; Global Strategies Group 2016). Hart's Canadian and Australian diplomatic and military clients helped maintain relations with Afghanistan and oversee reconstruction, while its commercial clients built power plants, flood barriers, roads, government offices, and centres supporting women and vulnerable people, and advised Afghan officials, businesses, and farmers (Office of the Inspector General 2010; Crowe Horwath 2013; Chemonics 2016; Louis Berger Group 2016).

USPI's diplomatic clients, including the US and Japanese governments and the UN, supported diplomatic and reconstruction objectives, while its commercial and non-profit clients carried out similar reconstruction work. The firm also protected logistics convoys carrying vital fuel and supplies to ISAF units (Schulman 2009; Office of the Inspector General 2010).

There are good reasons to believe that these firms would not inflict an especially great amount of harm during their security operations. Given that they were not equipped with heavy weapons, such as .50 calibre machine guns, auto-cannons, missiles, or tank cannons, it would have been much more difficult for them to inflict heavy casualties when compared to larger and better-equipped state-based military units.² Moreover, due to the fact that virtually all of their operations were defensive in nature, their personnel were likely to limit their uses of force to situations where they deemed that they or their clients were under threat of suffering harm or damage, such as when they encountered violent insurgents. With this said, however, these firms, as with any armed security force, including soldiers and police, were likely to, at least occasionally, harm innocent civilians when the firms' personnel wrongly mistook civilians for insurgents or otherwise believed particular civilians posed a threat to themselves or their clients.

The amount of harm these firms were likely to inflict on civilians is difficult to predict with any precision, but it seems unlikely that the number of civilians that the firms might mistakenly harm would come close to the number of client personnel that would likely have

² The most powerful weapons available to Western private security companies in Afghanistan were the 7.62 mm M240 medium machine gun and its Russian equivalent, the PK medium machine gun, anti-personnel grenade launchers, and light anti-tank weapons.

been harmed by insurgent attacks if the firms had not been hired to try to prevent this. The latter can be discerned by examining the casualties suffered by some of the other targets of insurgent attacks: coalition military personnel and members of the Afghan government's security forces. The US-led coalition in Afghanistan suffered a total of 1,488 deaths due to hostile fire between 2003 and 2009, for an average of 213 deaths per year (Physicians for Social Responsibility 2015). Moreover, between 2007 and 2009, the years for which accurate casualty figures are available, the ANP and the Afghan National Army (ANA) lost an average of 1,015 troops to hostile fire per year (Physicians for Social Responsibility 2015). In contrast, according to the records contained in the PSCVID, the clients under the firms' protection suffered just 33 known deaths in Afghanistan during this period despite being attacked by insurgents at least 581 times. It is probable that the firms' clients would have been attacked more often if they had lacked the protection of private armed forces and would have suffered more deaths.

Ultimately, when the relatively minor amount of harm that was likely to be inflicted by the PSCs is weighed against the valuable work being performed by the firms' clients – reconstructing Afghanistan and helping it maintain diplomatic relations with the Western world – which could not have been performed without the security provided by the firms, it is reasonable to conclude that the latter outweighs the former and that, therefore, the firms adhered to the *jus ad bellum* principle of proportionality.

Likelihood of Success

Even if a party to a violent conflict pursues a just cause, the violence and destruction it will inflict in its pursuit of this cause cannot be deemed just unless it has a reasonable chance of succeeding in the conflict (Eckert 2016; Dower 2009). This is because fighting without a reasonable chance of accomplishing objectives, such as successfully defending one's territory and people, means that a party to a conflict is likely to inflict and suffer a great deal of harm without achieving a positive outcome. In other words, fighting a hopeless conflict in pursuit of a just cause is not ethically acceptable. As with the *jus ad bellum* principle of proportionality, the likelihood of success principle is meant to be employed in a predictive manner, even when applied after a conflict has ended (Rhodes 2009). As Fotion puts it, the purpose of using this principle "is not to make an assessment of how things turned out in the end, but how things looked at the beginning," (Fotion 2008). Employing this principle does not involve analyzing the pre-war predictions of success, or lack thereof, made by the decision-makers who launched a war or security operation; rather, using this principle compels the analyst to conduct an independent, objective analysis of the likelihood that a particular war or security operation could be successful at achieving its objectives. Ceulemans rightly argues that scholars employing this principle should "begin with a comparison of military strengths. If we can establish military superiority for one of the conflict parties, then it seems pretty straightforward where the military advantage, and thus the Likelihood of Success, lie," (Ceulemans 2008). Ceulemans also notes, however, that scholars must examine the nature of the combatants' objectives, since highly ambitious objectives will likely be harder to achieve than more modest ones (Ceulemans 2008). Analyzing the likelihood that a particular PSC will succeed in its security operations should

involve an assessment of the inherent level of difficulty presented by the PSC's objectives, the firm's capabilities, such as the size of its force and its equipment, and its approach to conducting its security operations. This assessment can then be used as a basis for deciding whether there is a reasonable chance that the firm could achieve its objectives in Afghanistan (Eckert 2016). If a firm appears to have had a reasonable prospect of achieving its objectives, then it adhered to this principle.

All of the firms adhered to this principle in Afghanistan. They fielded capabilities and adapted approaches to conducting their security operations that afforded them a good chance of being able to successfully meet their objectives. ArmorGroup, Blackwater, Blue Hackle, DynCorp, Global Risk Strategies, and Hart conducted moderately difficult defensive security operations to protect fixed sites, like military bases and government buildings, and relatively small convoys of VIPs. Due to the relatively small size of their convoys, they were more likely to be able to travel around Afghanistan without being noticed and attacked by insurgents and, therefore, arrive safely at their destinations. Their site protection operations were, likewise, moderately difficult because the facilities they guarded were located inside fairly secure cities or military bases and were, therefore, in close proximity to large state-based security forces. As a result, these facilities were unlikely to face concerted ground assaults by a large number of insurgents.

ArmorGroup fielded close to 1,000 personnel. They were a mixture of well-trained Gurkhas supplemented by poorly trained Afghans from warlord militias, though with some American, South African, New Zealand, and Australian military veterans in leadership and support positions (Senate Armed Services Committee 2010; Regulatory News Service 2007).

Blackwater maintained an average of 164 employees for its non-CIA work and had several dozen personnel assigned to work on its snatch and grab and assassination operations for the CIA. Most were well-trained Western combat veterans and moderately trained third-state nationals but the firm employed some poorly trained Afghans as well (Center for Strategic and International Studies 2009). For its relatively ambitious CIA work, the firm primarily used veterans of US special operations units (Prince 2014).

Blue Hackle employed a mixture of at least several dozen highly trained Westerners and Gurkhas and poorly trained local personnel (Blue Hackle 2016a, 2016b). According to the firm, its British employees “are of the highest caliber and include experienced former Special Air Service (SAS) personnel,” (Blue Hackle 2016d). DynCorp fielded several hundred security contractors in Afghanistan, who were a mixture of well-trained Westerners, moderately trained third-state nationals, and poorly trained Afghans (Nawa 2006). Global Risk Strategies deployed hundreds of security contractors and relied primarily on highly trained Gurkhas and Fijians but also used poorly trained locals and some highly trained Westerners in supervisory and support positions (Nawa 2006). Finally, Hart employed hundreds of security contractors in Afghanistan. Most were poorly trained locals, but the firm used some highly trained veterans from British, Australian, and other Western military units in supervisory and support positions. Almost all of the Afghans employed by these and the other firms under study were members of warlord militias. Although they were poorly trained, employing them increased the likelihood that a firm could achieve its clients’ objectives because this practice co-opted a supply of fighters who might otherwise have launched attacks against the clients’ personnel and assets.

These firms generally used the same approach and equipment during their defensive security operations. This involved deploying teams armed with assault rifles and machine guns and, when necessary, vehicles. Most firms used armoured vehicles for their mobile security operations, but Blue Hackle also relied on locally-sourced unarmoured civilian vehicles because it felt that the benefits of travelling inconspicuously often outweighed the costs of having to fend off insurgent attacks, if they occurred, without the protection of armour plating (Blue Hackle 2016b, 2016c).

4 Horsemen, Compass, and USPI largely focused on conducting challenging defensive security operations, which involved protecting construction sites and relatively large logistics convoys that travelled long distances throughout Afghanistan. Due to their size, and the fact that they frequently carried valuable supplies, like fuel and military equipment, these convoys had a high probability of being spotted and attacked by insurgents (Schulman 2009). Moreover, the construction sites they protected were often located far away from state-based security units and, consequently, presented tempting targets for large-scale insurgent assaults. To meet these challenges, these firms fielded large security forces. Compass deployed at least 2,300 armed personnel, 4 Horsemen fielded several hundred, and USPI fielded over 3,000 (Senate Armed Services Committee 2010; Nawa 2006). The vast majority of their security personnel were numerous but poorly trained members of militias belonging to Afghan warlords or moonlighting members of the ANA and ANP, but they also fielded some Western military veterans in management, training, and support roles (Sherman 2015). All of these firms adopted the same general approach, which was to field relatively large numbers of armed security personnel to protect

their clients' personnel and assets; these personnel were equipped with assault rifles, machine guns, and unarmoured vehicles (Nawa 2006). Although the average quality of their personnel and equipment was lower than that fielded by the other PSCs under study, their sheer size meant that they had a reasonable chance of successfully defending their clients and completing their operations.

Last Resort

Since wars and violent security operations have the potential to impose great costs – in the form of human suffering, damage to property, and financial expenses – it is obligatory to try to avoid embarking on these activities, if at all possible, by considering alternative courses of action first (Coppieters, Apressyan, and Ceulemans 2008; Eckert 2016). In Nigel Dower's words, this principle "reflects a widely held norm of moral life in general: given that on many occasions one may have a duty to do something, it is preferable to carry it out, if there are a range of alternative ways of doing it, in such a way as to avoid or at least minimize negative consequences," (Dower 2009). In other words, launching a war or violent security operation that adheres to the other *jus ad bellum* principles could only be considered just in the absence of a *viable* alternative way to achieve the goals behind the endeavour. When scholars apply this principle to states, they tend to focus on diplomacy as a plausible alternative to going to war. Diplomacy is not always viable, however, since it requires all parties to negotiate in good faith and adhere to the terms reached during the negotiations (Regan 2013). Therefore, diplomacy is unlikely to work if one of the parties to a conflict, such as an aggressor who seeks to conquer another state's territory, is either unwilling to

negotiate or unlikely to be satisfied with a compromise that provides anything less than what they think they can achieve through violence (Coppieters, Apressyan, and Ceulemans 2008). Attempts to open diplomatic negotiations could also be viewed as a sign of weakness by an aggressor and further embolden them rather than encourage restraint.

This study shares a liberal, and practical, interpretation of the last resort principle: launching a violent security operation may be considered just if there are good reasons to believe that no alternative approaches are likely to achieve a client's objectives. Therefore, clients do not need to actually implement alternative approaches or even demonstrate that they seriously considered them if these approaches are obviously unlikely to help them safely achieve their goals.

The security operations under study adhered to the last resort principle. None of the firms started operating in Afghanistan at the outset of the conflict. Rather, they launched their security operations in response to growing demand for private security services that was driven by a deteriorating security environment. According to the Rand Database of Worldwide Terrorism Incidents (RDWTI), insurgents carried out 148 attacks in Afghanistan in 2003, 146 in 2004, 207 in 2005, 352 in 2006, 317 in 2007, 450 in 2008, and 291 in 2009 (Rand Corporation 2016). Moreover, the annual number of civilian casualties and coalition troop deaths in Afghanistan generally increased over time during this period (Livingston and O'Hanlon 2015; Physicians for Social Responsibility 2015).

Confronted with this security environment, the clients' most obvious alternative to hiring PSCs would have been to try to rely on state-based security forces for protection against insurgent attacks. This approach probably would not have worked in Afghanistan,

however, because the US-led coalition of foreign military personnel was not large enough to provide security for all of the personnel, facilities, and other property belonging to the firms' eventual clients. Prior to the 2008 "surge," fewer than 40,000 US troops were deployed to Afghanistan, supported by fewer than 30,000 other foreign troops (Livingston and O'Hanlon 2015). Only a fraction of these troops were assigned to ground combat units that could conceivably have been used for the kinds of security operations undertaken by PSCs. Moreover, most of the non-American military units were restricted from at least some forms of combat operations – particularly ground combat operations – because their governments chose to impose "caveats" or other limitations that restricted what these units could do in Afghanistan and where they could be deployed (Saideman and Auerswald 2012). Of perhaps greatest importance, these troops were overstretched attempting to cope with the duties already assigned to them, which included, but were by no means limited to, conducting offensive operations against the Taliban and other insurgent forces and training the Afghan security forces.

The Afghan security forces were also not a viable alternative to PSCs. Although these forces grew from 6,000 troops in 2003 to 195,000 by the end of 2009, numerous military experts deemed these troops thoroughly "corrupt," "inept," "not ready," and "incompetent," (Livingston and O'Hanlon 2015). As mentioned earlier, the foreign and the domestic troops in Afghanistan failed to prevent a fairly steady increase in insurgent attacks and friendly casualties since 2003. Therefore, it is unlikely that they could have served as an effective alternative to the private security operations under study. Furthermore, it is important to note that, even if these state-based security forces had been willing and able

to protect the clients, it seems likely that they would have used violence on a greater scale than that employed by the PSCs, especially since they were frequently armed with more destructive weapons, like tanks, bombs, and missiles. Consequently, state-based security forces would likely not have provided a less-violent alternative to employing PSCs.

Another possible alternative to employing PSCs would have been for the clients to have attempted to rely exclusively on negotiating agreements with the insurgents to refrain from attacking their personnel and property.³ This option is, however, also fraught with problems. Any agreement reached with the insurgents, whether or not it involved paying protection money, would have been unenforceable in a highly insecure environment, like Afghanistan. If an insurgent group, either under the direction of its leaders or on the initiative of a “rogue” element, decided to violate the agreement and attack a client, there would have been little the client could have done about this because the local government and coalition forces would not have had sufficient control of the environment to hold the violator accountable. This problem was aggravated by the fact that it would have been difficult for the victim of an attack to conclusively blame the particular groups it had an agreement with and convince coalition or local government security forces to direct reprisal measures against those groups. Afghan insurgents rarely wore uniforms. Moreover, since insurgents could not easily distinguish each client’s convoys from those operated by other actors, they would likely “accidentally” attack the convoys owned by clients that had paid them

³ As noted earlier, several clients hired PSCs that fielded defensive security forces made up, in part, of members of warlord militias. This coopting arrangement differs from paying warlords to refrain from attacking a client’s assets in that the militia members were paid to provide a potentially violent service to the client.

protection money, at least occasionally. In the absence of protection from PSCs, these clients could not have deterred or defended themselves from these attacks.

Conclusion

This study aimed to evaluate the extent to which private security operations — often subject to significant criticism — adhered to the *jus ad bellum* tenets of just war theory. As summarised in Table 1-1, all but two of the private security operations under study exhibited complete adherence to the *jus ad bellum* tenets of just war theory. All the firms’ operations met the requirements of the legitimate authority, proportionality, likelihood of success, and last resort tenets. Blackwater and DynCorp’s operations in Afghanistan failed to adhere to the requirements of just cause or right intention, since they were not purely defensive in nature, but otherwise met the *jus ad bellum* standards for undertaking just private security operations. Future studies could evaluate how effectively employees of PSCs in Afghanistan adhered to *jus in bello* tenets of just war theory, such as discrimination and proportionality, or could undertake comparative analysis of the ethics of private security operations alongside those conducted by state-based armed forces to determine whether PSCs’ operations are, as is commonly presumed, ethically inferior.

Table 1-1. The Firms’ Adherence to the *Jus ad Bellum* Tenets

Legitimate Authority	Just Cause	Right intention	Proportionality	Likelihood of Success	Last Resort
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4 Horsemen	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
ArmorGroup	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
Blackwater	Adhered	Did not adhere	Did not adhere	Adhered	Adhered	Adhered
Blue Hackle	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
Compass	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
DynCorp	Adhered	Did not adhere	Did not adhere	Adhered	Adhered	Adhered
Global Risk Strategies	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
Hart	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered
USPI	Adhered	Adhered	Adhered	Adhered	Adhered	Adhered

Given the widespread scepticism and negative perceptions surrounding private armed forces, these findings may surprise some readers. They suggest that such perceptions warrant scrutiny, particularly when they can be gauged against empirical evidence of actual private security operations. Indeed, they support the claims of liberal just war scholars like Martha Phelps, who characterises PSCs as “corporate entities that undertake contracts, that involve or provide support of the use of force, from reputable entities, such as state agencies or international governmental organisations (IGOs), in return for monetary or resource compensation,” and Eckert, who argues that “PMCs differ from transnational criminal organizations, terrorist groups, and other nonstate actors

engaged in the use of force because they do so pursuant to the authorization of the state,” (Phelps 2014; Eckert 2016). Moreover, these findings suggest that scholars should avoid reflexively declaring that contemporary private security operations are ethically equivalent to medieval mercenary campaigns because the actual nature of these operations can meet high ethical standards (Fabre 2012). They underscore the need for careful scrutiny and empirical evaluation of PSC operations rather than knee-jerk condemnation. This, in turn, could lead to better regulation and oversight of PSCs to ensure they adhere to ethical standards and are held accountable for their actions.

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