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# War For Sale! Battlefield Contractors in Latin America & the 'Corporatization' of America's War on Drugs

Kristen McCallion\*

## I. INTRODUCTION

The Pentagon's efforts to increase efficiency by utilizing troops for purely military missions, combined with the incredible technological development in aircraft and military equipment, have resulted in a largely accepted, yet hardly understood phenomenon - the outsourcing of military work to private military companies. Private military companies ("PMCs") are business organizations which provide professional services inexorably linked to warfare.<sup>1</sup> PMCs deliver military services, conduct military and combat training, provide security services, and supply technical expertise and intelligence to the United States government all over the world. The global business of PMCs is thriving, but to what extent we do not exactly know.

What we do know however, is that today, privatized military contracting is indeed a lucrative business. It is estimated that PMCs generate at least \$100 billion in revenue annually from the U.S. government.<sup>2</sup> In fact, many of these private military compa-

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\* Juris Doctor Candidate, May 2005, University of Miami School of Law. I would like to thank my parents, Loretta and Joseph McCallion, for their endless support of all my endeavors, particularly, law school. I would also like to thank my advisor, Professor Ricardo J. Bascuas for his guidance, criticism and perspective regarding this comment, as well as former Senator Bob Barr, the Sundance Channel and lastly, Edwin Deneen, whose "guidelines" always keep me on the right track. This comment is dedicated to the families of the contractors held hostage in Colombia. May awareness create a path to reparation.

1. The companies that comprise the privatized military industry are referred to as private military companies ("PMCs") or private military firms ("PMFs"). Additionally, author and Brookings Institute scholar P.W. Singer organizes the privatized military industry into three sectors: "military provider firms, military consultant firms, and military support firms." PETER W. SINGER, *CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY* 91 (2003). According to Singer, a military consulting firm "provide[s] advisory and training services integral to the operation and restructuring of a client's armed forces" by offering "strategic, operational, and/or organizational analysis." *Id.* at 95. For the purposes of this Comment, the term 'PMCs' encompasses all of these sectors.

2. See Interview by Multinational Monitor with Peter W. Singer, *The Privatized Military: The Unmonitored, Unregulated and Unchecked Global Growth of Private*

nies ranked in the 2004 Fortune Global 500 List.<sup>3</sup> A leading contractor exemplifying the camaraderie between PMCs and the current Bush Administration is Kellogg Brown & Root, a unit of Vice President Richard Cheney's oil powerhouse Halliburton, which was awarded a \$16 million contract for constructing the military prison at Guantanamo Bay.<sup>4</sup> Despite these high-priced contracts, government officials maintain that privatization saves taxpayers money, yet this claim is still up for debate.<sup>5</sup> Additionally, the U.S. Department of State asserts that PMCs, such as Arlington-based Military Professional Resources Incorporated ("MPRI"), are capable of providing advanced training more effectively and at a lower cost than the United States Army. As a result, the Pentagon compensates PMCs with more than \$4 billion a year for training American troops alone.<sup>6</sup>

In addition to training, civilian contractors, as PMC employees, act as technical experts for sophisticated weaponry, and are stationed on or near battlefields to be available for emergency repairs and maintenance.<sup>7</sup> In some instances, contractors identify potential enemy targets in a combat zone, as well as rescue and salvage downed aircraft. As a result, contractors have become heavily involved in overseas conflicts.<sup>8</sup>

Today, civilian contractors battle Colombian guerilla rebel groups, man armed helicopters, and train the Colombian Army. Their employment, commenced as assistance to aid the United States in its 'War on Drugs,' has grown out of proportion to what their original contracts provided. As a result, critics have charac-

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*Military Firms*, MULTINATIONAL MONITOR, Mar. 1, 2004, available at 2004 WL 76991271.

3. Northrop Grumman ranked # 155, Halliburton ranked # 322 and Computer Sciences Corporation ("CSC") ranked # 366. *The Fortune Global Five Hundred - World's Largest Corporations*, FORTUNE, July 26, 2004, at 163.

4. See Carol Rosenberg, *Building of Prison at Guantanamo Begins*, MIAMI HERALD (Feb. 28, 2002), available at [www.miami.com/mld/miamiherald/news/world/cuba/2760497.htm](http://www.miami.com/mld/miamiherald/news/world/cuba/2760497.htm).

5. See Deborah Avant, *Mercenaries*, FOREIGN POL'Y, July 1, 2004, available at 2004 WL 63562921.

6. See SINGER, *supra* note 1, at 67.

7. See Earle Eldridge, *Civilians Put Expertise on the Front Line; Thousands Serve Their Country in War on Terror*, USA TODAY, Dec. 5, 2001, available at 2001 WL 5477882.

8. See *id.* A DynCorp employee, who oversaw aircraft maintenance in the Gulf War stated, "We were well aware of the biological threat and the threat from Scud missiles . . . [w]e were stationed about a mile from enemy lines, but sometimes we had to go in to retrieve downed aircraft. It was a little scary." *Id.* Additionally, a civilian worker admitted to signing "paperwork saying they are emergency essential and that they may be subject to combat hostilities." *Id.*

terized U.S. activity in Colombia "as a small, undeclared war[.]"<sup>9</sup>

As civilian contractors perform virtually every function essential to a successful military operation, it comes as no surprise that they have been characterized as modern day mercenaries. The overwhelming number of civilian contractors,<sup>10</sup> combined with the sheer breadth of military operations in which they are engaged, results in a distortion of the boundary between military and civilian roles. Additionally, the employment of civilian contractors by the government raises issues regarding government liability, responsibility, and deniability for civilian action, as Congressional troop cap mandates are circumvented and profit maximizing procedures are implemented to the detriment of these civilian warfighters.

This Comment argues that the current status of government accountability is merely 'plausible deniability.' Plausible deniability has become an accepted stance as PMCs act as third parties whose presence justifies the government's denial of direct participation. Section II of this Comment explains the current war in Latin America and the United States' involvement under the Andean Regional Initiative. This section focuses on Colombia, where narcotics and guerilla organizations dominate the jungles in which civilian contractors are engaged in warfare. Section III of this Comment identifies the most active PMCs in Latin America. This section provides a description of PMC capabilities and examines a selection of the vast responsibilities PMCs have undertaken for the government in the United States and abroad. Section IV of this Comment describes Congressional budget approvals and corresponding mandates, like the military troop cap, which have been implemented in accord with the escalating privatized war in Latin America. This section depicts the tactics utilized to circumvent this troop cap, the resulting lack of public oversight over civilian contractors and the detrimental affects of PMC profit maximization. Section IV also illustrates the secrecy surrounding PMC contracts and provides an analysis of the consequences of plausible deniability and the diverging goals between the government and PMCs. Section V concludes.

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9. Ian Traynor, *The Privatization of War*, THE GUARDIAN, Dec. 10, 2003, available at 2003 WL 64378449.

10. It is estimated that the Pentagon employs over 700,000 private contractors stationed all over the globe. See Greg Guma, *Outside View: Privatizing War*, UNITED PRESS INT'L (July 7, 2004), available at [http://www.veteransforpeace.org/Outside\\_view\\_privatizing\\_070804.htm](http://www.veteransforpeace.org/Outside_view_privatizing_070804.htm).

## II. AMERICA'S WAR ON DRUGS - PLAN COLOMBIA AND THE ANDEAN REGIONAL INITIATIVE

Both the Clinton and Bush Administrations have hired PMCs to diminish coca crops in Latin American countries, particularly in the Andean Region. PMCs such as DynCorp, MPRI, and Northrop Grumman receive over \$1 billion a year to fly fumigation spray planes to eradicate coca fields in Colombia and monitor drug traffickers from remote radar sites.<sup>11</sup>

The United States has supported Colombia's efforts to reduce narcotics trafficking since the 1970s.<sup>12</sup> Plan Colombia, however, established in 1999, spurred the heavy military presence the United States maintains today. Plan Colombia was implemented by Colombia's former President Andrés Pastrana to address the detrimental affects of increasing drug crop cultivation in Colombia. The Clinton Administration deemed Plan Colombia's implementation as vital to deter Colombia's guerilla warfare, organized crime, narcotics trafficking, and undemocratic lawlessness from becoming a serious threat to the United States.<sup>13</sup> To support Plan Colombia, Congress approved a \$1.3 billion aid package to the country in 2000, \$400 million of which was allotted for helicopters, military training programs, and additional assistance to the Colombian Army counter-narcotics brigades.<sup>14</sup> Despite these monetary efforts, Colombia continues to provide 90% of the cocaine entering into the United States today.<sup>15</sup>

Today, the Andean Regional Initiative ("ARI") is the Bush

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11. See SINGER, *supra* note 1, at 68.

12. See United States Government Accountability Office, *Report to the Honorable Charles E. Grassley, Chairman, Caucus on International Narcotics Control, U.S. Senate, Drug Control: Aviation Program Safety Concerns in Colombia Are Being Addressed*, GAO-04-918 (July 29, 2004), available at <http://www.gao.gov/new.items/d04918.pdf>.

13. See Myles Frechette, *In Search of the Endgame: A Long-Term Multilateral Strategy for Colombia*, 62 THE NORTH-SOUTH AGENDA PAPERS 3 (2003), available at <http://www.ciaonet.org/wps/frm02/frm02.pdf>. Myles Frechette was the U.S. Ambassador to Colombia from mid-1994 to late 1997. See *id.*

14. See K. Larry Storrs & Connie Veillette, *Andean Regional Initiative (ARI): FY2003 Supplemental and FY2004 Assistance for Colombia and Neighbors*, Congressional Research Service ("CRS") Report for Congress 9 (Aug. 27, 2003), available at <http://www.fas.org/man/crs/RL32021.pdf>.

15. See Gabriela Marcella, *The United States and Colombia: The Journey from Ambiguity to Strategic Clarity* (May 2003) (this monograph report is part of the "Shaping the Regional Security Environment in Latin America" series published jointly by the North-South Center at the University of Miami and the Strategic Studies Institute of the U.S. Army War College), available at <http://www.carlisle.army.mil/ssi/pdffiles/00007.pdf>.

regime's continuation of 'Plan Colombia.'<sup>16</sup> The ARI provides economic assistance and military support to seven countries in the Andean Ridge: Bolivia, Brazil, Colombia, Ecuador, Panama, Peru, and Venezuela.

The United States is a major trading partner to all countries included in the ARI.<sup>17</sup> This fact, combined with the social and political disasters the narcotics industry fosters in the Andean Ridge, provides support for the strong economic and militaristic presence the United States maintains in the region.

Colombia, Bolivia, and Peru produce virtually all of the world's cocaine and 60% of the heroin seized in the United States.<sup>18</sup> In fact, "Peru is the second largest cocaine producer in the world . . . ."<sup>19</sup> Brazil is not categorized as a drug-producing country, but acts as a conduit for cocaine from Colombia to the United States.<sup>20</sup> Brazil implemented "a \$1.4 billion sensor and radar project called the Amazon Vigilance System ("SIVAM")" to monitor and control drug trafficking.<sup>21</sup> The country shares this monitoring data with the United States.<sup>22</sup>

Venezuela and Ecuador are both major oil producing countries, members of the Organization of Petroleum Exporting Countries ("OPEC"), and supply considerable quantities of oil to the United States.<sup>23</sup> In fact, Venezuela "is now the fourth largest supplier of crude oil to the United States."<sup>24</sup> Venezuela, like Brazil, acts as a major conduit for drug trafficking.<sup>25</sup> However, Venezuelan President Chavez denounced Plan Colombia, and has denied the United States any air rights to monitor drug production and cultivation over Venezuelan territory.<sup>26</sup>

In 1999, the United States and Ecuador signed a ten year agreement for a 'forward operating location' ("FOL"), which serves as a U.S. drug monitoring operation and aerial detection center.<sup>27</sup> This was a consequence of Panama's unwillingness "to allow the

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16. The ARI expanded Plan Colombia's reach in order to counter spill-over effects in neighboring countries. See Storrs & Veillette, *supra* note 14, at 8.

17. See *id.*

18. See *id.*

19. *Id.* at 17.

20. See *id.* at 23.

21. *Id.*

22. See *id.*

23. See *id.* at 8.

24. *Id.* at 24.

25. See *id.* at 25.

26. See *id.*

27. *Id.* at 21.

United States to retain a formal military presence" for drug surveillance within its borders.<sup>28</sup> As such, FOLs in Ecuador, El Salvador, and Aruba act as substitute locations for this activity.<sup>29</sup>

In addition to the role that commerce and oil play in elucidating U.S. involvement in Latin America, the amplified role of civilian contractors in Latin America is due largely to the increased focus of the Bush Administration on global terrorism as a result of the September 11 attacks on the United States. Consequently, the war on drugs in Latin America now encompasses the war on terrorism as well. Both wars have become intertwined elements that comprise "narcoterrorism."<sup>30</sup> Accordingly, civilian contractors are engaged in not only anti-drug efforts, but counter-insurgency and anti-terrorism operations in this region for the United States government. As a result, civilian contractors who were first contracted to fumigate drug crops are now engaged in battling terrorists in this "small, undeclared war[.]"<sup>31</sup>

### A. Colombia

As it is well known, Colombia has faced decades of turmoil comprised of political and economical struggles as a result of the country's narcotics trafficking. Despite decades of U.S. aid, Colombia continued to be a portrayal of warfare through the 1990s which slowly depicted the fall of the Colombian Army to guerilla groups, and consequently, the rise of the country as a drug state.<sup>32</sup>

While there are a number of Latin American countries engaged in some form of narcotics trafficking,<sup>33</sup> Colombia repre-

28. *Id.* at 26.

29. *See id.*

30. "According to the [United States] Drug Enforcement Administration ("DEA"), narcoterrorism refers to terrorist acts carried out by groups that are directly or indirectly involved in cultivating, manufacturing, transporting, or distributing illicit drugs. The term is generally applied to groups that use the drug trade to fund terrorism." Council on Foreign Relations, *Terrorism: Questions & Answers, Narcoterrorism, What is Narcoterrorism?*, available at <http://www.cfrterrorism.org/terrorism/narcoterrorism.html> (last visited Nov. 12, 2004).

31. Traynor, *supra* note 9, at 2.

32. Colombia currently produces coca, opium poppy, and cannabis, and is the world's leading coco cultivator. *See* United States Central Intelligence Agency, *CIA - The World Factbook - Colombia*, available at <http://www.cia.gov/cia/publications/factbook/geos/co.html> (last modified Jan. 27, 2005).

33. In September 2004, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, Jamaica, Mexico, Panama, Peru, and Venezuela were included on President Bush's 'Majors List' of countries which currently raise concerns over narcotics. *See* Robert Charles, Assistant Secretary for International Narcotics and

sents the single most significant threat to the United States. Today, "[t]he United States has . . . more troops and civilian contractors . . . in Colombia than ever before."<sup>34</sup> Quite simply, "Colombia is the linchpin in the narcoterrorist battle . . . ."<sup>35</sup> The magnitude of this threat and the current Administration's emphasis on protecting the United States from the Colombian drug war are major factors affecting the rise of civilian contractors engaged in operations within Colombia's borders.

### 1. Colombia's Guerilla Organizations: FARC, ELN, and AUC

Colombia's biggest detriment is in fact the massive presence of guerilla groups that rely on the lucrative narcotics industry. There are approximately 18,000 members in the Revolutionary Armed Forces of Colombia, or *Fuerzas Armadas Revolucionarias de Colombia* ("FARC"), and 4,000 members in the National Liberation Army or *Ejército de Liberación Nacional* ("ELN").<sup>36</sup> FARC and ELN comprise the two largest, active insurgent groups in the country.<sup>37</sup> Furthermore, there are approximately 8,000 members in a growing right-wing, anti-insurgent, paramilitary organization *Autodefensas Unidas de Colombia* ("AUC").<sup>38</sup> Comprised of at least seven sub-groups with different agendas, there is continuous disagreement within the AUC.<sup>39</sup> The organization has colluded with the Colombian Armed Forces in fighting FARC and ELN, but has also been accused of human rights abuses and narcotics trafficking.<sup>40</sup> Additionally, it is important to note that not one of these organizations abides by the laws of humanitarian conduct of war.

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Law Enforcement Affairs, *Statement on Narcotics Certification: President's FY 2005 Narcotics Certification* (Sept. 16, 2004), available at <http://www.state.gov/g/inl/rls/rm/36249.htm>.

34. United States Institute of Peace, *Civil Society Under Siege in Colombia*, Special Report 114, at 2 (Feb. 2004), available at <http://www.usip.org/pubs/specialreports/sr114.pdf>

35. *Challenges for U.S. Policy Toward Colombia: Is Plan Colombia Working?*, Hearing Before the Senate Committee on Foreign Relations, 108th Cong. (Oct. 29, 2003) (testimony of General James T. Hill, United States Army, Commander, United States Southern Command), available at <http://www.ciponline.org/colombia/031029.hill.htm>.

36. See Council on Foreign Relations, *Terrorism: Questions & Answers, FARC, ELN, AUC: Colombia, Rebels*, available at <http://www.cfrterrorism.org/groups/farc.html> (last visited Nov. 1, 2004)

37. See United States Central Intelligence Agency, *supra* note 32.

38. See Council on Foreign Relations, *supra* note 36.

39. See United States Institute of Peace, *supra* note 34, at 15.

40. See Storrs & Veillette, *supra* note 14, at 9.

Inhumane tactics utilized by the guerillas include kidnapping, hijacking, assassination, and bribery. The largest target of these tactics is the Colombian Army,<sup>41</sup> however, American civilian contractors fall victim to the inhumanities of Colombia's guerilla organizations as well.

Former Colombian president Pastrana initiated peace talks with the country's guerilla groups and even went as far as creating "a sanctuary area or '*despaje*'" for FARC rebels that was off-limits to the Colombian army.<sup>42</sup> This safe haven constituted approximately 40% of the country's territory,<sup>43</sup> which is an area approximately the size of Switzerland.<sup>44</sup> Unfortunately, the guerilla groups utilized it to plot terrorist attacks and establish drug camps.<sup>45</sup> These peace talks have since been cancelled and the demilitarized zone is now a battleground.

## 2. Colombia's President Uribe

In May 2002, the Colombians elected Alvaro Uribe as their President. The election marked a major political shift in the country. Colombians acknowledged the fact that Pastrana's peace efforts with the guerillas proved unsuccessful, and that ultimately, peace would not result from negotiations alone between the government and Colombia's terrorist organizations.<sup>46</sup> Uribe has implemented many controversial steps to battle the drug war, including "authoriz[ing] widespread aerial fumigation of coca crops."<sup>47</sup> Additionally, Uribe implemented the '*Soldados Campesinos*' (peasant soldiers) program which augmented the Colombian "armed forces with 'peasant soldiers'" who are based near their hometowns and "receive less training than regular [soldiers]."<sup>48</sup> The program's function is to diminish the vulnerability of towns

41. See Marcella, *supra* note 15, at 28.

42. Storrs & Veillette, *supra* note 14, at 9.

43. See Energy Information Administration, United States Department of Energy, *Colombia Country Analysis Brief* (July 2004), at <http://www.eia.doe.gov/emeu/cabs/colombia.html> (last visited Nov. 4, 2004).

44. See *Timeline: Colombia - A Chronology of Key Events*, BBC NEWS (Jan. 21, 2005), available at [http://news.bbc.co.uk/2/hi/americas/country\\_profiles/1212827.stm](http://news.bbc.co.uk/2/hi/americas/country_profiles/1212827.stm).

45. See *Challenges for U.S. Policy Toward Colombia: Is Plan Colombia Working?*, Hearing Before the Senate Committee on Foreign Relations, *supra* note 35, at 4.

46. See Thomas C. Bruneau, *Colombia: Conflict and Civil-Military Relations*, STRATEGIC INSIGHTS (March 2003), available at <http://www.ccc.nps.navy.mil/si/mar03/latinAmerica.asp>.

47. Storrs & Veillette, *supra* note 14, at 10.

48. *Id.*

that have little or no police or military presence to guerilla occupation.

Most recently, to combat the insurgent efforts of the Colombian guerilla organizations, President Uribe implemented '*Plan Patriota*.' Plan Patriota represents the most intense phase of military involvement thus far, and consequently calls for additional military and civilian contractor support.<sup>49</sup>

At first, U.S. involvement in "Colombia was defined only as counternarcotics support."<sup>50</sup> However, the September 11 attacks prompted the Bush Administration and Congress to view Colombia as not only a haven for narcotics, but a breeding ground for terrorism.<sup>51</sup> Consequently, FARC, ELN, and AUC all appeared on the U.S. Department of State's terrorist list, and were generally viewed as sub-parts of a global threat assessment, as they conducted illegal business activities throughout Latin America.<sup>52</sup>

Obviously, there are many factors which have influenced the rise of PMC presence in Colombia. The strength of the guerilla organizations in Colombia, President Uribe's militaristic approach, and the terrorist attacks of September 11 represent the more predominant causes. Consequently, America's war on drugs and war on terrorism have become one and the same in Colombia.<sup>53</sup> As civilian contractors work to reduce coca cultivation in the

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49. See Memorandum from Washington Office on Latin America to Foreign Policy and Defense Policy Aides, *Retain the Caps in Current Law on the Development of U.S. Soldiers and Private Contractors in Colombia* (May 14, 2004), available at [http://www.wola.org/Colombia/troop\\_cap\\_memo.htm](http://www.wola.org/Colombia/troop_cap_memo.htm).

50. Marcella, *supra* note 15, at 34.

51. See Bruneau, *supra* note 46.

52. See Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State, *International Narcotics and Law Enforcement: FY 2004 Budget Justification* (June 2003), available at <http://www.state.gov/g/inl/rls/rpt/cbj/fy2004/21880.htm>. "The September 11 attacks and their aftermath highlight the close connections and overlap among terrorists, drug traffickers, and organized crime groups. The nexus is far reaching. In many instances, such as Colombia, the groups are the same." *Id.*; see also Marcella, *supra* note 15, at 34-35. These groups were "present in at least 18 countries . . . and to this day regularly cross borders to conduct illegal activities in Panama, Ecuador, Venezuela, Peru and Brazil." *Id.*

53. Ari Fleischer stated, "we have every intention of helping Colombia and working closely with Colombia. What they face are terrorists. That's most often associated with drugs, but it's terrorism, nevertheless." Press Gaggle with Ari Fleischer, White House Press Secretary (Feb. 22, 2003), available at <http://www.whitehouse.gov/news/releases/2003/02/20030222-4.html>; see also Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State, *supra* note 52. "To deal with the increasing linkage and overlap among terrorist, drug and crime groups, [the Bureau of International Narcotics and Law Enforcement Affairs ("INL")] has begun shifting . . . to a broader and more integrated law enforcement effort to combat the full range of criminal, drug, and terrorist threats." *Id.*

Andean Region, they also battle guerilla groups in war-like surroundings alongside the Colombian Army. What was once only a war on drugs has become full-fledged warfare with American civilian contractors in the middle of a combat zone.

### III. PRIVATE MILITARY COMPANIES IN LATIN AMERICA

Yet another motivating factor behind the increasing war-like activity in Colombia can be explained by evaluating the advanced technological training and skills these PMCs boast. Quite simply, PMCs are engaged in the art of warfare. PMC employees are trained military men and women who are compensated for their involvement in military activities and quite obviously, in order for PMCs to survive as a business entity, there must be militaristic activities or programs in which they can engage. An evaluation of the following PMCs' capabilities is quite impressive, yet it also obviates the issues which are present today. The incredibly advanced expertise, combined with the technological capacities and private nature of these companies create an aura of secrecy surrounding their contracts with the government. In turn, this secrecy creates a web of misinformation that effectively reduces public oversight regarding PMC activities.

#### A. *Dyncorp and Computer Sciences Corporation*

Dyncorp was purchased in 2003 by Computer Sciences Corporation ("CSC"). CSC currently boasts 79,000 employees and \$14.8 billion dollars in revenue in 2004.<sup>54</sup> CSC's website claims that it efficiently supplies "everything from paper clips to weapons" to U.S. troops.<sup>55</sup> The company recently contracted a 10 year, \$680 million agreement with the U.S. Army to maintain logistics capabilities for the Army Materiel Command ("AMC"), which manages and supplies weapons systems essential for the preparation of warfare.<sup>56</sup> The company has "served virtually every agency, department and major initiative in the U.S. government."<sup>57</sup>

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54. See Computer Services Corporation ("CSC"), *About Us*, available at <http://www.csc.com/aboutus/> (last visited Nov. 12, 2004).

55. CSC, *Did You Know? Defense*, available at <http://www.csc.com/aboutus/didyouknowfactslong.shtml#defense> (last visited Nov. 12, 2004).

56. See CSC, *An Overview of the Army's Logistics Modernization Program*, available at <http://www.csc.com/industries/government/mds/mds2/509.shtml> (last visited Nov. 12, 2004).

57. CSC, *Representative Federal Sector Clients*, available at <http://www.csc.com/industries/government/mds/mds81/123.shtml> (last visited October 14, 2004). CSC's

In fact, CSC proudly claims that since 1959, it has “work[ed] closely with the U.S. federal government.”<sup>58</sup> More recently, in the 1990s, DynCorp assisted in the training of the Haitian police force under President Clinton.<sup>59</sup> In 1991, Dyncorp was awarded a \$600 million contract to handle aircraft maintenance, pilot and aircrew training, and crop fumigation and eradication by the Department of State’s International Narcotics and Law Enforcement (“DoS/INL”) program.<sup>60</sup> In Colombia, DynCorp shares headquarters with the U.S. Department of State in Bogotá.<sup>61</sup> Specifically, DynCorp provides and trains pilots, mechanics, and other operations and maintenance personnel to support the Colombian Army and the Colombian National Police.<sup>62</sup> Under this contract, the risk assessment to DynCorp employees “is considered significant.”<sup>63</sup> The company also maintains U.S. provided helicopters utilized in drug eradication missions.<sup>64</sup> Additionally, Dyncorp provides fuel specialists, accountants, secretaries, and drivers to the Colombian Army and Colombian National Police.<sup>65</sup> In Dyncorp’s efforts to eradicate coca fields in Latin America, “10 employees have been killed over the last decade.”<sup>66</sup>

### *B. Military Professional Resources Incorporated*

MPRI was incorporated in 1987 by eight retired senior military personnel.<sup>67</sup> MPRI’s headquarters is in Alexandria, Virginia,

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website lists a “representative sampling” of federal sector clients. The sampling lists thirty departments including the Missile Defense Agency, the Defense Threat Reduction Agency, and the U.S. Army, Navy, Air Force and Marine Corps. *See id.*

58. CSC, *Army Materiel Command (US): Smooth Transition of Government Employees to CSC Creates a Precedent of Success in Government Outsourcing*, available at <http://www.csc.com/industries/government/casestudies/1346.shtml> (last visited Mar. 10, 2005).

59. *See* Sean Gonsalves, *Service with Integrity?*, COMMON DREAMS NEWS CENTER (Dec. 19, 2000), available at <http://www.commondreams.org/views/121900-102.htm>.

60. *See* War Profiteers, *DynCorp-State Department Contract* (May 23, 2001), available at <http://www.corpwatch.org/article.php?id=676>.

61. DynCorp and the Department of State headquarters are in the El Dorado Airport in Bogotá. *See* United States Government Accountability Office, *supra* note 12, at 2.

62. *See* Secretary of State, United States Department of State, *Report to Congress: Certain Counternarcotics Activities in Colombia* (Apr. 14, 2003), available at <http://www.ciponline.org/colombia/03041401.htm>.

63. *Id.*

64. *See* United States Government Accountability Office, *supra* note 12, at 3.

65. *See* Secretary of State, United States Department of State, *supra* note 62.

66. Bob Cox & Barry Shlachter, *Fort Worth, Texas-Based Dyncorp Among Leaders in Providing Military Security*, FORT WORTH STAR TELEGRAM, Sept. 2, 2004, available at 2004 WL 55719444.

67. *See* Military Professional Resources Incorporated (“MPRI”), *About MPRI* –

conveniently located in close proximity to Washington D.C.<sup>68</sup> The company currently has 1500 employees worldwide “and manages programs throughout the United States and in more than twenty countries overseas.”<sup>69</sup> According to the MPRI website, the company “provides comprehensive and integrated programs that address training, education, leader development, organizational design and implementation, democracy transition, and emergency management across a broad spectrum of functional areas.”<sup>70</sup> In sum, MPRI acts as a military consulting firm to the U.S. government, and, quite honestly, appears to be a private extension of the United States military.<sup>71</sup> An attractive aspect of MPRI’s employment practices is that the company maintains and draws its workforce from a “carefully managed” database of more than 12,500 former defense and law enforcement professionals.<sup>72</sup> Hence, the company hires contractors on an as needed basis. The vast range of tasks performed by MPRI clearly depicts the confidence in and reliance on the company by the government. This reliance can best be explained by the fact that MPRI’s staff is exclusively comprised of retired U.S. military, as well as by the company’s guarantee of only working on international contracts approved by the United States government.<sup>73</sup>

The immeasurable range of tasks MPRI is assigned to perform by the current Administration can be observed merely by looking on U.S. soil alone. MPRI recruits, completes anti-terrorism assessments, implements foreign threat preparations, conducts weapons-related strategic planning, and writes “the U.S. Army Installation Commander Force Protection Handbook.”<sup>74</sup> MPRI is also responsible for the operation of military recruiting programs, commonly referred to as the Reserve Officer Training Corps (“ROTC”) in over 200 American universities, where instructors wear uniforms, despite being private sector employees.<sup>75</sup> As if the seemingly endless functions the company performs for train-

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*Taking Expertise Around the World*, available at <http://www.mpri.com/site/about.html> (last visited Nov 1, 2004)

68. *See id.*

69. *Id.*

70. *Id.*

71. *See SINGER, supra* note 1, at 119.

72. MPRI, *It's What We Do*, available at <http://www.mpri.com/site/capabilities.html> (last visited Oct. 7, 2004).

73. *See SINGER, supra* note 1, at 120.

74. MPRI, *Strategic Planning Programs*, available at <http://www.mpri.com/site/stratplanprograms.html> (last visited Oct. 7, 2004).

75. *See SINGER, supra* note 1, at 123.

ing purposes are not enough, MPRI has developed and written two field manuals for the Army regarding contracting in a battlefield environment.<sup>76</sup>

In fact, contracting in a battlefield environment is an exact depiction of MPRI's role in Latin America, despite the company website's vague edict that its sole function in this region is simply to "provide analytical support and conference/seminar activities on a periodic basis"<sup>77</sup> to the Center for Hemispheric Defense Studies ("CHDS").<sup>78</sup>

In reality, MPRI's participation in Latin America commenced when the company was hired to devise a plan for the Colombian government to implement Plan Colombia.<sup>79</sup> At first, MPRI was paid \$850,000 for six weeks of assessment work in the initial analytical stages of Plan Colombia.<sup>80</sup> This involvement resulted in the company's ability to effectively position itself for further participation in the Colombian drug war. In fact, by 2000, MPRI had employees stationed full time in Colombia under a \$6 million contract.<sup>81</sup> As the contractor's responsibilities responded to the Bush Administration's expansion of a counter-narcotics campaign to a counter-terrorism campaign, MPRI worked with Colombian armed forces and national police to implement counter-guerilla effective procedures.<sup>82</sup> Despite MPRI's deep presence in and among Colombian forces, the company's contract was prematurely terminated only one year later due to the dissatisfaction expressed

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76. According to the MPRI, the field manuals "established a doctrinal basis directed toward acquiring and managing contractors as an additional resource in support of the full range of military operations." MPRI, *Military Joint & Service Doctrine Development Program*, available at [http://www.mpri.com/site/nat\\_jointdocdev.html](http://www.mpri.com/site/nat_jointdocdev.html) (last visited Oct. 7, 2004).

77. MPRI, *Latin America*, available at [http://www.mpri.com/site/int\\_samerica.html](http://www.mpri.com/site/int_samerica.html) (last visited Oct. 9, 2004).

78. See *id.* The Center for Hemispheric Defense Studies ("CHDS") is a result of Latin American military defense officials from revitalized democratic countries who expressed concern over the lack of civilians prepared to deal knowledgeably with defense and military issues in their countries. Former U.S. Secretary of Defense William Perry proposed creating a regional center to address this problem during the second Defense Ministerial held in Argentina in 1996. CHDS was formally established in 1997 and operates as a university, in that it provides education and encourages research and writing on Latin American security and defense issues. See Center for Hemispheric Defense Studies, National Defense University, *Brief History of CHDS*, available at <http://www.ndu.edu/chds/index.cfm?secID=15&pageID=91&lang=EN&type=section> (last visited Oct. 9, 2004).

79. See SINGER, *supra* note 1, at 132.

80. See *id.*

81. See SINGER, *supra* note 1, at 133.

82. See *id.*

by Colombian officials.<sup>83</sup> Apparently, MPRI failed to staff its Bogotá office with Spanish speaking personnel and failed to provide expertise applicable to a low-intensity conflict context.<sup>84</sup> MPRI was compensated for its services, however, and paid the remaining balance of the \$6 million contract.<sup>85</sup>

### C. Northrop Grumman

Northrop Grumman characterizes itself as a "global defense company[,]” which “provides technologically advanced, innovative products, services and solutions in systems integration, defense electronics, information technology, advanced aircraft, shipbuilding, and space technology.”<sup>86</sup> The company has 125,000 employees, operates in fifty states and twenty-five countries, and serves the U.S. military and international military forces, as well as commercial clients.<sup>87</sup>

Providing services from the “Arctic Circle to the tropics[,]”<sup>88</sup> Northrop Grumman services worldwide military operations, U.S. Army, Navy, and Air Force bases, as well as NASA facilities.<sup>89</sup> The company has served as a lead contractor to the U.S. Department of Defense for over thirty-five years. Additionally, Northrop Grumman supports the development and maintenance of U.S. Department of Defense weapons systems and operates remote-controlled unmanned planes for the Air Force and Navy.<sup>90</sup> This military powerhouse proudly claims that it is capable of delivering “unprecedented battlefield awareness” to “[w]arfighters.”<sup>91</sup>

Northrop Grumman’s involvement in the war on drugs is indeed vast. Specifically, the company has provided military support services to the Colombian army in its operation of radar sites to monitor drug trafficking.<sup>92</sup> The Northrop Grumman operation in Colombia, coined the ‘Southcom Reconnaissance System,’ is an

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83. *See id.*

84. *See id.*

85. *See id.*

86. Northrop Grumman, *About Us*, available at [http://www.northgrum.com/about\\_us/about\\_us.html](http://www.northgrum.com/about_us/about_us.html) (last visited Oct 11, 2004).

87. *See id.*

88. Northrop Grumman, *Defense: From the Arctic Circle to the Tropics*, available at <http://www.it.northropgrumman.com/home.asp?bid=1523> (last visited Oct. 11, 2004).

89. *See id.*

90. *See id.*

91. Northrop Grumman, *Defense: The Power to Know, The Knowledge to Win*, available at <http://www.it.northropgrumman.com/home.asp?bid=1522> (last visited Feb. 21, 2005).

92. SINGER, *supra* note 1, at 207.

\$8.6 million contract,<sup>93</sup> under which the company provides contractors to fly drug crop spray planes. Under this contract, Northrop Grumman and its subsidiary, California Microwave Systems, are responsible for managing aircraft, pilots, and operators in order "to counter illicit drug trafficking."<sup>94</sup> The risk assessment to these contractors is considered "moderate to high" due to the nature of flights over dense jungle and treacherous terrain dominated by Colombian rebels.<sup>95</sup>

#### D. Kellogg Brown & Root

Familiarly known as Brown & Root, or KBR, this private contractor is a unit of Richard Cheney's former oil-services giant Halliburton. The camaraderie between Halliburton and the Bush Administration was a hotly debated topic during the 2004 Presidential election. Previously, KBR was paid \$141 million by the Army to provide assistance to thousands of troops sent into Haiti on a U.N. mission in 1994,<sup>96</sup> and they were also awarded a \$16 million contract to build the detention camps in Guantanamo Bay, Cuba, that presently houses Al Qaeda prisoners.

Quite obviously, the aforementioned PMCs are engaged in a vast and seemingly endless array of services for the U.S. government. The responsibilities and capabilities of PMCs illustrate the fact that private contractors have simply become an extension of the United States military. DynCorp, MPRI, Northrop Grumman, and KBR are only a sampling of the companies hired by the U.S. government involved in counter-narcotics and counter-insurgency missions in Latin America.<sup>97</sup> As the functions performed by civil-

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93. Juan Forero, *Private U.S. Operatives on Risky Missions in Colombia*, N.Y. TIMES (Feb. 14, 2004), available at [http://www.sandline.com/hotlinks/NY\\_Times-Private\\_o10AD845.html](http://www.sandline.com/hotlinks/NY_Times-Private_o10AD845.html); See also Secretary of State, United States Department of State, *supra* note 62.

94. Secretary of State, United States Department of State, *supra* note 62.

95. *Id.*

96. See Anthony Bianco et al., *Special Report: Outsourcing War; An Inside Look at Brown & Root, the Kingpin of America's New Military-Industrial Complex*, BUS. WK., Sept. 15, 2004, available at 2003 WL 62195579.

97. Other private military companies awarded contracts in Latin America include: Lockheed-Martin and ARINC, Inc., which were both awarded contracts to assist the Colombian National Police; ARINC Engineering Services, LLC, which was awarded a contract to support the Peruvian Air Force and Colombian Air Force; TRW, which was awarded a contract to install and support radar data processing and voice communications system; Matcom, which was awarded a contract to coordinate activities between the U.S. and Colombia Air Force; Cambridge Communications, which was awarded a contract to transport radar equipment; Virginia Electronic Systems, which was awarded a contract to install equipment in boats purchased for

ian contractors develop beyond the contours of their contract, liability is untraceable to the individual actor. This is only the first link in a chain reaction of deniability and unaccountability.

#### IV. CAUSES AND CONSEQUENCES OF AMERICA'S ESCALATION OF A PRIVATIZED OF WAR

An additional problem arises as the responsibilities of civilian contractors increasingly call for participation closer to the battlefield - their chances of becoming prime targets for enemy warfare significantly increase. Despite the government's claims that civilian contractors are not involved in combat, close scrutiny of the tensions in Latin America suggest otherwise. Drug eradication missions transpire in hostile environments where spray planes, accompanied by helicopter gunships, are shot at from the ground and are sometimes forced to land due to unrelenting ground fire.<sup>98</sup> As the battle against narcotics and terrorism continues, the hostility and danger increase as guerillas adamantly defend the coca crops.

In 2004, the United States General Accounting Office reported that the number of ground-fire hits on spray aircraft increased to a considerable degree in 2003, when the total number for that year was more than 2001 and 2002 combined.<sup>99</sup> Furthermore, a 2003 report issued by DynCorp noted that the increasing threat to aircraft and pilots was causing concern regarding the company's "safety and personnel morale."<sup>100</sup>

Morale concerns are an obvious consequence of repetitious

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Colombia by the U.S. Department of Defense; Air Park Sales and Service, which was awarded a contract to provide aircraft radio and equipment upgrades for the Colombian Navy; Integrated AeroSystems, Inc., which was awarded a contract to train the Colombian Air Force; Alion, LLC, which was awarded a contract to support senior representatives of the Colombian Armed Forces; The Rendon Group, which was awarded a contract to provide counter-drug public communications products; ACS Defense and INS, which were both awarded contracts to provide support to the U.S. Embassy; and Science Applications International Corp. and Mantech. See Secretary of State, United States Department of State, *supra* note 62.

98. See United States Government Accountability Office, *supra* note 12.

99. See *id.* In 2002 and 2003, the number of ground-fire hits averaged more than 26 per month. This is a significant increase from 2001 to 2002 when the number of ground-air hits averaged 10 per month. Additionally, the total number of hits in 2003 was more than the previous two years combined - 313 versus 288 in 2001 and 2002. See *id.*; see also R. Norman Moody, *Colombia's Drug Crops Taking Hit*, FLORIDA TODAY, July 11, 2004, at 1. Sharon Nell, Director of the Office of Aviation stated, "It's a risky business . . . the airplanes took 380 gunfire hits from ground last year. Four planes were lost." *Id.*

100. United States Government Accountability Office, *supra* note 12.

attack, and it appears that the government's plan to deal with these reports of increasing danger is to further increase military and civilian presence in Colombia. This is indicated by continual congressional approval of massive foreign aid budgets and personnel cap increases.

A. *Congressionally Approved Budgets, 'Expanded Authorities,' and the Evasion of Troop Caps*

The escalating presence of U.S. forces and civilian contractors in Latin America is signified by repeated Congressional budget increases alone. In 2003, Congress approved Bush's budget request of \$731 million to be allotted towards counter-narcotics assistance under the Andean Counterdrug Initiative ("ACI").<sup>101</sup> Despite increased spending, Congress was insistent that "no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation."<sup>102</sup> Only two months later, President Bush requested additional funding as part of an 'Emergency Wartime Supplemental' package to fight his global war on terrorism. This request included counter-drug and military funding for Colombia.<sup>103</sup> As a result, an additional \$34 million was allocated by Congress to the ACI.<sup>104</sup>

Most importantly, these budget appropriations included Congress' approval of a provision coined as 'expanded authorities,' whereby U.S. supplied training and equipment could be used not only in counter-drug efforts, but in counter-terrorism efforts as well.<sup>105</sup> The expanded authority implemented by Congress was an

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101. See Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, 117 Stat. 11, 172-73 (2003). Congress approved \$700 million to be provided to the Andean Counterdrug Initiative ("ACI"). Congress further allowed an additional \$31 million to be transferred from the State Department's International Narcotics Control and Law Enforcement account to ACI. See also Storrs & Veillette, *supra* note 14, at 28.

102. Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, 117 Stat. 11, 172-73 (2003).

103. See Storrs & Veillette, *supra* note 14, at 27-28.

104. See Emergency Wartime Supplemental Appropriations Act of 2003, Pub. L. No. 108-11, 117 Stat. 559, 560, 577 (2003). Congress also approved an additional reserve of \$20 million in Foreign Military Financing ("FMF") which could be made available to ACI for aircraft, training, and assistance to the Colombia Army. See *id.*; see also Storrs & Veillette, *supra* note 14, at 28.

105. "[F]unds available to the Department of State for assistance to the Government of Colombia shall be available to support a unified campaign against narcotics trafficking, against activities by organizations designated as terrorist organizations such as the Revolutionary Armed Forces of Colombia ("FARC"), the National Liberation Army ("ELN"), and the United Self-Defense Forces of Colombia

effort to further assist the Colombian government in its battle to restore political and social order to the country.<sup>106</sup>

As a result of the expanded authorities provision, a quantity of Black Hawk and Huey II helicopters were sent to Colombia to be utilized for counter-narcotics operations, coca field eradication, and lab destruction, as well as for Colombian force protection and humanitarian assistance.<sup>107</sup> Consequently, any belief that U.S. ammunition, troops, and private contractors were restricted only to fighting the drug war had just been effectively eradicated.

Included with the approval of expanded authorities however, were "funding conditions and reporting requirements."<sup>108</sup> In fact, if at any time the U.S. Secretary of State determined that the Colombian Army was not fulfilling its responsibility to restore government authority, the expanded authorities would be revoked.<sup>109</sup> The State Department was required to submit a report to Congress that described the programs currently being executed by private contractors to train Colombian nationals to assume the responsibilities of contracted programs.<sup>110</sup>

Recently, Congress again approved the Foreign Operations Appropriations bill which allotted \$731 million to go towards the ACI in 2005.<sup>111</sup> Yet again, the Senate reiterated the prohibition on U.S. armed forces and civilian contractors "from participating in any combat operation in connection with funds" provided in the bill.<sup>112</sup>

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("AUC"), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations." Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, 117 Stat. 11, 172-73 (2003).

106. See Storrs & Veillette, *supra* note 14, at 28. As explained by Storrs, the expanded 'authorities' provision was justified by the Committee as a means to "provide more effective intelligence by gathering and fusion." It was not, as clarified by the Committee, a "signal for the U.S. to become more deeply involved in assisting the Colombian military in fighting its terrorists groups . . ." *Id.*

107. See Marcella, *supra* note 15, at 41.

108. Storrs & Veillette, *supra* note 14, at 29.

109. "This authority shall cease to be effective if the Secretary of State has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerilla organizations." Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, 117 Stat. 11, 172-73 (2003).

110. See Storrs & Veillette, *supra* note 14, at 30.

111. See H.R. 4818, 108th Cong. (2004); S. 2812, 108th Cong. (2004). See also Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

112. For information regarding the 2005 Foreign Operations appropriations bills aid request, as well as the Senate and House Appropriations Committee reports, visit the website of the Center for International Policy's Colombia Program at <http://www.ciponline.org/colombia/05forops.htm>. See also S. 2812, 108th Cong. (2004).

Despite huge budget approvals to further U.S. presence in Latin America, it is obvious from the aforementioned Congressional requirements that the legislature was concerned U.S. presence could quickly escalate out of control. In fact, it has been stated by analysts and advocates alike that additional U.S. "involvement in Colombia could lead to a Vietnam-like quagmire."<sup>113</sup>

Congress' concern over this escalation is indeed plausible. In order to deter the intensification of civilian and military presence in Colombia, personnel caps were implemented by Congress as a safeguard against the escalation of America's involvement in Latin America in 2000. At first, Congress implemented caps of 500 military personnel and 300 civilian contractors who could be assigned to duty in Colombia at one time.<sup>114</sup> Obviously, these personnel caps were put in place by certain members of Congress who were concerned over the seemingly endless military commitments of the United States in Colombia.<sup>115</sup> Simply stated, members of Congress saw a dangerous amount of "growth potential[.]"<sup>116</sup> Until a few months ago, the caps had been maintained at 400 troop and civilian personnel each. However, U.S. presence in Colombia has quietly increased. Reports released by the White House indicated that U.S. military personnel tripled from November 2001 to May 2003 when there were 358 military personnel and 308 civilian contractors present in Colombia.<sup>117</sup>

Additionally, as a result of President Uribe's '*Plan Patriota*,' the most recent, large-scale counter-insurgency offensive to continue Colombia's war against the guerilla groups, contractor presence recently grew to exceed the mandated cap of 400 civilian personnel.<sup>118</sup> In March 2004, President Uribe requested that the

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113. Juan Forero, *Congress Approves Doubling U.S. Troops in Colombia to 800*, N. Y. Times, Oct. 11, 2004, at A9. "Lifting the Congressionally mandated limits on troops and contractors, a little-noticed measure in the 5,000-page Pentagon authorization bill, is seen by some political analysts and rights advocates as a major step toward even larger American troop commitments . . . [I]n 2000 . . . [,] members of Congress hotly debated whether involvement in Colombia could lead to a Vietnam-like quagmire." *Id.*

114. See Military Construction Appropriations Act of 2001, Pub. L. No. 106-246, § 3204(b)(1)(A)-(B), 114 Stat. 511 (2000).

115. See Memorandum from Adam Isacson, Center for International Policy, to Interested Colleagues, *Preserve the "Cap" on the U.S. Military Presence in Colombia* (Mar. 16, 2004), available at <http://www.ciponline.org/colombia/040322cap.pdf>.

116. *Id.*

117. See *id.*

118. See Adam Isacson et al., *Blurring the Lines, Trends in U.S. Military Programs with Latin America* 6 (2004) (this work is a joint publication from the Latin America

United States lift its "cap on the number of U.S. service members and contractors in Colombia."<sup>119</sup> The Bush Administration agreed and requested that Congress increase the cap. As a result, in May 2004, Congress raised only the military troop cap from 400 to 500, 300 short of Bush's request of 800.

Only four months later, in September 2004, the Bush Administration requested yet another troop cap increase. As a result, debates between the Senate and the House erupted, which depicted the growing concern of Congress' members over the expanding presence of U.S. troops and contractors in Colombia. Interestingly, the House and Senate appear deeply divided over this issue. The House of Representatives wanted to maintain the current caps of 500 military personnel and 400 civilian contractors.<sup>120</sup> However, the Senate approved of the cap increase to 800 military personnel and 600 civilian contractors.<sup>121</sup> On October 8, 2004, the final troop cap number was determined by a House-Senate Conference Committee.<sup>122</sup> The final legislation grants the Bush Administration its full request of 800 military personnel and 600 civilian contractors.<sup>123</sup>

It is interesting to note that the troop caps implemented by Congress do not apply to all personnel stationed in Colombia. The cap does not apply to civilian contractors who provide training and support to safeguard Colombia's major petroleum pipeline, *Cano Limón Covenas*, which has received the brunt of repeated attacks by FARC and ELN.<sup>124</sup> Neither does the cap apply to U.S. person-

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Working Group Education Fund, the Center for International Policy, and the Washington Office on Latin America), available at <http://ciponline.org/facts/0410btl.htm>.

119. Jim Garamone, *United States, Colombia Seek to Reinforce Success*, AMERICAN FORCES PRESS SERV. (Apr. 1, 2004), available at [http://www.defenselink.mil/news/Apr2004/n04012004\\_200404018.html](http://www.defenselink.mil/news/Apr2004/n04012004_200404018.html).

120. See The Center for International Policy's Colombia Program, *U.S. Military and Police Aid - 2004: The "Troop Cap" Debate*, available at <http://www.ciponline.org/colombia/04cap.htm> (last visited Nov. 12, 2004). Interestingly, the House of Representatives excluded any language regarding troop cap limits in the House version of the September 2004 Foreign Operations Appropriations Bill. Representative Sam Farr of California introduced and later withdrew an amendment what would have limited an increase in the number of troops and civilian contractors. This amendment was hotly debated by the House of Representatives. See *id.*

121. See *id.*

122. See *id.*

123. See *id.* The legislation was signed into law shortly thereafter on October 28, 2004. See National Defense Authorization Act for Fiscal Year 2005, Pub. Law No. 108-375, § 1021(c)(1)-(2), 118 Stat. 1811 (2004).

124. See Storrs & Veillette, *supra* note 14, at 4. The Cano Limón Covenas oil pipeline is operated by U.S. based Occidental. See also Thomas C. Bruneau,

nel assigned as part of their regular duties to the U.S. Embassy, nor to personnel sent on search and rescue operations.<sup>125</sup>

Nevertheless, the troop cap is a functional device which allows Congress to monitor the number of personnel sent to Colombia by the Bush Administration. The cap is a prudent measure designed to prohibit U.S. involvement in Colombia from spiraling out of control. It is extremely important that the troop caps are maintained. Unfortunately, as the caps increase, the primary function of limiting the number of civilian contractors becomes defunct. Consequently, the raised caps signify the escalating involvement of contractors. Indeed, a "Vietnam-like quagmire" is on the horizon.

In addition to maintenance of the troop cap, compliance with the cap is crucial. General Hill, former Commander of the Army's United States Southern Command ("Southcom"), reported that he managed the cap on a "daily basis" in order to "rigorously remain under the ceilings[.]"<sup>126</sup> As a result, General Hill explained, the Army was forced to cancel or delay previously scheduled personnel arrivals to Colombia, request aircraft personnel to reduce the size of their crew, and cut back on training.<sup>127</sup>

However, General Hill's compliance is not alone adequate. Fortunately, private military companies are required to report their personnel numbers to the government as well. As reported by DynCorp, from 2001 to 2004, the number of personnel the company employed in Colombia who were "directly involved" in aerial eradication procedures increased from 179 to approximately 298.<sup>128</sup> Despite this report provided by DynCorp, at one time it was actually reported that DynCorp realistically employed

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*Colombia: Conflict and Civil-Military Relations*, STRATEGIC INSIGHTS (Mar. 2003). "In 2001 the petroleum infrastructure suffered 170 attacks, costing the country \$520 million. In the last 15 years oil pipelines have suffered 950 attacks by the ELN and FARC." *Id.*

125. See Storrs & Veillette, *supra* note 14, at 4.

126. *Fiscal Year 2005 National Defense Authorization Budget Request: Hearing Before the House Armed Services Committee*, 109th Cong. (Mar. 24, 2004) (testimony of General James T. Hill, United States Army, Commander, United States Southern Command), available at <http://www.ciponline.org/colombia/040324hill.htm>

127. See *id.*

128. United States Government Accountability Office, *supra* note 12. Additionally, the number of DynCorp staff supporting the Office of Aviation at Patrick Air Force Base in Florida increased from 159 to approximately 190, from 2001 to 2003. DynCorp officials were unable to provide exact numbers of their staff who participated in eradication program. See *id.* The author of this Comment would like to note that this is *only one* PMC's personnel numbers reported during a time when there were many PMCs working under U.S. government contract in Colombia.

between 300 – 600 contractors in Colombia.<sup>129</sup>

The inability to monitor the number of civilian contractors employed by PMCs is detrimental to the mandated troop cap. The lack of knowledge regarding exact personnel numbers may be the result of the Department of State's failure to release a comprehensive report containing the specifications of contracts awarded to private companies.<sup>130</sup> In 2001, the Department of State released a 'Fact Sheet' regarding civilian contractors supporting Plan Colombia, however, the report only reiterated the caps implemented by Congress in 2000, and merely stated that the caps are closely monitored by the U.S. Embassy in Bogota.<sup>131</sup> Additionally, in 2003, the Department of State released a Report to Congress regarding the contracts awarded to PMCs in Colombia, however, it contains no information regarding the number of civilian contractors sent under the terms of each contract.<sup>132</sup>

The inability of the government to closely supervise PMC deployment of contractors is a troubling factor that contributes to the diminution of public oversight over contractor activities. Even more problematic are the reports that PMCs, specifically DynCorp, find creative ways to evade the caps. For instance, after Congress implemented the U.S. civilian contractor cap at 400, DynCorp hired foreign nationals to do their work in Colombia, thus circumventing Congressional authority.<sup>133</sup> Additionally, DynCorp ostensibly hires hundreds of non-military personnel who are not counted under the cap.<sup>134</sup>

In sum, it is apparent that the military caps implemented by Congress are neither monitored nor enforced. Accordingly, news sources report that the military caps have "been far surpassed"

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129. See SINGER, *supra* note 1, at 208. See also Neve Gordon, *Strategic Violations: The Outsourcing of Human Rights Abuses*, 63 THE HUMANIST 10 (Sept. 1, 2003). "While Congress capped the number of U.S. soldiers who could be sent to Colombia at five hundred, the Pentagon[,] together with the Colombian government[,] ha[s] been employing additional corporate soldiers from DynCorp to carry out anti-drug operations." *Id.*

130. See SINGER, *supra* note 1, at 207.

131. See Bureau of Western Hemisphere Affairs, United States Department of State, *Fact Sheet, Civilian Contractors and U.S. Military Personnel Supporting Plan Colombia* (May 15, 2001), available at <http://www.state.gov/p/wha/rls/fs/2001/3509.pdf.htm>.

132. See generally Secretary of State, United States Department of State, *supra* note 62.

133. See Nicholas von Hoffman, *Contract Killers*, HARPER'S MAG., June 1, 2004, available at 2004 WL 56976086.

134. See *id.*

and that in reality, there are "around 2000 U.S. mercenaries"<sup>135</sup> present in Colombia. In theory, the troop caps implemented by Congress merely represent a concerted effort to curtail U.S. involvement in Latin America. The personnel caps today, however, act only as a symbol of cautious measures, rather than an enforceable policy. Even if the caps are realistically enforced by both government employees and civilian contractors, the underlying policy - to restrict U.S. presence in Latin America - is rendered useless if Congress continually increases the caps at the request of the White House.

It has been recognized by a number of sources that an increase in personnel inevitably leads to an expansion of military commitments, referred to as "Mission Creep[.]"<sup>136</sup> The threat of Mission Creep mirrors the eerie prediction of Colombia becoming a "Vietnam-like quagmire." These threats are further enhanced by allegations that the risks and ramifications of American security policies in the Andean Region have not fully been disclosed to Congress by the current administration. Thus, it may be an uninformed Congress that continues to increase American military presence in the seemingly endless battle against drugs in the jungles of Colombia.<sup>137</sup> An increase in personnel, whether accounted for or not, inevitably leads to oversight. Obviously, the government can no longer turn a blind eye to the consequences of troop cap increases, or continue to ignore troop cap evasion practices.

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135. Constanza Viera, *17,000 Troops With U.S. Aid Launch Drive Against Rebels*, INTER PRESS SERVICE/GLOBAL INFORMATION NETWORK (June 29, 2004), available at <http://www.ips.org/>.

136. "Now we're being asked to double the number of our soldiers, boots on the ground, in Colombia. There is a term for what is happening in Colombia: It's called 'Mission Creep.'" *Limiting U.S. Troops in Columbia - The Farr Amendment: Hearing Before the House of Representatives*, 108th Cong. (July 15, 2004) (statement by Massachusetts Representative James P. McGovern), available at <http://www.house.gov/mcgovern/floor071504farr.htm>; See also World Organization on Latin America, *Plan Colombia Report Card* (grading 'Avoid Mission Creep' with an 'F'), available at [http://www.wola.org/Colombia/plan\\_col\\_report\\_card03.pdf](http://www.wola.org/Colombia/plan_col_report_card03.pdf) (last visited Nov. 16, 2004).

137. See Peter W. Singer, *War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law*, 42 COLUM. J. TRANSNAT'L L., 521, 539. "[U]nder current U.S. law, as long as the contract amount is under US \$50 million, any U.S. military firm can work abroad with or without notifying Congress." *Id.*; see also Memorandum from Washington Office on Latin America to Foreign Policy and Defense Policy Aides, *supra* note 49.

### B. *Plausible Deniability – The Reduction of Public Oversight*

Perhaps more troubling than the continual increase in contractor presence is the high level of secrecy regarding the range of militaristic activities in which private contractors are involved. Although government activities are by law open to examination by the Freedom of Information Act,<sup>138</sup> private company contracts are protected by proprietary law.<sup>139</sup> Internal company policies may prohibit directors, employees, and agents from disclosing or using confidential or proprietary information outside the company. Therefore, most contracts between PMCs and the government provide non-disclosure agreements, and are deemed confidential by both the contracting PMC as well as the Pentagon.<sup>140</sup> The confidential nature of contracted work may perhaps constitute the main reason behind the hiring of private contractors.

Obviously, this policy of accepted secrecy creates a breeding ground for unanswered questions and misinformation. The ability to 'contract out' jobs like spraying coca leaf, patrolling the skies, and providing intelligence services provides the U.S. government with "plausible deniability[.]"<sup>141</sup> For instance, U.S. troops may be legally prohibited by Congress from entering into combat in Latin America, but PMC employees constitute civilians under U.S. contract, and therefore, may not be bound by the same restrictions. Due to the fact that private firms operating in Colombia under U.S. government contract do not face the same constraints as the military, the Bush Administration has been accused of utilizing private contractors to further its political goals in order to circumvent Congressional scrutiny.<sup>142</sup>

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138. The Freedom of Information Act, 5 U.S.C. § 552 (2005). The Act provides that "[e]ach agency shall make available to the public . . . descriptions of its central and field organization . . . statements of the general course and method by which its functions are channeled and determined . . . ." 5 U.S.C. § 552(a)(1)(A)-(B) (2005).

139. Peter W. Singer, *Preface* to PETER W. SINGER, *CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY*, at x (2003).

140. See Joseph Giordano, *Contractors Do More than Sling Troops' Chow*, STARS AND STRIPES (European ed.) (Mar. 10, 2003), available at <http://www.stripes.com/article.asp?section=104&article=12928&archive=true>

141. The Center for Public Integrity, *Colombia: Outsourcing War*, available at <http://www.publicintegrity.org/report.aspx?aid=261> (last visited Oct. 20, 2004).

142. See *Dangerous Work – Private Security Firms in Iraq*, ECONOMIST, Apr. 10, 2004, available at WL 62017551. "The extensive PMF involvement in the war in Colombia and its neighboring states by U.S.-based firms has been entirely without Congressional notification, oversight, or approval." SINGER, *supra* note 1, at 209; see also Avant, *supra* note 5. "Although the U.S. Congress approves the military budget, its access to information about contracts is often limited. The president can use this

From a legal perspective, outsourcing military projects can serve as an effective measure to obfuscate the connection between an act committed by a civilian contractor and the United States government. Participation on the battlefield by a civilian contractor acts as an obscuration for the government, which, as a result, appears to have no involvement. The lack of privity between the government and an individual contractor, as well as between the government and a host nation, is an obvious defense. Additionally, the hiring of PMCs allows the government to avoid legislative debate and deny control over outsourced military operations. In fact, the only legislative debate regarding civilian contractors seems to be over the implemented troop caps. Ostensibly, congressional control begins and ends before contractors are even stationed on the battlefield.

Plausible deniability is further exemplified as contractors take on more expansive roles than what is specified in their contracts. The expansion of duties is illustrated by DynCorp's training and support responsibilities for the Colombian National Police. As previously mentioned, the firm's contract with the government provides for contractors to engage in pilot training and technical support to Colombian police units involved in drug crop eradication. However, it has also been reported that DynCorp employees are employed in aerial reconnaissance and combat.<sup>143</sup> Specifically, contractors are reportedly engaged in fighting narco-terrorists and Colombian guerillas.<sup>144</sup> DynCorp employees have in fact, admitted to engaging in high risk operations.<sup>145</sup> It is obvious that DynCorp's employees are involved in more dangerous missions than were initially anticipated by Congress.

An explanation for this is obviously the expanded authorities provision approved by Congress, however, this combative activity was first exemplified in February 2001, when a DynCorp team was sent on a search and rescue mission to recover the crew of a Colombian military helicopter downed by guerilla fire in Southern Colombia.<sup>146</sup> The rescue team was protected by a DynCorp helicopter gunship which provided covering fire.<sup>147</sup> Apparently, this

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advantage to evade restriction on U.S. actions, effectively limiting congressional checks on foreign policy." *Id.*

143. See SINGER, *supra* note 1, at 208.

144. See *id.*

145. See *id.*

146. See SINGER, *supra* note 1, at 208; see also The Center for Public Integrity, *supra* note 141.

147. See SINGER, *supra* note 1, at 208.

incident resulted in the first "public revelation" that DynCorp had four helicopter gunships at their disposal in Colombia, were engaged in firing at rebels, and were, in fact, engaged in offensive battle rather than merely crop spraying.<sup>148</sup>

Despite these glaring incidents of battle, the Bush Administration continues to deny that contractors are engaged in warfare. During a 2003 White House press briefing, when repeatedly asked if U.S. troops were engaged in battle with FARC in Colombia, the White House was adamant in its stance that U.S. forces were utilized only for support purposes in Colombia.<sup>149</sup> Similarly, when questioned whether a reported 150 additional special forces had been sent to Colombia, the White House claimed that the information was false and was in fact the result of an inaccurate, "erroneous report."<sup>150</sup> Interestingly, this "erroneous report" had been sent from the President to Congress a week prior.<sup>151</sup> When pressed further, the White House provided a vague response when asked about the number of troops and type of troops (military or contractors) sent to Colombia.<sup>152</sup>

Government officials deny the combative role that contractors play in fighting narcoterrorism and insist on veiling the truth behind U.S. participation as well.<sup>153</sup> For instance, in a September 2004 conference at Georgetown University, William B. Wood, U.S. Ambassador to Colombia stated, "Neither U.S. military nor U.S. contractors patrol with the Colombians or engage in activities that

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148. See *id.* But see *Fact Sheet, Civilian Contractors and U.S. Military Personnel Supporting Plan Colombia*, *supra* note 131. "On a typical mission, U.S. civilian contractors accompany the spray operation in these helicopters as pilots and medics, but not as gunners." *Id.*

149. In response to an inquiry whether US troops would be engaged in combat missions against the FARC, Mr. Fleischer responded, "[T]he United States is down there in a position of providing assistance to the government of Colombia, which Colombia is involved in the combat against the FARC. We are there to provide assistance in counter-narcotics and counter-terrorism efforts." Press Briefing by Ari Fleischer, White House Press Secretary (Feb. 24, 2003), available at <http://www.whitehouse.gov/news/releases/2003/02/print/20030224-5.html#7>.

150. *Id.*

151. See *id.*; see also Press Gaggle with Ari Fleischer, White House Press Secretary, *supra* note 53.

152. See Press Briefing by Ari Fleischer, White House Press Secretary, *supra* note 149. When questioned in what context the report was inaccurate, Mr. Fleischer replied, "In both the nature of the forces and the number. It is a far, far smaller number, and it's a varied type of DOD officials to go down there to assist Colombia in ongoing counter-narcotics, counter-terrorist effort." *Id.*

153. "Approximately 25 U.S. citizen contractors provide training and logistical support . . . but they do not fly in counternarcotics missions." *Fact Sheet, Civilian Contractors and U.S. Military Personnel Supporting Plan Colombia*, *supra* note 131.

might place them in a combat situation.”<sup>154</sup>

Unsurprisingly, PMCs are also secretive about their participation in Latin America. When asked about the expanded role of its contractors in fighting the war on drugs, DynCorp executives generally decline to comment. Apparently, DynCorp employees are bound by strict confidentiality agreements and are prohibited from talking to media. Furthermore, when DynCorp employees are killed in operations, DynCorp executives claim that the deaths are the result of ‘accidents’ rather than military engagements.<sup>155</sup> It is important to note that the death of an American soldier in this context would result in an investigation, with a report released by the U.S. Embassy regarding the deceased’s identity and background information. Simply because a contractor is a private civilian as opposed to a military recruit, the government is not bound to concede responsibility or provide release information regarding the incident.<sup>156</sup>

The accepted oversight and deniability which the government and PMCs share regarding the events in Colombia paint a grave picture of the war on drugs. This deniability results in a total lack of accountability, which in turn, has resulted in a war that has no end in sight.

### *C. The Detrimental Affects of Profit Maximization*

The consequence of plausible deniability as a result of a privatized military becomes particularly troublesome as the goals between contractors and the U.S. government diverge. An example of this can be found in the cost-cutting practices of PMCs while they are engaged in operations. For instance, MPRI, a company publicly owned by shareholders, is undoubtedly concerned with its bottom line under any contract it performs. When a contract relies on warfare to profit, this is certainly problematic. Concerns regarding profits and losses are certainly foreseeable as factors altering the way a company handles business decisions. Unfortunately, in a hostile environment, profit maximization may not

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154. Ambassador William B. Wood, Remarks at Georgetown University, U.S. Support for Colombia’s National Strategy for Defense and Democratic Security (Sept. 20, 2004), available at <http://usembassy.state.gov/posts/col/wwwsw42.shtml>

155. See SINGER, *supra* note 1, at 208.

156. See Representative Bob Barr, *Increased Opium Output Could Blind-Side U.S.* (Nov. 6, 2003), available at [http://bobbarr.org/default\\_print.asp?pt=newsdescr&RI=463](http://bobbarr.org/default_print.asp?pt=newsdescr&RI=463). When discussing the tragedy of civilian contractors killed in Colombia, Representative Bob Barr eloquently recognized, “There’s been no medals awarded to these men; no TV movies canonizing them; hardly a ripple of concern expressed.” *Id.*

result in the best political outcomes. In fact, divided goals and loyalties between a PMC and the government are obvious issues present in all of these contracts. A private contractor's loyalty to his salary, or an executive's loyalty to the company's bottom line will most certainly lead to inflated charges, over-billing, cost cutting and worse, the furtherance of war.

An egregious example of the detrimental effects of cost cutting as well as inflated billing can be found in DynCorp's employment of unqualified mechanics to repair spray aircraft.<sup>157</sup> More troubling are the statements of actual DynCorp employees employed in the maintenance of spray aircraft in Colombia. These employees claim that the amount of crashed aircraft results not from reportedly heavy enemy fire, but instead is a consequence of faulty maintenance work performed by unqualified DynCorp personnel.<sup>158</sup> Additionally, critics of the company claim that the loss of aircraft is a result of the poor safety record of DynCorp due to the company's utilization of non-standardized (i.e., cheaper) aircraft that lack central computerized tracking systems.<sup>159</sup>

Reportedly, MPRI is guilty of these cost-cutting procedures as well. Allegedly, MPRI hires chefs and former security guards to maintain and repair their spray aircraft.<sup>160</sup> This deplorable practice has purportedly resulted in a rather high amount of downed aircraft in Colombia.<sup>161</sup> Nevertheless, the company continues to hire employees who may not necessarily meet contract requirements in order to bill the government a specified billing amount set by the number of personnel required by its contract.<sup>162</sup>

Unfortunately, tragic results of the cost cutting ploys undertaken by various PMCs are obvious. Since 2000, approximately 40 U.S. aircraft have been lost in Colombia purportedly "due to poor maintenance and inexperienced Colombian pilots."<sup>163</sup> Addition-

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157. See SINGER, *supra* note 1, at 156.

158. See *id.* "As one DynCorp mechanic working on the contract writes, 'We have people who are working on aircraft with absolutely no aviation experience nor ground-equipment skills.'" *Id.*

159. See *id.*

160. See *id.*

161. Singer quotes a DynCorp employee as stating, "[t]he management here is looking at the bottom line, and they surely do not seem to care what kind of person works on the helicopters. I guess that makes good business sense, but to me not at the cost our servicemen and women." *Id.*

162. See *id.*

163. Norman Ho, *Failed Plan Colombia: U.S. Policy in Colombia in Misguided*, HARV. POL. REV. (Dec. 7, 2003), available at <http://www.hpronline.org/news/2003/12/07/World/Failed.Plan.Colombia-578467.shtml>

ally, although certainly not widely known, is the fact that the United States has lost more aircraft in Colombia than during the first Iraq war.<sup>164</sup>

The aforementioned concerns regarding the United States' role in the war on drugs are inexorably linked to each other. For instance, troop cap evasion and the government's accepted ignorance of evasion procedures easily creates an environment where contractor accountability is virtually impossible. This, in turn, allows the government to claim deniability of contractor involvement in warfare. Plausible deniability, combined with the life threatening affects of profit maximization measures, inevitably leads to inexcusable consequences.

*D. Kidnapped! A Tragic Consequence of Cost Cutting and a Glaring Example of Plausible Deniability*

On February 13, 2003, a U.S. plane carrying four American Northrop Grumman contractors on a surveillance and drug crop fumigation mission for Southcom<sup>165</sup> crashed in the southern jungles of Colombia in a zone dominated by FARC.<sup>166</sup> It is important to note that as a result of the previously mentioned expanded authorities provision, FARC announced that it would consider all U.S. government operatives as military targets.<sup>167</sup> Hence, FARC considers military personnel and civilian contractors as one and the same.

Three American civilians were consequently abducted by FARC and are still being held captive today, two years after their capture. The three men have been cut off from society and live at a FARC camp deep in the southern jungles of Colombia. FARC granted a Colombian reporter an interview with the hostages in

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164. See Representative Bob Barr, *supra* note 156.

165. The Army's United States Southern Command ("Southcom") is the lead Department of Defense agent responsible for assisting the Colombian government in its battle against 'narcoterrorism.' Southcom supports the Colombian government in its implementation of military aspects of the Andean Regional Initiative. Consequently, Southcom trains pilots, operates aircraft and provides counter-drug intelligence support to Colombian troops. In 2003, Southcom contracted the construction and implementation of logistics support centers and maintenance facilities in Colombia, as well as the maintenance of the Colombian Army's helicopter fleet to various private military companies. See *Hearing before the House Committee on Government Reform*, 108th Cong., at 2-17 (June 17, 2004) (written statement of General James T. Hill, United States Army, Commander, United States Southern Command), available at <http://reform.house.gov/UploadedFiles/SOUTHCOM%20-%20General%20Hill%20Testimony.pdf>.

166. United States Institute of Peace, *supra* note 34, at 2.

167. *Id.*

order to prove that the Americans were still alive.<sup>168</sup>

The American hostages are Marc Gonsalves, Keith Stansell, and Thomas Howes.<sup>169</sup> According to the three men, their plane crashed as a result of engine failure, and the pilot, Tom Janis, also a civilian contractor, was forced to land in a field in South Colombia.<sup>170</sup> The plane carried four American contractors and only one Colombian.<sup>171</sup>

A White House press briefing was held to address dual concerns about the kidnapping and a report allegedly released by the White House concerning personnel deployment to Colombia.<sup>172</sup> Despite the White House's acknowledgment that the hostages were private industry contractors, questions regarding whether additional forces had been sent to Colombia were deflected.<sup>173</sup>

A tactic frequently utilized by FARC is kidnapping for ransom, which aids in funding the organization's terrorist activities. FARC also uses hostages as bargaining tools to negotiate the release of its members from Colombian prisons. FARC is holding these three American contractors, as well as soldiers, officers, and politicians to demand a prisoner exchange for FARC rebels held in Colombian jails. Simply stated, the contractors' lives, if in fact they are still alive, depend on a prisoner exchange. The United States however, refuses to negotiate with FARC due to the guerrilla group's classification as a terrorist organization. Repeated requests by the contractors' families to Northrop Grumman and the State Department to facilitate the release of the contractors seem to fall on deaf ears. Apparently, the only effort made to facil-

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168. See *HELD HOSTAGE IN COLOMBIA* (Urcunina Films 2003). The Colombian journalist, Jorge Enrique Botero filmed the interview on July 25, 2003 and subsequently produced a documentary film.

169. See Robert Charles, Assistant Secretary for International Narcotics and Law Enforcement Affairs, *Colombian Terrorists*, WASH. TIMES (Aug. 25, 2004), available at <http://www.state.gov/g/inl/rls/rm/35711.htm>. See also *HELD HOSTAGE IN COLOMBIA*, *supra* note 168.

170. *HELD HOSTAGE IN COLOMBIA*, *supra* note 168.

171. See *id.* During the interview, the American contractors further explained that the Colombian military officer and American pilot Tom Janis were killed by FARC rebels.

172. See Press Gaggle with Ari Fleischer, White House Press Secretary, *supra* note 53.

173. See *id.* When asked whether a letter from the President to Congress reflected the number of personnel deployed in Colombia, Ari Fleischer stated, "On the numbers, you need to talk to DOD about it, anything dealing with the specific numbers. What I'm indicating to you is we have, and we will, continue to work closely with Colombia and its government and its military and its police on how to combat the FARC . . . So I'm trying to give you some body language that I'm not going to get into numbers." *Id.*

itate the contractors' return is a \$5 million reward for the individuals responsible for the kidnapping.<sup>174</sup>

Horrifically, an additional three Northrop Grumman employees were killed in a plane crash while on a rescue mission searching for Gonsalves, Howes, and Stansell.<sup>175</sup> The families of these deceased men, incensed that their efforts to get details pertaining to the deaths have been met by delay tactics and red tape, have filed a lawsuit against the Department of Defense and Northrop Grumman.<sup>176</sup> These lawsuits are currently pending in a Georgia district court.<sup>177</sup> The complaint alleges that the United States "privatizes" dangerous missions, thereby placing contractors directly on the front lines of the drug war "for no reason other than to save a few dollars."<sup>178</sup> The complaint further describes the treacherous terrain that surveillance and spray planes fly over and the obvious need for aircraft that can support the weight of heavy surveillance equipment, as well as the pilot and crew members on board.<sup>179</sup> The complaint alleges that Northrop Grumman acquired a salvaged, single engine aircraft that was less costly to maintain than a twin engine aircraft, despite the fact that a twin engine plane would have offered "significantly improved power to meet the demands of mountainous terrain."<sup>180</sup> Additionally, the complaint alleges that Northrop Grumman executives, as well as Department of Defense officials, were made aware of the plane's deficiencies.<sup>181</sup> Despite this, a second single engine plane was purchased. Both planes were sent to Colombia, but were "frequently grounded due to mechanical or other problems."<sup>182</sup> The complaint

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174. See Ambassador William B. Wood, Announcement on the Rewards for Justice Program (Dec. 4, 2003), available at [http://www.rewardsforjustice.net/english/acts\\_of\\_terror/Colombian\\_hostages.cfm](http://www.rewardsforjustice.net/english/acts_of_terror/Colombian_hostages.cfm).

175. See Loretta Waldman, *A Woman's Bold Move to Try to Free Her Son*, HARTFORD COURANT, Aug. 13, 2004, at A1. The three men killed on the search and rescue mission were Tommy Schmidt, Ralph Ponticelli and James Oliver. See *id.*; see also *HELD HOSTAGE IN COLOMBIA*, *supra* note 168.

176. See Waldman, *supra* note 175; see also John McQuaid, *Families of Four Men Killed In Colombian Crashes Sue*, TIMES PICAYUNE, May 21, 2004, available at <http://www.nola.com/>.

177. Plaintiffs Amended Complaint for Damages and Demand for Trial by Jury, *Oliver v. U.S. Dept. of Defense*, No. 3:04-CV-041-JTC (D. Ga. filed Apr. 6, 2004).

178. *Id.* at 2. "Little known to the public is the fact that the United States, through the Department of Defense, has attempted to 'privatize' these missions, placing those men who are at the front lines of this 'War' in grave and unacceptable danger for no reason other than to save a few dollars." *Id.*

179. See *id.* at 3.

180. *Id.*

181. See *id.* at 4.

182. *Id.*

goes on to describe various disputes that occurred between spray plane pilots and Northrop Grumman executives regarding derisory safety precautions and inadequate, underpowered, cheap aircraft, as well as the placement of inexperienced pilots with little aviation experience into dangerous situations with little to no training.

Obviously, the cost cutting procedures exercised by Northrop Grumman resulted in the purchase of salvaged, contemptible aircraft that were not capable of handling the specified mission. Hence, concern over profits by Northrop Grumman resulted in the kidnapping and murders of seven of its civilian contractors.

Perhaps even more troubling are the repercussions which followed this tragic event regarding the liability of Northrop Grumman and the U.S. government. Interestingly, soon after both plane crashes, the contracts that all of these civilian contractors were working under, as employees of the Northrop Grumman subsidiary, California Microwave Systems, were transferred to a newly created company, CIAO, Inc.<sup>183</sup> The complaint alleges that an agent of Northrop Grumman "removed all evidence of Oliver's employment" when he went through private papers belonging to the pilot and destroyed documents pertaining to his contract and employment with Northrop Grumman.<sup>184</sup> According to former pilots and a high-ranking official experienced in working with contractors in Colombia, the underlying rationale of this contract switch was to shield Northrop Grumman from liability.<sup>185</sup> Unfortunately, this contract switch seems to have shielded Northrop Grumman temporarily. While the families' cases are pending in court, Northrop Grumman, as well as Atlanta Air Salvage, the salvage company which provided the spray planes, "collected millions of dollars in insurance recovery" for the lost planes after their insurer was permitted to inspect the crash site.<sup>186</sup> The families claim that they were never permitted to view the crash site.<sup>187</sup>

The complaint sets forth claims of negligence, gross negligence, and willful and wanton conduct on the part of Northrop Grumman and the U.S. Department of Defense, as well as wrongful death and breach of contract claims.<sup>188</sup> Experts say that while

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183. Forero, *Private U.S. Operatives on Risky Missions in Columbia*, *supra* note 93.

184. Plaintiff's Amended Complaint for Damages and Demand for Trial by Jury, *Oliver v. U.S. Dept. of Defense*, No. 3:04-CV-041-JTC, at 8 (D. Ga. filed Apr. 6, 2004).

185. *See id.* at 7-8.

186. *Id.* at 8.

187. *See id.*

188. *See id.* at 22-34.

only a few lawsuits of this type have been filed against PMCs, the escalating employ of private contractors is sure to result in litigation.<sup>189</sup> As of now, however, the quandary regarding contract liability claims of contractors and their family members raises substantial issues. A lawsuit such as this one may serve to provide answers and “shake loose”<sup>190</sup> pertinent information that will begin to depict the true nature of the responsibilities handled by PMCs. Simply stated, this lawsuit represents a positive start to rectifying the dangers intrinsically present in PMC contracts. In fact, a predominant issue underlying this lawsuit, which is inherently present in all relations between private contractors and the government, is expressed in the complaint in a single sentence: “by using private contractors . . . the Department of Defense can attempt to avoid political repercussions for inappropriate, unsafe or unwarranted activities.”<sup>191</sup>

Not surprisingly, interviews with the kidnapped contractors’ families depict frustration and anguish. Marc Gonsalves’ wife stated, “[Northrop Grumman executives and the U.S. Department of State] tell me . . . they’re doing everything in their power, but everything seems to be a secret.”<sup>192</sup> Additionally, Jo Rosano, mother of Marc Gonsalves stated, “[the contractors] are fighting a war . . . the Bush Administration doesn’t want to appreciate the fact that they are doing this dirty job for the country. If they were in the military, it would be a different story.”<sup>193</sup>

In August 2004, Ms. Rosano, frustrated by the lack of involvement of the United States, initiated her own talks with President Uribe, requesting him to negotiate the release of her son.<sup>194</sup> Ms. Rosano has repeatedly accused the U.S. government of abandoning the three civilian hostages.<sup>195</sup> Ms. Rosano’s efforts in Colombia seem to have had some effect. Uribe first made a prisoner exchange offer with the FARC in August, but the discussions were unsuccessful. On November 1, 2004, however, it was reported that FARC unexpectedly released four hostages who

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189. See McQuaid, *supra* note 176.

190. *Id.*

191. Plaintiff’s Amended Complaint for Damages and Demand for Trial by Jury, Oliver v. U.S. Dept. of Defense, No. 3:04-CV-041-JTC, at 13 (D. Ga. filed Apr. 6, 2004).

192. HELD HOSTAGE IN COLOMBIA, *supra* note 168.

193. *Id.*

194. Ms. Rosano stated, “The United States government is not doing anything.” Reuters, *Mother of U.S. Contractor Pleads For Son’s Freedom From Colombian Rebels*, FRONTRUNNER, Aug. 18, 2004.

195. See *Hostage’s Mom Says U.S. Abandoning Son*, CHI. TRIB., Aug. 13, 2004, at 10.

were held by the guerilla organization for over three years.<sup>196</sup> Apparently, this prisoner release followed Uribe's proposal for a prisoner exchange the week prior. The four hostages released, however, were not the American civilian contractors.

The kidnapping of civilian contractors raises noticeable questions regarding the role of the government in their search and rescue. Bob Barr, former United States Congressman, recognized that there is a "noticeable difference" between the way the government has responded to military personnel taken as prisoners in Iraq and civilian contractors kidnapped in Colombia.<sup>197</sup> For instance, despite the government's 'concern' that civilian contractors will not receive Prisoner of War ("POW") status if captured by enemy forces, when FARC did, in fact, grant these three Americans POW status, the U.S. government officially designated the men as "kidnapees[.]"<sup>198</sup>

Certainly, questions remain regarding the liability of the civilian contractors' employer, as well as the U.S. government, in the contexts of civilian captivity and deaths. In regard to deaths of civilian contractors on the battlefield, the dependents of contract employees are not afforded the same answerability as relatives of U.S. troops.<sup>199</sup> In fact, the death toll among private contractors has been described as "anyone's guess[.]"<sup>200</sup> Under most contracts, the PMC is responsible for notifying families of grave circumstances, but unfortunately, this responsibility is handled deficiently by some companies.<sup>201</sup> Simply stated, if the government is going to rely on civilian contractors to fight its wars, it must make itself liable to their dependents. Foreseeable as it is that the government will continually refuse this role, procedures must be implemented and enforced to define the liabilities of PMCs to its civilian employees and their families.

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196. See *Colombia: FARC Frees Four Unexpectedly*, United Press Int'l (Nov. 1, 2004), available at <http://www.miami.com/mid/miamiherald/news/world/americas/10066294.htm?1c>

197. HELD HOSTAGE IN COLOMBIA, *supra* note 168.

198. Avant, *supra* note 5.

199. See Center for Public Integrity, *Colombia: Outsourcing War*, available at <http://www.publicintegrity.org/report.aspx?aid=261&sid=100%20&sid=100> (last visited Mar. 10, 2005).

200. von Hoffman, *supra* note 133.

201. See Interview by Multinational Monitor with Peter W. Singer, *supra* note 2. Singer stated, "Some companies have a great reputation for treating the employees families well if something goes wrong; and some of them do a quite terrible job and try to avoid any of the costs." *Id.* Subsequently, Singer provided the dissolution of California Microwave Systems into CIAO, Inc as an example of a PMC trying to avoid the costs of the three contractors held hostage. See *id.*

## V. CONCLUSION

As the distinctions between terrorists, rebels, guerillas and drug-traffickers are blurred, and the current Administration continues its battle in the inexorably linked wars of drugs and terrorism, it seems an obvious consequence that the roles played by military soldiers, mercenaries, and civilian contractors will be distorted as well. It is imperative to acknowledge the fact that the private military sector is here to stay. Civilian contractors are not only hired by the United States, and contractor operations are not confined to Latin America. Contracting civilian contractors is a *global* phenomenon. For example, PMCs are heavily involved in the Middle East and Africa, and are also contracted by the United Nations "for logistics, transportation, and demining operations."<sup>202</sup>

As information regarding the contracted missions of PMCs is disseminated and consequently understood (an attempted goal underlying the research articulated in this article), regulations need to be implemented to ensure that proper procedures specific to civilian contractors are followed. The onus here is on civilian contractors as well as the current Administration, the Department of Defense, and Southcom, which as previously mentioned, supports the Colombian government in its implementation of military aspects of the ARI. Every one of these organizations must follow guidelines, specifically the troop cap policy implemented by Congress.

The kidnapping and deaths of civilian contractors described in this Comment are the most recent example of the tragic consequences of non-compliance and unaccountability. It is important to realize that events similar to the one described in this Comment have been occurring for years. A particularly prime example occurred in April 2001, when a private plane flying over Peru was shot down after Peruvian military officials, working with U.S. support, identified it as a possible drug trafficking flight.<sup>203</sup> Unfortunately, the plane was carrying American missionaries who were killed in the crash.<sup>204</sup> In this particularly tragic incident, the 'U.S. support' was in fact a contracted surveillance crew, comprised of

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202. Garrett Mason, *UN Peacekeeping and the Private Sector*, IPOA QUARTERLY 1 (Oct. 5, 2004), available at <http://www.ipoaonline.org/content/IPOANewsletterOct2004.pdf>

203. See Storrs & Veillette, *supra* note 14, at 14.

204. See *id.* As a result of this incident, the House Foreign Operations Appropriations Subcommittee, in its report of the FY 2004 Foreign Operations Appropriations bill, denied support to the Peruvian air interdiction program until safeguards were implemented. See *id.* at 29.

Aviation Development Corporation employees, a PMC contracted by the CIA.<sup>205</sup>

It is also important to note that Latin America represents only a fraction of accountability issues regarding PMC contractors. Additional incidents of error, as well as palpable breaches of duty and security have occurred in Bosnia and Iraq where the PMC business is thriving. A prime example of contractor abuse occurred in Iraq at the now infamous Abu Ghraib prison, where contractors acted as interrogators and translators.<sup>206</sup> An additional recent example of contractor recklessness occurred last August, when a DynCorp contractor "flew a suitcase full of lethal explosives aboard an airliner from the Middle East" to JFK airport in New York.<sup>207</sup>

Obviously, accountability issues are prevalent wherever civilian contractors are employed. The consequences of unaccountability and diminished oversight constitute global threats. The current situation in Colombia represents a prime example of where these issues can be and need to be corrected.

The International Peace Operations Association ("IPOA") is attempting to instill a sense of order among private contractors. Members of the IPOA must pledge to follow a code of conduct and relevant international laws of human rights, as well as accept accountability for their actions.<sup>208</sup> Additionally, the Federal Acquisition Regulations govern contracts between the Department of Defense and PMCs.<sup>209</sup> However, the answerability created by these regulations is simply not enough.

The most obvious solution to the privatization and 'corporatization' of war is simply, accountability. As global wars continue to be waged, the employment of civilian contractors will flourish, and consequently, issues of negligence and liability will prolifer-

205. See SINGER, *supra* note 1, at 15.

206. See Avant, *supra* note 5.

207. John Marzulli, *JFK Airport Police Freed Lethal-Luggage Owner After Flight from Middle East*, DAILY NEWS, Sept. 15, 2004, available at 2004 WL 55644370.

208. See generally International Peace Operations Association ("IPOA"), *IPOA Code of Conduct*, available at <http://www.ipoaonline.org/code.htm> (last visited Mar. 22, 2004).

209. The Federal Acquisition Regulations System was established "for the codification and publication of uniform policies and procedures for acquisition by all executive agencies." 48 C.F.R. §1.101 (2004). The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR) which is the primary regulation used by Federal Executive agencies in their acquisition of supplies and services with appropriated funds. FAR provides guidelines for business conducted between the government and contractors. See *id.*

ate. The war on drugs in Latin America represents a prime example of this proposition. Plausible deniability and accepted oversight can no longer be tolerated.