

**The Iraq War, Politics, and Inadequate Information:
A Case Study of Congressional Oversight of Private Military Contractors, 2004**

by
Kimberly A. Shaw
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“The United States has reduced the force levels in Iraq to 2,500 as directed by President Trump, and as I announced on November 17, 2020. ... This force reduction is consistent with Operation Inherent Resolve’s (OIR) transition from major combat operations and does not equate to a change in U.S. policy. U.S. and Coalition forces remain in Iraq to ensure the enduring defeat of ISIS.” – Acting Secretary of Defense Christopher Miller, January 15, 2021¹

Four days after Acting Secretary of Defense Christopher Miller announced reduced U.S. troop levels in Iraq and Afghanistan, the Department of Defense (DoD) released its quarterly report on private military contractor support of U.S. operations in the U.S. Central Command’s area of responsibility. While U.S. troop numbers had been reduced, nearly 23,000 DoD contractors remained in Afghanistan, Iraq, and Syria supporting U.S. military operations between September 1, 2020, and December 31, 2020.² More than 4,600 military contractors supported Operation Inherent Resolve, the named operation for military activities in Iraq and Syria, of which half (2,300) were American. Nearly two private military contractors support Operation Inherent Resolve for every one U.S. service member. Private military contractors provided logistics and maintenance support (40%), base support (19.5%), construction (9.5%), transportation (9.4%), and other services, such as information technology, security, and translation and interpretation.³

¹ U.S. Department of Defense, “Statement by Acting Defense Secretary Christopher Miller on Force Levels in Iraq,” January 15, 2021. <https://www.defense.gov/Newsroom/Releases/Release/Article/2473344/statement-by-acting-defense-secretary-christopher-miller-on-force-levels-in-iraq/>.

² Office of the Assistant Secretary of Defense for Sustainment, “Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility (January 2021).” Quarterly Report. Washington, D.C.: Department of Defense, January 2021. https://www.acq.osd.mil/log/ps/.CENTCOM_reports.html/FY21_1Q_5A_Jan2021.pdf, 1.

³ Ibid, 2.

The Stars and Stripes newspaper described the contradiction with the simple headline “Troop levels are down, but US says over 18,000 contractors remain in Afghanistan.”⁴ Concerns about the U.S. military’s reliance on private military contractors, as well as the numbers and roles of contractors, first gained attention during Operation Iraqi Freedom. In August 2009, the Congressional Research Service (CRS) noted “many analysts now believe that DOD is unable to successfully execute large missions without contractor support” and pointed to military operations in the Balkans, Afghanistan, and Iraq where private military contractors were estimated to be approximately 50% of all DoD military, civilian, and contractor personnel in the country.⁵ The Congressional Budget Office (CBO) estimated in August 2008 that the DoD had obligated almost \$76 billion to contractors between 2003 and 2007, representing 90% of the \$85 billion the U.S. government had obligated for contracts in the Iraq theater.⁶ The \$76 billion represented 17% of the overall “\$446 billion of U.S. appropriations for activities in Iraq from 2003 through 2007.”⁷ While the amount of money spent may garner attention, the support provided and activities of private military contractors demonstrate a blurring of roles and tasks between the U.S. military and business and raises critical questions about congressional oversight of the military.

The March 2004 murders of four Blackwater contractors in Fallujah, Iraq, first raised the issue of private military contractors to Congress’s attention. The House and Senate Armed

⁴ J.P. Lawrence, “Troop Levels Are down, but US Says over 18,000 Contractors Remain in Afghanistan.” *Stars and Stripes*, January 19, 2021. <https://www.stripes.com/news/middle-east/troop-levels-are-down-but-us-says-over-18-000-contractors-remain-in-afghanistan-1.659040>.

⁵ U.S. Library of Congress, Congressional Research Service, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, by Moshe Schwartz, RL40764 (2011), 1.

⁶ U.S. Congressional Budget Office. “Contractors’ Support of U.S. Operations in Iraq.” Washington, D.C. August 2008, accessed February 15, 2021. <https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/08-12-iraqcontractors.pdf>, 3. According to CBO, other U.S. government agencies spending money contractors in Iraq included the Department of State, U.S. Agency for International Development, and the Departments of Agriculture, Commerce, Health and Human Services, the Interior, Justice, Transportation, and the Treasury, as well as the Broadcasting Board of Governors and the General Services Administration.

⁷ *Ibid*, 2.

Services Committee tried to understand the number of private military contractors and what they were doing in Iraq. Yet these two key committees, responsible for overseeing the DoD, struggled with the issue because of the impending June 2004 transfer of political sovereignty and the lack of information. Another critical factor was the November 2004 presidential and congressional elections. While the transfer of political sovereignty was a unique factor, the political posturing and the lack of information were not new, but these all combined to result in the two committees failing to immediately address the issue of private military contractors. Effective congressional oversight failed as the committees agreed to require the DoD to issue guidance about and report on the number and roles of contractors in Iraq.

What insights about civilian oversight of the military can be gained from examining how Congress initially struggled to understand the issue of contractors? Examining the committees' two April 2004 hearings, floor debates, and legislation demonstrates that Members of Congress, when confronted with an abstract problem amidst a debate dominated by politics, agreed on the need for more information. The committees' response stands in contrast to the HASC's active role during the same timeframe to address the threat of improvised explosive devices (IED) and provide up-armored Humvees to soldiers and marines in Iraq.⁸ The HASC used congressional hearings and legislation to articulate its concerns with the DoD that the IED threat and a solution must be addressed. The committee went a step further through a partnership with the Department of Army to review internal Army documents and negotiate with industry suppliers to accelerate the production of needed steel plates and kits, and the deployment of up-armored kits into Kuwait and Iraq. As a clear and present danger to the lives of U.S. service members, the IED threat presented

⁸ Kimberly Shaw, "The Department of Defense versus the House Armed Services Committee: Addressing the IED Threat during the Iraq War, 2003-2004." Paper presented at *The 24th Annual Brian Bertoti Innovative Perspectives in History Conference, Virtual: Virginia Polytechnic Institute and State University, March 19-20, 2021.*

as a tangible problem for Members and staff to understand and act upon. In contrast, while the brutal murders of the four Blackwater contractors were vivid and horrific images, the issue surrounding what they were doing in Fallujah and, more generally, the numbers and roles of military contractors was nebulous and less pressing.

The scholarly literature on private military contractors continues to grow. International relations and political science scholars had just begun to study the privatized military industry as U.S. forces invaded Iraq in 2003, although scholars have largely glossed over the role and reaction of Congress. In his 2003 monograph, *Corporate Warriors: The Rise of the Privatized Military Industry*, Peter W. Singer established the framework for understanding the privatized military industry but primarily focused on the executive branch and the military.⁹ Political scientist Deborah Avant acknowledged Congress in her 2005 monograph, *The Market for Force: The Consequences of Privatizing Security*. Although she noted “Congress approves the military budget, it does not approve individual decisions to contract out training” or oversee contractor’s behaviors. She treated Congress as a single entity without differentiating between the chambers, committees, parties, or even members.¹⁰ In a co-authored 2010 article “Private Security and Democracy: Lessons from the US in Iraq,” Avant and Lee Sigelman again treated Congress as a single actor. They examined news coverage, congressional capacity to exercise “its constitutional role as a veto point,” and the public’s reaction to news to understand the “the impacts of using private forces and traditional military instruments on transparency, constitutionalism, and public consent.”¹¹ Scholars

⁹ Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2008). Singer defined the three types of private military firms based on the range of services provided in the battlespace and the proximity to the frontlines of combat. The three different types of firms are *military provider firms*, *military consultant firms*, and *military support firms*.

¹⁰ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press), 2005, 128. Avant used a different term (private security companies) because she argued it was more inclusive of both military and security services.

¹¹ Deborah D. Avant and Lee Sigelman. “Private Security and Democracy: Lessons from the US in Iraq.” *Security Studies* 19, no. 2 (2010): 230–65. <https://doi.org/10.1080/09636412.2010.480906>, 231.

have largely failed to examine the evolution and nuances of the initial congressional debate and reaction regarding private military contractors.

Primary responsibility for U.S. military policy, ongoing military operations, and how the DoD was authorized to spend money resides with the Armed Services Committee of the Senate and the House of Representatives.¹² The House Armed Services Committee (HASC) and Senate Armed Services Committees (SASC) oversee the DoD through its hearings and the annual National Defense Authorization Act (NDAA), although other committees may hold defense-related hearings if the issue falls within their jurisdiction.¹³ The NDAA “establishes or continues defense programs, policies, projects, or activities at DOD and other federal agencies, and provides guidance on how the appropriated funds are to be used in carrying out those authorized activities.”¹⁴ Examining the hearing transcripts and legislation by these two committees yields key insights into how the defense committees conducted their oversight and attempted to legislate a solution to understanding the role of private military contractors.

This paper challenges the scholarly literature by demonstrating that Congress did not exercise its “veto power” to understand and address the role of privatized military contractors following the Blackwater murders. The Bush administration’s goal of transferring power to the interim Iraqi government in July 2004 took precedence for Republicans as Democrats unevenly prodded for answers about privatized military contractors. Although unstated in the record, it cannot be ignored that President Bush was also running for re-election against Massachusetts

¹² The House and Senate Appropriations Committees also have oversight of the DoD and its appropriations, along with the rest of the U.S. Government. The House Oversight and Government Reform Committee and the Senate Committee on Homeland Security and Government Affairs both have broad jurisdiction for the functioning of the U.S. Government.

¹³ For example, the House Committee on Oversight and Government Reform, under Chairman Henry Waxman (D-CA), held hearings on private military contractors in Iraq in 2007-2008. This committee has broad jurisdictional powers to investigate any matter with federal policy implications.

¹⁴ U.S. Library of Congress, Congressional Research Service, *Defense Primer: Navigating the NDAA*, by Brendan W. McGarry and Valerie Heitshusen, IF10516 (2021).

Democratic Senator John Kerry. Republicans also controlled the House of Representatives and Senate. Both the HASC and SASC struggled to understand how many contractors were on the ground and what they were doing. Each had the opportunity to weigh on the issue with their hearings on ongoing U.S. military operations in Iraq with senior administration officials several weeks after the murders, on April 20 and 21, 2004.

Academics and journalists generally agree the brutal murders of the four Blackwater contractors were a turning point in suddenly highlighting the issue of private military contractors.¹⁵ The brutal murders and displays of the four Blackwater contractors in Fallujah prompted local celebrations and a military operation, but also complicated the Bush administration's timeline to hand over sovereignty on June 30, 2004, to the interim Iraqi government. On March 30, 2004, four American Blackwater contractors set off to provide security for a convoy run by Eures Support Services, Inc., a U.S. government subcontractor that provided food to U.S. troops.¹⁶ The men drove into a city that had already seen increased fighting between insurgents and American troops. The men accompanied two empty flatbed trucks driven by Iraqis and headed for the other side of Fallujah to pick up kitchen equipment.¹⁷ Witnesses said, "the ambush was carried out by three insurgents who drove into town on a large truck" and left the area after killing the four men.¹⁸

Local support for the insurgents enabled the perpetrators to fade into the crowds. Local police arrived on the scene after their deaths and noted that "hundreds of people, old and young,"

¹⁵ See Avant and Sigelman, "Private Security and Democracy: Lessons from the US in Iraq"; Singer, *Corporate Warriors*; Avant, "The Market for Force"; PBS Frontline, "Private Warriors," Season 23, Episode 10, June 21, 2005; and Jeremy Scahill. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, 2008.

¹⁶ The four men were all former U.S. special operators. Scott Helvenston had been a Navy SEAL. Jerry Zovko and Wesley Batalona both served as Army Rangers, while Mike Teague served in the Army's 160th Special Operations Aviation Regiment.

¹⁷ Jeremy Scahill. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. Boulder: Nation Books, 2008. 101.

¹⁸ Sewell Chan, "U.S. Civilians Mutilated in Iraq Attack: 4 Die in Ambush; 5 Soldiers Killed By Roadside Blast." *The Washington Post*. April 1, 2004.

chanting slogans against the Americans.”¹⁹ According to a press report, the crowds carried the charred remains of two of the bodies and hung them from the King Faisal bridge over the Euphrates River. Still images and video of the burned and mutilated bodies, both hanging from the bridge and “dragged through the streets ... by a celebrating mob,” were beamed around the world and shined an immediate and intense media spotlight on the issue of private military contractors.²⁰

The humiliating and brutal murders prompted condemnation as well as the military response by the Bush administration. Journalists asked White House Press Secretary Scott McClellan whether the Blackwater “deaths threatened to become a ‘Mogadishu moment,’ a reference to the horror in the United States at the images of a soldier’s body being dragged through Somali streets after the slaughter of 18 [U.S.] commandos” in 1993.²¹ Army Lieutenant General Ricardo S. Sanchez, commander of the Combined Joint Task Force was ordered “to launch a retaliatory mission against the insurgents in the city.”²² Three days later the Marines launched Operation Vigilant Resolve and the First Battle of Fallujah began – to avenge the deaths of four American contractors and find the perpetrators.

The initial congressional response demonstrated Members reacting to the images and headlines without raising questions and concerns about why the private military contractors were even in the area. On April 1, 2004, several Members took to the floor of the Senate and House to predictably articulate their outrage and horror, express their condolences, justify the Iraq invasion, and reaffirm American resolve. Senator Elizabeth Dole, the Republican junior senator from North

¹⁹ Ibid.

²⁰ Mike Allen and Paul Fahri. “Progress Is Ongoing in Iraq, White House Says: Civilian Deaths Condemned as Administration Calls for U.S. to Show Resolve.” *The Washington Post*. April 1, 2004.

²¹ Ibid.

²² Chief Warrant Officer Timothy S. McWilliams. “U.S. Marines in Battle: Fallujah, November-December 2004.” Quantico, VA: History Division, U.S. Marine Corps, 2011. <https://www.usmcu.edu/Portals/218/FALLUJAH.pdf>. Accessed on February 21, 2021.

Carolina and a SASC member, made the first mention of the murders on the Senate floor.²³ She stated she “watched with horror yesterday as the media displayed the images of crowded streets, in Fallujah—and burning bodies in the center of that horrific celebration.”²⁴ The Senate Majority Leader, Senator Tom Daschle (D-SD), echoed similar comments but offered his condolences to the families of all Americans who lost their lives in Iraq the previous day. In addition to the contractors who were “attacked and brutally killed by a mob,” he recognized the five Marines who were killed by a car bomb.²⁵ Daschle noted “the courage of the men and women—both civilian and military—serving in Iraq, working to bring freedom to the Iraqi people.”²⁶

The Members venerated the military contractors while using their deaths as justification for the invasion. Dole oversimplified their roles, stating that they were stationed in Fallujah “to provide a convoy of security—the very purpose of their presence was to protect the lives of Iraqi men and women and they in turn were subjected to such barbaric and despicable acts.”²⁷ Daschle placed the deaths in a larger strategic context of the American service members killed and wounded to date, acknowledging the escalating violence. Over on the House floor, Representative Steve Israel (D-NY, HASC member) characterized the fight between “good versus evil” and stated the contractors were “providing security to deliver food to the people of Fallujah, and some of the people that they were seeking to feed killed them, mutilated them, massacred them.”²⁸

²³ Blackwater was based in North Carolina, although the contractors were from other states. As such, it is not necessarily surprising that Sen. Dole was the first member to speak about the issue.

²⁴ Senator Elizabeth Dole, speaking on Fallujah Deaths, on April 1, 2004, 108th Congress, 2nd session, 2004. *Congressional Record* 150, No. 5: 5982.

²⁵ Senator Tom Daschle, speaking on Violence in Fallujah, on April 1, 2004, 108th Congress, 2nd session, 2004, *Congressional Record* 150, No. 5: 5984.

²⁶ *Ibid.*

²⁷ Senator Dole.

²⁸ Representative Steve Israel, speaking on Mourning the Deaths in Fallujah, on April 1, 2004, 108th Congress, 2nd session, 2004. *Congressional Record* 150, No. 5: 6032.

Furthermore, the Members all made similar statements the murders would not weaken American resolve in Iraq, but all failed to even ask why the private military contractors were in an area of active combat. Dole stated the murderers “hate freedom and loathe democracy” and the “horrific slaughters” would “not weaken American resolve.”²⁹ She repeated her belief in the U.S. mission “and in the cause of democracy, freedom, and peace.”³⁰ No effort would be spared to ensure service members “have every tool, every resource, every possible advantage” to complete the mission and return home.³¹ He declared that “America will not be intimidated by barbaric acts whose only goal is to spread fear and chaos throughout Iraq.”³² Israel emphasized the U.S. “must redouble efforts to ensure that the perpetrators of these crimes are punished.”³³ Concluding his one-minute speech, Israel stated that “Justice will lead to security, security will lead to stability, stability will lead to democracy, and democracy will bring again justice and liberty for all.”³⁴ The images of the brutal murders should have raised key questions from the congressional defense committees tasked with overseeing the DoD and authorizing its activities.

As the attention shifted from the chambers’ floor remarks to the Armed Services Committees, the initial reaction eventually gave way to partisan fighting to understand the role and numbers of contractors in Iraq. When the HASC and SASC finally had their first chance three weeks later, on April 20 and 21, to address the issue of private military contractors, politics dominated the discourse and the lack of information became evident. The three government witnesses attempted to keep the committees focused on two key themes – the impending June 30, 2004, transfer of sovereignty from the Coalition Provisional Authority to an interim Iraqi

²⁹ Senator Dole.

³⁰ Ibid.

³¹ Senator Daschle.

³² Ibid.

³³ Ibid.

³⁴ Representative Israel.

Government, and justifying the invasion as a fight between good and evil as a means of downplaying the escalating violence.³⁵ Deputy Secretary of Defense Paul Wolfowitz characterized former Iraqi dictator Saddam Hussein as “more than just another bad guy” who wove a “blanket of fear” over the Iraqi people.³⁶ He rarely acknowledged the increasing violence and instability in Iraq as U.S. service members fought against Iraqi insurgents. He concluded by quoting retired Army General John Keane, “Our enemies are cunning, but they are ignorant, and their ignorance will be their undoing. They do not know our will, our courage, or our character.”³⁷ The administration’s goal of showing progress in order to transfer authority took priority over acknowledging the escalating violence and the contractors’ deaths. The other unspoken domestic political consideration was the 2004 presidential election that was a little over six months away. Demonstrating progress in Iraq was critical to President Bush’s re-election effort. Although Avant and Sigelman asserted “Congress was shocked to learn the extent of contractor duties” in the aftermath of the Blackwater murders, the committees initially struggled to understand the scope of the problem.³⁸

SASC Republicans used their time to push the administration’s messages of transferring political power and reaffirming American resolve. SASC Chairman John Warner (R-VA) opened the hearing by noting the risks and sacrifices of American troops and their families before pivoting to hail that the “brilliant military victories achieved ... have presented an opportunity to fully defeat violence and terror in Iraq.”³⁹ He echoed the importance of a “strong message of resolve,”

³⁵ The three administration witnesses were the Deputy Secretary of Defense, Paul Wolfowitz; the Chairman of the Joint Chiefs of Staff, U.S. Air Force General Richard B. Myers; and the Under Secretary of State for Political Affairs, Marc Grossman.

³⁶ U.S. Congress. Senate. Committee on Armed Services. *U.S. Policy and Military Operations in Iraq and Afghanistan*. 108th Congress, 2nd session, April 20, 2004, 9.

³⁷ *Ibid*, 19.

³⁸ Avant and Sigelman, 250-251.

³⁹ U.S. Congress, Senate, Committee on Armed Services, 2.

but also argued that it was critical the U.S. ended its “status as an occupying power” by transferring political sovereignty on June 30.⁴⁰ Warner concluded by asking whether U.S. troop levels in Iraq were sufficient, whether the troops had enough of and the right type of equipment to “carry out and complete the mission,” before shifting to ask about the role of the United Nations and the if the administration would pursue a United Nations Security Council resolution regarding the post-transition phase.⁴¹ Warner’s opening remarks venerated U.S. troops and focused on the transfer of sovereignty, but ignored the increasing violence of Fallujah and the contractors’ deaths.

Republican Senators rarely contradicted the witnesses and, while they focused on amplifying the administration’s talking points and asked for clarification, they could not always control the response. For example, Senator Wayne Allard (R-CO) asked General Richard Myers, the Chairman of the Joint Chiefs of Staff, to “comment about what we are seeing now on TV today and reading in the papers.”⁴² The General replied that “Fallujah has been the heart” of the fight against the extremists. He then explicitly linked recent U.S. military operations in Fallujah to the contractors’ deaths, stating

As you remember t U.S. troops had most recently gone in because of the atrocities on the Blackwater Security personnel, the four personnel that were killed and later burned and then hung on the bridge. We went in because we had to ... find the perpetrators. What we found was a huge rats nets that is still festering today, and needs to be dealt with. Right now we are dealing with it through negotiations and a ceasefire.⁴³

Allard thanked the General for his response and instead replied the troops “need to know ... that we are very proud of what they are doing and we are standing behind them.”⁴⁴ He ignored the deaths of the Blackwater contractors.

⁴⁰ Ibid.

⁴¹ Ibid, 4.

⁴² Ibid, 52.

⁴³ Ibid.

⁴⁴ Ibid, 53.

General Myers clearly stated the recent military operations in Fallujah had been a direct response to the Blackwater murders. The senior military advisor to the president had just acknowledged that the deaths of four private military contractors were the justification for a U.S. military operation. However, General Myers neglected to mention that the previous day, on April 19, American officials in Iraq had come to an agreement with local authorities in Fallujah to defuse tensions by ceding “responsibility for tracking down and prosecuting the [Blackwater] killers.”⁴⁵ Neither the admission nor omission prompted a question or comment by any SASC member about why U.S. military operations were being conducted – and then terminated – in response to actions and deaths of private military contractors. General Myers’ response raised critical questions about the role and actions of private military contractors in active combat zones, especially when it influenced military operations.

Despite General Myers’ comment, SASC Democrats failed to effectively focus on the issue of private military contractors. The committee’s senior Democrat, Senator Carl Levin of Michigan, acknowledged the hearing occurred “in a month that has tragically seen more U.S. military deaths from combat in Iraq” since the start of combat operations a year earlier, and specifically noted the violence in Fallujah.⁴⁶ Although he focused on relevant military and defense issues, such as the number of U.S. troops required to stay in Iraq to ensure stability and whether coalition forces would withdraw, he concluded by asking “whether Congress was adequately informed and involved concerning the expenditure of hundreds of millions of dollars for construction activities in preparation for war with Iraq.”⁴⁷ Levin never explicitly mentioned the Blackwater contractors.

⁴⁵ Rajiv Chandrasekaran and Pamela Constable, “Deal Struck on Fallujah Attacks: U.S. Waits on Surrender of Weapons.” *The Washington Post*. April 20, 2004.

⁴⁶ *Ibid*, 5.

⁴⁷ *Ibid*, 8.

Democratic senators walked a fine line trying to question the witnesses while also clearly stating they supported U.S. troops. Levin questioned General Myers about the potential options in case the U.S. needed to increase its troop presence in Iraq. Senator Ted Kennedy (D-MA) asked whether the U.S. was paying a high price for its presence in Iraq. Senator Joe Lieberman (D-CT) called the “war a necessary and noble undertaking in pursuit” of American values.⁴⁸

Only two Democratic senators explicitly used their time to ask about Blackwater contractors and, of those two, only one asked a question. Rhode Island Senator Jack Reed directed his second question to General Myers, stating “another issue has become relevant in the last few days ... the huge numbers, 20,000 estimated of armed security contractors.”⁴⁹ Reed noted contractors would “present an even greater problem after July 1” and asked about their status and the rules of engagements.⁵⁰ The General failed to address the issue head-on but said the DoD had provided the Commanders of U.S. Central Command and the Coalition Ground Forces with the policy guidance necessary to handle things. He acknowledged U.S. troops had “a lot of contractor support, not only in the security area but also in a lot of our logistics capability – truck drivers” before repeating that Central Command had the necessary guidance to address the issue. Unfortunately, Reed ran out of time to ask more questions but took a few minutes to argued with Wolfowitz and Warner over an unrelated report the DoD was refusing to provide. As Warner tried to regain control over the hearing, he made a specific point to counter Reed’s question about the contractors. While he thanked Reed for asking about contractors, Warner tersely replied the committee was reviewing the issue and reaffirmed his support because contractors provided “an

⁴⁸ U.S. Congress, Senate, Committee on Armed Services, 68.

⁴⁹ Ibid, 75.

⁵⁰ Ibid.

absolutely essential service, not only to our security side, but the logistics side.”⁵¹ Neither Wolfowitz nor General Myers had answered Reed’s questions.

The only other mention of contractors came from New York Senator Hillary Clinton, the last senator to ask a question at the end of the hearing, yet her reference to private military contractors came in the context of the transfer of sovereignty. She noted that, as the transfer of sovereignty date grew closer, private military contractors posed a challenge to the military’s authority, rules of engagements, and status in the country. She said “throw into the mix all these private contractors running around, heavily armed” and they created an even greater challenge that concerned her.⁵² She then moved on and used the rest of her time to ask about medical treatment and tracking for combat veterans returning from Iraq and the administration’s support for her bill investing in women’s education in the Muslim world. In the 4 hour and 15-minute hearing, the SASC committee members and witnesses went back and forth on the transfer of sovereignty, the escalating violence, and the stress on the U.S. forces. Despite General Myers’ admission that the U.S. military had launched an operation to find the murderers of the Blackwater contractors, no SASC member asked how many contractors were in Iraq and what they were doing.

Although the HASC’s hearing the next day had a similar focus on the transfer of sovereignty, several HASC members devoted time to the issue of private military contractors for differing political purposes.⁵³ The senior Democrat, Ike Skelton (D-MO), noted the committee’s constitutional duty to conduct oversight of the military. He expressed his concerns that there were not enough troops to stabilize the country, questioned the transfer of sovereignty, and wondered how to effectively train and equip Iraqi security forces. However, at the end of his remarks, Skelton

⁵¹ Ibid.

⁵² Ibid, 106.

⁵³ The same three witnesses testified before the HASC: Deputy Secretary of Defense Wolfowitz; the Chairman of the Joint Chiefs of Staff, General Myers; and the Under Secretary of State for Political Affairs Grossman.

veered from his written statement to ask Wolfowitz about a letter he had sent to Defense Secretary Donald Rumsfeld at the beginning of April requesting information about the “the report of 20,000 private security contractors” but had not yet received a response. Skelton added that he had “the feeling that we in Congress are not being fully informed as we should be ahead of time.”⁵⁴ He reiterated the committee’s constitutional responsibility and reminded the witnesses the Congress was a partner. Unfortunately, when it came time to ask questions after all the opening statements had been made, Skelton used his time to ask a single question – “are we winning the hearts and minds of the Iraqi people?”⁵⁵ The issue of private military contractors had been important for Skelton to send a letter and ad-lib his opening statement, but not critical enough to devote his five minutes to question the witnesses.

The issue did not resonate with Wolfowitz, nor did it detract him from his talking points. He did not even initially acknowledge Skelton’s comment about the letter. He waited until well into the hearing, after Hunter, Skelton, and three other members had already asked their questions, to address the letter. Almost as an aside, he added “Mr. Skelton, I know we owe you an answer on this question of private security forces in Iraq.”⁵⁶ He stated that it was “an extremely complicated issue” that the DoD was “relooking” because of the “importance of the issue.”⁵⁷ When finally asked about private military contractors, Wolfowitz’s response contrasted sharply with General Myers’ answer to the SASC that he had confidence the military commanders have the right policy.

The second Blackwater mention came from a HASC Republican member commenting the news’ headlines did not match the real situation on the ground. Representative Ed Schrock (R-VA)

⁵⁴ U.S. Congress, House of Representatives, Committee on Armed Services, *Iraq’s Transition to Sovereignty*, 108th Congress, 2nd session, April 21, 2004, 108-281, 74.

⁵⁵ *Ibid*, 95.

⁵⁶ *Ibid*, 103.

⁵⁷ *Ibid*.

expressed his concern about the “constant drip, drip, drip every night of the news media” and the perceived disconnect between the news reports and the “real Iraq.”⁵⁸ General Myers replied that Fallujah exemplified the “very serious situation in Iraq,” but that as the U.S. military had gone into the city to find the perpetrators, they were “trying to make sure that [they didn’t] lose the consent of the Iraqi people.”⁵⁹ He stated bluntly “This is combat. It is war.”⁶⁰ General Myers had again acknowledged ongoing U.S. military operations in Fallujah were a direct result of the Blackwater murders, and Members moved on without following up. Schrock focused more on the false picture the media painted, lamenting it was “a very sad commentary on what our people are fed every night on the news,” because such a defense supported the Republican administration’s transfer of sovereignty and election goals.⁶¹

The only other Member to explicitly mention the issue was Representative Susan Davis (D-CA) towards the end of the hearing. Like Clinton, Davis couched her question about private military contractors in the context of the transfer of political sovereignty, demonstrating the power of the administration’s theme and focus on the June 30 date. She used her first question to ask Wolfowitz how the DoD was thinking through the implications of U.S. troops on the transfer of sovereignty and chain of command between American and Iraqi troops, questioning “what role will the independent contractors play” in the chain of command issues.⁶² Echoing his earlier remarks to Skelton’s letter, he acknowledged the complexity of the issue, stating

I wish I could give you as clean an answer with respect to the private security forces which have attracted a lot of attention, particularly since the tragedy in Fallujah involved four of them. There is no way to dispense with private sector forces anywhere that I know of, including some private contractors we have who provide force protection for us at our own bases around the world. They are not to replace

⁵⁸ Ibid, 110.

⁵⁹ Ibid, 111.

⁶⁰ Ibid.

⁶¹ Ibid, 113.

⁶² Ibid, 150.

the military. They are not to be a private military force. They are guard forces. They help make it possible for contractors in a situation like Iraq to do reconstruction activities.⁶³

Davis asked if the DoD was working to identify clear policies and get them in place before the transfer of political sovereignty, but Wolfowitz wondered to what extent contractors “need to coordinate their movements with the U.S. military.”⁶⁴ Unfortunately, General Myers did not respond because he had left earlier in the hearing to return to the Pentagon to host a senior foreign military official, and thus deprived the committee of a critical military perspective on the issue.

Demonstrating the administration and Republican members’ focus on the transfer of political sovereignty and the lack of information, it had taken nearly nine hours over two hearings before the SASC and HASC to have a meaningful back-and-forth public discussion between a Member of Congress and a DoD witness about the role of private military contractors. Members were not, as Avant and Lee claimed, “furiously trying to figure out the role of contractors following the publicity that surrounded the deaths of four Blackwater personnel in Fallujah and the role of contractors in the Abu Ghraib prison scandal.”⁶⁵ The hearings revealed the Members and the administration witnesses instead debated the transfer of political sovereignty, the violence, and the number of U.S. troops. They had largely ignored the issue of four murdered Blackwater contractors, despite admissions by General Myers that their deaths had driven military operations and Wolfowitz that private military contractors provided integral support to the U.S. military.

One HASC witness raised key questions for Members’ consideration about the role of private military contractors; unfortunately, this non-government witness testified right after the government witnesses. Immediately following the HASC hearing, the committee held a second

⁶³ Ibid, 151.

⁶⁴ Ibid.

⁶⁵ Avant and Sigelman, 252.

hearing with a retired military officer who had served as the Vice Chief of Staff of the Army, a senior fellow from the National Defense University, and a senior fellow from the United States Institute of Peace.⁶⁶ Similar to the testimony of the government witnesses, the comments from these three veered over numerous topics, from the current security situation and its strategic implications to the differences between two major Iraqi Shiite leaders (Grand Ayatollah Ali al-Sistani and Muqtada al-Sadr) and whether Iraqi nationalism would hinder or help a stable democracy.

After more than six hours into double hearings, Representative Solomon Ortiz (D-TX) finally asked how the committee should understand the issue and its implications. He questioned the former Vice Chief of Staff of the Army, General Jack Keane, about how the committee should view both the armed contractors providing security and other contractors rebuilding Iraq. The retired general's answer replied with a brief history of how intertwined and integral private military contractors had become to the U.S. military. The issue was not new because the U.S. military "started to depend on contractors" going back to Bosnia-Kosovo operations as well as in Somalia.⁶⁷ The reliance on contractors enabled the U.S. military to reduce its "logistics footprint," which in turn required fewer deployments.⁶⁸ Many of the private military contractors in Iraq were "doing things that United States military forces would have to do if they weren't present," thereby reducing both the stress on U.S. forces and the number of U.S. forces needed.⁶⁹ The new complication,

⁶⁶ The non-government witnesses were the former Vice Chief of Staff of the U.S. Army, retired General Jack Keane; a Senior Fellow at the National Defense University, Dr. Judith Yaphe; and a Senior Fellow at the United States Institute of Peace, Dr. Amatzia Baram.

⁶⁷ U.S. Congress, House of Representatives, Committee on Armed Services, 167.

⁶⁸ Ibid.

⁶⁹ Ibid.

Keane argued, was the “unprecedented” nature of having so “many contractors in the middle of a combat zone” in Iraq.⁷⁰

Ortiz sought to understand private military contractors from a cost-benefit analysis, asking whether it was “better to train our soldiers so we have a well-rounded individual” instead of paying contractors.⁷¹ Keane demurred by stating he did not know about a cost-benefit analysis, but that “just intuitively, the costs for soldiers is very expensive” and it took years to “properly train them.”⁷² The witnesses illuminated the trade-offs, acknowledging, for example, that hiring contractors to provide logistics enabled the military to focus on maintaining combat fighting strength and skills. Keane’s responses provided vital context and raised legitimate questions for the Members. Unfortunately, coming at the end of the HASC’s marathon session, no Member picked up on comments or pondered the implications of relying on contractors to conduct vital support in a combat environment.

Democratic Members on both committees struggled to ask initial questions about contractors supporting the U.S. military in Iraq. The DoD witnesses effectively deflected, at times aided by Republican Members. Their focus on ensuring the transfer of sovereignty was more important than acknowledging the escalating violence, even though it had cost the lives of American private military contractors supporting the U.S. military and their deaths had instigated a major military operation to find the perpetrators. Although both committees asked about force structure, the stresses on forces rotating into Iraq, and the deteriorating situation, not one Member asked key follow-up questions, such as who is supporting those combat forces. As Keane’s

⁷⁰ Ibid.

⁷¹ Ibid, 168.

⁷² Ibid.

response demonstrated, private military contractors had been a vital support for the U.S. military since the 1990s and enabled the military to focus on combat troops.

The U.S. military could not fight without private military contractors, but the HASC and SASC Members did not appear to understand the implications. A week after the two hearings on April 28, 2004, the issue of private military contractors again garnered major attention when CBS' *60 Minutes II* aired a story about human rights violations committed by U.S. service members and contractors against detainees in the Abu Ghraib prison scandal. HASC and SASC Members still struggled to understand how many private military contractors there were and their roles, and yet the legislative calendar dictated that they needed to begin drafting and debating the annual national defense authorization bill in order to get it completed and enacted into law by the fall, and perhaps before the November election.⁷³

The small window between the Blackwater murders, the burgeoning Abu Ghraib scandal, and the start of the committees' legislative calendars did not allow enough time for Members and staff to fully understand or debate the issue of contractors and the implications. Three weeks after the hearings, both the HASC and SASC began the process of drafting, marking, and eventually conferencing the Fiscal Year (FY) 2005 NDAA legislation (H.R. 4200).⁷⁴ Both committees recognized a need to address the issue of contractors and proposed similar legislative language. The HASC bill included one provision to address the issue of private military contractors – Section 1205, that would require the Defense Secretary to issue guidance, within 90 days of the bill's enactment, regarding managing contractors that were supporting deployed combat troops. The

⁷³ Since the 2000s, the HASC and SASC have traditionally begun the NDAA process in May to allow each chamber time to debate and pass the bill in May and June. The timeline enables the two committee staffs to negotiate the differences throughout the summer and early fall, thus allowing the final bill to be passed, signed, and enacted into law by mid-to-late fall.

⁷⁴ Although the SASC completed its markup first in early May, the House finished both the committee markup and floor debate within a week. The SASC took a full month (in June) to debate the bill on the Senate floor.

language also directed the Defense Secretary report to Congress about how the DoD had addressed the policies, management, and oversight of contractors, and its process for gathering information on contractors providing security services in Iraq.⁷⁵

The Member who sponsored the language had not asked a question during the HASC's hearing or submitted a question for the record. Democratic HASC Member, Neil Abercrombie of Hawaii, the Ranking Member on the HASC's Tactical Air and Land Subcommittee and a member of the Readiness and Projection Forces Subcommittees, sponsored the provision. As a member of the Readiness Subcommittee, he likely focused on policies and funding related to military readiness, training, logistics, and maintenance issues and programs. Although his interest requires further historical research and analysis, the implication of his provision was clear. He believed, and the committee agreed, that it was necessary to direct the DoD to issue guidance on private military contractors and to inform Congress if it had done so. The committee both micromanaged and demand further information at the same time.

The importance of Abercrombie's amendment was further highlighted in the committee report. In the additional views section of the committee report, Skelton applauded Abercrombie for offering his amendment "to better account for and manage civilian contractors in Iraq."⁷⁶ He explicitly cited "the need for a better awareness of the number and role of contractors in Iraq."⁷⁷ Congress must that contractors' "roles are appropriate and that their safety can be reasonably secured."⁷⁸ However, Skelton expressed his frustration that Congress still did not have the "access to information to conduct proper oversight" nor was he "confident that the civilian and military

⁷⁵ On May 13, 2004, the HASC marked up and voted to approve H.R. 4200 by a unanimous vote of 60-0.

⁷⁶ U.S. Congress, House of Representatives, Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2005: Report of the Committee on Armed Services House of Representatives on H.R. 4200*, 108th Congress, 2nd session, H. Rpt. 108-491, May 14, 2004, 462.

⁷⁷ Ibid.

⁷⁸ Ibid.

leadership at the Pentagon has access to all the information they need to make critical policy decisions.”⁷⁹ Whether Skelton’s frustration was due to a lack of response to his original letter remains unclear. Nevertheless, Skelton clearly stated Congress did not understand the number and roles of contractors in Iraq, and neither did the DoD.

As the bill moved to the House floor, the debate shifted from concerns about the transfer of sovereignty to reaffirming support for U.S. troops. Democrats continued complaining about the lack of information. When the House began general debate on H.R. 4200 on the afternoon of May 19, 2004. Hunter acknowledged the recent attention on the Abu Ghraib prison scandal, but stated that it was “time to refocus” on the “135,000 great personnel” doing their jobs in Iraq.⁸⁰ He highlighted the equipment, proposed pay raise, benefits, and other items that the bill provided, but ignored any specific mention of private military contractors. When Skelton spoke after Hunter, he applauded several points in the bills, such as a proposed troop pay raise, before quickly pivoting to key issues that he believed would dominate the debate, including private military contractors. Repeating the importance of congressional oversight and the lack of information, he specifically noted that recent events raised “real questions about the role of private military contractors providing security services ... [and] highlight the Congress’s need to get better information and to take our oversight role more seriously.”⁸¹ Skelton argued the bill took “some steps” to address the issue of contractors.

Other Democratic members also expressed their support for Abercrombie’s amendment on private military contractors. Democratic members praising the legislation mirrored the hearings

⁷⁹ Ibid.

⁸⁰ Representative Duncan L. Hunter, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3260.

⁸¹ Representative Ike Skelton, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3261.

when only Democratic HASC Members had expressed concerns and showed how the issue had become partisan. Representative Sheila Jackson-Lee (D-TX) expressed her support, noting the language was needed because it was “painstakingly clear that the Pentagon has no control on the number of activities of independent contractors in Iraq.”⁸² Representative Patrick Meehan (D-MA, HASC Member) agreed the bill addressed the “gaping holes in the oversight of civilian contractors.”⁸³

One Member, in particular, linked the lack of information to lack of accountability and, in turn, drew the ire of Hunter. Building upon her questions and concerns at the hearing, HASC member Susan Davis (D-CA) criticized the DoD for not knowing how many contractors were in Iraq and raised key questions about the use and roles of contractors. She stated

If you ask the Defense Department today to tell you the number of contractor personnel serving in Iraq, you will get a shrug. That represents a fundamental area of concern. The events in Fallujah and the images of Abu Ghraib remind us of the role that contractor personnel play and how their actions can affect the military mission. We must come to terms with contractor participation and performance on the battlefield. The questions that must be answered include: Why are so many contractors being used in Iraq and other places? Does anyone really know how many are present? Who is responsible for ensuring contractors are properly trained and qualified? And to whom are the various contractors accountable? Are they providing security for the military, or is it the other way around?⁸⁴

By specifically acknowledging that the Blackwater deaths and Abu Ghraib scandal influence military actions, Davis demonstrated an understanding that private military contractors had an outsized role, even if she could not offer answers to her questions. Furthermore, she stated that the legislative branch had to “come to terms with money being spent on contractor personnel” before

⁸² Representative Sheila Jackson-Lee, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3270.

⁸³ Representative Patrick Meehan, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3273.

⁸⁴ Representative Susan Davis, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3272.

Congress approved the President's request for additional funding for the Iraq war.⁸⁵ She articulated the important role of Congress in overseeing the military. The DoD and administration must provide answers to Members' questions to secure congressional approval.

The swift Republican response demonstrated an attempt to shut down the debate and criticism by justifying the critical support that private military contractors provided to U.S. troops. Hunter's rebuke of Davis and defense of contractors even began with "God bless our contractors."⁸⁶ He noted the extensive services contractors provided, including risking their lives to bring food to troops through "the heart of insurgency country." Hunter justified the role contractors played, arguing that the military had "always had lots of contractors" in "all theaters of war" for the last one hundred years.⁸⁷ The four Blackwater contractors were heroes who were only "trying to advance the American cause with every bit as pure a heart and sense of honor" as any service member.⁸⁸ His furious defense of contractors illustrated the point made later by Representative Henry Waxman (D-CA), who railed about the use of contractors in the Abu Ghraib scandal and the lack of congressional oversight. Waxman stated simply "time and time again the majority has demonstrated that it has no interest in performing any serious oversight of this administration."⁸⁹ Despite the vigorous debate over contractors, the bill passed the House with broad bipartisan support by a vote of 391 to 34. Concerns about private military contractors could not stop supporting U.S. troops defending the homeland and national security interests.

⁸⁵ Ibid.

⁸⁶ Representative Duncan L. Hunter, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3272.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Representative Duncan L. Hunter, speaking on *H.R. 4200 National Defense Authorization Act for 2005*, on May 19, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 71: H3355.

On the other side of Capitol Hill, SASC dealt with the issue of private military contractors, in a similarly mysterious manner, by also recognizing the need for a management plan and report on private military contractors. The SASC's markup was closed and no unclassified transcript was available to the public, thus making it difficult to determine if a Senator had offered the language or if SASC staff drafted the language on behalf of the Chairman or Ranking Member.⁹⁰ The lack of a transcript also obscures whether the committee even debated the issue during their closed session. Nevertheless, the committee issued a bipartisan press release on May 7, 2004, announcing it completed its markup of the FY 2005 NDAA and unanimously approved the bill. Both Warner and Levin applauded the bill for supporting U.S. troops and their families.⁹¹

The issue of private military contractors was important enough for Warner and Levin to identify the provisions in the press release, although they did not explicitly reference private military contractors wounded or killed in support of U.S. military operations in Iraq. They noted there were "several provisions that would improve the oversight of contractors performing security, intelligence, law enforcement and criminal justice functions in Iraq and other areas where U.S. forces are engaged in military operations."⁹² One of the committee's six priorities was continuing its "active" oversight of DoD "programs and operations, particularly in the areas of acquisition reform and contract management, to ensure proper stewardship of taxpayers' dollars."⁹³ The committee proposed two provisions to address the issue of private military

⁹⁰ The SASC's Legislative Calendar noted the committee met in a closed hearing on May 5 and 6, 2004, and a transcript was "not printed." U.S. Congress, Senate, Committee on Armed Services, *Legislative Calendar: One Hundred Eighth Congress, 2003-2004*. S. Prt. 108-74, June 26, 2007,

<https://www.congress.gov/108/cprt/SPRT35990/CPRT-108SPRT35990.pdf>, 33

⁹¹ U.S. Congress, Senate, Committee on Armed Services, *Press Release: Senate Armed Services Committee Completes Markup Of National Defense Authorization Bill For Fiscal Year 2005*, 108th Congress, 2nd session, May 7, 2004, <https://www.armed-services.senate.gov/imo/media/doc/05mark.pdf>, 1.

⁹² Ibid.

⁹³ U.S. Congress, Senate, Committee on Armed Services, *Fiscal Year 2005 National Defense Authorization Bill Summary*, 108th Congress, 2nd session, May 7, 2004, <https://www.armed-services.senate.gov/imo/media/doc/05mark.pdf>, 1.

contractors by requiring a management plan for contractor personnel (Section 864) and a report on contractor personnel in Iraq (Section 1021).⁹⁴

In its report accompanying the draft bill, the issue of private military contractors was important enough for the committee to explicitly link its concerns to the Blackwater deaths. Their deaths “focused the nation’s attention on the extraordinary risks faced by contractor employees in Iraq.”⁹⁵ Although the committee estimated there could be “as many as 20,000 private security contractor employees in Iraq,” they did not know how many private military contracts there were or what they were doing, thus demonstrating the need to require the DoD report to Congress.⁹⁶ Furthermore, the committee expressed concerns that the rising costs of contractor security risked “draining much of the funding intended for reconstruction” of Iraq.⁹⁷ Private military contractors no longer only raised questions about how many and what they were doing, but that their presence in Iraq threatened diverting government funding away from critical government-backed reconstruction tasks. While the committee elevated the importance of contractors and told the DoD that their safety must be considered and prioritized, the SASC’s language demonstrated their “active” oversight and attempt to understand the larger ramifications of private military contractors from a cost perspective, despite the lack of information and best estimates.

Once the full Senate began debating FY 2005 NDAA, Senators attempted to debate the role of private military contractors but the debate was linked to the Abu Ghraib scandal.⁹⁸ Senator Chris Dodd (D-CT) offered an amendment to prohibit the use of contractors for specified DoD

⁹⁴ Section 1021 is cited as Section 1022 in the SASC Committee Report 108-260 that accompanies FY 2005 NDAA (S. 2400). After the Senate passed the bill, the provision number was altered to Section 1021 due to the renumbering of provisions to accommodate adopted Senate floor amendments.

⁹⁵ U.S. Congress, Senate, Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2005: Report to Accompany S.2400*, 108th Congress, 2nd session, S. Rpt. 108-260, May 11, 2004, 361.

⁹⁶ Ibid.

⁹⁷ Ibid, 362.

⁹⁸ The Senate debated the bill for sixteen days over four weeks in May and June 2004.

activities, such as intelligence gathering and interrogations. Republican Senators opposing Dodd's amendment focused on their concerns that banning private military contractors would hinder DoD operations targeting terrorists. At the same time, they acknowledged the critical importance of overseeing contractors and the awareness they were debating without having all the information.

The debate showed the Senators recognized they did not fully understand the magnitude or scope of DoD's reliance on private military contractors, especially on the battlefield. Another interpretation is they used the lack of information to delay any action or remedy that could potential hinder U.S. military operations and contractors' support. Senator Jeff Sessions (R-AL, SASC member) said "if there is a problem, it may be that we did not supervise contractors well."⁹⁹ Senator John McCain (R-AZ, SASC member) stated "it is essential to ensure that there is proper oversight when employing contractors in interrogations or any other military-related function."¹⁰⁰ McCain added that Congress needed "to look comprehensively at a number of facets of our military operations, including the long-term use of contractors, failures of leadership, and the overall size of our armed forces."¹⁰¹ Senator Pat Roberts (R-KS) bluntly stated "no committee has held a hearing on how to lessen our reliance on contractors."¹⁰² He opposed Dodd's amendment because, although several Senate committees had held hearings related to the detainees, the language "[prejudged] the important work we would like to do on issues that are related to contractors."¹⁰³ Roberts argued the Congress could address the problem, but the Senate "should not act hastily" on

⁹⁹ Senator Jeff Sessions, speaking on Amendment No. 3133 to S. 2400 on June 16, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 83: S6833.

¹⁰⁰ Senator John McCain, speaking on Amendment No. 3133 to S. 2400 on June 16, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 83: S6834.

¹⁰¹ *Ibid.*

¹⁰² Senator Pat Roberts, speaking on Amendment No. 3133 to S. 2400 on June 16, 2004, 108th Congress, 2nd session, *Congressional Record* 150, No. 83: S6835.

¹⁰³ *Ibid.*

this issue.¹⁰⁴ Dodd's amendment was tabled by a vote of 54-43, meaning a majority of Senators did not wish to further debate the issue.

Despite this development, interest in understanding the scope of private military contractors persisted. Warner offered three amendments on the very last day the Senate debated the FY 2005 NDAA (June 23, 2004) that expanded which Senate committees would receive the Section 1021 report on contractors and which agencies the DoD should coordinate in the preparation of the report.¹⁰⁵ These amendments demonstrated there was increased interest from other Senators and Senate committees that wanted to understand the scope of private military contractor support to the U.S. military. All three amendments were passed by unanimous consent with no debate and no recorded vote; later the same day, the Senate passed their version of the FY 2005 NDAA by unanimous consent, a week before the U.S. was scheduled to hand sovereignty over to the interim Iraqi government. The lack of a recorded vote on the amendments and the bill showed the Senators were not interested in expressing their specific positions regarding the issue of private military contractors or the U.S. military, in general.

Although the issue of transfer of political sovereignty no longer played a major role, the impending presidential elections and its associated politics, and the lack of information possibly were a factor when the HASC and SASC committee staffs likely began negotiations within weeks of the Senate's passage of their bill.¹⁰⁶ If internal committee papers are ever made available, scholars would be interested in how quickly the contractor provisions were addressed and whether they were negotiated by the staffs or elevated to the attention of committee staff leadership or the

¹⁰⁴ Ibid.

¹⁰⁵ Senator John Warner, speaking on Amendments 3476, 3477, and 3478 to S. 2400 on June 23, 2004, 108th Congress, 2nd Session, *Congressional Record* 150, No. 83: S7271-S7272.

¹⁰⁶ Official conference negotiations began on September 24, 2004, when both the House and Senate appointed conferees.

Chairmen and Ranking Members. What is known is that the conferees agreed to pair Section 1205 in H.R. 4200 with the Senate's Section 864 and that there was no corresponding House provision to the Senate's Section 1021 report.

The results of the HASC and SASC negotiators, also known as conferees, demonstrated the committees believed there was a need to provide clear, direct guidance to the DoD on how to oversee, manage, and report on private military contractors. In the first set of legislative provisions, the Senate negotiators receded – or withdrew – from their provision, Section 864, and agreed to modify the House's Section 1205 language with a clarification that the Secretary's guidance would also address the performance of contractors.¹⁰⁷ The new language, Section 1205, *Guidance on Contractors Supporting Deployed Forces in Iraq*, clearly showed that the committees expected the Secretary of Defense to take specific steps in developing and issuing the guidance. For example, they expected the Secretary “to address options for enhancing contractor security and reducing contractor security costs in current and future armed conflicts.”¹⁰⁸ The conferees even offered options for the Secretary's consideration and then stated a rationale must be provided explaining the Secretary's decision to implement, or not, the options. The HASC and SASC sought to provide clarity and specificity to the DoD to limit the department's flexibility in developing and implementing the guidance.

While the conferees micromanaged the guidance with the specific expectations, they cast as wide a net as possible for any and all information on the report on private military contractors.

¹⁰⁷ According to the CRS, the term “recede” has a technical meaning in the legislative process. When either the House or Senate recedes, the chamber is withdrawing from its previous position or action. For further information, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki, May 19, 2019.

¹⁰⁸ U.S. Congress, House of Representatives, *Conference Report to Accompany H.R. 4200 Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, 108th Congress, 2nd Session, H. Rpt. 108-767, October 8, 2004, 779.

The Senate's Section 1021 became Section 1206, *Report on Contractors Supporting Deployed Forces and Reconstruction Efforts in Iraq*, with the House adding further requirements to the report. The DoD would be required to report on the chain of command and oversight of contractors, any disciplinary actions and criminal actions brought against contractors, the legal status, casualty and fatality figures, and a description of any hostile fire incidents involving contractors. Although the conferees recognized the DoD had not "yet established a comprehensive system for collecting data on contractor casualties and fatalities," they also clearly stated the DoD should not develop and implement a system that would unnecessarily burden combatant commands or command units or even "undermine military operations."¹⁰⁹ Reporting should not hinder or impact those fighting or managing the war. The conferees believed the DoD could "collect this information accurately and comprehensively from the contractors themselves," thereby setting the expectation upfront that the committees would not accept excuses from the DoD leaders.¹¹⁰ Showing they also expected the DoD to immediately begin working on the system to gather information and provide the report, the conferees ordered the DoD to design and implement a guidance governing the use of contractors supporting U.S. forces in Iraq, as well as compile and submit the report on contractors, within 180 days after the bill's enactment into law.

While all sides complimented the bill, House Democrats hailed these legislative requirements on private military contractors as good and necessary oversight when conference negotiations officially concluded on October 8, 2004, nearly a full month before the presidential election. Skelton called it a "good defense authorization bill" and specifically noted Abercrombie's amendment requiring the report on contractors. Abercrombie said he had aimed to establish accountability and transparency standards because contractors played "a much larger role in Iraq

¹⁰⁹ Ibid, 780.

¹¹⁰ Ibid.

than anyone anticipated, and we have to get a handle on their activities.”¹¹¹ In contrast, Hunter remained silent about private military contractors, but applauded the bill for showing Congress’s “dedication to the men and women who wear America’s uniform.”¹¹² The SASC issued a bipartisan press release recognizing the bill’s commitment to U.S. troops. It noted the contractor provisions, but offered no additional commentary. On October 9, both the House and Senate voted overwhelmingly to approve the bill.¹¹³

The President’s reaction to the language on private military contractors stood as an example of the tension between the executive and legislative bodies regarding overseeing the U.S. military. Five days before the presidential election on October 28, President Bush signed the FY 2005 NDAA into law (Public Law 108-375) and released a statement objecting to several provisions claiming the language infringed on his constitutional role as Commander in Chief. He specifically objected to Section 1205 requiring the DoD to issue guidance and a report on contractor support in Iraq and bluntly stated his administration would interpret section 1205 the language in a manner consistent with the President’s constitutional authority to lead the executive branch, including the U.S. military.¹¹⁴ Even as the committees had agreed they needed more information, the HASC and SASC also told the President that his administration needed to better manage and account for private military contractors, without fully understanding the scope of the problem. The President claimed he could interpret the law as he deemed necessary. Tensions remained over managing and accounting for private military contractors’ support to U.S. military operations in Iraq.

¹¹¹ U.S. Congress, House of Representatives, Committee on Armed Services (Democrats), “Press Release: Defense Authorization Bill Includes Multiple Democratic Priorities,” October 8, 2004, http://www.house.gov/hasc_democrats/Press_Releases/NDAA_FY05_floor_10.8.04.pdf, 1-5.

¹¹² U.S. Congress, House of Representatives, Committee on Armed Services (Republicans), “Press Release: House Gives Final Approval to FY2005 Defense Authorization Act,” October 9, 2004. <http://armedservices.house.gov/pressreleases/2004/HR4200ConferencePassage.pdf>.

¹¹³ The House vote was 359-14, while the Senate agreed by unanimous consent.

¹¹⁴ George W. Bush, “Statement on Signing the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” in *Administration of George W. Bush, 2004*, Washington, DC: Government Printing Office, 2673.

The two key defense committees understood there was a problem, but the administration's push to transfer political transfer, the politics dominating a presidential election year, and the lack of information meant the committees also had not effectively dealt with the problem when it first became known in 2004. Despite being told it must establish a system to collect information and provide a report on private military contractors by April 26, 2005 (180 days after the bill became law), the DoD needed two additional years to begin accounting for the number of contractors killed or wounded in Iraq, submitting its first report in 2007. By 2008, the CBO reported that the number of contractors in Iraq equaled or was greater than the number of U.S. troops on the ground, and of those contractors, an estimated 30-35,000 contractors were armed. The lack of consistent questioning in their first hearings with senior DoD officials hindered Members' ability to begin to understand the problem. Complicating the challenge, the administration's commitment to the transfer of sovereignty and the partisan nature of the fight as presidential election politics overshadowed enabled the issue of private military contractors to fester.

Although contractor support to the U.S. military goes back to when the "Continental Army relied on contractors to provide such goods and services as transportation and engineering services, clothing, and weapons," the brutal murders of the four Blackwater personnel operating in an active, violent combat zone highlighted congressional attention on the numbers and roles of private military contractors supporting U.S. military operations.¹¹⁵ These deaths raised critical questions about the blurring roles between the military and private military contractors and what activities are considered inherently governmental or military versus commercial or business. The deaths also demonstrated how ineffectively equipped the two defense committees were to understand and answer these questions. The administration's goals regarding Iraqi sovereignty may be a unique

¹¹⁵ U.S. Library of Congress, Congressional Research Service, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, by Moshe Schwartz, RL40764 (2011), 1.

factor, but U.S. political elections and a lack of information are not new phenomena. Confronted with an undefined problem and complicated by these factors, the HASC and SASC's ability to conduct its oversight and identify a solution offers a case study of ineffective congressional oversight with significant policy and military consequences. The politics and limited congressional oversight in those first weeks and months after the Blackwater deaths allowed the DoD – and subsequent administrations – to keep U.S. troop numbers low without fully disclosing to the Congress and the American people just how many Americans were in harm's way or how much money was being spent.