

FIGHTING WAR AND FURTHERING SLAVERY: THE ALARMING TRUTH ABOUT PRIVATE MILITARY FIRMS AND THE SOLUTION TO END THEIR INVOLVEMENT IN HUMAN SEX TRAFFICKING

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INTRODUCTION

We worked from 4pm till late night or early morning with three to four clients a day. Sometimes we used condoms, but sometimes we didn't. Most of the clients were foreigners who didn't speak my language and didn't care about my age. I didn't know how to contact the police and I didn't know if the police would even care. I wanted to run away, but was scared the gang would find me and kill me. My self-loathing grew, so I began injecting myself with drugs. I tried to numb myself from the pain so I wouldn't feel anything at all.¹

These are the words of a young girl who was a victim of human trafficking.² Loreta is not the only victim of this horrific crime, as human trafficking is an ever-increasing industry.³ The International Labour Organization estimates that more than 20.9 million individuals are currently the victims of forced labor, and an estimated 4.5 million of these

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¹ EQUALITY NOW, SURVIVOR STORIES: LORETA 22 (2014), http://www.equalitynow.org/sites/default/files/Survivor_Stories.pdf.

² *Id.* See also Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *adopted* Nov. 15, 2000, 2237 U.N.T.S. 319, 344 (entered into force Dec. 25, 2003) (defining trafficking in persons as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”).

³ Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI L. ENFORCEMENT BULL., Mar. 2011, at 2, <https://leb.fbi.gov/2011/march/leb-march-2011>. See generally *Human Trafficking*, UNITED NATIONS OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Oct. 29, 2015) (noting that every year human trafficking affects thousands of men, woman, and children).

individuals are forced into human sex trafficking.⁴ Human sex trafficking is “the fastest-growing business of organized crime and the third-largest criminal enterprise in the world.”⁵ Many victims of this crime are adult and adolescent women.⁶ According to the Federal Bureau of Investigation:

[T]he business of human sex trafficking is much more organized and violent. These women and young girls are sold to traffickers, locked up in rooms or brothels for weeks or months, drugged, terrorized, and raped repeatedly. These continual abuses make it easier for the traffickers to control their victims. The captives are so afraid and intimidated that they rarely speak out against their traffickers, even when faced with an opportunity to escape.⁷

It is assumed that if an individual knows that a prostitute was coerced into sex trafficking, then the individual will not have sex with the prostitute; however, this is not always the case.⁸ Individuals who have sex with girls involved in sex trafficking typically have knowledge of the sex trafficking industry and potentially even know that their prostitute has been sex trafficked.⁹ One instance of this abnormality is the continued sexual exploitation of young women by private military contractors.

Over the last decade there has been a rise in the military’s use of private military contractors (PMC) as the United States has sought to reduce its budget.¹⁰ The United States has acknowledged that this increase in PMC deployments has contributed to the issue of human trafficking, as there have been several negative side effects of the

⁴ *New ILO Global Estimate of Forced Labour: 20.9 Million Victims*, INT’L LABOUR ORG. (June 1, 2012), http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang-en/index.htm.

⁵ Walker-Rodriguez & Hill, *supra* note 3, at 2.

⁶ U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2006), <http://www.state.gov/documents/organization/66086.pdf>.

⁷ Walker-Rodriguez & Hill, *supra* note 3, at 3.

⁸ *Cf.* Angela Snell, Note, *The Absence of Justice: Private Military Contractors, Sexual Assault, and the U.S. Government’s Policy of Indifference*, 2011 U. ILL. L. REV. 1125, 1139–40 (2011) (noting that while the U.S. government implemented regulations to guarantee their employees did not engage in human trafficking, “it is doubtful that the regulations will accomplish their laudable objective, since [c]ontractors are unlikely to self-report.”) (alternation in original).

⁹ *Cf. id.* at 1139–40, 1160 (noting that even though the Department of Defense “adopted a zero-tolerance policy on trafficking activities for military personnel” trafficking scandals involving military contractors still persisted).

¹⁰ *See id.* at 1129.

implementation of PMCs.¹¹ First, there has been an increased number of incidences of PMCs involvement in labor and sex trafficking (often during peacekeeping operations).¹² Second, there is little to no way of policy enforcement to reprimand PMCs involvement in human sex trafficking.¹³ Third, incidences of PMCs involvement in sex trafficking have led to a plethora of bad publicity for the United States and its military.¹⁴

This Note first examines the military's increased use of Private Military Firms (PMF) and PMCs. This Note next discusses previous PMF and PMC labor and sex trafficking violations. This note further analyzes the current laws in place to prevent PMF and PMC involvement with human trafficking, and the implementation of prior policies. Likewise, this Note analyzes why current laws, such as the Trafficking Victims Protection Act (TVPA), have failed. Finally, this Note concludes by proposing a solution that will provide a way to prosecute PMFs and PMCs involved in sex trafficking violations while forcing governmental agencies to cut ties with PMFs and PMCs that violate trafficking laws.

I. HISTORY

A. *History of Military Sexual Exploitation*

“Throughout history, women have been treated as spoils of war; wherever there has been military occupation, incidents of rape and sexual assault have been prevalent. . . . [S]exual abuse of women has been regarded as an inevitable feature of war.”¹⁵ Over time, the nexus between military deployment and sexual assault has not diminished.¹⁶ Even today,

¹¹ See *Enforcing U.S. Policies Against Trafficking in Persons: How Is the U.S. Military Doing?: Briefing Before the Comm'n on Sec. & Cooperation in Eur. & the H. Armed Servs. Comm.*, 108th Cong. 4, 7 (2004) (statement of Rep. Christopher H. Smith, Chairman, Comm'n on Sec. and Cooperation in Eur., and Ambassador John R. Miller, Director, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State).

¹² See *id.* at 2, 7.

¹³ See *id.* at 4 (statement of Rep. Christopher H. Smith, Chairman, Comm'n on Sec. and Cooperation in Eur.).

¹⁴ See *id.* at 2–3.

¹⁵ Snell, *supra* note 8, at 1127–28, 1134. “In 2003, nearly thirty percent of female veterans from Vietnam through the first Gulf War surveyed by psychologist Anne Sadler and her colleagues said they were raped in the military. A 1995 study of female veterans reported that ninety percent had been sexually harassed, which was defined broadly as anything from being pressured for sex to being leered at by fellow service members. Military reports placed the number of sexual assaults in the military at 2670, but the Pentagon itself estimates that eighty to ninety percent of military sexual assaults are never reported and that the figure given is probably grossly inaccurate.” *Id.* at 1133.

¹⁶ See *id.* at 1158–59. See also Mindy Kotler, *The Comfort Women and Japan's War on Truth*, N.Y. TIMES (Nov. 14, 2014), http://www.nytimes.com/2014/11/15/opinion/comfort-women-and-japans-war-on-truth.html?_r=0 (discussing the Japanese military's official policy of using comfort women during WWII, and recent attempts by the Japanese government to discredit the historical record).

the effects of military deployment in otherwise cold conflicts nevertheless negatively impact women.¹⁷ Recently, a Department of Defense (DOD) report on human trafficking showed women being rushed to an area of war by traffickers to meet the needs of the military personnel stationed in the area.¹⁸ The culture of the military and its views and actions towards women and sexuality are largely to blame for these demoralizing problems.¹⁹ The recent trend towards utilizing PMCs in place of military personnel has intensified hostile actions towards women in various PMC job locations since PMCs often carry the same cultural views towards women;²⁰ yet there is a lack of current legislation to provide for efficient and adequate prosecution of PMC involvement in human trafficking.²¹

B. Increase in the Use of Private Military Contractors

Since the end of the Cold War, in an effort to reduce its budget and fill a void left by a reduction in the size of its military, the United States has increased the number of PMCs.²² One study showed that in the Gulf War, the ratio of PMCs was one contractor company per every one hundred military members.²³ During the Iraq War, however, the ratio of PMCs increased to one contractor company per every ten military members.²⁴ In Iraq, “over 20,000 [PMCs were] securing key American installations, participating in armed raids against insurgents, and—most infamously—serving as interrogators in the occupation’s most notorious prisons.”²⁵ In 2012, there were more contractors than U.S. troops working in Afghanistan.²⁶ Today, PMCs are best known for their security work in both Afghanistan and Iraq as they have provided a wide array of services

¹⁷ Snell, *supra* note 8, at 1132.

¹⁸ See U.S. DEP’T OF DEF., ASSESSMENT OF DOD EFFORTS TO COMBAT TRAFFICKING IN PERSONS: PHASE II—BOSNIA-HERZEGOVINA AND KOSOVO 7 (2003), www.dodig.mil/FOIA/ERR/HT-Phase_II.pdf (discussing evidence of sex trafficking by various multinational military related personnel in post-conflict Bosnia and Herzegovia).

¹⁹ Snell, *supra* note 8, at 1132–33.

²⁰ See *id.* at 1133.

²¹ U.S. DEP’T OF DEF., *supra* note 18, at 7, 10.

²² Snell, *supra* note 8, at 1129.

²³ Laura A. Dickinson, *Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability Under International Law*, 47 WM. & MARY L. REV. 135, 149 (2005).

²⁴ *Id.*; see also MINORITY STAFF OF H.R. COMM. ON GOV’T REFORM, 109TH CONG., DOLLARS, NOT SENSE: GOVERNMENT CONTRACTING UNDER THE BUSH ADMINISTRATION 5, (Comm. Print 2006), <http://www.halliburtonwatch.org/reports/waxman0606.pdf>, (explaining that between 2000 and 2005, spending by the Department of Defense on contractor services rose by 102%, from \$133.5 billion to \$270 billion).

²⁵ Jon D. Michaels, *Beyond Accountability: The Constitutional, Democratic, and Strategic Problems with Privatizing War*, 82 WASH. U. L.Q. 1001, 1004 (2004).

²⁶ See David Isenberg, *Contractors in War Zones: Not Exactly “Contracting.”* TIME, Oct. 9, 2012, <http://nation.time.com/2012/10/09/contractors-in-war-zones-not-exactly-contracting>.

such as security, transportation, laundry, food services, policy development, weapon management, and military supervision from a range of locations.²⁷ The jobs given to PMCs are vast. They are not limited to one category, but cover every area of military operations. Given the overwhelming number of PMCs serving the United States, the ever-increasing issue is effective supervision and efficient prosecution of PMFs and PMCs when they commit human trafficking offenses.

C. Supervision of Private Military Contractors

Problematically, the increase in the United States' use of PMCs was not accompanied by a way to monitor PMCs. In actuality, no agency or governmental organization was responsible for tracking the numbers of PMCs in Iraq until 2003.²⁸ One congressional study showed that of the \$206 billion paid to contractors in both Iraq and Afghanistan, a conservative estimate of \$31 billion to \$60 billion of that was “waste.”²⁹ The root of the problem is believed to be “excessive reliance on badly supervised private contractors indulging in ‘vast amounts of spending for no benefit.’”³⁰ At one point, the DOD Inspector General reported “government officials who had entered into contracts with private companies, such as Halliburton, failed to institute sufficient surveillance plans on eighty-seven percent of contracts reviewed and failed to document contractor performance in forty-three percent of contracts

²⁷ Martha Minow, *Outsourcing Power: Privatizing Military Efforts and the Risks to Accountability, Professionalism, and Democracy*, in GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY 110, 111–12 (Jody Freeman & Martha Minow eds., 2009).

²⁸ Snell, *supra* note 8, at 1131. See also Chia Lehnardt, *Private Military Companies and State Responsibility*, in FROM MERCENARIES TO MARKET: THE RISE AND REGULATION OF PRIVATE MILITARY COMPANIES 139, 139–40 (Simon Chesterman & Chia Lehnardt eds., 2007). But see U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-966, REBUILDING IRAQ: DOD AND STATE DEPARTMENT HAVE IMPROVED OVERSIGHT AND COORDINATION OF PRIVATE SECURITY CONTRACTORS IN IRAQ, BUT FURTHER ACTIONS ARE NEEDED TO SUSTAIN IMPROVEMENTS 4–6 (2008) (finding that the Department of Defense and the U.S. Department of State have taken steps to increase contractor oversight); David Isenberg, *Contractor Oversight Is Improving*, UPI (Aug. 29, 2008, 6:47 PM), http://www.upi.com/Top_News/Special/2008/08/29/Contractor-oversight-is-Improving/UPI-17311220050031/ (indicating that oversight over contractors is improving in Iraq); but cf. *Private Security Contractor Oversight and Accountability Concerns, Iraqi Refugee Needs Will Persist Past President's Remarks*, HUMAN RIGHTS FIRST (Aug. 31, 2010), <http://www.humanrightsfirst.org/media/usls/2010/alert/648/index.htm> (showing that the amount of oversight is still lacking in some respects: “To date, there remains a serious gap in the law that does not give U.S. courts jurisdiction over all private security contractors employed by the State Department.”).

²⁹ Editorial, *Runaway Spending on War Contractors*, N.Y. TIMES, Sept. 17, 2011, http://www.nytimes.com/2011/09/18/opinion/sunday/runaway-spending-on-war-contractors.html?_r=0.

³⁰ *Id.* (quoting the Commission on Wartime Contracting, a bipartisan panel established by Congress, which conducted a three-year study).

reviewed.”³¹ This allowed PMCs to capitalize on profits earned due to corruption as the United States sought to procure enough PMCs to reduce military spending and fill employment gaps.³²

Improper PMC supervision has had consequences beyond financial misconduct. In fact, financial misconduct was a gateway to several other negative consequences resulting from the absence of proper PMC supervision.³³ Arguably, one of the largest problems with the increased use of PMCs has been the corresponding increase in PMC human trafficking violations.

II. THE PROBLEM

A. *Military Contractor Companies’ Violations*

1. DynCorp

DynCorp International [hereinafter DynCorp], is a PMF that is recognized as one of the United States top twenty-five service providers.³⁴ Though the United States continues to use DynCorp, this company has been the subject of several scandals in recent history.³⁵ These scandals include, but are not limited to, seeking double reimbursement for travel expenses, double charging for vacation pay, failure to return payroll expenses, bribes to officials through its subcontractors to expedite deliverance of visas and licenses, overcharging for fuel, assigning individuals jobs that they were not qualified for³⁶, and defrauding the United States.³⁷ Remarkably, a previous employee, in a civil complaint, alleged ten violations that DynCorp had committed in its professional

³¹ Snell, *supra* note 8, at 1131.

³² *Id.* at 1129–30.

³³ *Id.* at 1131.

³⁴ Kelly O’Meara, *US: DynCorp Disgrace*, COPRWATCH, (Jan. 14, 2002), <http://www.corpwatch.org/artcile.php?id=11119>.

³⁵ Laura K. Donohue, *The Shadow of State Secrets*, 159 U. PA. L. REV. 77, 118–19 (2010).

³⁶ *Id.* at 118–119, 119 n.183. See also Heather Carney, Note, *Prosecuting the Lawless: Human Rights Abuses and Private Military Firms*, 74 GEO. WASH. L. REV. 317, 324–25 (2006) (quoting Barry Yeoman, *Dirty Warriors*, MOTHER JONES, Nov./Dec. 2004, at 32) (“Most PMFs perform little background screening on prospective employees, particularly in filling the growing need for services in Iraq. ‘With pressure to quickly fill thousands of jobs, many companies have recruited former police officers and soldiers who engaged in human rights violations—including torture and illicit killings—for regimes such as apartheid South Africa, Augusto Pinochet’s Chile, and Slobodan Milosevic’s Yugoslavia.’”).

³⁷ Donohue, *supra* note 35, at 119 n.181 (“[E]stimating that DynCorp may have overcharged the government by as much as \$600,000, with a potential additional claim of \$85,000.”); see OFFICE OF THE SPECIAL INSPECTOR GEN. FOR IRAQ RECONSTRUCTION, JANUARY QUARTERLY AND SEMIANNUAL REPORT 21 (2005), http://www.sigir.mil/files/quarterlyreports/January2005/Report_-_January_2005.pdf.

capacity.³⁸

One of the most egregious violations by DynCorp was its involvement with the human sex trafficking industry in Bosnia in the late 1990s. DynCorp was involved in various sex crimes such as trafficking girls as young as twelve years old while frequenting and even running prostitution rackets.³⁹ At a minimum, DynCorp was involved in prostitution.⁴⁰ However, reports have revealed that members of DynCorp were actively involved in trafficking women and girls into prostitution.⁴¹ These violations came to light after two DynCorp employees, Ben Johnston, an aircraft mechanic for DynCorp, and Kathryn Bolkovac, a United Nations International Police Task Force (IPTF) monitor, came forward with stories of coworkers engaging in human sex trafficking.⁴² Bolkovac realized that the men that worked beside her were involved in the trafficking of girls when a man she was training with mentioned that he “knew where to find really nice twelve to fifteen year olds.”⁴³ This revelation was confirmed after Bolkovac interviewed several women and girls in Bosnia.⁴⁴ While serving in her role as an IPTF monitor, Bolkovac was assigned the job of investigating the trafficking of young girls into prostitution in Bosnia.⁴⁵ Bolkovac visited several brothels and observed first-hand the interactions between her coworkers and the girls that had

³⁸ United States *ex rel.* Longest v. DynCorp, No. 03-0816, 2006 WL 47791, at *2 (M.D. Fla. Jan. 9, 2006) (“These ten schemes included: seeking double reimbursement for travel expenses; seeking reimbursement for inflated or unearned per diem, danger pay, and post differential allowances; charging the Government for services without verifying documentation, such as time cards; seeking reimbursement for employee living expenses such as cable television and lawn services that were not payable under the INLEA Contract; failing to return relocation expenses advanced by the Government when employees did not relocate or resigned shortly after relocating; failing to return payroll expenses advanced by the Government but never paid by DynCorp; seeking reimbursement for severance payments and associated attorneys' fees, which were not payable under the INLEA Contract; seeking reimbursement for employee expenses without supporting documentation; seeking reimbursement for compensation to unapproved employees; charging the Government for purported expenses that were actually embezzled by a DynCorp employee, and failing to reimburse the Government upon discovering the embezzlement; and seeking reimbursement for a variety of other general expenses either not earned or not permitted under the INLEA Contracts, including double-charging for vacation pay, seeking reimbursement for rental car damages that were paid by an insurance company, and seeking reimbursement for employees' personal travel and cell phone expenses.”).

³⁹ Donohue, *supra* note 35, at 118.

⁴⁰ *See id.*

⁴¹ *Id.*

⁴² *See O'Meara, supra* note 34.

⁴³ *Bolkovac: Male Colleagues Purchased Girls in Bosnia*, BBC (Jan. 27, 2011), <http://news.bbc.co.uk/2/hi/programmes/hardtalk/9377841.stm> (video interview by Sarah Montague with Kathryn Bolkovac).

⁴⁴ *Id.*

⁴⁵ *Id.*

been brought in from other countries and placed into horrific circumstances within the sex trafficking industry.⁴⁶ In addition to frequenting these bars and soliciting services from the victims, some of her coworkers even falsified passports and purchased girls outright to take home with them.⁴⁷ Bolkovac, later referred to as a whistleblower, came forward with her information in an effort to stop the crimes from being committed by peacekeepers that were actively engaging in the very crime that they were employed to prevent.⁴⁸ DynCorp's immediate reaction to reports of these crimes was to "fire the whistle-blowers."⁴⁹ As a result, Johnston was fired and placed into protective custody before leaving the country several days later.⁵⁰ Bolkovac was demoted from her position, and later dismissed from DynCorp and forced to flee the county.⁵¹ In Bolkovac's recount of the incident, she stated in her book *The Whistleblower: Sex Trafficking, Military Contractors, and One Woman's Fight for Justice*:

[I was] a police investigator certified in forensic science, [and] I was contracted to work on human rights abuses. When I was promoted to UN Headquarters to oversee all cases of domestic abuse, sexual assault, and human trafficking throughout Bosnia, my case files started disappearing on a routine basis from the Internal Affairs office. Files upon files of evidence we human rights officers, and even local Bosnian police, had collected never saw the light of day: victim statements, license plate numbers, identifying badges, names, tattoos, and even instant photographs.⁵²

Even more horrific than this occurrence taking place is the reality that none of the individuals that took part or were associated with this act ever had to face the consequences.⁵³

In 2009, DynCorp was once again placed in the spotlight after its employees paid a seventeen year old Bacha Bazi performer for

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Snell, *supra* note 8, at 1127.

⁵⁰ *Hopes Betrayed: Trafficking of Woman and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, HUMAN RIGHTS WATCH 66 (Nov. 2002), <http://www.hrw.org/reports/2002/bosnia/Bosnia1102.pdf>.

⁵¹ *Bolkovac*, *supra* note 43.

⁵² KATHRYN BOLKOVAC & CARI LYNN, *THE WHISTLEBLOWER: SEX TRAFFICKING, MILITARY CONTRACTORS, AND ONE WOMAN'S FIGHT FOR JUSTICE* 8–9 (2011).

⁵³ Snell, *supra* note 8, at 1126.

entertainment.⁵⁴ “Bacheh-baazi” is a practice indicative of child prostitution and sexual slavery where children are sold, in this case to DynCorp employees, for sexual entertainment.⁵⁵ Though DynCorp fired four employees as a result of this incident, neither DynCorp nor its employees ever faced criminal charges.⁵⁶

Despite its history of violations, DynCorp has continued to be awarded new contracts worth millions of dollars. Directly after this incident, DynCorp was awarded a \$250 million dollar contract “to provide training to the developing Iraqi police force.”⁵⁷ DynCorp even executed a contract with the Department of State (DOS) to run Iraqi prisons.⁵⁸ Today, “DynCorp is the largest recipient of DOS reconstruction funding in Afghanistan, accounting for sixty-nine percent of contract money awarded since 2002.”⁵⁹ Justice was not served during this peacekeeping mission in Bosnia due to the corrupt nature of several DynCorp employees and the United States’ inability to effectively implement a policy to deter PMFs and PMCs from committing such behavior.⁶⁰

2. Abu Ghraib

The devastating events that took place at Abu Ghraib are yet another instance of what some may classify as sex trafficking violations involving PMCs. Reports and photographs depict prisoners of Abu Ghraib being raped and sodomized at the hands of United States military personnel,

⁵⁴ Ellen Nakashima, *Amid Reviews, DynCorp Bolsters Ethics Practices*, WASHINGTON POST (July 27, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/26/AR2009072602358.html>; see *US Embassy Cables: Afghan Government Asks US to Quash ‘Dancing Boys’ Scandal*, THE GUARDIAN (Dec. 2, 2010, 5:30 PM), <http://www.theguardian.com/world/us-embassy-cables-documents/213720>; Ali Latifi, *Ten Years On, Young Afghans Still Lack Basics*, ALJAZEERA (May 14, 2011, 7:44 PM), <http://www.aljazeera.com/indepth/features/2011/05/201151113246797936.html>.

⁵⁵ Nakashima, *supra* note 54; Latifi, *supra* note 54.

⁵⁶ Nakashima, *supra* note 54.

⁵⁷ Snell, *supra* note 8, at 1126–27 (“At the time of the Bosnia incident, the means available for holding PMCs accountable for crimes committed abroad were either nonexistent or completely inadequate to the task of bringing to justice private actors acting on behalf of the U.S. government abroad. Liability depended on a variety of factors, including the laws of the country where the crime took place and the possible existence of an agreement between U.S. military officials and the government of the host country. If committed today, these crimes could face sanction only if committed within the context of war.”).

⁵⁸ Carney, *supra* note 36, at 326.

⁵⁹ Jessica Schulberg, *The American Government is Funding Human Trafficking*, NEW REPUBLIC (Nov. 14, 2014), <http://www.newrepublic.com/article/120269/contractors-violate-us-zero-tolerance-policy-human-trafficking>.

⁶⁰ Snell, *supra* note 8, at 1126–27.

and employees of CACI International, Inc. (CACI),⁶¹ a Virginia-based PMF and Titan Corporation (Titan), a California-based PMF.⁶²

As the Abu Ghraib prison authorities were not adequately trained, military intelligence officers and PMCs began ordering military police to set the conditions for detainee interrogations.⁶³ As a result, prison guards and interrogators used forced nudity, rape, and sexual assault as a means to intimidate the prisoners.⁶⁴ One of the detainees gives his account of the events that unfolded at Abu Ghraib as follows:

They stripped me of all my clothes, even my underwear. They gave me woman's underwear that was rose color with flowers in it, and they put the bag over my face. One of them whispered in my ear, "Today I am going to f*** you," and he said this in Arabic. . . . He cuffed my hands with irons behind my back to the metal of the window, to the point my feet were off the ground and I was hanging there for about 5 hours just because I asked about the time, because I wanted to pray. And then they took all my clothes and he took the female underwear and he put it over my head. After he released me from the window, he tied me to my bed until before dawn.⁶⁵

Several similar accounts are told by fellow Abu Ghraib detainees.⁶⁶ Military personnel and PMCs forced prisoners to wear woman's underwear over their heads as part of a tactic known as "ego down"—a

⁶¹ *CACI Profile*, CACI, <http://www.caci.com/about/profile.shtml> (last visited Oct. 28, 2015) ("CACI provides information solutions and services in support of national security missions and government transformation for Intelligence, Defense, and Federal Civilian customers. A Fortune magazine World's Most Admired Company in the IT Services industry, CACI is a member of the Fortune 1000 Largest Companies, the Russell 2000 Index, and the S&P SmallCap 600 Index. CACI provides dynamic careers for over 16,200 employees in 120 offices worldwide."); see also Carney, *supra* note 36, at 325, 328 ("As CACI, one of the PMFs operating at Abu Ghraib, was scrambling to fill interrogator positions in Iraq, it began decreasing its required experience from seven years to five years and then to two years. According to one CACI interrogator, he was hired over the phone without meeting anyone.")

⁶² See *Titan Systems International Inc.*, UC SAN DIEGO, <http://libraries.ucsd.edu/sdta/companies/titan.html> (last visited Oct. 28, 2015). See also *L-3 Communications Acquires Titan*, DEF. INDUSTRY DAILY (June 8, 2005), <http://defenseindustrydaily.com/l3-communications-acquires-titan-0663>.

⁶³ See generally Snell, *supra* note 8, at 1131–32; Carney, *supra* note 36, at 324–25, 329.

⁶⁴ Seymour M. Hersh, *Torture at Abu Ghraib*, NEW YORKER (May 10, 2004), <http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>.

⁶⁵ Scott Higham & Joe Stephens, *New Details of Prison Abuse Emerge: Abu Ghraib Detainees' Statements Describe Sexual Humiliation and Savage Beatings*, WASHINGTON POST (May 21, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A43783-2004May20.html> (citing original transcripts: <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/151108.pdf>).

⁶⁶ *Id.*

tactic that amounts to abuse and sexual harassment.⁶⁷ More troubling yet is that several of these prisoners were innocent.⁶⁸

Though it is unclear how many PMCs were involved in the Abu Ghraib scandal, “at least 37 interrogators from [PMFs] were operating in the prison.”⁶⁹ Titan employed all the translators who made communications with the prisoners possible and, “Employees from CACI . . . made up more than half of all the analysts and interrogators at Abu Ghraib.”⁷⁰ A report issued by Army Major General Antonio Taguba placed “as many as four civilian contractors in the Abu Ghraib prison abuse scandal.”⁷¹ One contractor was even accused of raping a young Iraqi boy who was a prisoner of Abu Ghraib.⁷² An investigation of Steven Stephanowicz, a CACI employee, revealed that he had lied about the details of his interrogations with detainees, including where and how the interrogations took place, and his knowledge of the abuse taking place.⁷³ The investigation further revealed that Stephanowicz had personally instructed military police to commit various types of “abuse” on the detainees.⁷⁴

Though United States military personnel have been prosecuted for their involvement at Abu Ghraib, no PMFs or PMCs have ever been prosecuted or reprimanded.⁷⁵ Further, the United States Supreme Court declined to hear appeals from a group of 250 Iraqis who sought to bring a lawsuit against CACI and Titan with claims of abuse by interrogators and translators within the prison.⁷⁶ The lower court dismissed the suit on the grounds that the companies had sovereign immunity due to their status as government contractors pursuant to the Battlefield Preemption Doctrine, which relieves PMFs and PMCs from tort claims that arose as a

⁶⁷ Josh White, *Abu Ghraib Tactics Were First Used at Guantanamo*, WASHINGTON POST (July 14, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/13/AR2005071302380.html>.

⁶⁸ See Hersh, *supra* note 64.

⁶⁹ Carney, *supra* note 36, at 328.

⁷⁰ *Id.* at 328–29.

⁷¹ *Id.* at 328. See *Civilian Contractor Involvement in Iraqi Prison Abuse*, CNN (Sept. 8, 2004), http://transcripts.cnn.com/TRANSCRIPTS/0409/08/i_ins.01.htm (reporting that in interviews with over 150 Iraqis, the detainees indicated that the civilian translators were often “worse than U.S. troops.”).

⁷² Carney, *supra* note 36, at 328.

⁷³ *Id.* at 329.

⁷⁴ *Id.*

⁷⁵ *Id.* at 318.

⁷⁶ *Saleh v. Titan Corp.*, 131 S. Ct. 3055 (2011), *cert. denied*, 580 F.3d 1 (D.C. Cir. 2009).

result of wartime conduct.⁷⁷ Further, the United States awarded Titan a \$164 million contract and awarded CACI a \$16 million contract despite these horrific acts.⁷⁸

3. PMCs in Afghanistan

The International Organization for Migration released a field survey report that revealed several Chinese women who had been the victims of human sex trafficking in Afghanistan.⁷⁹ Faye, one of the victims, was a woman from China looking to find work.⁸⁰ A friend suggested to Faye that she go to Afghanistan to find a job.⁸¹ Faye, having no money for travel expenses, was introduced to a man who would take care of all of her travel expenses and in return, she would owe him \$1500 for his services.⁸² Upon arrival in Afghanistan, Faye started working at a restaurant.⁸³ This was seemingly normal until a few weeks later when Faye's boss told her that he owed \$800 for her visa extension and she would have to start sleeping with customers to pay off this debt.⁸⁴ Her boss threatened to "call the police and have her arrested if she refused."⁸⁵ A raid of the restaurant later brought Faye to her freedom and uncovered that the restaurant was, in fact, a cover up for a brothel.⁸⁶ This led to further raids that recovered ninety women from similar situations.⁸⁷ An investigation revealed that most of the men that frequented these brothels were "western men" working for PMFs that had "poured into Afghanistan" as a result of the

⁷⁷ Saleh v. Titan Corp., 580 F.3d 1, 2, 7, 15–16 (D.C. Cir. 2009) (citing Boyle v. United Technologies Corp., 487 S. Ct. 2510 (1988)); see Steve Vladeck, *Immunity vs. Preemption in the Fourth Circuit Torture Cases—And Why That Distinction Matters*, LAWFARE (Dec. 20, 2011, 12:16 PM), <http://www.lawfareblog.com/2011/12/immunity-vs-preemption>.

⁷⁸ Peter Beaumont, *Abu Ghraib Abuse Firms Are Rewarded*, THE GUARDIAN (Jan. 16, 2005, 8:15 PM), <http://www.theguardian.com/world/2005/jan/16/usa.iraq>.

⁷⁹ Brittany Warren, Note, "If You Have a Zero-Tolerance Policy, Why Aren't You Doing Anything?": *Using the Uniform Code of Military Justice to Combat Human Trafficking Abroad*, 80 GEO. WASH. L. REV. 1255, 1257 (2012).

⁸⁰ *Id.*; see INT'L ORG. FOR MIGRATION, *TRAFFICKING IN PERSONS IN AFGHANISTAN: FIELD SURVEY REPORT* 37–38 (2008).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Warren, *supra* note 79, at 1257; INT'L ORG. FOR MIGRATION *supra* note 80, at 38.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Warren, *supra* note 79, at 1257; Nick Schwellenbach & Carol D. Leonnig, *Despite Allegations, No Prosecutions for War Zone Sex Trafficking*, CTR. FOR PUB. INTEGRITY (July 17, 2010, 9:03 PM), <http://www.publicintegrity.org/2010/07/17/2609/despite-allegations-no-prosecutions-war-zone-sex-trafficking>.

2001 invasion.⁸⁸ A whistleblower within one of the PMFs revealed that his coworker admitted and bragged about owning women within these brothels.⁸⁹ However, no one was prosecuted as a result of this incident as neither the Federal Bureau of Investigations nor the DOS ever sought to prosecute this matter.⁹⁰

In 2008, a warehouse operated by Najlaa International Catering, a KBR subcontractor, contained more than a thousand workers who appeared to be victims of human trafficking.⁹¹ Despite an investigation confirming these findings, Najlaa retained its contract and later received an additional multimillion dollar contract.⁹² Just one year later, in 2009, James Gordon, an Armor Group employee, was forced to resign after reporting that his coworkers had bragged about frequenting brothels and owning women.⁹³ The link between PMFs and PMCs and human sex trafficking continues today as allegations of PMC interactions with human trafficking activities continue to come to light.

B. *The Reasoning*

PMCs working under PMFs continue to commit horrific acts such as the ones portrayed above with little or no repercussion. This is likely a result of (1) PMF connections to United States governmental agencies and lobbying efforts, and (2) a lack of government oversight.⁹⁴ Due to the large number of former military personnel employed by PMFs, these companies have strong connections with United States governmental agencies, allowing them to enhance their political status.⁹⁵ Equally as problematic is the lack of government oversight of PMFs.⁹⁶ PMFs are not held accountable for hiring practices, and the PMCs that they hire are not

⁸⁸ Warren, *supra* note 79, at 1257; Alisa Tang, *Chinese Prostitutes Imported to Afghanistan*, USA TODAY (June 14, 2008, 12:18 PM), http://www.usatoday.com/news/world/2008-06-14-2605427433_x.htm.

⁸⁹ Warren, *supra* note 79, at 1257; Schwellenbach & Leonnig, *supra* note 87.

⁹⁰ Warren, *supra* note 79, at 1258; Schwellenbach & Leonnig, *supra* note 87.

⁹¹ Sarah Stillman, *The Invisible Army*, NEW YORKER, June 6, 2011, at 61.

⁹² *Id.*

⁹³ Warren, *supra* note 79, at 1263; Schwellenbach & Leonnig, *supra* note 87; see *Gordon v. Armor Group, N.A.*, No. 1:10cv002, 2010 WL 3418219, at *1–3 (E.D. Va. Aug. 27, 2010); *Armor Group North America and Its Affiliates Pay \$7.5 Million to Resolve False Claims Act Allegations*, DEP'T OF JUST. (July 7, 2011), <http://www.justice.gov/opa/pr/2011/July/11-civ-889.html> (discussing how James Gordon brought a suit against Armor Group in April 2011, and received a settlement of \$1.35 million).

⁹⁴ See Carney, *supra* note 36, at 326.

⁹⁵ *Id.* (“PMFs also conduct extensive lobbying efforts and invest heavily in congressional and presidential campaigns.”). See also Barry Yeoman, *Soldiers of Good Fortune*, MOTHER JONES, May/June 2003 (“Many [PMFs] are staffed with retired military officers who are well connected at the Pentagon—putting them in a prime position to influence government policy and drive more business to their firms.”).

⁹⁶ See Carney, *supra* note 36, at 326.

required to follow the Military Code of Conduct as it is not applicable to civilian employees of government contractors.⁹⁷ Today, PMCs perform many functions that were historically performed by military personnel.⁹⁸ The PMF industry is now worth over \$100 billion a year, and its biggest client is the United States.⁹⁹

Though the United States is the largest client of PMFs, the United States has “failed to adequately supervise and regulate the industry.”¹⁰⁰ As a result, PMFs are able to easily shield themselves from liability and there is virtually no incentive to terminate PMCs that commit human trafficking violations due to the fear of reduced business efficiency.¹⁰¹ Human rights attorney, Steven Watt, stated, “The government says it has a zero tolerance policy, and yet there’s fairly credible allegations that these guys have been involved in trafficking and they continue to win government contracts. . . . It’s pretty far from a zero tolerance policy.”¹⁰² Sam McCahon, an attorney based in India, stated:

This is the only situation in which the government uses U.S. tax dollars to fund human trafficking. . . . It’s not that we’re idly sitting by; we’re actively paying for it. It’s like the U.S. government is the John, telling the pimp, “We need bodies here, but we aren’t going to look at how you got them, or if they are even getting paid.”¹⁰³

Failure to hold PMFs accountable has and will continue to lead to devastating consequences.

III. POLICY AND LEGISLATION

A. *History of Policy*

The original basis of addressing and prohibiting human trafficking was the Thirteenth Amendment, which prohibits slavery and involuntary servitude.¹⁰⁴ In 1910, Congress passed the first United States act

⁹⁷ *Id.* at 326–27; Yeoman, *supra* note 95.

⁹⁸ Carney, *supra* note 36, at 319.

⁹⁹ Robert Collier, *Global Security Firms Fill in as Private Armies/15,000 Agents Patrol Violent Streets of Iraq*, S.F. CHRON. (Mar. 28, 2004), <http://www.sfgate.com/news/article/Global-security-firms-fill-in-as-private-armies-2802997.php>; Yeoman, *supra* note 95.

¹⁰⁰ Carney, *supra* note 36, at 319.

¹⁰¹ See Carney, *supra* note 36, at 327.

¹⁰² Schulberg, *supra* note 59.

¹⁰³ *Id.*

¹⁰⁴ U.S. CONST. amend. XIII, § 1; John G. Bradbury, Note, *Human Trafficking and Government Contractor Liability: Is FAR 22.17 a Step in the Right Direction?*, 37 PUB. CONT. L.J. 907, 910 (2008).

specifically addressing human trafficking—the Mann Act.¹⁰⁵ However, neither the Thirteenth Amendment nor the Mann Act has an extra-territorial effect, as both apply only “within the United States, or any place subject to their jurisdiction.”¹⁰⁶ In 2002, President George W. Bush, in a National Security Presidential Directive, mandated a “zero-tolerance” policy toward trafficking in persons.¹⁰⁷ In addition, the DOD issued Department of Defense Instruction 2200.01 to deter DOD personnel from engaging in activities that may create a demand for human trafficking, such as hiring foreign prostitutes.¹⁰⁸ President Barack Obama reaffirmed this policy in 2010.¹⁰⁹

B. Current Policy

Today, there are four methods by which the United States may charge a PMF or PMC that has been implicated in a human trafficking violation outside of the United States. These are (1) the TVPA, (2) the Military Extraterritorial Jurisdiction Act (MEJA), (3) the Uniform Code of Military Justice (UCMJ), and (4) the National Defense Authorization Act §§ 1701-08 (NDAA).

1. Trafficking Victims Protection Act

The TVPA is the main piece of legislation used by the United States to prosecute those involved in human trafficking.¹¹⁰ The main objectives of the TVPA “are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹¹¹ The TVPA was first enacted in 2000,¹¹² and was

¹⁰⁵ Bradbury, *supra* 104, at 910 (“The Mann Act was a response to the panic of ‘white slavery,’ the belief that innocent white female victims were being transported to the United States and coerced into sex work. This is as an early example of the United States focusing on the problem of sexual trafficking and tying it to prostitution. The panic of white slavery evinced the public zeal to address sexual exploitation of women over other forms of trafficking.”).

¹⁰⁶ U.S. CONST. amend. XIII, § 1. *See* The White-Slave Traffic Act of 1910, 18 U.S.C. § 2421–2424 (2015).

¹⁰⁷ WHITE HOUSE, NATIONAL SECURITY DIRECTIVE No. 22 (2002), <http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf> (President Bush noted that the policy was “abolitionist” in nature and would require vigorous enforcement of the law).

¹⁰⁸ DEP’T OF DEF., INSTRUCTION NUMBER 2200.01: COMBATING TRAFFICKING IN PERSONS (2007), <http://www.dtic.mil/whs/directives/corres/pdf/220001p.pdf>.

¹⁰⁹ *See* Proclamation No. 8471, 75 Fed. Reg. 1267, 1267 (Jan. 4, 2010).

¹¹⁰ Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101–7112 (2000); *see* Margaret Maffai, Comment, *Accountability for Private Military and Security Company Employees That Engage in Sex Trafficking and Related Abuses While Under Contract with the United States Overseas*, 26 WIS. INT’L L.J. 1095, 1116 (2009).

¹¹¹ Trafficking Victims Protection Act § 7101(a).

¹¹² *Id.* §§ 7101–7112.

most recently reauthorized in 2013 under the Violence Against Women Reauthorization Act (VAWA), which amended the TVPA.¹¹³ The VAWA seeks to establish and strengthen:

[P]rograms to ensure that U.S. citizens do not purchase products made by victims of human trafficking. . . . It also puts into place emergency response provisions within the State Department to respond quickly to disaster areas . . . where people are particularly susceptible to being trafficked. . . . [and] strengthens collaboration with state and local law enforcement to ease charging and prosecuting traffickers.¹¹⁴

The TPVA permits the United States to prosecute those involved in “labor trafficking, sex trafficking of children, or sex trafficking of an adult by force, fraud, or coercion.”¹¹⁵ Until a 2005 amendment, the TPVA did not apply beyond the United States’ jurisdictional boundaries; however, once amended, the TPVA specifically applied to civilian employees working for the United States in foreign countries.¹¹⁶

Though the TPVA has made much progress on paper in establishing an authority that is able to reprimand PMCs engaged in human trafficking, the TPVA still falls short. There are “significant loopholes in the construction and enforcement of the TPVA” that prove to be problematic when it comes to enforcing the terms against PMCs in areas of contingency or peacekeeping operations.¹¹⁷

These shortfalls lie mainly in the TPVA’s narrow definitions and terminology. The TPVA is only able to prosecute “severe” forms of trafficking—those where the person involved has not yet reached

¹¹³ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in 42 U.S.C. § 13925(b)(13)(A)); *Current Federal Laws*, POLARIS, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/current-federal-laws> (last visited Oct. 29, 2015).

¹¹⁴ *Current Federal Laws*, *supra* note 113.

¹¹⁵ Warren, *supra* note 79, at 1264 (“The various punishments authorized under the TVPA include sentences of up to twenty years imprisonment for forced labor trafficking and life imprisonment for individuals who traffic children for commercial sex acts or adults for commercial sex acts through the use of force, fraud, or coercion.”); see Trafficking Victims Protection Act § 7101.

¹¹⁶ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 301(11), 119 Stat. 3558, 3562 (2006) (codified as amended at 22 U.S.C. §§7110).

¹¹⁷ Warren, *supra* note 79, at 1265.

eighteen, or trafficking by means of “force, fraud, or coercion.”¹¹⁸ A finding of “force” must include “rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.”¹¹⁹ “Coercion” is defined as “any scheme, plan, or pattern” that would cause one to believe that their lack of cooperation would result in serious harm or physical restraint.¹²⁰ The definition of coercion, in this case, is far too narrow.¹²¹ In applying the TVPA’s definition of coercion to a real life scenario, look to the debt bondage of girls trafficked into Bosnia. For example, the TPVA would not bring relief to victims who were trafficked from Bulgaria into Bosnia, and required to work off the cost of the journey and living expenses before being allowed to return to Bulgaria.¹²² This is because the TVPA’s narrow definition of coercion does not provide for all instances of debt bondage,¹²³ as debt bondage only rises to the level of coercion when the value of the services provided by the laborer “is not applied toward the liquidation of the debt, or the length and nature of those services are not respectively limited and defined.”¹²⁴ As the PMC trafficker did not use “force” or “coercion” as defined by the TVPA, the trafficker did not engage in a “severe form of trafficking” and thus cannot be prosecuted under the TVPA.¹²⁵

Equally as problematic is the fact that coercion under the TVPA requires “serious harm” which must be “sufficiently serious . . . to compel a reasonable person of the same background and in the same circumstance” to continue to perform the forced activity.¹²⁶ This definition assumes that up until one reaches the level of “severe force,” he or she was able to consent to the force being exerted.¹²⁷ Also, this definition of

¹¹⁸ Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101–7112, 7102 (2000), (“The term ‘severe forms of trafficking in persons’ means (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”).

¹¹⁹ Trafficking Victims Protection Act § 7101(b)(6).

¹²⁰ *Id.* § 7102(3)(B).

¹²¹ See April Rieger, Note, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 234, 249–50 (2007).

¹²² See Trafficking Victims Protection Act § 7102(3), (5). See generally Rieger, *supra* note 121, at 249 (stating that situations such as debt bondage are not accounted for in the TVPA).

¹²³ See Trafficking Victims Protection Act § 7102(3), (5).

¹²⁴ Maffai, *supra* note 110, at 1118.

¹²⁵ See *id.*

¹²⁶ 18 U.S.C. §§ 1589(c)(2), 1591(e)(4).

¹²⁷ See Jane Kim, Note, *Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry*, 51 VA. J. INT’L L. 443, 492 (2011).

coercion is problematic in that it is difficult to prove, creating a nearly insurmountable burden of proof on the victim.¹²⁸ Although in print the TVPA has come a long way in working towards prosecuting and preventing human trafficking, it cannot effectively prosecute PMFs and PMCs involved with sex trafficking due to its conspicuously narrow statutory definitions.¹²⁹

2. Military Extraterritorial Jurisdiction Act

The MEJA, passed in 2000, works collectively with the TVPA by allowing federal prosecutors to bring criminal charges against PMFs and PMCs that commit felonies while serving on DOD missions abroad—including prosecuting human trafficking violations.¹³⁰ While the purpose of the MEJA is to prevent those who accompanied, but were not employed by the United States military, from “get[ting] away with murder,”¹³¹ it is insufficient to stop human trafficking by PMFs and PMCs.¹³² First, the MEJA applies only to those “supporting the mission of the DOD,” which is not inclusive of all PMFs and PMCs.¹³³ Additionally, the United States attorneys that are responsible for handling MEJA prosecutions have to overcome significant hurdles to successfully prosecute a case, such as geographical distances, leading to the difficulty of gathering evidence and interviewing witnesses.¹³⁴ This leads to many problems, in part due to limited budgets. A senior fellow in foreign policy at the Brookings Institution, Peter Singer, stated, “No U.S. Attorney likes to waste limited budgets on such messy, complex cases 9,000 miles outside their district,

¹²⁸ See *id.* at 452 (noting that the Palermo Protocol “focuses on exploitation rather than coercion” and draws “no distinctions” between a victim who can prove she was coerced and one who cannot); see also *Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. 75–76 (2007) (statement of Dorchen A. Leidholdt, Director, Sanctuary for Families’ Center for Battered Women’s Legal Services arguing that the “force, fraud, or coercion” requirement wrongly puts the onus on the victim rather than the trafficker).

¹²⁹ Maffai, *supra* note 110, at 1122.

¹³⁰ See Military and Extraterritorial Jurisdiction Act of 2000, 18 U.S.C. §§3261(a)(1), 3267(1)(A) (2006). While its original language only covered Department of Defense contractors, MEJA was amended in 2004 to cover contractors of any governmental agency supporting the mission of the Department of Defense. See *id.* § 3267(1)(A).

¹³¹ 146 CONG. REC. 24896 (2000) (statement of Sen. Patrick Leahy).

¹³² See generally Margaret Prystowsky, *The Constitutionality of Court-Martialing Civilian Contractors in Iraq*, 7 CARDOZO PUB. L. POL’Y & ETHICS J. 45, 56–57 (2008) (noting that “MEJA remains untested in the context of civilian contractors.”).

¹³³ *Id.* at 56.

¹³⁴ Johnathan Finer, *Recent Developments: Holstering the Hired Guns: New Accountability Measures for Private Security Contractors*, 33 YALE J. INT’L L. 259, 263 (2008).

even if they were fortunate enough to have the evidence at hand.”¹³⁵ This is reflected in the minimal number of MEJA prosecutions, as only one contractor was ever reported to the Department of Justice for trafficking under the MEJA, and the contractor was not subsequently prosecuted due to “little appetite and investigative resources to go after these crimes.”¹³⁶

3. Uniform Code of Military Justice

In 2005, President Bush implemented an executive order adding “patronizing a prostitute” to Article 134 of the Manual for Courts-Martial, which includes a general prohibition against prostitution and pandering in the United States military.¹³⁷ The purpose of the executive order was to aid enforcement of the zero-tolerance policy on human trafficking by disciplining those who have “compelled, induced, enticed, or procured” a prostitute.¹³⁸ Article 134 and the executive order, however, are far from sufficient as both view human trafficking in terms of sex and prostitution, leaving out all other possibilities, such as labor trafficking.¹³⁹ Viewing trafficking as only prostitution and sexual slavery, in accordance with the executive order, takes away from anti-trafficking efforts by limiting the focus to only prostitution and sex slavery. This, in turn, becomes an ineffective policy for upholding all the DOD’s anti-trafficking policies.¹⁴⁰

Additionally, historically the UCMJ was only allowed as an aid in prosecuting civilians when they accompanied United States military personnel “in time of [declared] war.”¹⁴¹ However, in 2007, Congress amended the language of Article 2(a)(10) of the UCMJ to include an

¹³⁵ P.W. Singer, *The Law Catches Up to Private Militaries, Embeds*, DEFENSETECH (Jan. 3, 2007), <http://defensetech.org/2007/01/03/the-law-catches-up-to-private-militaries-embeds>; Schwellenbach & Leonnig, *supra* note 87 (quoting Stephen Paul Cullen, a former JAG attorney: “If you have a case where it will take a significant amount of effort to get the evidence to bring the case . . . it will be very hard for the Justice Department to do it.”).

¹³⁶ See U.S. DEPT OF STATE, 2011 TRAFFICKING IN PERSONS REPORT 21 (2011), <http://www.state.gov/documents/organization/164452.pdf>; see also Nick Schwellenbach, *Pentagon Contractor Employee Investigated for Human Trafficking, Fired . . . But No Prosecutions or Contract Terminations*, PROJECT ON GOV’T OVERSIGHT: BLOG (June 28, 2001, 10:37 AM), <http://pogoblog.typepad.com/pogo/2011/06/pentagon-contractor-employee-investigated-for-human-trafficking-fired.html> (asserting that “[e]xperts inside and outside the government told us there is little appetite and investigative resources to go after these crimes.”).

¹³⁷ Exec. Order No. 13,387, 70 Fed. Reg. 60,697, 60,700 (Oct. 17, 2005); MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 97 (2012) [hereinafter MCM].

¹³⁸ Exec. Order No. 13,387, *supra* note 137; MCM *supra* note 137, pt. IV, ¶ 97b(2)(b).

¹³⁹ See Warren, *supra* note 79, at 1260, 1274 (discussing how human trafficking is a larger problem that at times involves the exploitation of men, women, and children in both sex and non-sex sectors).

¹⁴⁰ See *id.* at 1274.

¹⁴¹ Uniform Code of Military Justice § 802(a)(10).

allowance for the prosecution of civilians during contingency operations.¹⁴² Despite these efforts, there has been much debate over the constitutionality of Article 2(a)(10), which has fostered ambiguity regarding its implications and execution in real life scenarios.¹⁴³

The UCMJ falls short as an aid to prosecuting sex trafficking not only in its wording and implications, but also in its penalties and sentencing. A violation of the UCMJ is punishable by up to five years in prison while a violation of the TVPA is punishable by a life term.¹⁴⁴

4. National Defense Authorization Act

The NDAA also addresses the issue of human trafficking associated with PMFs and PMCs.¹⁴⁵ The NDAA “seeks [to] limit human trafficking associated with government contractors” by “giv[ing] governmental agencies the ability to terminate, without penalty, any contract or grant with any organization or individual that engages in human trafficking.”¹⁴⁶ The NDAA further provides that “all grants and contracts worth more than \$500,000 have a written certification that no party in the transaction will engage in or support human trafficking practices” and “establishes methods of reporting and investigating possible instances of human trafficking associated with government contracts and grants.”¹⁴⁷

Though the NDAA is the most recent piece of legislation enacted to prohibit PMFs and PMCs from engaging in human trafficking by providing a way to prosecute such violations, this piece of legislation fails on many levels. If governmental agencies wanted to end contracts with PMFs and PMCs that have committed human trafficking violations, they would have ended contracts with firms such as DynCorp and Halliburton

¹⁴² *Id.* Warren, *supra* note 79, at 1255–56.

¹⁴³ See, e.g., Katherin J. Chapman, Note, *The Untouchables: Private Military Contractors' Criminal Accountability under the UCMJ*, 63 VAND. L. REV. 1047, 1071–72, 1074 (2010) (concluding that the Constitution allows courts-martial jurisdiction over military contractors when certain limitations are implemented); Andres Healy, Note, *The Constitutionality of Amended 10 U.S.C. § 802(A)(10): Does the Military Need a Formal Invitation to Reign in “Cowboy” Civilian Contractors?*, 62 FLA. L. REV. 519, 543 (2010) (arguing that the Constitution permits the expansion of military justice to civilians accompanying armed forces outside the context of a declared war). *But see* Anna Manasco Dionne, Note, *“In Time of Whenever the Secretary Says”: The Constitutional Case Against Court-Martial Jurisdiction over Accompanying Civilians During Contingency Operations*, 27 YALE L. & POL'Y REV. 205, 237–38 (2008) (arguing that Congress lacks either the rulemaking or war powers authority to extend UCMJ jurisdiction over civilian contractors).

¹⁴⁴ MCM, *supra* note 137, pt. IV, ¶ 97e(1); 18 U.S.C. § 1591(b).

¹⁴⁵ *Current Federal Laws*, *supra* note 113; H.R. 4310, 112th Cong. §§ 1701–08 (2012) (enacted).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

once their terms concluded.¹⁴⁸ Conversely, governmental agencies have continued to award these companies new contracts despite previous violations.¹⁴⁹ Further, no PMFs or PMCs have been disciplined under the Federal Acquisition Regulation (FAR), which provides “the set of rules for government purchases of goods and services.”¹⁵⁰ Thus, even though there have been numerous previous violations of anti-trafficking laws by PMFs and PMCs, there are no official records of these violations, which allows PMFs and PMCs with previous violations to continue to be eligible for million dollar government contracts.¹⁵¹ The FAR rests on the premise that governmental agencies will end all business with PMFs and PMCs upon receiving notification that these companies have been involved in human trafficking.¹⁵² However, time after time that this has not been the case as governmental agencies continue to award PMFs and PMCs with million dollar contracts despite their sex trafficking violations.¹⁵³

Current legislation is not effective in bringing justice to PMFs and PMCs that are involved in human trafficking violations.¹⁵⁴ It is due to the current legal framework that horrific human trafficking violations by PMFs and PMCs continue to go unnoticed and unprosecuted.¹⁵⁵ The next portion of this Note advocates for an amendment to the NDAA. Such an amendment would strictly regulate the practices of governmental agencies that deal with PMFs and PMCs, and thereby assist with bringing an end to the ongoing sex trafficking violations committed by PMFs and PMCs.

IV. THE SOLUTION

As the law stands today, it is clear that the numerous legislative and executive attempts to combat human trafficking discussed above are insufficient to protect persons abroad from exploitation and abuse by PMFs and PMCs. As this Note asserts, there is a definite link between PMFs and PMCs and sex trafficking. An alteration in the current legal framework is necessary to move forward and provide justice for victims of human trafficking.

¹⁴⁸ See generally Stillman, *supra* note 91, at 61–62 (stating that PMF Najlaa International Catering kept its contracts and even procured new contracts despite its involvement in human trafficking.).

¹⁴⁹ Schulberg, *supra* note 59.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Cf. JOINT CONTRACTING COMMAND IRAQ/AFG., ACQUISITION INSTRUCTION 20, 47 (2009), <https://acc.dau.mil/adl/enUS/268090/file/41371/jccia%20acq%20instruction%2020090301.pdf>.

¹⁵³ See Schulberg, *supra* note 59.

¹⁵⁴ See Carney, *supra* note 36, at 319–20.

¹⁵⁵ *Id.*

A. *Amending the National Defense Authorization Act*

Though the United States was on the right track to implement an effective policy while working on the NDAA, its language is far too relaxed. The current act “seeks [to] limit human trafficking associated with government contractors” by “giv[ing] governmental agencies the ability to terminate, without penalty, any contract or grant with any organization or individual that engages in human trafficking.”¹⁵⁶ As previously pointed out, governmental agencies, though given the option to terminate PMF or PMC contracts, likely will not choose this option.¹⁵⁷ Finding and obtaining a new contract with a new PMF or PMC may provide more difficulties to governmental agencies than they see worthwhile.¹⁵⁸ For this reason, the NDAA should be amended to require that governmental agencies terminate any contract or grant with any organization or individual that directly or indirectly engages in human trafficking.¹⁵⁹ This termination should be followed with a five-year ban from future contracts and a lifetime ban if PMFs or PMCs are found to have repeated sex trafficking violations.¹⁶⁰

Additionally, the current NDAA provides that “all grants and contracts worth more than \$500,000 have a written certification that no party in the transaction will engage in or support human trafficking practices.”¹⁶¹ The NDAA should be amended to provide that all grants and contracts between governmental agencies and PMFs must have a written certification that no party in the transaction will engage in, benefit from, or support human trafficking practices, regardless of the contract price.¹⁶² Further, this should accompany a strict policy prohibiting PMCs from soliciting any form of prostitution, and subsequently require PMFs to

¹⁵⁶ *Current Federal Laws, supra* note 113.

¹⁵⁷ Schulberg, *supra* note 59.

¹⁵⁸ *Cf. Carney, supra* note 36, at 323–24 (explaining the advantages and efficiencies of continuing to use PMFs: “[I]t is cheaper . . . to contract out services as it cuts down on the total cost of training and maintaining a skill set that has to evolve and change over time.”).

¹⁵⁹ *See Snell, supra* note 8, at 1161–62.

¹⁶⁰ *See generally id.* (suggesting that the UCMJ should be amended).

¹⁶¹ *Current Federal Laws, supra* note 113.

¹⁶² *See Dickinson, supra* note 23, at 206–07, 229 (proposing that contracts should use more explicit terms to establish a measure of legal accountability especially as it pertains to including “at minimum, clear requirements that contractors abide by international human rights and humanitarian law standards applicable to government actors For example, the government could . . . specify that when a contractor is not performing well under the contract, government monitoring can increase, and, if problems rise to a certain level, the government can actually take over or rescind the contract. Contracts could also provide for fines when contract employees engage in abuses. . . . Finally, . . . independent entities could provide accreditation, certifying that private contractors have offered proof that they will comply with the laws of war and human rights standards as well as the norms of rational, nonarbitrary provision of services.”).

dismiss any employees who solicit any type of prostitution.¹⁶³

With these amendments and modifications to the NDAA, PMFs take a more stringent stance on their employees' involvement with sex trafficking, as engagement in these acts will have immediate and long-term adverse effects on their contracts.¹⁶⁴ To make sure these violations are properly detected and recorded, this Note will further propose that an amendment be made to Article 2(a)(10) of the UCMJ.

B. Amending Article 2(a)(10) of the Uniform Code of Military Justice

As stated previously in this Note, federal prosecution often runs into several evidentiary and motivational issues when attempting to prosecute PMFs and PMCs for sex trafficking violations.¹⁶⁵ These issues include dealing with a limited budget while attempting to obtain evidence and witnesses to carry forth prosecutions.¹⁶⁶ Therefore, the military justice system is best suited for prosecuting PMFs and PMCs involved in sex trafficking.¹⁶⁷ Use of the military justice system, once given subject matter jurisdiction over PMFs and PMCs, will negate these evidentiary hurdles due to the use of military criminal investigators who will investigate possible violations and quickly procure and question witnesses.¹⁶⁸ Use of the military justice system would likewise bypass motivational hurdles, as trials would take place in the military courts established on military bases in the country where the violation took place.¹⁶⁹

For these reasons, the military justice system should have the authority to hear all cases involving human trafficking violations by PMFs and PMCs. To make this possible, Article 2(a)(10) of the UCMJ must be amended to make human trafficking a crime under military law. This will allow the United States military to have criminal jurisdiction over all

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See Finer, *supra* note 134, at 263; Singer, *supra* note 135; Schwellenbach & Leonnig, *supra* note 87 (“If you have a case where it will take a significant amount of effort to get the evidence to bring the case—as is typical in trafficking cases—it will be very hard for the Justice Department to do it.”); U.S. DEP’T OF STATE, *supra* note 136, at 21; see also Schwellenbach, *supra* note 136.

¹⁶⁶ Prystowsky, *supra* note 132, at 59–60; Singer, *supra* note 135; Schwellenbach & Leonnig, *supra* note 87.

¹⁶⁷ See Snell, *supra* note 8, at 1161. Cf. Carney, *supra* note 36, at 344.

¹⁶⁸ See, e.g., *Mission in Depth*, U.S. ARMY CRIM. INVESTIGATION COMMAND, <http://www.cid.army.mil/mission2.html> (last visited Oct. 29, 2015).

¹⁶⁹ See Prystowsky, *supra* note 132, at 59–60 (referring to the establishment of an “adequate chain of custody to meet U.S. evidentiary standards,” high costs, the unpredictability of war zones, and national security concerns as “high hurdle[s] that prosecutors must overcome” in order to prepare for trials pertaining to crimes that have occurred abroad).

individuals, including PMCs, who commit any human trafficking violations in areas of declared war, contingency operations, or peacekeeping operations.¹⁷⁰ This proposed amendment to the UCMJ will supplement the federal prosecution process and provide a concurrent jurisdictional framework in which the military justice system can carry forth prosecutions of PMFs or PMCs. Under this proposed amendment, human trafficking violations will be an offense capable of prosecution, rather than an offense that places an insurmountable burden on United States prosecutors, fact finders, and witnesses.

CONCLUSION

This Note examined how the increased use of PMFs and PMCs by the United States has fostered the expansion and proliferation of human trafficking abroad. This Note illustrated the violent nature of previous PMF and PMC sex trafficking abuses, and concludes that it is clear that PMFs are making no progress towards prohibiting these violations internally. Though legislation at both the domestic and international level has been enacted to try to break the link between the increased use of PMFs and PMCs and an increase in human trafficking by civilian contractors, it has failed. This Note established that effective prosecution of human trafficking violations calls for regulatory systems at both the domestic and international level. Finally, this Note proposed amendments to both the NDAA and Article 2(a)(10) of the UCMJ, which will provide a way to prosecute PMFs and PMCs involved in sex trafficking violations while forcing governmental agencies to cut ties with PMFs and PMCs that violate sex trafficking laws.

¹⁷⁰ See generally Uniform Code of Military Justice, 10 U.S.C. §§ 801–946, 802 (2006); Warren, *supra* note 79, at 1277.