

It has been a decade since the United States (US) led the invasion of Iraq. Subsequent years of war and conflict have left Baghdad one of the most dangerous places on Earth. Nonetheless, Iraqi oil is still a very profitable business. Iraq has the world's fifth largest proven reserves of oil combined with some of the world's lowest production costs. This doesn't even take into consideration that some experts believe that Iraq's unexplored regions could contain even more oil wealth than imagined (perhaps up to as much as 100 billion barrels' worth). The lure of such potential oil wealth helps explain why oil companies and private military companies wish to remain in Iraq. It also explains why Iraq is taking whatever steps it can toward providing its own hydrocarbon security forces.

One of the most recent steps Iraq has announced in the oil patch has been the creation of an Iraqi oil police. This state unit was created in response to frequent armed attacks on Iraq's hydrocarbon sector. The oil police's sole mission is to protect oil and gas fields. Within this context two observations can be made. First, the creation of a state unit specifically for the protection of oil and gas interests is an important symbolic act. It sends a message to the oil firms returning to Iraq that while Iraq is open for business, the state itself is taking a hands-on approach in protecting its most lucrative state-asset namely oil. Second, and perhaps more relevant, the creation of a police rather than military unit has its own significance. Unlike its more aggressive counterpart, a police force can be regarded as a civilian extension of state control. It exists to maintain order, protect, and if necessary enforce laws. It does not exist to openly wage warfare or otherwise actively engage in combat.

The advent of Iraq's oil police is an important step to limit the activities of what many consider 'foreign military firms' whose actions have not been without controversy in Iraq during the past decade of conflict. Firms like Blackwater (now known as Academi) have been accused of behaving with open aggression against Iraqis, and quite infamously in one case, were indicted in the slaying of civilians. Taking this questionable history into account, the creation of an oil police may complement Iraq's 2012 ban on the use of private military companies (PMCs) by oil subcontractors.

However, there continues to be much pressure on Iraq's new protection unit as they struggle to become an efficient state security arm amid the prospect of further oil exploration. Future oil operations will require larger infrastructure that will need to be guarded, and the oil police are already struggling with present-day challenges. The oil police's 25,000 members are not enough to adequately defend up to 4,300 miles of gas and oil pipelines. Although that figure is being augmented by Iraq's army personnel, it is important that the oil police become an independent security unit known for its civil rather than military nature. Such efforts to ensure the existence of civilian hydrocarbon peacekeepers, separate from their military counterpart,

elucidates the banning of private military contractors (PMCs) even further. The goal of creating and sustaining an independent civilian protection unit is therefore paramount to ensuring that the oil sector remains in state hands; hydrocarbons represent 90% of Iraq's domestic energy supply and almost 100% of its state budget.

What Iraq risks

While it is true that the security situation in Iraq continues to be unstable, the prospect of a privatized oil industry was fiercely resisted by Iraqis themselves during the period of US involvement in Iraq. The Coalition Provisional Authority (CPA) during its temporary administration of Iraq sought to issue a directive to privatize all Iraqi state industries. This call was rejected by many Iraqi oil workers who voiced their fear that privatization (of oil interests) would result in the selling of oil to foreign firms at lower prices. The larger issue was the fear that the state's assets, and the institutions that govern and/or regulate them, if weakened could become vulnerable to well vested and financed commercial interests to the detriment of the nation.

A most salient case in point for concern is the nature of the oil and gas business in Latin American states if replicated in Iraq. In Ecuador for example, oil firms have constructed a dual-layered security arrangement. While PMCs may be used by oil firms for personal protection and small-scale combat scenarios, such oil firms also employ the Ecuadoran state's armed forces for a larger scale and effectively militarization of oil fields and related assets (including surrounding areas populated by the local population). Domestic resistance to activities by oil firms is systemically suppressed by state military forces by establishing roadblocks and enforcing the interests of their commercial employers through, *inter alia*, intimidation and violence, while controlling the entry and exit of all persons from areas under their purview. In some cases, indigenous inhabitants have been driven from their homes as oil firms create their own *de facto* borders seen by some as a challenge to state sovereignty.

Arrangements in Ecuador between oil companies and the Ecuadorian military are centralized under a general contract between the state and each oil company under the aegis of a document, entitled *Military Security Cooperation Agreement between the Ministry of Defense and the Oil Companies that Operate in Ecuador*.¹ In it, the contract outlines "[...] the terms of collaboration and coordination of actions to guarantee the security of the oil installations and of the personnel that work in them." The terms in the agreement, vague at best and open to interpretation, provide the formal framework that governs relations between oil

firms and the state. This has resulted in oil firms in Ecuador taking over basic responsibilities for the armed forces traditionally governed by the state including providing fuel, food, living arrangements and medical care. Hence, state authority is eroded (with the assistance of the state) as commercial bodies usurp a central relationship between the state and its national military force.

Are businesses going to war?

The case study of Ecuador illustrates what appears to be an increasing trend which is namely the militarization of the oil and gas industry. Compounding the issue is the contemporary trend of recruiting ex-military personnel by commercial businesses and by creating obscure legal arrangements that may make the regulation of both oil firms and PMCs increasingly difficult. Oil and gas firms are actively hiring transitioning and retired military personnel. Private energy firms (and their recruiters) claim that military personnel have highly valued skills that are seamlessly transferable to the oil and gas industry. In exchange for such skills, energy firms can promise candidates high pay and private sector benefits in addition to significant career advancement. While such an arrangement is no doubt tempting for many servicemen and women, the reasons for oil firms to draft from the armed forces should be scrutinized further.

Once military personnel are hired by private businesses their legal status becomes a subject of much debate. No longer a member of any state's armed forces, such staff members, under the employ of a private company enter into a precarious legal existence especially if engaged in defensive or protective tasks in conflict zones. The issue of private military employees taking on diverse tasks within a defined battle space has often been dominated by the question of whether PMC personnel are legitimate business operatives or organized mercenaries engaged in pseudo-military activities. Under International Law, Article 47 of the Geneva Conventions sets out a 6-point definition of individuals who can be legally classified as mercenaries.

According to Article 47, a mercenary is anyone who: a) is specially recruited locally or abroad in order to fight in an armed conflict; b) does, in fact, take a direct part in hostilities; c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party; d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; e) is not a member of the armed forces of a party to the conflict; and; f) has not been sent by a state which is not a party to the conflict on official duty as a member of its armed forces.

Such a precise definition should provide states with a globally recognized legal instrument to curb hostile activities of PMC staff and oil firm militias. Indeed, point (c) may describe the circumstances of many former military members who are recruited for their combat expertise and deployed in unstable states. However, many experts have pointed out that, despite its precise framework, the legal definition of a mercenary under international law remains too vague or open to interpretation to be of practical use in preventing and prosecuting acts of illegal militarism supported by commercial businesses. Only individuals may be prosecuted for criminal acts in such a context and not the companies they work for. In addition, the 6-point definition of a mercenary is accumulative in nature meaning that any individual tried for criminal acts as a mercenary is unlikely to meet all 6 criteria and thus unlikely to be deemed an illegal combatant. Finally, one of the major deficiencies regarding Article 47 is the requirement of what is termed 'international or domestic armed conflict' in the environment Article 47 is to be applied. In other words for the 6-point definition to be legally applicable to any individual accused of mercenary acts, these individuals must be in environments classified under international law as not only unstable but in a state of either domestic or international armed conflict. This latter problem can easily bar Article 47 from being used at all in countries where instability or even armed resistance is not on a large enough scale for the state to be legally acknowledged as a party to an armed conflict including in oil states such as Angola, Ecuador and others.

Regulation must be domestic

In a sad, ironic twist, the governing pillars of international law do not necessarily provide oil states with pragmatic regulation of commercial security activities. States must still rely on domestic measures to resist the erosion of their own political and security bodies by external interests. Returning to Iraq, the exit of US military personnel has led to the retention by private oil firms of their security contractors. Subsequent pressure by the oil industry to alter Iraqi law shows how vigilant Iraq must be in maintaining sovereign control. As recently as 2012, foreign oil firms and their associated governments lobbied for the acceptance of the Iraqi Oil Law which has been under debate since 2007. The agreement framework related to this Act is somewhat comparable in their potential effect on the Iraqi state of contracts between oil firms and Ecuador. Contracts under the Iraqi Oil Law would provide a greater long term advantage to international oil firms and would also transfer certain control mechanisms of hydrocarbons to commercial entities depriving the Iraqi state of the power to regulate and monitor its largest source of state income.

With current oil concessions in Iraq, cited by critics as lacking in transparency and a clear legal framework, it is likely that controversy surrounding the proposed Iraqi Oil Law may be driven by external interests. Indeed since the invasion of 2003, there has been concern over the prospect of external interests overriding domestic governance and Iraqi control. In the case of commercial security, there is much concern that PMCs, oil firms and their respective staffs,

have enjoyed a culture of impunity that was officially sanctioned by the Coalition Provisional Authority (CPA) during its temporary administration of Iraq. Consisting of coalition force nations, the CPA ultimately paved the way for external commercial forces to chip away at eventual domestic state authority by drafting a law that exempted foreign operatives from all Iraqi legal processes.

The CPA's legacy of impunity has left a new Iraqi government with the task of balancing their need for international hydrocarbon firms with the retention of state sovereignty as genuine security concerns prompt oil companies to retain PMCs for protection. This balancing act, as precarious as it may be, has so far succeeded in preventing Iraq's transformation into an oil state like Ecuador. However, a closer inspection of other oil states in Africa reveals another impending challenge that may see oil companies and privatized military firms merge into single commercial units.

In certain African states, multinational oil firms are changing the nature of their security arrangements with private military companies. Rather than outsource small to medium scale security companies (and the militarization of their interests), some oil firms are considering the purchasing of the PMCs they have traditionally hired. Such a shift would see oil firms incorporate PMCs into their own business structure, leading to the creation of Militarized Resource Companies (MRCs). The incorporation of commercial military firms into the larger structure of a private energy company would undoubtedly lead to further legal obfuscation regarding the status of private military operatives now employed by an energy rather than a pseudo-military firm. In turn, a murkier legal status could encourage even greater commercial impunity and erosion of state authority by commercial interests as prosecution of individual employees for illegal acts would be increasingly difficult.

Conclusion

Although a potential threat to state sovereignty, the merging of oil firms and PMCs into MRCs has yet to become a major trend despite the oil boom in Iraq. Nonetheless, as PMCs remain in Iraq and in the aftermath of the Arab Spring this affects the security needs of oil states. These states must clearly define what security arrangements they will or will not accept from commercial and external sources. They must ensure that any sharing of resources with private firms is done so under a precise framework-agreement to retain state oversight over their resources. Ultimately, such frameworks must also ensure state sovereignty over what is, for many oil nations, the largest contributor to their national budgets. However, in any country where the state's most profitable asset is under constant attack, convincing oil firms to forego their own security and even political arrangements is easier said than done.

Iraq's Oil Police

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