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Blackwater guilty verdict long overdue

Despite convictions, accountability gaps remain for security contractors

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by [Lauren Carasik](#) [@LCarasik](#)

Seven years after Blackwater contractors killed 14 unarmed Iraqi civilians and injured 17 others in Baghdad's Nisour Square, a federal jury in the District of Columbia [convicted one defendant of murder and three others of manslaughter](#) and weapons charges for the bloodbath. The verdict was announced on Wednesday after 27 days of deliberation.

The trial, which began June 11, served as an important test of U.S. willingness to hold its contractors to account. Blackwater was hired by the State Department to provide security for diplomats in Iraq. The carnage served as a flashpoint for Iraqi anger at Blackwater and sparked an international debate about the use of private security contractors.

Iraqis' demands for justice have been somewhat muted recently by their need for assistance in combating the Islamic State in Iraq and the Levant (ISIL). But it is precisely the specter of increased U.S. engagement in Iraq and reluctance to put American military boots back on the ground that makes the gaps in accountability all the more urgent to fill. However, it is not simply the individual guards who should answer for this tragedy: Leaders of private security companies and the governments that employ them must also be held to account.

Recklessness and hubris

Most of the facts in this case are uncontested. On Sept. 16, 2007, the guards, positioned in four armored trucks, drove into Nisour Square. There they opened fire at a white Kia sedan driven by an unarmed Iraqi medical student and his mother, killing 17 unarmed Iraqi civilians. While the guards claim they believed they were being ambushed, there is little evidence to support their belief.

The first of more than 60 witnesses to testify during the trial was Mohammed Kinani, whose 9-year-old son, Ali Abdul Razzaq, was killed as he sat in the backseat of his family's car. [Kinani recounted that day](#) in harrowing detail. When the staccato of gunfire finally stopped, Kinani found his youngest son slumped sideways as his brains spilled to the ground between his shoes. After Ali died en route to the hospital, Kinani returned to the bloody scene to gather the rest of his son's skull and brain tissue for burial. At one point during his testimony, Kinani was so grief-stricken that Judge Royce C. Lamberth recessed the trial until he could compose himself. The day after Kinani's wrenching testimony, Lamberth excused a juror who said she was [too haunted](#) by Kinani's story to sleep.

Blackwater's recklessness and hubris incited outrage among Iraqi civilians and the government. Appearing at a congressional hearing in 2007, Erik Prince, the company's founder and former CEO, testified that his men "[acted appropriately at all times](#)." But his assertions were belied by the company's questionable tactics to defend its reputation and fend off threats to its ongoing business in Iraq. Former company officials claimed that in December 2007, Blackwater [approved secret payments of \\$1 million](#) to Iraqi officials, hoping to defuse criticism and evade accountability for the Nisour Square killings. Such payments are illegal under the Foreign Corrupt Practices Act, which prohibits bribing foreign officials.

The verdict against the Blackwater guards is a small and laudable step toward ending impunity. But the US must develop mechanisms to ensure accountability that ascends the chain of command in both private companies and the governments that hire them.

Blackwater's reputation was badly tarnished well before the Nisour Square tragedy. The New York Times wrote that "Blackwater had [cultivated a cowboy culture](#) that was contemptuous of government rules and regulations," according to former company officials. Yet U.S. officials turned a blind eye to its misdeeds. A [State Department investigation](#) into Blackwater operations in Iraq was abruptly

stopped in August, a few weeks prior to the shootings at Nisour Square. In a [memo to officials](#) on Aug. 31, chief investigator Jean Richter reported, “Blackwater contractors saw themselves as above the law.” He described a systematic lack of professionalism and discipline, compounded by superficial oversight of the contractors that created the perception that Blackwater issued rather than followed commands of the military. Richter reported that Daniel Carroll, Blackwater’s leader in Iraq, mentioned menacingly that “he could kill” him. But Richter’s warnings went unheeded. Despite its well-known misconduct, Blackwater was still able to obtain lucrative contracts in 2010 by [designing a web of shell companies and subsidiary corporations](#).

Prince sold the company, now known as Academi, four years ago. According to documents obtained by WikiLeaks, Prince had won [\\$1.6 billion in unclassified federal contracts](#) for the company in addition to payment for [conducting classified work](#) for the Central Intelligence Agency. And that is only a fraction of U.S. government expenditures for the security-industrial complex in the last seven years. The Department of Defense alone spent [\\$160 billion on private security](#) in Iraq and Afghanistan from 2007 to 2012. [At various points](#), private contractors outnumbered military personnel in Iraq.

Oversight and accountability

The lesson of the Nisour Square shootings is that privatizing military functions is inherently risky. For one, employees owe their allegiance to the firm, not the U.S. or the military policies it espouses. Despite their increased presence in conflicts [and numerous instances of abuse](#), there are gaping holes in the civil and criminal accountability framework at the [domestic and international levels](#).

The [Military Extraterritorial Jurisdiction Act](#) (MEJA), used to charge the Blackwater defendants, applies to Department of Defense missions and covers other U.S. agencies only “to the extent such employment relates to supporting the mission of the Department of Defense overseas.” But many perpetrators [escape accountability](#) for abuses, in part because of Washington’s reluctance to prosecute crimes. In July, Sen. Patrick Leahy, D-Vt., continued his

effort to expand liability by [reintroducing the Civilian Extraterritorial Jurisdiction Act](#). The bill would extend the reach of criminal responsibility to those working for other U.S. agencies and require the administration to adequately resource efforts to investigate violations. But so far, Leahy's efforts have been unsuccessful.

Efforts are underway to fix the accountability gap at the international level as well, largely focused on industry self-regulation. In 2010 the [International Code of Conduct for Private Security Service Providers](#) (ICOC) established standards that comport with human rights and humanitarian principles. The initiative relies on independent oversight to ensure compliance through a certification and monitoring process as well as a complaint mechanism. As of September 2013, [more than 700 companies](#) have signed on to the standards. Critics note the ICOC is an [agreement brokered by competing interests](#), including contractors arguing for the lowest standards and civil society advocates demanding more stringent safeguards, and that it is nonbinding and does not provide for remedies for the aggrieved. Nevertheless, the U.S. should contract only with companies that comply with the ICOC, to reinforce a normative framework of responsibility and encourage industrywide buy-in.

But nonbinding initiatives are not enough. In 2010 the [United Nations Mercenaries Working Group](#) proposed a new convention more suitable for modern warfare and conflict zones. The treaty would explicitly cover private military and security contractors, promote transparency and accountability and ensure remedies for victims of grave human rights violations. [Many countries support a legally binding international framework](#), but the [lack of consensus](#) on the need for a treaty dampens the likelihood of its adoption. Unsurprisingly, countries such as the U.S. that employ and are home to many of the private security companies are the most vocal opponents.

The U.S. resists labeling its private military contractors mercenaries. But Washington is increasingly relying on paid private gunmen to provide critical services on the battleground and elsewhere, where the risk of lethal errors and the consequences of misconduct are high. Without clear laws, private soldiers

will continue to operate in a legal vacuum. The verdict against the Blackwater guards is a small and laudable step toward ending impunity. But the U.S. must develop mechanisms to ensure accountability that ascends the chain of command in both private companies and the governments that hire them.

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