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AN UNEASY RELATIONSHIP: U.S. RELIANCE ON PRIVATE SECURITY FIRMS IN OVERSEAS OPERATIONS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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WEDNESDAY, FEBRUARY 27, 2008

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in Room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, Carper, McCaskill, Tester, Collins, and Sununu.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. Thank you all for being here.

Throughout our history, the American military has relied on the private sector in what has been called a "great arsenal of democracy" to provide weapons and supplies for our fighting forces. But once the private sector delivered the goods, generally speaking its responsibility ended.

Over the past 15 years, we have seen a significant expansion of the role of private firms in overseas operations from being the manufacturers of military supplies and equipment to becoming suppliers of crucial military services, like the logistical support of our troops, the training of foreign police and armies, the conduct of interrogations, and the provision of armed security details.

It is the latter—the use of private security contractors (PSCs)—that is the subject of today's hearing because of questions that have been raised about the use of private security contractors in the ongoing conflicts in Iraq and Afghanistan.

Traditionally, bearing arms and employing force in arenas of military conflict have been the sole province of the armed services. But our present military is just not large enough to fulfill the need for the protection of American personnel, convoys, key facilities, and reconstruction projects.

So the use of PSCs has become necessary in Iraq and Afghanistan. PSC employees have, in fact, performed effectively, honorably, and in many instances, heroically. Many of the PSC employees are ex-service members. They are patriots who are deeply dedicated to the U.S. mission and ready every day to risk their lives—and some-

times lose them—protecting American personnel and America's cause.

We all remember in this regard the horrific sight of the bodies of those four Blackwater contractors, private security contractors, being dragged through the streets of Fallujah in 2004.

But there have also, of course, been problems with the private security contractors. The rapid growth in their use has been ad hoc and without a comprehensive framework for the hiring, training, vetting, or even use of their services.

Insufficient oversight of PSCs has drawn strong criticism from within our government and our military itself, including Defense Secretary Robert Gates, who said in October that the mission of many contractors was "at cross purposes to our larger mission in Iraq."

A special panel convened by Secretary of State Condoleezza Rice to look at PSCs—directed by Under Secretary Patrick Kennedy, who is one of our witnesses today—concluded that PSCs "operate in an overall environment that is chaotic, unsupervised, deficient in oversight and accountability, and poorly coordinated." Those are tough words that need to be taken seriously by us.

These concerns are reinforced, of course, by incidents like the September 16, 2007, shooting incident in Baghdad involving Blackwater security agents in which 17 Iraqis died. Incidents like that one have exposed gaps in our own laws that leave our government with limited ability to prosecute employees of Federal contractors who may have committed criminal acts abroad.

The House of Representatives, in fact, has passed legislation to address these gaps, and I understand that Senators Leahy, Obama, and others are currently working to bring a similar bill to the Senate floor.

But beyond changing the laws so we can punish criminal behavior when it occurs—which, again, I stress, are a minority of cases—we also need to have a discussion about our rapidly growing reliance on PSCs with the goal of developing a better framework across our government for deciding how and where we are going to use them.

Our Committee staff has conducted an extensive investigation into the use of PSCs in Iraq and Afghanistan that leads to the following findings:

First, there are no government-wide standards for the hiring, vetting, and training of PSCs.

Second, oversight of PSCs has been hobbled by jurisdictional squabbles between the State Department and the Department of Defense (DOD), as well as insufficient numbers of personnel from both departments in theater to supervise the contractors.

Third, reconstruction companies, non-governmental organizations (NGOs), and other kinds of non-governmental entities also employ armed security contractors—many of them third-party nationals—further complicating the creation of a uniform framework for security services.

And, fourth, Federal agencies are doing very little to assess our future needs for PSCs or entering into a process to decide by some rational standards which functions must remain governmental and which can be contracted out.

That has led our staff to make some recommendations to us for consideration, for instance: To give consideration to creating a licensing authority for security companies and their employees; to set training standards on everything from the proper use of weapons to the application of international human rights laws; better coordination among agencies to oversee PSCs; and to create a clear chain of command when multiple agencies are involved in an operation. And, again, the fundamental question that has to be answered—and it seems to us is not now answered—is what kind of missions private security contractors should be hired for in the first place.

In December 2007, the Department of Defense and the Department of State took a first step by signing a Memorandum of Agreement (MOA) to commit to the development of common standards for management of PSCs in Iraq and to clarify their respective roles.

But this only applies to Iraq and only applies to the Departments of State and Defense, not to other potential fields of battle or to other agencies such as the U.S. Agency for International Development (USAID) and the Department of Justice, which also are involved in the retention of private security contractors.

The need for standards and regulations on the use of PSCs goes far beyond today's missions in Iraq and Afghanistan. For instance, peacekeeping and stabilization, I believe, will be a major focus of the new Africa Command (AFRICOM) at the Department of Defense. The State Department is currently bidding a private contract worth approximately $1 billion to train peacekeepers and provide logistics for use in Africa.

So, we have to assume that in the normal course the need for PSCs in the Federal Government is only going to grow, and I think we have to determine together, Congress and the Executive Branch, where that growth is necessary and where it is reasonable. And we have to put in place clear rules for their hiring of PSCs, and then, I hope, comprehensive systems to ensure proper training, vetting, and accountability of their employees.

I thank our staff for the good work they have done preparing for this hearing. I thank our witnesses for being here. And now I would call on the Ranking Member of the Committee, Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman. This is a very interesting and important subject, and I appreciate your decision to focus the Committee's efforts on it.

Over the past two decades, the end strength of the U.S. military has declined by a third, from 3.3 million in 1987 to 2.2 million today.

That dramatic post-Cold War decline has imposed enormous strains on our troops and caused some unintended consequences as America undertook large-scale military operations in Afghanistan and Iraq.

As the Government Accountability Office (GAO) recently concluded, the decline in force strength, coupled with the demands of

overseas deployments, has greatly increased the demand for private contractors, including private security firms.

When thousands of contract security employees are involved in guarding facilities and escorting convoys in a hostile zone and face a high risk of violent incidents, we confront a fundamental question: Should private contractors be responsible for jobs in a combat zone that have traditionally been performed by military personnel? Where should the line be drawn between inherently governmental military operations and contract services?

There are, of course, many valid reasons to employ contractors to carry out or augment overseas tasks. But as the Congressional Research Service has pointed out, never before have private sector employees played such an extensive role in a combat zone.

Furthermore, the heavy reliance on contractors without effective acquisition policies and contract oversight has led in some cases to wasteful spending, unsatisfactory performance, and failure to achieve mission objectives. When the Departments of State and Defense, USAID, or other agencies hire firms that place armed civilians in foreign countries, their actions can also have a significant impact on America's foreign policy objectives.

It is also true that private security firms are providing valuable services in hostile settings overseas, especially at a time when our military forces are stretched so thin. They guard vital infrastructure, protect American and foreign officials, and escort convoys. Their employees, as the Chairman pointed out, are often highly skilled, disciplined, and honorable professionals, typically with extensive military experience.

Nevertheless, the actions of some contract employees, combined with legally tenuous or ambiguous accountability mechanisms, have tarnished the industry.

A team of Justice Department prosecutors and the FBI are currently in Baghdad on a 2-week mission to interview local witnesses to the September 2007 incident in which Blackwater private security guards under contract to the State Department opened fire in a public square. Seventeen Iraqi civilians died, and others were wounded.

Now, the facts of this incident remain to be determined, but they raise a broader issue about the lingering uncertainty about whether these security guards are subject to any legal accountability. And that degree of uncertainty should not be acceptable at this stage in the war. And the degree of accountability should not hinge, as it appears to do today, upon whether the contractor was supporting a Defense Department mission or acting on behalf of the State Department.

The problem is not new. In recent years, several contractors implicated in violence have simply left the area to avoid any legal consequences.

These examples underscore a stark truth: The United States cannot expect trust and respect from other peoples if we cannot impose clear constraints and enforce serious legal consequences for illegal conduct by private security contractors.

Improving private security performance and protecting Federal interests demand explicit expectations, precise contract require-

ments, sharp oversight, clear standards for the use of force, and a framework for ensuring legal accountability.

Our hearing today will raise many difficult questions, and it is evident that we need better answers than we seem to have today. Devising an effective set of answers must also include improving our Nation's ability to recruit, train, and retain a skilled Federal acquisition workforce.

Our acquisition workforce must not only be strengthened, but be able to apply its skills in a war zone. And that is why the Chairman and I have worked very hard to include provisions in our contracting reform bill that will strengthen our Federal acquisition workforce and create a Contingency Contracting Corps that could be marshalled to deploy experienced acquisition professionals in hostile settings such as Iraq and Afghanistan.

The rule of law, our obligations to other governments and to noncombatants, our responsibilities to taxpayers, and our interest in the success of our foreign policy all suggest that we need to ask fundamental questions about the role of private security firms in a war zone. We need to improve the regulation and oversight of these firms when they are used, and most of all, we need to ensure accountability. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins, for an excellent opening statement, and you raise some very important questions.

I welcome Senator Tester and Senator Sununu to the hearing this morning.

We will proceed now with the witnesses. I believe we are going to give each of you 10 minutes. I appreciate that you are here. I think you are exactly the people we wanted to be here to help us with our deliberations.

We will begin with Patrick Kennedy, Under Secretary of Management for the Department of State. Mr. Kennedy was asked by Secretary Rice last fall to serve as executive director of a special panel convened to examine the State Department's contracting for security, so I welcome you and look forward to your testimony now.

TESTIMONY OF HON. PATRICK F. KENNEDY,[1] UNDER SECRETARY FOR MANAGEMENT, BUREAU OF MANAGEMENT, U.S. DEPARTMENT OF STATE

Mr. KENNEDY. Good morning. Thank you very much, Mr. Chairman, Ranking Member Collins, distinguished Members of the Committee. I am honored to appear before you today with my distinguished colleagues. I would like to thank you and the Committee Members for your continued support and interest in the Department of State's programs and foreign policy objectives.

The Bureau of Diplomatic Security, the law enforcement and security bureau of the Department, has the primary responsibility for ensuring the safety and security of State Department and other U.S. Government personnel operating under Chief-of-Mission authority overseas. The Diplomatic Security's nearly 1,500 special agents serve in the United States and around the world, in embassy and consulate Regional Security Offices, and manage secu-

[1] The prepared statement of Mr. Kennedy appears in the Appendix on page 39.

rity programs designed to protect U.S. Government personnel, facilities, and classified information at 285 posts worldwide.

Even with this presence, the employment of security contractors has become a critical Department tool since the 1980s for providing services necessary to protect U.S. personnel, buildings, and information. After the bombing of the U.S. Embassy in Beirut in 1983, private companies were afforded the opportunity to compete for security contracts at U.S. overseas missions under the Diplomatic Security and Antiterrorism Act of 1986. Over the years, security contractors have been employed in diverse hot spots around the world, and as these contracts have evolved, the Department has sought to standardize the way posts contracted and paid for guard force services to enhance uniform fiscal reporting responsibilities and to streamline security management.

Over the past decade, conflicts, wars, political unrest, and terrorist activities have increasingly required the deployment of diplomats to areas that are inherently dangerous places to live and work. As the U.S. Government continues its diplomatic efforts in these critical areas, the assets and resources required to ensure the safety and security of U.S. diplomats and other governmental representatives have also increased.

The use of security contractors in these dangerous places has allowed the Department the flexibility to rapidly expand its capabilities to meet these increased security requirements and to support national security initiatives without the delays inherent in recruiting, hiring, and training full-time personnel. The employment of security contractors remains an essential cost-effective tool utilized by the Department to provide security services necessary to support U.S. personnel and facilities.

The government's Federal Acquisition Regulation (FAR) enables the Department to procure, sometimes with little notice, the services of a skilled cadre of security professionals for emergency needs as world events unfold. The Department's security contractors perform a narrow range of defensive duties abroad, including the protection of certain foreign heads of State, high-level U.S. Government officials—including Members of Congress—and U.S. diplomats under Chief-of-Mission authority. These functions are not inherently governmental, as Department security contractors are engaged in protecting our diplomats and other officials and are not authorized to engage in law enforcement or combat activities. The use of contract personnel allows the Department the flexibility to rapidly expand or contract the level of security personnel deployed based upon changing requirements. Most importantly, it is through the contracting mechanism that the Department requires security contractors to adhere to stringent standards of recruiting and training.

The establishment of interagency standards for contractors would ensure that all U.S. Government security contractors or subcontractors meet core standards regarding their qualifications, training, and operations. Over the past several months, the Department of State has been working closely with the Department of Defense to accomplish this goal. Agencies should be allowed the flexibility to augment core standards, as needed, with additional training and operational requirements.

Contract provisions requiring contractors to comply with local laws and regulations are additional measures that ensure appropriate security contractor activity. Such provisions are currently included in Department of State contracts; for example, existing contracts require contractors to comply with all licensing requirements that are established by the host government. In general, such provisions require contractors to secure a business license, firearms permits, and firearms storage licenses, etc.

Contract requirements and government-wide standards are only as effective as the management and oversight controls implemented, as the Chairman noted in his opening remarks. The Secretary of State's Panel on Personal Protective Services in Iraq, on which I served, carried out a comprehensive review of the embassy's security practices in Iraq and provided recommendations, all of which have been adopted by the Secretary to strengthen these procedures.

The panel also encouraged enhanced coordination and communication with the U.S. military. To that end, the Secretaries of State and Defense signed on December 7, 2007, a memorandum to jointly develop, implement, and follow core standards in these areas.

Over the past several months, the Department has undertaken to quickly institute new policies and procedures governing security contractors. Diplomatic Security agents are now "embedded" with every embassy movement of personnel in Iraq. Procedures have been established to ensure that the Multi-National Force in Iraq (MNF-I) and the embassy are aware of and coordinate all movements by each other's details. This maximizes the Department of State protective support and provides visibility to battle-space commanders. Respective liaison officers now serve in operations centers, and both entities have established procedures to respond to and investigate incidents.

The State Department has developed new investigative procedures on the use of force which will also facilitate the referral of cases to the Department of Justice where there is evidence of potentially criminal misconduct.

A Joint Embassy Review Board, which also includes U.S. force representatives, periodically reviews incident investigations to develop lessons learned, determine trends, and make recommendations for improvements in private security contractor operations.

Embassy Baghdad's Mission Firearms Policy has been revised and reissued to reflect the common principles on "Rules for the Use of Force" that govern private security contractors, as agreed in the State and Defense Department MOA. And the Regional Security Officer in Baghdad has established direct channels of communication and working arrangements on coordination and liaison with senior Iraqi officials at the National Police, the Ministry of the Interior, and the Ministry of Defense.

Moreover, the Department of State strongly supports efforts to provide greater legal accountability for unlawful acts its security contractors may commit abroad. The Administration is currently working with the Congress on legislation concerning extraterritorial coverage of U.S. criminal laws. We would very much like to see this critical legislation enacted as soon as possible.

In addition to private security contractors that contract directly with the Department of State, there are also those with contractual arrangements with other contractors, subcontractors, or grantees of the Department or other civilian agencies. In accordance with the State and Defense Department MOA, the State Department has also taken strides to strengthen oversight and accountability of these security contractors. The State Department has been actively engaged with the Department of Defense and the Agency for International Development in developing core policies for vetting, background investigations, training, weapons authorizations, movement coordination, and incident response procedures and investigations for these subcontractors, arrangements we already have in place for our direct contractors.

In that vein, on January 30, 2008, the Departments of State and Defense co-hosted a meeting at the Pentagon with company executives to discuss further efforts to strengthen security contractor operations, oversight, management, and accountability.

With the passage of the National Defense Authorization Act (NDAA) for Fiscal Year 2008, the Departments of State and Defense are now actively engaged in the development of formal regulations governing private security contractors operating in combat zones, as well as the development of a Memorandum of Understanding that will address all contractors operating in Iraq and Afghanistan and establish a common database of information, as required by Sections 861 and 862 of the Act. Our joint efforts in developing and implementing the December 2007 MOA have already established a strong foundation for these regulations. Moreover, the State Department is prepared to participate in the Defense Department's Synchronized Pre-deployment Operational Tracking (SPOT) database of these contractors, anticipated for a DOD rollout in March.

This enhanced coordination with the Defense Department and our own increased oversight of our private security contractors has necessitated additional staffing in Iraq by State Department personnel. In response, the State Department has initiated temporary deployments of additional Diplomatic Security special agents to Iraq and authorized a permanent increase in Baghdad staffing consistent with the recommendation of the Secretary of State's Panel. With these staffing requirements straining personnel resources and the need to meet continual and emerging worldwide security demands, the State Department will be hiring additional special agents. The additional requirements are being requested, and with them the Department will be able to meet these requirements and continue to provide a safe and secure environment for the conduct of U.S. foreign policy.

Chairman Lieberman, Ranking Member Collins, I thank you very much, and other Members of the Committee, for the opportunity to appear here today, and at the end of the testimony, I would be glad to receive any questions that you might have. Thank you very much.

Chairman LIEBERMAN. Thanks, Mr. Kennedy. A good beginning. I am impressed that you completed your statement exactly as the 10 minutes expired. We do not see that too often.

Mr. Bell, thanks for being here. Jack Bell, Deputy Under Secretary of Defense for Logistics and Materiel Readiness, has been a leader in the Department of Defense efforts to strengthen the integration, oversight, and management of the large contractor force working alongside military personnel in Iraq. So you are right in the middle of exactly the questions we have on our minds, and we look forward to your testimony now.

TESTIMONY OF HON. P. JACKSON BELL,[1] DEPUTY UNDER SECRETARY OF DEFENSE, LOGISTICS AND MATERIEL READINESS, U.S. DEPARTMENT OF DEFENSE

Mr. BELL. Thank you. Chairman Lieberman, Ranking Member Collins, other Members of the Committee, thanks for this opportunity to appear before you to discuss DOD's initiatives to improve the management and oversight of personal security contractors—operating in Iraq and Afghanistan.

As Chairman Lieberman pointed out, contractors supporting our military forces in contingency operations, both at home and deployed, are performing critical support functions that are integral to the success of our military operations. DOD military forces—civilian forces also—have been downsized significantly over the last 25 years, as Ranking Member Collins has pointed out, and our dependence on contractors has, accordingly, increased.

In addition, the increasing technical complexity of DOD weapons systems and equipment requires a level of specialized technical expertise that DOD does not believe can be cost-effectively supported by a military force capability.

The current scale and duration of DOD military force deployments in support of the global war on terrorism (GWOT) are the first major contingency operations to reflect the full impact of the shift of the reliance on contractor personnel to support critical functions of the military deployed in the field. This has required a substantial commitment by DOD contractors to deploy with our military forces in forward areas. As of the first quarter of fiscal year 2008, which ended December 31, 2007, for example, Central Command (CENTCOM) reported in January about 163,590 DOD contractor personnel working in Iraq and 36,520 personnel for DOD working in Afghanistan.

Chairman LIEBERMAN. Give us those numbers again, because those are quite significant—some might say stunning.

Mr. BELL. Glad to do that. As of December 31, 2007, CENTCOM reported in January about 163,590 DOD contractor personnel working in Iraq and 36,520 DOD contractor personnel working in Afghanistan.

Chairman LIEBERMAN. So, in Iraq, that is about as high, or maybe a little higher than uniform personnel that we have had there.

Mr. BELL. That is correct. The ratio in both theaters is about 1:1, roughly.

Chairman LIEBERMAN. Yes. That is very important for us to understand. Please go ahead.

[1] The prepared statement of Mr. Bell appears in the Appendix on page 45.

Mr. BELL. Thank you. This unprecedented scale of dependence on contractors has led us at DOD to recognize the situation that deployed contractors are a significant and continuing part of our total force, and DOD must manage our contractors on an integrated basis with our military forces.

Since 2005, we have launched several major initiatives that are already strengthening the management of all DOD contractors and contractor personnel. I will briefly outline those for you.

First of all, we have been working since 2005 on establishing a strategic policy and operational framework for managing contractors and contractor personnel in future operations on a systematic basis.

Second, we have focused on strengthening the management of current DOD contractor operations in Iraq and Afghanistan.

Third, we are responding to the recommendations in the Gansler Report on Contracting in the CENTCOM area of responsibility.

Fourth, as Mr. Kennedy has pointed out, we are implementing State Department-DOD Memorandum of Agreement governing PSC operations, specifically in Iraq.

And, fifth, we are both working with the State Department again and with USAID on implementing Sections 861 and 862 of the 2008 National Defense Authorization Act.

However, in my testimony today, I would like to focus on what DOD is doing with the State Department to strengthen the management of PSC operations in Iraq and Afghanistan.

The operations in Iraq and Afghanistan, as we have all recognized, have required PSCs to fulfill a variety of important security missions, operating in non-permissive environments in support of both the DOD military mission and State Department diplomatic mission. These include both mobile physical protection for individuals and delegations, such as congressional delegation trips (CODELs), and facility protection for bases, buildings, and supplies.

Again, referring to the first quarter 2008 CENTCOM census for the period ending December 31, 2007, there were approximately 6,467 armed DOD personal security contractor personnel in Iraq and 2,745 DOD personal security contractors in Afghanistan performing security functions.

Both DOD and the State Department have recognized the need for more effective coordination of PSC operations in Iraq. On December 5, DOD and the State Department signed a Memorandum of Agreement—I will be referring to it as a "MOA"—defining a framework for improving both the accountability over PSC operations and strengthening the actual operational procedures. This MOA covers a broad range of management policies and operational procedures to achieve more effective management coordination in Iraq. The specific provisions of the MOA are detailed in my written testimony, and also a copy is available on the DOD website.

The purposes of the MOA, briefly, are to: Establish core standards for vetting, training, and certifying PSC personnel; to specifically avoid situations where there is a high risk of incidents occurring; to integrate incident management and investigations; to integrate follow-ups with the government of Iraq's Ministry of Interior and our own Tactical Operations Centers; and to coordinate follow-

ups with any persons affected by an incident and any witnesses thereto.

MNF-I has already executed and implemented what we call a Fragmentary Order (FRAGO)—titled 07–428. It establishes authorities, responsibilities, and requirements for oversight of all DOD civilians and DOD contractors. The State Department, as Mr. Kennedy points out, is developing a counterpart document to reflect U.S. Embassy Baghdad's policies for U.S. Government agencies working under Chief-of-Mission authority.

Many aspects of the MOA have already been implemented. In fact, we have adopted interim procedures in cases where permanent solutions require additional work. At the Office of the Secretary of Defense (OSD), we are closely monitoring the implementation status of these elements as they are being put together in-country.

On January 30, again, as Mr. Kennedy pointed out, Deputy Defense Secretary Gordon England and Deputy Secretary of State John Negroponte co-hosted a meeting of PSC company executives. In this meeting, we discussed the new initiatives covered by the MOA. We particularly emphasized contractor responsibilities for the elimination of sexual harassment, ethnic discrimination, employee misconduct, and criminal activity. We also covered the implementation of the Uniform Code of Military Justice, which is applicable to DOD contractor personnel deployed with our military forces. And again, most importantly, we emphasized the need to support U.S. strategic goals in the operations in Iraq and Afghanistan as well as performing contract missions.

We also discussed the efforts of both the State Department and DOD to obtain legislation to strengthen the Military Extraterritorial Jurisdiction Act—MEJA, as we call it—because we feel it is important to clarify the legal accountability of non-DOD U.S. Government contractors overseas.

In response to the requirements of Sections 861 and 862 of the 2008 NDAA, DOD and the State Department are jointly developing a Memorandum of Understanding (MOU), covering matters relating to the State Department, DOD, and USAID contractor operations in Iraq and Afghanistan, and that covers all contractors, not just PSCs. Once this memorandum is signed, the MOU will be implemented through DOD, the State Department, and USAID policies and regulations.

We are also moving ahead at the State Department with efforts to comply with the provisions of Section 862 of the 2008 NDAA, and that specifically focuses on the management of PSC operations in Iraq and Afghanistan.

We have already placed a high priority at DOD and the State Department on registering contracts and contractor personnel in the theater of operations in something called the Synchronized Predeployment and Operational Tracker System. SPOT provides a system to: Track contractor personnel movements within Iraq, Afghanistan, and CENTCOM AOR; verify specifically the authority of the individual to have authorization and access to specific facilities; and establish their eligibility for specific support services.

We are approaching at DOD 100 percent registration and accountability of all DOD PSCs and contractor personnel involved in

translation and interpretation activities. We anticipate that SPOT will be a system used also in compliance with Section 861. The State Department is already participating in getting their contractors in and is on schedule to basically get their personal security contractors under prime contracts into the system by March 2008. USAID is also evaluating how best to implement the system.

Taken together, these initiatives substantially strengthen DOD's, the State's Department, and USAID's capabilities in managing its contractors and in particular its PSC contractors and contractor personnel compliant with Sections 861 and 862.

We thank you for your interest and support in this effort, and at this time I look forward to your questions whenever the other people have finished testifying. Thank you.

Chairman LIEBERMAN. Thank you very much, Mr. Bell.

Mr. Schmitt, you are next. As Senior Vice President of the ArmorGroup of North America, you served last year as the Chair of the private security industry's association, the International Peace Operations Association. The ArmorGroup itself has 9,000 employees in 38 countries, including 1,600 in Iraq. Thank you for being here, and I look forward to your testimony now.

TESTIMONY OF JAMES D. SCHMITT,[1] SENIOR VICE PRESIDENT, ARMORGROUP NORTH AMERICA, INC

Mr. SCHMITT. Thank you, Mr. Chairman. Mr. Chairman, Senator Collins, Members of the Committee, I would like to thank you for having me appear in front of you today with such distinguished leadership from the Department of Defense, the Department of State, and from academia.

It is an honor to assist the Committee in its review of the use of the private security industry. And as noted this morning, the private security industry, my industry, has been under a great deal of scrutiny due to the recent events and significant incidents in Iraq and Afghanistan. These events, especially tragic incidents involving the deaths of private security employees and local civilians alike, have brought questions concerning the practices of private security providers, their oversight, and their accountability to the front pages of newspapers and morning discussions across kitchen tables throughout America.

At best, we are viewed as a necessary evil and, at worst, as trigger-happy thugs who sacrifice America's reputation at home and abroad and damage its strategic operations by operating as if we are above the law in the pursuit of a quick, opportunistic buck. From our perspective, this view is a gross caricature of an industry in which ArmorGroup, my company, has been operating for more than 26 years, providing a wide range of defensive protective services, risk avoidance training, humanitarian and mine action, and reconstruction and stabilization efforts.

As private security contractors, it is our actions—good or bad—and the image we project that influence and shape how the local civilian populations view our Nation. Perceptions matter. The conduct and disposition of private security contractors paint a striking canvas from which we, as a Nation, are viewed by local inhab-

[1] The prepared statement of Mr. Schmitt appears in the Appendix on page 52.

itants. As an American, I know how I would feel about large numbers of foreign security contractors driving down our streets. Would we really expect the Iraqi people or the population of any other nation to feel so differently when they witness an expatriate-laden security convoy careen through their neighborhood?

While the development of a coordinated and comprehensive U.S. Government framework for using PSCs has been under discussion and long in the making, it seems to me that the question is not when we will use private security providers but, rather, which firms are best qualified to provide the optimal support commensurate with our national interests.

Of course, the specific decision on whether to use a PSC will always depend on the U.S.'s requirements at that time and on given needs and circumstances. However, experience has shown that contingency requirements normally develop with little warning. Hurricane Katrina, the deteriorating security situation of Iraq in 2003 and 2004, the need to train and mentor a large number of local security sector personnel in Iraq, Afghanistan, West Africa, and elsewhere all indicate that the U.S.'s interests could be best served by identifying, validating, and competing suitable firms for contingency response contracts in advance of a crisis or need.

Likewise, U.S. Government demand for private security contractors seems poised for continued growth with the establishment of National Security Presidential Directive 44 and Department of Defense Directive 3000.5 for Stability, Security, Transition, and Reconstruction, both of which demonstrate the U.S. Government's intent to include the private sector in future reconstruction and stabilization efforts in high-risk areas around the world.

For this reason, I believe the U.S. Government's coordinated framework for determining when to use private security companies should be less about deciding the when and more about setting the common standards, the validation, and oversight procedures necessary that have been addressed so far this morning. My company, along with many other committed firms, would prefer to do everything we can in terms of proving our standards and procedures before a contingency operation even gets underway so that we are able to respond and deliver immediately when called upon to do so.

As to the question on whether there is a need to establish government-wide standards, licensing requirements, or contract provisions for security providers, the answer can only be "absolutely, yes."

The development of industry standards, best practices, and accountability provisions was first addressed by the private security industry well before the ramp-up of PSCs in Iraq in 2003. In the case of my company, we have long-established formal corporate programs to ensure that company employees act at all times within the relevant international and local legal and humanitarian frameworks including an employee Code of Conduct, a stringent ethics policy, and an ethics review board. We implement deliberate leave rotation, provide personal insurance and welfare policies, and we teach cultural training to ensure our employees—whom we refer to as our "quiet professionals"—are prepared to provide our protective services in an ethically sensitive fashion in the most complex of environments.

In 2004, in keeping with our commitment to transparency, we published the PSC industry's first white paper, calling on the U.K. Government to regulate the industry, and we became a publicly traded company.

Unfortunately, a number of newer PSCs working in support of U.S. Government programs in Iraq and elsewhere, but without this rigorous approach to ethics, have found themselves embroiled in difficult incidents which have resulted in controversy surrounding the U.S. Government's use of PSCs. The U.S. Government regulations are clearly beginning to take shape, including the key oversight provisions for PSCs, as discussed this morning by the Hon. Patrick Kennedy and the Hon. Jack Bell. In fact, with regulation now established, the industry stands ready to assist in its implementation.

PSCs will gladly follow the U.S. Government's regulatory requirements provided to them. And with the establishment of the MOA between the Department of State and the Department of Defense for PSC operations in Iraq, and the provisions of the 2008 National Defense Authorization Act, the industry is hopeful that this will be a blueprint of interagency policies and operating practices that can be applied to other future areas of operations as required.

We stand ready to assist and will do so more efficiently when the implementation procedures are developed in an inclusive manner with the U.S. Government taking into account companies' experiences and management practices. Companies that comply with prescribed regulatory and performance standards should be rewarded with more opportunities to support the U.S. Government stabilization objectives; companies that do not should be held accountable through the loss of contracts and the ineligibility to bid on new ones.

We also suggest implementation of the following mechanisms:

First, involve PSCs and other stakeholders in ongoing standard-setting dialogues and implementation processes;

Second, a codification of standards and best practices in company policies and daily operating procedures;

Third, training of U.S. Government personnel interacting with PSCs within the Combatant Command (COCOM)/Chief-of-Mission AOR;

And, last, education for impacted local populations on the means to identify PSCs and how to register a complaint through appropriate authorities concerning PSC operations. Additionally, we also see a more proactive role for trade associations.

While many industry best practices are codified in the existing codes of conduct and ethics policies of individual firms and internationally recognized trade associations, not all U.S. Government private security contractors are members of these trade associations or have adopted codes of conduct.

An alternative method of regulation could be that the U.S. Government mandates that its PSCs require some type of third-party accreditation, potentially through trade associations, to validate their attainment of industry standards. Strict enforcement of these standards ultimately depends upon the will and consensus of the association's members to prove an effective self-enforcement mecha-

nism exists, and upon the U.S. Government to demonstrate that it takes these standards seriously by committing to only work with those companies who have obtained accreditation.

Oversight for private security contractors begins with a corporate commitment to the ethical delivery of services that we believe at a minimum should contain the following provisions: Knowledge of, and respect for, indigenous populations; a defined corporate "operating envelope" which limits a company's role to purely protective, defensive security support; a formal declaration that the company will not plan or participate in offensive operations; full adherence in mandatory induction and continuation training on U.S. and host Nation local laws, international human rights and humanitarian law, and country-specific rules for the use of force; a commitment to cooperate with local and all law enforcement agencies and submit records of all notifiable incidents to those agencies; a commitment to transparency by registering host Nation subsidiary companies; a formal declaration that the company will not plan or participate in any operations that seek to destabilize governments or alter the political or military balance in a host nation; a commitment that the company will not supply lethal equipment nor permit employees to bear arms, except for those carried for personal protection or for the defense of clients, without possessing a license from the host government or mandated authority; and, finally, the establishment of an executive-level ethics committee to review and approve all significant new client contracts.

Additionally, and in closing, we believe that U.S. Government resources in areas of operation would help provide improved oversight to private security providers.

While reputable PSCs can and have established policies and codes to ensure the ethical delivery of their services, ultimately only the U.S. Government can establish formal industry-wide regulatory and ethical standards though the introduction of more stringent contractual obligations and a commitment to the enforcement of these obligations

The regulatory provisions described above and discussed earlier are an important step in establishing standards, but will only be effective if sufficient resources are committed to ensure that they are upheld and a more rigorous approach is taken towards those who do not uphold them.

Working under the direction and guidance of Congress and the U.S. Government agencies we support, the private security industry is capable of providing meaningful contributions to U.S. Government stabilization and reconstruction efforts in high-risk areas around the world. This work, we know, must be delivered with full adherence to U.S. and host Nation local law and with full commitment to the provisions of international human rights and humanitarian law.

I very much appreciate the opportunity to speak to you this morning, Chairman Lieberman and Ranking Member Collins, and to the Members of the Committee, and I look forward to taking any questions.

Chairman LIEBERMAN. Thanks, Mr. Schmitt, for that constructive testimony. I appreciate it.

Our last witness this morning is Professor Laura Dickinson of the University of Connecticut Law School. I will express parochial pride in the fact that you are here from UConn Law, and I will say with additional parochial pride that is not why you are here. But the staff of the Committee, in asking people who in academia would have the most to contribute, kept receiving your name in answer to that question, and I was very pleased to hear that.

Professor Dickinson has written extensively on U.S. Government privatization of foreign affairs functions. She served during the Clinton Administration in the Department of State's Bureau of Democracy, Human Rights, and Labor.

Thank you very much for being here.

TESTIMONY OF LAURA A. DICKINSON,[1] PROFESSOR, UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

Ms. DICKINSON. Thank you, Mr. Chairman, Ranking Member Collins, and other Members of the Committee. It is a great privilege to be here with such a distinguished panel.

While most contractors have performed admirably and have filled vital roles—and, indeed, more than 1,100 have died in Iraq—many have committed serious abuses without being held accountable. The use of private security contractors and interrogators poses special risks and potentially threatens core values embodied in our legal system, including respect for human dignity and limits on the use of force, as well as a commitment to transparency and accountability.

How should Congress respond to the problems posed by private security contractors? One possibility is to define certain functions as inherently governmental, such as security, and ban outsourcing of these functions entirely. However, the drive to use contractors will likely persist and may even expand, particularly once the inevitable drawdown of troops in Iraq begins. Therefore, it may be difficult, and perhaps even unwise, to limit significantly the use of such contractors.

Another approach might be for Congress to define such functions as core functions rather than inherently governmental, which would permit outsourcing, but at the same time impose limits on the percentage of positions that may be turned over to contractors while mandating higher standards of oversight for these positions.

Regardless, Congress will need to institute more effective measures to punish contractors who commit abuses. The MEJA Expansion Act of 2007, which has already passed in the House and which is pending in the Senate, would close important loopholes in the Federal courts' jurisdiction over contractors who commit crimes overseas. I suspect, however, that these types of back-end enforcement measures, while critical, will be insufficient. I, therefore, propose five steps that Congress can take to improve contracting practices, oversight, and monitoring so as to better prevent abuses before they occur.

First, Congress should establish minimum standards for contractual terms. As my co-panelists Mr. Bell and Mr. Kennedy have testified, the Department of State and the Department of Defense

[1] The prepared statement of Ms. Dickinson appears in the Appendix on page 60.

have made significant progress in this area. However, I recommend that we do more. I think Congress should go further and establish a set of minimum standards to guide the drafting of private sector contracts. These minimum standards would explicitly make contractors subject to clear, consistent rules regarding the use of force and establish specific requirements for training and recruitment.

With respect to the use of force in particular, these rules should be both specific and consistent across governmental departments. Indeed, the Department of Defense and the Department of State rules have sometimes differed from each other. For example, as Mr. Kennedy's report concluded in the wake of the September 16, 2007, Blackwater incident, the Department of Defense at the time required its security contractors to fire aimed shots when responding to a threat, while the Department of State did not.

Similarly, Congress could mandate that contracts with private security companies do more to explicitly require that contractor employees receive training in the applicable limits on the use of force, including very specific training in international human rights and humanitarian law. Experts have concluded that training thus far has in some cases been insufficient. DOD's recently proposed rule that certain security contractors should receive training by military lawyers is a very strong measure that would be a significant improvement. I would argue, however, that Congress should legislatively require such training rather than leaving it up to agency discretion, as the agencies have differed in their practices on this question.

Congressionally mandated standard contractual terms should also include consistent recruiting and vetting requirements for security contractor employees. Vetting becomes even more critical and more difficult as the number of non-citizen contract employees rises. Finally, in the increasingly global market for labor, recruiting practices are particularly important, and Congress could impose minimum standards here as well.

Second, Congress should encourage better interagency coordination. Government officials from the multiple agencies that have hired security contractors have not in the past communicated well with each other in the field or in Washington, contributing to a climate of confusion that can create abuse. For example, in some cases, military commanders have not known when security contractors hired by other agencies passed through their areas because there was no clear system in place to communicate that information to them. And the agencies have not had a working, unified system for counting, let alone keeping track of what contractors are doing.

As mentioned above, agencies have applied different rules regarding the use of force, and when there are investigations, multiple agencies have been on the scene. Moreover, the precise jurisdiction of each agency has been unclear, leading to further confusion.

For this reason, we must improve interagency coordination of contractors both on the ground and in Washington. The Memorandum of Understanding between the State and Defense Departments is an important step, but we can do much more. I would argue that Congress should require the establishment of an inter-

agency working group to set common standards for security contractors and design uniform systems for keeping track of them, improving communication, and clarifying lines of authority.

Third, Congress should expand the contract monitoring regime. An effective contractual regime must include sufficient numbers of trained and experienced governmental contract monitors. We have recently cut back on the acquisitions workforce, and the personnel who are on the payroll do not have adequate incentives to serve in Iraq and other conflict zones. The problems caused by the sheer low number of personnel are exacerbated by a lack of expertise in the particular issues raised by security contractors. Many of the contract personnel were trained in another era. They did not learn how to manage service contracts, let alone service contracts that raised the specific problems regarding security.

Congress should mandate that agencies increase the number of monitoring and oversight personnel, ensure that they specialize in the types of tasks they are overseeing, and require that they receive specific training in rules regarding the use of force.

Fourth, Congress should require regular reporting. One of the factors that is creating the oversight challenge is a lack of information, combined with the piecemeal way that much information about contractors comes to Congress and to the public at large. Recent legislation and bills in the pipeline would improve the situation but do not go far enough. Congress should require each agency to report to Congress quarterly or every 6 months. If Congress establishes an interagency working group, it could be the task of this group to coordinate and provide the report. Moreover, this report should not only identify the number of contractors and oversight personnel, but it should provide information about the tasks the contractors are performing, the number of incidents in which security contractors fire their weapons and injure third parties, and qualitative assessments about whether these incidents raised concerns.

Furthermore, the reports should provide information about follow-up: Whether there was an investigation, what the conclusion was, and what happened subsequent to the investigation. If the State Department can report annually on the human rights conditions in all of the countries around the world, the agencies should be able to provide Congress with minimal information about their own security contractors. Of course, any mandate should be funded so that the agencies have the resources to do this work.

Finally, Congress should foster accreditation and licensing. Congress should encourage the creation of third-party monitoring, accreditation, and certification entities and then consider requiring such third-party approval as part of the contract. At least one industry organization, the International Peace Operations Association, has launched this sort of a system, and its work has been very important. Accreditation by an independent organization, I would argue, would be an even better approach, but no organization yet exists. The National Committee on Quality Assurance, which rates and monitors health maintenance organizations (HMOs) in the health care area, might serve as a model. Congress could encourage the creation of such an entity by providing seed funding or, as it has done in the health care area, by giving agencies the authority

to deem ratings by such an independent entity as sufficient to satisfy congressionally mandated standards.

In conclusion, it is extremely important that Congress move forward with this Committee's efforts to impose greater contractual standards and monitoring requirements on private security contractors. To that end, in addition to any legislation arising from this Committee, the work of the new Commission on Wartime Contracting in Iraq and Afghanistan will provide an important forum for further consideration of these issues.

Thank you very much for the opportunity to address this Committee.

Chairman LIEBERMAN. Thank you very much, Professor Dickinson. Thanks for the suggestions, and I promise you that we will consider those as we consider whether and how to legislate, as we will the suggestions that Mr. Schmitt made. We are going to do a 6-minute round of questioning to move the discussion around to the Members here.

I appreciate what has been done to provide for better management of private security contractors, as both Mr. Kennedy and Mr. Bell have testified to. Let me try to focus on the question on which I am interested in, which is, are we using private security contractors too much? In other words, are we for various reasons using private security contractors in what might be called inherently governmental functions that would better be carried out by full-time government personnel?

I know you could talk for hours on that. I want to ask Mr. Kennedy and Mr. Bell just to give me a quick response to that overall question. Too many PSCs?

Mr. KENNEDY. Mr. Chairman, I do not think so, for two reasons. The way the State Department uses PSCs, we ensure that they do not engage in any law enforcement activities and they do not engage in any what I will call "aggressive combat activities." They simply engage in defensive activities.

The second point I would make, Mr. Chairman, is that, at least for the State Department, the ebb and flow of the activities in Iraq today, Xanadu tomorrow, or Shangri-La next year create a curve that I do not believe that the State Department has the resources to meet. We only have 1,500 special agents. To deploy them all to Iraq and Afghanistan would mean we would have no defensive advisory capability at any other post in the world, as well as no one in Washington to pursue important activities such as combating passport and visa fraud. So I believe that private security contractors, with appropriate oversight, with the full panoply of restrictions and injunctions placed into the contracts, constitute an important tool for the State Department to carry out its mission.

Chairman LIEBERMAN. So I understand the second part of what you said. Obviously, there is a benefit to a private security contractor because it is not a full-time governmental employee and you can retain their services in the arena where you need them. But I wonder, if I can phrase this question differently, whether we are at a point where we ought to be able to foresee not only the need for private security contractors in Iraq and Afghanistan but, to carry on your wonderful fantasy names, Shangri-La and Xanadu

and, therefore, increase the total number of full-time Diplomatic Security beyond the 1,500 that it is at now.

Mr. KENNEDY. Mr. Chairman, we employ in Iraq alone 1,518 contractors, just in the security arena, which is almost exactly the same number as the Diplomatic Security special agents we have. We also employ other contractors, for example, assisting our personnel who go into the Gaza Strip or the West Bank.

I do not feel confident to say that requirement would continue in perpetuity. I wish to have a robust Diplomatic Security Service. I think that is essential to permit us to carry out our activities abroad. But a doubling or a tripling of the Diplomatic Security Service, I am not sure about, Mr. Chairman. We are seeking a few additional resources so that we can have, as the Secretary has mandated from the report, a Diplomatic Security special agent move as the agent in charge in every one of these convoys. I think that pairing of a Federal agent as the agent in charge, backed up by contractors, is the appropriate way to go, sir.

Chairman LIEBERMAN. Mr. Bell, what is your quick answer on the DOD side? Too many PSCs?

Mr. BELL. Sir, we do not believe so, and I think it is important to insert in the record here very briefly that we are operating within a well-defined U.S. Government policy regarding what is an inherently governmental function and what is not. As you know, Policy Letter 92–1 from the Office of Management and Budget (OMB) defines what is an inherently governmental function and what is not. And I would just like to emphasize that Appendix B, Paragraph 19 of that Public Policy Letter specifically exempts personal security contractor functions as not being inherently governmental.

That policy has been in place since 1992. We have built our DOD force structure around the assumption that they would not be inherently governmental.

So, for example, if you looked at the approximately 9,200 personal security contractors that we have in Iraq and Afghanistan, using the Congressional Budget Office analytical construct from their work in 2005 on DOD staffing, it would indicate we would probably have to have somewhere on the order of magnitude of nine brigades of military forces to support the rotation of troops in and out for a fielded force of 9,200 private security contractors.

Chairman LIEBERMAN. I hear you on that. The fact is that there have been numerous incidents that have drawn private security contractors in Iraq into hostilities, when they have been deployed to protect personnel, convoys, or facilities in hot zones. I understand, for instance, that Forward Operating Base Shield, which is a quarter mile from Sadr City, is guarded by a contractor.

So I wonder whether there has been any shift in the Department's policies about when security contractors should be used and when they should not, and whether, in fact, they are not inherently in some of these cases in hot zones performing governmental functions.

Mr. BELL. The line of distinction, as Mr. Kennedy has pointed out, is whether they are used for defensive purposes or need to be involved in offensive combat operations. Static base security is considered to be defense. The private security contractor personnel that we have engaged in that static security defense are clearly

trained on the fact they are not to engage in offensive operations. But as for any base that is threatened by a hostile force, the role of that security force is to protect that base.

So that is the distinction that we have been using within the Executive Branch, certainly at DOD, regarding what is an appropriate role for a private security contractor.

Chairman LIEBERMAN. OK. My time is up, but I want to come back to this in the second round. Thanks very much. Senator Collins.

Senator COLLINS. Thank you. Actually, Mr. Chairman, you have set up perfectly the questions that I want to ask, because I, too, believe that the fundamental question here is what functions are appropriate to contract out and what functions should be retained and are, in the bureaucratic term that we use, inherently governmental.

This is a section of the Army Field Manual, and as you can see, it is a very thick section. And it is entitled "Contractors on the Battlefield." It sets forth the standards for when you would use a contractor. It is very detailed. It was written by a contractor. In other words, a private security contractor wrote the guidance in the Army Field Manual for using contractors on the battlefield. And I want to ask each of you whether you think that is appropriate.

It seems to me that this is inherently governmental, but even if it is not inherently governmental, it seems to me that there is at least an inherent conflict of interest to have a contractor writing the section of the manual on the use of contractors. But I am going to start with you, Mr. Bell, since it is a DOD document.

Mr. BELL. With all due respect, Senator Collins, I am sure that that document was not issued without detailed review by both military and civilian employees of the Department of Defense. We do, as you know, use contractors for different drafting purposes. I have not actually seen the manual in detail. I know specifically what it is. But I would suggest that the document has been thoroughly vetted by both DOD military personnel as well as civilian personnel in its issuance.

Obviously, there is the appearance, as you are pointing out, of an apparent conflict of interest in that, but I would suggest that that probably had very detailed screening.

Senator COLLINS. Well, our understanding is that the contractor received some basic guidance, but essentially did the job. It obviously was reviewed——

Mr. BELL. Right.

Senator COLLINS [continuing]. As you have said. I want to ask the professor her opinion on this.

Ms. DICKINSON. Well, I do think it raises concerns, a broader concern, which is that when you outsource certain functions, there is a risk that you lose the capability in-house. Now I am not suggesting that the military has lost the capability of doing that particular job, but with respect to security, I think there is a risk, and that is why I think we ought to think about limiting the percentage of positions that can be outsourced. And, of course, anytime you have risk to human life, then there is a greater concern, and so there should be greater oversight.

Senator COLLINS. Thank you.

Mr. Bell, another specific issue that is raised by this Army Field Manual is the role of contractors in the interrogation of prisoners. Now, I am told that an earlier version of this manual in 2000 had a specific prohibition against intelligence work being performed by private contractors. But in 2003, when the manual was revised—this version—that policy was omitted. And, subsequently, we had the abuse at Abu Ghraib. And according to the Fay Report, private contractors allegedly were involved in 10 of the incidents of abuse of Iraqi prisoners.

Do you believe that the interrogation of prisoners is an inherently governmental function that should not be contracted out?

Mr. BELL. I can say, irrespective of my personal beliefs on this, that it has been defined that interrogation, translation, and prisoner/detainee operations are not considered inherently governmental functions. I think to the extent that we wanted to get into personal discussions, there would be a lot of different opinions on that. What we operate on is what is provided for specifically in the U.S. Government guidance.

Senator COLLINS. Are you aware of a dispute within the Army on whether the earlier policy should have been reinserted into the 2003 version of this manual?

Mr. BELL. Senator Collins, I actually am not.

Senator COLLINS. OK. Mr. Kennedy, I also want to get your views on the timeline for finalizing a Memorandum of Understanding for Afghanistan. I understand it is finished for Iraq, but where are we as far as coming up with the same sort of guidance for Afghanistan?

Mr. KENNEDY. Senator, the requirement in the Defense Authorization Act for 2008 requires this to be done within 6 months of the date of enactment. And Mr. Bell and I are under specific orders from Deputy Secretary England and Deputy Secretary Negroponte that we are not to fail to meet that deadline. So it will be done within 6 months, and it will incorporate Afghanistan and Iraq as the Defense Authorization Act requires.

There is already a first draft of it circulating among our agencies, and we have every intention of making it. It is a complicated issue because of the volume of individuals to be registered and conforming practices. But there is a clear congressional mandate, and we will meet it, ma'am.

Senator COLLINS. Thank you.

Mr. BELL. Let me clarify Mr. Kennedy's comment. With specific regard to PSC operations for Iraq and Afghanistan, we have 120 days after the enactment of the legislation to comply with Section 862. Mr. Kennedy was referring to the larger issue, and Section 861 is where we have to put in place the database, the tracking mechanisms, and the policies regarding all DOD, State Department, and USAID contractors. But the deadline for PSC compliance is 120 days after enactment, so that is in April.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins. Senator Tester.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Mr. Chairman. I want to thank all the witnesses today for being here. This is a very important hear-

ing. It has been very valuable to me. I think there are a couple reasons why we have such a hearing, and other people may have different opinions: to make sure that taxpayer dollars are spent to the best effect and that they are not being wasted. Regrettably, I do not see an urgency there, and I have heard a lot of information about what has been going on with contractors, particularly in Iraq. And it is of great concern to me.

I am very proud of the nine freshmen in this Senate, led by Senator Webb, Senator McCaskill, and others, who are setting up a contracting commission to find out what is going on and get to the bottom of how these dollars are being spent. Unfortunately, I think the President put a signing statement on that DOD authorization bill that I hope does not block this important work.

It is important we spend the dollars correctly for obvious reasons. When you are at war, the money has to go to what is important—armor protection, bullets, equipment, those kind of things. And then we also need to understand how contracting would affect our troops, and there is a lot of information out there about what the contractors are getting paid versus what the troops are getting paid—6 or 7 times as much is what I have heard. And I think that could have a tremendously negative effect on morale. So I really appreciate your being here. I do have some questions.

Mr. Kennedy, you talked about local laws and regulations being adhered to by the contractors. When did this start occurring?

Mr. KENNEDY. Senator, it is a requirement in the State Department worldwide security contract that we issue that governs all the contractors we employ. It is a prima facie requirement.

Senator TESTER. OK. Has that been put in all the contracts from the beginning? Because there are plenty of examples where contractors have, well, to be blunt, killed Iraqis and have been escorted out of the country before any law enforcement could take place in Iraq.

Mr. KENNEDY. It has been in the contract. We have referred the case, I believe, that you are referring to, Senator, to the Department of Justice. And, unfortunately, I cannot comment on it any more because I do not have any information from DOJ.

Senator TESTER. That is fine.

Mr. KENNEDY. But we are pursuing that case at DOJ, and if it is appropriate, the individual would be brought to justice.

Senator TESTER. How many contractors are Americans and how many are foreign?

Mr. BELL. It varies, depending on whether they are personal security contractors or not.

Senator TESTER. Well, of the total 163,000—well, over 200,000, approximately, ballpark figure?

Mr. BELL. The figure, I believe, is about 17 percent Americans.

Senator TESTER. Seventeen percent American, 83 percent foreign born?

Mr. BELL. Yes, sir. Most of those are third-country nationals, but we have some host-country nationals as well.

Senator TESTER. Is that about the same ratio in the Department of State?

Mr. KENNEDY. No, sir. All of our direct personal security contractors are Americans.

Senator TESTER. OK, so of that 9,200 that you talked about?

Mr. KENNEDY. It was 1,500, sir, we have 1,500 personal security contractors in Iraq; 792 are personal security professionals. They are all Americans.

Senator TESTER. OK.

Mr. KENNEDY. We have 431 static guards. Almost all of those are third-country nationals with American supervisors. And then there is some support personnel, technical personnel, cooks, etc., who are——

Senator TESTER. OK. You actually used two terms. You used 1,500 special agents, and then during testimony somewhere—and I think this was attributed to you—you said there are 9,200 PSCs. Is that incorrect?

Mr. BELL. That is actually my quote, Senator. That is 9,200 in Iraq and Afghanistan for the Department of Defense.

Senator TESTER. Help me out. You have 163,590.

Mr. BELL. Yes, sir.

Senator TESTER. Where is the 9,200?

Mr. BELL. The 9,200 are a subset of that. Those are the personal security contractors that are a subset of the total number of contractors.

Mr. KENNEDY. And, Senator, if I might, it just happens to be that our number of contractors in Iraq is 1,518, and the total number of our special agents worldwide is 1,500

Senator TESTER. So you are saying that 1,518 is 100 percent American.

Mr. KENNEDY. No, sir. Half of—792 of the 1,518——

Senator TESTER. So half American.

Mr. KENNEDY [continuing]. Are Americans. Half of them, and then of the other half, about 10 percent or so have American supervisors, but those are static guards or support personnel.

Senator TESTER. Good enough. One thing that came to me—and this goes back to the questions of the Chairman and Senator Collins. Mr. Bell, you talked about weapons systems were pretty much being manned by contractor personnel. That is somewhat concerning to me. We are talking about weapons systems that are being operated by contract personnel that, quite frankly, could go to the highest bidder anywhere in the country.

Mr. BELL. The way it works, Senator, is we have about 12,500 contract——

Senator TESTER. Numbers aside, just that philosophy, can you tell me what the justification of it is?

Mr. BELL. The justification is usually the original equipment manufacturer (OEM) of a system—it is not usually the entire weapons system. It is a specific component of the weapons system. It is involving technology that has to be maintained.

Senator TESTER. OK.

Mr. BELL. And so most of the contractors that we have doing that are representatives of the OEM.

Senator TESTER. OK. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator Tester. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Mr. Chairman, and thank you to the panel this morning. I have sent a letter to President Bush about the Status of Forces Agreement (SOFA). What I am really concerned about here is this notion that we are negotiating potential immunity from Iraqi law for contractors before it is very clear that every single contractor involved in a contingency operation or in a war zone is accountable to someone.

As you all know, there are various, different types of laws that contractors are potentially accountable under. There is the Military Extraterritorial Jurisdiction Act, obviously. There is the Uniform Code of Military Justice. There are laws in the United States of America. And depending on what kind of contractor you are, it is not clear where you fall under these various accountability regulations.

What I would particularly like to hear from Mr. Kennedy and Mr. Bell is a commitment on the part of the Departments of State and Defense that you would support the notion that we should enter into no agreement until it is laid out under the letter of the law, the accountability for acts performed by contractors that are in direct violation of our standards of conduct in the United States of America.

Mr. BELL. Senator, we are already on the record, both the State Department and DOD, as strongly encouraging Congress to pass the amendment for the MEJA provision here. We think there is ambiguity in the current law that needs some attention, and until that is done, obviously, there are some questions about it.

I think certainly we would feel it would be ill-advised to issue an additional task order in support of our troops and our combat operations until that law passes because it is obviously something outside our control. But we very strongly endorse the recommendation that the MEJA law be passed as quickly as possible.

Mr. KENNEDY. If I could second that, one of the recommendations of the panel for which I was executive director is specifically to seek clarity, and in turn, the Secretary of State and Secretary of Defense have talked about this, along with the Department of Justice. And we fully agree with you, this must be clarified.

There are statutes that are available to the Diplomatic Security Service if the event takes place on U.S. Government owned or leased property abroad. But there are obviously gray areas, and we want absolute clarity. We fully support, believe, and endorse that if a contractor employee commits a violation, it would be a violation in the United States, that individual should be brought to justice.

Senator MCCASKILL. Do you agree that the President should not negotiate any Status of Forces Agreement and execute any agreement unless and until that law is clarified?

Mr. BELL. Our great hope, Senator McCaskill, is that the law will be passed well in advance of the conclusion of SOFA negotiations, which are not scheduled to be concluded until some months from now. It is our view that this law needs to be passed as quickly as possible.

Mr. KENNEDY. Negotiating something as complex as the SOFA agreement or an agreement based upon the Vienna Convention is

a very complex and time-consuming activity. And I believe that it is important that the negotiations proceed sequentially.

Senator MCCASKILL. On another topic, I want to make sure I get both Defense and State Departments on the record today about the new auditing authority given to the Special Inspector General for Iraq Reconstruction (SIGIR) and to the Special Inspector General for Afghanistan Reconstruction (SIGAR) in last year's defense authorization bill that was signed into law by the President. I sponsored an amendment that expanded the authority of the SIGIR and for the new SIGAR to be able to do audit work in the area of these security contracts.

The tricky part is getting the Inspectors General at the State Department and at DOD to cooperate and work effectively in order to make sure that the horizon is covered with the appropriate audit work. I know that Mr. Krongard had testified in front of Congress that he did not have sufficient resources to do the kind of audit work that, frankly, would have exposed some of the problems that have been exposed in the press. It is bad when we learn about bad stuff by someone other than the Inspectors General because that means the Inspectors General are not adequately doing their jobs or do not have the resources to do their jobs. And many times it is the latter, not a lack of will.

I know that Mr. Krongard is now gone from the State Department, but it is my understanding there have been meetings, regarding where we have jurisdiction here, and we are not sure, so we are anxious for you to do these audits. This amendment was passed to make sure that no one had the excuse that someone did not have the responsibility for doing the audit work in this important area.

Mr. Bell.

Mr. BELL. Having spent 7 months in Afghanistan in 2003 and 2004, Senator McCaskill, I strongly welcome the approval of the SIGAR authority, to establish the same authority there we have in Iraq with SIGIR. So I welcome that.

I personally have not seen any evidence of any territorial disputes between DOD and SIGIR. I do not know the personnel who may eventually be nominated to take the responsibility for SIGAR. I know some qualified candidates. Knowing General Kicklighter, who is our Inspector General, I would assume that he has no sense of turf or stovepiping desire in his duties and would welcome that opportunity.

I believe that SIGIR has done a good job as much in preventive oversight as in retroactive oversight, and I think that is an important thing to establish. We have recognized in some work the Secretary asked me to do last September that we needed to strengthen the oversight in the field. We have given authority to the Joint Contracting Command in Iraq and Afghanistan so that they must pre-clear all contracts. We are adding up to 300 Defense Contract Management Agency (DCMA) personnel going into Iraq and Afghanistan before the end of March; a hundred of them are already deployed—all with the point of view I think the direction you are leading, which is we need much stronger integrated oversight of all post-award contract administration.

Senator MCCASKILL. And I am more worried about the State Department than I am the Defense Department in this regard.

Mr. KENNEDY. As you know, Senator, the Inspector General is an independent entity within the State Department and not under the jurisdiction of the Under Secretary for Management, as it should be.

I have been briefed that the Inspector General of the State Department's team and SIGIR have already engaged in some joint reviews. I know that the Inspector General of the State Department is in the process of staffing a regional office in Amman, Jordan, so that the new Inspector General or the current Acting Inspector General will have resources in the field, because I fully agree that oversight by an independent entity such as an Inspector General is a critical element. I welcome that. I welcome the information that the Inspectors General can provide to me as the management adviser to the Secretary so I can make course corrections when I see that.

If I could also second something that Mr. Bell has said, we are just in the process of changing over our entire contracting support operation in Iraq to what we call a working capital fund so that we assess a small fee on every contract and that fee goes to the contracting office that guarantees, as work rises and falls, they have sufficient resources to give every contract the sufficient front-end work, signing work, and post-award work.

So these are activities that I personally am very committed to, and I know that our Inspector General is working with SIGIR and is working to push personnel into the field so they are closer to the scene in Iraq and can do a better job.

Senator MCCASKILL. OK. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator McCaskill. Senator Akaka, welcome.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. Let me apologize for being here late as I was chairing another hearing.

Chairman LIEBERMAN. Understood. Thank you. Glad you came.

Senator AKAKA. And I welcome our witnesses here. Mr. Bell, many reports indicate that Department of Defense private security contractors utilize non-American personnel. Specifically, a January *L.A. Times* article pointed out a firm called Triple Canopy that relied on Peruvian citizens to work security in Iraq.

How can the Department adequately ensure the suitability of non-U.S. citizens for work as security contractors? And what additional challenges do they pose for the Department?

Mr. BELL. Thank you, Senator Akaka. It is good to see you again, sir. Obviously, every private security contractor has to be vetted from a security perspective in their home country, just as they would for an interpreter, a translator, or an intelligence operative. And so the vetting process is conducted against the same standards we would use for any other function where we recruit foreign nationals to do that.

Out of the 6,467 armed security contractors we have in Iraq working for DOD, about 5,300 of them are third-country nationals. Many of them come from countries where that vetting process is

relatively easy, such as the U.K. and South Africa. There are a number of others where it is more difficult, but we have the procedures and the capability to do that vetting, and that has not been, to our knowledge, a problem.

Senator AKAKA. I understand some of these have experience as ex-military personnel and ex-policemen in their countries. Let me ask, are there background checks made on each one of these individuals?

Mr. BELL. There are, sir, and in fairness, when we recruit people, for example, there are a substantial number of former British Army Gurkhas, who have obviously been vetted by the British Government themselves, who are working as private security contractors. We do additional vetting over and above their credentials for having served in a government. So that is done on an individual basis.

Senator AKAKA. Mr. Schmitt, in your testimony you alluded to security contracts being awarded based more on claimed versus demonstrated capabilities. Can you please explain that?

Mr. SCHMITT. Certainly, Senator, and good morning.

Senator AKAKA. Good morning.

Mr. SCHMITT. That basis really comes from some of the observations that I personally had when I had the opportunity to serve at the Coalition Provisional Authority (CPA) in 2003 and 2004 in Iraq. And more publicly, from some of the instances we have seen that are really a matter of public record—and I guess probably the most striking example would be the Custer Battles Company, which, as I recall, had really no background or past performance as a security provider whatsoever, but was awarded a security contract to provide the security for the Baghdad International Airport.

So for an established firm, not just mine but many others, to see something like that and then to see that contract really disintegrate, we took great concern with that. And certainly the FAR exists for a reason, both at the Federal level and at the agency level, but we also are sympathetic that there was such great need at that time and such great demand that the services need to be rendered quickly.

Our view is that, as I mentioned this morning, Senator, if we can identify the processes in advance, much like the indefinite delivery/indefinite quality (IDIQ) contracts that are more greatly being used by the agencies, the agencies then can identify suitable providers before the need occurs. And when that need occurs, the providers are ready to respond. The American taxpayer has the assurance that the provider is, in fact, qualified and is, in fact, prepared to do what they have demonstrated they can do through the evaluation process.

Senator AKAKA. Thank you.

Mr. Bell, one concern raised in a joint Subcommittee hearing I co-chaired on January 24, 2008, regarding contingency contracting in Iraq and Afghanistan was that contractors are not under the same obligations as U.S. servicemen and servicewomen. For example, a contractor could refuse to travel to dangerous areas of Iraq.

Does the Department feel comfortable that there is a strong chain of command with private security contractors?

Mr. BELL. Yes, Senator Akaka, we did discuss that at the last hearing. We are comfortable that we are being fully supported by the contractor companies. If they have an internal problem with an individual contractor personnel refusing the mission, they also have the obligation to supply somebody according to the timetable we have to perform that mission. I have actually had personal conversations with the heads of several of the private security contractors who provide those kinds of services, such as KBR, Inc., which has the Logistics Civil Augmentation Program (LOGCAP) contract, to query whether this has at any time been a problem or looks like it could be a problem. We are getting strong, consistent assurances that with our reliance on the individual company to provide the personnel required, they do not anticipate any problem in that regard.

Senator AKAKA. Well, thank you very much. Thank you for your responses.

Mr. Chairman, I have a statement that I would like to be included in the record in the proper place. Thank you.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Mr. Chairman, for holding this important hearing.

I have made it a point over the past year to take a close look at government contracting for goods and services. At several hearings with both in this Committee, and in the Armed Services Committee, a pattern of insufficient contract oversight and poor execution has emerged. In too many cases, contracts are awarded hastily with not enough Federal employees overseeing them, putting the government at risk of waste, fraud, or abuse.

In particular, I have been concerned about hiring contract workers to fill gaps in the Federal workforce. Agencies across the Federal Government rely on contractors to fulfill critical government functions. Alarmingly, many agencies don't even know how many contractors are working for them, side by side with Federal employees, at any one time.

The Federal Government has all too often passed off the job of managing contractors to the contracting firms themselves. There are currently no consistent standards across agencies that say who can be a private security contractor or how they should be managed. Different contract security firms conduct different levels of background checks and have different hiring standards.

The legal status of many contractors operating outside of the United States needs to be clarified. The law is ambiguous at best as to how private security contractors are treated when they break the law in foreign countries.

For the foreseeable future, private security contractors will need to be used abroad. Our dependence on them can not be ended quickly, but we can do more to ensure better oversight and management. Reforms are needed to make sure that the Federal Government is using private security contractors appropriately and that they are well suited to work for the Federal Government.

I am a cosponsor of the Security Contractor Accountability Act which would clarify the legal status of security contractors overseas to ensure that they are accountable for their actions. However, the legal status of contractors is only part of the problem. Perhaps even more importantly we must institute standards for private security contractors to ensure that they behave appropriately in the field.

This Committee has an important role in reforming contracting rules conducting oversight. Contractors should be held to the same high standards as our outstanding Federal workforce. Even though contractors overseas are not government employees, it is essential that their actions reflect well on the United States.

Chairman LIEBERMAN. Thank you very much, Senator Akaka.

I would like to return to a few of the questions that I raised at the outset, regarding the kind of functions that private security contractors are performing now. They have been involved in so many shooting incidents, and I am assuming, for the record, that

those are justified incidents of shooting. But I wonder if the distinctions that we are making that we discussed earlier, Mr. Bell, between defensive and offensive operations really are relevant in that sense. I will start with Ambassador Kennedy because I did not have a chance to ask him about this. The security contractors from the Department obviously are often assigned tasks or sent into areas that put them at high risk of being engaged in the use of force. And I know you spoke to this issue somewhat in earlier comments, but I want to ask you if you would address the validity of the distinction between defensive and offensive security.

Mr. KENNEDY. Clearly, Senator, we ask our security contracting professional colleagues to engage in dangerous activities.

Chairman LIEBERMAN. Right.

Mr. KENNEDY. During calendar year 2007, in Iraq—this is in both Baghdad and other locations where the State Department uses personal security contractors—we asked them to run over 5,648 missions. There was a very small percentage of those missions—I will calculate that and get it to you—where there was escalation of force and actual shooting. So the numbers are relatively small, but they have been deadly over the years. During the course of the existence of the American Embassy in Iraq after it was turned over to the State Department from the CPA, two State Department Foreign Service security officers, government employees, have been killed, and 28 colleagues from the contract security forces have been killed as well. So this is inherently dangerous.

Chairman LIEBERMAN. Yes.

Mr. KENNEDY. However, their actions that they take are entirely defensive. They do not fire unless they are approached and encroached into the zone, and then they go through a very specific and laid-out rubric, flashing lights, hand signals, large placards on the back of the trailing vehicle. So we have very specific rules of engagement that say you do not fire. And then as the next to the last resort, you fire shots into the engine body of the vehicle that is encroaching on you to attempt to disable the vehicle, and only then as a last resort do you fire into the cabin or the body of the vehicle.

So it is a dangerous environment, but the percentages are relatively small, where escalation of force and actual shooting occurred but the number of missions, as you can see, is very large, over 5,600 in 1 year.

Chairman LIEBERMAN. Mr. Schmitt, let me ask you to get into this from the contractor's point of view. Is the distinction between offensive and defensive actions is a meaningful one? And, parenthetically—I know the parent company of ArmorGroup is British—I'd like to know whether, from your own experience whether the British Government system, both for hiring contractors and for describing responsibility once hired, is different from our own.

Mr. SCHMITT. Certainly, Senator. Clearly, the British Government took an early lead on this, even, I would say, earlier than we did, in really about 2004.

Chairman LIEBERMAN. Meaning the use of the contractors or in rules to govern the use?

Mr. SCHMITT. The use and the rules themselves for the employment of the contractors. It is an essential question on the rules of

force, which are different than rules of engagement, actually, and as the Under Secretary described, there is a whole series of procedures and actions that do occur.

We believe that the most essential thing is that you train individuals prior to employing them on these tasks so that there is no question of how to de-escalate when you have a situation. Much can be determined on how a contractor is perceived by the local population.

I will give you an example from my own experiences in Hurricane Katrina. I was deployed immediately upon landfall of Hurricane Katrina to set up our support for the de-watering of the city, and the thing that I felt was most important was the type of weaponry that we would use. We chose to use—and it was very dangerous, very lawless at the time—only shotguns, not rifles.

Now, you may ask, it is still a firearm, but the distinction in how it looks and how it is perceived by the local population makes all the difference. And the same is true in Iraq, and we believe that if you train individuals appropriately before placing them in the situation, you can do much to avoid the incident to begin with—not always. Sometimes you have to actually escalate very quickly to the rules of force where you may have to engage to protect life or limb. Many times you can avoid it.

Chairman LIEBERMAN. So do you think the existing defensive/offensive security distinction that our government is following is a meaningful one?

Mr. SCHMITT. I do, Senator, and I think it is essentially important that we clearly state as a government and as a country that we only allow private security providers to provide defensive work. Private security providers are not agents of the U.S. Government. They are contractors.

Chairman LIEBERMAN. Right. Thank you. My time is up. Senator Collins.

Senator COLLINS. Mr. Bell, I want to refer to a December 2006 GAO report that is entitled "High-Level DOD Action Needed to Address Long-standing Problems with the Management and Oversight of Contractors Supporting Deployed Forces." There were a number of recommendations in the report. One is that DOD had such limited visibility over contractors because information was not aggregated, and as a result, senior leaders and military commanders could not develop a complete picture of the extent to which they could rely or did rely on contractors to support their operations. And the GAO went on to give an example of a base consolidation plan that DOD officials were unable to determine how many contractors were even deployed to bases in Iraq.

What is the current status in terms of DOD's visibility over contractors? This report is about 14 months old now.

Mr. BELL. Thank you, Senator Collins. The report itself, even when it was issued, was somewhat dated, and I have had a series of conversations with Bill Solis about this. Let me give you the current status of those arrangements.

First, as I mentioned earlier, we are in the process of implementing now a system we call SPOT, which actually will identify every DOD contractor who comes on a military base, and we will know where they are on the base—if they come to a dining facility,

medical care facility, or when they leave the base. So we can actually identify and aggregate the statistics regarding the individual contractor personnel.

Equally important, we have put into place in October of this last year the authority that all contracts and task orders that are going to be implemented in Iraq or Afghanistan must be pre-cleared by the Joint Contracting Command for Iraq and Afghanistan, so that not only do we know about the individuals who are transiting and moving around our AOR, we actually know what contracts are being implemented. This was not the case prior to that effort of putting the Joint Contracting Command Authority in place and as we implement the actual SPOT system, as we call it, for tracking the personnel. So we have about 75,000 contractor personnel and contracts in the system already that is being fielded today. The State Department is pilot testing that for their own personnel for contractors. So we believe by this summer that the combination of having the Joint Contracting Command oversight of any contract to be implemented there as well as the actual ability to track individual contractor personnel and their movements will give us that kind of information.

Senator COLLINS. Thank you.

Another concern that GAO raised about the oversight of contractors is that DOD did not have sufficient contracting officers in-country. I know from my many briefings with the Special Inspector General for Iraq Reconstruction that he believes this is still a problem. Similarly, Ambassador, with the State Department, the October 2007 report found that there was not sufficient State Department contracting officers in-country. There is a very startling statistic that my staff found that in 2003, USAID had only four employees to oversee its Iraq contract work.

What is the status of your efforts to ensure that there is sufficient DOD acquisition personnel? I will start with you, Mr. Bell, and then the same question to you, Ambassador.

Mr. BELL. Thank you again, Senator Collins. The Secretary of Defense asked me to do an assessment for him in September about how effectively we were managing contractors, addressing the whole range of operational and contract management activities. At that time, I recommended to him exactly what you have indicated here, that we need to substantially strengthen both the staffing and contracting authority of the Joint Contracting Command as well as significantly increase the amount of DCMA post-award contract administration.

Subsequent to that, he has approved all those recommendations. We are in the process of adding 48 people just to the Joint Contracting Command as contracting officers. We have already put 100 additional DCMA personnel in. We have another 150 that are going in before the end of March. That meets the short-term need.

The long-term need is one we have to address, which is the need to enlarge the civilian and military contracting capability and personnel force that we have available to deploy to support post-award contracting activity. That is a long-term problem. The Gansler Commission has some important recommendations regarding the need to strengthen that, particularly not only to train the people but to career-path them so we have appropriate levels of experi-

ence, both in contracting in general, but particularly in contingency contracting.

Senator COLLINS. Thank you. Ambassador Kennedy.

Mr. KENNEDY. Senator, the State Department approaches the problem slightly differently. We do not do major contracts in Iraq. In order to reduce the number of people at risk and make sure that we have the most robust contract oversight, all of our major contracts are written, negotiated, and executed in Washington by our contracting professionals here. So that is why we do not have as many contract executors there. What we do, though, in parallel to Defense, is we have contracting officer's representatives. For example, every Diplomatic Security special agent who is being assigned to Iraq now receives a 40-hour course on how to ensure that they enforce the provisions of the contract. We have contracts for telecommunications and so our information management supervisors there provide the oversight of the contract and refer any questions back to Washington. The same with our facilities and the same with our logistics.

So we have the contract officer's representatives there who are professionals in the field that they are overseeing and they then refer questions or doubts about it to our central headquarters in Washington where the contract was negotiated and where there is the solid expertise on that. And that reduces the number of personnel at risk while at the same time maintains a robust oversight of the execution of the contract.

Senator COLLINS. I will tell you, Ambassador, based on the discussions that I have had with Stuart Bowen, if you do not have the contracting officials in-country, you have a lessening of accountability and oversight. I realize the negotiation can be done in the safety of Washington, but look at all the terminations for convenience of the government that we have seen in Iraq when they really should have been terminations for default. And it is because you do not have the people on the ground. I think nothing substitutes for that on-site oversight.

Mr. KENNEDY. Senator, I have read Mr. Bowen's reports. I fully agree with you for those kind of contracts, but those are not the kind of contracts that are within my jurisdiction. Developmental contracts are the purview of the Agency for International Development. The one division that we have out there, the Bureau of International Narcotics and Law Enforcement that does various kinds of training, they do have a robust staff. I believe they are up to 11 contracting people overseeing that.

I will be glad to get that data, but I fully agree with you, but it is the distinction of the type of contract that we use versus the kind DOD uses or the kind the Agency for International Development or some other body that is doing developmental work as opposed to internal operations contracting.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thank, Senator Collins. Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman,

As I alluded to earlier, I think that any time taxpayer dollars end up unnecessarily in the contractor's pockets instead of going to support the troops in terms of body armor, vehicles, bullets, or just general overall support, I think it is a travesty. And I think it is

our job to make sure that any fraud or abuse that happens does not happen.

Along that line, Mr. Kennedy, in 2004, there was a Worldwide Personnel Protective Services (WPPS) contract awarded, which you alluded to earlier, for $332 million to Blackwater. Two years later, Blackwater received for that contract $488 million, over $150 million more than what the contract said.

Was that contract competitively bid in the beginning? Explain to me why Blackwater would underbid a contract by that much.

Mr. KENNEDY. Senator, the original Blackwater contract to provide protective security operations in Iraq was awarded by the Department of Defense in 2003. When the U.S. Embassy was stood up on relatively short notice in 2004, there was a brief, sole-source award to Blackwater by the State Department.

Senator TESTER. And that was this contract?

Mr. KENNEDY. The original one. However, the State Department was then in the process of awarding what we call the Worldwide Personnel Protective Security contract. That pre-qualified companies, and there were three companies that won as being certified: Triple Canopy, Blackwater, and DynCorp. Then we post task orders to that contract that say we want you to bid now among the qualified firms for this particular task order. And then the three companies bid on that.

Senator TESTER. It was competitively bid?

Mr. KENNEDY. Yes, sir. And then the task orders are competitively bid. However, if during the period of the contract running for the year, if circumstances greatly change on the ground and we need additional PSCs, because of increased danger or expanded presence.

Senator TESTER. And that is the case?

Mr. KENNEDY. We then amend the task order, but they are paid the same rate that they won the bid on.

Senator TESTER. So Blackwater billed the State Department $1,222 a day for their employees, which was about $445,000 a year, which is well above the poverty line and well above what you pay our soldiers in the field. Is that typical?

Mr. KENNEDY. I hate to say it, Senator, but that is the competitively bid going rate, yes, sir. We competitively bid the contract, and we take the best price and best value. And it is what it costs these days——

Senator TESTER. And this is cost-effective rather than going with our active military to provide the support we want, to have control over, and as Senator McCaskill said, to be able to work our forces so everybody knows where they are at and integrate what is happening. That is cost-effective?

Mr. KENNEDY. Two things on that, Senator. When I was a member of the Secretary's special panel, I interviewed every senior U.S. military officer in and around Iraq from four stars to one star.

Senator TESTER. Yes.

Mr. KENNEDY. And I said if the State Department stopped using contractors to provide the protective security operations——

Senator TESTER. Yes.

Mr. KENNEDY [continuing]. For diplomatic activities there, do you, DOD, have the resources and the troops to take on the mission? And the answer was 100 percent uniformly, "No."

Senator TESTER. I do not doubt that a bit, but shouldn't we step up our efforts to make the active military more suitable because we are at war?

Mr. KENNEDY. That, Senator, is a question that I do not feel qualified to answer.

Senator TESTER. OK.

Mr. KENNEDY. But if I might, one other thing.

Senator TESTER. Yes.

Mr. KENNEDY. We have vetting procedures. We run through a complete schedule to make sure that we are getting everything that the taxpayer has paid for under the terms of those contracts.

Senator TESTER. I understand, but if the bar is set at $1,200 a day, that is pretty incredible from my perspective. I mean, it is truly incredible.

Mr. KENNEDY. That is, of course, Senator, you realize, a fully loaded cost where they are providing the housing, the meals, the transportation.

Senator TESTER. Are you sure about that? When I went to Iraq, the folks who guarded me—they did a very fine job, I might say—were contractors and ate in the same barracks everybody else ate in.

Mr. KENNEDY. No, sir. If you went to Baghdad, you were protected by the Regional Security Office which uses Blackwater.

Senator TESTER. Right.

Mr. KENNEDY. There is a Blackwater camp where they sleep. There is a Blackwater dining hall where they eat. And their ID card does not entitle them——

Senator TESTER. That is amazing.

Mr. KENNEDY [continuing]. To services in the Defense mess hall, which the State Department pays for independently.

Senator TESTER. All right.

Mr. BELL. If I could, Senator Tester?

Senator TESTER. Yes.

Mr. BELL. What you may have observed is they were on duty providing protection to you, which requires them to be in proximity to you when you have your meals.

Senator TESTER. OK. All right. Could you give me any kind of ballpark figure—and I know I am running out of time rapidly here. But of the $70 billion we just appropriated for Iraq and Afghanistan, what percentage of those dollars that you get will be used for contracts across the board, not just PSC but all contracts? Just give me an idea. And if you cannot, you can get back to me with what that amount might be.[1]

Mr. BELL. I would like to take that as a question for the record because I think you deserve a good, specific answer on that.

Senator TESTER. That would be fine, yes.

Mr. KENNEDY. I have a ballpark figure. I would say in Iraq it is about $400 million a year. But let me provide you with an exact

[1] See Mr. Bell's response to question for the record, which appears in the Appendix on page 147.

figure for the record, Senator, because that would allow me to make sure I encompass all the costs, including the Northern portion and the Southern portion.[1]

Senator TESTER. That would be good. I know the contractors do a good job because I saw them. The ones I dealt with did a good job. But one of the things, I think, that the American public does not understand and why red flags go up on a contractor is because we think we have 150,000 or 170,000 troops in Iraq. Well, we are paying for twice that many. And as you said earlier, Mr. Bell, only 17 percent are Americans, but we are supporting twice that many troops in Iraq. I know the militaries went down from 3.3 million to 2.2 million, and I do not doubt that. But this policy decision was made, and I just do not know if I quite agree with it, to be honest with you, from my perspective. And we can debate that some other time.

Thank you very much.

Chairman LIEBERMAN. Thanks very much, Senator Tester. Thanks for your participation in the hearing.

I would note the presence of the distinguished Senator from Delaware, Senator Carper.

With apologies to the witnesses, I am going to turn the gavel over to Senator Akaka because I have to go to the Senate floor. So he will decide who winds this up. I want to thank the witnesses. You have been very constructive, and I appreciate it a lot.

The hearing record will remain open if you want to submit additional testimony for at least 15 days, and we may want to submit questions. Some of you have made suggestions here that I would like to invite the others to comment on, particularly Professor Dickinson's suggestions.

The Committee thinks there is a need to legislate here, but obviously we want to do it thoughtfully and only as necessary. So your input will remain very important to us.

I want to say finally that Senator Levin wanted to be here, but has been unable to get away from a very important hearing of the Senate Armed Services Committee. He asked me to thank the witnesses on his behalf and to indicate that he will have questions to ask you for the record, so you have something to look forward to when you leave the hearing.

With that, I thank you and turn the gavel over to the Senator from Hawaii.

Senator AKAKA [presiding]. Thank you very much, Mr. Chairman.

Mr. Bell, subcontracting has been an area where there have been questions. In a letter to Chairman Henry Waxman of the House Oversight Committee, the Department of Defense found that prime contractor KBR, Inc., had subcontracted for private security under a dining and facilities contract. At the time, the Department had no idea such a subcontract had been put into place by KBR, Inc.

Does the Federal Government have authority over these subcontractors? Or must we rely on prime contractors to oversee them?

[1] See Mr. Kennedy's response to question for the record, which appears in the Appendix on page 120.

Mr. BELL. We have the authority to specify the deliverables under a performance contract, and IDIQ contract, which KBR, Inc. has under LOGCAP. They were specifically prohibited from providing security services under that contract, but were authorized to subcontract that out to qualified security companies should the need be determined to do that. So in this particular case, I am not sure of the specifics it was responding to. I am sure that what happened is that they found a need, given a deteriorating security situation, to get security contract protection for that facility and did that through a subcontract.

Senator AKAKA. I see. So my question was whether the Federal Government has authority over those subcontractors?

Mr. BELL. We do have authority over all subcontractors. We even have authority over contracts where the services and the goods have not yet been turned over to the U.S. Government, and we are exercising, for example, jurisdiction over private security contractors on deliveries that have not yet changed ownership to the U.S. Government.

Senator AKAKA. Thank you, Mr. Bell.

Mr. Kennedy, Homeland Security Presidential Directive 12 (HSPD-12) requires that all Federal employees and contractors have a common proven identity card (PIV), which requires a background check. According to the Department of State website, due to difficulty in conducting background checks for many overseas employees, you do not expect to implement PIV cards for everyone until 2011 because of your many overseas employees and contractors.

How many private security contractors working for the Department of State have obtained PIV cards and undergone the mandatory background check?

Mr. KENNEDY. Senator, every single direct personal services contractor protective agent is an American, we only employ Americans for those jobs. When the contractor proposes the individual to us, we vet that individual. We check their credentials. In the beginning, they already must be an honorably discharged U.S. military veteran or someone with Federal, State, or local law enforcement experience. Then we run a security check on them under all the relevant U.S. Executive Orders and bring them up to the Secret security clearance level. So every one of our American employees is fully cleared and has a Secret security clearance among the contractors.

For our contractors who are non-Americans—and we only use those individuals as static guards—not any of the movement security professionals that you may have seen if you have been in any one of the State Department threatened posts, as I know you have. For static guards, support personnel, cooks, cleaners, maintenance personnel, and others, we run every single local check that is possible under the State Department's rubric and the State Department's liaison with the intelligence community and other law enforcement.

The problem that HSPD-12 causes for the State Department is that you can run all the checks that they want on Americans, but you cannot run them all to the same degree on local employees,

which is why we do not give third-country nationals or locally engaged staff security clearances, and HSPD-12 drives that.

So there is an important distinction there, but in terms of the security professionals we hire for convoy and movement security, they all, sir, have a full U.S. Government Secret security clearance and the appropriate suitability checks that go with it.

Senator AKAKA. Well, thanks for the distinction. Let me ask Mr. Bell the same question.

Mr. BELL. As you know, Senator Akaka, we use both U.S., third-country nationals, and foreign nationals for our private security contractors. Our requirements under the rules we have at DOD and certainly the rules we have with the multi-national force over in Iraq and Afghanistan require that background checks must be completed and security clearances must be provided. We use, obviously, Interpol and the FBI; we use U.S. embassy facilities if they are third-country nationals. And any investigation of local records from their city or province of origin are also checked to make sure they have no criminal records.

To the extent they have been in the United States, obviously, we check to make sure that they have not been convicted of any crime that would prohibit them from being armed and, in fact, that they have no other criminal investigation against them. So we do conduct, particularly on private security contractors, very thorough background investigations.

Senator AKAKA. Well, thank you. I really appreciate your responses. You have been helpful to the Committee. What we have put into the record now will certainly clarify and explain some of the questions surrounding this important issue.

So, with that, I want to thank Mr. Kennedy, Mr. Bell, Mr. Schmitt, and Ms. Dickinson for being here today and being part of this hearing. This hearing is adjourned.

[Whereupon, at 12:10 p.m., the Committee was adjourned.]

APPENDIX

STATEMENT OF
PATRICK F. KENNEDY

UNDER SECRETARY FOR MANAGEMENT
BUREAU OF MANAGEMENT
DEPARTMENT OF STATE

Before the

SENATE COMMITTEE ON HOMELAND SECURITY
AND
GOVERNMENTAL AFFAIRS

"An Uneasy Relationship: U.S. Reliance
on Private Security Firms in Overseas Operations"

Wednesday, February 27, 2008
10:00 a.m.
SD-342, Dirksen Senate Office Building
Washington, D.C.

Good Morning Chairman Lieberman, Ranking Member Collins and Members of the Committee.

I am honored to appear before you today with my distinguished colleagues. I would like to thank you and the Committee members for your continued support and interest in the Department of State's programs and foreign policy objectives.

The Bureau of Diplomatic Security (DS), the law enforcement and security bureau of the Department, has the primary responsibility for ensuring the safety and security of State Department and other U.S. government personnel operating under Chief-of-Mission authority overseas. Diplomatic Security's nearly 1,500 Special Agents serve in the United States and around the world, in embassy and consulate Regional Security Offices, and manage security programs designed to protect U.S. government personnel, facilities, and classified information at 285 State Department posts worldwide.

Even with this presence, the employment of security contractors has become a critical Department tool since the 1980s for providing services necessary to protect U.S. personnel, buildings, and information. After the bombing of the U.S. Embassy in Beirut in 1983, private companies were afforded the opportunity to compete for security contracts at U.S. overseas missions under the Diplomatic Security and Antiterrorism Act of 1986. Over the years, security contractors have been employed in diverse hotspots around the world, and, as these contracts have evolved, the Department has sought to standardize the way posts contracted and paid for guard force services to enhance uniform fiscal reporting and to streamline security management.

Over the last decade, conflicts, wars, political unrest, and terrorist activities have increasingly required the deployment of diplomats to areas that are inherently dangerous places to live and work. As the U.S. government continues its diplomatic efforts in those critical areas, the assets and resources required to ensure the safety and security of U.S. diplomats and other government representatives have also increased.

The use of security contractors in these dangerous places has allowed the Department the flexibility to rapidly expand its capability to meet these increased security requirements and to support national-security initiatives

without the delays inherent in recruiting, hiring and training full-time personnel. The employment of security contractors remains an essential cost-effective tool utilized by the Department to provide the security services necessary to protect U.S. personnel and facilities and allow the continued conduct of diplomatic efforts in non-permissive environments.

The government's Federal Acquisitions Regulations enable the Department to procure, sometimes with little notice, the services of a skilled cadre of security professionals for emergency needs as world events unfold. The Department's security contractors perform a narrow range of defensive duties abroad, including protection of certain foreign heads of state, high-level U.S. officials (including members of Congress), and U.S. diplomats under Chief-of-Mission authority. These functions are not inherently governmental, as Department security contractors are engaged in protecting our diplomats or other senior officials and are not authorized to engage in law enforcement or combat activities. The use of contract personnel allows the Department the flexibility to rapidly expand or reduce the level of security personnel deployed based on changing requirements. Most importantly, it is through the contracting mechanism that the Department requires security contractors to adhere to stringent standards and operating procedures for contract performance.

The establishment of interagency standards for security contractors operating overseas would ensure that all U.S. government security contractors or subcontractors meet core standards regarding their qualifications, training, and operations. Over the last several months, the Department of State has been working closely with the Department of Defense to accomplish this goal. Agencies should be allowed the flexibility to augment the core standards, as needed, with additional training and operational requirements.

Contract provisions requiring contractors to comply with local laws and regulations are additional measures that ensure appropriate security contractor activity. Such provisions are currently included in Department of State contracts; for example existing Department security contracts require contractors to comply with all licensing requirements that are established by the host government. In general, such provisions require contractors to secure a business license, firearms permits, and a firearms storage licenses before commencing any security contractor operations.

Contract requirements and government-wide standards are only as effective as the management and oversight controls implemented to ensure contractor compliance and accountability. In October of 2007, the Secretary of State's Panel on Personal Protective Services in Iraq, on which I served, carried out a comprehensive review of U.S. Embassy Baghdad's security practices and provided recommendations to strengthen the coordination, oversight, and accountability aspects of those practices.

The Panel also encouraged enhanced coordination and communication with the U.S. military in Iraq. To that end, the Secretaries of State and Defense, through the Memorandum of Agreement (MOA) dated December 5, 2007, agreed to jointly develop, implement, and follow core standards, policies, and procedures for the accountability, oversight, and discipline of private security contractors.

Over the past several months, the Department has undertaken to quickly institute new policies and procedures governing security contractors overseas to implement both the Panel's recommendations and the December 2007 MOA with the Department of Defense:

- Diplomatic Security Special Agents are now "embedded" within each Embassy movement of personnel.

- Procedures have been established to ensure that MNF-I and the Embassy are aware of and coordinate on all movements by each others' details. To maximize military support for DOS protective security details and to provide visibility to battle-space commanders, the Embassy continues to provide movement details to MNF-I in advance of each movement.

- Embassy Baghdad and MNF-I liaison officers serve in each other's respective operation centers. The military liaison officer for the Embassy plays a critical role in coordinating military support and facilitating direct communication and intelligence sharing.

- Embassy Baghdad and MNF-I have established procedures to respond to and investigate serious incidents involving protective security details.

- The State Department has developed new investigative policies and procedures for use of force incidents by security contractors, which will also facilitate the referral of cases to the Department of Justice where there is evidence of potential criminal misconduct.

- An Embassy Joint Incident Review Board, which includes MNF-I, periodically reviews incident investigations to develop lessons learned, determine trends, and make recommendations for improvements in private security contractor operations.

- Embassy Baghdad's Mission Firearms Policy has been revised and reissued to reflect the common principles on "Rules for the Use of Force" that govern private security contractor operations, as agreed in the MOA.

- The Regional Security Officer in Baghdad has established direct channels of communication and working agreements on coordination and liaison with senior Iraqi officials at the National Police, Ministry of Interior, and Ministry of Defense.

Moreover, the Department of State strongly supports efforts to provide greater legal accountability for unlawful acts its security contractors may commit abroad. The Administration is currently working with Congress on legislation concerning extraterritorial coverage of U.S. criminal laws. We would very much like to see this critical legislation enacted as soon as possible.

In addition to private security contractors (PSC) that contract directly with the Department of State, there are also PSCs that have a contractual relationship with contractors, subcontractors, or grantees of the Department or other civilian agencies under Chief-of-Mission authority. In accordance with the State/Defense Memorandum of Agreement, the State Department has also taken strides to strengthen oversight and accountability of these security contractors. The State Department has actively engaged with the Defense Department and the Agency for International Development in developing core policies for vetting, background investigations, training, weapons authorizations, movement coordination, and incident response and investigations. In that same vein, on January 30, 2008, Departments of Defense and State co-hosted a meeting with PSC company executives to

discuss efforts to further strengthen security contractor operations, oversight, management, and accountability.

With the passage of the National Defense Authorization Act (NDAA) for Fiscal Year 2008, the Departments of State and Defense are now actively engaged in the development of formal regulations governing private security contractors operating in combat zones, as well as the development of a memorandum of understanding that will address all contractors operating in Iraq and Afghanistan and establish a common database of information on such contractors, as required by sections 861 and 862 of that law. Our joint efforts in developing and implementing the MOA of December 2007 have already established a strong foundation for the regulations required by the NDAA. Moreover, the Department is prepared to participate in DOD's Synchronized Pre-Deployment Operational Tracking (SPOT) database of contractors, upon its anticipated rollout this March.

This enhanced coordination with the Defense Department and our increased oversight of our private security contractors has necessitated additional staffing by Department personnel. In response, the State Department initiated temporary deployments of additional Diplomatic Security Special Agents to Iraq and authorized a permanent increase in Baghdad staffing consistent with the staffing recommendations of the Secretary of State's Panel on Personal Protective Services in Iraq. With these staffing requirements straining personnel resources and the need to meet the continual and emerging worldwide security demands, the State Department will be hiring additional Special Agents. The additional requirements are being requested, and with them the Department will be able to meet these requirements and continue to provide a safe and secure environment for the conduct of U.S. foreign policy.

Chairman Lieberman and Ranking Member Collins, I thank you and the other Members of the Committee for the opportunity to appear here today. I would now be happy to answer any questions you or the other Members may have.

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AFFAIRS COMMITTEE

TESTIMONY OF

MR. JACK BELL

DEPUTY UNDER SECRETARY OF DEFENSE

(LOGISTICS AND MATERIEL READINESS)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

(ACQUISITION, TECHNOLOGY & LOGISTICS)

BEFORE THE UNITED STATES SENATE

COMMITTEE ON HOMELAND SECURITY

AND GOVERNMENTAL AFFAIRS

February 27, 2008

Chairman Lieberman, Ranking Member Collins, and Members of the Committee: thank you for the opportunity to appear before you today to discuss the Department of Defense's initiatives to improve the management and oversight of Private Security Contractors (PSC) operating in Iraq and Afghanistan.

Contractors supporting our military forces in contingency operations, both at home and deployed, are performing critical support functions that are integral to the success of military operations. United States Government military and civilian forces have been downsized significantly over the last 25 years and dependence on contractors increased, as a result of several U.S. Government policy decisions, including:

- The shift to an all-volunteer force;
- An effort to capture a "peace dividend" following the collapse of the Soviet Union; and
- Many service and support functions being performed by contractors pursuant to performance-based logistics concepts.

In addition, the increasing technical complexity of DoD weapons systems and equipment requires a level of specialized technical expertise, but of limited scope, that the DoD does not believe can be cost-effectively serviced and supported by a military force capability.

The structure of our military forces has adapted to this environment, thereby increasing our dependence on contractor personnel to provide support services both at our home bases and with our deployed forces.

The current Global War on Terrorism (GWOT) deployments of Department of Defense (DoD) military forces are the first major contingency operations to reflect the full impact of the shift to reliance on contractor personnel for critical support functions. The scale and duration of these GWOT operations have required a substantial commitment of contractors for DoD support, including a significant deployment of contractor personnel in forward areas. As of the first quarter fiscal year (FY) 2008, the U.S. Central

Command (USCENTCOM) reported about 163,590 DoD contractor personnel working in Iraq.

Faced with this unprecedented scale of dependence on contractors, we have confronted major challenges associated with visibility, integration, oversight, and management of a large contractor force working along side our deployed military personnel that, frankly, we were not adequately prepared to address. Contractors have become a significant and continuing part of our total force that DoD must manage on an integrated basis with our military forces.

Based upon a host of lessons learned, independent studies, the U.s. Government Accountability Office (GAO) and Special Inspector for Iraq (SIGIR) reports, and at the direction of Congress, we have launched several major initiatives that are strengthening our management of contractors and contractor personnel accompanying our military forces. These initiatives are based upon four guiding principles:

- Support the Warfighter and war-fighting needs;
- Maintain the capability to scale rapidly to support changing war-fighting requirements – surging, downsizing, and retrograding, as needed;
- Manage the total force, military and civilian, on an integrated basis; and
- Ensure that the initiatives to strengthen contractor management fit into a comprehensive integrated framework of requirements planning, contracting, contract administration, contractor personnel tracking and accountability, and expanded training of military personnel on the management of contractors.

DoD has several major initiatives underway to: (1) establish a strategic policy and program management framework for managing contractors and contractor personnel in future operations; (2) strengthen the management of current DoD contractor operations in Iraq and Afghanistan; (3) respond to the recommendations in the Gansler Report on Contracting in the USCENTCOM AOR; (4) implement the State Department – DoD Memorandum of Agreement (MOA) governing PSC operations in Iraq; and, (5) implement sections 861 and 862 of the Fiscal Year (FY) 2008 National Defense Authorization Act (NDAA). My testimony today will focus on the work the DoD

is doing with the Department of State (DoS) to –strengthen the management of contractor operations in Iraq and Afghanistan.

Operations in Iraq have required PSCs to fulfill a variety of important security functions, operating in non-permissive environments in support of the DoD military mission and the DoS diplomatic mission. This includes the mobile physical protection for individuals and congressional delegations (CODELs), and facility protection for bases, buildings, and supplies. According to the first quarter FY 2008, USCENTCOM census, reported in January 2008, there were approximately 6,467 armed DoD contractor personnel performing static or mobile security functions in Iraq. The table below illustrates the distribution by nationality and delineates armed versus unarmed PSCs.

DoD Private Security Contractors in Iraq
1st Quarter, FY 2008

	Total	US Citizens	Third Country National	Local/Host Country National
Total DoD PSCs in Iraq	9,952	830	7,590	1,532
Armed PSCs in Iraq	6,467	429	5,318	720

Both DoD and State have recognized the need to achieve more effective coordination of PSC operations in Iraq. On December 5, 2007, DoD and State signed a Memorandum of Agreement (MOA) defining a framework for improving accountability and strengthening operations of U.S. Government (USG) PSCs in Iraq. This MOA covers a broad range of management policies and operational procedures to achieve more effective management coordination of PSC operations in Iraq that will:

- Establish core standards for vetting, training and certification of all USG PSC contractor personnel;
- Require full compliance with contractor licensing and other rules and regulations of the Government of Iraq (GOI), Embassy Baghdad, and/or the Multi-National Force – Iraq (MNF-I);

- Require that all USG PSCs use only authorized weapons and ammunition.
- Adopt common standards for Rules on the Use of Force (RUF) and escalation procedures;
- Improve the effectiveness of incident management, response, and follow-up investigations;
- Assure transparent, timely reporting and investigations of incidents between U.S. Embassy Baghdad and MNF-I, with timely reporting of same to the GOI;
- Enforce compliance with Coalition checkpoint operations and requirements;
- Establish policies for timely, consistently, and appropriate condolence payments to be made for casualties or property damage among innocent persons; and
- Synchronize PSC operations outside secure bases to establishes real-time battle space commander and Regional Security Officer (RSO) oversight, visibility, and coordination of PSC convoy movements in the battlespace. When the battlespace commander determines there is a need for the PSDs or other convoy operations to alter routes or abort missions, PSDs will however, comply with the recommendations of the battlespace commander. Final authority for U.S. Embassy moves rests with the Chief of Mission, but he will generally honor the MNF-I recommendation. The purposes are to: (1) avoid situations with a high risk of incidents occurring; (2) integrate incident management follow-ups with the Ministry of Interior and TOC and with any persons affected by the incident; and (3) expedite incident investigations.

MNF-I has already executed Fragmentary Order 07-428, which establishes authorities, responsibilities, and coordination requirements for MNC-I to establish oversight of all DoD contractors and DoD civilians. State is developing a counterpart document to reflect U.S. Embassy Baghdad's PSC policies for U.S. Government agencies working under Chief of Mission authority.

Many aspects of the MOA have already been implemented. Interim procedures have been adopted where permanent solutions require additional work. Others are in stages of standardization and final design. At the Office of the Secretary of Defense (OSD), we are closely monitoring the implementation status of the major elements of the MOA identified above.

On January 30, Deputy Secretary of Defense England and Deputy Secretary of State Negroponte co-hosted a meeting of PSC company executives to discuss new initiatives, issues, and improvements needed in contractor management of their personnel. In the meeting DoD and State officials covered key provisions of the MOA and other initiatives, including emphasis on contractor responsibilities for the elimination of sexual harassment, ethics, discrimination, and employee misconduct. Also covered was the implementation of the Uniform Code of Military Justice (UCMJ) for DoD Contractor personnel deployed with our military forces in contingency operations. We also discussed the efforts of State and DoD to obtain legislation to strengthen the Military Extraterritorial Jurisdiction Act, or MEJA, to clarify the legal accountability of non-DoD U.S. Government contractors overseas. A group of PSC executives who attended the meeting is also assessing the benefits of establishing a private security association to establish credentialing and certification standards to ensure full compliance with State and DoD requirements.

DoD and State are jointly developing a Memorandum of Understanding (MOU) covering matters relating to DoD, State, and U.S. Agency for International Development (USAID) contracting and contractor management in Iraq and Afghanistan as required by section 861 of the FY 2008 NDAA. DoD and State are in the process of reviewing a draft MOU addressing the requirements. Once signed, the MOU will be implemented through DoD, State, and USAID policies and regulations. Every effort will be made to implement the provisions of the MOU within the 120 days following the MOU signing, as required in the FY 2008 NDAA.

DoD and State are also moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 NDAA, regarding management of PSC operations in Iraq and Afghanistan.

The DoD – State effort will build on DoD regulations which have been underway for some months now. The DoD effort establishes a framework that defines the roles and responsibilities for the management and integration of all DoD contractors operating under a covered contract in an area of combat operations. A DoD Directive and

companion DoD Instruction will implement the requirements of section 861 and 862 of the FY 2008 NDAA .

The DoD and State have placed a priority on registering contracts and contractor personnel in the Synchronized Pre-deployment and Operational Tracker (SPOT) System. SPOT provides a web-based automated system to: (1) track contractor personnel movements within Iraq, Afghanistan, and CENTCOM AOR; (2) validate individual contractor personnel association with specific contracts; (3) verify their authority and their authorization for access to specific DoD facilities; and (4) establish their individual eligibility for specific DoD support services. By providing information on contractor location, training, and capabilities, SPOT improves the ability of the current civilian and military acquisition workforce to conduct program management activities relative to combat support, reconstruction, or other aspects of contingency operations.

With great effort and emphasis by DoD on implementing this program, we have achieved close to 100% registration and accountability of DoD PSCs. DoD's implementation plan includes all DoD contractors working in Iraq and Afghanistan, with the highest priority on private security contractor personnel, translators, and interpreters. We continue to expand the capability of SPOT and anticipate that it will serve as the interagency database for information on contractor personnel required by section 861 of the FY 2008 NDAA. In preparation for the anticipated requirement to establish a shared database, State has already been participating in a SPOT test case to begin tracking its contractors in Afghanistan, and USAID is evaluating how best to implement the system. Both agencies have conducted training on SPOT. DOD is committed to working with State to entering their prime PSCs, employed under the Worldwide Personal Protective Services contracts (in Iraq and Afghanistan), in SPOT by March 2008.

Taken together, these initiatives substantially strengthen DoD's, State's, and USAID's capabilities and performance in managing contractors and contractor personnel in a coordinated fashion compliant with section 861 and 862.

DoD appreciates the interest and support Congress is providing to this effort.

At this time, I look forward to your questions and thank you again for this opportunity to appear before your Committee.

Statement of
James D. Schmitt

Senior Vice President
ArmorGroup North America, Inc.

Before the
United States Senate Committee on
Homeland Security and Governmental Affairs

February 27, 2008

Mr. Chairman, Senator Collins, Members of the Committee:

I would like to thank you for having me appear in front of you today to discuss the role of private security contractors (PSCs) and their use in overseas operations in support of United States government (USG) requirements.

It is an honor to present to you today and to assist the Committee in its review of the use of the private security industry.

Of course, the private security industry, my industry, has been under a great deal of scrutiny due to the recent events and significant incidents in Iraq and Afghanistan involving private security contractors operating in support of U.S. government requirements. These events, especially tragic incidents involving the deaths of private security employees and local civilians alike, have brought questions concerning the practices of private security providers, their oversight, and their accountability, to the daily forefront of newspapers and morning discussions across kitchen tables throughout America.

At best, private security contractors are viewed as a necessary evil; and, at worst, as trigger happy thugs who sacrifice America's reputation at home and abroad and damage its strategic operations by operating as if they were above the law in their pursuit of a quick, opportunistic buck. Mr. Chairman, Senator Collins, members of the Committee, this view is a gross caricature of an industry in which ArmorGroup, my company, has been operating for more than 26 years, providing a wide range of defensive protective services, including kidnap and ransom support, risk avoidance training, and the removal of mines and unexploded ordnance in heavily populated regions, to governments, commercial organizations and NGOs working in hostile or remote locations around the world.

That being said, as events increasingly show, it is certainly prudent to examine the role of private security companies, the standards to which they are expected to operate, and the oversight and enforcement mechanisms necessary to ensure their conduct and operations fall within the rule of law.

Before I discuss each of these areas I would like to begin with the following foundational premise for our industry: how private security contractors conduct themselves directly impacts how we are perceived as a country by a local population.

Unlike many other contractors from the private sector, private security contractors interact and engage with the local inhabitants that reside in the areas where we operate. Whether escorting and protecting a USG diplomat or Provincial Reconstruction Team member meeting with a local community leader or providing the secure delivery of goods and supplies across an unsecure road network, the roads and villages we transit are the same roads and villages of the local populace we are assisting.

As private security contractors, it is the actions we do - good or bad – and the image we project, that influence and shape how the local civilian populations view our nation. As much as

diplomats or soldiers who place themselves in harm's way to protect America's interests, the conduct and disposition of private sector protective security specialists paint a striking canvas from which we, as a nation, are viewed by local inhabitants. As an American, I know how I would feel about large numbers of foreign security contractors driving down our streets. Would we really expect the Iraqi people or the population of any other nation to feel so differently when they witness an expatriate laden security escort team careen through their neighborhood?

This morning I hope that I can convey to you some of the regulatory provisions that are coming to this industry and what we, in the private sector, can do to assist the U.S. government with the implementation of these changes.

What is the extent to which the U.S. Government has, or should have, a coordinated and comprehensive framework for determining when to use PSCs?

While the development of a coordinated and comprehensive U.S. government framework for using PSCs has been under discussion and long in the making, it seems to me that the question is not when we will use private security providers, but rather which firms are qualified to provide the optimal services commensurate with the best interest of our national policy objectives and the American tax payer.

Previously, we have witnessed examples where PSCs have been awarded contracts which seemed to be based more on their claimed rather than their demonstrated professional capabilities. With the continued maturing of the PSC industry, and the USG's continued use and review of PSCs, we now see more effective pre-validation of a company's standards, practices, and capabilities under the established procurement mechanisms of the USG's Federal Acquisition Regulations.

We believe that the use of suitable PSCs will continue to provide the U.S. government with additional capacity to promote regional stabilization efforts in high risk areas around the world for many years to come.

While the specific decision on whether to use a PSC will always depend on the United States' requirements at that time, depending on a given need and circumstance, experience has shown that contingency requirements normally develop with little warning. Hurricane Katrina, the deteriorating security situation of Iraq in late 2003 and 2004, the need to train and mentor a large number of local security personnel in Iraq, Afghanistan, West Africa, and elsewhere all indicate that the United States' interests could be best served by identifying, validating, and competing suitable firms for contingency response contracts in advance of a crisis or need.

Likewise, U.S. government demand for private security contractors seems poised for continued growth with the establishment of National Security Presidential Directive 44 and Department of Defense (DoD) Directive 3000.5 for Stability, Security, Transition and Reconstruction.

- National Security Presidential Directive 44 – clarifies U.S agency responsibilities for stability support operations and tells the private sector to align efforts in support of future anticipated USG overseas requirements for private sector providers

- DoD Directive 3000.5 for Stability, Security, Transition and Reconstruction – provides insight into how the military approaches stabilization operations in areas at risk and the role that private security providers fulfill in support of these efforts

In the last two years, I have had the privilege of participating in many U.S. government interagency and public-private sector initiatives related to the more effective realization of linked U.S. government agency pre- and post conflict stabilization efforts around the world in high risk areas. I would offer two observations in regards to these experiences:

- The progress of U.S. government interagency discussions and cooperation with regards to the delivery of overseas stabilization efforts is undeniable and real. The contracted private sector provider that wishes to be relevant for emerging interagency requirements must be familiar with the culture and language of multiple government agencies.

- Every indication exists that the U.S. government will continue to look to qualified, appropriate, and experienced PSCs to provide the focused resources and capabilities for overseas contingency operations.

For these reasons, I believe the U.S. government's coordinated framework for determining when to use PSCs should be less about deciding when to use private contractors and more about setting the common standards, validation, and oversight procedures needed to ensure that the right ones are selected. My company would prefer to do everything we can in terms of proving our standards and procedures before a contingency operation even gets underway so that we are able to respond and deliver immediately when called upon to do so.

Is there a need to establish government-wide standards, licensing requirements, or contract provisions for security providers?

As to the question on whether there is a need to establish government-wide standards, licensing requirements, or contract provisions for security providers, the answer can only be "absolutely yes" and ArmorGroup has been a leading global exponent of government-backed regulation for many years. However, I believe the evidence is clear that in many regards the first steps are already in place and we are now in the initial stages of standard development, implementation, and review.

Establishing industry standards, best practices, and accountability

The development of industry standards, best practices, and accountability provisions was first addressed by the private security industry well before the ramp up of private security providers in Iraq in 2003. In the case of ArmorGroup, we have long established formal corporate programs to ensure that company employees act at all times within the relevant international and local legal and humanitarian frameworks including an employee Code of Conduct, a stringent ethics policy, and an ethics review board. In 2004, in keeping with our commitment to transparency, we published the PSC industry's first white paper calling on the UK Government to regulate the industry, and we became a publicly traded company. We have also been instrumental in the founding and provision of intellectual support to the establishment and ongoing operations of the two largest

industry trade associations, the International Peace Operations Association and the British Association of Private Security Companies. We ensure our employees are trained and certified on the tenets of international humanitarian law as well as the local laws of the countries in which they operate. We implement deliberate leave rotation, provide personal insurance and welfare policies, and teach cultural training to ensure our employees, our "quiet professionals", are prepared to provide our protective services in an ethically sensitive fashion in the most complex of environments.

Unfortunately, a number of newer PSCs working in support of U.S. government programs in Iraq and elsewhere, but without this rigorous approach to ethics, have found themselves embroiled in difficult incidents which have resulted in controversy surrounding the USG's use of private security contractors. USG regulation has begun to take shape, including the following key provisions for PSCs.

- The 2006 National Defense Authorization Act (NDAA) established that DoD's private contractors could be held accountable under the Uniform Code of Military Justice.

  In theater, USCENTCOM policies and directives prescribed the manner in which DoD PSC contractors received authorization to provide armed security services within Iraq and Afghanistan.

- The 2008 National Defense Authorization Act (NDAA) included three key provisions impacting PSC operations:

  - Section 841 (Wartime Contracting Commission under Senators Webb and McCaskill)
  - Section 861 (MOU between DOD, DOS, and USAID)
  - Section 862 (record keeping and training, equipping and conduct of PSC, as well as review of incidents)

- MEJA Expansion and Enforcement Act – Representative Price's Bill (H.R. 2740) passed overwhelmingly in the House and a similar bill by Senator Obama is under consideration in the Senate. If signed into law, the bill would extend MEJA authority and US law to all private security providers, not just those supporting DoD operations.

- Ambassador Kennedy's "Report on Personal Protective Service in Iraq" released in October 2007, establishing recommendations for Department of State's PSCs.

- DoS-DoD Memorandum of Agreement (MOA) on USG private security contractors operating in Iraq released in December 2007.

Regulation is now established – industry stands ready to assist in its implementation

Private security contractors will gladly follow the U.S. government regulatory requirements provided to them. In essence it is what the industry has requested for some time. With the establishment of the MoA between the DoS and the DoD for PSC operations in Iraq, and the provisions of the 2008 NDAA, the industry is hopeful that this will be a blueprint of interagency

policies and operating practices that can be applied to other future areas of operations as required.

Private security providers stand ready to assist and will do so more efficiently when the implementation procedures are developed in an inclusive manner with the USG taking into account companies' experiences and management practices. Companies that comply with prescribed regulatory and performance standards should be rewarded with more opportunities to support USG stabilization objectives; companies that do not should be held accountable through the loss of contracts and the ineligibility to bid on new ones.

Suggested implementation mechanisms

1. **Involving PSCs and other stakeholders in ongoing standard setting dialogues and implementation processes**
   - Continued formal discussion with private sector providers on how best to implement the provisions of 2008 NDAA Sections 841, 861, and 862
   - Continued formal discussion with private sector providers on how to best to implement the provisions of the DoS-DoD MOA on U.S. government private security contractors in Iraq
   - Extension of similar MOA provisions to other current contingency areas of operations such as Afghanistan, AFRICOM, and other potential high risk areas prior to the conducting of contingency response or stability support operations
   - Provide transparency of implantation process and seek input from other third parties, such as key civil society stakeholders that work closely with affected populations
   - Actively involve industry trade associations (the International Peace Operations Association, the British Association of Private Security Companies, the Private Security Company Association of Iraq, and the Private Security Company Association of Afghanistan) in these discussions.

2. **Codification of standards and best practices in company policies and daily operating practices**
   - Companies must establish their own formal ethics policies and codes of conduct, in addition to what is codified in regulations.

3. **Training of USG personnel interacting with PSCs within the COCOM/Chief of Mission Area of Responsibility**
   - Pre-deployment training and education for U.S. government personnel likely to come in contact with PSCs in contingency operations
   - Continuation of DoD-DOS-Private Sector Working Group as outlined in the January 30th, 2008 meeting chaired by Deputy Secretary of State Negroponte and Deputy Secretary of Defense England

4. **Education for impacted/affected local populations**
   - Local populations should be given a better understanding of how to register a complaint to appropriate authorities concerning PSC operations. They should also have the means for formal redress in the event of criminal misconduct on the part of PSCs.

A more proactive role for trade associations

While many industry best practices are codified in the existing codes of conduct and ethics policies of individual firms and internationally recognised trade associations, not all U.S. government private security contractors are members of these trade associations or have ratified codes of conduct.

An alternative method of regulation could be that the USG mandates that its PSCs require some type of third-party accreditation to validate their attainment of industry standards. While trade associations exist to further industry best practices and represent their members' interest, strict enforcement of these standards ultimately depends upon the will and consensus of the members to prove an effective self-enforcement mechanism exists, and for the USG to prove that it takes these standards seriously by committing to only work with those companies who have accreditation.

How could U.S. Government agencies and firms improve their oversight of PSC operations in the field?

Oversight for private security providers begins with a corporate commitment to the ethical delivery of services

The operating principles for appropriate private security stand clear:

- a formal corporate commitment to the ethical delivery of services;
- local knowledge of, and respect for, indigenous populations; and
- a defined corporate "operating envelope" which limits a company's role to purely protective, defensive security support.

ArmorGroup's strong credibility has been built on combining the principle of operating in a strictly defensive fashion with stringent ethical and regulatory structures, backed up by our employees' respect for the cultural and legal systems of the countries in which we operate.

An effective corporate ethics program would contain the following provisions at a minimum:

- Provide protective services only using defensive measures (effective security management, armored vehicles, body armor and low caliber firearms);
- Full adherence to and mandatory induction and continuation training on U.S. and host nation local laws and international human rights and humanitarian law;
- Full adherence to and mandatory induction and continuation training on country-specific Rules for the Use of Force;
- Formal commitment to comply with host nation law, co-operate with host nation law enforcement agencies and submit records of all notifiable incidents to those agencies;
- Formal commitment to establish transparency by registering host nation subsidiary companies, ensuring local participation in management and the payment of local taxes;
- Formal declaration that will not undertake any activity that would be formally censured by the U.S. government or local governments;
- Formal declaration that will not plan or participate in any offensive operations;

- Formal declaration that will not plan or participate in any operations that seek to destabilize governments or alter the political-military balance in a host nation;
- Formal declaration that will not supply lethal equipment, nor permit employees to bear arms, except for those carried for personal protection or the defense of clients, without possessing a license from the host government or mandated authority;
- A formal commitment and establishment of an Executive Ethics Committees to review and approve all significant new client contracts.

Increased USG resources in areas of operation would help provide improved oversight to private security providers

While reputable PSCs can and have established policies and codes to ensure the ethical delivery of their services, ultimately only the USG can establish formal industry-wide regulatory and ethical standards though the introduction of more stringent contractual obligations and a commitment to enforcement of those obligations. The regulatory provisions described above are an important step in establishing standards but will only be effective if sufficient resources are committed to ensure that they are upheld and a more rigorous approach is taken towards those who do not uphold them.

Working under the direction and guidance of Congress and the U.S. government agencies we support, the private security industry is capable of providing meaningful contributions to U.S government stabilization and reconstruction efforts in high risk areas around the world. This work, we know, must be delivered with full adherence to U.S. and host nation local law and with full commitment to the provisions of international human rights and humanitarian law.

Testimony Before the United States Senate Committee on
Homeland Security and Governmental Affairs

Wednesday, February 27, 2008

Laura A. Dickinson
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Thank you for the opportunity to address you here today on this important topic. As members of this Committee are no doubt aware, both our military and our foreign policy agencies are now employing private contractors to an unprecedented degree. For example, current estimates suggest that there are almost as many contractors as troops in Iraq.[1] These contractors are serving meals, building facilities, transporting goods, and providing a broad range of logistical support to troops. They are training Iraqi police and performing other tasks to help build democracy in Iraq. And, in some cases, they are interrogating detainees and providing security to governmental officials, sites, and convoys. We don't know precisely how many security contractors are operating in Iraq, though estimates suggest there may be as many as 30,000.[2] Indeed, we are forced to rely

[1] *See, e.g.*, Statement of Gordon England, Deputy Secretary of Defense, before the House Budget Committee, July 31, 2007 (citing the results of the U.S. Central Command CENTCOM Contractor Census, which counted about 129,000 contractor in Iraq as of April 2007, but did not include contractors from the U.S. Department of State or the U.S. Agency for International Development (USAID)); *see also* T. Christian Miller, *Contractors Outnumber Troops in Iraq*, L.A. TIMES, July 4, 2007, at 1. USAID estimated that 53,300 contractors worked for the agency in Iraq, with more than 53,000 of them Iraqis, and the State Department could not estimate the number of contractors. *See* Miller, *supra.* A more recent news article suggests that during the last quarter of 2007, there were 150,000 defense department contractors in Iraq, compared to 155,000 troops. *See* David Ivanovich, *Contractor Deaths up 17 Percent in Iraq in 2007*, HOUSTON CHRON., Feb. 10, 2008, at A1.

[2] This figure is the industry estimate. *See id.* Gary Motsek, Assistant Deputy Undersecretary of Defense for Program Support, who serves as the principal advisor to the Office of the Secretary of Defense leadership on policy and program support, *see* Dep't of Defense, Program Support, at http://www.acq.osd.mil/log/PS/bio.htm, estimates that the number of Defense Department Security contractors totaled only 6,000 as of July 2007, but others have put the figure closer to 10,000. Miller, *supra* note 1. A memorandum from the House Committee on Government Oversight and Reform indicated that the 2006 agreement between the State Department and Blackwater provided for 1,020 Blackwater employees to operate in Iraq, but this figure does not include the numbers of employees for Triple Canopy and Dyncorp, the other companies that have entered into security contracts with the State Department.

on rough estimates because neither the State Department nor the Department of Defense, nor any other arm of government, keeps sufficient track.[3] And some reports suggest that even on-the-ground military commanders in Iraq may not know whether private security contractors are operating in their territory.[4]

While most contractors have performed admirably and filled vital roles—and more than 1,100 contractors have died in Iraq while doing so[5]—some have committed serious abuses without being held accountable. Perhaps the most notable recent case is the incident from September 16 of last year, when Blackwater security guards employed by the Department of State fired into a crowd in Baghdad's Nisour Square, killing seventeen people.[6] Subsequent reports by the Department of Justice and the military have concluded that at least 14, and possibly all, of the killings were unprovoked.[7] Yet no one has yet been indicted for the killings. In a similarly high-profile incident, contract interrogators and translators joined troops in sexually humiliating and brutally abusing detainees at the Abu Ghraib Prison in Iraq in 2003. Indeed, General Fay reported that the contractors, many of whom lacked training, were actually supervising uniformed military personnel at the prison.[8] Yet while twelve uniformed soldiers have faced punishment for

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House Comm. on Gov't Oversight and Reform, Memorandum, *Additional Information about Blackwater USA*, Oct. 1, 2007, at 4.

[3] In the 2007 Supplemental Appropriations Act, Congress required the Department of Defense to count the number of Defense Department Contractors in Iraq. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28 (May 5, 2007), § 3305. The Department gathers this information from the U.S. Central Command (CENTCOM) Contractor Census. Statement of Gordon England, Deputy Secretary of Defense, before the House Budget Committee, July 31, 2007. But this tally does not include contractors from the U.S. Department of State or USAID. *See* Miller, *supra* note 1.

[4] *See, e.g.*, PATRICK KENNEDY ET AL., REPORT OF THE SECRETARY OF STATE'S PANEL ON PERSONAL PROTECTIVE SERVICES IN IRAQ, at 6 (Oct. 2007) [hereinafter "Kennedy Report"].

[5] Ivanovich, *supra* note 1 (reporting that 1,123 contractors have died in Iraq since 2003).

[6] David Johnston & John M. Broder, *FBI Says Guards killed 14 without cause*, N.Y. TIMES, Nov. 14, 2007.

[7] Johnson & Broder, *supra* note 6.

[8] Maj. Gen. George R. Fay, AR–15–6 INVESTIGATION OF THE ABU GHRAIB DETENTION FACILITY AND 205TH MILITARY INTELLIGENCE BRIGADE (2004), at 51-52 *available at*

their role in the abuse,[9] no contractors have been charged. A recent report from Human Rights First suggest that these incidents are just the tip of the iceberg and that there are many more cases in which security contractors or contract interrogators may have used excessive force.[10] In fact, CIA director Michael Hayden has testified that he believes that CIA contract interrogators have engaged in waterboarding.[11] But again there has been so far only one instance—the case of the CIA contract interrogator David Passaro—in which U.S. authorities have criminally prosecuted a contractor for such crimes.[12]

Thus, we are left with the unmistakable conclusion that the use of private security contractors and interrogators potentially threatens core values embodied in our legal system, including (1) respect for human dignity and limits on the use of force and (2) a commitment to transparency and accountability.

How should Congress respond to the problems posed by private security contractors and interrogators? One possibility is to take steps to discourage or ban the outsourcing of at least some military, security, and intelligence functions. Certainly, the risks are greatest when contractors are authorized to use force, as in the case of security contractors or interrogators. Accordingly, we should be particularly cautious about outsourcing such functions and consider whether they may be inherently governmental.

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http://news.findlaw.com/hdocs/docs/dod/ fay82504rpt.pdf [hereinafter Fay Report].

[9] Julian Barnes, *CIA Contractor Guilty in Beating of Detainee*, L.A. TIMES, Aug. 18, 2006, at 18. The cases include those of Sabrina Harman, Santos A. Cardona, Shawn Martin, Megan Ambuhl, Ivan Frederick, Roman Krol, Javal Davis, Armin Cruz, Jeremy Sivitz, Charles Graner, Lynndie England, and Michael Smith. See also Laura A. Dickinson, Abu Ghraib, *The Battle Over Institutional Culture and Respect for International Law within the U.S. Military, in* INTERNATIONAL LAW STORIES, at 405, 417 (2007).

[10] Human Rights First, PRIVATE SECURITY CONTRACTORS AT WAR, ENDING THE CULTURE OF IMPUNITY (2008), *available at* http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf.

[11] *See* Siobhan Gorman, *CIA Likely Let Contractors Perform Waterboarding*, WALL ST. J., Feb. 8, 2008 (reporting that, when asked whether CIA contractors engaged in waterboarding: "I'm not sure of the specifics . . . I'll give you a tentative answer: I believe so.").

[12] *See* Scott Shane, *C.I.A. Contractor Guilty in Beating of Afghan Who Later Died*, N.Y. TIMES, Aug. 18, 2006, at A8.

Alternatively, Congress might consider designating such functions as "core" rather than inherently governmental, which would permit outsourcing but at the same time impose limits on the percentage of positions that may be turned over to contractors, while mandating higher standards of oversight regarding these positions. The State Department should not find itself in the position—as Patrick Kennedy's report on the September 16 Blackwater incident concluded—that it does not have enough Diplomatic Security Agents to even monitor the actions of contractor security guards, let alone protect government officials themselves.[13]

Nevertheless, although efforts to declare certain activities to be inherent or core governmental functions are important, I also think that the incentives to use contractors will persist, and may even expand, particularly once the inevitable draw-down of uniformed military personnel begins. Therefore, it may be difficult (and perhaps even unwise) to limit significantly the use of private security contractors.

Accordingly, Congress will undoubtedly need to institute more effective measures to punish contractors if they commit abuses. The Military Extraterritorial Jurisdiction Act (MEJA) Expansion and Enforcement Act of 2007,[14] which has already passed in the House of Representatives and which is pending in the Senate, would close important loopholes in the federal courts' jurisdiction over contractors who commit crimes overseas. Most notably, the Act would clarify ambiguity over whether U.S. federal courts would have jurisdiction to try contractors who are not employed by the Department of Defense, extending jurisdiction to all contractors and not merely those, as

[13] *See* Kennedy Report, *supra* note 4, at 6 ("There are an insufficient number of Diplomatic Security Service Special Agents assigned to the Embassy [in Iraq] to provide the appropriate level of oversight to ensure adherence to the rules and procedures already in place").
[14] MEJA Expansion and Enforcement Act of 2007, H.R. 2740, Passed in the House, Oct. 4, 2007.

current law provides, whose work relates to "supporting the mission of the Department of Defense overseas."[15]

I suspect, however, that those types of back-end enforcement measures, while important, will be insufficient. The focus of this Committee on front-end measures to improve oversight and control is therefore critical. Moreover, in devising a better oversight regime, Congress may be able to take some guidance from the domestic context, where we have outsourced functions such as health care and prison management for decades. An analysis of what we might learn from the domestic setting has been the focus of some of my recent scholarly research.[16] In addition to this research, I have helped to organize a series of meetings sponsored by Princeton University's Program in Law and Public Affairs, which have included governmental officials, contractors, uniformed military personnel, NGO representatives, and academics.[17] These experts have reached a surprising degree of consensus on some of these issues. I have also participated in a Swiss government initiative to improve government contracting standards.[18] Thus, drawing both on my own research, and on some of the suggestions from the Princeton meetings and Swiss initiative, I propose five steps Congress can take to improve contracting practices, oversight, and monitoring so as to better prevent abuses *before* they occur.

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[15] 18 U.S.C. 3267.
[16] Laura A. Dickinson, *Public Law Values in a Privatized World*, 31 YALE J. INT'L L. 383 (2006).
[17] *See Summary of Meeting*, PRINCETON PROBLEM-SOLVING WORKSHOP SERIES IN LAW AND SECURITY: A NEW LEGAL FRAMEWORK FOR MILITARY CONTRACTORS (Jan. 8 2007) [hereinafter Princeton Report], *available at* http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.
[18] See International Committee of the Red Cross, Privatisation of War: The Growing Use of Private Military and Security Companies, *available at* http://www.icrc.org/web/eng/siteeng0.nsf/html/privatisation-war.

1) Establish Minimum Standards for Contractual Terms.

Every one of the private security contractors operating on our behalf overseas is there because the company entered into a contract with the federal government. The existence of such contracts gives the federal government significant power to dictate the terms under which contractors operate, if only such power were actually exercised. Thus, I recommend that Congress establish a set of minimum standards to guide the drafting of private security contracts. These minimum standards would explicitly make contractors subject to clear, consistent rules regarding the use of force, and establish specific requirements for training and recruitment.

For example, the terms of each private security agreement could provide that private contractors must abide by relevant human rights and humanitarian law rules applicable to governmental actors and lay out specific rules regarding the use of force. While such provisions are commonplace in the domestic setting,[19] the US government's security and other contracts remain inadequate.[20] To be sure, a 2005 Department of Defense (DOD) document providing general instructions regarding contracting practices does state that contractors "shall abide by applicable laws, regulations, DOD policy, and international agreements."[21] Yet, while this is a significant advance, the language is vague, and does not spell out precisely what rules and standards the contractors must obey.

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[19] As a term in their contracts with privately run prisons, for example, many states require compliance with constitutional, federal, state, and private standards for prison operation and inmates' rights.

[20] Nevertheless, of the sixty publicly available Iraq contracts, none contains specific provisions requiring contractors to obey human rights, anticorruption, or transparency norms.
See Center for Public Integrity, Contracts and Reports, *available at* http://publicintegrity.org/wow/resources.aspx?act=resources (providing text of contracts).

[21] US Department of Defense Instruction, No. 3020.41, § 6.1 (2005).

With respect to the use of force in particular, these rules should be both specific and consistent across governmental departments. Indeed, the Department of Defense and the Department of State rules have sometimes differed from each other. For example, according to Patrick Kennedy's report, while the State Department has required its security contractors to fire aimed shots when responding to a threat, the Department of Defense has not.[22] In addition, rules have often been vague or non-existent. The eleven work orders for the CACI interrogators did not expressly require that the private contractor interrogators comply with specific international human rights or humanitarian law rules such as those contained in the Torture Convention or the Geneva Conventions. [23] A congressional mandate that contracts should include such provisions is an easy and obvious reform.

Likewise, Congress could mandate that contracts with private security companies explicitly require that, as part of the recruiting process, contractor-employees receive training in the applicable limits on the use of force, including training in international human rights and humanitarian law. Domestic contracts in the United States between state governments and private prison operators regularly include such terms.[24] Yet, while the 2005 DOD instructions require documentation of training concerning appropriate use of force,[25] the contract training requirements remain vague, and experts have asserted that

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[22] Kennedy Report, *supra* note 413, at 9.
[23] Work Orders Nos. 000035/0004, 000036/0004, 000037/0004, 000038/0004, 000064/0004, 000067/0004, 000070/0004, 000071/0004, 000072/0004, 000073/0004, & 000080/0004, issued under DOI-CACI, *available at* <http://http://publicintegrity.org/wow/docs/CACI_ordersAll.pdf.>.
[24] A standard term in state agreements with companies that manage private prisons, for example, requires companies to certify that the training they provide to personnel is comparable to that offered to state employees. See, e.g., Oklahoma Department of Corrections, "Correctional Services Contract" § 6.4, available at <http://www.doc.state.ok.us/Private%20Prisons/98cnta.pdf> [hereinafter Oklahoma Contract]; Florida Corrections Privatization Commission, "Correctional Services Contract with Corrections Corporation of America" § 6.5.
[25] Dep't of Defense Instruction (footnote 21 above), § 6.3.5.3.4.

training is insufficient.[26] Thus, it is not surprising that an Army Inspector General report on the conditions that led to the Abu Ghraib scandal concluded that 35 percent of CACI's Iraqi interrogators did not even have any "formal training in military interrogation policies and techniques," let alone education in international law norms.[27] Nor is it surprising that Patrick Kennedy concluded that the State Department security contractors had not received sufficient guidance in how to apply the rules regarding the use of force, and in particular, the use of deadly force.[28]

The Defense Department's recently proposed rule, that certain security contractors should receive training by military lawyers, is a strong measure that would be a significant improvement.[29] Yet, I would argue that Congress should legislatively require such training, rather than leaving it up to agency discretion, as the agencies have differed in their practices on this question. Moreover, education by the military lawyers in the Judge Advocate Generals (JAG) Corps—the able lawyers who train our troops and advise our commanders in the field—would ensure that the security contractors (and interrogators) are receiving training of the highest caliber. These lawyers have honed their judgment with on-the-ground experience in conflict zones, and understand the

[26] Princeton Report, supra note 17, at 6-7.
[27] US Department of the Army, Inspector General, "Detainee Operations Inspection" (2004), pp. 87-89, *available at* <http://www4.army.mil/ocpa/reports/ArmyIGDetaineeAbuse/DAIG%20Detainee%20Operations%20Inspection%20Report.pdf>. *See also* Fay Report, *supra* note 8, at 19 (noting that that "contractors without training, qualifications, and certification created ineffective interrogation teams and the potential for non-compliance with applicable laws").
[28] Kennedy Report, supra note 4, at 6.
[29] Defense Federal Acquisition Regulations Supplement; DOD Law of War Program (DFARS Case 2006-D035), 73 Fed. Reg. 1853 (Jan. 10, 2008), proposed amendment to 48 CFR 252 (proposing requirement that contractor personnel accompanying the Armed Forces outside the United States must receive "basic training" in the law of war at a military-run training center or approved web-based source; and that some contractor personnel must receive "advanced training, commensurate with their duties and responsibilities" to be "conducted by Service Judge Advocates," and which "which will be coordinated with the servicing legal advisor in the operational chain of command, within the appropriate geographic combatant command").

complex, competing values at play. Training by these lawyers could help ensure that the rules are not just paper commands but rather legal commitments with specific meaning.

Congressionally mandated standard contractual terms should also include consistent recruiting and vetting requirements for security contractor (and interrogator) employees. Vetting to ensure that employees have not participated in past abuses remains a critical issue that has not yet been resolved. To give one example of the problems that remain, Blackwater fired an employee working as a security guard under its agreement with the State Department when that employee allegedly shot and killed an Iraqi security guard on December 24, 2006.[30] Yet subsequently, a Defense Department contractor hired the man as an employee, and the company was unaware of the prior incident.[31]

Vetting is even more critical—and more difficult—as the number of non-citizen contract employees rises. By some estimates, 80 percent of contract laborers in Iraq are not U.S. citizens.[32] And while it is unclear whether the percentage of non-U.S. security contractors and interrogators is that high, there are reports that security contractors have hired third country nationals from South Africa, Colombia, Fiji, and Nepal.[33] In this context, training is not sufficient; vetting is necessary to ensure that the employees have not, for example, participated in human rights abuses as actors within repressive regimes.

Finally, in the increasingly global market for labor, recruiting practices are particularly important. Some reports have surfaced that contract employees have come to

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[30] *Contractor Involved in Iraq Shooting Got Job In Kuwait*, CNN, Oct. 4, 2007, *available at* http://www.cnn.com/2007/POLITICS/10/04/blackwater.contractor/index.html.
[31] *Id.*
[32] *See, e.g.*, Miller, *supra* note 1.
[33] *See* Paul Salopek, *South Africa's Silent War in Iraq*, CHICAGO TRIB., Oct. 7, 2007, at A1.

Iraq under false pretenses, and that some employers may have withheld passports.[34] The Defense Department has improved its standard contractual terms regarding vetting and recruiting. Nonetheless, Congress should mandate terms to insure consistency and a firm minimum standard that would prohibit such practices.

2) Encourage Inter-Agency Coordination

Government officials from the multiple agencies that have hired security contractors (and interrogators) do not communicate well with each other in the field or in Washington, contributing to a climate of confusion that can contribute to abuse. As discussed above, some military commanders do not know when security contractors hired by other agencies pass through their area, because there has been no clear system in place to communicate that information to them. And, also as mentioned above, the agencies do not have a unified system even for counting, let alone keeping track of contractors. Furthermore, in investigating abuses, multiple agencies' officials are on the scene, though the precise jurisdiction of each agency is unclear, leading to further confusion. In the case of the Blackwater September 16 incident, for example, in addition to the multiple inquiries that the State Department conducted, the FBI and military authorities also conducted investigations. Indeed, the fact that the State Department officials may have granted immunity to some contractors has complicated the criminal investigations.[35]

Moreover, in some cases, the lines of authority and communication are so unclear that contractors are actually supervising governmental personnel, instead of the other way around. In addition to the Abu Ghraib case discussed above, an incident from Najaf in

[34] *See* Princeton Report, *supra* note 17, at 13.
[35] *See* Johnston & Broder, *supra* note 6.

2004 is instructive. Blackwater guards charged with defending a Coalition Provisional Authority site fought alongside a marine who appears to have asked the Blackwater guards for advice about whether or not to fire into a menacing crowd.[36]

For this reason, one of the clearest and strongest recommendations from the Princeton group was to improve inter-agency coordination of contractors, both on the ground and in Washington.[37] The memorandum of understanding between the State Department and the Defense Department to establish better inter-agency control of security contractors is an important step.[38] Yet this agreement only addresses two agencies and could go further. I would argue that Congress should encourage the National Security Council or some other entity to establish an inter-agency working group to set common standards for security contractors, to design uniform systems for keeping track of contractors, and for improving communication and clarifying lines of authority.

3. Expand the Contract Monitoring Regime

Even when useful language is written into a contract, enforcement is lax because the agencies have not devoted enough resources to contract monitoring. An effective contractual regime must include sufficient numbers of trained and experienced governmental contract monitors. Recently the government has moved in precisely the wrong direction, however, by dramatically *reducing* its acquisitions workforce.[39]

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[36] *See Contractors in Combat: Firefight from a rooftop in Iraq*, VIRGINIAN PILOT, July 25, 2006; JEREMY SCAHILL, BLACKWATER 123 (2007).
[37] Princeton Report, *supra* note 17, at 13-15.
[38] *See* Karen DeYoung, *State Department Contractors in Iraq Are Reined In*, WASH. POST, Dec. 6, 2007, at A24.
[39] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, DOD NEEDS TO EXERT MANAGEMENT AND OVERSIGHT TO BETTER CONTROL ACQUISITION OF SERVICES (Jan. 17 2007). For a detailed discussion of the depletion

Moreover, even the personnel who are on the payroll do not have adequate incentives to work in Iraq and other conflict zones.[40] For these reasons, scholars and commentators, including the GAO, have been warning of a contract oversight crisis.

The problems caused by the sheer low numbers of personnel are exacerbated by a lack of expertise in the particular issues raised by security contractors and interrogators. Many of the contract personnel were trained in another era and did not learn how to manage service contracts, let alone service contracts that raise the specific concerns of security and interrogation. Few contract monitors, for example, are trained in international human rights and humanitarian law standards, or in the rules regarding the use of force.

Congress, therefore, should mandate that the agencies increase the number of monitoring and oversight personnel, ensure that they specialize in the types of tasks they are overseeing, and require that they, in turn, receive specific training in rules regarding the use of force and international humanitarian and human rights law. Furthermore, Congress should allocate the funding so that the agencies have sufficient resources to fulfill this mandate.

Thus, Congress must provide more resources for contractor oversight personnel. Moreover, these monitors must be trained not only to root out fraud and corruption, but also to apply rules regarding the use of force and other important human rights and humanitarian law norms. Finally, Government monitors (or even military lawyers from the JAG Corps) should, as much as possible, be embedded with PSC convoys. This would allow some on-the-ground oversight, analogous to the role that JAG Corps lawyers

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of the acquisition workforce, *see* Steven L. Schooner, *Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government*, 16 STAN. L. & POL. REV. 16 (2005).

[40] *See* Princeton Report, *supra* note 17, at 16.

play in advising military personnel on legal issues surrounding military operations.

4. Require Regular Reporting to Congress

One of the factors that is creating the oversight challenge is a lack of information, combined with the piecemeal way that much information about contractors comes to Congress (and to the public at large). Agency officials do testify periodically and provide information, but the information (such as details about the number of contractors and their functions) does not flow to Congress in a systematic way. Part of the difficulty stems from the multiplicity of agencies entering into agreements with contractors.

Recent legislation, and bills in the pipeline, would improve the situation, but do not go far enough. Thus, the provision of the MEJA expansion act that would require reporting to Congress on the number of cases investigated is an important step, but it focuses only on the Department of Justice.[41] Similarly, recent provisions in the Defense Authorization Act of 2008 enhance reporting requirements, but are insufficient because they do not require each agency to provide both quantitative and qualitative information about contractor abuses.[42]

Congress should require each agency to report to Congress quarterly, or every six months. These reports should identify the number of security contractors, the tasks they are performing, and the number of personnel overseeing them. If Congress establishes an inter-agency working group, it could be the task of this group to coordinate and provide the report. Moreover, this report should not only identify the number of contractors and oversight personnel, but it should also provide information about the

[41] H.R. 2740, *supra* note 14, at §2.
[42] National Defense Authorization Act for Fiscal Year 2008, H.R. 4986, passed in the House, Jan. 16, 2008, passed in the Senate, Jan. 22, 2008, signed by the President, Jan. 28, 2008.

number of incidents in which security contractors fire their weapons and qualitative assessments about whether these incidents raised concerns. Furthermore, the reports should provide information about the follow-up: whether there was an investigation, what the conclusion was, and what happened subsequent to the investigation. To be sure, not all weapons discharges are cause for concerns, and companies with higher rates may in fact be serving in more dangerous areas. Thus, the fire rate is not the only critical factor. Nonetheless, the agencies should gather and provide to Congress meaningful reports about these incidents. If the State Department can report annually on the human rights conditions in all of the countries around the world,[43] the agencies should be able to provide Congress with minimal information about their own security contractors.

5. Accreditation/Licensing

Finally, Congress should encourage the creation of third-party monitoring, accreditation, and certification entities and then consider requiring such third-party approval as part of the contract. At least one industry organization, the International Peace Operations Association (IPOA), has launched this sort of accreditation system,[44] and independent organizations without industry ties could establish a rating system as well.

On this score, the domestic context provides a particularly rich set of models as to how an accreditation scheme might work. For example, in the healthcare field, state laws or contractual terms often specify that health maintenance organizations (HMOs) must

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[43] *See, e.g.*, U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007), *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/.

[44] *See, e.g.*, International Peace Operations Association Code of Conduct, *available at* http://www.ipoaonline.org/conduct/.

receive accreditation by the National Committee for Quality Assurance (NCQA), an independent, non-profit organization, before receiving public funding.[45] NCQA rates HMOs along various benchmarks of quality. Until recently, NCQA certification was primarily voluntary, offering HMOs an advantage when competing for contracts.[46] When states became managed care purchasers, however, they adopted NCQA certification as a requirement for receiving public funding.[47] Similarly, many contracts with private prison operators require companies to receive accreditation by the American Correctional Association (ACA), although the ACA is an industry organization.[48] And because private investors come to view accreditation as an indicator of quality, an accreditation requirement creates significant compliance incentives.

Accreditation by an independent organization would be the best approach, but no such organization yet exists. Congress might encourage the creation of such an organization by providing funding. Or, alternatively, Congress might, as it has done in the health care context, give agencies the authority to "deem" ratings by such an independent entity as sufficient to satisfy Congressionally mandated standards.

Conclusion

It is extremely important that Congress move forward with this Committee's efforts to impose greater contractual standards and monitoring requirements on private security contractors. To that end, in addition to any legislation arising from this

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[45] *See, e.g.*, National Committee for Quality Assurance, *available at* http://www.ncqa.org/.

[46] Although NCQA's accreditation program is voluntary, almost half the HMOs in the nation, covering three quarters of all HMO enrolees, are currently involved in the NCQA Accreditation process. Significantly, employers increasingly require or request NCQA accreditation of the plans with which they do business. *See* National Comm. for Quality Assurance, NCQA: Overview, *available at* http://www.ncqa.org/Communications/Publications/overviewncqa.pdf.

[47] For an extended discussion of NCQA, see Dickinson, *supra* note 16.

[48] *See, e.g.*, Oklahoma Contract, *supra* note 24. Dep't of Corr., Correctional Services Contract, art. 1.

Committee, the work of the new Commission on Wartime Contracting in Iraq and Afghanistan, established in the Defense Authorization Act,[49] will provide an important forum for further consideration of these issues. Thank you very much for the opportunity to address these matters with you today.

[49] *See* H.R. 4986, *supra* note 42 at § 841.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Joseph Lieberman (#1a)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

The two non-governmental witnesses at the hearing, Professor Laura Dickinson and Mr. James Schmitt, put forth a series of recommendations to improve accountability and oversight of private security contractors (PSCs). Please comment on these recommendations. Specifically, for each recommendation, please tell the Committee what actions the Department of State has taken and what additional actions it plans to take. To the extent that the Department disagrees with a recommendation, please explain the basis for disagreement.

Professor Dickson's recommendations fell within five areas:

- Establishment of minimum standards for contractual terms.
- Encouragement of interagency cooperation.
- Expansion of contract monitoring.
- Regular reporting to Congress.
- Use of accreditation and licensing.

Answer:

We agree with Professor Dickenson that contract management is an essential component for ensuring proper contractor accountability and oversight.

- *Establishment of minimum standards for contractual terms.*

  Through the Memorandum of Agreement (MOA) on U.S. Government (USG) Private Security Contractors (PSCs), signed on

December 5, 2007, the Department of Defense (DOD) and Department of State (DOS) agreed to jointly develop, implement, and follow core standards, policies, and procedures for the accountability, oversight, and discipline of PSCs. These core principles cover such vital areas as rules for the use of force, movement coordination, and incident reporting and investigation. Since the MOA was signed, Embassy Baghdad and Multi-National Force-Iraq officials have been implementing these core principles through respective policies and directives. The MOA will also inform the DOS's consultations with DOD on the regulations mandated by Section 862 of the 2008 National Defense Authorization Act (NDAA), which will further codify minimum standards applicable to USG PSCs operating in Iraq, Afghanistan and other combat zones.

- *Encouragement of interagency cooperation.*

DOS and DOD cooperate closely in Iraq through the joint leadership of Ambassador Crocker and General Petraeus. For example, the Regional Security Office and MNF-I officials have closely collaborated in establishing direct channels of communication and working agreements on coordination and liaison with senior Iraqi officials at the National Police, Ministry of Interior, and Ministry of

Defense regarding PSC operations. An Embassy and MNF-I Joint Incident Review Board periodically reviews PSC incident investigations to develop lessons learned, determine trends, and make recommendations for improvements in PSC operations. In addition, DOS has developed new investigative policies and procedures for use of force incidents by PSCs, which will also facilitate the referral of cases to the Department of Justice where there is evidence of potential criminal misconduct.

In Washington, DOD, DOS, and USAID have established working groups actively engaged in coordinating activities related to PSC oversight and accountability, including the implementation of the common database for USG contractors mandated by Section 861 of the 2008 NDAA.

- *Expansion of contract monitoring.*

The Department has taken numerous steps to increase the degree of operational oversight over our security contractors in Iraq in the last several months. The number of Diplomatic Security Special Agents staffing the Embassy Baghdad Regional Security Office has been increased, and DS agents are now "embedded" within each movement of Embassy personnel. In addition, as I described in my

testimony, the Department revised the Embassy Baghdad Mission Firearms Policy, developed new procedures and mechanisms to investigate incidents, improved coordination with MNF-I on convoy movements and contractor oversight, improved use of technology, and so on. As a matter of practice, the Department always reserves the contractual right to alter oversight controls as necessary to meet the exigencies of changing conditions during performance.

- *Regular reporting to Congress.*

The Department regularly reports to Congress through various mechanisms and reporting vehicles and welcomes the opportunity to expand the quantity and nature of the reports in the interest of promoting appreciation for the extent of its efforts to use and control its contractor personnel effectively and efficiently.

- *Use of accreditation and licensing.*

Although the Department does not currently require that private security contractors receive accreditation through any independent entity, as a general matter, we encourage the responsible development of such accreditation.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Joseph Lieberman (#1b)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

The two non-governmental witnesses at the hearing, Professor Laura Dickinson and Mr. James Schmitt, put forth a series of recommendations to improve accountability and oversight of private security contractors (PSCs). Please comment on these recommendations. Specifically, for each recommendation, please tell the Committee what actions the Department of State has taken and what additional actions it plans to take. To the extent that the Department disagrees with a recommendation, please explain the basis for disagreement.

Mr. Schmitt's recommendations fell within the following areas:

- Involvement of PSCs and other stakeholders in ongoing standard-setting dialogues and implementation processes.
- Codification of standards and best practices in company policies and daily operating procedures.
- Training of U.S. government personnel interacting with PSCs within the COCOM/Chief of Mission Area of Responsibility.
- Education for impacted local populations on means to identify PSCs and how to register complaints through appropriate authorities concerning PSC operations.

Answer:

The Department of State continues to enhance accountability and oversight of private security contractors, primarily through implementation of the Department of State (DOS)/Department of Defense (DOD) Memorandum of Agreement (MOA), dated December 5, 2007, and the recommendations of the Secretary of State's Panel on Personal Protective Services in Iraq. Mr. Schmitt's

recommendations are consistent with the Department's efforts on these two initiatives.

The Department actively engages its private security contractors and stakeholders in standard-setting dialogues and implementation processes. In its review of DOS security operations in Iraq, the Secretary's Panel made recommendations based on interviews with officials from the U.S. and foreign embassies, the U.S. military, other civilian agencies, the Government of Iraq, and private security contractors. Additionally, on January 30, 2008, the Deputy Secretaries of State and Defense met directly with senior representatives of DOS and DOD private security contractors to discuss management, accountability, and expectations.

The Bureau of Diplomatic Security meets with its primary private security contractors weekly to discuss contractual, administrative, and operational issues. In accordance with the MOA, DOS and DOD continue to jointly implement agreed upon core standards, policies, and procedures governing private security contractor operations in Iraq.

The Department codifies standards, procedures, and best practices for its primary private security vendors through contractual requirements, post policies,

and standard operating procedures. The Department is currently expanding the scope of these standards to make them applicable to other private security contractors and subcontractors working for the Department of State and other agencies under Chief of Mission authority.

The Department requires Iraq-specific training for all personnel working under Chief of Mission authority. The Diplomatic Security Foreign Affairs Counter Threat (FACT) course exposes personnel to security issues, policies, and procedures and provides an orientation to the mission and operations of private security contractors. Personnel also receive a detailed security briefing upon arrival at post, which includes a portion on interaction with private security contractor personnel. Conversely, the Bureau of Diplomatic Security requires its primary private security contractors to complete additional training focusing on cultural awareness and Embassy operations. The Department continues to review training needs and will add or modify training requirements as appropriate.

The Department maintains high standards of conduct for its security personnel and takes prompt action against those who act outside established guidelines. The Embassy receives, reviews, and responds to complaints about private security contractors and, the Embassy's Public Affairs office continues to educate the local population on procedures for registering complaints.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Joseph Lieberman (#2)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

For each of the past ten fiscal years, please provide the total budget for the Department of State's Bureau of Diplomatic Security (DS), the number of DS special agents, and the number of PSC employees on contract with the DS/Department.

Answer:

The total budget for the Department of State's Bureau of Diplomatic Security (DS) over the past ten years is shown in Attachment A, Diplomatic Security Funding History.

The number of DS special agents during the time period requested is shown in Attachment B, Total Number of DS Special Agents (FP-2501), Overseas and Domestic.

The data on the number of DS Private Security Contractors contained in Attachment C provides information relating to the Worldwide Personal Protective Services (WPPS) Staffing by Year 2000 to March 2008 and does not include static guards.

Diplomatic Security Funding History

Dollars in Thousands

Appropriations

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009 request
DS D&CP	210,805	215,118	231,154	218,871	184,897	186,429	186,715	193,323	188,499	192,971
WSP	254,000	409,098	487,735	549,405	639,896	649,904	680,716	681,949	964,170	1,179,275
Iraq Supp	0	0	0	0	190,710	599,992	740,000	884,000	1,392,695	1,108,496
Other Supplemental			103,600	10,000		43,476	50,100	96,500	191,600	
Total	464,805	624,216	822,489	778,276	1,015,503	1,479,801	1,657,531	1,855,772	2,736,964	2,480,742

Total Number of DS Special Agents (FP-2501), Overseas and Domestic
U.S. Department of State

Date	Total Number of Security Officers (FP-2501) Employees On-Board Permanent Full-Time (FTP)
9/30/2007	1478
9/30/2006	1441
9/30/2005	1382
9/30/2004	1348
9/30/2003	1261
9/30/2002	1244
9/30/2001	1022
9/30/2000	990
9/30/1999	984
9/30/1998	785

Source: HR/RMA
3/24/08

WPPS Staffing by Year 2000 to March 2008*

WPPS Staffing 2000 to 2008

YEAR	COUNTRY	PERSONNEL	YEAR	COUNTRY	PERSONNEL
2000	Bosnia	21	**2006**	Bosnia	22
2001	Bosnia	21		Israel	29
2002	Bosnia	21		Afghanistan	119
	Israel	18		Iraq	1330
	Afghanistan	121		Haiti	37
2003	Bosnia	21	**2007**	Bosnia	15
	Israel	18		Israel	29
	Afghanistan	286*		Afghanistan	119
2004	Bosnia	21		Iraq	1320
	Israel	37	**2008**	Bosnia	15
	Afghanistan	289*		Israel	46
	Iraq	244		Afghanistan	119
	Haiti	37		Iraq	1451
2005	Bosnia	22	Snapshot of total staffing across all labor categories: PSS, Support, and Guard		
	Israel	37			
	Afghanistan	141			
	Iraq	879	* only includes American personnel, No TCN's or local nationals		
	Haiti	37			
					4/2/2008

Attachment C

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Joseph Lieberman (#3)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Please provide the following details on the Department's contract for the protection of the U.S. Embassy in Kabul:

- Before the contract was awarded, what did the Department do to ascertain that the selected contractor, ArmorGroup, had the necessary resources and training facilities called for by the contract?
- What oversight has the Department conducted to ensure that the contract is properly staffed and executed according to its terms? How many State Department personnel in Afghanistan have responsibility for oversight of this contract?
- Has the Department reviewed and verified that the contractor's personnel have been properly vetted and trained for the mission?

Answer:

Armor Group North America (AGNA) submitted a self certifying technical proposal in response to the Department's detailed solicitation for an Embassy Kabul guard force. The proposal was reviewed by a technical evaluation panel instructed by a Senior Contracting Officer (SCO) to ensure that the proposal met the minimum requirements noted in the solicitation to include necessary resources and training facilities. The panel determined, based on AGNA's technical proposal, that AGNA was a technically acceptable

firm with the lowest evaluated price. As required by the Federal Acquisition Regulation, the Contracting Officer reviewed AGNA's resources, past performance and financial data to make a positive determination of contractor responsibility before making the contract award.

Contract oversight includes a Senior Contracting Officer (SCO), four Contracting Officer's Representatives (CORs); two of the CORs serve at Post (RSO personnel) and two are assigned to Diplomatic Security (DS) headquarters staff. In addition, the SCO conducts weekly meetings between the CORs and the contractor's staff. To date, there have been 80 meetings and conference calls between Department representatives and AGNA to discuss contract issues. From March 2007 to present, DS conducted five program management reviews in Kabul. When deficiencies are identified, corrective action is requested and monitored.

There are established contract requirements which define the security clearance and/or vetting procedures for specific duties and responsibilities; including U.S. personnel, expatriates, third country nationals and local nationals. The contract requires that all personnel submit resumes which are approved by a government representative. The contract also requires AGNA

to screen conduct and perform employment suitability checks, including police checks, credit checks, and previous employment checks. The Department follows the established process noted above to ensure that the contractor's personnel have been properly vetted and trained for the mission. With regard to security vetting:

- U.S. citizens must have either a U.S. government issued Secret or Top Secret security clearance or a Moderate Risk Public Trust certification issued by DS. Distinction is based on the individual's duties.
- Third country nationals are investigated by DS and must be issued a Moderate Risk Public Trust certification to perform on this contract.
- Local nationals from Afghanistan are vetted by the Regional Security Office staff at the U.S. Embassy in Kabul in accordance with investigative standards in place at Post.

The contract mandates that all personnel attend and complete eighty (80) hours of basic guard training and forty (40) hours of basic weapons training and qualification. Specialized labor categories, such as Emergency Response Team members, are required to complete an additional 120 hours of training. AGNA is required to submit training curricula and class schedules for approval by the U.S. Government. In addition, DS personnel have conducted four visits to observe AGNA's training courses, including site visits to training being conducted in Afghanistan, Texas, and Virginia.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Carl Levin (#1)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Requirement to comply with orders and direction issued by combatant commanders.

Section 862 of the National Defense Authorization Act for Fiscal Year 2008 provides that all contracts, subcontracts, and task and delivery orders for services to be provided in Iraq or any other area of combat operations must include a clause requiring the contractor to comply with orders, directives, and rules on the use of force issued by the relevant combatant commander.

Will the Department of State ensure that all covered contracts, subcontracts and task and delivery orders entered by non-defense agencies include the contract clause required by this section?

Answer:

The Department of State is working closely with the Department of Defense regarding the implementation of all of the requirements of section 862, including those concerning contract clauses.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Carl Levin (#2)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Implementation through the Federal Acquisition Regulation.

Section 862 requires that the Federal Acquisition Regulation (FAR) be revised to require the insertion of a contract clause into all covered contracts and task orders implementing the requirement of the provision.

Will you initiate a FAR case to make the required changes to the Federal Acquisition Regulation?

Answer:

We anticipate the FAR case being initiated jointly by the Department of State and the Department of Defense.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Carl Levin (#3)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Implementation of NDAA Regulatory Requirements.

Section 862 requires the issuance of regulations on private security contractors. The requirements of section 862 go beyond the requirements of the Memorandum of Agreement entered by the Department of Defense and the Department of State. For example, unlike the MOA between DoD and DoS, section 862 requires (1) the establishment of a single process for registering, accounting for, and keeping records of personnel working as private security contractors under any US government contract in Iraq; (2) the establishment of a process for registration and identification of armored vehicles, helicopters, and other military vehicles operated by private security contractors in Iraq; and (3) the establishment of a process for reporting all incidents in which a weapon is discharged, or a private security contractor is killed or injured, or kills or injures somebody else.

Would you agree that these legislative requirements go beyond what is currently included in the Memorandum of Agreement? Will you ensure they are fully implemented?

Answer:

The Department of State is working closely with the Department of Defense regarding the implementation of all of the requirements of section 862. We agree that the requirements of section 862 go beyond those currently included in the Memorandum of Agreement and they will be fully implemented through appropriate FAR clauses and other guidance.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Daniel Akaka (#1)
Senate Committee on Homeland Security
and Governmental Affairs
February 27, 2008

Question:

How many security contractor firms are employing foreign national employees for their U.S. contract, and how many individual foreign nationals are currently providing security services for the Department of State in Iraq and Afghanistan?

Answer:

	Security Contracts using Local and TCN Personnel	Local Hires	Third Country Nationals
Afghanistan Contracts	2	35	420
Iraq Contracts	5	158	1942
Total	7	193	2555

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Daniel K. Akaka (#2)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

What kind of background checks have foreign national private security contract employees undergone before serving in Iraq and Afghanistan?

Answer:

Third Country National (TCN) private security contractor employees performing on Worldwide Personal Protective Services (WPPS) and Embassy Security Force contracts in Iraq and Afghanistan undergo a National Agency Check, Local Agency Check, and Credit Check when possible/applicable. The National Agency Check is an FBI fingerprint and name check, CIA name check, and Terrorist Screening Center name check. The Local Agency check is conducted by the Regional Security Officer in the TCN's country of citizenship.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Daniel K. Akaka (#3)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Are the suitability standards and background checks for foreign national private security contract employees for the U.S. Government as stringent as those for American contractors?

Answer:

The Department uses the same methodology to conduct background checks on foreign national private security contract employees as we do for American contractor employees; however, because the investigative information for foreign nationals normally only resides with the host country government the results *generally* do not afford us as comprehensive a picture of the candidate's background as we would like to have. To compensate for this, the Department errs on the side of caution in implementing its suitability standards by mandating that any adverse information developed during the investigation will result in an automatic employment suitability denial.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Daniel K. Akaka (#4)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

What level of access do foreign national private security contract employees have to Department of State facilities and personnel in Iraq and Afghanistan?

Answer:

Foreign national private security contract employees are provided access to Department of State (DOS) facilities and personnel in accordance with established DOS policies and procedures, as well as post specific policies. Only individuals who possess the required security certification and have a legitimate need for access are authorized access to DOS facilities non-public areas and personnel. Non-cleared individuals with a legitimate access need may be granted limited access if escorted by an authorized, cleared DOS representative in accordance with DOS and post policies. Generally, foreign national private security contract employees participating in dignitary protective details are provided restricted, escorted access as necessary for performance of official duties.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Daniel K. Akaka (#5)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

In your written testimony before the committee, you state that protection of various U.S. Government officials "are not inherently governmental, as Department security contractors are engaged in protecting our diplomats or other senior officials and are not authorized to engage in law enforcement or combat activities." How does authorization to engage in law enforcement or combat affect the inherently governmental aspect of protecting high ranking U.S. officials? Is the function of protecting these officials inherently governmental under any circumstances?

Answer:

The State Department's determination of what functions are inherently governmental is guided by Federal Acquisition Regulation Subpart 7.5, "Inherently Governmental Functions," which provides numerous examples but leaves specific cases to the judgment of the relevant department or agency. For example, one function not generally considered inherently governmental is "providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details (FAR 7.503(d)(19))."

The State Department's private security contractors who protect U.S. Government officials in Iraq are not authorized to engage in law enforcement duties or offensive combat operations. This leads to the Department's determination that their functions are not "inherently governmental." To the extent that, under different circumstances, the effective performance of such protection functions would require the exercise of law enforcement duties, such as the ability to arrest individuals, they could be deemed "inherently governmental" and would accordingly be performed by government employees.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#1)
Senate Committee on Homeland Security
and Governmental Affairs
February 27, 2008

Question:

What other regulatory reforms or practices could Department of State implement to improve government oversight of private security contractor operations and thus to enhance contractor responsibility and accountability?

Answer:

The Department of State continues to enhance accountability and oversight of private security contractors, primarily through implementation of the Department of State (DOS)/Department of Defense (DOD) Memorandum of Agreement (MOA), and the recommendations of the Secretary of State's Panel on Personal Protective Services in Iraq.

In the MOA, signed on December 5, 2007, DOS and DOD agreed to jointly develop, implement, and follow core standards, policies, and procedures for the management, coordination, and oversight of their respective private security companies operating in Iraq. The MOA also provides that DOS and DOD will ensure that their subcontractors and contractors with other federal agencies will adhere to these core standards, policies and procedures to the maximum extent possible. These policies and

procedures will also serve as the foundation for the Department's consultations with DOD on the private security contractor regulations mandated by Section 862 of the NDAA for FY 2008.

In October 2007, a panel of experts assembled by the Secretary of State determined the Department's security practices in Iraq to be highly effective in ensuring the safety of mission personnel and recommended additional measures to strengthen coordination, oversight, and accountability of the Department's security contractors. The Department continues to move forward with implementation of the panel's recommendations and provisions of the MOA. Significant progress has been made in a number of critical areas, including use of force policies, incident response and investigation, and movement coordination and control. The Department believes its efforts have positively impacted operations and have effectively strengthened accountability and oversight of private security contractors.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#2)
Senate Committee on Homeland Security
and Governmental Affairs
February 27, 2008

Question:

Once private security contractor contracts are entered into by Department of State, does contract management and oversight have an important impact on contractor operations? What could Department of State do to improve its performance in this sphere? Do you have sufficient resources to do this? What additional resources would this require?

Answer:

The Department of State focuses considerable attention on contract management and oversight and believes this does have a significant impact on contractor operations. A trained Contracting Officer Representative (CORs) with technical expertise is appointed to monitor contractor performance in-country; the COR is usually the Regional Security Officer or Assistant Regional Security Officer. Additionally, coordinated monthly meetings with contractors and Contracting Officers ensure contract compliance and enhanced communication. Although we believe the correct model is in place for contract management and oversight, additional work is needed to ensure model execution is consistent throughout the Department.

On February 22, the Department received Congressional clearance to implement Procurement Shared Services, a fee-for-service model that charges a one percent fee for contracts administered by the Bureau of Administration at the time of contract obligation. The Department believes that the increased resources provided under the fee-for-service model will greatly improve the acquisition function and ultimately lead to lower contract costs as a result of better price analysis and negotiation, strengthened oversight, and additional legal review.

The Department is currently reallocating existing resources to strengthen oversight and accountability of private security companies. The Department continues to examine future resource needs necessary to meet security demands so that the increased efforts do not adversely impact the Department's ability to meet worldwide security requirements.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#3)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Apart from contract management and oversight, what day-to-day operational oversight do Department of State personnel provide to private security contractors under contract to them? Does the Department of Defense or Department of State or some other agency provide the same day-to-day operational oversight to private security contractors under contract to USAID and other civilian federal agencies? What could the Department of State do to improve its performance in this sphere? Do you have sufficient resources to do this? What additional resources would this require?

Answer:

The Regional Security Office (RSO) provides daily operational oversight of private security contractors directly supporting the U.S. Embassy. Bureau of Diplomatic Security (DS) Special Agents are embedded in all protective security details for Chief of Mission employees in Baghdad. The Department of State continues to increase its use of technology to enhance oversight through the installation of video recording systems into protective mission vehicles, the recording of radio transmissions, and the archiving of critical mission data.

The Department has increased the number of DS Special Agent positions in Iraq and continues to augment staffing through temporary

deployments. The Department of State along with our DoD colleagues provides operational interaction with USAID contractors on rules for the use of force, moment coordination, incident reporting procedures, and incident investigation procedures. Comprehensive oversight of all private security companies in Iraq associated with the Department of State and other civilian federal agencies would require significant increases in funding and resources, both in Iraq and domestically. The Department has requested additional funding for current initiatives and continually reviews funding needs for emerging requirements.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#4)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Do the Department of Defense, Department of State and other federal agencies engaging private security contractors apply or follow common contractual requirements and rules and regulations when it comes to the utilization of private security contractors? Does the use of different standards cause challenges? If so, how could these challenges be mitigated?

Answer:

In a Memorandum of Agreement (MOA) signed on December 5, 2007, the Department of State (DOS) and the Department of Defense (DOD) agreed to jointly develop, implement, and follow core standards, policies, and procedures for the management, coordination, and oversight of their respective private security companies operating in Iraq. The MOA also provides that DOS and DOD will ensure that their subcontractors and contractors with other federal agencies will adhere to these core standards, policies, and procedures to the maximum extent possible. The Department of State, in consultation with USAID and DOD, is accordingly in the process of issuing detailed policies and procedures applicable to these contractors. These policies and procedures will also serve as the foundation for the

Department's consultations with DOD on the private security contractor regulations mandated by Section 862 of the NDAA for FY 2008.

The MOA establishes core principles but allows DOD, DOS, and other agencies the flexibility necessary to meet their unique operational demands. The standardization of key policies and operational procedures set forth by the MOA, and as addressed in the forthcoming regulations under NDAA Section 862, will effectively mitigate many of the challenges inherent with the use of different standards. Additionally, the MOA provides a framework to allow DOS and DOD to jointly address future challenges.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#5)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

In December 2007, the Departments of Defense and State announced that they had negotiated a Memorandum of Agreement (MoA) "to clearly define the authority and responsibility for the accountability and operations of USG Private Security Contractors in Iraq." The same MoA states that "U.S. Embassy Baghdad and MNF-I will not tolerate misconduct by their respective PSCs and will enforce contractual obligations." Does this zero-tolerance policy apply to PSCs engaged by other federal agencies?

Answer:

The Departments of Defense (DOD) and Department of State (DOS) Memorandum of Agreement (MOA) on USG private security contractors (PSCs) in Iraq, signed on December 5, 2007, focused on those PSCs directly contracted to DOD or DOS. It also states that "the intent of this MOA is for the DOS and DOD to ensure that personnel working under contracts with other federal agencies or as subcontractors on DOS or DOD contracts are to be covered by the policies and procedures developed under this MOA. The DOD and DOS will identify those USG agencies and organizations and contractors having contractual arrangements for private security and ensure,

to the maximum extent possible, that these agencies and their PSCs adhere to the core procedures and process required by this MOA."

Accordingly, the Department of State, in consultation with USAID and DOD, is in the process of issuing detailed policies and procedures applicable to these contractors, in order to strengthen their oversight and accountability as well. Ultimately, contractual obligations are enforced by the appropriate federal agency.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#6)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

The MoA continues, "Where there is evidence of criminal misconduct, U.S. Embassy Baghdad and MNF-I will make referrals to the appropriate prosecutorial authority." Have any such referrals been made? How many? To what agency? With what result?

Answer:

The Department of State has not referred any case involving evidence of criminal misconduct by its private security contractor personnel in Iraq to the Department of Justice under the new MOA signed on December 5, 2007. While three escalation of use of force incidents involving Department of State private security contractor personnel have been investigated since the MOA was signed, in each incident the Department of State found no evidence of criminal misconduct and no referral to the Department of Justice was made. However, the Department of State has recently referred five incidents of potential misconduct by its private security personnel in Iraq, that pre-dated the MOA, to the Department of Justice for further consideration. These five referrals resulted from a review of more than 400 incidents involving Embassy Baghdad protective security details since 2004.

As you are aware, the Department of Justice has two ongoing investigations regarding incidents involving Department of State private security contractor personnel. We refer you to the Department of Justice for any questions regarding the status of these referrals and investigations.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#7)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

The MoA defines "serious incidents" to include all uses of deadly force by private security contractors and all incidents resulting in death, serious injury or significant property damage. How many serious incidents have been reported since the MoA came into effect? What is the trend in serious incidents? What is the Department of State doing to investigate these serious incidents?

Answer:

Since the Memorandum of Agreement (MOA) was signed on December 5, 2007, three escalation of use of force incidents involving Department of State private security contractor personnel have been reported, and none of these resulted in death or serious injury. This is a noticeable decline in the number of incidents compared with the rate of incidents reported between January and September 2007.

Since the MOA was signed, the Department of State has strengthened its processes for reporting, investigating, and referring serious incidents involving Department of State private security contractors in Iraq, as well as those involving contractors associated with other federal civilian agencies.

The Baghdad Regional Security Office (RSO) has a unit specifically dedicated to investigating serious incidents and, with security support from the U.S. military, conducts on-scene incident investigations when it is safe to do so.

The Senior RSO reviews the final incident investigation report, determines whether the use of force was consistent with the Mission Firearms Policy, and directs any corrective action, including the termination of personnel from the relevant contract as appropriate. These findings and recommendations are sent to the Deputy Chief of Mission for further review and any other appropriate action. The Embassy will also assemble a Joint Incident Review Board to review any incident that involved the use of deadly force which is known or asserted to have caused injury or death or other serious consequences. The Department will refer any incident in which there is evidence of criminal misconduct to the appropriate prosecutorial authority.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#8)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

Is the Department of State concerned that private contractors implicated in serious criminal offenses in Iraq and Afghanistan have not to date faced the same criminal jeopardy that U.S. military implicated in similar conduct have faced?

Answer:

As you are aware, the Department of Justice has a number of ongoing criminal investigations concerning Department of State private security personnel. We refer you to the Justice Department for any updates on the status of those investigations.

The Department of State strongly supports efforts to provide greater legal accountability for unlawful acts its security contractors may commit abroad. The Administration is currently working with the Senate on legislation to clarify and expand extraterritorial coverage of U.S. criminal laws in this context. We would very much like to see appropriate legislation enacted as soon as possible.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#9)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

On September 16, Blackwater guards reportedly opened fire on civilians in Nissour square, Baghdad, killing 17 Iraqis. Not only is this a tragic loss of life, but the killings seriously damaged relations with the Iraqis and undercut the military's important efforts to build support from the local population. While the Nissour Square shootings garnered the most publicity, the problem of unaccounted-for private security contractor abuse is hardly new. For example, on Christmas Eve, a Blackwater contractor reportedly shot dead a security guard for the Iraqi Vice-President. The Blackwater contractor was reportedly flown out of Iraq without ever being charged with any crime, and has since been employed by another security contractor based in Kuwait. In 2006, two Triple Canopy employees reported that their supervisor had fired indiscriminately on civilian vehicles in Baghdad. The employees were fired, and as far as is publicly known, the supervisor was never even questioned by the Department of Justice or the Federal Bureau of Investigation about his alleged actions. And while the U.S. Army in 2004 referred the case of seven civilian contractors it believed to be criminally responsible for abuses at Abu Ghraib, there have been no indictments to date. In fact, only one civilian private security contractor - David Passaro - has ever been charged and convicted of abuse of civilians in Afghanistan. None have been charged for misconduct directed at civilians in Iraq.

a. Do you believe that private security contractors operating overseas should be held accountable for these types of alleged abuse? What do you plan to do to increase government oversight of contractors employed in Iraq, Afghanistan, or other zones of active hostility? How will you ensure that information regarding such abuse is shared in a timely manner with the Department of Justice? What additional resources are needed to ensure effective monitoring, timely investigations, and quick reporting to the relevant parties in DOJ and elsewhere?

Answer:

The Department of State strongly supports efforts to provide greater legal accountability for unlawful acts its private security contractors may commit abroad. The Administration is currently working with the Senate on legislation concerning extraterritorial coverage of U.S. criminal laws in this context. We would very much like to see appropriate legislation enacted as soon as possible.

The Department of State has taken a number of steps since the Nissour Square incident to improve operations, oversight, and accountability for protective security detail contractors in Iraq. The Regional Security Office (RSO) provides direct daily operational oversight of private security contractors supporting the U.S. Mission in Iraq. Bureau of Diplomatic Security (DS) Special Agents are now embedded with all protective security details for the U.S. Embassy in Baghdad. Additionally, the Department of State is increasing its use of technology to enhance oversight by installing video recording systems into protective security detail vehicles, recording radio transmissions, and archiving critical mission data.

The Department of State has developed new investigative policies and procedures for use of force incidents by security contractors, which will also facilitate the referral of cases to the Department of Justice where there is evidence of potential criminal misconduct.

On December 5, 2007, the Department of State signed a Memorandum of Agreement (MOA) with the Department of Defense, agreeing to jointly develop, implement, and follow core standards, policies, and procedures for the management, coordination, and oversight of private security companies operating in Iraq. Procedures have been established to ensure that MNF-I and the Embassy are aware of and coordinate on all movements by each others' protective security details. To maximize military support for Embassy details and to provide visibility for battle-space commanders, the Embassy continues to provide movement details to MNF-I in advance of each movement.

Many of the initiatives and policies described above will also serve as the foundation for the Department's consultations with DOD on the private security contractor regulations mandated by Section 862 of the NDAA for FY 2008. These regulations will help the Department strengthen the oversight

and accountability of DS-contracted private security operations in Iraq, Afghanistan, and DOD designated war zones.

The Department of State is reallocating existing resources to strengthen oversight and accountability of private security companies. These efforts are hampering the Department's ability to meet worldwide security demands. As a result, the Department has requested additional personnel (100 in FY-2009) and continues to evaluate funding requirements necessary to meet emerging demands.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Barack Obama (#10)
Senate Committee on Homeland Security and Governmental Affairs
February 27, 2008

Question:

There are reports that the Bush Administration is proceeding to negotiate a new agreement with the Iraqi government regarding management of the war there, to be put in place by the time the current U.N. Security Council mandate expires at the end of the year. The Administration reportedly wants to include a provision in this agreement providing continued immunity from Iraqi law for contractors accused of violating that law. If the Justice Department is unable – for whatever reason – to prosecute contractors and other civilians who commit serious crimes in Iraq and Afghanistan under U.S. law, what would be the consequences of giving them immunity under host country law?

Answer:

For nearly five years, UN Security Council resolutions have authorized the presence in Iraq of the United States and our coalition partners; however, the Government of Iraq has expressed its strong desire that the UN Chapter VII mandate expire at the end of this year. The U.S. and the UN Security Council support this goal.

It is the Government of Iraq's desire to replace the UN mandate with a bilateral arrangement. To that end, we have begun negotiations to establish a framework for a strong relationship with Iraq, reflecting our shared

political, economic, cultural, and security interests. This process also includes negotiation of agreements, which would include the legal authorities and protections necessary to continue to operate in Iraq. As with other negotiations, we can not publicly discuss our negotiating positions on key issues. We will ensure, however, that members of Congress are kept fully informed as the negotiations proceed; briefings have already begun, and will continue.

As a general matter, the Department of State strongly supports efforts to provide greater legal accountability for unlawful acts contractors may commit while working in Iraq on behalf of the Department or another civilian federal department or agency. The Administration is currently working with the Senate on legislation to clarify and expand the ability of the Department of Justice to enforce U.S. criminal laws in this context. We would very much like to see appropriate legislation enacted as soon as possible.

Questions for the Record Submitted to
Under Secretary Patrick F. Kennedy by
Senator Jon Tester (#1a)
February 27, 2008

Question:

From the hearing transcript: Could you give me any kind of ballpark figure- of the $70 billion we just appropriated for Iraq and Afghanistan, what percentage of those dollars that you get will be used for contracts across the board, not just PSC but all countries [categories]? Just give me an idea and if you cannot you can get back to me with what that amount might be.

Answer:

The total amount appropriated for the Department of State as emergency bridge funding for Iraq and Afghanistan in FY 2008 was $575 million. None of the $70 billion in emergency funding provided to the Department of Defense (DOD) in FY 2008 was appropriated for the Department of State.

Of the $575 million the State Department received in FY 2008 emergency bridge funding for Iraq and Afghanistan, an estimated $330 million, or 57%, is expected to be spent on contracting actions, including follow-on project contracts related to the construction of the New Embassy Compound, Operations and Maintenance contracts for Embassy Baghdad, the current

DOD Logistics Civilian Augmentation Program (LOGCAP) contract for Chief of Mission life support and operational support in Baghdad, the Baghdad Embassy Security Forces (BESF) static local guard contract, personal security detail support, and overhead cover.

CHARRTS No.: SG-02-001
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Lieberman
Question: #1

Accountability and Oversight of Private Security Contractors

Question. The two non-governmental witnesses at the hearing, Professor Laura Dickinson and Mr. James Schmitt, put forth a series of recommendations to improve accountability and oversight of private security contractors (PSCs). Please comment on these recommendations. Specifically, for each recommendation, please tell the Committee what actions the Department of Defense has taken and what additional actions it plans to take. To the extent that the Department disagrees with a recommendation, please explain the basis for disagreement.Professor Dickinson's recommendations fell within five areas:* Establishment of minimum standards for contractual terms.* Encouragement of interagency cooperation.* Expansion of contract monitoring.* Regular reporting to Congress.* Use of accreditation and licensing.Mr. Schmitt's recommendations fell within the following areas:* Involvement of PSCs and other stakeholders in ongoing standard-setting dialogues and implementation processes.* Codification of standards and best practices in company policies and daily operating procedures.* Training of U.S. government personnel interacting with PSCs within the COCOM/Chief of Mission Area of Responsibility.* Education for impacted local populations on means to identify PSCs and how to register complaints through appropriate authorities concerning PSC operations.

Answer. The Memorandum of Agreement (MOA) between the Department of Defense (DoD) and the Department of State (DoS), signed December 5, 2007, states that minimum standards will be developed and implemented jointly for the management and coordination of operations of U.S. Government (USG) Private Security Contractors (PSCs). These standards are being incorporated into policy and regulations.

The DoD agrees that interagency cooperation is critical and should be encouraged. The DoD continues to work closely with the DoS and the U.S. Agency for International Development (USAID) to coordinate efforts and improve management and oversight of all contractors employed in support of the USG during contingency operations. The DoD-DoS MOA was signed December 5, 2007, to define clearly the authority and responsibility for accountability and operations of USG PSCs in Iraq. The DoD and DoS also are moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 National Defense Authorization Act (NDAA) regarding management of PSC operations in Iraq and Afghanistan. This will broaden the scope of coverage of the current MOA and will extend applicability to USAID and PSC operations in Afghanistan as well.

The DoD agrees that post-award contract administration and oversight require special attention. To improve these functions in theater, the Defense Contract Management Agency (DCMA) has expanded its presence and taken responsibility for the administration of the more

complex contracts that require specialized and critical oversight functions. To support the expanded requirement, the DCMA completed the deployment of an initial surge of 100 personnel into the U.S. Central Command (USCENTCOM) Area of Operations (AOR) on December 31, 2007. A Joint Manning Document (JMD) has been submitted for six-month rotational deployments of a total of 348 personnel. The DCMA projects that it will have all 348 personnel in theater by the end of 2008, providing critical contract oversight and administration functions.

The DoD is reporting regularly to Congress. In addition to providing testimony and briefings to staff members and responding to U.S. Government Accountability Office (GAO) requests for information, we submitted an interim report to Congress in October 2007 and provided the final report required by section 854 of the NDAA for FY 2007 to Congress in mid-April.

The DoD has established minimum standards for an individual to be eligible to perform as a private security contractor. The DoD validates training and weapons qualification and requires a background check before licensing an individual to carry a weapon.

Recognizing the special sensitivity of PSC operations in Iraq and Afghanistan, Deputy Secretary of Defense England and Deputy Secretary of State Negroponte co-hosted a meeting of PSC company executives on January 30, 2008, to discuss new initiatives, issues, and improvements needed in contractor management of their personnel. In the meeting, DoD and DoS officials covered key provisions of the MOA and other initiatives, including emphasis on contractor responsibilities for the elimination of sexual harassment, ethics, discrimination, and employee misconduct. Also covered was the implementation of the Uniform Code of Military Justice (UCMJ) for DoD contractor personnel deployed with our military forces in contingency operations. We also discussed the efforts of the DoS and the DoD to obtain legislation to strengthen the Military Extraterritorial Jurisdiction Act (MEJA) to clarify the legal accountability of non-DoD USG contractors overseas. A group of PSC executives who attended the meeting is assessing the benefits of establishing a private security association to establish credentialing and certification standards to ensure full compliance with DoS and DoD requirements.

We are proceeding to strengthen our deployable contract management forces. We have instituted a requirement that all contracting officers in an expeditionary environment complete the expeditionary contracting competency assessment. Together with the Joint Staff and the Military Departments, the Office of the Secretary of Defense (OSD) is developing career and leadership development plans and programs for all expeditionary contracting personnel. In addition, we are broadening training for operational military leaders across all grades, both officer and enlisted, on management of contractors deploying with forces. This training will be included in professional military education programs such as the War College, Service staff colleges, and basic noncommissioned officer courses.

The DoD agrees that it would be helpful to engage and educate the local population so that they are able to report serious incidents involving contractors supporting USG agencies during contingency operations.

CHARRTS No.: SG-02-002
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Lieberman
Question: #2

Reconstruction Contractors

Question. Many security contractors in Iraq are those who are subcontractors to the contractors performing reconstruction work. Local firms are often hired to do reconstruction security. The Committee has heard complaints from reconstruction contractors do not have adequate guidance from the U.S. government on which local firms are reputable. Should the Department establish procedures for pre-qualifying security firms? What other guidance could the Department provide for the hiring of local firms?

Answer. The Department of Defense (DoD) does not pre-qualify security firms, but certain host-nation laws serve to limit the competitive pool of local private security contractors (PSCs). Before a winning bidder is awarded a contract, the company will be audited for financial stability to ensure they have the resources available to start work. In addition, they will be checked against the Excluded Parties List to ensure the company is not on the list. The DoD uses minimum standards for qualification of individuals performing security functions. Minimum standards include training, weapons qualification, and background checks. These minimum standards are reflected in the new Federal Acquisition Regulation Supplement (FARS) clause 52.225-19, which requires:

"(3) The Contractor shall ensure that its personnel who are authorized to carry weapons--
(i) Are adequately trained to carry and use them—
(A) Safely;
(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and
(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;
(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and
(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition."

CHARRTS No.: SG-02-003
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Levin
Question: #3

Requirement to comply with orders and directives issued by combatant commanders

Question. Section 862 of the National Defense Authorization Act for Fiscal Year 2008 provides that all contracts, subcontracts, and task and delivery orders for services to be provided in Iraq or any other area of combat operations must include a clause requiring the contractor to comply with orders, directives, and rules on the use of force issued by the relevant combatant commander. Will the Department of Defense ensure that all covered contracts, subcontracts, and task and delivery orders entered by non-defense agencies include the contract clause required by this section?

Answer. The Secretary of Defense, in coordination with the Secretary of State, is developing regulations for selecting, training, and equipping personnel performing private security functions under a covered contract in an area of combat operations. The Department of Defense (DoD) and the Department of State (DoS) also are developing rules to regulate the conduct of those personnel. When those regulations are completed, we will develop appropriate coverage in the Federal Acquisition Regulation (FAR).

Although the DoD cannot ensure the compliance of non-defense agencies, the DoD, the General Services Administration (GSA), and the National Air and Space Administration (NASA) have published a final rule amending the FAR to address contractor personnel who are providing support to the mission of the U.S. Government in a designated operational area or who are supporting a diplomatic or consular mission outside the United States, but are not accompanying the U.S. Armed Forces. The new FAR clause, 52.225-19, "Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States," requires the contractor to comply with orders, directives, and rules on the use of force issued by the relevant combatant commander.

In addition, the Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7040 imposes the same requirements on contractor personnel who are authorized to accompany the U.S. Armed Forces deployed outside the United States in designated operational areas.

CHARRTS No.: SG-02-004
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Levin
Question: #4

Implementation through the Federal Acquisition Regulation

Question. Section 862 requires that the Federal Acquisition Regulation (FAR) be revised to require the insertion of a contract clause into all covered contracts and task orders implementing the requirements of the provision. Will you initiate a FAR case to make the required changes to the Federal Acquisition Regulation?

Answer: The Secretary of Defense, in coordination with the Secretary of State, must first develop regulations for selecting, training, and equipping personnel performing private security functions under a covered contract in an area of combat operations. Additionally, regulations regarding the conduct of these personnel must be produced. After those regulations are developed, we will develop appropriate coverage in the Federal Acquisition Regulation.

CHARRTS No.: SG-02-005
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Levin
Question: #5

Implementation of NDAA Regulatory Requirements

Question. Section 862 requires the issuance of regulations on private security contractors. The requirements of section 862 go beyond the requirements of the Memorandum of Agreement entered by the Department of Defense and the Department of State. For example, unlike the MOA between DOD and DOS, section 862 requires: (1) the establishment of a single process for registering, accounting for, and keeping records of personnel working as private security contractors under any US government contract in Iraq; (2) the establishment of a process for registration and identification of armored vehicles, helicopters, and other military vehicles operated by private security contractors in Iraq; and (3) the establishment of a process for reporting all incidents in which a weapon is discharged, or a private security contractor is killed or injured, or kills or injures somebody else. Would you agree that these legislative requirements go beyond what is currently included in the Memorandum of Agreement? Will you ensure that they are fully implemented?

Answer. The Memorandum of Agreement (MOA), signed December 5, 2007, was established to define clearly the authority and responsibility for accountability and operations of U.S. Government (USG) Private Security Contractors (PSCs) in Iraq. We agree that section 862 of the FY 2008 National Defense Authorization Act (NDAA) expands the requirements.

The Department of Defense (DoD) and the Department of State (DoS) are moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 NDAA regarding management of PSC operations in Iraq and Afghanistan. This change broadens the scope of coverage of the current MOA and extends applicability to the United States Agency for International Development and to PSC operations in Afghanistan as well.

CHARRTS No.: SG-02-006
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Levin
Question: #6

Contract Interrogators

Question. In the course of the hearing, Secretary Bell testified that the interrogation of detainees is not an inherently governmental function. The Department of Defense Manpower Mix Criteria provide definitive guidance on the classification of DOD-unique functions as inherently governmental. Paragraph E1.2.2.5 of the DOD Manpower Mix Criteria address the interrogation of detainees as follows:"How enemy prisoners of war (POWs), terrorists, and criminals are treated when captured, in transit, confined, and interrogated during or in the aftermath of hostilities entails the discretionary exercise of government authority. Their handling as well as decisions concerning how they are to be treated cannot be transferred to the private sector to contractors who are beyond the reach of controls otherwise applicable to government personnel. . . . Note: this does not include support functions performed by linguists, report writers, C4/IT technicians, etc., provided the commander implements procedures to ensure that contract personnel are not involved in handling of detainees (e.g. confinement, interrogation, and treatment)."How do you square your testimony that interrogation is not an inherently governmental function with the clear direction of the DOD Manpower Mix Criteria to the contrary?

Answer. Detainee operations are a matter of great importance to the U.S. Government (USG). The Department of Defense (DoD) is sensitive to the concern that detainee operations require careful oversight. As such, the role of contractors in detainee operations is governed by a number of DoD policy Directives and Instructions:

DoD Directive (DoDD) 2310.01E (September 5, 2006) specifies that:

> "The Under Secretary of Defense for Intelligence shall exercise primary responsibility for developing policy pertaining to DoD intelligence interrogations, detainee debriefings, and tactical questioning . . . ."
> (Paragraph 5.4.1.)

> "[A]ll DoD contracts pursuant to which contractor employees interact with detainees include a requirement that such contractor employees receive training regarding the international obligations and laws of the United States applicable to detainee operations."
> (Paragraph 5.3.1.)

> "The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure contractor employees accompanying DoD components in conducting, participating in, or supporting detainee operations complete training and receive information on the law, regulations, and policies applicable to detention operations, and the requirements to report possible, suspected, or alleged violations that arise in the context of detention

operations . . . ." (Paragraph 5.3.2.)

DoD Directive 3115.09 (November 3, 2005) states that:

> "The Under Secretary of Defense for Intelligence shall exercise primary responsibility for DoD intelligence interrogations, detainee debriefings, and tactical questioning and serve as the advisor to the Secretary and Deputy Secretary of Defense regarding DoD intelligence interrogations policy." (Paragraph 4.1 and 4.1.1.)
>
> "A trained and certified DoD interrogator shall monitor all interrogations, debriefings, and other questioning conducted by non-DoD or non-U.S. Government agencies or personnel." (Paragraph 3.4.4.3.)

DoD Instruction (DoDI) 1100.22, *Guidance for Determining Workforce Mix* (issued 22 September 2006, and updated April 6, 2007), states that:

> "[D]irection and control of intelligence interrogations are IG functions. This includes the approval, supervision, and oversight of interrogations. However, in areas where adequate security is available and is expected to continue, properly trained and cleared contractors may be used to draft interrogation plans for government approval and conduct government-approved interrogations consistent with DoD Directive 3115.09 (*DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning)*, if they are properly supervised and closely monitored throughout the interrogation process by sufficient numbers of properly trained government officials." (Paragraph E2.1.6.2.)

CHARRTS No.: SG-02-007
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Levin
Question: #7

Offensive versus Defensive Operations

Question. Secretary Bell, you testified that while offensive operations are inherently governmental, defensive operations are not inherently governmental and may be performed by contractors even in a hostile environment. However, DOD's Manpower Mix Criteria appears to indicate that some defensive operations may be inherently governmental, particularly in a high-threat environment where the use of force is predictable and the need for a military chain of command is high.For example: Paragraph E1.1.1.2 of the Manpower Mix Criteria states:"The use of force, particularly deadly force, significantly affects the life, liberty, and property of private persons. The appropriate use of force is of national interest and, under certain circumstances the U.S. government can be liable for its misuse. Therefore, responsibility for its use cannot be transferred to the private sector to personnel who are beyond the reach of controls otherwise applicable to government personnel. Personnel engaged in combat or the use of force in a hostile environment must be under military command, subject to direct and immediate decisions concerning the appropriate and legal use of force and extensively trained in the proper use of lethal force."In addition, Paragraph E1.1.1.5 of the Manpower Mix Criteria states:"Physical security at military installations CONUS or OCONUS in high threat environments could entail defense against a military or paramilitary organization whose capabilities are so sophisticated that only an armed military defense could provide an adequate response. When the threat of an attack by a military or paramilitary organization is high and physical security requirements necessitate a military defense" e.g., require military command and control (to include intelligence); UCMJ authority and discipline; military training; and equipment and arms that may not be legally available to civilians "the operations are military essential and inherently governmental."Secretary Bell, would you agree that, based on the DOD Manpower Mix Criteria, defensive operations that are likely to entail the use of force in a hostile environment may be inherently governmental?How do you reconcile the statement in Paragraph E1.1.1.5 of the Manpower Mix Criteria that responsibility for the use of force "cannot be transferred to the private sector to personnel who are beyond the reach of controls otherwise applicable to government personnel" with the known use of force by private security contractors in Iraq and the development by DOD and other agencies of rules on the use of force for such contractors?

Answer. The Department of Defense's (DoD) decisions to date to use private security contractors (including subcontractors) are in compliance with current U.S. Government (USG) policy and regulations. Relevant policy direction and guidance on this subject are found in the following:

The Federal Activities Inventory Reform (FAIR) Act of 1998; and

The current Federal Acquisition Regulation, including the recent final ruling to add a new

FAR Subpart 25.3, which specifically governs the contracting for PSCs.

The comments accompanying the publication of the final FAR Rule, "Contractor Personnel in a Designated Operational Area of Supporting a Diplomatic or Consular Mission," FAR Subpart 25.3 (Federal Register: February 28, 2008, Volume 73, Number 40, pages 10943-10959) explicitly state that:

The USG has the authority to hire security guards (i.e., private security contractors) worldwide (page 10944);

The protection of property and persons is not an inherently governmental function (page 10944); also, see FAR 7.503 (d)(19);

There is an important distinction between self-defense and combat operations, and that individuals have an inherent right of self defense (page 10943);

Private security contractors (PSC) are not mercenaries and are not authorized to engage in offensive operations (page 10944);

PSCs have been given a mission to protect other assets/persons, and so it is important that the rule reflect the broader authority of PSCs regarding the use of deadly force (page 10944);

The standard on the use of deadly force by PSCs should be, when it "reasonably appears necessary," a standard in DoD Directive 5210.56 that applies to [the defensive] use of deadly force by military security personnel (page 10944).

CHARRTS No.: SG-02-008
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Akaka
Question: #8

Employment of Foreign Nationals by Private Security Firms

Question. I asked you about the use of foreign national private security contractors in Iraq and Afghanistan in reference to a January 2008 LA Times article. How many security contractor firms are employing foreign national employees for their U.S. contract, and how many individual foreign nationals are currently providing security services for the Department of Defense in Iraq and Afghanistan?

Answer. In January 2008, there were 21 companies contracted by the Department of Defense (DoD) to provide security services in Iraq. All of these companies employ third country or local national personnel. The same is true in Afghanistan, where all 38 companies contracted by the DoD to provide security employ foreign nationals.

The table below illustrates the distribution by nationality and delineates armed versus unarmed private security contractors (PSCs) in Iraq and Afghanistan

DoD Private Security Contractors in Iraq and Afghanistan
(As of December 31, 2007)

	Total	U.S. Citizens	Third Country Nationals	Local/Host Country Nationals
Total DoD PSCs in Iraq	9,952	830	7,590	1,532
Armed PSCs in Iraq	6,467	429	5,318	720
Total DoD PSCs in Afghanistan	2,998	19	30	2,949
Armed PSCs in Afghanistan	2,745	16	30	2,699

CHARRTS No.: SG-02-009
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Akaka
Question: #9

Vetting of Foreign Nationals

Question. What kind of background checks have foreign national private security contract employees undergone before serving in Iraq and Afghanistan?

Answer. Contract terms and conditions require all personnel performing private security functions for the Department of Defense (DoD) to undergo background checks. Background checks are performed using available sources. The sources available for use depend on the nation of origin, and include Interpol, Federal Bureau of Investigation, Country of Origin Criminal Records, Country of Origin U.S. Embassy Information Request, Central Intelligence Agency records, and/or any other equivalent records systems.

CHARRTS No.: SG-02-010
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Akaka
Question: #10

Vetting of Foreign Nationals

Question. Are the suitability standards and background checks for foreign national private security contract employees for the U.S. Government as stringent as those for American contractors?

Answer. Yes. All Department of Defense contracted private security firm employees are subject to thorough background checks. Background checks are performed using available sources. The sources available for use depend on the nation of origin, and include Interpol, Federal Bureau of Investigation, Country of Origin Criminal Records, Country of Origin U.S. Embassy Information Request, Central Intelligence Agency records, and/or any other equivalent records systems.

CHARRTS No.: SG-02-011
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Akaka
Question: #11

Access of Foreign Nationals

Question. What level of access do foreign national private security contract employees have to Department of Defense facilities and personnel in Iraq and Afghanistan?

Answer. Foreign nationals do have access to Department of Defense facilities and personnel. However, levels of access are granted only on a need-to-know basis. Personnel who require access to an installation are vetted and badged accordingly. Day laborers are escorted on and off the installation. Access is granted by the facility or installation commander and is dependent on the threat.

CHARRTS No.: SG-02-012
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #12

Possible Regulatory Reforms or Practices

Question. What other regulatory reforms or practices could the Department of Defense implement to improve U.S. government oversight of private security contractor operations, and thus to enhance contractor responsibility and accountability?

Answer. The Department of Defense (DoD) is improving contractor oversight and management through several regulatory mechanisms both internal to the DoD and in conjunction with other Government agencies.

First, the DoD is revising DoD Instruction 3020.41, "Integrating Operational Contract Support into Contingency Operations." This revised version contains substantial improvements to the existing instruction including: incorporation of lessons learned from current operations, requirements for the development of contractor oversight plans, and requirements for adequate personnel necessary to execute contract oversight.

Additionally, the DoD and the Department of State (DoS) jointly are developing a Memorandum of Understanding (MOU). They are planning implementation of policies and operational requirements for the DoD, the DoS, and the U.S. Agency for International Development (USAID) contracting and contractor management in Iraq and Afghanistan, as required by section 861 of the FY 2008 National Defense Authorization Act (NDAA). This MOU will cover all DoD, DoS, and USAID contractors and contractor personnel, not just private security contractors (PSCs). A draft MOU addressing these requirements is in development. Once signed, the MOU will be implemented through DoD, DoS, and USAID policies and regulations.

The DoD and DoS are also moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 NDAA regarding management of PSC operations in Iraq and Afghanistan. These changes will broaden the scope of coverage of the current Memorandum of Agreement (MOA) to cover USAID and PSC operations in Afghanistan as well.

Finally, the Office of Secretary of Defense, in collaboration with all the Military Departments and Defense Agencies, is developing recommendations for an enterprise solution to broader acquisition issues designed to address contracting and contract management recommendations in the 2007 Gansler Commission Report.

CHARRTS No.: SG-02-013
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #13

Contract Management and Oversight

Question. Once private security contractor contracts are entered into by the Department of Defense, does contract management and oversight have an important impact on contractor operations? What could Department of Defense do to improve its performance in this sphere? Do you have sufficient resources to do this? What additional resources would this require?

Answer. The Department of Defense (DoD) has adequate clauses and standards included in contracts. We recognize that post-award oversight and administration of these contracts can be improved. One way we have done that is by establishing the authority of the Joint Contracting Command for Iraq and Afghanistan (JCC-I/A) to pre-clear all contracts and task orders to be performed in Iraq and Afghanistan. This requirement ensures that contracts contain the appropriate terms and conditions for work to be accomplished in Iraq and Afghanistan and will ensure that the planned work is in harmony with in-country commanders' plans. To administer the increased workload, about 50 additional personnel in theater now provide a 96-hour turn-around time on contracts submitted by executing departments and agencies. Through this expanded authority, the JCC-I/A now has visibility of all in-theater support contracts execution in support of Iraq and Afghanistan.

Additionally, the JCC-I/A and the Defense Contract Management Agency (DCMA) have conducted an analysis of the contract administration mission in the Iraq Area of Operations (AOO) to evaluate the effectiveness of the operation as currently configured. Based on their assessment of the contract administration workload and determination of the total assets required to effectively manage contract oversight in the Area of Responsibility (AOR), the Defense Contract Management Agency (DCMA) agreed to expand its presence in theater and assume responsibility for the administration of the more complex contracts that require specialized and critical oversight functions. The additional contracts include but are not limited to:

- Armed security, translator, and interpreter contracts;
- Foreign Military Sales (FMS) and Iraqi Security Forces (ISF) contracts for arms and equipment;
- High-risk contracts requiring Government Property Administration (GPA) support;
- Contracts requiring commodity-specific Quality Assurance (QA) support;
- High-risk contracts requiring traditional material surveillance and receipt inspection (i.e., ammunition and weapons);
- Hazardous materials (HAZMAT) contracts;
- Complex services and commodity contracts;
- Contracts requiring a security clearance; and
- Theater-wide contracts of a complex nature

To support the expanded requirement, the DCMA completed the deployment of an initial surge of 100 personnel into the U.S. Central Command (USCENTCOM) AOR on December 31, 2007. A Joint Manning Document (JMD) has been submitted for six-month rotational deployments of a total of 348 personnel. Pending JMD fills, the DCMA projects that it will have all 348 personnel in theater by the end of 2008, providing critical contract oversight and administration functions. This force structure will continue to be evaluated and will be adjusted to adapt to changing mission requirements.

Beginning January 22, 2008, the DCMA executed a 90-day PSC implementation plan to identify, capture, and institute a full Quality Assurance oversight and surveillance plan of all theater PSC contractors. Compliance with the requirements of section 862 of the FY 2008 National Defense Authorization Act (NDAA) will be accomplished through checklist verifications for contractor requirements for training, security, certifications, and qualifications. Surveillance of PSC contractor movement will be executed through utilization and enforcement of the Synchronized Pre-Deployment Operational Tracker (SPOT).

CHARRTS No.: SG-02-014
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #14

Day-to-Day Operational Oversight

Question. Apart from contract management and oversight, what day-to-day operational oversight do Department of Defense personnel provide to private security contractors under contract to them? Does the Department of Defense or Department of State or some other agency provide the same day-to-day operational oversight to private security contractors under contract to USAID and other civilian federal agencies? What could the Department of Defense do to improve its performance in this sphere? Do you have sufficient resources to do this? What additional resources would this require?

Answer. Commanders have the authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders, and otherwise address the immediate needs of the situation. Commanders possess significant authority to act whenever criminal activity may relate to or affect the commander's responsibilities, including situations in which the alleged offender's precise identity or actual affiliation is to that point undetermined.

On October 17, 2006, the Uniform Code of Military Justice (UCMJ) was amended to extend UCMJ jurisdiction over persons serving with or accompanying U.S. Armed Forces in the field in times of declared war or a contingency operation. In late September 2007, the Deputy Secretary of Defense signed a memo to Combatant Commands emphasizing the importance of accelerating the implementation of UCMJ authority over Department of Defense (DoD) contractors, as authorized under section 552 of the FY 2007 National Defense Authorization Act (NDAA). On March 10, 2008, the Secretary of Defense signed a memorandum addressing concurrent authority and the authorities and policies for the exercise of UCMJ authority over DoD civilians and DoD contractors.

When offenses alleged to have been committed by civilians violate U.S. Federal criminal laws, the DoD notifies responsible Department of Justice (DoJ) authorities and affords the DOJ the opportunity to pursue its prosecution of the case in Federal district court.

The DoD is working to improve interagency coordination. The DoD and the Department of State (DoS) jointly are developing a Memorandum of Understanding (MOU). They are planning implementation of policies and operational requirements for the DoD, the DoS, and the U.S. Agency for International Development (USAID) contracting and contractor management in Iraq and Afghanistan as required by section 861 of the FY 2008 NDAA. This MOU will cover all DoD, DoS, and USAID contractors and contract personnel, not just private security contractors (PSCs). A draft MOU addressing these requirements is in development. Once signed, the MOU will be implemented through DoD, DoS, and USAID policies and regulations.

In December 2007, the Multi-National Force – Iraq (MNF-I) published Fragmentary Order 07-428 which implements the minimum standards identified in the December 5, 2007, Memorandum of Agreement between the DoD and the DoS. In a recent audit of PSCs in Iraq, the Government Accountability Office (GAO) noted significant improvements in PSC coordination and oversight and in the tracking and reporting of incidents when they happen.

The MNF-I and the DoD are still evaluating whether additional resources are required.

CHARRTS No.: SG-02-015
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #15

Contractual Requirements

Question. Do the Departments of Defense and State and other federal agencies engaging private security contractors apply or follow common contractual requirements and rules and regulations when it comes to the utilization of private security contractors? Does the use of different standards cause challenges? If so, how could these challenges be mitigates?

Answer. Common contractual requirements regarding private security contractors (PSCs) were established in the new FAR, subpart 25.3, *Contracts Performed Outside the United States.*

In general, different standards do cause challenges. To mitigate these challenges, the Departments of Defense (DoD) and State (DoS) have worked together closely to establish common Rules for the Use of Force, movement coordination, and necessary communications. A Memorandum of Agreement (MOA), signed December 5, 2007, has been instrumental in implementation of changes.

The DoD also is working on additional measures to improve interagency coordination and to meet congressional mandates to improve oversight and management of contractors in contingency environments. The DoD and the DoS are developing a Memorandum of Understanding (MOU). They are planning the implementation of policies and operational requirements for DoD, DoS, and the U.S. Agency for International Development (USAID) contracting and contractor management in Iraq and Afghanistan, as required by section 861 of the FY 2008 National Defense Authorization Act (NDAA). This MOU will cover all DoD, DoS, and USAID contractors and contractor personnel, not just PSCs. A draft MOU addressing these requirements is in development. Once signed, the MOU will be implemented through DoD, DoS, and USAID policies and regulations.

The DoD and DoS are moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 NDAA, regarding management of all U.S. Government PSC operations in Iraq and Afghanistan. These changes will broaden the scope of coverage of the current MOA to cover USAID and PSC operations in Afghanistan as well.

CHARRTS No.: SG-02-016
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #16

Zero-Tolerance Misconduct Policy

Question. Your testimony includes some discussion regarding the 2007 DoD-DoS MoA to strengthen operations of PSCs in Iraq. That MoA states that "U.S. Embassy Baghdad and MNF-I will not tolerate misconduct by their respective PSCs and will enforce contractual obligations." Does this zero-tolerance policy apply to PSCs engaged by other federal agencies?

Answer. In December 2007, the Multi-National Force – Iraq (MNF-I) published Fragmentary Order 07-428, which implements the minimum standards identified in the Memorandum of Agreement between the Departments of Defense (DoD) and State (DoS). The DoD and the DoS are moving ahead with efforts to broaden the scope of coverage of the current Memorandum of Agreement (MOA) to other U.S. Government (USG) agencies and private security contractor (PSC) operations in Afghanistan, in compliance with the provisions of section 862 of the FY 2008 National Defense Authorization Act (NDAA) regarding management of PSC operations in Iraq and Afghanistan.

The DoD, the DoS, and the U.S. Agency for International Development (USAID) also are jointly developing a Memorandum of Understanding (MOU). They are planning the implementation of policies and operational requirements for DoD, DoS, and USAID contracting and contractor management in Iraq and Afghanistan as required by section 861 of the FY 2008 NDAA. This MOU will cover all DoD, DoS, and USAID contractors and contractor personnel, not just PSCs. A draft MOU addressing these requirements is already in development. Once signed, the MOU will be implemented through DoD, DoS, and USAID policies and regulations.

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Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #17

Zero-Tolerance Misconduct Policy

Question. The MoA continues, "Where there is evidence of criminal misconduct, U.S. Embassy Baghdad and MNF-I will make referrals to the appropriate prosecutorial authority." Have any such referrals been made? How many? To what agency? With what result?The MoA defines "serious incidents" to include all uses of deadly force by private security contractors and all incidents resulting in death, serious injury or significant property damage. How many serious incidents have been reported since the MoA came into effect? What is the trend in serious incidents? What is Department of Defense doing to investigate these serious incidents?

Answer. Since the Memorandum of Agreement (MOA) between the Departments of Defense (DoD) and State (DoS) was signed on December 5, 2007, the Multi-National Force – Iraq (MNF-I) and the U.S. Embassy - Baghdad follow an established process to review each and every private security company weapon discharge and, as appropriate, conduct follow-up investigations. Since the MOA was implemented there have been no private security contractor (PSC) incidents resulting in death, serious injury, or significant property damage and none that have met the criteria for referral to prosecutorial authority. The MNF-I and the U.S. Embassy - Baghdad co-chair a quarterly Joint Incident Review Board to review incidents, discuss trends, and make recommendations for improving PSC oversight.

CHARRTS No.: SG-02-018
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #18

Accountability of Private Security Contractors

Question. Is the Department of Defense concerned that private contractors implicated in serious criminal offenses in Iraq and Afghanistan have not to date faced the same criminal jeopardy that U.S. military implicated in similar conduct have faced?

Answer. All Department of Defense (DoD) contractor personnel, regardless of nationality, are legally accountable for their conduct in complying with the DoD policies and regulations, as well as with the laws of the United States and the laws of the host country. This legal accountability proceeds from a number of statutes, including:

- The jurisdictional scope of the Uniform Code of Military Justice (UCMJ), which was expanded by section 552 of the FY 2007 National Defense Authorization Act (NDAA) to cover all contractors located outside the United States working in support of military forces in the field in contingency operations against a hostile force.

- The Military Extraterritorial Jurisdiction Act (MEJA) applies to DoD civilian employees and other U.S. Government (USG) agency employees and contractors (including subcontractors at any tier) whose employment relates to supporting the military mission outside the United States. Host country individuals who are nationals and ordinarily residents in the host country are excluded.

- Other statutes applicable outside the United States address legal accountability of U.S. citizens alleged to have committed specific crimes against other U.S. citizens and other criminal acts.

- Coalition Provisional Authority (CPA) Order 17 (revised) was signed into effect prior to the transfer of authority to the Government of Iraq in June 2004. It provides immunity from prosecution under Iraqi law of all foreign citizens accompanying Coalition Forces in the performance of their contractual responsibilities. CPA Order 17 (revised) provides that it shall remain in force until the authorities granted in the current United Nations Security Council Resolution (UNSCR) expire and shall not terminate until the departure of the final element of the Multinational Force from Iraq. The current UNSCR will expire on December 31, 2008.

Although DoD civilian employees and DoD contractors are considered to be legally accountable for their actions, both the DoD and the Department of State have cited the need for legislation to strengthen the legal accountability of other USG contractor personnel deployed outside the United States that are supporting other USG missions besides the DoD mission.

CHARRTS No.: SG-02-019
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Obama
Question: #19

Accountability of Private Security Contractors

Question. On September 16, Blackwater guards reportedly opened fire on civilians in Nissour square, Baghdad, killing 17 Iraqis. Not only is this a tragic loss of life, but the killings seriously damaged relations with the Iraqis and undercut the military's important efforts to build support from the local population. While the Nissour Square shootings garnered the most publicity, the problem of unaccounted-for private security contractor abuse is hardly new. For example, on Christmas Eve, a Blackwater contractor reportedly shot dead a security guard for the Iraqi Vice-President. The Blackwater contractor was reportedly flown out of Iraq without ever being charged with any crime, and has since been employed by another security contractor based in Kuwait. In 2006, two Triple Canopy employees reported that their supervisor had fired indiscriminately on civilian vehicles in Baghdad. The employees were fired, and as far as is publicly known, the supervisor never even questioned by the Department of Justice or the Federal Bureau of Investigation about his alleged actions. And while the U.S. Army in 2004 referred the case of seven civilian contractors it believed to be criminally responsible for abuses at Abu Ghraib, there have been no indictments to date. In fact, only one civilian private security contractor - David Passaro - has ever been charged and convicted of abuse of civilians in Afghanistan. None have been charged for misconduct directed at civilians in Iraq.Do you believe that private security contractors operating overseas should be held accountable for these types of alleged abuse? What do you plan to do to increase government oversight of contractors employed in Iraq, Afghanistan, or other zones of active hostility? How will you ensure that information from the Department is shared in a timely manner with the Department of Justice in order to facilitate any criminal charges? What additional resources are needed to ensure effective monitoring, timely investigations, and quick reporting to the relevant parties in DOJ and elsewhere?

Answer. It is my personal belief that whenever contractors employed by the United States Government commit unlawful acts, they should be held accountable by the laws governing the jurisdiction where the crime was committed. Section 552 of the FY 2007 National Defense Authorization Act (NDAA) extended the Uniform Code of Military Justice (UCMJ) authority to persons serving with or accompanying armed forces in the field against hostile forces. The UCMJ authority is now in effect in Iraq and Afghanistan. The Military Extraterritorial Jurisdiction Act (MEJA) applies to felony-level offenses committed outside the U.S. by Department of Defense (DoD) civilian employees, DoD contractors (and subcontractors at any tier), and contractor employees or U.S. Government (USG) agency employees and contractors (and subcontractors at any tier) overseas whose employment supports the DoD mission overseas. However, the Department of Justice (DoJ) must agree to take the case. Although DoD civilian employees and DoD contractors are considered to be legally accountable for their actions, both the DoD and the Department of State (DoS) have cited the need for

legislation to strengthen the legal accountability of other USG contractor personnel deployed outside the United States that are supporting other USG missions besides the DoD mission. On December 5, 2007, the DoD and the DoS entered into a Memorandum of Agreement to lay the foundations to bring DoD, DoS, and the U.S. Agency for International Development contractors under a common framework to prevent, by way of training and qualifications, and resolve incidents of this nature. Further, the FY 2008 NDAA requires, with specificity, regulations and contract provisions regarding the training and qualification of Private Security Contractors, the arming of contractors for protection and self-defense, and the reporting of incidents in which a firearm is discharged.

CHARRTS No.: SG-02-020
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator Tester
Question: #20

Percentage of Afghanistan Funding that will be used for Contracts Across the Board

Question. Could you give me any kind of ballpark figure - of the $70 billion we just appropriated for Iraq and Afghanistan, what percentage of those dollars that you get will be used for contracts across the board, not just PSC, but all countries?

Answer. The manner in which financial resources are allocated varies from military department to military department. Tracking mechanisms also vary. In the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (Logistics and Materiel Readiness), we monitor dollars spent on contracts in the AOR based on monthly reports from JCC-I/A. As of March 31, 2008, the JCC-I/A has executed $2,878.9M in the theater -- $2,357.2M in Iraq and $521.7M in Afghanistan. This data tracks the execution of contracts when the requirement reaches their office.

Based on FY 2007 figures, 12% for the actual cost of the war was spent on operating support, which included, but is not limited to, fuel, maintenance and repair, contract logistics support, and supplies and equipment. It is anticipated the FY 2008 expenditures will approximate the same as the FY 2007 costs.

CHARRTS No.: SG-02-021
Senate Committee on Governmental Affairs
Hearing Date: February 27, 2008
Subject: U.S. Reliance on Private Security Firms in Overseas Operations
Witness: Hon. Bell
Senator: Senator McCaskill
Question: #21

DoD Law of War Program

Question. On January 10, 2008, the Department of Defense published its proposed rule relating to the Defense Acquisition Regulation Supplement, DoD Law of War Program (DFARS Case 2006-D035), 48 CFR Part 252. Contractors who have personnel that are authorized to accompany U.S. forces deployed outside the United States must provide basic law of war training to all deploying personnel. The proposed rule allows for this training to be provided through either a military run training center or "a web-based source, as specified in the contract or approved by the Contracting Officer." Please describe what type of web-based training is envisioned by this rule, and describe what process will be used to determine the quality of such web-based training.

Answer. The web-based training envisioned by the rule has been prepared by the Department of Defense (DoD) Law of War Working Group, comprised of DoD experts in the Law of War and acting pursuant to DoD Directive 2311.01E, the DoD Law of War Program. Upon publication of the final rule, the Web site to access this training will be made available.

Post-Hearing Questions for the Record
Submitted to James D. Schmitt
From Senator Joseph I. Lieberman

"An Uneasy Relationship:
U.S. Reliance on Private Security Firms in Overseas Operations"
February 27, 2008

1. **As you note in your testimony, ArmorGroup has been operating for more than 26 years providing a wide range of security services to governments, commercial organizations, and non-governmental organizations working in hostile or remote areas around the world. What lessons, if any, could the U.S. government learn from the regulatory systems of other countries that employ private security companies (PSCs)?**

Answer: *Our view is that in many ways the United States is leading the way in developing the regulatory structure required by the PSC industry. The Committee may find it useful to review the 2008 draft findings of the initiative launched by Switzerland in cooperation with the International Committee of the Red Cross with regards to private military and security companies. At this time, other national efforts are being undertaken by the United Kingdom and the Swiss Government (on the international approach) but none are so pronounced as to what has been legislated in the United States through:*

- *The 2006 National Defense Authorization Act (NDAA) established that DoD's private contractors could be held accountable under the Uniform Code of Military Justice.*

- *The 2008 National Defense Authorization Act (NDAA) included three key provisions impacting PSC operations:*

  - *Section 841 (Wartime Contracting Commission under Senators Webb and McCaskill)*
  - *Section 861 (MOU between DOD, DOS, and USAID)*
  - *Section 862 (record keeping and training, equipping and conduct of PSC, as well as review of incidents)*

- *MEJA Expansion and Enforcement Act – Representative Price's Bill (H.R. 2740) passed overwhelmingly in the House and a similar bill by Senator Obama is under consideration in the Senate. If signed into law, the bill would extend MEJA authority and US law to all private security providers, not just those supporting DoD operations.*

2. **PSCs typically recruit employees from all over the globe. What are ArmorGroup's vetting procedures for hiring non-U.S. citizens? Are there ways that the U.S. government could improve the vetting process for non-U.S. citizens?**

Answer: *ArmorGroup has over 25 years experience in recruitment and has sufficient reach back into military units, police forces and international agencies to verify credentials, performance and reliability. It is our experience that the U.S. government has become very proficient in establishing vetting procedures for non-U.S. citizens employed on overseas contracts.*

The following procedures form the baseline for ArmorGroup North Americas' vetting procedures for non-US citizen candidates for a security guard force position.

Applicant Identification, driven by operational staffing needs

Projected applicant numbers are identified through the position control document

- ***Recruiting profile adjusted for force protection mission***
  - *Focus on applicants with prior contract experience*
  - *Recruit for force protection experience and desire for that work*
  - *Ensure desirable applicant has appropriate security experience, qualification, and interest relevant to the position*

- ***CV/Resume review***
  - *Confirm required experience and training*
  - *Prescreen personally by phone for bars to obtaining clearance, including DV convictions, significant credit issues, criminal history, driving history and appropriate experience*
  - *Complete client resume templates and submit for client position approval*

- ***Vetting Packet***
  - *Contains AGNA hiring documents, UA test form, PFT information, fingerprint cards, clearance applicant information (to set up E-QIP access), processing instructions*
  - *Vetting packet sent by FEDEX to applicant after we confirm that he meets the resume requirements*
  - *Vetting requirements are included in the packet, with instructions on completion*
  - *Vetting packet is returned to AGNA by FEDEX as soon as possible*
  - *Once the vetting packet is received, the security information is forwarded to the USG security coordinator for starting the USG background check and Moderate Risk Public Trust (MRPT) determination process*

- ***Background Check***
  - *Started as soon as the FEDEX packet with the required releases is received*
  - *Background information is reviewed when returned. Any adverse information is worked through by phone with the applicant*
  - *MRPT processing status is reviewed for stop points*
  - *Final review of the applicant for recommendation to participate in the training course*

- ***Management Review***
  - *Applicant packet and processing results are reviewed for required skills and abilities, completeness and MRPT status*
  - *Reviewed applicants are ranked in order to proceed with training, to best meet the project operational needs*
  - *This listing is forwarded to the training coordinator to begin the training process*
  - *Administration days are included in the processing at the training site to complete any outstanding processing and conduct personal interviews with each applicant for a final check to ensure that we are processing the best applicant for the detail and to reduce the likelihood of completing the processing and training on a person that is unlikely to obtain an MRPT.*
  - *After training is successfully completed, the qualified list of applicants is used to fill existing openings and deployed to the project*

3. Please provide the following details about the contract ArmorGroup North America holds to protect the U.S. Embassy in Kabul:

▪ What process is ArmorGroup using to vet employees for this contract?

Answer: *Potential employees are prescreened personally by phone to identify any bars to obtaining security clearance, including domestic violence convictions, significant credit issues, criminal history, driving history, and appropriate experience. A vetting packet containing AGNA hiring documents, urine analysis test form, physical fitness test information, fingerprint cards, clearance applicant information (to set up E-QUIP) access, and processing instructions is sent to the applicant after AGNA confirms that the applicant meets resume requirements. Once the vetting packet is completed and returned, the security information is forwarded to the security coordinator to start the Moderate Risk Public Trust (MRPT) Certification process. A background check is started as soon as the completed vetting packet is received by AGNA. The MRPT processing status is reviewed for stop points. The applicant then receives a final review for recommendation to participate in the training course.*

▪ **What is the total number of employees in Kabul used in support of this contract? Of that number, how many are U.S. citizens? What is the nationality of the other employees? What has been the retention rate of employees on the contract?**

Answer:

U.S.	*121*
Expats	*22*
TCNs	*317*
LNs	*71*

Individuals from the following countries are employed on the project:

United Kingdom
South Africa
New Zealand
Zimbabwe
Nepal
Afghanistan

Our subcontractor, RA International Services, also employs individuals from India and Sierra Leone.

U.S/EXPATS – Monthly Retention Rates
From the program start date in July 2007, AGNA has retained 36% of assigned US and EXPAT employees.

	July 07	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Jan 08*	*Feb*	*Mar*
Departing Staff	*11*	*11*	*12*	*12*	*13*	*14*	*17*	*6*	*2*
Total Staff	*160*	*158*	*155*	*155*	*155*	*152*	*150*	*149*	*149*
Monthly Retention Rate	*93.2%*	*93.1%*	*92.3%*	*92.3%*	*91.7%*	*90.8%*	*88.7%*	*96%*	*98.7%*

TCN – Monthly Retention Rates
From the program start date in July 2007, AGNA has retained 98% of assigned TCN employees.

	July 07	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Jan 08*	*Feb*	*Mar*
Departing Staff			*1*		*2*	*2*	*1*		*1*
Total Staff	*271*	*310*	*310*	*317*	*317*	*317*	*317*	*317*	*317*
Monthly Retention Rate	*100%*	*100%*	*99%*	*100%*	*99%*	*99%*	*99%*	*100%*	*99%*

- What is the total number of hours worked per week per employee?

Answer:

U.S./Expats: 60 hours/week
TCNs: 54 hours/week

- **What training does ArmorGroup North America require for employees providing protection of the Embassy? Where is that training conducted? What training facilities does ArmorGroup have in Afghanistan?**

Answer: *The ArmorGroup training course is designed to prepare students to fulfill the duties of an Emergency Response Team Member, Embassy Security Force Guard and to complete the Department of State mandatory weapons training and qualifications required for all embassy security personnel operating in a high threat environment. ArmorGroup North America delivers the Department of State approved Emergency Response Team Training to selected students prior to their deployment to Kabul. This is a comprehensive training program that is designed to fully prepare students to operate as a member of an Emergency Response Team for the US Embassy Kabul Security Force. Our emphasis is on ensuring that students have a comprehensive understanding of the specific skill sets and that they gain practical experience. Students are tested in the successful application of those skill sets. The course includes hands-on training in the concepts, techniques and methodologies associated with effective Emergency Response Team Drills, CQB and Mechanical Breaching operations and Embassy Guard Force Procedures. This course will be delivered over four weeks, using a wide range of training methods, including lecture, demonstration, interactive question-and-answer and practical exercises. Media, including limited video and other visual aids, will be used to complement the training methods and support the learning.*

This course provides realistic, hands-on training to prospective ERT/ESF Members in the following:

- *Firearms Handling: Students receive basic firearms instruction, as a group and individually. Students are provided with a comprehensive forty (40) hour firearms training package. In this package the students fire a qualification table specifically constructed for high threat operations as well as a course designed by AGNA and approved by United States Department of State High Threat Programs to practice advanced shooting techniques while placing the student under pressure in a safe training environment. The physical abilities of the individual student are tested, but more importantly, the course requires the students to work together as a team. Developing a team concept is an absolute necessity for all tactical team members. Timed shooting, reloading drills, immediate and remedial action drills and target engagement while moving are explained, practiced, and repeated until satisfactory performance is achieved.*
- *Mechanical Breaching and Room Entry Techniques: The classroom phase of this course emphasizes several techniques to safely make entry into rooms. Practical exercises will be conducted to assure each student has the opportunity to practice each technique.*
- *Search Techniques and Guard Procedures: Students are taught to identify methods of attack, search techniques for personnel and vehicles, entry searches, protective searches, venue or building searches and vulnerable point route checks.*
- *Static and Mobile Protection: Students are taught the fundamentals of residential, office and venue security. Students are taught safe driving principles, tactical car drills and dynamics of armored vehicles, hard and soft car drills, road worthiness checks and anti-ambush drills, foot movements in a high risk environment and the applicable formations for such movement including selection of routes on foot and by vehicle to minimize the risk to the team.*
- *Trauma Management: Students are taught to select and prepare the appropriate medical equipment, understand basic anatomy and physiology and the actions to be carried out at the scene of a medical emergency. Students are taught how to deal with C-Spine injuries, breathing and circulatory injuries, abdominal and pelvic injuries, head injuries and unconscious casualties, minor and major burns and the response to non life threatening injuries.*
- *Control and Restraint Techniques/Unarmed Combat: This provides the specialized skills and training necessary to respond appropriately to lethal and non lethal threat situations, whatever the environment or mission objective, in order to effectively control individuals during high-risk encounters.*
- *Surveillance Awareness: Students are taught how to detect and identify surveillance, counter surveillance techniques and anti surveillance drills.*
- *Student Briefings and Walk-through: The students perform mission briefings and execute the mission plans, in a walk-through, while receiving systematic instructions.*

This training course is conducted at one of the ITI (International Training Incorporated) training facilities in West Point, Virginia or Dilly, Texas. In the event of scheduling difficulties, AGNA has utilized alternate training facilities at the Storm Mountain Training Center located in Elk Garden, West Virginia and the Olive Security Training Center located in Nesbit, Mississippi. All training conducted at these alternate sites is conducted and managed by AGNA training staff. Follow On, Roll Call Sustainment, and Annual ERT / ESF training is conducted at the U.S. Embassy, Camp Sullivan, Anjuman Base. All Machine Gun Training and Qualification is conducted at the Afghan Army Training Center Range (KMT).

Third Country National (TCN) and NON-US Expat Embassy Security Force (ESF) Basic Training and Weapons Training is conducted at Camp Sullivan, Anjuman Base and at the Afghan Army Training Center Range (KMT). Anjuman Base and Camp Sullivan are the only locations that AGNA have open access to; however, through coordination the Afghan Army Training Center Range (KMT) is accessible on a regular basis.

ArmorGroup has a modern, secure training facility located in Kabul at Anjuman Base, which is located five miles from both Camp Sullivan and the US Embassy. It is a purpose-built, 26,000 square meter facility, complete with full training, accommodation, communications, and medical facilities. The camps is well secured; blast walls surround the compound with security guards manning the entry control points (ECPs) and over-watch stations and conducting perimeter patrols. The facility maintains an electronic security system with CCTV and access control features, and underground bomb shelters. ArmorGroup uses this facility for all the training of the Embassy Security Force (ESF) to be conducted in country, at no additional cost to the Government. This includes initial basic training, supervisory training, and refresher training during contract implementation. Anjuman Base has a Close-Quarter Battle (CQB) house for use with Simunition, a defensive driver training area, and a 5,200 square meter hostile environment training area for acclimation of ESF personnel to conditions in Kabul.

The principal benefits to the Government of using Anjuman Base for the ESF training are:

- *Rapid acclimation of guard force to security environment and living conditions in Kabul*
- *Collocation of all ESF personnel and supervisors in one place to develop team spirit of ESF*
- *Good value for the Government; no requirements to lease additional, insecure facilities*
- *Secure, safe, self-contained compound with all classroom facilities available*
- *Easy transition from outgoing ESF contractor; no crowding at Camp Sullivan; close proximity to US Embassy and Camp Sullivan for smooth transition*

James D. Schmitt
Senior Vice President
ArmorGroup North America
April 11th, 2008

Post-Hearing Questions for the Record
Submitted to James D. Schmitt
From Senator Barack Obama

"An Uneasy Relationship:
U.S Reliance on Private Security Firms in Overseas Operations"
February 27, 2008

1. Do you think it is important for there to be clear rules and standards regarding contractor conduct and strong enforcement of those rules?

   In fact, don't such rules, standards, and effective enforcement help put all participants on a level playing field, improve the industry's image, and serve us all better in the long run?

Answer: *It is absolutely imperative that there are clear rules and standards regarding contractor conduct with a corresponding strong USG oversight and enforcement of those rules. How private security contractors conduct themselves directly impacts on how we as a nation are perceived by local populations.*

2. Do you support efforts to put more concrete training, vetting, and reporting requirements into the contracts themselves? If so, why?

Answer: *The development of industry standards, best practices, and accountability provisions, to include contractor training, vetting, and reporting requirements, was first addressed by the private security industry well before the ramp up of private security providers in Iraq in 2003. As recent events in Iraq and elsewhere show, difficult incidents involving armed contractors complicate or even negate USG stabilization and reconstruction efforts in the eyes of impacted populations.*

Companies must establish formal corporate programs to ensure that employees act at all times within the relevant international and local legal and humanitarian frameworks including an employee Code of Conduct, a stringent ethics policy, and an ethics review board.

Companies must ensure employees are trained and certified on the tenets of international humanitarian law as well as the local laws of the countries in which they operate.

The standards are baselines for operating in fragile and complex political and socio-economic environments. If companies are unwilling or unable to set and adhere to these standards for their operations, then an established legal and regulatory framework must ensure that they do so.

3. Do you support efforts to expand the Military Extraterritorial Jurisdiction Act to make clear that all contractors operating in areas of active hostilities, such as Iraq and Afghanistan, are subject to criminal laws and criminal penalties regardless of which agency they work for?

Answer: *I do support efforts to expand the Military Extraterritorial Jurisdiction Act to make clear that all contractors operating in areas of active hostilities are subject to criminal laws and criminal penalties regardless of which agency they work for. Responsible contractors will gladly follow the U.S. government regulatory requirements provided to them. In essence it is what the industry has requested for some time.*

4. Do you believe increased oversight of contractors alone will help us ensure private security contractors conduct their work in accordance with U.S. laws and standards, or do we need a combination of increased oversight along with clear accountability under U.S. law? Can the U.S. government help improve contractor accountability by clarifying the reach of MEJA?

Answer: *While certainly a very critical component, I do not believe that increased oversight alone will suffice to improve contractor accountability to necessary standards under U.S. law. Rather, increased oversight with an unambiguous and comprehensive legal framework that consistently applies the tenets, obligations, and protection of U.S. law to all contractors engaged by U.S. government agencies is required.*

James D. Schmitt
Senior Vice President
ArmorGroup North America
April 11th, 2008

Post-Hearing Questions for the Record
Submitted to Laura A. Dickinson
from Senator Joseph I. Lieberman
"An Uneasy Relationship:
U.S. Reliance on Private Security Firms in Overseas Operations"

1. Both Undersecretary Kennedy and Deputy Under Secretary Bell have defended their agencies' use of private security contractors (PSCs) by arguing that PSCs are used for defensive, and not offensive, operations. Do you find such a distinction useful or workable, especially in the context of a combat zone?

The distinction is difficult to draw, and raises questions about whether, by outsourcing security, our government is privatizing an inherently governmental function. There is clear consensus that private security contractors under contract with U.S. governmental agencies should not participate in offensive combat, and we do not currently allow such outsourcing. Yet there are cases in which private security contractors hired for defensive operations have taken actions that approach offensive combat. For example, in an incident in Najaf in 2004, Blackwater guards had been hired to defend a Coalition Provisional Authority facility. When Iraqi insurgents assembled in front of the facility and thereby seemed to pose a threat, Blackwater guards, joined by a U.S. marine, reportedly began shooting, and a firefight ensued that lasted many hours.[1] Thus, offensive and defensive uses of force often merge in actual context.

Perhaps for this reason international humanitarian law, in determining both whether contractors receive prisoner- of-war status and whether they may be lawfully targeted, does not draw a distinction between offensive and defensive actions. Rather, the relevant question is merely whether the contractor has taken direct part in hostilities.[2]

On the other hand, it is significant that policy makers do agree, at least in the abstract, that outsourcing should not be used for offensive combat. Accordingly, even though the line is fuzzy, maintaining the distinction may itself discourage some forms of outsourcing that might pose serious problems.

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[1] *See, e.g*, Daniel Bergner, *The Other Army*, N.Y. TIMES, Aug. 14, 2005; Kate Wiltrout, *"If I had to Die, it Would Be Defending My Country"*, VIRGINIAN PILOT & LEGER STAR, Sept. 18, 2004, at A1.

[2] *See Summary of Meeting*, PRINCETON PROBLEM-SOLVING WORKSHOP SERIES IN LAW AND SECURITY: A NEW LEGAL FRAMEWORK FOR MILITARY CONTRACTORS 7(Jan. 8 2007) [hereinafter Princeton Report], *available at* http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf; *see also e.g.*, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 3 Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (providing protections for persons who take "no active part in hostilities); U.S. Executive Order 12333 (Office of the Judge Advocate General, Department of the Army, 2 November 1989) ("While there is general agreement among law-of-war experts that civilians who participate in hostilities may be regarded as combatants, there is no agreement as to the degree of participation necessary to make an individual civilian a combatant[. . . .] There is a lack of agreement on this matter, and no existing law-of-war treaty provides clarification or assistance.").

In the end, rather than relying solely on the offensive/defensive distinction, I would suggest that policymakers begin to carve out additional principles for distinguishing among types of security functions. For example, one possible principle might be the "likelihood that the security contractor will directly engage the enemy or use force against civilians." Applying this principle, security contractors hired to check badges at the entrance to a mess hall within a military base would be less likely to engage the enemy or use force against civilians than security contractors hired to guard the perimeter of a military base, or those under contract to provide diplomatic convoy security. At a minimum, contractors more likely to engage the enemy or fire on civilians should be subject to greater regulation and oversight. In addition, the use of such contractors should be studied to consider whether the risks to U.S. interests ultimately outweigh the benefits of using such contractors.

2. In your testimony, you suggest that policy makers might want to look beyond the debate of what is "inherently governmental" and "not inherently governmental" and instead focus on what functions are "core." Under this approach, the government could permit outsourcing but at the same time impose limits on the percentage of positions that may be turned over to contractors. What parameters would you suggest for determining which agency functions are "core"?

First, one might consider the principle discussed above: the "likelihood that the security contractor will directly engage the enemy or use force against civilians." Another important factor is whether outsourcing saps the agency's own ability to perform the security function in question. While loss of agency expertise in areas other than security may be less problematic, arguably in the case of security, an agency should never lose its own capabilities to provide the function.

3. One suggestion you have put forward for consideration is the establishment of a licensing or accreditation system for PSCs. Should such a system be created, are there safeguards that you would suggest that would prevent the system from becoming a market entry barrier to smaller firms?

A licensing scheme, which would establish certain minimum requirements for PSCs, should be distinguished from accreditation, which could rate PSCs according to various benchmarks of quality. If small firms cannot meet the minimum licensing requirements, then arguably such firms should not be performing the security function. If the market for such firms is so small as to threaten competition, the government might consider awarding training grants to start-ups or, alternatively, could bring the function back in-house due to a lack of a viable market.

Accreditation, which offers a more nuanced evaluation of firms' quality according to multiple measures or criteria, need not necessarily be a prerequisite for a security firm to receive a particular contract. If the market is small, accreditation might be one of many factors for the government to consider in awarding the contract. Yet, if there is a more robust market, a certain accreditation score (as in the health care setting), might serve as a prerequisite.

Post-Hearing Questions for the Record
Submitted to Laura A. Dickinson
from Senator Barack Obama

1. What is the impact on U.S. national interests when private security contractors fielded by the U.S. government engage in serious criminal conduct, and local nationals are the victims of that conduct?

If there is no meaningful accountability when contractors hired by the U.S. government engage in serious criminal misconduct, that misconduct could jeopardize U.S. interests and goals. In interviews I have recently conducted with uniformed military lawyers who have served in Iraq, a number of those lawyers have expressed concerns about the current lack of accountability in cases of reported misconduct. They have indicated that the lack of sufficient oversight, and the lack of a working system to punish those responsible for misconduct, could threaten the U.S. goals of bringing peace and stability to Iraq, and, in particular, the counterinsurgency campaign.

2. There appears to be some uncertainty about whether security contractors hired by the Department of State can be prosecuted for violations of federal criminal law under the MEJA. Assuming the allegations against Blackwater private security contractors in Iraq for the unwarranted killing of Iraqis are true, would U.S. security interests be better served by clarifying the extent to which MEJA applies to overseas contractors?

Yes. For that reason, I believe that the MEJA Expansion Act, which has passed overwhelmingly in the House and which Senator Obama has co-sponsored in the Senate, is a much-needed legislative initiative.[3] The bill would close the loophole in the existing law that currently brings only those contractors whose employment "relates to supporting the mission of the Department of Defense overseas"[4] within the ambit of federal courts' criminal jurisdiction. While I think a plausible argument can be made that the employment of security contractors hired by the Department of State could in some circumstances be construed as "supporting a mission of the Department of Defense," I nonetheless think the Expansion Act's proposed amendment to ensure that the statute would apply unambiguously to contractors working for all agencies is a critical reform.

At the same time, merely bringing the conduct within the federal courts' jurisdiction is not sufficient. Enforcement will also be a critical issue. For that reason, the bill's proposed language to require "theater investigative units"[5] of FBI agents is also essential. In addition, I would argue that the bill should require the Department of Justice to establish a dedicated unit to investigate and prosecute such crimes. Such a dedicated unit could help lawyers within the agency to develop greater expertise in prosecuting these challenging cases. Finally, Congress should impose greater reporting requirements

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[3] MEJA Expansion and Enforcement Act of 2007, H.R. 2740, Passed in the House, Oct. 4, 2007 [hereinafter MEJA Expansion Act].
[4] 18 U.S.C. 3267 (1) (A) (iii).
[5] MEJA Expansion Act, *supra* note 3, § 3.

on this dedicated unit, thereby enhancing the ability of Congress to exercise its oversight role.

3. Apart from enforcement of criminal accountability, can U.S. agency contractual requirements and rules and regulations be devised to promote private contractor responsibility and accountability? How? What are significant federal contracting reforms the U.S. could implement (or contract requirements the U.S. could impose) to promote private contractor responsibility and accountability? What are significant federal regulatory reforms the U.S. could implement to promote private contractor responsibility and accountability?

As I have discussed in more detail in my testimony, I believe that Congress and the agencies can go further in requiring specific contractual terms and oversight practices to better ensure that contractors respect limits on the use of force and other important norms. Specifically, the contracts could include more precise terms identifying the specific laws and rules that the contractors must obey, could require more clearly that contractors receive extensive training in the rules regarding the use of force—in particular the use of deadly force—and could mandate more uniform and clear vetting procedures for all contractor personnel, including third country nationals. Ideally, Congress would set a minimum standard term in each of these areas so that firms that do provide extensive training and vetting are not outbid by others that cut costs in these areas.

In addition, Congress could foster better oversight of the contracts by requiring the relevant agencies to maintain sufficient numbers of contract oversight personnel both in Washington and in the field, provide relevant training for the contract personnel, and ensure that they have incentives to remain in the field for enough time to provide for continuity. To better foster accountability, Congress should also require the agencies to report on not only on the number of security contractors but also on the numbers of incidents involving contractor use of force, the nature of such incidents, and what kind of investigation was conducted in each case. Any such mandates should of course be funded to ensure that the agencies have sufficient resources to carry them out.

Furthermore, Congress could set minimum standards by establishing a licensing regime and could encourage best practices by fostering accreditation, a process of rating and evaluating each company along various benchmarks of quality.

Congress, in the 2008 National Defense Authorization Act,[6] as well as the Department of Defense and the Department of State have taken important steps in these directions. But there is still a need for more action at the legislative and agency level.

4. Once private security contractor contracts are entered into by the U.S. government, does contract management and oversight have an important impact on contractor operations? How? How is the U.S. government performing now when it

[6] National Defense Authorization Act for Fiscal Year 2008, H.R. 4986, passed in the House, Jan. 16, 2008, passed in the Senate, Jan. 22, 2008, signed by the President, Jan. 28, 2008.

comes to effective contract management and oversight of private security contractors? What impact does that have on private contractor responsibility and accountability? What would the U.S. government have to do to improve its performance in this sphere? What resources would this require?

The agencies that employ security contractors have taken significant steps to improve management and oversight, but much, much more needs to be done, and Congress can do more to encourage agency action in this area. Oversight and management on the front end is critical because it can help to prevent abuses and avoid accountability problems on the back end.

Congress should require the agencies to ensure that sufficient numbers of contract monitoring personnel, with relevant training and experience, are in theater to address any issues that may arise in the performance of security contracts. The Defense Department's establishment of the Joint Contracting Command has been an important step, as has the State Department's actions, following the September 16, 2007 Blackwater incident, to require that Diplomatic Security Service employees ride along with security convoys. Yet a lack of contract oversight by experienced contract and other governmental personnel has been a recurring theme, and Congress can do more to set minimum standards in this area and to provide funding for the agencies to ensure that they can meet these standards.

Similarly, Congress should encourage better agency coordination. The increased cooperation of the State Department and the Defense Department in the wake of the September 16 incident has been an important development, but greater coordination is needed, both between these two agencies but also among other agencies. For example, commanders on the ground may not know when security contractors working for another agency will be moving through their area. The Defense Department is now working to include State Department contractors in its census, but more can be done to ensure that information about contractors is disseminated at the working level. I would argue that there is an urgent need for national security council level inter-agency working group, in Washington, as well as a plan for improved inter-agency communication on the ground where security contractors operate.

5. Do U.S. government agencies apply or follow common contractual requirements and rules and regulations when it comes to the utilization of private security contractors. What is the impact of the application of different standards?

Contractors for different agencies are frequently subject to different standards, which can cause confusion and difficulties on the ground—difficulties that indeed could undermine U.S. interests. One prominent example, as noted in the report on the September 16 incident by the Secretary of State's Panel, is the rule regarding contractors' use of force. At the time of the September 16 incident, State Department security contractors, in contrast to Department of Defense contractors, were apparently not required to fire aimed shots in response to a threat.[7] While the State Department and the Defense Department have subsequently remedied this problem, the example highlights why it is critical for Congress to set consistent minimum standards and for the executive branch to establish a high-level inter-agency working group to iron out any remaining inconsistencies.

[7] PATRICK KENNEDY ET AL., REPORT OF THE SECRETARY OF STATE'S PANEL ON PERSONAL PROTECTIVE SERVICES IN IRAQ, at 9 (Oct. 2007).

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