

**HOLD UNTIL RELEASED BY THE  
COMMISSION ON WARTIME CONTRACTING**

**TESTIMONY OF**

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**BEFORE THE COMMISSION ON WARTIME CONTRACTING**

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COMMISSION ON WARTIME CONTRACTING**

Co-chair Shays, Co-chair Thibault, and Members of the Commission, thank you for the opportunity to again appear before you to discuss the program management and oversight of private security contracts in Iraq and the United States Government planning for future security contracting requirements.

## **Background**

As the 2010 Quadrennial Defense Review (QDR) acknowledged, contractors are part of the total force, providing an adaptable mix of unique skill sets, local knowledge, and flexibility that a strictly military force cannot cultivate or resource for all scenarios. Contractors provide a broad range of supplies, services, and critical logistics support in many capability areas, while reducing military footprint and increasing the availability and readiness of resources. Typically, there is a higher reliance on contracted support during the post-conflict phases of an operation (Phase IV- Stabilization and Phase V - Enable Civil Authority).

Current operations in the U.S. Central Command (USCENTCOM) Area of Operations require Private Security Contractors (PSCs) to fulfill a variety of important security functions for the Department of Defense (DoD), the Department of State (DoS), and other U.S. Government (USG) entities supporting Operation Iraqi Freedom. Relief, recovery, and reconstruction of a post-conflict region are traditionally civilian functions, and thus it is entirely appropriate for civilian resources to be used to protect these activities from theft, extortion, vandalism, terrorism, and other unlawful violence. DoD contracts with PSCs to protect personnel, facilities, and activities. The roles of PSCs are analogous to civilian security guard forces, not combat forces. By using civilian resources to accomplish selected civilian tasks, military forces can focus on the military mission.

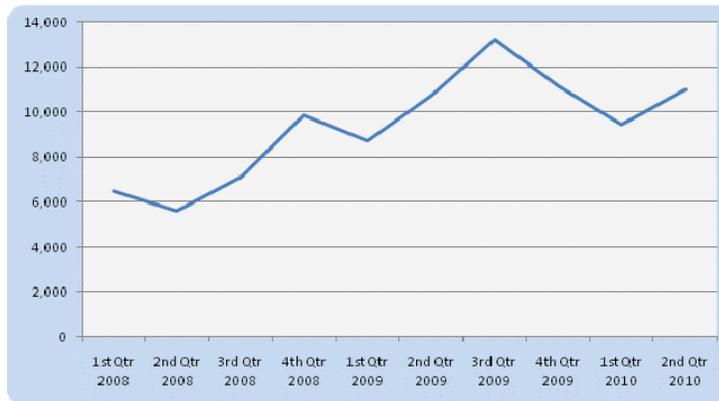
PSC employees presently account for about 14% of the entire DoD contracted workforce in USCENTCOM. As of the 2nd quarter, FY 2010, USCENTCOM reported that there were approximately 11,030 armed DoD contracted PSC personnel in Iraq, as well as 11,610 unarmed DoD PSC personnel. Figure 1 below illustrates the distribution by nationality and delineates total PSC personnel and those who are armed. Figure 2 shows the number of DoD Armed PSC personnel in Iraq since 2008.

**Number of DoD PSCs in Iraq as of 2<sup>nd</sup> Qtr FY 2010**

	Total	U.S. Citizens	Third Country National	Local/Host Country National
<b>DoD PSCs in Iraq</b>	<b>11,610</b>	<b>1,081</b>	<b>9,376</b>	<b>1,153</b>
<b>Armed DoD PSCs in Iraq</b>	<b>11,029</b>	<b>1,027</b>	<b>8,907</b>	<b>1,095</b>

**Figure 1**

**Number of DoD Armed PSCs in Iraq since 1<sup>st</sup> Qtr FY 2008**



**Figure 2**

The behavior of PSC personnel can affect the national security goals of the U.S. and for this reason we have published guidance on the selection, oversight, and management of PSCs operating in contingency operations in the

form of an interim rule (IR) in the Federal Register<sup>1</sup> and a corresponding DoD Instruction<sup>2</sup>. The IR, developed in response to section 862 of the John Warner National Defense Authorization Act of Fiscal Year 2007 (FY2007 NDAA), established policies for selecting, training, equipping, and managing PSCs operating in contingency operations. The rule requires tracking and accounting for PSC equipment and incidents involving PSCs personnel, and requires the investigation of

- the injury or death of PSC personnel
- the discharge of weapons by or at such personnel
- the injury, death, or damage of property caused by the actions of such personnel
- incidents of alleged misconduct.

Interagency coordination is essential to successful contingency planning. The IR, as written, supports flexible, agile, and focused contingency planning and DoD, DoS and USAID believe it provides sufficient strategic direction for interagency coordination relative to PSC oversight and conduct. Public comments to the IR have been considered and an updated version of the rule has been submitted for publication as a final rule.

While the rule establishes overarching USG policies and processes, it assigns responsibility to Geographic Combatant Commanders and Chiefs of Mission for developing implementing procedures and guidance specific to their area of responsibility.

We, i.e., DoD, DoS and USAID, believe that there is sufficient uniformity of guidance provided through this policy and existing acquisition regulations. We believe that it is appropriate for DoD to provide the Geographic Combatant

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1 32 CFR Part 159, [DOD-2008-OS-0125/RIN 0790-A138], Private Security Contractors (PSCs) Operating in Contingency Operations, July 8, 2009

2 DOD Instruction 3020.50, *Private Security Contractors Operating in Contingency Operations* was signed July 22, 2009.

Commanders with the requirements to be included in their respective guidance and procedures. Situations change significantly from one geographic region to another. The Geographic Combatant Commander (GCC) must have the flexibility to apply the overarching policy, tailoring their guidance and procedures as necessary to meet the particular circumstances and changing conditions within his area of responsibility at that particular time. For example, rules for the use of force must be based on operational conditions. The rules for Iraq would not fit recent operations in Haiti.

In terms of implementation in Iraq, guidance for oversight and management of PSCs is contained in Appendix 13 to Annex C (Operations) to United States Forces Iraq (USF-I) Operations Order 10-01, USF-I *Armed Contractor Oversight*. In addition to containing mandatory guidance for DoD PSCs, Appendix 13 includes coordination and communication procedures between USF-I and US Embassy Baghdad for movement of PSCs, incident reporting and management, and investigative procedures. Multinational Forces Iraq (MNF-I) details the specific standards for selecting, vetting, and authorizing weapons. It is the responsibility of the Contracting Officer or Contracting Officer Representative (COR) to ensure the PSCs comply with the terms and conditions of their contracts.

In Iraq, a contractor operations cell (CONOC) became fully functional in September of 2004. Its primary mission is to provide situational awareness and coordination of PSC protected movements. A regional CONOC is collocated with each battlespace commander. All USG PSC operations in Iraq are under the oversight of the battlespace commander and his government staff who can redirect or terminate a private security operation that would enter an area of combat operations, or have a high risk of either being attacked or causing casualties among innocent civilians. Final authority for U.S. Embassy moves rests with the Chief of Mission, but he will generally honor the battlespace commander's recommendation. The battlespace commander also has the

authority to take control of any battlefield situation, including one in which a PSC is being attacked or is involved in an incident.

## **Inherently Governmental**

The DoD's use of contractors, including PSCs, is consistent with existing U.S. Government policy on inherently governmental functions. We are guided by four main documents when determining whether an activity or function is inherently governmental: DoD Instruction 1100.22 "Policy and Procedures for Determining Workforce Mix"; the Federal Acquisition Regulations (FAR); the Performance of Commercial Activities and the Federal Activities Inventory Reform Act, or FAIR Act, of 1998; and, Office of Management and Budget (OMB) Policy Letter 92-1, issued in 1992. The DoD recognizes that there are specific security functions that are inherently government and cannot be contracted. The DoD does not contract those functions, but there are other security functions that are appropriate to contract. The DoD, the Government Accountability Office (GAO), the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), and the Congressional Research Service (CRS) have reviewed the use of PSCs, the potential for their performance of inherently governmental functions, and the appropriateness and manner in which they are employed. The recently published Center for New American Security (CNAS) report, "Contracting in Conflicts, The Path to Reform" also provides a good discussion on this subject.

DoD's current policies are in compliance with these regulations and policies. Specifically:

- The mission of PSCs is strictly defensive – protecting persons, facilities, places or supplies, depending on the specific contract under which they operate. They are specifically prohibited from engaging in combat (offensive) operations.
- PSCs do not operate as part of a larger, totally integrated and cohesive military force, where their actions could adversely affect the success of the military mission, or could bind the U.S. to a course of action where alternative courses of action do not exist.

- All DoD PSCs in Iraq and Afghanistan are contractually bound to follow the policies and rules established by the USCENTCOM, USF-I, and United States Forces Afghanistan (USFOR-A) commanders. These rules include specific language on Rules on the Use of Force (RUF)

In spite of DoD's restricted use of PSCs, the issue of whether security should be included under inherently governmental functions remains highly contentious. DoD is reviewing the Office of Management and Budget proposed language with regard to a definition of inherently governmental and this language is consistent with the Federal Activities Inventory Reform Act of 1998.

DoD welcomes the discussion of "critical functions" introduced in the OMB draft policy letter, which are functions that, while not inherently governmental, are needed for an agency to effectively perform its mission and maintain control of its operations. Functions under this designation could be performed by contractors as well as federal employees, provided the government has sufficient internal capacity to maintain control of its operations and the necessary training to manage contractors. .” In this way, the government could maintain the capacity for a base level of the function with government employees while potentially using (or retaining) contractors for the remainder to achieve the best mix of government employees and contractors. . For example, this concept could pave the way for the development of a small cadre of government civilian PSCs that could be leveraged in selected circumstances. There is great potential in this area.

Contractors employed to perform security functions for the DoD are only a fraction of the total private security sector – public, private, and international – in the USCENTCOM Area of Responsibility. This is one of the reasons that OSD is supporting the initiative of the Swiss Government to move beyond the Montreux Document and implement an industry-led, government supported, international accountability regime that will apply to all PSCs in all operational environments.

Although our existing polices and acquisition language are adequate, an industry generated standard, recognized by the U.S. Government and other States contracting with PSCs, and incorporated into contracting tools, will be an important step towards ensuring that the operations of all PSCs in a contingency environment are consistent with U.S. national policy and support the long term stability of the region in which they operate, and that PSCs under contract with other States operate in a similar manner. The first step in this effort is to produce a universal standard of conduct (Standard) broadly endorsed by the PSC industry. A draft of this Standard has been developed and is being refined by a working group drawn from the U.S., UK, and Swiss Governments, with equal participation from the PSC industry and NGOs active in human rights law and the law of armed conflict. The aim of the working group is to finalize the Standard and the principles for the accountability mechanism for PSCs later this year.

### **Iraq Drawdown**

From the DoD's perspective, the drawdown in Iraq, with current planning assumptions, remains on track. We are working hard to synchronize the drawdown of contractors and contracting requirements through working groups and boards that engage all key stakeholders. To date, the reduction in contractors has proceeded well ahead of Multi-National Force-Iraq's (MNF-I's) goal, and this trend is expected to continue.

The military mission will transition from Operation IRAQI FREEDOM (OIF) to DoS-led stability for Iraq and partner capacity building, and the USCENTCOM theater will be re-positioned to respond to current and emerging threats. When Phase III of the transition begins, DoD will move from Title 10 to Title 22 responsibilities. A classified joint campaign plan, which recently received a positive assessment by the Government Accountability Office, details the specifics of the shift of responsibilities between the DoD and DoS.

Fundamentally, when DoD ceases to have operations, DoD's residual forces will work for the Chief of Mission like anywhere else in the world. However, DoD recognizes that, until individual installations are handed over to the Iraqis, it will retain the fiduciary and legal responsibility to maintain installation security. As long as DoD is conducting military operations which are supported by PSCs, DoD will maintain its oversight, and it will be appropriately sized.

Hopefully, this testimony provides a documentary baseline of the topics I was asked to address at this hearing. I will be happy to answer any questions you have regarding these areas of concern and interest. Thank you.