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STATEMENT OF
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HEARING ON
THE INVESTIGATION OF PROTECTION PAYMENTS FOR SAFE PASSAGE
ALONG THE AFGHAN SUPPLY CHAIN
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Chairman Tierney, Ranking Member Flake, distinguished members of the subcommittee, thank you for the opportunity to appear before you today to discuss the Department of Defense's use of Private Security Contractors in Afghanistan.

The Department of Defense (DOD) is just one of many entities—including other U.S. government agencies, foreign governments, international organizations, and private industry—that employ private security contractors (PSC) in Afghanistan. In recent years, the United States and many other nations and organizations, have increasingly turned to private contractors to provide security, as well as a variety of other functions, in support of stabilization and reconstruction efforts.¹ This increased reliance on contractors has fueled the growth of the private security industry worldwide.

Services Provided by Private Security Contractors

There is some debate as to what constitutes a private security contractor. Some commentators define private security as any activity that is directly related to protecting a person, place, or thing.² Others use a broader definition that includes such activities as providing intelligence analysis, operational coordination, and the training of military or law enforcement personnel. The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181 Sec. 864) defines private security functions as the “guarding of personnel, facilities, or property,” and any other activity for which contractors are required to “carry weapons in the performance of their duties.” This definition does not include unarmed personnel providing services directly related to security, such as coordinating the movements of PSCs throughout Iraq and Afghanistan. However, many of the companies that consider themselves PSCs provide a number of services that are not considered armed security. For the purposes of this report, the services provided by private security contractors can be divided into two major categories: armed services and unarmed services. Armed services include

- static (site) security—protecting fixed or static sites, such as housing areas, reconstruction work sites, or government buildings;
- convoy security—protecting convoys traveling through unsecured areas;
- security escorts—protecting individuals traveling in unsecured areas; and
- personal security details—providing full-time protective security to high-ranking individuals.

¹ According to one report, “Not since the 17th century has there been such a reliance on private military actors to accomplish tasks directly affecting the success of military engagements.” Fred Schreier and Marina Caparini. *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces, March 2005. p. 1. For discussions on the growth of private companies providing security and other support to military efforts worldwide, see, for example: Deborah D. Avant. *The Market for Force: The Consequences of Privatizing Security*. Cambridge, UK; New York: Cambridge University Press, 2005; Simon Chesterman and Chia Lehnardt. *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*. Oxford, UK; New York: Oxford University Press, 2007; and Singer, Peter W. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, NY: Cornell University Press, 2003. For a discussion of United Nations use of such contractors, see William J. Durch and Tobias C. Berkman. *Who Should Keep the Peace? Providing Security for the Twenty-First-Century Peace Operations*. Washington, D.C.: The Henry L. Stimson Center, September 2006. pp. 83-84.

² Doug Brooks, President of the International Peace Operations Association, an industry trade group, defines private security as any activity directly related to protecting a “noun.”

For some PSCs, unarmed services represent more than 50% of their total revenue. Unarmed security services include

- operational coordination—establishing and managing command, control, and communications operations centers;
- intelligence analysis—gathering information and developing threat analysis;
- hostage negotiations; and
- security training—providing training to domestic or international security forces.³

PSCs Operating in Afghanistan

There are currently 52 PSCs licensed by the Afghan government to operate in Afghanistan, with some 25,000 registered security employees. PSCs operating in Afghanistan are generally limited to a cap of 500 employees and can only exceed 500 with permission from the Afghan cabinet.⁴

Many analysts believe that regulations governing PSCs are only enforced in Kabul; that outside Kabul there is little government control and local governors, chiefs of police, and politicians run their own illegal PSCs. Because of the legal restrictions placed on security companies in Afghanistan, a number of PSCs are operating without a license or are exceeding the legal limit, including security contractors working for NATO and the U.S. government.⁵ Estimates of the total number of PSC employees in Afghanistan, including those that are not licensed, are as high as 70,000.⁶ Responding to concerns over the actions of a number of PSCs in Afghanistan, in November 2009, President Karzai stated a goal of closing down all PSCs in two years.⁷

³ Contractors providing weapons training may be armed. However, the use of weapons for training purposes is categorized here as an unarmed service because the weapons are used as training tools and not to provide armed security.

⁴ Based on discussions and emails with S. J. A. Brooking, Advisor to the Minister of Interior, Afghanistan, November 19, 2009. Some of the companies that had more than 500 employees prior to the cap taking effect were grandfathered in and permitted to maintain a larger force.

⁵ Based on DOD documentation and on official in Afghanistan. See also CRS Report R40835, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*, by Moshe Schwartz.

⁶ The majority of PSC personnel working in Afghanistan do not work for the U.S. government. David Zucchini, "Private security forces unnerve Afghans," *Chicago Tribune*, August 17, 2009.

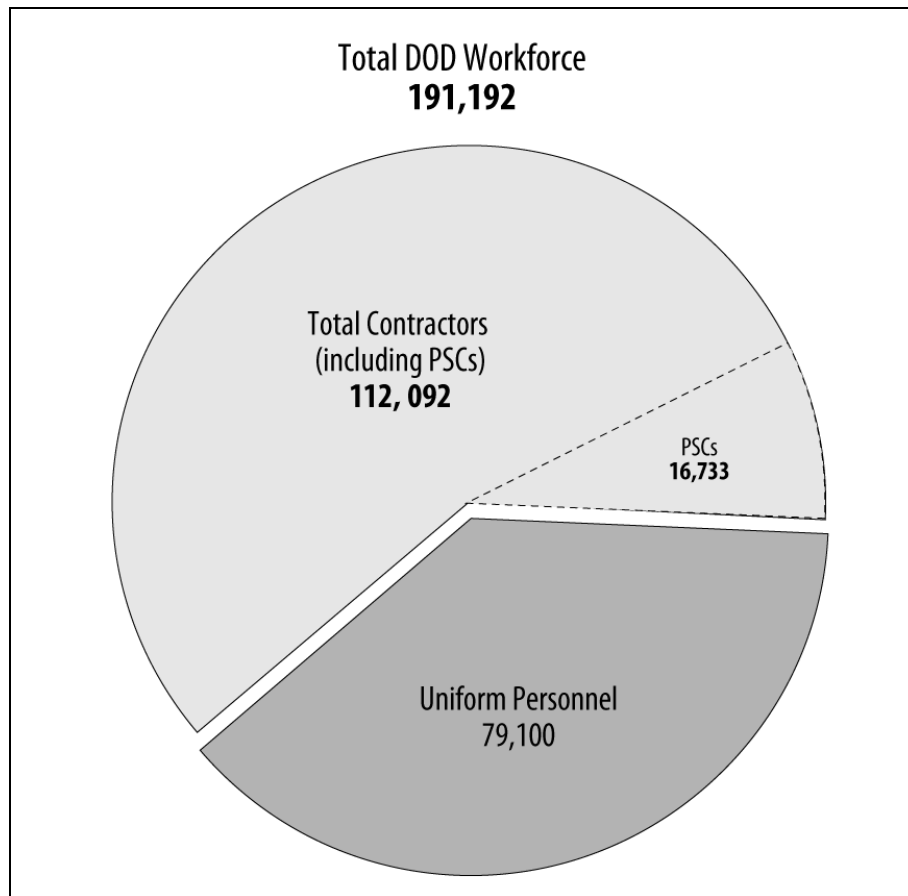
⁷ Kathy Gannon and Elena Becastoros, "Karzai makes big promises at inaugural," *Desert Morning News (based on Associated Press story)*, November 20, 2009, pp. A-04; John Boone, "The agenda: Five-year timetable for Afghan troops to replace foreign forces," *The Guardian*, November 20, 2009, p. International: 29.

The Department of Defense's Use of PSCs in Afghanistan

DOD's Total Workforce in Afghanistan

According to DOD, as of March 2010, there were approximately 191,200 people working for DOD in Afghanistan.⁸ This number includes over 112,000 contractors and over 79,000 U.S. uniformed personnel. Contractors made up 59% of the total workforce. 16,733 of the contractors in Afghanistan were private security contractor personnel (see **Figure 1**).

Figure 11. DOD Workforce in Afghanistan
As of March 31, 2010



Source: DOD data.

⁸ For purposes of this testimony, DOD's workforce is defined as uniformed personnel and the contractor workforce. DOD civilian personnel are excluded from this count. According to DOD's *Joint Personnel Status Report*, as of September 8, 2009, the DOD civilian workforce in Afghanistan was 1,706 employees (1.0% of the total force).

Number of Armed Security Contractor Personnel

According to DOD, of the 16,733 private security contractor personnel working for DOD in Afghanistan, 16,398 (98%) were armed. Of the armed security contractor personnel, 93% were local nationals (see **Table 1**).⁹ Since December 2009, the number of armed security contractor personnel working for DOD in Afghanistan has exceeded the number of armed security contractors in Iraq.¹⁰

Table 11. Number of DOD's Armed Security Contractor Personnel in Afghanistan by Nationality
(March, 31 2010)

	Number of Americans	Number of Afghans	Number of Third-Country Nationals	Total
Armed PSC personnel	137	15,301	960	16,398
Percent of Total	1%	93%	6%	100%

Source: CENTCOM Fiscal Year 2010 2nd Quarter Contractor Census Report.

Notes: Actual numbers of employees working in Afghanistan vary widely on a daily basis due to personnel rotations, medical evacuations, and R&R travel.

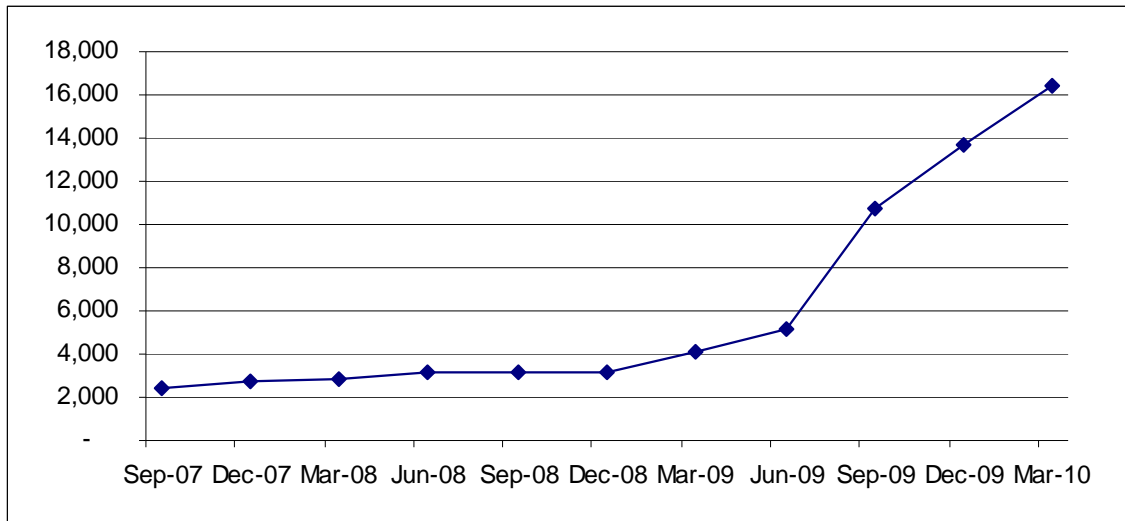
According to DOD, from December 2008 to March 2010, the number of armed security contractor personnel increased from 3,184 to 16,398, an increase of 415% (13,214 people) (see **Figure 2**). DOD attributed much of the increase in personnel to increased operational tempo and efforts to stabilize and develop new and existing forward operating bases.¹¹

⁹ According to DOD, since September 2007, local nationals have made up 90% or more of all armed security contractors in Afghanistan.

¹⁰ As of December 31, 2009 there were 13,717 armed private security personnel in Afghanistan compared to 9,431 in Iraq. As of March 31, 2010 there were 16,398 armed private security personnel in Afghanistan compared to 11,029 in Iraq.

¹¹ CENTCOM FY2009 4th Quarter and FY2010 2nd Quarter Contractor Census.

Figure 22. Trend of DOD's Armed Security Contractor Personnel in Afghanistan

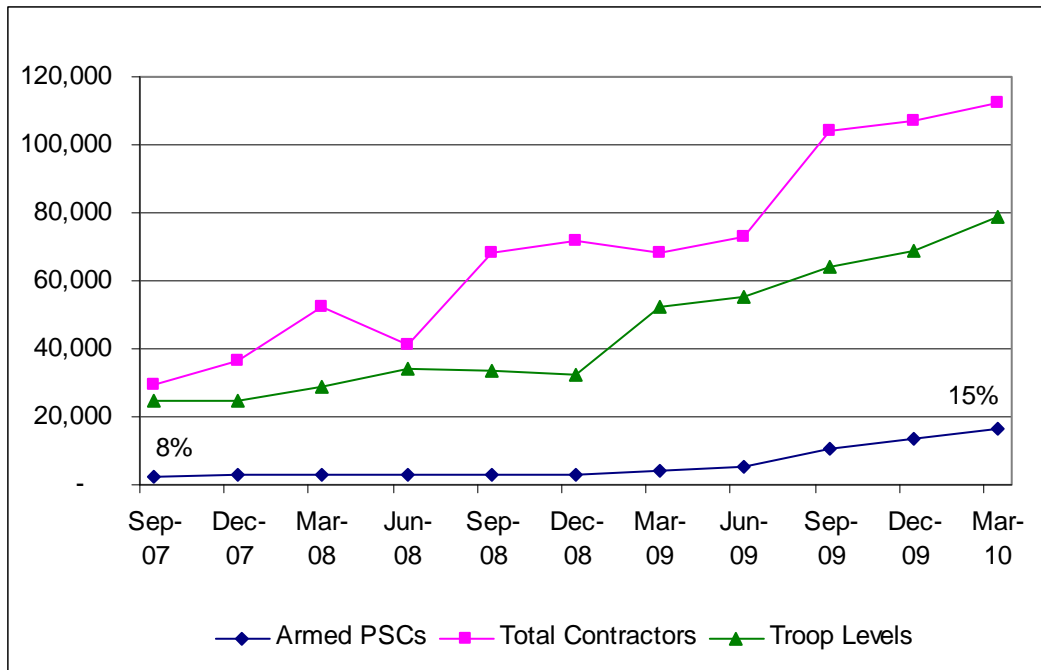


Source: CENTCOM Quarterly Contractor Census Reports, FY2008-FY2010.

Armed Security Contractor Personnel Compared to Total Contractor and Troop Levels

According to DOD, from September 2007 to June 2009, the number of armed security contractor personnel increased at a slower rate than overall contractor and troop levels. However, from June 2009 to March 2010, armed security contractor personnel increased at a faster rate (217%) than total contractors (54%) or troop levels (44%). As of March 2010, armed security contractor personnel made up 15% of the total number of contractor personnel working for DOD in Afghanistan and about 9% of DOD's total workforce in Afghanistan (see **Figure 3**).

Figure 33. Number of DOD's APSC personnel vs. Total Contractor and Troop Levels in Afghanistan



Source: Contractor data from CENTCOM Quarterly Census Reports; Troop data from CRS Report R40682, *Troop Levels in the Afghan and Iraq Wars, FY2001-FY2012: Cost and Other Potential Issues*, by Amy Belasco; see also Joint Staff, Joint Chiefs of Staff, “Boots on the Ground” monthly reports to Congress.

Notes: Percentages represent number of armed security contractor relative to total contractor personnel.

There are many different ways to look at this data. Some analysts could point out that armed contractor personnel make up only 9% of DOD’s total workforce in Afghanistan. Others could add together the number of uniformed troops and armed private security contractor personnel and state that armed security makes up 17% of the armed force.¹² Still others could say that contractors make up 26-34% of DOD’s armed security and stability force (defined as uniformed personnel and contractors who are armed to perform their core mission of conducting security operations).¹³ Regardless of how one defines the role of private security contractors working for the Department of Defense, these contractors incur a risk of death and injury from insurgents in Afghanistan.

Casualty Rates of PSC Personnel vs. Uniformed Personnel

According to DOD, from June 2009 to April 2010, 260 private security contractor personnel working for DOD have been killed in Afghanistan, compared to 324 U.S. troops killed over the same period.¹⁴ Adjusting for the difference in the number of PSC personnel compared to troops, a

¹² See CRS Report R40835, *The Department of Defense’s Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*, by Moshe Schwartz.

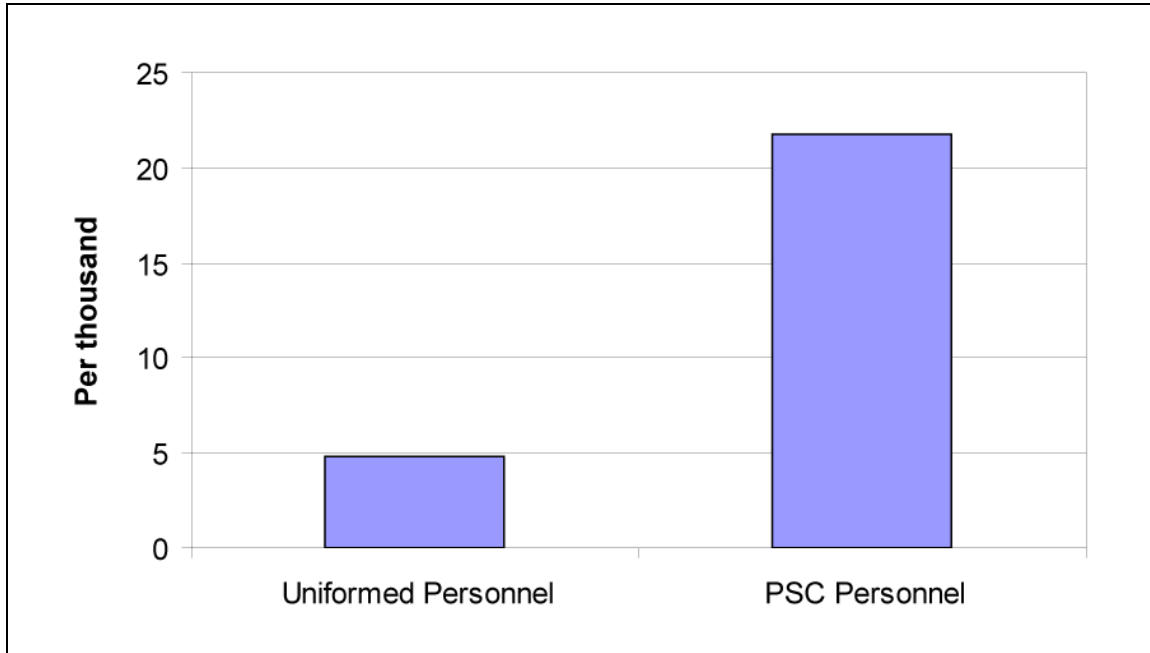
¹³ Ibid.

¹⁴ PSC data provided by DOD to CRS on May 7, 2010. Troop data can be found at http://siadapp.dmdc.osd.mil/personnel/CASUALTY/oef_list_of_names.xls, *Operation Enduring Freedom—Names*, (continued...)

PSC employee working for DOD in Afghanistan is 4.5 times more likely to be killed than uniformed personnel (see **Figure 4**).

More contractor personnel were killed providing convoy security (188 people or 72% of PSC personnel fatalities) than any other type of security, even though those providing convoy security were less than half of the total PSC workforce.^{15,16}

Figure 44. Number of PSC Personnel Killed vs. Uniformed Personnel
(deaths per thousand)



Source: CRS Analysis of DOD data.

Notes: KIA/Thousand calculated by dividing the average number of personnel deployed in Afghanistan (66,789 troops and 11,948 contractors, based on quarterly data from June 2009 to March 2010) by the total killed (from June 2009 to April 2010).

PSCs Offer Benefits for DOD but Also Pose Substantial Operational Risks

Regardless of how one analyzes the number of armed contractors working for DOD, PSCs play a critical role in U.S. efforts in Afghanistan. Yet the extent of DOD's reliance on PSCs was not planned and was executed without a clear strategy, exacerbating the risks inherent in using armed

(...continued)

Alphabetical Order.

¹⁵ Based on data provided by DOD on May 7, 2010.

¹⁶ Based on DOD documents and discussions with DOD officials.

contractors on the battlefield.¹⁷ As Secretary of Defense Roberts Gates testified, DOD's extensive reliance on contractors occurred

without any supervision or without any coherent strategy on how we were going to do it and without conscious decisions about what we will allow contractors to do and what we won't allow contractors to do... We have not thought holistically or coherently about our use of contractors, particularly when it comes to combat environments or combat training.¹⁸

The unprecedented extent to which DOD relies on PSCs to provide security in Iraq and Afghanistan, and the unplanned nature of this reliance, raises some fundamental questions:¹⁹

1. What are the benefits and risks of using PSCs in military operations?
2. To what extent should contractors be used in contingency operations?
3. What can be done to ensure that DOD improves its planning for the use of contractors in future military operations?

Benefits of Using PSCs During Contingency Operations

Private security contractors can provide significant operational benefits to the U.S. government. Contractors can often be hired and deployed faster than a similarly skilled and sized military force. Because security contractors can be hired and released quickly, using contractors can allow federal agencies to adapt more easily to changing environments around the world. In contrast, adapting the military force structure or training significant numbers of Department of State civilian personnel can take months or even years. Security contractors also serve as a force multiplier for the military, freeing up uniformed personnel to perform combat missions or providing the State Department with the necessary security capabilities when the department's civilian security force is stretched thin. In some cases, security contractors may possess unique skills that the government workforce lacks. For example, local nationals hired by U.S. government agencies working overseas may provide critical knowledge of the terrain, culture, and language of the region. In some instances, using PSCs can save the government money. Hiring contractors only as needed can be cheaper in the long run than maintaining a permanent in-house capability. According to government officials and many analysts, both DOD and the Department of State would be unable to execute their missions in Iraq and Afghanistan without

¹⁷ U.S. Government Accountability Office, *Military Operations: Implementation of Existing Guidance and Other Actions Needed to Improve DOD's Oversight and Management of Contractors in Future Operations*, GAO-08-436T, January 28, 2008, p. 6. See also U.S. Government Accountability Office, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, GAO-08-572T, March 11, 2008, p. 14.

¹⁸ U.S. Congress, Senate Committee on Armed Services, *To Receive Testimony on the Challenges Facing the Department of Defense*, 110th Cong., 2nd sess., January 27, 2009.

¹⁹ Iraq and Afghanistan appear to be the first two instances where the U.S. government has used private contractors extensively for protecting persons and property in combat or stability operations where host country security forces are absent or deficient, but it is not the first time private contractors have been used for such purposes. The U.S. Government Accountability Office (GAO) reported that contractors have provided security guards in the Balkans and Southwest Asia. *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*. GAO-03-695, June 2003, p 8. The United States also uses contractors (U.S. and foreign citizens) for guard duty at U.S. military installations and U.S. embassies and consulates in a number of countries where stability generally is not an issue.

the support of private security contractors.²⁰ According to these analysts, the risk of not using PSCs in Iraq and Afghanistan is nothing short of depriving DOD of the resources it needs to succeed in its mission.²¹

Risks of Using Armed Contractors in Contingency Operations

Given the critical role contractors are playing in supporting military operations and the billions of dollars DOD spends on contractors, the ability of DOD to manage and oversee contractors has become increasingly important. Poor contract management can lead to troops not receiving needed support and the wasteful spending of billions of dollars.²² According to many analysts, extensively relying on private security is also undermining the credibility and effectiveness of U.S. efforts in Iraq and Afghanistan.

Can the Use of PSCs Undermine U.S. Efforts?

According to the Army Field Manual on counterinsurgency, one of the fundamental tenets of counterinsurgency operations—such as those undertaken in Iraq and Afghanistan—is to establish and maintain security while simultaneously winning the hearts and minds of the local population. Abuses by security forces, according to the manual, can be a major escalating factor in insurgencies.²³ Abuses committed by contractors, including contractors working for DOD and other U.S. agencies, can also turn public opinion in favor of anti-American insurgents.²⁴

There have been published reports of local nationals being abused and mistreated by DOD contractors in such incidents as the summary shooting by a private security contractor of an Afghan who was handcuffed,²⁵ the shooting of Iraqi civilians,²⁶ and the abuse of prisoners at Abu Ghraib prison in Iraq.²⁷ Such incidents continue to be reported in Afghanistan. Private security contractors escorting supply convoys to coalition bases have been blamed for killing and wounding more than 30 innocent civilians during the past four years in Afghanistan's Maywand district alone, leading to at least one confrontation with U.S. forces.²⁸ And in May of this year,

²⁰ CRS Report MM70119, *Private Security Contractors: Possible Legislative Approaches*. Online Video. DVD., coordinated by Kennon H. Nakamura.

²¹ CRS Report MM70119, *Private Security Contractors: Possible Legislative Approaches*. Online Video. DVD., coordinated by Kennon H. Nakamura.

²² U.S. Government Accountability Office. *Stabilizing And Rebuilding Iraq: Actions Needed to Address Inadequate Accountability over U.S. Efforts and Investments*. GAO-08-568T. March 11, 2008. p. 4,6; See also Urgent Reform Required: Army Expeditionary Contracting, op. cit., p. 2.

²³ Department of Defense, *Counterinsurgency*, FM 3-24, December 2006, p. 1-9

²⁴ Chairman of the Joint Chiefs of Staff, *Operational Contract Support*, Joint Publication 4-10, October 17, 2008, pp. IV-20; See also *Counterinsurgency*, p. 1-9. *Operational Contract Support* recognizes that local nationals may not always draw a distinction between government contractors and the U.S. military.

²⁵ Bruce Alpert, "Killing in Afghanistan hits very close to home; N.O. man is accused of cold-blooded crime," *Times-Picayune*, December 17, 2008, p. 1.

²⁶ Mark Townsend, "National: Iraq victims sue UK security firm: Guards employed by Hampshire-based company are," *The Observer*, January 11, 2009, p. 14.

²⁷ Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004. See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>. The contractors involved in the Abu Ghraib incident are generally considered not to have been private security contractors.

²⁸ Sean Taylor, "Trigger-Happy Security Complicates Convoys," *Army Times*, December 1, 2009.

U.S. and Afghan officials reportedly stated that local Afghan security contractors protecting NATO supply convoys in Kandahar “regularly fire wildly into villages they pass, hindering coalition efforts to build local support.”²⁹ One officer from a Stryker brigade deployed in Afghanistan was quoted as saying that these contractors “tend to squeeze the trigger first and ask questions later.”³⁰ And unlike in Iraq, where a series of high-profile incidents involved U.S. security personnel, in Afghanistan, many of the guards causing the problems are Afghans.³¹

According to many analysts, these events have undermined the U.S. missions in Iraq and Afghanistan.³² An official from Iraq’s Interior Ministry, discussing the behavior of private security contractors, said “Iraqis do not know them as Blackwater or other PSCs but only as Americans.”³³ One senior military officer in Iraq reportedly stated that the actions of armed PSCs “can turn an entire district against us.”³⁴

The extent to which the behavior of private security contractors in Afghanistan has hurt coalition efforts in Afghanistan was recently discussed by Major General Nick Carter (United Kingdom), International Security Assistance Force (ISAF) Afghanistan Regional Command South, who stated that the “culture of impunity” that exists around PSCs are a serious problem that needs to be dealt with and that this culture is to some degree “our own doing”.³⁵

Factors for Determining to What Extent PSCs Should Be Used in Contingency Operations

In 2007, then Senator Barack Obama argued “we cannot win a fight for hearts and minds when we outsource critical missions to unaccountable contractors.”³⁶ This statement raises a critical question: is the practice of using contractors for the critical function of armed security a problem or is the problem DOD’s seeming inability to properly manage contractors and hold them accountable? How this question is answered can go a long way in determining to what extent private security contractors should be used in contingency operations. To those analysts who believe that armed security should not be contracted out, possible options include increasing the size of the military, rethinking current force structure, or choosing not to engage in certain contingency operations. To those who believe that the problem is insufficient planning and poor

²⁹ Sebastian Abbot, “Private Guards Anger U.S., Afghans,” *Associated Press*, May 1, 2010.

³⁰ *Ibid.*

³¹ Sean Taylor, “Trigger-Happy Security Complicates Convoys,” *Army Times*, December 1, 2009; Sebastian Abbot, “Wild and Reckless Behavior,” *The Associated Press*, May 1, 2010; “Afghanistan Bars Security Firms After Civilian Deaths,” *Agence France Presse*, May 9, 2010; Noor Kahn, “Karzai: Afghan guards employed by US killed police,” *AP Newswire*, June 29, 2009.

³² See David Zucchino, “Private security forces unnerve Afghans,” *Chicago Tribune*, August 17, 2009; Sebastian Abbot, “Wild and Reckless Behavior,” *The Associated Press*, May 1, 2010; “Afghanistan Bars Security Firms After Civilian Deaths,” *Agence France Presse*, May 9, 2010.

³³ Steve Fainaru, “Where Military Rules Don’t Apply; Blackwater’s Security Force in Iraq Given Wide Latitude by State Department,” *Washington Post*, September 20, 2007, Pg. A1.

³⁴ Anna Mulrine and Keith Whitelaw, “Private Security Contractors Face Incoming Political Fire,” *U.S. News & World Report*, October 5, 2007.

³⁵ “Major General Nick Carter (U.K. Royal Army) Holds a Defense Department News Briefing Via Teleconference From Afghanistan,” CQ Transcript, May 26, 2010.

³⁶ Hauser, C., *New Rules for Contractors are Urged by 2 Democrats*, the New York Times, October 4, 2007.

management, the solution may be to develop an effective strategy for using PSCs, improve DOD operational planning, and enhance oversight and accountability.

Legal Issues

In January 2006, the Office of General Counsel of the Department of Defense issued a legal opinion stating that DOD may use PSCs in Iraq and Afghanistan.³⁷ The opinion also stated that PSCs “should not be employed in situations where the likelihood of direct participation in hostilities is high, such as military convoy security operations where the likelihood of hostile contact is high.” A recent DOD instruction expanded on this issue, stating that “security is [inherently governmental] if it is performed in environments where there is such a high likelihood of hostile fire... by groups using sophisticated weapons and devices that, in the judgment of the military commander, the situation could evolve into combat.”³⁸ The issue of whether or not PSCs are involved in combat is critical, as the DOD instruction bars PSCs from engaging in combat, which is generally defined by DOD as taking “offensive action against a hostile force.”³⁹ As such, according to DOD and some analysts, PSCs are not engaging in combat because they are not involved in offensive action against hostile forces.

Other analysts disagree with DOD’s analysis, arguing that armed security contractors are taking part in combat operations. These analysts point out that that international law makes no distinction between the offensive or defensive nature of participation in combat.⁴⁰ Some of these analysts also argue that given the frequency and sophistication of the attacks launched by hostile forces against targets protected by PSCs and the number of contractors killed and wounded in these attacks, practically speaking, contractors are engaged in combat. Last year, guidance issued by the International Committee of the Red Cross argued that direct participation in hostilities as a matter of international law included defense of legitimate military targets such as military bases, military convoys, and military personnel during an armed conflict.⁴¹ This analysis could hold that contractors performing such services are not only directly participating in hostilities, but could themselves become legitimate targets of attack.

Management and Oversight

According to some analysts, improved oversight and accountability could mitigate the negative effects that the use of PSCs and other contractors has had on U.S. efforts in Iraq and Afghanistan,

³⁷ Charles A. Allen, Deputy General Counsel, *Request to Contract for Private Security Companies in Iraq*, Department of Defense Office of General Counsel, Memorandum, January 10, 2006, p. 4.

³⁸ Dr. Clifford L. Stanley, Undersecretary of Defense for Personnel and Readiness, *Policy and Procedures for Determining Workforce Mix*, Department of Defense, Instruction 1100.22, April 12, 2010, p. 19.

³⁹ Ibid.

⁴⁰ Even according to analysts who believe that armed contractors are engaging in combat, there are significant differences between contractors and uniformed personnel. For example, contractors are bound by the terms of the contract, do not fall within the same chain of command as uniformed personnel, and are barred by contract and DOD regulations from participating in offensive activities. For a more detailed discussion on whether armed security contractors are engaging in combat, see CRS Report R40991, *Private Security Contractors in Iraq and Afghanistan: Legal Issues*, by Jennifer K. Elsea.

⁴¹ Nilz Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law, International Committee of the Red Cross, Geneva, Switzerland, May 2009, p. 38.

and could potentially bring the standard of behavior of PSCs in line with that of uniformed personnel.⁴²

In the early years of the wars in Iraq and Afghanistan, as the number of contractors in the area of operations increased, the operational force—the service men and women in the field—increasingly relied on, interacted with, and were responsible for managing contractors.⁴³ Yet, a number of military commanders and service members indicated that they did not get adequate information regarding the extent of contractor support in Iraq and did not receive enough pre-deployment training to prepare them to manage or work with contractors.⁴⁴ One DOD official pointed out that the military did not have an adequate infrastructure to effectively manage and oversee contractors in Iraq.⁴⁵ And in 2007, an Army commission produced the Gansler Report, which found that Contracting Officer Representatives (CORs) responsible for managing contractors are generally drawn from combat units and receive “little, if any, training” on how to work with contractors.⁴⁶ This finding confirms what many analysts argued: that deployed military personnel were not sufficiently trained or prepared to manage contractors in an area of operations.

DOD has taken a number of steps to improve management and oversight of PSCs. In July 2009, DOD issued an instruction establishing policy and procedures for managing private security contractors during contingency operations.⁴⁷ DOD also released an interim rule modifying the Code of Federal Regulations that lays out policy regarding the use of private security contractors in war zones. The rule includes policies and procedures for selecting, training, equipping and overseeing private security contractors. DOD established Contractor Operations Cells in Iraq and in Afghanistan to coordinate the movement of PSCs,⁴⁸ and it established the Armed Contractor

⁴² According to an Army investigative report, a lack of good contractor oversight at Abu Ghraib prison contributed to fostering a permissive environment in which prisoner abuses took place at the hands of contractors. Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004, p. 52. The report found “Proper oversight did not occur at Abu Ghraib due to a lack of training and inadequate contract management ... [T]his lack of monitoring was a contributing factor to the problems that were experienced with the performance of the contractors at Abu Ghraib.” See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>.

⁴³ The operational force, including servicemen and women conducting military operations on the battlefield, consists of those forces that “conduct full spectrum operations around the world.” The institutional force, including acquisition personnel, supports the operational force. “Institutional organizations provide the infrastructure necessary to raise, train, equip, deploy and ensure the readiness of” military forces. See *Urgent Reform Required: Army Expeditionary Contracting*, op. cit. p. 1.

⁴⁴ U.S. Government Accountability Office. *DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*. GAO-08-572T. Highlights page. March 11, 2008; Also based on discussions with military personnel deployed in Iraq.

⁴⁵ Kathryn T.H. Syzmanski, Command Counsel U.S. Army Materiel Command in Atlanta on August 9, 2004. American Bar Association Section of Public Contract Law, *Contractors on the Battlefield: Exploration of Unique Liability and Human Relations Issues*, Volume II.

⁴⁶ Commission on Army Acquisition and Program Management in Expeditionary Operations. *Urgent Reform Required: Army Expeditionary Contracting*. October 31, 2007. p. 43.

⁴⁷ Ashton Carter, *Private Security Contractors (PSCs) Operating in Contingency Operations*, Department of Defense, Acquisition, Technology, and Logistics, DODI 3020.50, July 22, 2009.

⁴⁸ The Armed Contractor Oversight Division in Iraq was renamed the Armed Contractor Oversight Bureau. For a detailed discussion on DOD efforts to improve the coordination of PSC movements throughout Iraq, see Government Accountability Office, *Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements*, GAO-08-966, July 31, 2008; Special Inspector General for Iraq Reconstruction, *Field Commanders See Improvements in Controlling and Coordinating Private Security Contractor Missions in Iraq*, SIGIR 09-022, July 28, 2009.

Oversight Division to receive serious incident reports involving PSCs and to ensure that all of the incidents are reported, tracked, and investigated.⁴⁹

According to many analysts, DOD's efforts have improved the management, oversight, and coordination of PSCs. These and other improvements have been discussed at length and noted by the Special Inspector General for Iraq Reconstruction, (SIGIR) the Government Accountability Office, and the Commission on Wartime Contracting, which called DOD's improved management of PSCs in Iraq a "success story".⁵⁰ Many analysts believe that such improvements can help rein in contractor behavior that undermines U.S. efforts.

Recognizing the improvements that have been made to date, most analysts maintain that gaps still remain in DOD's management of PSCs.⁵¹ For example, in its April 2010 report to Congress, SIGIR stated that it "continues to make recommendations" on how DOD can make better use of PSCs in contingency reconstruction operations.⁵² DOD officials acknowledge that the management of PSCs is a work in progress that still has a way to go.

Ensuring that DOD Sufficiently Plans for the Use of Contractors in Future Military Operations

The extent to which DOD plans for the use of contractors in the future can help ensure that DOD puts a more effective management system in place. Such planning could also ensure that contractors are used as a way to improve overall operational effectiveness and not primarily because DOD unexpectedly has insufficient military personnel to perform critical functions.

In 2003, GAO issued a report entitled *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*.⁵³ In the report, GAO found that the U.S. operational plans for the war in Iraq contained only limited information on contractor support even though DOD was aware of the need to identify contractors providing essential services as early as 1988. This same opinion was expressed in 2008 by a U.S. colonel in Baghdad who was responsible for overseeing PSCs in Iraq. In explaining all of the progress being made by DOD in improving its management of PSCs, he stated that the question is not what DOD is doing to fix the problem now; rather, he said the real question is why DOD was not thinking about this issue ten years ago when steps could have been taken to avoid the situation that we are in today.⁵⁴

⁴⁹ Special Inspector General for Iraq Reconstruction, Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved, SIGIR 09-023, July 28, 2009.

⁵⁰ Ibid. See also, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, *Commission on Wartime Contracting: Interim Findings and Path Forward*, 111th Cong., 1st sess., June 10, 2009.

⁵¹ U.S. Government Accountability Office, Contingency Contract Management: DOD Needs to Develop and Finalize Background and Other Standards for Private Security Contractors, GAO-09-351, July 31, 2009.

⁵² Special Inspector General for Iraq Reconstruction, *Quarterly Report to the United States Congress*, April 30, 2010, p. 100.

⁵³ U.S. General Accounting Office, *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*, GAO-03-695, June 24, 2003, p. 2.

⁵⁴ Based on in-person conversation in Baghdad, March 2008.

This raises another question: namely, to what extent is DOD actively assessing when and to what extent armed security contractors, and even contractors in general, should be used in future military operations. A number of analysts believe that DOD has not sufficiently engaged in such an assessment. This belief is in line with a recently released GAO report entitled *Warfighter Support: DOD Needs to Improve Its Planning for Using Contractors to Support Military Operations*.⁵⁵ Earlier this year, General Stanley McChrystal reportedly addressed this issue when he stated that the U.S. has created a dependency on contractors that “is greater than it ought to be.”⁵⁶

Some analysts argue that DOD missed an opportunity to address the issue in the 2010 Quadrennial Defense Review (QDR). The QDR has a seven page section on counterinsurgency, stability, and counterterrorism operations, including a list of ten priorities for improvement. These analysts point out that the word “contractor” does not appear once in the discussion, despite the fact that contractors make up more than 60% of DOD’s workforce in Afghanistan, including more than 13,000 armed contractors.

Despite not being included in the QDR, senior DOD officials have begun to examine the extent to which DOD relies on contractors, including PSCs. In December 2008, Acting Chairman of the Joint Chiefs of Staff, General James E. Cartwright, established the Dependence on Contractor Support in Contingency Operations Task Force. This task force was charged with determining the extent to which DOD relies on contractors, and to use this analysis to consider how to use contractors in contingency operations as well as help plan DOD’s future force structure. The task force conducted a detailed study of contractors in Iraq and has briefed the most senior levels of the Department of Defense. A number of analysts believe that this effort is a step in the right direction.

Incorporating the Role of Contractors into Military Education and Exercises

A number of experts have argued that increased training and education in managing contractors during contingency operations is necessary for non-acquisition personnel throughout the military. The Gansler Report stated that the Army needs to train operational commanders on the important role contracting plays in warfighting, as well as on their responsibilities in the process. The report called for adding courses on contractors in expeditionary operations into the curricula of the services’ professional military education programs.⁵⁷ Echoing the Gansler Report, an official at the U.S. Army Materiel Command wrote that “Contractor logistics support must be integrated into doctrine and taught at every level of professional schooling in each component.”⁵⁸ The calls for more robust training are not new. For example, in 2003, GAO testified before the House Armed Services Committee, Subcommittee on Readiness, stating “Without training, many commanders, senior military personnel, and contracting officers’ representatives are not aware of their roles and responsibilities in dealing with contractors.”⁵⁹

⁵⁵ U.S. Government Accountability Office, *Warfighter Support: DOD Needs to Improve Its Planning for Using Contractors to Support Military Operations*, GAO-10-472, March 30, 2010.

⁵⁶ “Too Many Contractors in Afghanistan - McChrystal,” *Trend News Agency*, April 17, 2010.

⁵⁷ Urgent Reform Required: Army Expeditionary Contracting, op. cit., p. 7.

⁵⁸ Contractors on the Battlefield Volume II, op. cit.

⁵⁹ U.S. Government Accountability Office. *Military Operations: Contractors Provide Vital Services to Deployed Forces* (continued...)

Some analysts argue that education is not enough: that to truly integrate contractors into the culture of the military, it is critical to incorporate contractors and contract operations in military exercises. According to these analysts, only through military exercises will military planners and operational commanders truly understand the role of and how to manage contractors during military operations.

Mr. Chairman, distinguished members of the subcommittee, this concludes my testimony. Thank you again for the opportunity to appear before you to discuss these issues. I will be pleased to respond to any questions you might have.

(...continued)

but Are Not Adequately Addressed in DOD Plans, GAO-03-695, June 2003. p. 36.