

July 2008

# 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

This report was revised on August 1, 2008 to reflect a change to the text on page 2, in line 11 of the second paragraph, “provisions of the 2007 National Defense Authorization Act” is revised to “provisions of Section 862 of the 2008 National Defense Authorization Act.”



# Report Documentation Page

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Highlights of [GAO-08-966](#), a report to Congressional Committees

## Why GAO Did This Study

The U.S. government relies extensively on private security contractors (PSC) for a variety of security services. However, incidents involving PSCs have raised concerns about oversight and legal accountability. Under the authority of the Comptroller General and in response to continuing congressional interest, GAO performed this review to examine the extent to which the Department of Defense (DOD) and Department of State have strengthened (1) oversight and (2) coordination of private security contractors in Iraq. GAO is also providing information on the legal framework used to hold private security contractor employees legally accountable for their actions in Iraq. GAO reviewed DOD and State Department policies and guidance, and their memorandum of agreement on PSCs; observed operations in Iraq and met with DOD officials there and in the U.S.; and met with officials from the Departments of Justice and State, and private security contractors.

## What GAO Recommends

GAO recommends that DOD develop a strategy to sustain the increase in its oversight personnel in Iraq. Further, GAO made two recommendations that DOD update current training being provided to military units deploying to Iraq. DOD concurred with these recommendations. However, State disagreed with some of GAO's comments regarding the status of the implementations of the recommendations made by the panel.

To view the full product, including the scope and methodology, click on [GAO-08-966](#). For more information, contact William Solis, (202) 512-8365 or [solisw@gao.gov](mailto:solisw@gao.gov).

## 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

#### What GAO Found

Both DOD and the State Department have taken steps to strengthen oversight of private security contractors in Iraq since September 2007. However, staffing and training challenges remain for DOD. DOD has increased the number of personnel in Iraq assigned to provide oversight for DOD's PSCs but has not developed plans or a strategy to sustain this increase. An Army-commissioned report has specifically raised concerns about the lack of personnel available to provide sufficient contracting support to either expeditionary or peacetime missions. In the short term, DOD has increased the number of oversight personnel in Iraq by shifting existing oversight personnel from other locations into Iraq. However, without developing and implementing a strategy for providing and sustaining an increased number of personnel dedicated to oversight of PSCs, it is not clear whether DOD can sustain this increase because of the limited number of oversight personnel in the workforce. Moreover, while DOD has provided some training on PSCs for units deploying, the training has not been updated to reflect the changes made by DOD since September 2007 to increase oversight. As a result, military units may be unaware of their expanded oversight and investigative responsibilities. The State Department has implemented 11 of 18 actions recommended in October 2007 by a panel tasked by the Secretary of State with reviewing that agency's use of private security contractors in Iraq. For example, the State Department has increased the number of diplomatic security personnel stationed in Iraq to provide oversight of contractor activities and has requested and received funding to hire and train 100 additional agents to replace those who were transferred from other State Department programs in the United States to Iraq. According to State Department officials, the additional personnel will help sustain the increased number of agents in Iraq. In addition, as of June 2008, the State Department has equipped 140 of its security vehicles with video recording equipment and plans to equip an additional 93 vehicles.

Coordination among DOD, the State Department, and the government of Iraq has significantly improved since September 2007. The State Department coordinates its PSC movements with DOD through liaison officers, and by providing a daily briefing to Multi-National Forces-Iraq (MNF-I) on upcoming PSC activities. MNF-I's Armed Contractor Oversight Division facilitates coordination for PSC matters among DOD, State Department, the government of Iraq, and the PSC community. Further, DOD and the State Department signed a memorandum of agreement detailing coordination activities to be undertaken.

Various laws hold PSC employees accountable for their actions in Iraq, including U.S. criminal laws that may be applied extraterritorially, the Military Extraterritorial Jurisdiction Act, and the Uniform Code of Military Justice. The applicability of these laws depends on the circumstances—e.g., the nature and location of the alleged crime and the nationality of the accused—of any specific incident. The legal framework for holding PSCs accountable also includes Iraqi and international law and contract provisions.

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## Abbreviations

ACOD	Armed Contractor Oversight Division
CENTCOM	U.S. Central Command
COM	Chief of Mission
CONOC	Contractor Operations Cells
COR	Contracting Officer's Representative
CPA	Coalition Provisional Authority
DCMA	Defense Contract Management Agency
DOD	Department of Defense
DS	Diplomatic Security
JCC-I/A	Joint Contracting Command-Iraq/Afghanistan
MEJA	Military Extraterritorial Jurisdiction Act
MNC-I	Multi-National Corps-Iraq
MNF-I	Multi-National Force-Iraq
PSC	private security contractor
RSO	Regional Security Office
TOC	tactical operations center
UCMJ	Uniform Code of Military Justice
USAID	U.S. Agency for International Development
WPPS	Worldwide Personal Protective Services

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United States Government Accountability Office  
Washington, DC 20548

July 31, 2008

### Congressional Committees

Since military operations began in Iraq in 2003, the United States government has relied extensively upon the services of private security contractors (PSC). For the Department of Defense (DOD) these services include providing security for senior military officials such as the Commanding General of the Multi-National Force-Iraq and for personnel from the Army Corps of Engineers, protecting military facilities, and protecting more than 19,000 supply convoys traveling throughout Iraq.<sup>1</sup> For the Department of State, PSCs provide security for the ambassador, other U.S. government officials working in Iraq as well as visiting Members of Congress and visiting officials of the executive branch. PSCs also provide site security of the embassy and other State Department facilities in Iraq. The number of PSCs in Iraq is also substantial. DOD and the Department of State estimate that about 11,000 private security employees (9,952 with DOD, 1,400 with the State Department) are working in Iraq under direct contracts with the U.S. government. DOD has estimated that it would need to create nine new Army brigades to replace the current number of PSC employees working in Iraq.<sup>2</sup>

Because of incidents involving PSCs in Iraq, concern regarding the level of oversight and the legal accountability over these firms and their employees has increased. Incidents occurring between PSCs and Iraqis and between PSCs and U.S. forces have been reported since 2004. In July 2005, we issued a report that examined how the U.S. government and reconstruction contractors used PSCs.<sup>3</sup> In that report we made a number of recommendations including one addressed to DOD to develop a training package for military units deploying to Iraq that included information on (1) the role of PSCs in Iraq, (2) typical PSC operating procedures, (3)

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<sup>1</sup> According to DOD officials from August 2004 to February 2008, the Department launched 19,268 supply convoys. These convoys moved reconstruction supplies as well as logistic supplies for the Iraq Security Forces and were protected by PSCs.

<sup>2</sup> DOD made this estimate based on the analytical framework of a CBO study, *Logistics Support for Deployed Forces*, 2005.

<sup>3</sup> GAO, *Rebuilding Iraq: Actions Needed to Improve the Use of Private Security Providers*, [GAO-05-737](#) (Washington, D.C.: July 2005).

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guidance related to PSCs, and (4) the military's responsibilities to PSCs. In 2006, we testified that coordination between the U.S. military and the PSCs needed improvement and that further action needed to be taken by DOD to implement the pre-deployment training recommendation from 2005.<sup>4</sup> According to the report of the Secretary of State's Panel on Personal Protective Services in Iraq, on September 16, 2007, an incident involving a PSC firm working for the Department of State resulted in the deaths of 17 Iraqi civilians in Baghdad. In the wake of this incident, which U.S. government officials describe as a watershed event, both DOD and the State Department began to examine their efforts to provide oversight, improve coordination between DOD, the State Department and the government of Iraq, and enhance accountability for the PSCs they employ in Iraq.

Because of continuing congressional interest in the use of PSCs in Iraq, we began in August 2007, under the authority of the Comptroller General to conduct evaluations on his own initiative, a review to update our work on the U.S. government's use of PSC. This report examines the extent to which DOD and the Department of State have strengthened (1) oversight and (2) coordination of private security contractors in Iraq. In addition, we are providing information on the legal framework in place to hold private security contractor employees legally accountable for their actions in Iraq. Later this year, we plan to issue a report on other PSC issues related to selection, training, and weapons accountability as well as DOD's implementation of provisions of Section 862 of the 2008 National Defense Authorization Act which requires DOD to prescribe regulations for the use of private security contractors in contingency operations.

To assess the U.S. government's efforts to improve oversight and coordination of PSCs it employs in Iraq, we reviewed recent DOD, United States Central Command (CENTCOM), Multi-National Force-Iraq (MNF-I), and State Department policies and guidance addressing the requirements, procedures, and responsibilities for the oversight and coordination of PSCs. These documents include new MNF-I PSC guidance and policies on incident reporting, investigation requirements, coordination, and contract oversight. In addition, we reviewed the memorandum of agreement between DOD and the State Department on PSCs working for the U.S. government in Iraq. We reviewed these policies to determine the U.S.

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<sup>4</sup>GAO, *Rebuilding Iraq: Action Still Needed to Improve the Use of Private Security Providers*, [GAO-06-865T](#) (Washington, D.C.: June 13, 2006).

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government's authority and responsibility for the oversight and coordination of PSCs in Iraq that have contracts with the U.S. government. In February 2008, we traveled to Iraq to examine what, if any, improvements had been made after the Nisour Square incident. In Iraq we met with officials from DOD, including officials from MNF-I, the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A), and the Defense Contract Management Agency (DCMA), as well as officials from the State Department, including officials from the U.S. Embassy-Baghdad and its Regional Security Office, to discuss issues related to oversight, coordination, and accountability over PSCs in Iraq. While in Iraq, we observed operations at DOD's Contractor Operations Cell and at the State Department's Tactical Operations Center, witnessing the planning, oversight and coordination, and tracking of PSC movements throughout Iraq. We also met with the Executive Secretary of the Secretary of State's panel established to review the State Department's security practices in Iraq. We also interviewed officials from ten selected private security firms who currently provide or have recently provided private security functions in Iraq, as well as representatives from an Iraq-based private security association.

To describe the legal framework in place to hold PSC employees accountable we reviewed various laws including the Uniform Code of Military Justice and the Military Extraterritorial Jurisdiction Act. We also interviewed officials from DOD's Office of the General Counsel, the State Department's Office of the Legal Adviser and from the Department of Justice to gain an understanding of the process used to hold PSCs accountable. Moreover, we also reviewed applicable U.S. government PSC contract clauses that outline and regulate contractor behavior.

Our work focused on PSCs who have a direct contractual relationship with the United States government and we did not assess the use of PSCs by reconstruction contractors, non-governmental organizations or other coalition nations. We reviewed processes used to provide oversight and coordination over PSCs in Iraq but did not evaluate how effectively they were being implemented because the processes reviewed are new. We also did not evaluate how laws were being used to hold contractors accountable. Appendix I contains a more detailed presentation of our scope and methodology. We conducted this performance audit from February 2008 to June 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on audit



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objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Results in Brief

Since the Nisour Square incident in September 2007, DOD and the State Department have taken action to improve oversight of PSCs in Iraq. However staffing and training challenges remain for DOD. In November 2007 MNF-I established the Armed Contractor Oversight Division to provide oversight and serve as MNF-I's overall point of contact on policies that govern DOD's PSCs. MNF-I has also published comprehensive guidance related to the oversight of DOD PSCs and has made military units more responsible for providing oversight of PSCs in terms of incident reporting and investigating as well as contract management. However, while DOD has incorporated information on working with PSCs into senior military staff and unit training programs and exercises, this training does not reflect the increased PSC oversight responsibilities and organizational structures established since the September 2007 incident. Thus, military units may not be aware of and trained on how to carry out their expanded oversight responsibilities and the required incident investigations may not occur. Further, while DOD has increased the number of personnel in Iraq devoted to providing contract oversight and management over private security contracts it is not clear whether DOD can sustain this increase because limited number of oversight personnel in the workforce. In the short-term, DOD has increased the number of oversight personnel in Iraq by shifting existing oversight personnel from other locations into Iraq. However, if DOD is unable to sustain the increase in oversight personnel, the improvements in contract oversight gained by the current personnel increases may well be lost. The State Department has implemented 11 of the 18 actions recommended by a panel that reviewed the Department's use of PSCs in Iraq and continues to implement others. Among the recommendations it has implemented or is in the process of implementing are recommendations to install video recording equipment in its security vehicles, place a diplomatic security agent in each PSC motorcade, and increase the number of Diplomatic Security agents stationed in Iraq to improve contract oversight and management. To provide these additional agents, the State Department moved personnel from other assignments both in the U.S. and abroad which negatively affected other Diplomatic Security missions. The State Department has requested and received funding for an additional 100 diplomatic security agents in its fiscal year 2008 supplemental appropriations request.

Coordination between DOD, the State Department, and the government of Iraq has improved since the Nisour Square incident. For example, the State Department now coordinates its PSC movements with DOD through

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liaison officers, and by providing a daily briefing to MNF-I regarding upcoming PSC activities. Multi-National Corps-Iraq (MNC-I) has established several operations centers to track and coordinate the movement of DOD PSCs with U.S. military units throughout Iraq, as well as to coordinate the movements of PSCs working for the State Department. Prior to the establishment of these operations centers, PSC movements were not always coordinated with U.S. military units. Moreover, MNF-I 's Armed Contractor Oversight Division facilitates coordination for PSC matters in Iraq among DOD, the State Department, the government of Iraq, and the PSC community in Iraq. Prior to the establishment of the oversight division the U.S. government did not coordinate PSC issues with the Government of Iraq. Since the establishment of the division, representatives of the State Department and the oversight division meet regularly to listen to concerns, resolve issues, and generate joint solutions. In addition, the division notifies the Iraq Ministry of the Interior when an incident occurs involving PSCs and Iraqi civilians. Finally, in December 2007 DOD and the State Department signed a memorandum of agreement that details specific coordination activities to be undertaken by the departments.

Various laws exist to hold PSC employees accountable for criminal acts committed in a wartime environment beyond the borders of the United States. These laws include U.S. criminal laws that may be applied extraterritorially, the Military Extraterritorial Jurisdiction Act (MEJA), the Uniform Code of Military Justice (UCMJ), international law, as well as Iraqi laws. Whether a particular law provides extra-territorial jurisdiction over a criminal act by a PSC employee depends on the specific facts of the incident, such as the time, nature and location of the alleged crime, the nature of the contractor's employment, and the nationality of the accused. For example, an employee of a DOD contractor, whether a U.S. citizen or Third Country National, who commits a felony while accompanying the Armed Forces in Iraq during a contingency operation may be charged under the UCMJ or MEJA. With regard to other than DOD contractor employees, a panel of State Department representatives reporting on protective services in Iraq concluded in October 2007 that the legal framework for holding non-Department of Defense contractor employees accountable under U.S. law is inadequate. Congress is presently considering legislation that would clarify and extend U.S. criminal jurisdiction over individuals employed under a contract awarded by any U.S. department or agency where contract performance is located in the area of a contingency operation. In addition to U.S. law, the legal framework for holding PSCs accountable includes applicable international

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law and Iraqi law. Also, contract provisions serve to regulate contractor behavior.

We are making recommendations to the Secretary of Defense to (1) take the necessary steps to ensure that the Joint Contracting Command Iraq/Afghanistan has sufficient personnel to meet its contract oversight and management responsibilities; (2) update training materials to reflect the current guidance and oversight requirements; and (3) fully implement our 2005 recommendation by including information on PSC typical operating procedures and the military's responsibilities to PSCs.

The Department of Defense agreed with our recommendations and noted that it welcomed our assistance in improving how DOD and its contractors can plan for and effectively execute comments in a complex and changeable security environment. DOD's comments appear in appendix III.

In commenting on our report the State Department noted that in addition to the oversight improvements discussed in this report, the State Department and the Bureau of Diplomatic Security have increased and realigned staff to enhance oversight. In addition, the State Department expressed concern over our depiction of the status of implementation of the Secretary of State's Panel on Personal Protective Services in Iraq in appendix II. In its comments the State Department stated that it has implemented 16 of the 18 recommendations made by the panel. In our draft report we originally assessed 9 recommendations as complete. Based on additional information provided by the State Department we changed our assessment of the status of two recommendations (recommendation numbers 3 and 11 in appendix II) and now we are reporting that the State Department has completed 11 of the 18 recommendations. The State Department's comments and our detailed responses appear in appendix IV.

In addition, both Departments provided technical comments which we incorporated as appropriate.

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## Background

PSCs are defined as private companies, and/or personnel, that provide physical security for persons, places, buildings, facilities, supplies, or means of transportation. These contractors provide security services for a variety of U.S. government agencies in Iraq; however, they principally are hired by DOD and the State Department. Given the security concerns in Iraq, the U.S. government has relied upon PSCs to fulfill a variety of

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important security functions throughout the country in support of the DOD military mission and the State Department's diplomatic mission.<sup>5</sup>

The mission of PSCs hired by the U.S. government in Iraq is to protect government agency officials as they perform their duties in the unstable security environment currently present. These contractors may be U.S. or foreign-based and their employees are recruited and hired from a wide variety of countries, including the United States, the United Kingdom, South Africa, Nepal, Sri Lanka, and Fiji. They also include Kurds and Arabs from Iraq. These firms may provide a variety of security related services including:

- static security – security for housing areas and work sites, including U.S. military installations;
- personal security details – security for high-ranking U.S. officials and Chief of Mission personnel;
- security escorts – security for U.S. government employees, contractor employees, or others as they move through Iraq;
- convoy security – security for vehicles and their occupants as they make their way into Iraq or within Iraq; and
- security advice and planning.

In Iraq, two distinct authorities are responsible for the security of U.S. government employees and contractors. The U.S. military, under the authority of the Secretary of Defense and the Combatant Commander, is responsible for the security of all personnel who are under direct control of the Combatant Commander.<sup>6</sup> The State Department, under the authority of the Secretary of State, is responsible for the security of all other U.S. government personnel on official duty abroad<sup>7</sup>. In Iraq, that responsibility is delegated to the U.S. Ambassador as Chief of Mission and to the U.S. Embassy's Regional Security Officer who is the Chief of Mission's focal point for security issues and as such establishes specific security policies and procedures. While these two agencies also are responsible for

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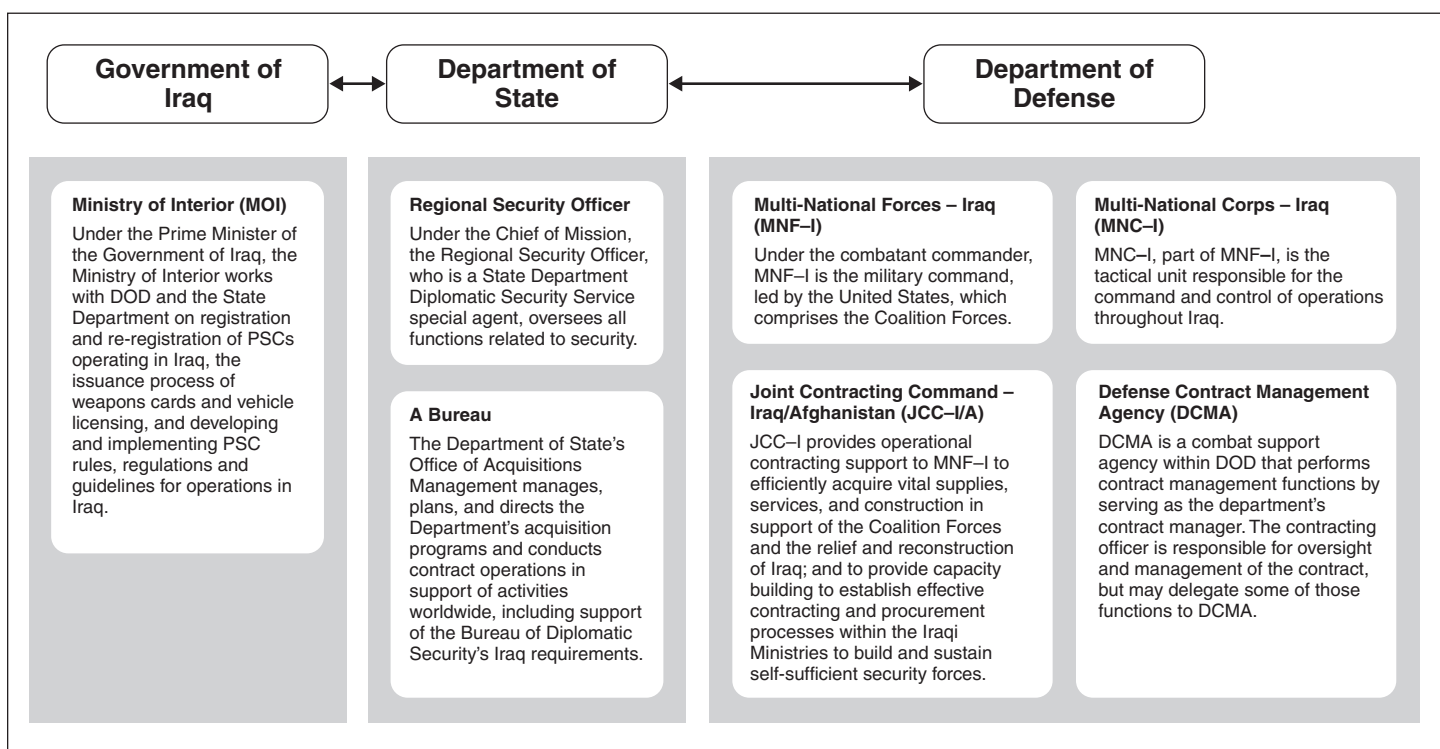
<sup>5</sup> Additionally, PSCs are hired by many other non-U.S. government affiliated organizations operating in Iraq such as the government of Iraq, the United Nations, private companies, various non-governmental organizations, and the media.

<sup>6</sup> A Memorandum of Agreement between DOD and State Department signed December 5, 2007, identifies their authorities as derived from 10 U.S.C. §164 (2007) and 22 U.S.C. §4802(a)(1)(A)(2007).

<sup>7</sup> 22 U.S.C. §4802(a)(1)(A)(2007).

providing oversight, coordination and accountability for U.S. government PSCs, the government of Iraq also plays a role. Figure 1 depicts the organizations that play a key role in the oversight and coordination of PSCs operating in Iraq.

**Figure 1: Key Organizations with Roles in Oversight and Coordination of Private Security Contractors in Iraq**



Source: DOD data; GAO presentation.

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## DOD and the State Department Have Increased Oversight Efforts Regarding PSCs, but Staffing and Training Challenges Remain for DOD

DOD and the State Department have both taken action to increase their oversight efforts over PSCs in Iraq, however, staffing and training challenges remain for DOD. In Iraq, MNF-I has established an office to provide PSC oversight and MNF-I has published comprehensive mandatory guidance related to the oversight of DOD PSCs and has made military units more responsible for providing oversight to PSCs in terms of incident reporting and investigating. However, senior military staff as well as units may not be aware of their increased responsibilities because DOD has not incorporated information on the revised guidance and increased responsibilities in its training program. Further, while DOD has increased the number of personnel in Iraq devoted to providing contract oversight and management over private security contracts it is not clear based on our current and past work whether DOD can sustain the increased number of contract oversight and management personnel it has sent to Iraq since late 2007. In addition, the State Department has implemented 11 of the 18 recommendations made by a panel appointed by the Secretary of State to review the agency's oversight of PSCs in Iraq. Among the recommendations implemented or being implemented are recommendations to increase the number of agents in Iraq to provide oversight over its PSC contractors, install audio and video recording equipment in security vehicles, and a recommendation to place a diplomatic security agent in each PSC motorcade.

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## Multi-National Force-Iraq Has established an Office to Provide Oversight over DOD PSCs in Iraq

Prior to the incident in Baghdad in September 2007, the U.S. military lacked a single structure for managing its PSCs in Iraq. In November 2007, MNF-I, established a new organization, the Armed Contractor Oversight Division<sup>8</sup>, to serve as MNF-I's overall point of contact for policy issues relating to PSCs hired by DOD<sup>9</sup> as well as to provide broad oversight over these contractors. According to MNF-I officials, the office's goals include (1) working to reduce the number of incidents of PSCs discharging weapons or behaving in a manner that undermines the credibility of U.S. efforts; (2) developing a mechanism for holding PSCs accountable for their actions; (3) reducing the time that elapses between the occurrence of an incident and the reporting of that incident; and (4) minimizing the impact of an incident on the credibility of U.S. efforts in Iraq<sup>10</sup>. The office is currently staffed with 7 full time employees comprised of 3 military personnel and 4 contractors. Figure 2 depicts the Armed Contractor Oversight Division's organizational structure and the responsibilities of each staff member.

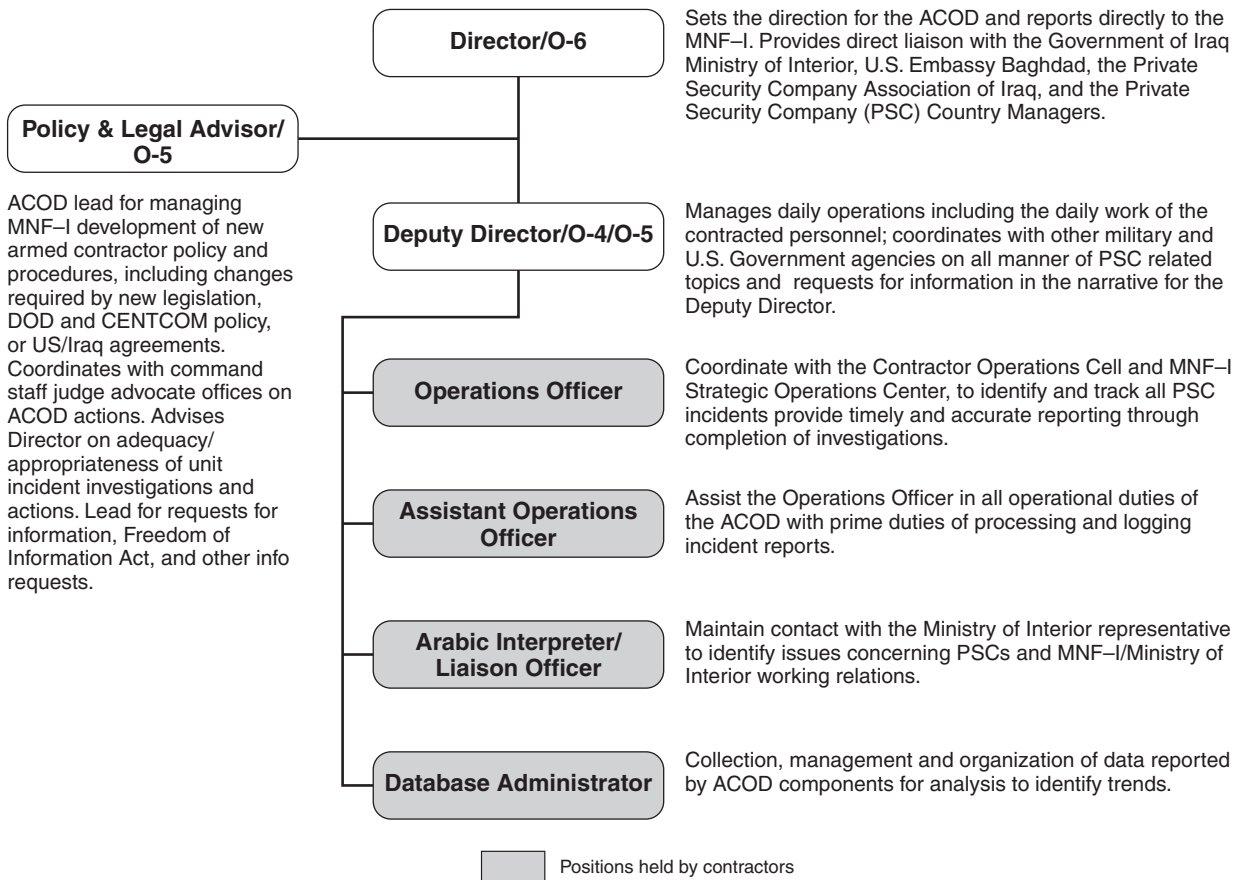
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<sup>8</sup> The Armed Contractor Oversight Division was previously known as the Contractor Procedures Oversight Division.

<sup>9</sup> The Armed Contractor Oversight Division is only responsible for providing oversight to PSCs, and is not responsible for providing oversight over other DOD contractors.

<sup>10</sup> We were unable to determine if the Armed Contractor Oversight Division had met its goals because it was still in the process of standing up when we traveled to Iraq.

**Figure 2: Armed Contractor Oversight Division (ACOD) Organizational Structure**



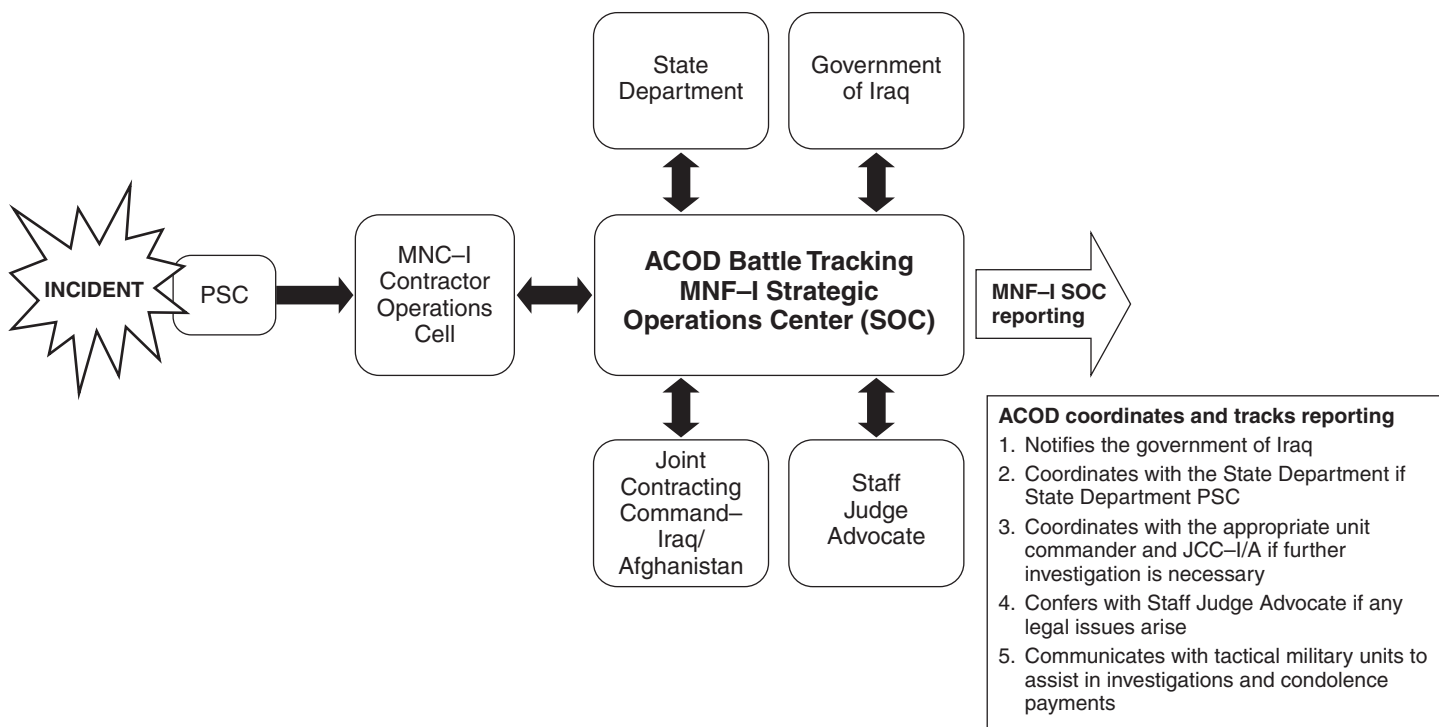
Source: DOD presentation.

One of the key efforts of the Armed Contractor Oversight Division is to monitor, review, and report all PSC incidents. These incidents include those involving injuries; deaths; negative reports in the media; weapons discharges; complaints from U.S. military commanders, local Iraqi citizens or the government of Iraq; and other allegations of PSC misconduct. PSCs are required to report these incidents in writing to the MNC-I CONOC. The office then reviews each incident report to determine whether the incident requires additional investigation. After an investigation is completed by the appropriate unit commander, the Armed Contractor Oversight Division tracks corrective or disciplinary actions initiated by the commander or the PSC. The Armed Contractor Oversight Division also conducts a trend analysis of incident reporting data. According to officials, since the office began oversight over PSCs in October 2007, weapons discharges by PSCs



have decreased approximately 60 percent.<sup>11</sup> Figure 3 depicts how the Armed Contractor Oversight Division monitors and reports PSC incidents.

**Figure 3: Description of the PSC Incident Reporting Process**



Source: DOD presentation.

### DOD Has Consolidated and Strengthened Its PSC Oversight Guidance by Requiring Further Incident Investigation

According to MNF-I officials, prior to December 2007 there were between 40 and 50 separate fragmentary orders relating to regulations applicable to PSCs in Iraq. As such, contracting officers as well as military commanders rotating into Iraq may not have been aware of all of the regulations covering PSCs. In December 2007, MNF-I issued Fragmentary Order 07-428, to consolidate the previous fragmentary orders and establish

<sup>11</sup> This information was provided by the Armed Contractor Oversight Division and GAO did not independently verify it. Additionally, other factors, such as the increase in the number of U.S. troops in Iraq may have led to the decrease in weapons discharges. As such, we cannot reasonably conclude that this decrease was solely caused by the office's strengthened oversight.

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authorities, responsibilities and coordination requirements for MNC-I to provide oversight for all armed DOD contractors and civilians in Iraq including PSCs. The establishment of the consolidating fragmentary order creates a single source for CENTCOM mandated orders, regulations and mandatory contract clauses relating to requirements, procedures, and responsibilities for control, coordination, management, and oversight of PSCs in Iraq. Specifically, the order addresses PSC requirements including arming procedures and responsibilities, rules for the use of force and mandates strengthened serious incident reporting procedures and responsibilities. For example, under the new order when a PSC observes, suspects, or participates in a serious incident such as a weapons discharge, PSCs are required to submit an immediate incident report at the earliest opportunity via the most secure means available to MNC-I and then submit an initial written report of the incident not later than 4 hours after the incident in contrast to the previous 48 hour reporting requirement.<sup>12</sup> The order requires the initial report to contain a highlighted version of the incident, including critical information such as who was involved and when and where the incident occurred. PSCs are required to file a final report with 96 hours of the incident.

Additionally, the fragmentary order increases the oversight responsibilities for military units by requiring the military to investigate serious incidents involving a DOD PSC. Previous orders only directed the military to investigate incidents related to contractors firing weapons. According to the December 2007 order, the military unit that receives the contracted security services is required to conduct a preliminary inquiry if contractors are involved in a serious incident. The order also stipulates that at a minimum, a commander's inquiry will be conducted and documented. Previously, there was no requirement that commanders' investigations be documented. Incidents that involve death, serious injury, or property damage in excess of \$10,000 must be investigated by the appropriate level commander. Previous investigative requirements did not include this requirement. The order directs commanders to involve criminal investigative authorities if the preliminary investigations suggest either criminal misconduct, a violation of the rules for the use of force, or an inappropriate graduated force response. Finally, the order requires that any military unit observing or becoming aware of a serious incident

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<sup>12</sup> The fragmentary order defines a serious incident as a weapons discharge including negligent discharges, traffic accidents, and criminal acts including but not limited to murder, kidnapping, theft, and assault.

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provide an investigative report to the unit's operational chain of command and to include photographs and names if possible. In reviewing investigative reports to determine whether PSC misconduct was involved, commanders are to use the same standards as they would for their own units' actions. Investigations or inquiries completed by the military are forwarded to the Armed Contractor Oversight Division and the MNC-I Staff Judge Advocate for review. Moreover, according to an Armed Contractor Oversight Division official, if a military investigation is deemed to have been inadequate, MNF-I or MNC-I can direct another investigation. Prior to the establishment of the Armed Contractor Oversight Division there was no MNF-I level review of incident reports.

The fragmentary order also requires that PSCs report all weapons discharges on a monthly basis to the contracting officer's representative or sponsoring activity. The monthly report, which includes information on the type of discharge, is to be annotated to include information on the type and status of the investigation and who conducted it. In addition, if an action such as a fine or termination was taken against a contractor employee, this information also is to be included in the report. The reports are provided to the MNC-I office responsible for authorizing individual contractor employees to carry weapons and may be considered when MNC-I determines whether an individual will be allowed to carry a weapon. The monthly reports are also provided to the Armed Contractor Oversight Division, which analyzes the data for trends. Previous guidance did not require the monthly weapons discharge report.

The fragmentary order also addresses the contracting officer representative's (COR) critical role in contract support and provides information to properly designate, train, and support the COR in government oversight and administration of security contracts. A DOD guidance memo assigning contract administration functions lists oversight over a contractor's compliance with CENTCOM policies and directives among contract administration responsibilities. The order states that organizations supported by security services shall insure a COR is nominated to perform contract oversight. The order further states that contracting officers are responsible for monitoring PSC performance and ensuring PSC compliance with contractual requirements. According to the order, contracting officer representatives should be selected at a rank commensurate with the contract's oversight responsibilities and that contract oversight should be their primary function. The contracting officer's representative should also be at a location to allow sufficient direct oversight of contractor operations. Prior to the fragmentary order

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there was not a comprehensive document describing these responsibilities and how they relate to providing oversight over PSCs.

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### DOD Has Increased the Number of Personnel Devoted to Contract Management and Oversight, but It Is Unclear Whether the Increase Can Be Sustained

DOD contract oversight efforts in Iraq have also been strengthened through actions taken by the Undersecretary of Defense, Acquisition Technology and Logistics and the Defense Contract Management Agency (DCMA). However the Department may be challenged to continue to provide the increased number of personnel needed to sustain the additional oversight. In October 2007, the Undersecretary issued memoranda giving JCC-I/A new authorities and responsibilities for PSCs contracting in Iraq. Specifically, JCC-I/A is responsible for all contract administration for DOD's security contracts in Iraq.<sup>13</sup> In Iraq, JCC-I/A has delegated to DCMA the responsibility to provide contract administration over private security contracts. This newly delegated authority enables DCMA, with its presence in Iraq, to implement a systematic approach toward oversight of PSCs contracts. DCMA officials told us that this approach, which did not exist prior to DCMA receiving this authority, includes developing a quality assurance framework, a key component of which is the agency's development of a series of quality assurance checklists for PSCs. DCMA officials stated that the checklists have been developed by incorporating requirements from the statements of work in PSC contracts and current MNF-I guidance and fragmentary orders and translating these requirements into objective measurable standards intended to enable the agency to conduct regular and unbiased inspections of contracting personnel, known as surveillance audits. According to DCMA officials, these checklists are intended to ensure that PSCs are meeting contract requirements and that DOD is providing appropriate oversight over the contracts. The checklists translate security contract requirements into an audit document. According to DCMA officials, the agency coordinates with the Armed Contractor Oversight Division to ensure that the checklists reflect current MNF-I guidance and fragmentary orders related to PSCs.

To assist in its greater role in Iraq to provide contract award, administration and oversight, JCC-I/A plans to add additional personnel in Iraq while DCMA has increased its number of oversight personnel in Iraq

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<sup>13</sup> The memo also implemented a process known as the Theater Business Clearance Process. Under this process JCC-I/A reviews all contracts being written by DOD contracting offices outside of Iraq to ensure that the contracts conform to CENTCOM and MNF-I policies, directives, and fragmentary orders.

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and hopes to add additional personnel. DCMA has approximately doubled the number of oversight personnel in the CENTCOM area of responsibility by shifting personnel from other areas. Of the personnel in theater in March 2008, somewhat more than half were deployed to Iraq to provide greater oversight of contracts in Iraq including private security contracts.<sup>14</sup> Furthermore, DCMA plans to increase the number of staff deployed to the theater to 348 by the end of 2008. While the contracting command and DCMA both hope to be able to increase the number of personnel available in Iraq to provide additional oversight of DOD's PSC contracts, our current and past work suggests that the agencies may not be able to fill all of the positions or sustain this increase. For example, during our visit to Iraq officials from JCC-I/A stated that while they had a joint manning document that authorizes 39 additional staff, the positions would not be immediately filled and thus they continued to work with the individual services to fill the positions. As of June 2008, JCC-I/A officials reported that 32 of the 39 positions listed in the joint manning document had been created and should be filled by the services soon. DCMA also developed a joint manning document and is asking the services to provide the additional oversight and management personnel needed in part because DCMA lacks the personnel to meet the additional requirements. During our visit to Iraq, DCMA officials expressed concerns about maintaining the increase in the number of oversight personnel in Iraq over the long-term. In 2007 the report of the Commission on Army Acquisition and Program Management in Expeditionary Operations stated that the Army lacks the leadership and military and civilian personnel to provide sufficient contracting support to either expeditionary or peacetime missions.<sup>15</sup> According to the commission, Army contracting personnel experienced a 600 percent increase in their workload and are performing increasingly complex tasks, but the number of Army civilians and military in the contracting workforce has either remained static or declined because of congressional direction to DOD and the Army to make significant cuts in the acquisition workforce.<sup>16</sup> According to a May 2008 Congressional Research Service

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<sup>14</sup> The remaining DCMA personnel were deployed to Afghanistan, Kuwait, and Qatar. In addition to private security contracts, DCMA provides oversight for the Army and Air Force's logistics support contracts.

<sup>15</sup> Commission on Army Acquisition and Program Management in Expeditionary Operations, *Urgent Reform Required: Army Expeditionary Contracting* (October 31, 2007).

<sup>16</sup> Congress has taken steps to increase the quality and quantity of acquisition professionals in DOD's workforce. For example, the Congress recently provide additional funds to add 200 more contracting officers at DCMA to help with the added workload.

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report, the earlier reductions in the contracting workforce reflected Congress' view that the workforce had not been reduced enough in proportion with the overall defense budget, particularly the acquisition portion of the defense budget.<sup>17</sup> However, concomitant to the workforce reduction was the department's decision to increase its reliance on contractors to provide services previously provided by DOD civilians or service members. As a result, the actual workload of contracting personnel (the people charged with writing, negotiating, monitoring, and enforcing performance of the contracts) was substantially increasing in complexity and volume. Furthermore, in a June 2008 report to Congress, the Air Force commented that in the current conflict it was strained to cover its own contracting requirements and provide 67 percent of the contracting personnel to support joint contracting requirements. These comments cast doubt on the Air Force's ability as well as the Army's ability to fully support either JCC-I/A or DCMA. As we noted in our January 2008 testimony, without adequate contract oversight personnel in place to monitor DOD's many contracts in deployed locations such as Iraq, DOD may not be able to reasonably assure that contractors are meeting their contract requirements efficiently and effectively.<sup>18</sup>

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## Units Continue to Deploy to Iraq without Training on Increased PSC Oversight Responsibilities

In July 2005, we reported that units deploying to Iraq received no training on working with PSCs and were unclear as to their responsibilities towards PSCs.<sup>19</sup> At that time we recommended that DOD establish and incorporate a training program into the mission-rehearsal exercises and predeployment training for units deploying to Iraq. In response to the recommendation, DOD has incorporated training on PSCs into various predeployment training programs and exercises. For example, the Joint Forces Command has developed training on the role of PSCs in the battlespace for senior military staff in Iraq. The Army has a pilot program to incorporate PSC scenarios into its Battle Command Training Program, which trains Corps, division and brigade staff. The Army and the Marine Corps also incorporated scenarios on the rules of engagement and

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<sup>17</sup> Congressional Research Service, *Defense Contractors in Iraq: Issues and Options for Congress* (Washington, D.C.: May 21, 2008).

<sup>18</sup> GAO, *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](#) (Washington, D.C.: January 24, 2008).

<sup>19</sup> GAO, *Rebuilding Iraq: Actions Needed to Improve the Use of Private Security Providers*, [GAO-05-737](#) (Washington, D.C.: July 2005).

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escalation of force involving PSCs into unit predeployment training. Additionally, according to DOD officials, PSC scenarios have been incorporated into two recent training exercises for senior staff. However, this training does not include all of the topics we recommended in 2005 such as information on PSC standard operating procedures nor does it reflect the increased PSC oversight responsibilities and organizational structures established since the September 2007 incident, such as training on the role of the Armed Contractor Oversight Division. When we made our recommendation, DOD's use of PSCs was limited to a few contracts that provided support to the Army Corps of Engineers and to static security for work areas within military installations. Since then DOD's use of PSCs has increased significantly and military units at all levels have been given more oversight responsibility for PSCs as well as more responsibilities for coordination as we discuss below. Without training that reflects current policies, practices and procedures, military units deploying to Iraq may not conduct the independent incident investigations required to ensure contractor accountability.

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### The State Department Has Begun to Increase Its Oversight Efforts in Iraq

After the Nisour Square incident, the Secretary of State assembled a panel of experts to review the agency's security practices in Iraq and make recommendations to reduce the likelihood of future incidents that could adversely affect the overall U.S. mission in Iraq. The panel found that while the State Department's security operations had been highly effective in ensuring that mission personnel were safe, improvements were needed to address deficiencies in oversight and coordination. To address these deficiencies, the panel made 18 recommendations to improve oversight of PSCs contracted by the State Department in Iraq. The State Department has implemented 11 of the recommendations and is in the process of implementing the remaining recommendations. Appendix II provides additional information on all of the panel's recommendations, their implementation status, and our comments on the implementation status.

When we met with State Department officials at the U.S. Embassy in Baghdad, officials told us that the department had made progress in implementing some of these recommendations. For example, one of the panel's principal recommendations was to increase the number of Diplomatic Security Special Agents in Iraq in order to expand oversight of the department's PSCs. State Department officials told us that the agency is increasing the number of agents in Iraq from 36 to 81 permanent and 7 temporary duty personnel to provide additional oversight of the department's PSCs, such as accompanying the PSC contractors on each personal protection mission. According to the State Department, these positions are expected to be filled by September 2008. The State

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Department has acknowledged that it does not have sufficient numbers of diplomatic security agents to meet the agency's security requirements and as a result relies on and will continue to rely on private security contractors to provide additional capacity. According to the State Department, in order to provide enough Diplomatic Security Special Agents in Iraq, the department had to move agents from other programs, and those moves have negatively affected the agency's ability to perform other missions including providing security for visiting dignitaries and visa, passport, and identity fraud investigations. For example, the official stated that the agency had to borrow personnel from another federal law enforcement agency in order to provide security at the Middle East Peace Summit held in Annapolis, Maryland. According to the State Department, 100 new agents are needed in order to sustain this increase and will continue to be needed after the hostilities in Iraq are over. The State Department received funding for the new agents in the 2008 supplemental appropriations act signed by the President of the United States on June 30, 2008, which covers the 4th quarter of fiscal year 2008 and all of fiscal year 2009. According to the State Department, these positions will be included in the agency's fiscal year 2010 budget request.

Similar to DOD, the State Department has developed directives to consolidate and establish the agency's rules, regulations, and policies for PSCs in Iraq. As of May 2008, the State Department has issued four directives that provide guidance similar to the fragmentary order issued by MNF-I. The purpose of these policy directives is to provide PSCs with rules, regulations, and requirements for operating in Iraq. The topics covered in these directives cover rules for the use of force, escalation of force, serious incident reporting, and investigating as well as coordination with DOD. According to State Department officials, these directives consolidate previously issued guidance and ensure that all of the State Department's PSCs are aware of current department policies.

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## Coordination, Including Interagency Coordination, Related to PSCs in Iraq Has Improved

DOD and the State Department have improved coordination related to PSCs in Iraq. For example, since the Nisour Square incident in late 2007, the agencies have increased interagency coordination of their PSC movements in Iraq through liaison officers and other means. In addition, MNC-I has established several operation centers to track the movement of DOD PSCs as well as to coordinate the movements of PSCs working for the State Department. MNF-I's Armed Contractor Oversight Division has also been coordinating efforts related to PSC oversight and accountability among DOD, the State Department, the Government of Iraq, and the PSC community in Iraq. Moreover, in December 2007, DOD and the State Department entered a memorandum of agreement that covers a broad



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range of management and operational procedures intended to improve the U.S. government's management coordination over PSC operations in Iraq.

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### Interagency Coordination Has Improved between DOD and the Department of State and between the U.S. Government and the Government of Iraq

Prior to the Nisour Square incident, DOD and the State Department did not maintain regular communication or coordination on the departments' efforts related to PSCs in Iraq, and neither DOD nor the State Department coordinated on a regular basis with the Government of Iraq on issues related to PSCs. According to State Department officials, much of the prior coordination with MNF-I was ad hoc in part because MNF-I lacked a focal point to coordinate with. During our visit to Iraq, DOD and State Department officials told us that since the incident, both agencies have implemented several measures to improve communication and coordination between the two agencies. For example, the State Department has a liaison officer stationed at MNC-I's operations cell, and MNC-I continues to maintain a liaison officer in the RSO's operations center. In addition, representatives from the State Department participate in daily MNF-I briefings to coordinate with MNF-I regarding planned State Department personnel movements. Additionally, the agencies have increased their coordination on the reporting and investigation of serious incidents involving PSCs. For example, the State Department's Tactical Operations Center coordinates with and reports all serious incidents involving its PSCs to the Armed Contractor Oversight Division. Moreover, State Department officials in Iraq stated that they are now sharing additional information and have enhanced coordination on PSC movements with DOD, requesting route intelligence from DOD, and providing DOD feedback on route security. While the State Department provided MNF-I with route information and scheduled personnel movements prior to the Nisour Square incident, MNF-I did not know that the information was being provided by the State Department. The State Department uses a data tracking system to provide DOD tactical units with situational awareness of State Department PSC movements. According to DOD and State Department officials, these improvements were driven in part by recommendations made by the State Department panel reviewing PSC operations and by the signing of a memorandum of agreement between the two agencies stating that they agree to work together on PSC matters in Iraq.

Additionally, the director of the Armed Contractor Oversight Division coordinates with the State Department by co-chairing an incident review board with the Regional Security Officer. This board meets quarterly to examine incidents involving U.S. government PSCs in order to identify trends and make recommendations to improve U.S. Government oversight of PSCs in Iraq. The board also identifies best practices and communicates

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these practices with PSCs. Furthermore, Armed Contractor Oversight Division officials told us that the office has increased its coordination efforts with the government of Iraq. For example, the division and the State Department's Regional Security Officer regularly meet with the Ministry of the Interior to coordinate on managing PSCs, and listen to concerns, resolve issues, and generate joint solutions. This process did not occur prior to the establishment of the oversight division. Furthermore, the division ensures that the Ministry is immediately notified when incidents occur involving PSCs and Iraqi civilians.

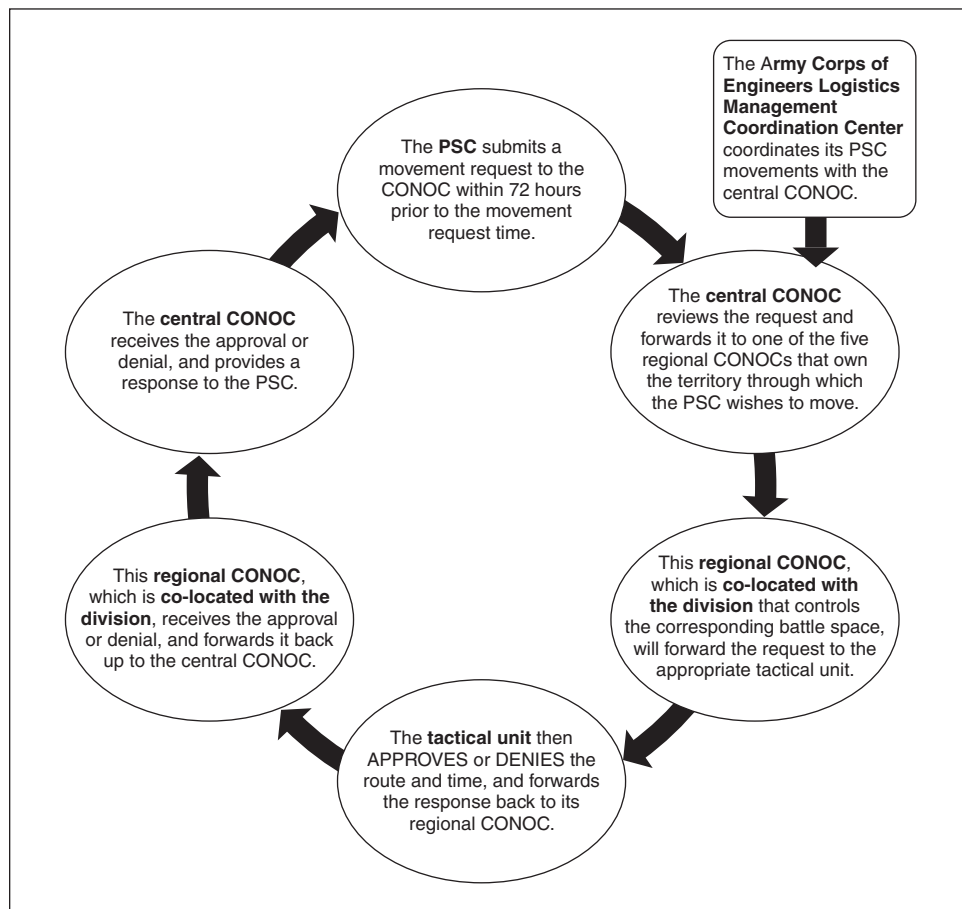
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### Multi-National Corps-Iraq Has Created a Group of Operations Centers to Coordinate Movement of DOD and State PSCS

Prior to the issuance of the fragmentary order, DOD tracked the movement of its PSCs through the Reconstruction Operations Center, which was run by a U.S. Army Corps of Engineers contractor. As directed by the fragmentary order, MNC-I has established six Contractor Operations Cells to assume the responsibility to provide battlefield coordination, previously handled by the Reconstruction Operations Center, control of PSC movement throughout Iraq, and facilitate the expedient reporting of incidents involving PSCs. The central Contractor Operations Cell is located at MNC-I headquarters at Camp Victory, while the others are located at the tactical operations centers of each of the five divisions that control the corresponding battle space in Iraq. According to MNF-I and MNC-I officials, the Contractor Operations Cells provide a better mechanism for coordination than did the Reconstruction Operations Center, for several reasons. First, as we noted above, the Contractor Operations Cells are co-located with the tactical units responsible for the battle space, making coordination easier. Second, commanders have improved situational awareness because information related to PSCs is now viewed in context with other battle space activities. For example, the State Department provides the Contractor Operations Cells with U.S. Embassy PSC movement information that can be tracked by battlefield commanders using the same system as is used to track military vehicles. This movement information was never provided to the Reconstruction Operations Center when it was responsible for tracking DOD's PSC movements. Third, battle space commanders now control the movement of DOD PSCs in Iraq. According to the MNF-I order establishing the Contractor Operations Cells, the tactical unit responsible for the battle space must approve or deny the movement request submitted by DOD PSCs. Previously, the battlespace commanders may have been made aware of the PSCs' planned movements, but they were not required to approve the movement. Additionally, MNF-I developed common standards for communications between PSCs and government personnel. MNF-I secured funding from U.S. Army Central Command for radios and satellite

phones for all DOD PSCs in Iraq in order to standardize communication standards between PSCs and government personnel. Additionally, the Defense Contract Management Agency is currently modifying all PSC contracts in Iraq to incorporate these common standards, and the PSCs will be acquiring standardized radios and satellite phones as contractor furnished equipment in order to meet these new requirements. Figure 4 depicts how the Contractor Operations Cells coordinates U.S. government PSC movements in Iraq.

**Figure 4: Overview of the Contractor Operations Cells (CONOC)**



Source: DOD data; GAO presentation.

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## The Department of Defense and Department of State Have Developed a Memorandum of Agreement to Improve Coordination of PSCs in Iraq

After the Nisour Square incident, DOD and the Department of State recognized the need for a more unified approach toward the oversight and coordination of U.S. government PSCs in Iraq and began to develop, implement, and follow standards, policies, and procedures for the coordination of PSCs in Iraq. On December 5, 2007, DOD and the State Department signed a memorandum of agreement with the purpose to clearly define the authority and responsibility for the accountability and operations of U.S. government PSCs in Iraq. The memorandum of agreement lays an important groundwork and, as we have discussed, many of its provisions are being implemented. For example, the memorandum of agreement directs the two agencies to

- improve the effectiveness of incident management, response, and follow-up for investigations;
- assure transparent, timely reporting and investigation of incidents between U.S. Embassy in Baghdad and MNF-I, with timely reporting of same to the government of Iraq; and
- synchronize PSC operations between the battle space commander and Regional Security Officer in order to establish real-time oversight, visibility, and coordination of PSC convoy movements outside secure bases<sup>20</sup>.

The memorandum of agreement also directs DOD and the State Department to ensure that their respective PSC contracts and subcontracts contain common language, through contract modifications if necessary, implementing relevant provisions of the memorandum of agreement.

On July 10, 2008, pursuant to Section 861 of the 2008 National Defense Authorization Act, DOD, the State Department and U.S. Agency for International Development (USAID) signed a memorandum of understanding which covers, among other things, contracting and contracting personnel in Iraq, including PSCs. The matters addressed include: identifying each agency's roles and responsibilities pertaining to procedures and coordination for the movement of contractor personnel in Iraq; identifying and maintaining a common database to serve as a

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<sup>20</sup> However, according to the memorandum of agreement, when the battle space commander determines there is a need for a PSC to alter routes or abort missions, PSCs are directed to comply with the recommendations of the battlespace commander. While final authority for U.S. Embassy moves rests with the Chief of Mission, he or she will generally honor the MNF-I recommendation.

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repository of information on contracts in Iraq; and collecting data on, and appropriately referring, cases of contractor criminal misconduct.

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## An Overview of the Legal Framework for Holding Private Security Contractor Employees Accountable for Their Actions in Iraq

Various laws exist to hold PSC employees accountable for criminal acts committed in a wartime environment beyond the borders of the United States. These laws include U.S. criminal laws that may be applied extraterritorially, the Military Extraterritorial Jurisdiction Act<sup>21</sup> (MEJA), the Uniform Code of Military Justice<sup>22</sup> (UCMJ), international law, as well as Iraqi laws. Whether a particular law provides extra-territorial jurisdiction over a criminal act by a PSC employee depends on the specific facts of the incident, such as the time, nature and location of the alleged crime, the nature of the contractor's employment and the nationality of the accused. For example, an employee of a DOD contractor, whether a U.S. citizen or Third Country National, who commits a felony while accompanying the Armed Forces in Iraq during a contingency operation may be charged under the UCMJ or MEJA. With regard to other than DOD contractor employees, a panel of State Department representatives reporting on protective services in Iraq concluded in October 2007 that the legal framework for holding non-Department of Defense contractor employees accountable under U.S. law is inadequate. Congress is presently considering legislation that would clarify and extend U.S. criminal jurisdiction over individuals employed under a contract awarded by any U.S. department or agency where contract performance is located in the area of a contingency operation. In addition to U.S. law, the legal framework for holding PSCs accountable includes applicable international law, including the law of war, and Iraqi law. Also, contract provisions serve to regulate contractor behavior.

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## U.S. Laws May Be Applied Extraterritorially in Certain Instances

Congress has the authority to enact laws that have effect beyond the territorial boundaries of the United States.<sup>23</sup> However, it is a long standing principle that a law of the United States is meant to apply only within the territorial jurisdiction of the United States, unless there is a clear

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<sup>21</sup> 18 U.S.C. §§ 3261-3267 (2008).

<sup>22</sup> 10 U.S.C. §§ 801-941 (2008).

<sup>23</sup> *Equal Employment Opportunity Com'n v. Arabian American Oil Co., et al.*, 499 U.S. 244, 248 (1991).

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expression of congressional intent to the contrary.<sup>24</sup> Certain federal statutes prescribe criminal sanctions for offenses committed by or against U.S. nationals overseas, such as the War Crimes Act of 1996, which makes murder, rape, torture, and other grave breaches punishable during an armed conflict.<sup>25</sup> The United States also has jurisdiction over U.S. nationals for crimes committed outside U.S. territory through special maritime and territorial provisions for certain offenses clearly identified in the U.S. Code, such as maiming, assault, kidnapping, murder, and manslaughter. In the U.S. Code, the definition of "special maritime and territorial jurisdiction" includes any lands reserved or acquired for use of the United States or any place acquired by the United States for the erection of a building.<sup>26</sup> In addition, effective October 26, 2001, the definition of the "special maritime and territorial jurisdiction" was expanded to include U.S. diplomatic, consular, military or other U.S. missions or entities in foreign states including leased buildings or residences with respect to offenses committed by or against a U.S. national, except where the offense is committed by a person employed by or accompanying the Armed Forces or a member of the Armed Forces, as defined in MEJA.<sup>27</sup> Therefore, the statute essentially exempts people who are already subject to MEJA (in other words, giving preference to MEJA as the source of jurisdiction).

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<sup>24</sup> The U.S. Supreme Court has taken this position to avoid encroachment on foreign sovereignty and to protect against unintended clashes between U.S. laws and those of other nations, which could result in international discord. *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909) and *Equal Employment Opportunity Com'n v. Arabian American Oil Co., et al.*, 499 U.S. 244, 248 (1991).

<sup>25</sup> 18 U.S.C. § 2441 (2008). On November 21, 2001, the President issued a military order, which stated, among other findings, that international terrorists had created a state of armed conflict. President Issues Military Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html>, last visited 6/24/08.

<sup>26</sup> 18 U.S.C. § 7(3) (2008).

<sup>27</sup> USA PATRIOT Act, Pub. L. No. 107-56, § 804.

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## MEJA Applies to Contractors Supporting DOD's Mission Overseas

In 2000, Congress enacted MEJA in part due to a disagreement among federal courts interpreting the breadth of special maritime and territorial jurisdiction.<sup>28</sup> MEJA extended U.S. criminal jurisdiction over civilians employed by or accompanying the Armed Forces outside the United States who commit offenses outside the United States that would have been punishable by imprisonment for more than 1 year had the offense occurred within the special maritime and territorial jurisdiction of the United States. The statute is applicable to DOD contractors, including subcontractors at any tier, and, beginning in 2004,<sup>29</sup> to contractors of any other U.S. agency to the extent that the contractor employee's employment relates to supporting the mission of the DOD overseas. The law is not applicable to individuals who are nationals of or ordinarily resident in the host nation. DOD has issued regulations and an instruction implementing policies and procedures under MEJA.<sup>30</sup> Among other things, the regulation states that the DOD General Counsel shall provide initial coordination and liaison with the departments of Justice and State, on behalf of the military departments, regarding a case for which investigation and/or federal criminal prosecution under MEJA is contemplated.<sup>31</sup> The regulation further states that the DOD Inspector General shall report to the Attorney General whenever the Inspector General has reasonable grounds to believe that a violation of federal criminal law has occurred and to ensure that DOD criminal investigative organizations fulfill their responsibilities outlined in the memorandum of understanding between the Department of Justice and DOD. The regulation also notes that a question remains as to whether MEJA

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<sup>28</sup> In 2000, a federal circuit court refused to interpret 'special maritime and territorial jurisdiction' to include a housing complex leased by the U.S. military on a military base in Germany where a sexual assault was committed by one military dependent upon another. *U.S. v. Gallin*, 216 F.3d 207, 209 (2nd Cir. 2000). Later that year, a federal judge in a different circuit interpreted the jurisdiction to include an American citizen tried for a crime that occurred in a private apartment building rented by the U.S. embassy for the use of its employees. *U.S. v. Corey*, 232 F.3d 1166, 1169 (9th Cir. 2000).

<sup>29</sup> Effective October 28, 2004, the definition of "employed by the Armed Forces outside the United States," was revised from DOD employees, contractors, and contractor employees, to those of DOD and any other federal agency or any provisional authority to the extent their employment relates to the DOD mission overseas. Ronald Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 1088.

<sup>30</sup> 32 C.F.R. Part 153 and DOD Instruction 5525.11, "Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," March 3, 2005.

<sup>31</sup> 32 C.F.R. §153.4 (a) & (b).

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jurisdiction should be applied to persons who are Third Country Nationals but have a tenuous nexus to the United States.

The Report of the Secretary of State's Panel on Personal Protective Services in Iraq stated among its principal findings that the panel was unaware of a clear legal basis for holding non-Department of Defense contractors accountable under U.S. law and recommended the State Department urgently engage with other administration agencies to establish a clear legal basis for holding contractors accountable under U.S. law. A number of bills have been introduced during the 110th Congress, including one that was passed in the U.S. House of Representatives in October 2007, to broaden the applicability of MEJA beyond members of the Armed Forces and individuals employed by or accompanying the Armed Forces outside the United States, to include individuals employed under a contract or subcontract awarded by any U.S. department or agency where the employment is carried out in or near an area where the Armed Forces are conducting a contingency operation.<sup>32</sup> DOD officials we interviewed expressed concern that the pending legislation is imprecise and contains nebulous language that needs refinement. State, Defense and Justice Department officials we interviewed all confirmed that alternative language is being jointly prepared in an effort to clarify the jurisdictional boundaries under MEJA.

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### Certain Contractors May Be Subject to Prosecution under the UCMJ

Contractor personnel may be subject to prosecution by court-martial under the Uniform Code of Military Justice (UCMJ) for conduct that takes place during a contingency operation in certain circumstances. The John Warner National Defense Authorization Act for Fiscal Year 2007 broadened the applicability of the UCMJ regarding persons serving with or accompanying an armed force in the field,<sup>33</sup> from "in time of war"<sup>34</sup> to "in

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<sup>32</sup> The House Judiciary Committee has stated this legislation is needed to make contractors not affiliated with DOD accountable for their criminal conduct. House Report 110-352 to accompany H.R. 2740, MEJA Expansion and Enforcement Act of 2007, at 5, Sept. 27, 2007.

<sup>33</sup> "In the field" has been judicially interpreted to refer to the nature of the military's engagement, as opposed to a matter of location. *Hines v. Mikell*, 259 Fed. 28, 34 (4th Cir., 1919). As such, even after the 2007 amendment, the applicability of the UCMJ to civilians accompanying the armed forces would be limited to those contingency operations where the armed forces are engaged in an existing conflict. See *Reid v. Covert*, 354 U.S. 1, 34 (1957) (where the Court, in rejecting the government's assertion that the conditions of world tension present in 1957 permitted military trial of civilians accompanying the armed forces overseas in an area where no actual hostilities were under way, stated "The exigencies which have required military rule on the battlefield are not present in areas where no conflict exists.").



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time of declared war or a contingency operation.” According to DOD officials we interviewed, the trial of civilian contractors by courts-martial will likely be challenged on constitutional grounds, particularly in light of variations between the rules of courts-martial and civilian trials on key issues such as jury composition and due process. On March 10, 2008, the Secretary of Defense issued guidance regarding expanded UCMJ jurisdiction over DOD contractor personnel and other persons serving with or accompanying the Armed Forces overseas. The memorandum clarifies the broad scope of command authority to act whenever criminal activity may relate to or affect the commander’s responsibilities. It requires that when alleged offenses committed by civilians violate U.S. federal criminal laws, DOD notify responsible Department of Justice authorities to afford them the opportunity to pursue prosecution of the case in federal district court. The memorandum also specifically notes that the unique nature of extended UCMJ jurisdiction requires sound management over when, where, and by whom such jurisdiction is exercised. According to MNF-I officials, on June 22, 2008, the Army for the first time tried a civilian defense contractor employee by court-martial under the expanded UCMJ authority. MNF-I officials informed us that an interpreter with U.S. armed forces in Iraq was originally charged with aggravated assault for allegedly stabbing another contractor at a combat outpost, but pleaded guilty to wrongfully taking a soldier’s knife, obstructing justice, and lying to investigators. After the military judge accepted the guilty plea, the government dismissed the assault charge and the contractor employee was found guilty of all remaining charges and sentenced to 5 months confinement.

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## International Law

The part of international law that addresses the conduct of armed hostilities is referred to as the law of war. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, such as treaties and international agreements to which the United States is a party. According to DOD policy, the law of war obligations of the United States are observed and enforced by the DOD components and DOD contractors assigned to or accompanying deployed Armed Forces.<sup>35</sup> This DOD policy also requires the service secretaries to develop internal policies and procedures to forward all

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<sup>34</sup> Beginning with a 1957 U.S. Supreme Court case, courts have interpreted the phrase “in time of war” to mean wars declared by Congress. *Reid v. Covert*, 354 U.S. 1 (1957), *Robb v. U.S.* 456 F. 2d 768 (Ct. Cl. 1972).

<sup>35</sup> Department of Defense Directive 2311.01E, “DOD Law of War Program,” May 9, 2006.

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reports of suspected or alleged violations of the law of war involving contractors or subcontractors assigned to or accompanying the Armed Forces to the DOD General Counsel for review for prosecutorial action under the criminal jurisdiction of the United States.

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### PSCs in Iraq Operate under the Law of the Government of Iraq

PSCs who perform services for U.S. agencies, for any member of the multinational force, or for diplomatic entities in Iraq operate under the law of the government of Iraq, which includes orders issued by the Coalition Provisional Authority (CPA) that have not been rescinded. PSCs, however, currently enjoy legal protections by virtue of CPA Order 17, which was revised on June 27, 2004. CPA Order 17 provides that PSCs are not subject to Iraqi laws or regulations on matters relating to the terms and conditions of their contracts, as long as they comply with CPA Orders and instructions governing the activities of PSCs in Iraq. Those orders and instructions include the registration and licensing of weapons and firearms. One such instruction, CPA Memorandum 17, provides binding rules for the use of force and a code of conduct that must be followed by all PSCs. CPA Order 17 further recognizes that the United States shall have the right to exercise within Iraq any criminal and disciplinary jurisdiction conferred by U.S. law over persons subject to U.S. military law.

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### Contract Provisions Also Regulate Contractor Behavior

Contracts specify the terms of conduct and employment by which contractors must abide. For example, PSC contracts typically provide that a contractor is responsible for ensuring that its personnel who are authorized to carry weapons are adequately trained to carry and use them safely, adhere to the rules on the use of force, comply with law and agreements, and are not barred from possession of a firearm. Inappropriate use of force could subject a contractor, its subcontractors, or its employees to prosecution or civil liability under the laws of the United States and the host nation. A Defense Federal Acquisition Regulation Supplement clause, which is required to be included in contracts that authorize contractor personnel to accompany U.S. Armed Forces outside the United States in contingency operations, reminds such contractor personnel that they must comply with, and ensure that deployed personnel are familiar with and comply with, all applicable laws, rules, and regulations, including those of the host country, all treaties and international agreements, all U.S. regulations, and all orders, directives, and instructions issued by the combatant commander.<sup>36</sup> A Federal

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<sup>36</sup> DFARS 252.225-7040(d).

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Acquisition Regulation clause, which is required to be included in contracts that require contractor personnel to perform outside the United States in a designated operational area during contingency operations, creates similar requirements for contractor personnel supporting a diplomatic or consular mission outside the United States.<sup>37</sup> The requirements of these clauses apply to subcontractors as well. As discussed earlier in this report, Fragmentary Order 07-428 also identifies language that must be incorporated into all DOD contracts where arming of employees is contemplated in Iraq, including a statement that the contractors and their subcontractors agree to obey all existing and future laws, regulations, orders, and directives applicable to the use of private security personnel in Iraq.

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## Conclusions

Given the security situation in Iraq and the shortage of available military personnel and Department of State diplomatic security personnel to provide security, private security contractors play an integral role in providing the security. The September 16, 2007, incident in Nisour Square demonstrated the importance of having in place a coordinated system of oversight and coordination over U.S. government-hired private security contractors. Since that incident, DOD and the State Department have taken steps to increase oversight and coordination over PSCs, including establishing the Armed Contractor Oversight Division and Contractor Operations Cell systems and increasing the number of personnel devoted to PSC oversight functions in Iraq. The improvements DOD and the State Department have made may reduce the number of PSC incidents in Iraq. However, these enhancements may not eliminate incidents. Moreover, while the increase in the number of DOD personnel devoted to PSC oversight in Iraq should improve oversight, more efforts are required to ensure that these personnel are well-trained and qualified, and that positions are filled and sustained over time. Furthermore, unless DOD ensures that military units deploying to Iraq understand both their expanded oversight and coordination responsibilities problems in managing and overseeing PSCs may continue. By ensuring that these efforts are sustained, the U.S. government can strengthen its framework of PSC oversight and coordination in Iraq and can better prepare to respond effectively to incidents and to apply this framework to future contingency operations, should they occur, and overseas diplomatic missions in high threat areas.

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<sup>37</sup> FAR 52.225-19(d).

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## Recommendations for Executive Action

To ensure that DOD sustains its current efforts to strengthen oversight for private security contractors in Iraq, we recommend that the Secretary of Defense develop and implement a strategy to fill authorized positions for the Joint Contracting Command – Iraq/Afghanistan and DCMA.

To ensure that units and military commanders deploying to Iraq are aware of their new oversight and coordination responsibilities, we recommend that the Secretary of Defense direct the service Secretaries to update the information being provided on PSCs at unit mission-rehearsal exercises and predeployment training to include information regarding the operations of the Armed Contractor Oversight Division and the Contractor Operations Cells along with the role of military units in providing contract oversight, incident investigation, and PSC coordination procedures. Further, we recommend that DOD fully implement our 2005 recommendation by including information on PSC typical operating procedures and the military’s responsibilities to PSCs.

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## Agency Comments and Our Evaluations

We provided a draft of this report to DOD and the State Department for their review and comment. DOD’s response is provided in appendix III, and the State Department’s response and our comments are provided in appendix IV. Both departments also provided us with technical comments, which we incorporated into the report as appropriate.

In commenting on the draft of this report, DOD concurred with our recommendations. First, DOD concurred with our recommendation to develop and implement a strategy to fill authorized positions for the JCC-I/A and DCMA. DOD concurred and stated that it has initiated a strategy to deploy 220 personnel by December 15, 2008. DOD also concurred with our second recommendation that the Secretary of Defense direct the Service Secretaries to update the information being provided on PSCs at unit mission rehearsal exercises and pre-deployment training to include information regarding the operation of the Armed Contractor Oversight Division and the Contractor Operations Cells along with the role of military units in providing contract oversight, incident investigation, and PSC coordination procedures. DOD stated that it is actively incorporating contractors and contract support into the exercise schedules. We believe this is a positive step. However, DOD’s efforts should also ensure that the training provided is given to a wide audience including senior military leadership, officers, and enlisted personnel. Lastly, DOD concurred with the third recommendation to fully implement our 2005 recommendation by including information on typical PSC operating procedures and the military’s responsibilities to PSCs. DOD stated that it continues to swiftly

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improve its procedures through the rapid dissemination of changes to the MNF-I Fragmentary Order 07-428.

In commenting on our report the State Department noted that in addition to the oversight improvements discussed in this report, the State Department and the Bureau of Diplomatic Security have increased and realigned staff to enhance oversight. According to the State Department, the duties of the increased and realigned staff include assisting in administrating contracts, approving invoices, and increasing oversight of contractor training. In addition, the State Department provided us with some additional information regarding actions it has taken to improve contract oversight for private security contractors in Iraq which we have included in the report. The State Department expressed concern over our depiction of the status of implementation of the Secretary of State's Panel on Personal Protective Services in Iraq in appendix II. In its comments the State Department stated that it has implemented 16 of the 18 recommendations made by the panel. In our draft report we originally assessed 9 recommendations as complete. Based on additional information provided by the State Department we changed our assessment of the status of two recommendations (recommendation numbers 3 and 11 in appendix II) and now we are reporting that the State Department has completed 11 of the 18 recommendations. For example, in comments the State Department noted that it considered the implementation of the panel's recommendation that video recording equipment be installed into each security vehicle, even though to date the equipment has been installed in 140 of 233 vehicles. Therefore, we disagreed with the State Department's assessment and stand by our assertion that the State Department has implemented 11 of the panel's recommendations and have detailed our rationale in appendix II. In addition, the State Department's comments and our detailed responses appear in appendix IV.

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We are sending copies of this report to other interested congressional committees, the Secretary of Defense and the Secretary of State. Copies of this report will also be made available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff has any questions on the matters discussed in this report, please contact me at (202) 512-8365. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are John Needham, Director, Acquisition and Sourcing Management; Carole Coffey, Assistant

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Director; Vincent Balloon; Laura Czohara; Barbara Hills; Moshe Schwartz;  
Karen Thornton; Cheryl Weissman; and Natasha Wilder.

A handwritten signature in black ink, appearing to read 'W. Solis', with a long horizontal flourish extending to the right.

William M. Solis  
Director, Defense Capabilities and Management

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*List of Congressional Committees*

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Ike Skelton  
Chairman  
The Honorable Duncan L. Hunter  
Ranking Member  
Committee on Armed Services  
House of Representatives

The Honorable David Price  
House of Representatives

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# Appendix I: Scope and Methodology

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To assess the U.S. government's use of PSCs in Iraq as well as to examine the efforts by DOD and the State Department to provide oversight, coordination, and accountability over the actions of the PSCs they employ in Iraq, we took a number of actions.

To determine if the oversight and coordination of PSCs operating in Iraq strengthened between U.S. government agencies, we reviewed several DOD, CENTCOM, Multinational Force-Iraq (MNF-I) and State Department policies and guidance addressing the requirements, procedures and responsibilities for the control, coordination, management and oversight of PSCs, as well as policies and guidance on arming requirements and certification, rules for the use of force, and incident reporting and investigation requirements. Specifically, we reviewed DOD regulations and instructions that relate to the management and oversight of PSCs during contingency operations as well as guidance and fragmentary orders issued by CENTCOM and headquarters MNF-I, including fragmentary order 07-428 entitled 'Armed Contractors/DOD Civilians and PSCs', and its appendices, which consolidates several prior MNF-I fragmentary orders. We analyzed these documents to gain an understanding of the evolution of oversight roles and responsibilities and the delegation of authority to increase coordination between the agencies. In addition, we reviewed the memorandum of agreement, signed in December 2007, between DOD and the State Department on U.S. Government PSCs in Iraq. We reviewed these policies and documents to determine the authority and responsibility for the oversight, coordination, and accountability over PSC operations in Iraq. We reviewed the National Defense Authorization Act, including Sec. 861 directing the agencies to enter into a Memorandum of Understanding as well as Sec. 862 which outlines regulations on contractors performing private security functions in areas of combat operations.

To understand what actions the agencies have or can take to hold PSCs accountable, we analyzed the legal framework that PSCs hired by the U.S. government must comply with, including applicable international law, Iraqi law, and U.S. law. We reviewed the Military Extraterritorial Jurisdiction Act and the Uniform Code of Military Justice to gain an understanding of the process of how PSCs are held accountable for criminal misconduct. We interviewed officials from DOD's Office of the General Counsel, the State Department's Office of the Legal Adviser and from the Department of Justice to gain an understanding of the process used and the actions taken against PSC employees accused of misconduct in Iraq. Moreover, we also reviewed applicable U.S. government PSC contract provisions that outline and regulate contractor behavior.



Additionally, we met with military officials from the Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics; Office of the Secretary of Defense, Office of the General Counsel, U.S. Central Command; and the U.S. Army Corps of Engineers; officials from the State Department, including the Bureau of Diplomatic Security, Office of Acquisitions Management, and the Office of the Legal Advisor, and the U.S. Agency for International Development to discuss oversight, coordination, and accountability of PSCs in Iraq. We also met with the Executive Secretary who led the State Department panel to review the State Department's security practices in Iraq to discuss the findings and recommendations of their study.

We also interviewed officials from ten private security firms, located in the United States, the United Kingdom, and/or Baghdad, Iraq, who currently provide or have recently provided private security functions in Iraq. We met with the three firms contracted by the State Department under the Worldwide Personal Protective Service Contract as well as the firm hired by DOD to run the Reconstruction Operations Center, the predecessor to the Contractor Operations Cells. In addition, we interviewed several others to reflect a range of firms that provide private security. The private security firms we met with provided the U.S. government with a variety of private security services, including static security, personal protective detail, high threat protection, and convoy security. Our discussions included qualification and training standards, employee conduct and accountability, coordination with U.S. government agencies and their tactical operations centers, interaction amongst the other PSC firms operating in Iraq, vehicle and weapon tracking, and incident reporting procedures. Additionally, we met with representatives from an Iraq-based private security association to gain an industry perspective on the use, role, oversight, accountability, and legal framework of PSCs operating in Iraq.

We traveled to Iraq to meet with officials from DOD, including Multi-National Force-Iraq, Multi-National Corps-Iraq, and Multi-National Division-Baghdad, and Joint Contracting Command-Iraq/Afghanistan to discuss issues related to oversight, coordination, and accountability of PSCs in Iraq. We met with senior officials responsible for the establishment and operation of the Armed Contractor Oversight Division and the Contractor Operations Cells, as well as the military liaisons who are located in the State Department's Tactical Operations Center. Likewise, we met with officials from the State Department, including senior officials from the U.S. Embassy Baghdad and its Regional Security Office. We met with them to gain an understanding of the delegated

responsibility and oversight structure of PSCs in Iraq, procedures for the coordination and communication between MNF-I and US Embassy Baghdad for the movement of PSCs within the MNF-I battle space, procedures for reporting and investigation in the event that a serious incident occurs as well as applicable laws to hold PSCs operating in Iraq accountable for their actions. While in Iraq, we toured DOD's Contracting Operations Cell and the State Department's Tactical Operations Center, witnessing the planning, oversight and coordination, and tracking of PSC movements throughout Iraq. Additionally, in Iraq, we met with officials from private security firms to gain an industry perspective.

We scoped our work to include only on PSCs that have a direct contractual relationship with the U.S. government. As such, our work excluded PSCs with an indirect relationship with the U.S. government, such as those contracted by reconstruction firms. We reviewed processes but did not evaluate how effectively they were being implemented because the processes reviewed are new. We also did not evaluate how laws were being used to hold contractors accountable. We conducted this performance audit from February 2008 to April 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We visited or contacted the following organizations during our review:

**The Department of Defense:**

- Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics, Washington, D.C.
- Office of General Counsel, Arlington, Va.
- Office of the J4, Washington, D.C.
- U.S. Central Command, Tampa, Fla.
- Defense Contract Management Agency, Baghdad, Iraq
- Multi-National Forces-Iraq, Baghdad, Iraq
- Multi-National Corps-Iraq, Baghdad, Iraq
- Multi-National Division-Baghdad, Baghdad, Iraq
- Joint Contracting Command Iraq/Afghanistan, Baghdad, Iraq

**Department of the Army:**

- Army Corps of Engineers Gulf Regional Division, Baghdad, Iraq
- Army Corps of Engineers, Logistics Movement Coordination Center, Baghdad, Iraq

**Other Government Agencies**

- State Department
  - Bureau of Diplomatic Security, Arlington, Va.
  - Office of Acquisitions Management, Arlington, Va.
  - Office of the Legal Adviser, Arlington, VA; Baghdad, Iraq
  - Secretary of State's Panel on Personal Protective Services in Iraq, Washington, D.C.
  - US Embassy Iraq, Baghdad, Iraq
- Department of Justice
  - Criminal Division, Washington, D.C.
  - Federal Bureau of Investigation, Washington, D.C.

**Industry Associations:**

- Private Security Association of Iraq, Baghdad, Iraq

**Private Security Contractors:**

- Aegis, London, United Kingdom
- Armor Group, London, United Kingdom
- Blackwater, Baghdad, Iraq; Moyock, N.C.
- Blue Hackle, Baghdad, Iraq
- Control Risks Group, London, United Kingdom
- Dyncorps International, West Falls Church, Va.
- Erinys International, London, United Kingdom
- Olive Group, Baghdad, Iraq
- Raymond Associates, Clifton Park, N.Y.
- Triple Canopy Inc., Herndon, Va.

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## Appendix II: Implementation Status of Recommendations from the Secretary of State's Panel on Personal Protective Services in Iraq

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According to State Department officials, the department has also begun to implement other recommendations made by the panel including the installation of audio and video recording equipment in security vehicles and the creation of an eight person unit to investigate any reported and alleged incidents involving State Department PSCs including those involving injuries or death. In July 2008, officials provided information on the status of the implementation of the recommendations noting that 16 were completed and that others were dependent on other agencies or governments. This appendix provides additional information on all of the panel's recommendations, their implementation status, and our assessment of the implementation status. In certain instances our assessment differed from the State Department's. For example, the panel recommended that the Regional Security Office should be provided video and audio recording equipment for each security vehicle operating in Iraq. According to the State Department, they have fully implemented this recommendation by installing video recording systems into 140 vehicles and installing a radio recording system in the Regional Security Officer's Tactical Operations Center to record all Embassy radio transmissions. However, according to State Department officials the goal is to install the equipment into 233 vehicles by December 2008. Therefore, it is our assessment that implementation of the recommendation is still in progress. Similarly, the panel also recommended that a working group should be established to determine ways to move the Iraqi licensing process forward more transparently. The State Department stated that in its view this recommendation has been completed because it established the working group and that it was not necessary to have improved the licensing process to consider the recommendation implemented.

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

**Table 1: Implementation Status of Recommendations from the Secretary of State's Panel on Personal Protective Services in Iraq**

Recommendation	Status of Implementation as Reported by the State Department	GAO Comments
1. The State Department should urgently engage with the Department of Justice and the Office of Management and Budget, and then with the Congress, to establish a clear legal basis for holding contractors accountable under U.S. law	<ul style="list-style-type: none"> <li>• The Department of State's Office of the Legal Adviser has actively engaged with an interagency working group, led by the Department of Justice, to work with Congress on legislation clarifying the Military Extraterritorial Jurisdiction Act (MEJA) in order to hold USG private security contractors overseas accountable for offenses.</li> <li>• The Department of Justice is taking the lead on further discussions of this issue with Senate staff.</li> <li>• The Department of State's Office of the Legal Adviser will stay engaged in this process until legislation is passed.</li> <li>• The Department's actions have met the intent of the recommendation. This recommendation is complete.</li> </ul>	We disagree with the State Department's assessment that the recommendation is complete. According to the State Department at least three officials from the Legal Advisor's office have been working continuously on this issue. However, when asked to provide a copy of the legislation, officials stated that no such single draft exists and that the language had evolved over time through discussions within the agency and with Congress. In addition, the interagency working group is still pursuing an effort to establish a clear legal basis for holding contractors accountable under U.S. law. Therefore, we believe that implementation of the recommendation is still in progress.
2. The Department of State should work with the Department of Defense to determine how to commence discussions with the Government of Iraq on a new regulatory framework for PPS contractors.	<ul style="list-style-type: none"> <li>• U.S. Embassy Baghdad, Multi-National Forces – Iraq (MNF-I), and the Iraqi Ministry of Interior continue to negotiate a Status of Forces Agreement and a Strategic Framework Agreement.</li> <li>• The Department's actions have met the intent of the recommendation. This recommendation is complete.</li> </ul>	We disagree with the State Department's assessment that the recommendation is complete. The Status of Forces Agreement and a Strategic Framework Agreement are still being negotiated. Therefore, we believe that implementation of the recommendation is still in progress.
3. The requirement to expand security oversight requires an overall increase in the Diplomatic Security Service's authorized staffing level. The Department of State should approach the Office of Management and Budget and request in the final appropriations action for FY-08 an increase of 100 positions and the requisite salary and operating costs in order to provide the needed staffing in Iraq without stripping other missions of their security resources.	<ul style="list-style-type: none"> <li>• The FY2008 Supplemental Appropriations Act provides funding for the 4th quarter of FY2008 and all of FY2009. The positions have been regularized in the Department's FY2010 budget request.</li> <li>• This recommendation is complete.</li> </ul>	GAO agrees with the State Department's assessment.
4. When the FBI investigation into the September 16, 2007, incident is completed, the Embassy should submit its recommendation as to whether the continued services of the contractor involved is consistent with the accomplishment of the overall United States mission in Iraq	<ul style="list-style-type: none"> <li>• The Embassy and the Department are awaiting the results of the FBI's investigation.</li> </ul>	GAO agrees with the State Department's assessment.

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

<b>Recommendation</b>	<b>Status of Implementation as Reported by the State Department</b>	<b>GAO Comments</b>
<p>5. The Regional Security Office should be provided with additional Department of State Special Agents so that an Assistant Regional Security Officer can accompany PPS movements. The State Department should ensure that each Assistant Regional Security Officer should complete an Iraq-specific orientation program.</p>	<ul style="list-style-type: none"> <li>• 45 new full time employee DS Special Agents positions were created for Iraq. Currently, 11 of these new positions are staffed at post and 34 agents are completing High Threat Training. All positions will be filled by Sept. 08.</li> <li>• Additionally, the RSO staff is currently augmented by 16 temporary duty (TDY) DS personnel.</li> <li>• All Diplomatic Security (DS) Special Agents complete Iraq-specific training at the DS Training Center and Foreign Service Institute prior to deployment.</li> <li>• This recommendation is complete.</li> </ul>	<p>We disagree with the State Department's assessment that the recommendation is complete as the Department's efforts to fulfill this requirement are ongoing. Therefore, we believe that implementation of the recommendation is still in progress.</p>
<p>6. The Worldwide Personal Protective Service (WPPS) contract should be amended to require the contractor to provide a limited number of Arabic language staff for use as needed.</p>	<ul style="list-style-type: none"> <li>• The WPPS contract was modified to require eight (8) Protective Security Specialist/Translators, as requested by the RSO, to serve throughout Iraq.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>
<p>7. Additional training modules should be added under the Worldwide Protective Services contract to enhance the cultural awareness of assigned personnel, acquaint them with diplomatic structures and procedures, and familiarize them with Multi-National Force-I tactics, techniques, and procedures</p>	<ul style="list-style-type: none"> <li>• The WPPS contract was modified to require that all WPPS personnel complete the Iraq Cultural Awareness training program developed by the DS Training Center and the online "Working in an Embassy" course offered by the Foreign Service Institute.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>
<p>8. To tighten the ground rules for the use of deadly force and to ensure greater parallelism with USCENTCOM rules on the use of force by contracted security in Iraq, the U.S. Mission Firearms Policy should be revised to specify, without limiting the inherent right to take action necessary for self-defense, if an authorized employee must fire his/her weapon, he/she must fire only aimed shots; fire with due regard for the safety of innocent bystanders; and make every effort to avoid civilian casualties.</p>	<ul style="list-style-type: none"> <li>• The Departments of State and Defense agreed upon common principles for the Rules for the Use of Force.</li> <li>• The updated Mission Firearms Policy incorporating these revised Rules for the Use of Force was signed into effect by the Deputy Chief of Mission on February 2, 2008.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

<b>Recommendation</b>	<b>Status of Implementation as Reported by the State Department</b>	<b>GAO Comments</b>
<p>9. The Regional Security Office (RSO) should be provided video and audio recording equipment for each security vehicle, audio recording equipment in the Tactical Operations Center to record all radio transmissions and computer enhancements to record all Blue Force Tracking Data</p>	<ul style="list-style-type: none"> <li>• To date, video recording systems have been installed into 140 mission vehicles throughout Iraq. The remaining installations have been funded and are planned for completion by December 2008.</li> <li>• Each protective mission now includes a vehicle with video recording capability.</li> <li>• Protective vehicle video camera installations have been institutionalized. All new vehicles are now being hard-wired for video recording capability in the assembly line process.</li> <li>• The radio recording system in the RSOs Tactical Operations Center is operational, and all Embassy radio transmissions are recorded.</li> <li>• Post implemented long-term recording of all Blue Force Tracker data. Blue Force Tracker data is stored on external hard drives, expanding retention capabilities.</li> <li>• This recommendation is complete.</li> </ul>	<p>We disagree with the State Department's assessment that the recommendation is complete. According to State Department documents, video and audio recording equipment has been installed into 133 vehicles. While officials have stated that the systems have been installed in 140 vehicles, according to State Department officials, the equipment is to be installed into 233 vehicles. Therefore, we believe that implementation of the recommendation is still in progress.</p>

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

<b>Recommendation</b>	<b>Status of Implementation as Reported by the State Department</b>	<b>GAO Comments</b>
<p>10. The Regional Security Office should place a readable number (like a license plate) on the right rear door of each vehicle utilized, to enable anyone wishing to question its mode of operation to identify the unit of the Regional Security Office, which can then review the matter and take appropriate action.</p>	<ul style="list-style-type: none"> <li>• The intent of Recommendation 10 is to ensure that Private Security Contractors (PSC) can be easily identified, located, and held accountable for their actions should it be required. The technical systems and procedural measures implemented by the Regional Security Officer (RSO) place Chief of Mission motorcades in full compliance with the scope of the recommendation.</li> <li>• Currently, Chief of Mission (COM) motorcade movements are tracked and monitored real-time by State Department personnel utilizing BFT and Tapestry. COM motorcade radio communications are recorded and monitored by RSO personnel in the RSO TOC. Motorcade vehicles are equipped with video cameras that record and document motorcade movements and events. These technical measures combined with reporting requirements and established operational procedures allow for COM motorcades to be monitored and held accountable.</li> <li>• This recommendation is complete.</li> </ul>	<p>We disagree with the State Department's assessment that the recommendation is complete. According to State Department officials, this recommendation was reviewed because of concern that unless all PSCs operating in Iraq, including non-State Department PSCs, were required to use the readable number, placing such a number on the State Department vehicles would make the agency's motorcades more vulnerable to attack. However, during our trip to Iraq, we observed that many non-State Department PSCs, including many with contracts with DOD, affixed readable numbers on their vehicles. While the technical systems and procedural measures being implemented may assist the monitoring of these motorcades by U.S. government officials, these systems and measures will not enable anyone to identify the vehicle via a readable number such as a license plate as stated in the recommendation. Additionally, as stated above, the recording equipment has not been installed into every vehicle. Therefore, we believe that implementation of the recommendation is still in progress.</p>



**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

Recommendation	Status of Implementation as Reported by the State Department	GAO Comments
<p>11. The Regional Security Office should establish a "Go Team" that would proceed as soon as possible to the scene of any weapons discharge to gather information and material and provide an analysis of what happened and why, and prepare a report. The team would work with representatives of the appropriate Government of Iraq offices and the U.S. military unit responsible for the location.</p>	<ul style="list-style-type: none"> <li>• The RSO established a dedicated Go Team, referred to as the Force Investigation Unit, and reached an agreement with MNF-I for military security support for investigators as needed.</li> <li>• The Go Team is currently staffed with 2 full-time DS Special Agents who are augmented by 4 DS Special Agents assigned to the Investigations and Intelligence section. When the need arises this group is augmented by Special Agents from other sections of the RSO office.</li> <li>• Since January 2008, the Go Team has investigated 49 motor vehicle accidents and 52 escalations of force incidents involving Tier 1 and Tier 2 contractors -- of those 35 were pen flares and 13 were discharge of firearms incidents.</li> <li>• To expand and augment the Go Team, DS awarded a contract on May 22, 2008, to provide additional investigators and translators.</li> <li>• Six investigators and 2 translators have been hired and are now in training. They depart for Iraq on July 27, 2008.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>
<p>12. An Embassy Joint Incident Review Board should be established to review all incidents involving the use of deadly force that are known or asserted to have caused injury or death or other serious consequences. The Board should be chaired by the Deputy Chief of Mission and other members should be the Regional Security Officer, another civilian embassy officer with a law enforcement background from an agency other than State or Justice, and a military officer designated by MNF-I. The Board would hear from the Assistant Regional Security Officer (A/RSO) who was in the motorcade, review the statements provided by the security personnel involved, as well as any protectee(s), plus the Go Team report, and then make a recommendation to the Ambassador on whether or not the use of force appears justified. If it does not feel that it was justified, the Department should be informed to notify the Department of Justice.</p>	<ul style="list-style-type: none"> <li>• The Deputy Chief of Mission approved an Action Memo establishing the framework and process for convening an Embassy Joint Incident Review Board. The board has not yet had cause to meet.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

Recommendation	Status of Implementation as Reported by the State Department	GAO Comments
<p>13. The Regional Security Office and MNF-I should establish a permanent working group to develop commonly agreed operational procedures; establish a robust liaison element; exchange information; ensure optimal situational awareness; and ensure that any issues are discussed and quickly resolved.</p> <p>In addition to the above, three specific items should be on the agenda for the first meeting:</p> <p>Ensuring that the planning, coordinating and routing information which currently flows from the Regional Security Office's Tactical Operations Center (TOC) to Multi-National Force-Iraq (MNF-1) liaison elements located in the TOC and posted to the U.S. Military's Command Post of the Future system, is available electronically to all operating elements under MNF-I;</p> <p>Providing TOC Spot Reporting electronically to any subordinate military element that wishes to receive it directly;</p> <p>Coordinating the provision of frequencies for the military radios and the RSO has ordered to enhance coordination.</p>	<ul style="list-style-type: none"> <li>• A permanent working group was established in November 2007.</li> <li>• In December 2007, the Deputy Secretaries of State and Defense signed a memorandum of agreement to define the authority and responsibility for the accountability and operations of private security contractors in Iraq.</li> <li>• This recommendation is complete.</li> <li>• Electronic tracking issues were addressed to everyone's satisfaction by Command Post of the Future, Blue Force Tracker, and TAPESTRY. (11/16/07)</li> <li>• The RSO and MNC-I exchanged liaison officers in their respective Tactical Operations Centers.</li> <li>• This recommendation is complete.</li> <li>• RSO Spot Report language entered into MNF-I Combined Information Data Network Exchange database by the MNF-I liaison officer. This recommendation is complete. (11/16/07)</li> <li>• The RSO received 142 PRC-152 radios, which have been loaded and configured with DOD-compatible channels. This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>
<p>14. Coordination with MNF-I elements could be further enhanced if the pending order for Harris Corporation Model PRC-110 radios were received. The Department of State should intervene, including with DOD as necessary, to obtain these units.</p>	<ul style="list-style-type: none"> <li>• Post received 142 PRC-152 radios.</li> <li>• All radios have been loaded and configured with DOD-compatible channels and were distributed to RSO protective security teams.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

Recommendation	Status of Implementation as Reported by the State Department	GAO Comments
<p>15. When the "Go Team" is not involved in investigating incidents, it should be employed in pattern analysis. The Diplomatic Security service in Washington should provide the RSO with a relational database to be used to review incidents and determine potential patterns. Such a database would include:</p> <p>Date and time of incident            Destination and GPS coordinates            GPS coordinates of incident            Mission identifier            Vehicle identification numbers            Incident type            Names of all security personnel involved and their assignments in the motorcade            Such other details as would be useful.            Data on each event would be input promptly after it occurs. Weekly reports should be generated to look for potential patterns that would call for systemic or individual changes</p>	<ul style="list-style-type: none"> <li>• Pattern analysis software was identified, tested, modified, and beta tested.</li> <li>• Software was tested locally through May 2008 and milestones were met. The software was deployed to Baghdad on June 19, 2008, and is undergoing various forms of testing with hardwire and encrypted radio networks.</li> <li>• Based on feedback from the field, deployment of the finalized version of pattern analysis software from headquarters with full operational capability is expected by December 2008.</li> </ul>	<p>According to State Department officials the software is currently being tested in Baghdad. However, officials could not provide documentation of any evaluations of the software, noting that the software testing and assessment continues.</p>
<p>16. The Embassy should use the venue afforded by the Iraqi-U.S. Joint Commission to establish a working group to determine ways to move the licensing process forward in an open and transparent way</p>	<ul style="list-style-type: none"> <li>• The Deputy Chief of Mission, Embassy Legal Advisor, RSO, and MNF-I have been involved in discussions with Iraqi officials concerning private security company licensing and registration processes.</li> <li>• Currently the Iraqi licensing process involves the Ministries of Interior and Trade. Security company licenses must be renewed every six months. Worldwide Personal Protective Services (WPPS) contractors Triple Canopy and DynCorp are currently licensed by the central government in Baghdad. Blackwater has submitted an application for a license, which is currently pending.</li> <li>• The Department's actions have met the intent of the recommendation. This recommendation is complete.</li> </ul>	<p>We disagree with the State Department's assessment. While State Department officials stated that they have had numerous conversations with Iraqi officials regarding the licensing and registration of PSCs in Iraq, the process is still ongoing and officials were unable to provide formal documentation of the discussions. According to the State Department in its view this recommendation has been completed because it established the working group and it was not necessary to have improved the licensing process to consider the recommendation implemented. We believe that implementation of the recommendation is still in progress.</p>

**Appendix II: Implementation Status of  
Recommendations from the Secretary of  
State's Panel on Personal Protective Services  
in Iraq**

<b>Recommendation</b>	<b>Status of Implementation as Reported by the State Department</b>	<b>GAO Comments</b>
<p>17. The Regional Security Officer should establish direct channels to senior Iraqi police and security officials in Baghdad and in any other city where Provincial Reconstruction Teams are located. This should be a major step towards providing information on incidents in a timely way so that they can be appropriately investigated.</p>	<ul style="list-style-type: none"> <li>• The RSO had multiple meetings with senior Iraqi officials at the National Police, Ministry of Interior, and Ministry of Defense and developed working agreements on coordination, liaison, and mutually supportive engagement.</li> <li>• RSO personnel serving at Regional Embassy Offices and Provincial Reconstruction Teams have also established relations with local Iraqi police and security officials.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment.</p>
<p>18. In order to be more responsive to Iraqi customs, the Embassy must actively seek out the families of those innocent Iraqi civilians killed or seriously injured, or those whose property has been damaged by personal protective services personnel. The Regional Security Office "Go Team", assisted by the U.S. military unit responsible for the area in which an incident has occurred, should work with counterparts designated by the Government of Iraq to promptly offer appropriate condolences and compensation.</p>	<ul style="list-style-type: none"> <li>• As part of the investigative process, the RSO coordinates with MNF-I and the Government of Iraq to facilitate victim access to the Embassy Claims Program.</li> <li>• This recommendation is complete.</li> </ul>	<p>GAO agrees with the State Department's assessment. However, our interviews with PSCs with contracts with the State Department found that they were unaware that the Embassy Claims Program existed.</p>

Source: State Department; GAO Analysis.

# Appendix III: Comments from the Department of Defense



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WASHINGTON, DC 20301-3500

JUL 28 2008

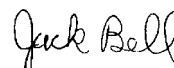
Mr. William M. Solis  
Director, Defense Capabilities and Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Solis:

This is the Department of Defense (DoD) response to the GAO draft report GAO - 08-996, "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," dated July 8, 2008 (GAO Code 351234). We welcome your assistance in improving how the DoD and its contractors can plan for and effectively execute contracts in a complex and changeable security environment. Enclosed are DoD's detailed comments regarding the recommendations on page 31 of your draft report.

We appreciate the opportunity to review and comment on your findings.

Sincerely,

  
Jack Bell

Enclosure:  
As stated



GAO DRAFT REPORT - DATED JULY 8, 2008  
GAO CODE 351234/GAO-08-996

**“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”**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE RECOMMENDATIONS**

**RECOMMENDATION 1:** The GAO recommends that the Secretary of Defense develop and implement a strategy to fill authorized positions for the Joint Contracting Command-Iraq/Afghanistan and Defense Contract Management Agency (DCMA).

**DOD RESPONSE:** Concur. We have initiated a strategy, based on current and projected delegated workload, to deploy 220 personnel by 15 December 2008. Underpinning this strategy is the recent hiring of Emergency Essential employees, current volunteer efforts, and the continued support by the Services to source the Joint Manning Document.

**RECOMMENDATION 2:** The GAO recommends that the Secretary of Defense direct the Service Secretaries to update the information being provided on PSCs at unit mission-rehearsal exercises and pre-deployment training to include information regarding the operations of the Armed Contractor Oversight Division and the Contractor Operations Cells along with the role of military units in providing contract oversight, incident investigation, and Private Security Contractor (PSC) coordination procedures.

**DOD RESPONSE:** Concur. DoD is actively incorporating contractors and contract support into the exercise schedules.

**RECOMMENDATION 3:** The GAO recommends that DoD fully implement their 2005 recommendation by including information on Private Security Contractors (PSC) typical operating procedures and the military's responsibilities to PSCs.

**DOD RESPONSE:** Concur. DoD continues to swiftly improve its procedures through the rapid dissemination of changes to CENTCOM FRAGO 07-428, *Overarching FRAGO For Requirements, Procedures, Responsibilities For Control Coordination And Management And Oversight of Armed Contractors DoD Civilian and PSCs*, which was last updated on July 17, 2008.

# Appendix IV: Comments from the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



**United States Department of State**

*Assistant Secretary for Resource Management  
and Chief Financial Officer*

*Washington, D.C. 20520*

Ms. Jacquelyn Williams-Bridgers  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

JUL 24 2008

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "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 Job Code 351234.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Paul Ginsburg, Program Analyst, Bureau of Diplomatic Security at (571) 345-2742.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Higgins".

Bradford R. Higgins

cc: GAO – William Solis  
DS – Eric Boswell  
State/OIG – Mark Duda

**Department of State Comments on GAO Draft Report**

**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, GAO Code 351234)

The Department of State (DOS) thanks the Government Accountability Office (GAO) for the opportunity to respond to their draft report resulting from the August 9, 2007, notification letter to review private security contractors in Iraq. In addition to oversight enhancements discussed in this document, the State Department and Bureau of Diplomatic Security (DS) have increased and realigned staff to enhance Post's oversight responsibilities as follows.

- Two in-country Contracting Officer Representatives (CORs) for the Baghdad Embassy Security Force (BESF).
- A third COR at Headquarters assists with the administrative aspects of the contract to include a weekly meeting with the contractor, monthly invoice reviews, and liaison between the Contracting Officer and in-country CORs, and when requested, personnel deployment to assist the in-country CORs with their responsibilities.
- Two in-country CORs in support of the Worldwide Personal Protective Services (WPPS) Iraq task orders who are supported by two CORs at Headquarters that assist with the administrative aspects of the contracts to include weekly meetings with the contractors, monthly invoice reviews, and liaison between the Contracting Officer and in-country CORs.
- The Department increased its staffing by eight personnel to assist with compliance issues, invoice approval, and the Synchronized Pre-Deployment and Operational Tracking System for the WPPS contracts. In support of contract oversight, DS is hiring six additional training instructors to enhance oversight of contractor training.

**Comments**

***Highlights***

“The State Department has **completed more than half** of 18 actions recommended in October 2007 by **the Secretary’s** panel tasked with



reviewing that agency's use of private security contractors in Iraq. **Three (3) recommendations are dependent on other agencies or governments and those remaining will be completed by December 2008.**"

See comment 1.

- **The phrase "begun implementing" is misleading to the extent it sounds like DOS has not actually completed any of the actions. The Department requests this phrase be corrected and information added in the *Highlights* section and on pages 4, 9, and 17.**

**Page 2**

"On September 16, 2007, an incident in **Nisour Square** involving a PSC firm working for the Department of State resulted in the deaths of Iraqi civilians in Baghdad."

See comment 2.

- **This is an ongoing DOJ investigation and the number of casualties is not definitive. If GAO wishes to use a specific number, it should provide the source of that information or include a footnote noting the range of reported numbers.**

**Pages 5 and 24**

"Whether a particular law provides extra-territorial jurisdiction over a criminal act by a PSC contractor depends on the specific facts of the incident, such as the time, nature, and location of the alleged crime, **nature of the contractors' employment**, and the nationality of the accused."

See comment 3.

- **The Department requests that factors listed regarding whether a particular law applies should include "the nature of the contractors' employment" as this is a very relevant factor to UCMJ and MEJA jurisdiction.**

**Page 19**

"**Since** the Nisour Square incident, DOD and the **DOS** have significantly **enhanced** communication **and** coordination on the departments' efforts related to PSCs in Iraq, and **both** DOD **and** **DOS** are coordinating with the Government of Iraq on issues related to PSCs on a regular basis."

See comment 4.

Pages 24 – 26

See comment 5.

- The Department is concerned that the 18 USC 7(9) -- added to the Special Maritime and Territorial Jurisdiction (SMTJ) statute as part of the PATRIOT ACT -- is only mentioned in Footnote 28, but not in the section discussing SMTJ itself. 18 USC 7(9) is a significant source of extra-territorial jurisdiction that may potentially apply in the context of a crime by a PSC in Iraq or elsewhere. By contrast, the discussion of the case law interpreting SMTJ prior to 2001 seems to be of less importance than the current state of the jurisdiction and might be best discussed in a footnote.
- The description of 18 USC 7(9) in footnote 28 is misleading and suggests there is a major loophole in the law, but the statute essentially exempts people who are *already* subject to MEJA (in other words, giving preference to MEJA as the source of jurisdiction).

See comment 6.

Page 30

“The improvements DOD and DOS have made may reduce the number of PSC incidents in Iraq, however, it may not eliminate incidents.”

See comment 7.

- The Department believes the more relevant question is whether the PSC incidents are minimized to the extent possible and, if they do occur, are they handled appropriately.
- The term “PSC incidents” is used without defining what that term means and in a way that sets up a false standard. If the term refers to any instance involving use-of-force, then the DOS goal would be to minimize them rather than eliminate them, as PSCs are authorized to use force under specific conditions. If “PSC incidents” refers to negative incidents involving use-of-force, then again, it seems unfair to suggest that they could ever be eliminated in this context.

Page 39

Appendix II

4

- **The Department requests revisions to this entire narrative based on comments and technical corrections provided below.**

Recommendation 1 - Status of Implementation

- **The Department requests this section be replaced with the following.**
  - **The Department of State’s Office of the Legal Adviser has actively engaged with an interagency working group, led by the Department of Justice, to work with Congress on legislation clarifying the Military Extraterritorial Jurisdiction Act (MEJA) in order to hold USG private security contractors overseas accountable for offenses.**
  - **The Department of Justice is taking the lead on further discussions of this issue with Senate staff.**
  - **The Department of State’s Office of the Legal Adviser will stay engaged in this process until legislation is passed.**
  - **The Department’s actions have met the intent of the recommendation. This recommendation is complete.**

See comment 8.

**Page 40**

Recommendation 2: “The Department of State should work with the Department of Defense to determine how to commence discussions with the Government of Iraq on a new regulatory framework for PPS contractors.”

Recommendation 2 - GAO Comment: “The negotiations of the Status of Forces Agreement and a Strategic Framework Agreement are still being negotiated. Therefore, we believe that implementation of the recommendation is still in progress.”

- **The Department must register disagreement with GAO’s interpretation of Recommendation 2. This recommendation is specifically worded not to require DOS to create or negotiate a new regulatory framework, but merely to “commence discussions” with the Government of Iraq on the subject, which has been done. It would not be proper to hold this**

See comment 9.

**recommendation open, given that it depends on the actions of another sovereign nation.**

- **The Department's actions have met the intent of the recommendation. This recommendation is complete.**

Recommendation 3 - GAO Comment: "Although State Department officials told us that funding for the positions was in the FY2008 supplemental request and that they would ask for funding in the Department's FY2010 base budget, the Department indicated it was not included in the FY2009 supplemental request currently being considered by Congress."

- **The FY2008 Supplemental Appropriations Act provides funding for the 4<sup>th</sup> quarter of FY2008 and all of FY2009. The positions have been regularized in the Department's FY2010 budget request.**
- **This recommendation is complete.**

Recommendation 5 - Status of Implementation

- **The Department requests the addition of a 4<sup>th</sup> bullet indicating this recommendation is complete.**

Page 41

Recommendation 9 - Status of Implementation

- **The Department requests this section be replaced with the following.**
  - **To date, video recording systems have been installed into 140 mission vehicles throughout Iraq. The remaining installations have been funded and are planned for completion by December 2008.**
  - **Each protective mission now includes a vehicle with video recording capability.**
  - **Protective vehicle video camera installations have been institutionalized. All new vehicles are now being hard-**

See comment 10.

See comment 11.

See comment 12.

6

wired for video recording capability in the assembly line process.

- The radio recording system in the RSOs Tactical Operations Center is operational, and all Embassy radio transmissions are recorded.
- Post implemented long-term recording of all Blue Force Tracker (BFT) data. BFT data is stored on external hard drives, expanding retention capabilities.
- This recommendation is complete.

Page 42

Recommendation 10 - Status of Implementation

- The Department requests this section be replaced with the following.
  - The intent of Recommendation 10 is to ensure that Private Security Contractors (PSC) can be easily identified, located, and held accountable for their actions should it be required. The technical systems and procedural measures implemented by the Regional Security Officer (RSO) place Chief of Mission motorcades in full compliance with the scope of the recommendation.
  - Currently, COM motorcade movements are tracked and monitored real-time by State Department personnel utilizing BFT and Tapestry. COM motorcade radio communications are recorded and monitored by RSO personnel in the RSO TOC. Motorcade vehicles are equipped with video cameras that record and document motorcade movements and events. These technical measures combined with reporting requirements and established operational procedures allow for COM motorcades to be monitored and held accountable.
  - This recommendation is complete.

Recommendation 11 - Status of Implementation

See comment 13.

7

- **The Department requests this section be replaced with the following.**
  - **The RSO established a dedicated Go Team, referred to as the Force Investigation Unit (FIU), and reached an agreement with MNF-I for military security support for investigators as needed.**
  - **The Go Team is currently staffed with 2 full-time DS Special Agents who are augmented by 4 DS Special Agents assigned to the Investigations and Intelligence section. When the need arises this group is augmented by Special Agents from other sections of the RSO office.**
  - **Since January 2008, the Go Team has investigated 49 motor vehicle accidents and 52 escalations of force incidents involving Tier 1 and Tier 2 contractors -- of those 35 were pen flares and 13 were discharge of firearms incidents.**
  - **To expand and augment the Go Team, DS awarded a contract on May 22, 2008, to provide additional investigators and translators.**
  - **Six investigators and 2 translators have been hired and are now in training. They depart for Iraq on July 27, 2008.**
  - **This recommendation is complete.**

Page 44

Recommendation 15 - Status of Implementation

- **The Department requests this section be replaced with the following.**
  - **Pattern analysis software was identified, tested, modified, and Beta tested.**
  - **Software was tested locally through May 2008 and milestones were met. The software was deployed to Baghdad on June 19, 2008, and is undergoing various forms of testing with hardwire and encrypted radio networks.**
  - **Based on feedback from the field, deployment of the finalized version of pattern analysis software from**

See comment 14.

See comment 15.

8

**headquarters with full operational capability is expected by  
December 2008.**

**Page 45**

Recommendation 16 - Status of Implementation

- **The Department requests this section be replaced with the following.**
  - **The DCM, Embassy Legal Advisor, RSO, and MNF-I have been involved in discussions with Iraqi officials concerning private security company licensing and registration processes.**
  - **Currently the Iraqi licensing process involves the Ministries of Interior and Trade. Security company licenses must be renewed every six months. WPPS contractors Triple Canopy and DynCorp are currently licensed by the central government in Baghdad. Blackwater has submitted an application for a license, which is currently pending.**
  - **The Department's actions have met the intent of the recommendation. This recommendation is complete.**

See comment 16.

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The following are GAO's comments on the State Department's letter dated July 24, 2008.

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## GAO Comments

1. The State Department commented that it had completed more than half of the 18 recommendations made by the Secretary of State's panel. The department noted that three of the recommendations were dependent on other agencies or governments and the remaining recommendations would be completed by December 2008. In appendix II of the report, we note the State Department's assessment on the status of implementation for each of the panel's 18 recommendations. This information is presented verbatim from information provided by the State Department. We also added an acknowledgement in the report that the State Department has implemented 11 of the 18 recommendations made by the panel.
2. We revised the report to attribute the number of Iraqi civilian deaths caused by the September 16, 2007, incident to the report of the Secretary of State's Panel on Personal Protective Services in Iraq.
3. We revised the report to include "nature of the contractor's employment" among the factors that could affect whether a particular law provides extraterritorial jurisdiction in a specific case.
4. While DOD and the State Department have improved communication and coordination related to PSCs in Iraq, we have no basis to state that these improvements are significant.
5. The report was revised to accept the suggested change.
6. We are unclear how the language in footnote 28 is misleading or suggests a loophole in 18 U.S.C. 7(9). We did change the language as suggested by the State Department to clearly state that "the statute essentially exempts people who are already subject to MEJA (in other words, giving preference to MEJA as the source of jurisdiction)."
7. The State Department misinterpreted our conclusions. Our statement that the improvements made by DOD and the State Department may reduce, but not necessarily eliminate, incidents is intended to demonstrate that regardless of the level of oversight provided, in places with tenuous security situations such as Iraq, incidents involving PSCs may still occur. As we noted in our conclusions, a strengthened framework of PSC oversight and coordination in Iraq will



enable the U.S. government to be better prepared to respond effectively when incidents do occur.

8. While we incorporated the requested updated information into the status of implementation column of recommendation 1, we disagree that the State Department has completed implementation of the recommendation. The State Department noted that the department's Office of the Legal Advisor was actively engaged in this manner through an interagency working group led by the Department of Justice. However, the effort to establish a clear legal basis for holding contractors accountable under U.S. law is still ongoing. Therefore, we assert that this recommendation has not been implemented.
9. The State Department commented that it disagreed with our assertion that the status of implementation of recommendation 2 should be cited as in progress. In its comments the department noted that the recommendation was worded not to require that the State Department create or negotiate a new regulatory framework, but to merely "commence discussions" with the Government of Iraq on this subject. While negotiations with the Government of Iraq are ongoing on a Status of Force Agreement and a Strategic Framework Agreement, it is our assertion that implementation will be complete when an agreement is reached.
10. Based on additional information provided to by the State Department we have changed our assessment of the status of this implementation to "GAO agrees with the State Department's assessment."
11. While we have incorporated the requested updated information into the status of implementation column of recommendation 5, we disagree that the State Department has completed the implementation of this recommendation. We assert that fully implementing the recommendation means that the additional personnel should be recruited, trained, and deployed to Iraq, a process that has not happened yet. Therefore, we believe that implementation of the recommendation is still in progress.
12. The State Department requested that we incorporate updated information into the status of implementation column of recommendation 9. While we updated the column, we disagree that the State Department has completed the implementation of this recommendation because not all of the department's vehicles have been outfitted with the video recording systems as recommended by the panel. According to the State Department, to date the equipment has been installed in 140 of the 233 vehicles it intends to place this

equipment in. The State Department noted that it expects this process to be completed by December 2008. As such our assessment of the status of implementation is that implementation is ongoing.

13. While we have incorporated the requested updated information into the status of implementation column of recommendation 10, we disagree that the State Department has completed the implementation of this recommendation. As noted in appendix II, the panel recommended that the State Department place a readable number on the right rear door of each vehicle utilized, to enable anyone wishing to question its mode of operation to identify the unit to the Regional Security Office. The systems and measures being implemented by the State Department may assist the monitoring of these vehicles by U.S. government officials. However, these systems do not enable any person, such as an Iraqi citizen standing on a street corner, to identify the unit to the Regional Security Office.
14. We incorporated the requested updated information into the status of implementation column for recommendation 11. Based on this additional information we now agree with the State Department that the recommendation has been implemented.
15. We incorporated the requested updated information into the status of implementation column for recommendation 15.
16. While we incorporated the requested updated information into the status of implementation column of recommendation 16, we stand by our initial assertion that the recommendation is ongoing and therefore not complete. According to information provided by the State Department, officials from the department have had numerous conversations with officials from the government of Iraq regarding the licensing and registration of PSCs in Iraq and had established a working group. However, officials were unable to provide a written account for these discussions when asked and stated that it considered the recommendation completed because the intent of the recommendation was to start holding talks and not to have necessarily improved the licensing process.

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## Public Affairs

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