



# The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress

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## Summary

The United States relies on contractors to provide a wide variety of services in Iraq and Afghanistan, including security. Private firms known as private security contractors (PSCs) are hired to protect individuals, transport convoys, forward operating bases, buildings, and other economic infrastructure. While DOD has previously contracted for security in Bosnia and elsewhere, it appears that in Iraq and Afghanistan DOD is for the first time relying so heavily on armed contractors to provide security during combat or stability operations. As of March 31, 2010, there were more than 27,000 armed private security contractors in Iraq and Afghanistan. Recent contracting trends indicate that the number of such contractors in Iraq may decline while the number in Afghanistan may continue to increase. Many analysts and government officials believe that DOD would be unable to execute its mission without PSCs.

The use of armed contractors has raised a number of issues for Congress, including concerns over transparency and accountability. Much of the attention given to PSCs by Congress and the media is a result of numerous high-profile incidents in which security contractors have been accused of shooting civilians, using excessive force, being insensitive to local customs or beliefs, or otherwise behaving inappropriately. These actions may have undermined U.S. counterinsurgency efforts in Iraq and Afghanistan. Some analysts and DOD officials believe that poor contractor oversight has significantly contributed to contractor abuses. As a result, Congress has also focused on whether DOD is effectively managing PSCs and whether improved contractor oversight could have prevented or minimized the impact of these incidents.

DOD officials have stated that the military's experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD's attention on the importance of managing PSCs. DOD has taken steps to improve how it manages and oversees such contractors in Iraq and Afghanistan. These steps include tracking contracting data, coordinating the movements of PSCs throughout the battle space, issuing new policy on managing PSCs, and updating DOD doctrine to incorporate the role of contractors. However, these efforts are still in progress and could take three years or more to effectively implement.

This report examines current private security contractor trends in Iraq and Afghanistan, steps DOD has taken to improve oversight and management, and the extent to which DOD has incorporated the role of security contractors into its doctrine and strategy. It also reviews steps Congress has taken to exercise oversight over the use of PSCs and includes options for Congress.

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## Introduction

The 111<sup>th</sup> Congress is grappling with a broad range of issues regarding the use of private security contractors (PSCs) to provide security for people and property in Iraq and Afghanistan. The United States has gradually increased the tasks for which it contracts with private companies in military operations. Congress has generally accepted the concept of using unarmed contractors to carry out support functions in military operations, such as providing food and laundry services, although not without concerns regarding the costs of contracts and alleged favoritism in issuing them.<sup>1</sup> But for the Department of Defense (DOD), Iraq and Afghanistan present new challenges. The United States is relying heavily, apparently for the first time during combat or stability operations, on private firms to supply a wide variety of security services.<sup>2</sup> Given the shortage of U.S. troops, PSCs are widely viewed as vital to U.S. efforts in the region. Many Members are concerned about transparency, accountability, and legal and symbolic issues raised by the use of armed civilians to perform security tasks formerly performed primarily by military personnel, as well as about the negative effect that PSCs may be having on U.S. counterinsurgency efforts.

This report discusses the types of work performed by PSCs, why DOD uses PSCs, and the number of armed security contractors working in Iraq and Afghanistan. The report also examines whether the use of PSCs could undermine U.S. efforts in the region.

## Background

The United States Government is just one of many entities—including foreign governments, international organizations, and private industry—that employ private security contractors in Iraq and Afghanistan.

In recent years, the United States and many other nations and organizations, including the United Nations, have increasingly turned to private contractors to provide security, as well as a variety of other functions, in support of stabilization and reconstruction efforts.<sup>3</sup> This increased reliance on contractors has fueled the growth of the private security industry worldwide.

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<sup>1</sup> For a discussion on DOD's use of contractors in Iraq and Afghanistan, see CRS Report R40764, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, by Moshe Schwartz.

<sup>2</sup> Iraq and Afghanistan appear to be the first two instances where the U.S. government has used private contractors extensively for protecting persons and property in combat or stability operations where host country security forces are absent or deficient, but it is not the first time private contractors have been used for such purposes. The U.S. Government Accountability Office (GAO) reported that contractors have provided security guards in the Balkans and Southwest Asia. *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*. GAO-03-695, June 2003, p 8. The United States also uses contractors (U.S. and foreign citizens) for guard duty at U.S. military installations and U.S. embassies and consulates in a number of countries where stability generally is not an issue.

<sup>3</sup> According to one report, "Not since the 17<sup>th</sup> century has there been such a reliance on private military actors to accomplish tasks directly affecting the success of military engagements." Fred Schreier and Marina Caparini. *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces, March 2005. p. 1. For discussions on the growth of private companies providing security and other support to military efforts worldwide, see, for example: Deborah D. Avant. *The Market for Force: The Consequences of Privatizing Security*. Cambridge, UK; New York: Cambridge University Press, 2005; Simon Chesterman and Chia Lehnardt. *From Mercenaries to Market: The Rise and Regulation* (continued...)

## Services Provided by Private Security Contractors

There is some debate as to what constitutes a private security contractor. Some commentators define private security as any activity that a company undertakes that is directly related to protecting a person, place, or thing.<sup>4</sup> Others use a broader definition that includes such activities as providing intelligence analysis, operational coordination, and the training of military or law enforcement personnel. The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181 Sec. 864) defines private security functions as the guarding of personnel, facilities, or properties, and any other activity for which contractors are required to be armed. Such a definition does not include unarmed personnel providing services directly related to security, such as coordinating the movements of PSCs throughout Iraq and Afghanistan. Many of the services provided by companies that consider themselves PSCs go beyond providing armed security. For the purposes of this report, the services provided by private security contractors can be divided into two major categories: armed services and unarmed services. Armed services include

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

For some PSCs, unarmed services represent more than 50% of their total revenue. Unarmed security services include<sup>5</sup>

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

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(...continued)

*of Private Military Companies*. Oxford, UK; New York: Oxford University Press, 2007; and Singer, Peter W. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, NY: Cornell University Press, 2003. For a discussion of United Nations use of such contractors, see William J. Durch and Tobias C. Berkman. *Who Should Keep the Peace? Providing Security for the Twenty-First-Century Peace Operations*. Washington, D.C.: The Henry L. Stimson Center, September 2006. pp. 83-84.

<sup>4</sup> Doug Brooks, President of the International Peace Operations Association, an industry trade group, defines private security as any activity directly related to protecting a “noun.”

<sup>5</sup> Contractors providing weapons training may be armed. However, the use of weapons for training purposes is categorized here as an unarmed service because the weapons are used as training tools and not to provide armed security.

## **Total Number and Profile of PSCs Working in Iraq and Afghanistan**

How the term private security contractor is defined affects how one counts the number of contractors. For example, according to the Department of Defense (DOD), as of March 2010, there were 11,610 PSC employees in Iraq, of which 581 (5%) provided unarmed services. This figure does not include contractors, armed or unarmed, that are training security forces, analyzing intelligence, or conducting interrogations. The Department of Defense (DOD) uses the term PSCs to include unarmed security contractors and APSCs (armed private security contractors) to denote armed contractors providing security.

Security contractors come from all over the world to work in Iraq and Afghanistan. Peter Singer of the Brookings Institution has estimated that citizens of some 30 countries have worked as security contractors in Iraq.<sup>6</sup> PSC employees are generally divided by nationality into three groups:

1. U.S. nationals,
2. Third-country nationals, and
3. Local nationals.

U.S. and coalition nationals often have military or law enforcement experience and are generally the easiest to vet through a background check. Third-country nationals are generally cheaper than U.S. coalition contractors, even though some third-country nationals have extensive military training and experience. Local nationals are generally the least expensive to hire, in part because there are no large overhead costs related to transportation, housing, and sustenance. Using local nationals as security contractors can also provide a number of potential benefits, such as providing jobs, building relationships and developing contacts with the local population, and having a security force that has a better understanding of the region. However, local nationals are often more difficult to screen and can be more easily infiltrated by hostile forces.

In Iraq there are currently 82 PSCs registered and licensed with the Ministry of Interior (56 Iraqi companies and 26 foreign companies).<sup>7</sup> These PSCs are employing more than 30,000 armed employees working for a variety of government and private sector clients.<sup>8</sup> In Afghanistan, there are currently 52 PSCs licensed to operate with some 25,000 registered security contractors. PSCs operating in Afghanistan are limited to 500 employees and can only exceed 500 with permission from the Cabinet.<sup>9</sup> Because of the legal restrictions placed on security companies in Afghanistan, a number of PSCs have operated without a license or have exceeded the legal limit, including security contractors working for NATO and the U.S. Government.<sup>10</sup> Many analysts believe that

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<sup>6</sup> Conversation with Peter Singer, Brookings Institution, June 13, 2007.

<sup>7</sup> Data as of June 1, 2010, based on information provided by Lawrence Peter, Director Private Security Company Association of Iraq, June 16, 2010. According to Mr. Peter, the Ministry of Interior began a licensing program in early 2005 and issued a total of 113 licenses. 31 PSCs have either had their license revoked, let their license lapse, or have gone out of business.

<sup>8</sup> *Ibid.*

<sup>9</sup> Based on discussions and emails with S. J. A. Brooking, Advisor to the Minister of Interior, Afghanistan, November 19, 2009. Some of the companies that had more than 500 employees prior to the cap taking effect were grandfathered in and permitted to maintain a larger force.

<sup>10</sup> *Ibid.*



regulations governing PSCs are only enforced in Kabul; outside Kabul there is no government reach at present and local governors, chiefs of police, and politicians run their own illegal PSCs. Estimates of the total number of security contractors in Afghanistan, including those that are not licensed, are as high as 70,000.<sup>11</sup> The majority of these PSCs do not work for the U.S. government. Responding to the concerns over the use of PSCs in Afghanistan, in November 2009, President Karzai stated a goal of closing down all PSCs in two years.<sup>12</sup>

## Congressional Focus on PSCs

Congress has generally focused more on private security contractors than on other specific contracting issues, even though such contractors have generally comprised roughly 6%-12% of DOD contractors in Iraq and Afghanistan and a smaller percentage of Department of State contractors. Much of the attention given to PSCs is a result of numerous high-profile incidents in which security contractors were accused of shooting civilians in Iraq and Afghanistan, using excessive force, being insensitive to local customs or beliefs, or otherwise behaving in a manner that has raised concerns (See below "Can the Use of PSCs Undermine US Efforts?"). Congress has also focused on whether DOD is effectively managing PSCs and whether improved contractor oversight could have prevented or minimized the impact of these incidents.

Hearings have been held in the Senate Committee on Armed Services,<sup>13</sup> the Senate Committee on Homeland Security and Governmental Affairs,<sup>14</sup> the House Oversight and Government Reform Committee<sup>15</sup>, and the House Committee on Armed Services.<sup>16</sup> This issue was also raised in the House Judiciary Committee's hearing on *Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq*.<sup>17</sup>

Congress has enacted legislation to address some of its concerns. In the FY2008 National Defense Authorization Act (NDAA), Congress required the Secretary of Defense, in coordination with the Secretary of State, to prescribe regulations and guidance relating to screening, equipping, and managing private security personnel in areas of combat operations. These regulations were to include tracking private security contractor (PSC) employees, authorizing and accounting for weapons used by PSCs, and reporting requirements whenever a security contractor discharges a

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<sup>11</sup> David Zucchini, "Private security forces unnerve Afghans," *Chicago Tribune*, August 17, 2009.

<sup>12</sup> Kathy Gannon and Elena Becastoros, "Karzai makes big promises at inaugural," *Desert Morning News (based on Associated Press story)*, November 20, 2009, pp. A-04; John Boone, "The agenda: Five-year timetable for Afghan troops to replace foreign forces," *The Guardian*, November 20, 2009, p. International: 29.

<sup>13</sup> U.S. Congress, Senate Committee on Armed Services, *Inquiry into the Treatment of Detainees in U.S. Custody*, 110th Cong., 1st sess., August 3, 2007.

<sup>14</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *An Uneasy Relationship: U.S. Reliance on Private Security Firms in Overseas Operations*, 110th Cong., 2nd sess., February 27, 2008.

<sup>15</sup> U.S. Congress, House Committee on Oversight and Government Reform, *Private Security Contracting in Iraq and Afghanistan*, 110th Cong., 1st sess., October 2, 2007; U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, *Commission on Wartime Contracting: Interim Findings and Path Forward*, 111th Cong., 1st sess., June 9, 2009.

<sup>16</sup> U.S. Congress, House Committee on Armed Services, *Contingency Contracting: Implementing a Call for Urgent Reform*, 110th Cong., 2nd sess., April 9, 2008.

<sup>17</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq*, 110th Cong., 1st sess., December 19, 2007.

weapon, kills or injures another person, or is killed or injured.<sup>18</sup> Included in the FY2009 NDAA is a “Sense of the Congress” provision that private security contractors should not perform inherently governmental functions, such as security protection of resources in high-threat operational environments.<sup>19</sup>

## **Private Security Companies Working For the U.S. Government**

### **Why the U.S. Government Uses PSCs**

Private security contractors can provide significant operational benefits to the U.S. government. Contractors can often be hired and deployed faster than a similarly skilled and sized military force. Because security contractors can be hired and fired quickly as needed, using contractors can allow federal agencies to adapt more easily to changing environments around the world. In contrast, adapting the military force structure or training significant numbers of Department of State civilian personnel can take months or years. Security contractors also serve as a force multiplier for the military, freeing up uniformed personnel to perform combat missions or providing the State Department with the necessary security capabilities when State’s civilian security force is stretched thin. In some cases, security contractors may possess unique skills that the government workforce lacks. For example, local nationals hired by U.S. government agencies working overseas may provide critical knowledge of the terrain, culture, and language of the region. Using PSCs can also save the government money. Contractors can be hired when a particular security need arises and be let go when their services are no longer needed. Hiring contractors only as needed can be cheaper in the long run than maintaining a permanent in-house capability. According to government officials, both DOD and the Department of State would be unable to execute their missions in Iraq and Afghanistan without the support of private security contractors.<sup>20</sup>

### **Department of Defense PSCs**

DOD did not begin to gather data on private security contractors until the second half of 2007. As a result, the following CRS analysis includes the past eleven quarters, ending March 31, 2010. In addition, a number of analysts have raised questions about the reliability of the data gathered. For example, in October 2008, GAO reported that DOD’s quarterly contractor reports were not routinely checked for accuracy or completeness.<sup>21</sup> DOD officials have acknowledged these shortcomings; in the census for the second quarter of fiscal year 2009 (Q2 FY2009), DOD reported that the data system previously used to count contractors duplicated reported numbers on

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<sup>18</sup> P.L. 110-181, sec 862.

<sup>19</sup> P.L. 110-417, sec 832. For a discussion on inherently governmental functions, see CRS Report R40641, *Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress*, by John R. Luckey, Valerie Bailey Grasso, and Kate M. Manuel.

<sup>20</sup> CRS Report MM70119, *Private Security Contractors: Possible Legislative Approaches. Online Video. DVD.*, coordinated by Kennon H. Nakamura (archived).

<sup>21</sup> U.S. Government Accountability Office, *Contingency Contracting: DOD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan*, GAO-09-19, October 1, 2008, p. 6.

task order contracts. DOD may have been consistently undercounting the actual number of PSCs working directly or as subcontractors. The census for the third quarter of FY2009 notes that the recorded 19% increase in armed security contractors over the previous quarter is partly a result of “continued improved ability to account for subcontractors who are providing security services.”

DOD stated that it is working to improve the reliability and the type of data gathered.<sup>22</sup> For example, DOD is implementing the Synchronized Predeployment and Operational Tracker (SPOT), which is designed to track and monitor contractor personnel in a contingency operation. SPOT is expected to track contractor data across the entire Iraq and Afghanistan theaters, including contractors based in neighboring countries.<sup>23</sup> DOD is still transitioning from a manual quarterly census of contractor personnel to the SPOT database.

## Iraq

### *Number of Security Contractors*

According to DOD, as of March 2010, there were 11,610 private security contractors in Iraq, of which 11,029 (95%) were armed. Of the armed security contractors in Iraq, 81% were third-country nationals, and 10% were Iraqis (see **Table 1**).

**Table 1. Number of Armed Security Contractors in Iraq by Nationality**  
(March 31, 2010)

	<b>Number of Americans</b>	<b>Number of Iraqis</b>	<b>Number of Third-Country Nationals</b>	<b>Total</b>
Armed PSCs in Iraq	1,027	1,095	8,907	11,029
Percent of Total	9%	10%	81%	100%

**Source:** CENTCOM 2<sup>nd</sup> Quarter Contractor Census Report (as of March 31, 2010).

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

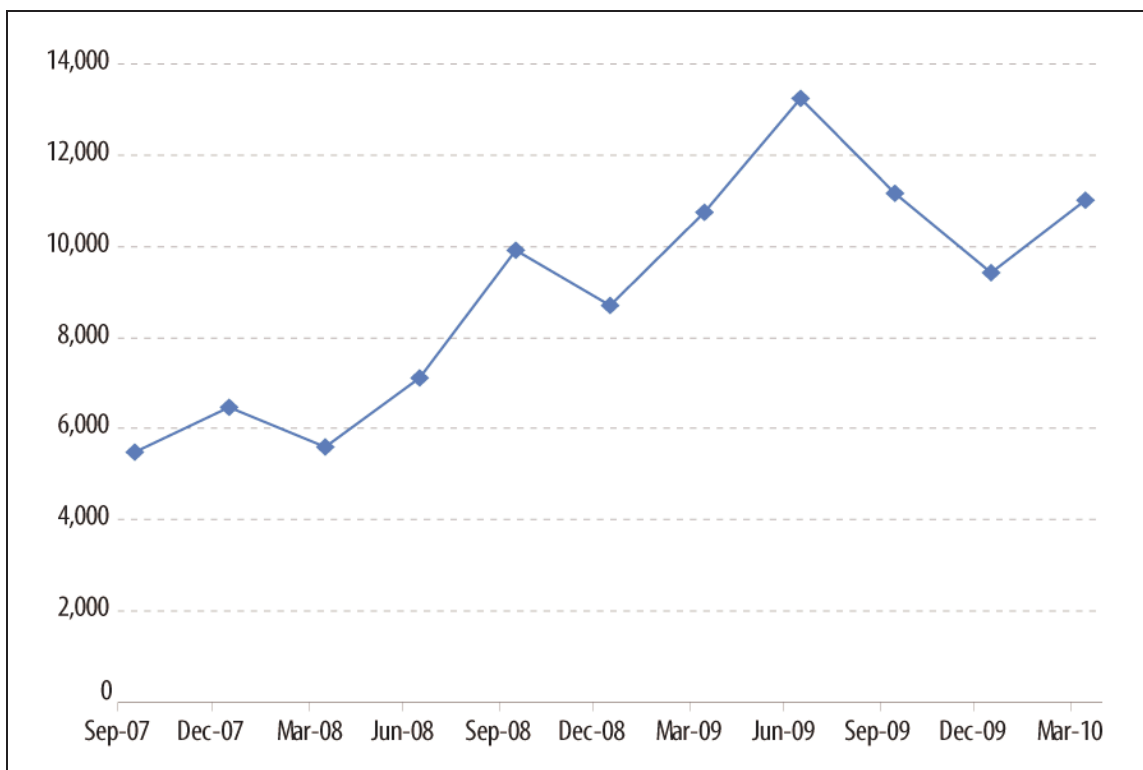
According to DOD, from September 2007 to June 2009, the number of armed security contractors increased from 5,481 to a high of 13,232, an increase of 140%. However, from June 2009 to March 2010 the number of armed security contractors has decreased by 2,203, or 17% (see **Figure 1**).<sup>24</sup> DOD officials anticipate that the number of armed contractors in Iraq will continue to decrease, much as the overall number of contractors and troops in Iraq has also decreased.

<sup>22</sup> Ibid.

<sup>23</sup> In April 2009, SPOT won the Computerworld Honors Program's 21st Century Achievement Award. See [http://www.cwhonors.org/documents/The\\_Laureate\\_09.pdf](http://www.cwhonors.org/documents/The_Laureate_09.pdf).

<sup>24</sup> Even though the number of contractors increased from December 31, 2009 to March 31, 2010, the trend over the last four quarters has been a decrease in the overall number of private security contractors. There is not enough data to determine whether such a decrease will continue in the future.

Figure I. Trend of Armed Security Contractors in Iraq



Source: CENTCOM Quarter Contractor Census Reports, FY2008-Q2 FY2010.

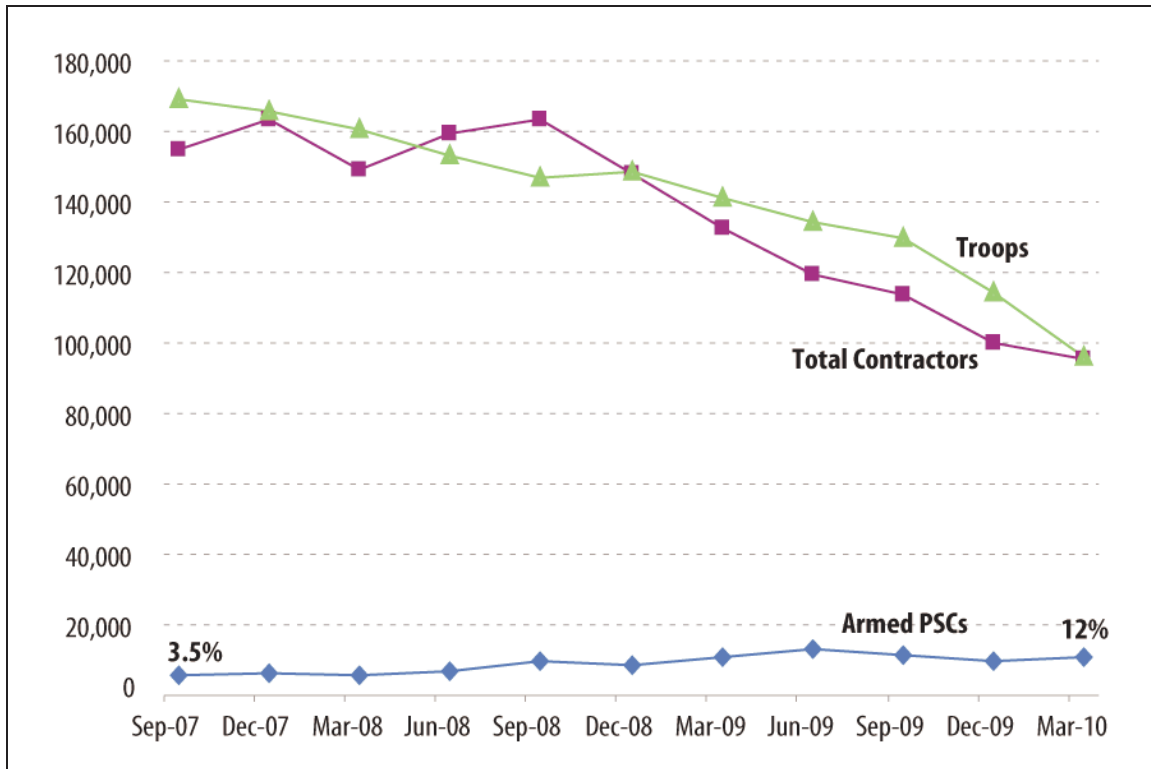
### *Armed Security Contractors Compared to Total Contractor and Troop Levels*

Over the last eleven quarters, the number of troops in Iraq dropped from a high of 169,000 in September 2007 to a low of 95,900 in March 2010, a decrease of 43%. The total number of contractors dropped from a high of 163,000 in September 2008 to 95,461 in March 2010, a decrease of 42%. The number of PSCs peaked at 13,232 in June 2009. As reflected in **Figure 2**, even as overall contractor and troop levels were generally falling, the number of PSCs was increasing. This trend was reversed from June 2009 to March 2010, as the number of armed private security contractors decreased by 2,203, or 17%. As discussed above, DOD officials anticipate that the number of armed contractors in Iraq will continued to decrease, much as the overall number of contractors and troops in Iraq has also decreased.

As of March 2010, armed security contractors made up 12% of all contractors, which represents the highest percentage of armed contractors in DOD's contractor workforce in Iraq since September 2007. Armed contractors made up only 6% of DOD's total workforce in Iraq, which also represents the highest percentage of armed contractors in DOD's total workforce in Iraq since September 2007.<sup>25</sup>

<sup>25</sup> For purposes of this report, DOD's workforce is defined as uniformed personnel and the contractor workforce. DOD civilian personnel are excluded from this count. According to DOD's *Joint Personnel Status Report*, as of September 8, 2009, the DOD civilian workforce in Iraq was 2,033 employees (less than 1.0% of the total force) and the DOD civilian workforce in Afghanistan was 1,706 employees (1.0% of the total force).

**Figure 2. Number of APSCs vs. Total Contractor and Troop Levels in Iraq**



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

**Notes:** Percentages represent number of armed security contractors relative to total number of contractors.

As reflected in this figure, even though the overall number of armed private security contractor personnel decreased from June 2009 to March 2010, the percentage of contractors who are armed private security contractors increased from 11% to 12% over the same period.

### *Casualty Rates of PSC Personnel vs. Uniformed Personnel*

According to DOD, in 2009, 26 private security contractor personnel working for DOD were killed in Iraq, compared to 148 U.S. troops killed over the same period.<sup>26</sup> Adjusting for the difference in the number of PSC personnel compared to troops, a PSC employee working for DOD in Iraq was 1.8 times more likely to be killed than uniformed personnel.<sup>27</sup>

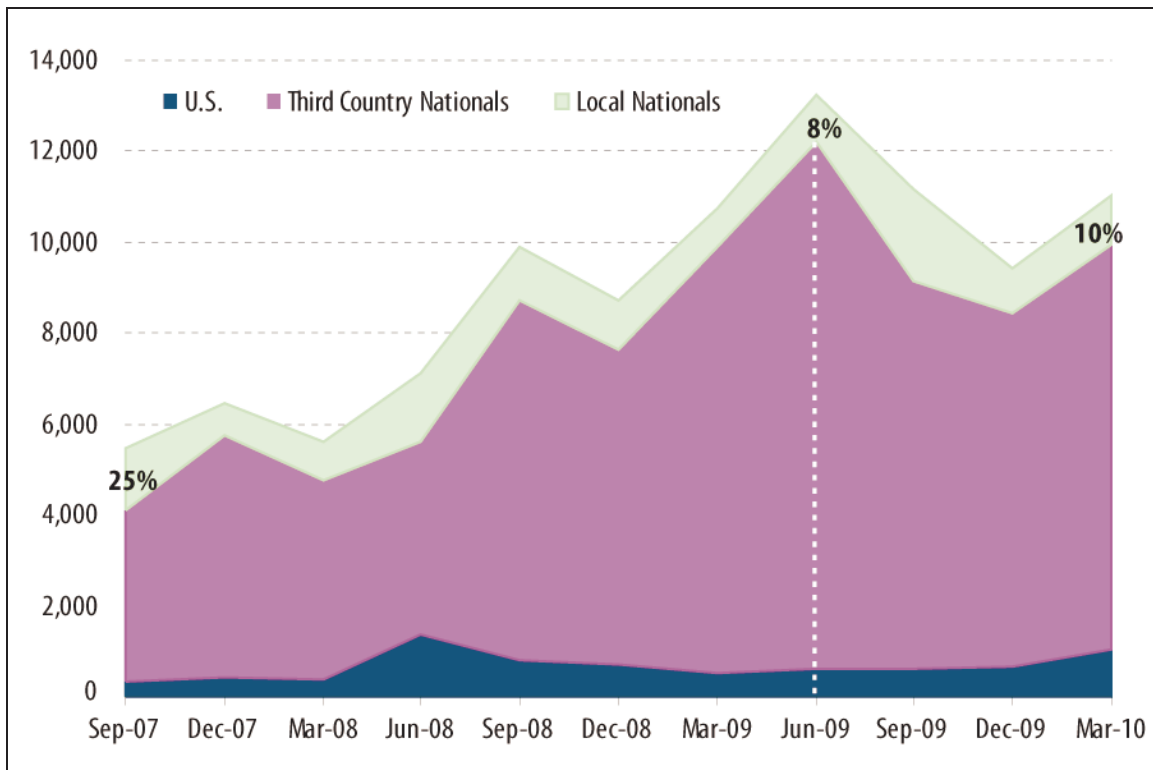
<sup>26</sup> PSC data provided by DOD to CRS on June 18, 2010. Troop data can be found at [http://siadapp.dmdc.osd.mil/personnel/CASUALTY/oif\\_list\\_of\\_names.pdf](http://siadapp.dmdc.osd.mil/personnel/CASUALTY/oif_list_of_names.pdf), *Operation Iraqi Freedom -- Names, Alphabetical Order*.

<sup>27</sup> PSC data provided by DOD to CRS on June 18, 2010. Troop data can be found at <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>

### Nationality of Armed Contractors

Contracting local nationals is an important element in DOD's counterinsurgency strategy. In January 2009, General Raymond Odierno issued a memorandum stating "employment of Iraqis not only saves money but it also strengthens the Iraqi economy and helps eliminate the root causes of the insurgency—poverty and lack of economic opportunity."<sup>28</sup> The memorandum set forth a goal of increasing the percentage of local national contractors. From January 2009 to March 2010, the percentage of local nationals serving as armed security contractors has decreased from 12% to 10% (see **Figure 3**). Over the same period, the number of local nationals serving as armed contractors increased by 30, whereas the number of third-country nationals increased by 1,998 and the number of U.S. nationals increased by 300. In contrast to Iraq, where 10% of armed security contractors are local nationals, in Afghanistan, 93% are local nationals (see **Table 2** and **Figure 4**).

**Figure 3. Trend of Armed Security Contractors in Iraq by Nationality**  
(March 31, 2009)



**Source:** CENTCOM Quarter Contractor Census Reports, FY2008-Q2 FY2010.

**Notes:** Percentages represent number of armed security contractors who are local nationals.

<sup>28</sup> General Raymond T. Odierno, Memorandum, *Increased Employment of Iraq Citizens Through Command Contracts*, Multi-National Force-Iraq, January 31, 2009.

## Afghanistan

### *Number of Contractors*

According to DOD, as of March 2010, there were 16,733 private security contractors in Afghanistan, of which 16,398 (98%) were armed. Of the armed security contractors, 93% were local nationals (see **Table 2**).

**Table 2. Number of Armed Security Contractors in Afghanistan by Nationality**  
(March 31, 2010)

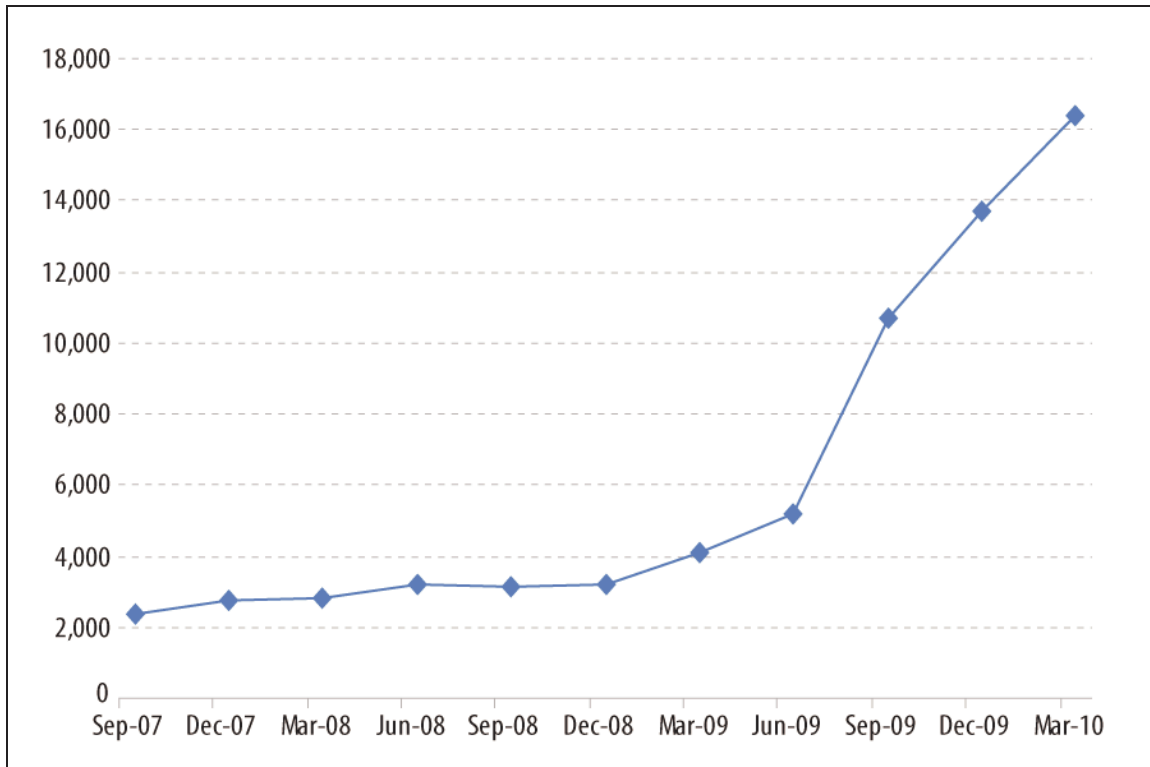
	Number of Americans	Number of Afghans	Number of Third-Country Nationals	Total
Armed PSCs in Afghanistan	137	15,301	960	16,398
Percent of Total	<1%	93%	6%	100%

**Source:** CENTCOM FY2010 2<sup>nd</sup> Quarter Contractor Census Report.

**Notes:** Sum of percentages does not equal 100% due to rounding. Actual numbers of employees working in Afghanistan vary widely on a daily basis due to personnel rotations, medical evacuations, and R&R travel.

According to DOD, from the 15 month period of September 2007 to December 2008, the number of armed security contractors increased from 2,401 to 3,184, an increase 33% (783 contractors). However, from the 15 month period of December 2008 to March 2010, the number of armed security contractors increased from 3,184 to 16,398, an increase of 415% (13,214 contractors) (see **Figure 4**). DOD attributed the increase in security contractors to increased operational tempo and efforts to stabilize and develop new and existing forward operating bases.<sup>29</sup>

<sup>29</sup> CENTCOM FY2009 4<sup>th</sup> Quarter and FY2010 2<sup>nd</sup> Quarter Contractor Census.

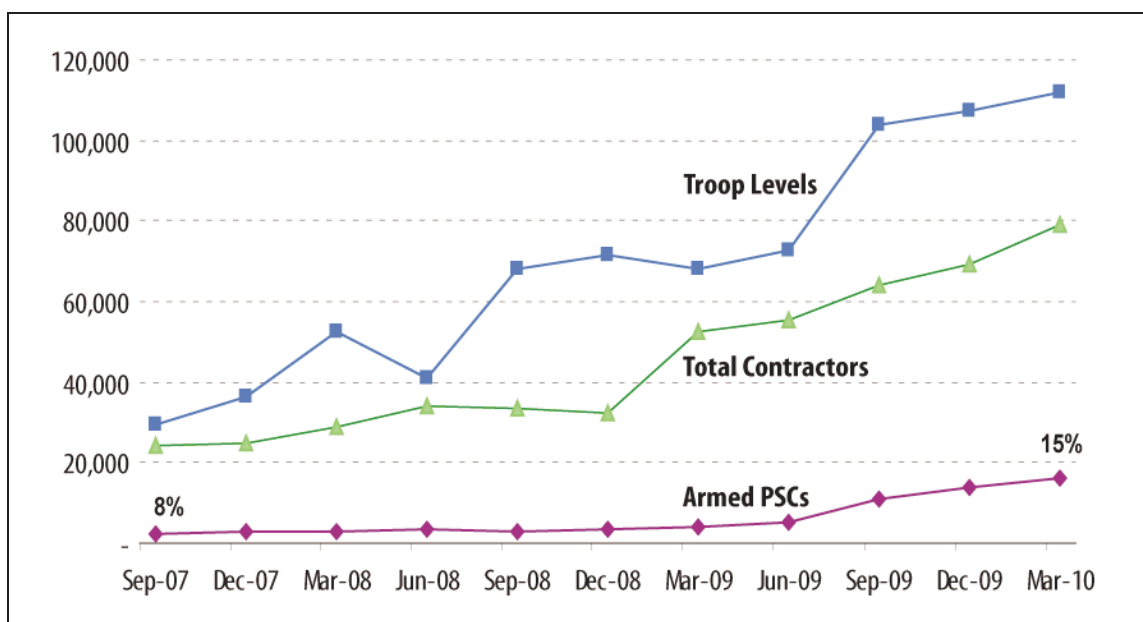
**Figure 4. Trend of Armed Security Contractors in Afghanistan**

Source: CENTCOM Quarter Contractor Census Reports, FY2008-Q2 FY2010.

### *Armed Security Contractors Compared to Total Contractor and Troop Levels*

According to DOD, from September 2007 to June 2009, the number of armed security contractors increased at a slower rate than overall contractor and troop levels. Over the same time period, the number of armed security contractors increased from 2,401 (8% of all contractors) to 5,165 (7% of all contractors). However, from June 2009 to March 2010, armed security contractors increased at a faster rate (217%) than total contractors (54%) or troop levels (44%). As of March 2010, armed security contractors made up 15% of all contractors (see **Figure 5**). However, armed contractors make up only about 9% of DOD's workforce in Afghanistan. Just like in Iraq, the number of armed security contractors in Afghanistan as of March 2010 represents the highest percentage of DOD's contractor workforce and DOD's total workforce since September 2007.



**Figure 5. Number of APSCs vs. Total Contractor and Troop Levels in Afghanistan**

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

**Notes:** Percentages represent number of armed security contractors relative to total number of contractors.

### *Casualty Rates of PSC Personnel vs. Uniformed Personnel*

According to DOD, from June 2009 to April 2010, 260 private security contractor personnel working for DOD have been killed in Afghanistan, compared to 324 U.S. troops killed over the same period.<sup>30</sup> Adjusting for the difference in the number of PSC personnel compared to troops, a PSC employee working for DOD in Afghanistan is 4.5 times more likely to be killed than uniformed personnel (see **Figure 6**).

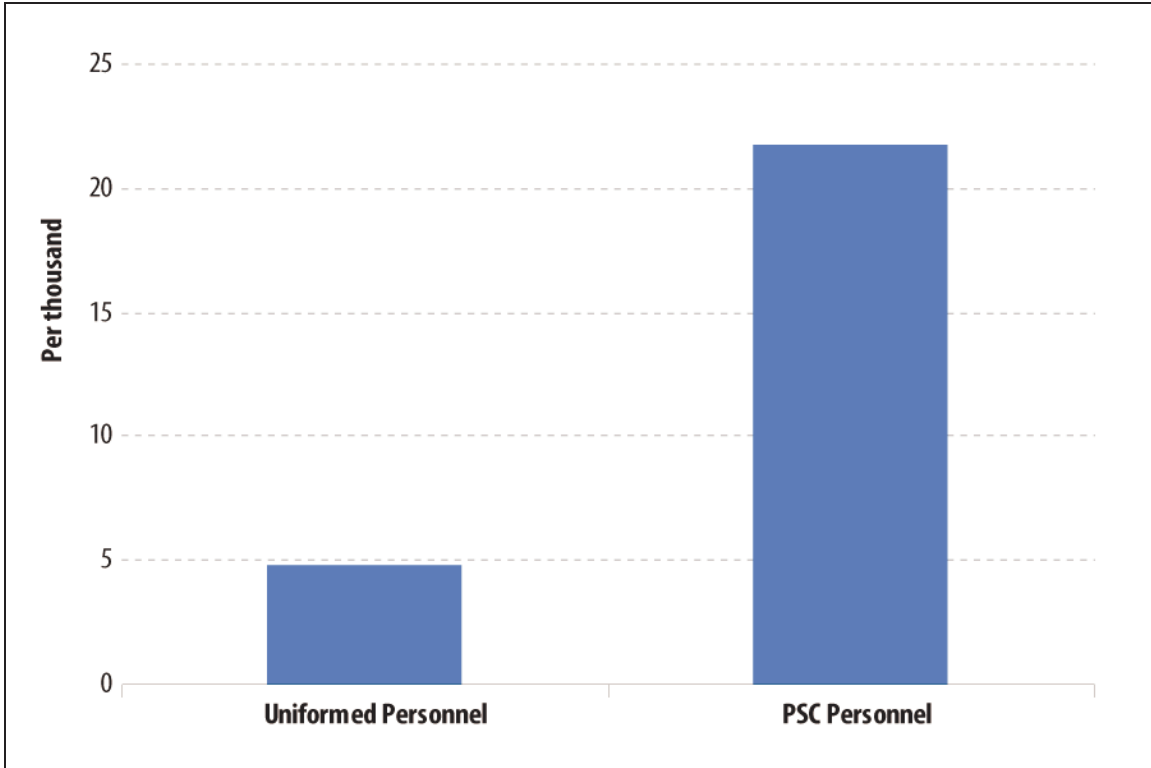
More contractor personnel were killed providing convoy security (188 people or 72% of PSC personnel fatalities) than any other type of security, even though those providing convoy security were less than half of the total PSC workforce.<sup>31,32</sup>

<sup>30</sup> PSC data provided by DOD to CRS on May 7, 2010. Troop data can be found at [http://siadapp.dmdc.osd.mil/personnel/CASUALTY/oef\\_list\\_of\\_names.xls](http://siadapp.dmdc.osd.mil/personnel/CASUALTY/oef_list_of_names.xls), *Operation Enduring Freedom -- Names, Alphabetical Order*.

<sup>31</sup> Based on data provided by DOD on May 7, 2010.

<sup>32</sup> Based on DOD documents and discussions with DOD officials.

**Figure 6. Number of PSC Personnel Killed vs. Uniformed Personnel**  
(deaths per thousand)

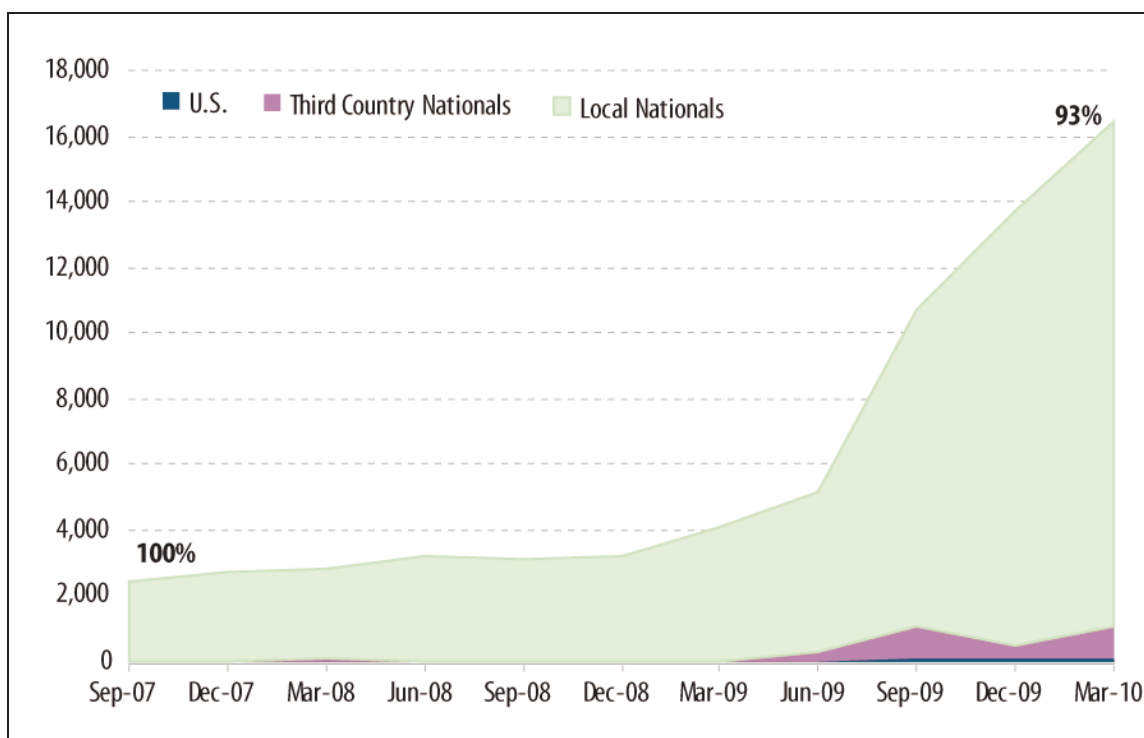


**Source:** CRS Analysis of DOD data.

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

### *Nationality of Contractors*

According to DOD, since September 2007, local nationals have made up 90% or more of all armed security contractors in Afghanistan (see **Figure 7**).

**Figure 7. Trend of Armed Security Contractors in Afghanistan by Nationality**

**Source:** Department of Defense.

**Notes:** Percentages represent the number of armed security contractors who are local nationals.

## Armed Security Contractors as a Percentage of DOD's Armed Stability and Security Force

### Are Armed Security Contractors Part of DOD's Armed Force?

One of DOD's core missions in Iraq and Afghanistan is to provide stability and security. Sometimes, this mission requires offensive combat operations and sometimes it requires a more defensive posture.<sup>33</sup> For purposes of this report, the armed stability and security force (herein referred to as the armed force) is defined as uniformed personnel and contractors who are armed to perform their core mission of conducting security operations as part of the military's overall counterinsurgency mission, even in the event of an insurgent attack. DOD's total armed force is therefore calculated by adding together the number of uniformed troops and the number of armed contractors performing these security operations.<sup>34</sup>

<sup>33</sup> For example, in a clear and hold strategy, clearing a region of insurgents is an offensive operation that should be undertaken exclusively by military personnel; holding a region is a more defensive operation that could include the use of armed security contractors to protect certain sites.

<sup>34</sup> Many analysts believe that armed security contractors are taking part in combat operations, arguing in part that international law makes no distinction between the offensive or defensive nature of participation in combat. DOD disagrees, pointing to Department of Defense Instruction 1100.22, which defines combat to exclude the present use of PSCs in Iraq and Afghanistan. Even according to analysts who believe that armed contractors are engaging in combat, there are significant differences between contractors and uniformed personnel. For example, contractors are bound by (continued...)

## Calculating the Size of DOD's Armed Stability and Security Force

The first step in determining the percentage of DOD's armed force that is composed of contractors is to calculate the number of uniformed personnel that are part of the armed force. One way to estimate the breakdown of troops currently deployed into combat or armed forces versus support personnel is to use the tooth-to-tail ratio. This ratio describes the relationship between the personnel used to perform the military's "core" mission (tooth) versus the personnel used to manage and support those performing the "core" mission (tail).<sup>35</sup> Title X (10 U.S.C. § 118) defines the tooth-to-tail ratio as the "ratio of combat forces to support forces." This ratio can be expressed in terms of percent. A 40% tooth-to-tail breakdown, for example, would mean that a deployed force of 130,000 uniformed personnel (the number of troops currently in Iraq) would have a "tooth" of 52,000.

Because there is no single method for distinguishing between armed and support forces, DOD and military analysts have employed many different approaches to determine the tooth-to-tail ratio.<sup>36</sup> When dealing with counterinsurgency/stability operations such as those currently taking place in Iraq and Afghanistan, determining the tooth-to-tail ratio becomes more difficult as the distinction between troops performing core missions and those providing support begins to blur.<sup>37</sup> According to Department of Defense Instruction (DODI) 3000.05, "Stability operations are a core U.S. military mission that the Department of Defense shall be prepared to conduct with proficiency equivalent to combat operations."<sup>38</sup> Stability operations include "restor[ing] essential services" and "repair[ing] and protect[ing] critical infrastructure."<sup>39</sup> Using this definition, any uniformed personnel who are working to develop or reconstruct a remote village may be performing the core mission of working to win the hearts and minds of the local population. In that sense, such uniformed personnel are performing a core mission of the military and could be considered part of the "tooth."<sup>40</sup> However, as critical as these efforts are to counterinsurgency operations, their core mission is not to conduct armed operations and therefore they are generally considered to be support personnel under Title X.<sup>41</sup>

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(...continued)

the terms of the contract, do not fall within the same chain of command as uniformed personnel, and are barred by contract and DOD regulations from participating in offensive activities. For a more detailed discussion on whether armed security contractors are engaging in combat, see CRS Report R40991, *Private Security Contractors in Iraq and Afghanistan: Legal Issues*, by Jennifer K. Elsea.

<sup>35</sup> See Defense Business Board, *Task Group report on Tooth-to-Tail Analysis*, Report to the Secretary of the Defense, April 2008, p. Slide 4; Captain Tamara L. Campbell and Captain Carlos H. Velasco, "An Analysis of the Tail to Tooth Ratio as a Measure of Operational Readiness and Military Expenditure Efficiency", (Master's Thesis, Naval Postgraduate School, 2002), p. Abstract; "The Other End of the Spear: The Tooth-to-Tail Ratio (T3R) in Modern Military Operations," *The Long War Series: Occasional Paper 23*, Combat Studies Institute Press, Ft. Leavenworth, KS, 2007.

<sup>36</sup> For a discussion of various ways to calculate the tooth-to-tail ratio, see: Captain Tamara L. Campbell and Captain Carlos H. Velasco, "An Analysis of the Tail to Tooth Ratio as a Measure of Operational Readiness and Military Expenditure Efficiency", (Master's Thesis, Naval Postgraduate School, 2002).

<sup>37</sup> Task Group report on Tooth-to-Tail Analysis, p. slide 7.

<sup>38</sup> Dated September 16, 2009.

<sup>39</sup> DODI 3000.05.

<sup>40</sup> *Counterinsurgency*, FM 3-24, December 2006. See Chapter Two, which states "A successful COIN operation meets the contested population's needs to the extent needed to win popular support." p. 2-1.

<sup>41</sup> As used in this report, the armed force includes personnel whose mission inherently requires them to be armed. This definition excludes personnel who are armed for self-protection or for demonstration purposes when providing training.

A 2007 study published by the Combat Studies Institute determined the tooth-to-tail for recent operations in Iraq to be 40% combat personnel and 60% support.<sup>42</sup> Combat engineers were included in the “tooth.” Some analysts argue that the large number of contractors currently providing operational support to DOD in Iraq and Afghanistan frees up more uniformed personnel to perform combat operations and that therefore the ratio is actually higher. A tooth-to-tail of 45% can account for a possible increase in the percentage of troops dedicated to armed operations. Some analysts could argue that in a counterinsurgency, the tooth should also include members of logistics units who are responsible for defending the convoy from enemy attack and are armed with heavy machine guns, grenade launchers, rocket launchers, and mines. Increasing the tooth-to-tail ratio by another 5% could account for such troops. Because there is no single agreed-upon tooth-to-tail ratio in Iraq and Afghanistan, the figures below include calculations based on tooth-to-tail percentages ranging between 40% and 50% in order to present a range of calculations.<sup>43</sup>

The next step in determining the percentage of DOD’s armed force that is composed of contractors is to calculate the number of contractors to be included in the tooth. As of March 2010, there were 11,029 armed security contractors in Iraq and 16,398 armed security contractors in Afghanistan (see **Table 1** and **Table 2**). Some analysts consider all armed security contractors as part of the armed force. Other analysts argue that a number of armed security contractors are performing security tasks that would not necessarily be assigned to a combat unit or would be assigned as an additional duty to non-combat personnel, such as guarding a gym or dining hall at a large military base. The number of armed contractors considered to be part of the “tooth” can be adjusted down by 15% to account for those armed contractors that are not performing functions that could be considered closely related to security and stability operations. The figures below include calculations based on the actual number of armed security contractors and a number discounted by 15% in order to present a range of calculations.

### **Armed Contractors as a Percentage of DOD’s Armed Force in Iraq and Afghanistan**

Based on the estimated size of the armed stability and security force as discussed above, contractors in Iraq may make up approximately 16-22% of DOD’s armed force in Iraq and 26-34% of the armed force in Afghanistan (see **Table 3** and **Table 4**).

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<sup>42</sup> The report also calculated the tooth-to-tail ratios for Vietnam (35%) and Desert Storm (30%). The tooth-to-tail ratio for Iraq was based on data from 2005. See “The Other End of the Spear: The Tooth-to-Tail Ratio (T3R) in Modern Military Operations,” *The Long War Series: Occasional Paper 23*, Combat Studies Institute Press, Ft. Leavenworth, KS, 2007.

<sup>43</sup> There have been other attempts to calculate a tooth-to-tail ratio. For example, in 2001, a commission on national security stated that only 20% of uniformed personnel were involved in combat activity (United States Commission on National Security/21<sup>st</sup> Century, *Creating Defense Excellence: Defense Addendum to Road Map for National Security*, Washington D.C., May 15, 2009, p. 20). However, this report relies on the tooth-to-tail analysis quoted above because it is based on actual deployments to Iraq in 2005.

**Table 3. Armed Security Contractors as Percentage of Total Armed Force in Iraq**  
(March 2010)

Troop Level	Tooth-To-Tail Ratio	Armed/Combat Troops	Armed PSCs	Total Armed Force	Contractors as % of Total Armed Force
95,900	40%	38,360	11,029	49,389	22%
95,900	45%	43,155	11,029	54,184	20%
95,900	50%	47,950	9,375	57,325	16%

**Source:** Troop and PSC data: CENTCOM 2<sup>nd</sup> Quarter Contractor Census Report (as of March 31, 2010). Tooth-to-Tail ratios based on sources cited above. All other figures based on CRS analysis of data.

**Note:** The tooth-to-tail ratios of 45% and 50% are based on CRS adjustment as described above. The Armed PSC level of 9,375 is based on a 15% downward adjustment of armed contractors as explained above.

**Table 4. Armed Security Contractors as Percentage of Total Armed Force in Afghanistan**  
(March 2010)

Troop Level	Tooth-To-Tail Ratio	Armed/Combat Troops	Armed PSCs	Total Armed Force	Contractors as % of Total Armed Force
79,100	40%	31,640	16,398	48,038	34%
79,100	45%	35,595	16,398	51,993	32%
79,100	50%	39,550	13,398	53,498	26%

**Source:** Troop and PSC data: CENTCOM 2<sup>nd</sup> Quarter Contractor Census Report (as of March 31, 2010). Tooth-to-Tail ratios based on sources cited above. All other figures based on CRS analysis of available data.

**Note:** The tooth-to-tail ratios of 45% and 50% are based on CRS adjustment as described above. The Armed PSC level of 13,398 is based on a 15% downward adjustment of armed contractors as explained above.

As discussed earlier in this report, there are a number of reasons that DOD relies on armed security contractors, including saving money, being able to quickly mobilize and demobilize security personnel, and freeing up uniformed personnel to perform offensive combat operations. DOD and many analysts further point to potential benefits of using local nationals to provide security, including providing jobs, building relationships and developing contacts with the local population, and having a security force that has a better understanding of the region. In addition, particularly in a counterinsurgency situation, incorporating local nationals into current U.S. security operations could contribute to a smoother and more secure transition to local governance as U.S. troops drawdown.

However, using large numbers of armed security contractors can also pose a number of challenges, including contract oversight, weaknesses in the chain of command, and potentially undermining U.S. counterinsurgency efforts. For example, there have been a number of reports that U.S. and NATO forces have frequently hired security providers that are run by warlords who have private militias which may compete with state institutions for power.<sup>44</sup> Other analysts have

<sup>44</sup> Jake Sherman and Victoria DiDomenico, *The Public Cost of Private Security in Afghanistan*, Center on International Cooperation: New York University, September 2009, p. 8. See also Gareth Porter, "AFGHANISTAN: U.S., NATO (continued...)"

raised concerns that PSCs compete with local police and security forces for the best trained and best performing personnel. These analysts argue that some of the most qualified local nationals may choose to work for PSCs because of higher salaries and other benefits that the local government can not match.<sup>45</sup>

## Can the Use of PSCs Undermine US Efforts?

According to the Army Field Manual on counterinsurgency, one of the fundamental tenets of counterinsurgency operations—such as those undertaken in Iraq and Afghanistan—is to establish and maintain security while simultaneously winning the hearts and minds of the local population. Abuses by security forces, according to the manual, can be a major escalating factor in insurgencies.<sup>46</sup>

Abuses committed by contractors, including contractors working for other U.S. agencies, can also strengthen anti-American insurgents.<sup>47</sup> There have been published reports of local nationals being abused and mistreated by DOD contractors in such incidents as the summary shooting by a private security contractor of an Afghan who was handcuffed,<sup>48</sup> the shooting of Iraqi civilians,<sup>49</sup> and the abuse of prisoners at Abu Ghraib prison in Iraq.<sup>50</sup> (It should be noted that there have also been reports of military personnel abusing and otherwise mistreating local nationals, including the abuses that took place at Abu Ghraib prison.<sup>51</sup> CRS has not conducted an analysis to determine whether the incidence of abuses is higher among contractors than it is among military personnel.)

Many of the high-profile reports of PSCs shooting local nationals or otherwise acting irresponsibly were committed by contractors working for the Department of State. Some of these incidents include the reported shooting of Iraqi civilians by Triple Canopy employees,<sup>52</sup> the shooting of 17 Iraqi civilians at a Baghdad traffic circle in Nisoor Square by Blackwater employees,<sup>53</sup> and the recent controversy over the behavior of security contractors from Armour

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(...continued)

Forces Rely on Warlords for Security,” *Interpress News Service*, October 30, 2009.

<sup>45</sup> Based on discussions and email exchanges with Dr. Thomas X. Hammes, Senior Research Fellow, Institute for National Strategic Studies, National Defense University, January 7-11, 2010.

<sup>46</sup> Department of Defense, *Counterinsurgency*, FM 3-24, December 2006, p. 1-9

<sup>47</sup> Chairman of the Joint Chiefs of Staff, *Operational Contract Support*, Joint Publication 4-10, October 17, 2008, pp. IV-20; See also *Counterinsurgency*, p. 1-9. *Operational Contract Support* recognizes that local nationals may not always draw a distinction between government contractors and the U.S. military.

<sup>48</sup> Bruce Alpert, “Killing in Afghanistan hits very close to home; N.O. man is accused of cold-blooded crime,” *Times-Picayune*, December 17, 2008, p. 1.

<sup>49</sup> Mark Townsend, “National: Iraq victims sue UK security firm: Guards employed by Hampshire-based company are,” *The Observer*, January 11, 2009, p. 14.

<sup>50</sup> Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004. See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>. The contractors involved in the Abu Ghraib incident are generally considered not to have been private security contractors.

<sup>51</sup> Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004. See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>.

<sup>52</sup> Tom Jackman, “Security Contractor Cleared in Two Firings,” *Washington Post*, August 2, 2007, p. A-15.

<sup>53</sup> Blackwater has since changed its name to Xe.

Group who were hired to protect the U.S. embassy in Afghanistan.<sup>54</sup> Of the six incidents listed above, five were committed by U.S. companies and U.S. nationals.

Incidents of abuse still occur in Afghanistan. Private security contractors escorting supply convoys to coalition bases have been blamed for killing and wounding more than 30 innocent civilians during the past four years in Afghanistan's Maywand district alone, leading to at least one confrontation with U.S. forces.<sup>55</sup> And in May of this year, U.S. and Afghan officials reportedly stated that local Afghan security contractors protecting NATO supply convoys in Kandahar "regularly fire wildly into villages they pass, hindering coalition efforts to build local support."<sup>56</sup> One officer from a Stryker brigade deployed in Afghanistan was quoted as saying that these contractors "tend to squeeze the trigger first and ask questions later."<sup>57</sup> And unlike in Iraq, where a series of high-profile incidents involved U.S. security personnel, in Afghanistan, many of the guards causing the problems are Afghans.

According to many analysts, these events have in fact undermined the U.S. mission in Iraq and Afghanistan.<sup>58</sup> An Iraqi Interior Ministry official, discussing the behavior of private security contractors, said "Iraqis do not know them as Blackwater or other PSCs but only as Americans."<sup>59</sup> One senior military officer reportedly stated that the actions of armed PSCs "can turn an entire district against us."<sup>60</sup> Some analysts also contend that PSCs can be a direct threat to the legitimacy of the local government. These analysts argue that if counterinsurgency operations are a competition for legitimacy but the government is allowing armed contractors to operate in the country without the contractors being held accountable for their actions, then the government itself can be viewed as not legitimate in the eyes of the local population. These analysts point to the recent court decision dismissing the case against former Blackwater employees as a case in point where the legitimacy of the U.S. and local government is being undermined by the actions of PSCs.<sup>61</sup>

The extent to which the behavior of private security contractors in Afghanistan has hurt coalition efforts in Afghanistan was recently discussed by Major General Nick Carter (United Kingdom), International Security Assistance Force (ISAF) Afghanistan Regional Command South, who stated that the "culture of impunity" that exists around PSCs are a serious problem that needs to be dealt with and that this culture is to some degree "our own doing."<sup>62</sup>

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<sup>54</sup> Tony Harris, Jill Dougherty, and Chris Lawrence, et al., "U.S. Embassy Hazing & Humiliation," *CNN: CNN Newsroom*, September 2009. See also, Letter from Project on Government Oversight to The Honorable Hillary Clinton, Secretary of State, September 1, 2009, <http://www.pogo.org/pogo-files/letters/contract-oversight/co-gp-20090901.html>.

<sup>55</sup> Sean Taylor, "Trigger-Happy Security Complicates Convoys," *Army Times*, December 1, 2009.

<sup>56</sup> Sebastian Abbot, "Private Guards Anger U.S., Afghans," *Associated Press*, May 1, 2010.

<sup>57</sup> Ibid.

<sup>58</sup> See David Zucchini, "Private security forces unnerve Afghans," *Chicago Tribune*, August 17, 2009.

<sup>59</sup> Steve Fainaru, "Where Military Rules Don't Apply; Blackwater's Security Force in Iraq Given Wide Latitude by State Department," *Washington Post*, September 20, 2007, Pg. A1.

<sup>60</sup> Anna Mulrine and Keith Whitelaw, "Private Security Contractors Face Incoming Political Fire," *U.S. News & World Report*, October 15, 2007.

<sup>61</sup> Charlie Savage, "U.S. Judge throws out case against Blackwater; Indictment for shootings in Iraq tainted by misuse of defendants' statements," *International Herald Tribune*, January 2, 2010, p. 1; Editorial, "Stain on US justice," *Arab news*, January 2, 2010.

<sup>62</sup> "Major General Nick Carter (U.K. Royal Army) Holds a Defense Department News Briefing Via Teleconference From Afghanistan," CQ Transcript, May 26, 2010.



The perception that DOD and other government agencies are deploying PSCs who abuse and mistreat people can fan anti-American sentiment and strengthen insurgents, even when no abuses are taking place. There have been reports of an anti-American campaign in Pakistan, where stories are circulating of U.S. private security contractors running amok and armed Americans harassing and terrifying residents.<sup>63</sup> U.S. efforts can also be undermined when DOD has ties with groups that kill civilians or government officials, even if the perpetrators were not working for DOD when the killings took place. In June 2009, the provincial police chief of Kandahar, Afghanistan, was killed by a group that worked as a private security contractor for DOD.<sup>64</sup>

Pointing to the example of the killing of the police chief in Kandahar, some analysts have also argued that the large-scale use of armed contractors in certain countries can undermine the stability of fragile governments. In a paper for the U.S. Army War College, Colonel Bobby A. Towery wrote

After our departure, the potential exists for us to leave Iraq with paramilitary organizations that are well organized, financed, trained and equipped. These organizations are primarily motivated by profit and only answer to an Iraqi government official with limited to no control over their actions. These factors potentially make private security contractors a destabilizing influence in the future of Iraq.

These and other considerations have led a number of analysts, government officials, and military officers to call for limiting the use of PSCs in combat and stability operations. Some analysts have called for completely barring the use of PSCs during such operations. The executive summary for the U.S. Naval Academy's 9th Annual McCain Conference on Ethics and Military Leadership takes this position:

We therefore conclude that contractors should not be deployed as security guards, sentries, or even prison guards within combat areas. APSCs should be restricted to appropriate support functions and those geographic areas where the rule of law prevails. In irregular warfare (IW) environments, where civilian cooperation is crucial, this restriction is both ethically and strategically necessary.<sup>65</sup>

Others have suggested a more targeted approach, such as limiting DOD's use of PSCs to providing only static security in combat areas, leaving all convoy and personal security details to the military.<sup>66</sup>

Analysts calling for restrictions on the use of PSCs generally believe that contractors are more likely to commit abuses or other atrocities than military personnel. Some analysts believe that the culture of the military, which is focused on mission success and not on profit or contractual

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<sup>63</sup> Saeed Shah, "Anti-Americanism rises in Pakistan over U.S. motives," *McClatchy Newspapers*, September 7, 2009. See also "Article flays Pakistan for not taking 'serious note' of US firm's activities," *The British Broadcasting Corporation*, September 25, 2009, 03:25, BBC Monitoring South Asia.

<sup>64</sup> Noor Khan, "Afghan minister calls for disbanding of private security forces after killing of police chief," *Associated Press*, June 30, 2009, AP Newswire.

<sup>65</sup> Vice Admiral Jeff Fowler, Superintendent, U.S. Naval Academy, Executive Summary for the U.S. Naval Academy's 9th Annual McCain Conference on Ethics and Military Leadership, Annapolis, MD, April 23, 2009, <http://www.usna.edu/Ethics/Seminars/mccain.htm> Last visited August 21, 2009. See also Colonel Bobby A. Towery, "Phasing Out Private Security Contractors in Iraq", (master's thesis, U.S. Army War College, 2006), p. 12.

<sup>66</sup> Col. David A. Wallace, "The Future Use of Corporate Warriors With the U.S. Armed Forces: Legal, Policy, and Practical Considerations and Concerns," *Defense Acquisition Review Journal*, vol. 16, no. 2 (July 2009), p. 136.

considerations, makes it less likely that uniformed personnel will behave inappropriately. Some analysts and DOD officials believe that lax contractor oversight has significantly contributed to contractor abuses.<sup>67</sup> This sentiment was echoed by then Senator Barack Obama, who stated “we cannot win a fight for hearts and minds when we outsource critical missions to unaccountable contractors.”<sup>68</sup> According to these analysts, improved oversight and accountability could mitigate the negative effects that the use of PSCs and other contractors has had on U.S. efforts in Iraq and Afghanistan, and could potentially bring the standard of behavior of PSCs on par with that of uniformed personnel.

## DOD Management and Oversight of PSCs

DOD officials have stated that the military's experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD's attention on the importance of contractors to operational success. DOD has taken steps to improve how it manages and oversees all contractors in Iraq and Afghanistan. These steps include tracking contracting data, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce to manage contractors in Iraq and Afghanistan, implementing rules and regulations for managing and coordinating PSCs, and updating DOD doctrine as it relates to contractors generally. To the extent that DOD improves the management and oversight of contractors broadly, management and oversight of security contractors should also be improved.

DOD has also taken a number of steps to specifically improve management and oversight of PSCs. In July 2009, DOD issued an Instruction, *Private Security Contractors (PSCs) Operating in Contingency Operations*, establishing policy and procedures for managing private security contractors during contingency operations.<sup>69</sup> DOD also released an interim rule modifying the Code of Federal Regulations that lays out policy regarding the use of private security contractors in war zones. The interim rule includes policies and procedures for selecting, training, equipping and overseeing private security contractors. DOD established Contractor Operations Cells in Iraq and in Afghanistan to coordinate the movement of PSCs,<sup>70</sup> and it established the Armed Contractor Oversight Division to receive serious incident reports involving PSCs and to ensure that all of the incidents are reported, tracked, and investigated.<sup>71</sup>

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<sup>67</sup> According to an Army investigative report, a lack of good contractor oversight at Abu Ghraib prison contributed to fostering a permissive environment in which prisoner abuses took place at the hands of contractors. Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004, p. 52. The report found “Proper oversight did not occur at Abu Ghraib due to a lack of training and inadequate contract management ... [T]his lack of monitoring was a contributing factor to the problems that were experienced with the performance of the contractors at Abu Ghraib.” See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>.

<sup>68</sup> Hauser, C., *New Rules for Contractors are Urged by 2 Democrats*, the New York Times, October 4, 2007.

<sup>69</sup> Ashton Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, *Private Security Contractors (PSCs) Operating in Contingency Operations*, Department of Defense, DODI 3020.50, July 22, 2009. DODI 3020.50 was concurrently published as an interim final rule in the Federal Register.

<sup>70</sup> The Armed Contractor Oversight Division in Iraq was renamed the Armed Contractor Oversight Bureau. For a detailed discussion on DOD efforts to improve the coordination of PSC movements throughout Iraq, see Government Accountability Office, *REBUILDING IRAQ: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements*, GAO-08-966, July 31, 2008; Special Inspector General for Iraq Reconstruction, *Field Commanders See Improvements in Controlling and Coordinating Private Security Contractor Missions in Iraq*, SIGIR 09-022, July 28, 2009.

<sup>71</sup> Special Inspector General for Iraq Reconstruction, *Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved*, SIGIR 09-023, July 28, 2009.

DOD's efforts have improved the management, oversight, and coordination of PSCs. These and other improvements have been discussed at length and noted by the Special Inspector General for Iraq Reconstruction, the Government Accountability Office, and the Commission on Wartime Contracting, which called DOD's improved management of PSCs a success story.<sup>72</sup> Many analysts believe that such improvements can help rein in contractor behavior that undermines U.S. efforts. However, according to a number of analysts, gaps still remain in DOD's management of PSCs. For example, in July 2009, GAO found that DOD needs to develop and finalize background screening and other standards for PSCs.<sup>73</sup> DOD officials stated that improving the management of PSCs is a work in progress that could take three years or more to completely implement.

DOD is also participating in international efforts to develop an enforceable code of conduct for PSCs. As part of this effort, the U.S. and other countries signed the Montreux Document, a non-binding understanding of participating governments regarding the legal obligations that arise whenever such companies operate during situations of armed conflict. The U.S. is involved in efforts to build upon the Montreux Document and develop a more robust mechanism for holding armed security contractors accountable.<sup>74</sup>

## Options for Congress

In assessing whether legislative action could help minimize the harm that armed private security contractors could have on U.S. efforts in Iraq, Afghanistan, and future operations, Congress may consider the options discussed below.

### **Define the Role that Private Security Contractors Can Play in Support of Military Operations Taking Place in Unsecured Environments**

Many analysts believe that the use of armed private security contractors in combat or stability operations poses significant risks to U.S. government interests, including undermining efforts to win hearts and minds during counterinsurgency and other contingency operations. Defining the role that PSCs can—and should not—play in supporting military operations could help minimize the risk that contractors will be placed in situations where their actions will undermine U.S. efforts. Below are three different options for defining the role of PSCs.

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<sup>72</sup> Ibid. See also, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, *Commission on Wartime Contracting: Interim Findings and Path Forward*, 111th Cong., 1st sess., June 10, 2009.

<sup>73</sup> U.S. Government Accountability Office, *Contingency Contract Management: DOD Needs to Develop and Finalize Background and Other Standards for Private Security Contractors*, GAO-09-351, July 31, 2009.

<sup>74</sup> For a more detailed discussion of the Montreux Document and international efforts in this area, see CRS Report R40991, *Private Security Contractors in Iraq and Afghanistan: Legal Issues*, by Jennifer K. Elsea.

### **Prohibit armed security contractors from being deployed in combat zones.**

Proponents of this approach argue that in combat zones, the mechanisms for oversight and accountability of contractors are likely to deteriorate and that, therefore, the use of deadly force should be restricted only to the military. The military possesses a more robust chain of command and is focused on achieving the mission, without consideration for profit motives or contractual requirements. Opponents of this approach argue that DOD simply does not have the forces to accomplish its mission in Iraq and Afghanistan, and that restricting the use of armed security contractors deprives the military of the flexibility to hire and dismiss defensive security contractors that can be tailored for specific situations in a highly fluid environment.

### **Restrict armed security contractors to performing static security.**

Such an approach would permit DOD to use armed security contractors in and around the perimeter of a static location and would bar contractors from performing convoy and some personal security. Contractors would also be barred from serving as quick reaction forces that move to the site of an engagement to extract or protect an individual or convoy. Proponents of this approach argue that most of the high-profile incidents involving armed contractors shooting at local nationals have occurred during convoy or personal security movements outside of the perimeter of a secure location. Accordingly, this approach specifically restricts the use of armed contractors only in those situations where there is likely to be a shooting incident that involves civilians. Opponents of this approach argue that such a restriction leaves DOD with insufficient forces to accomplish its mission in Iraq and Afghanistan. They also argue that this approach limits the flexibility that allows DOD to mobilize and demobilize defensive security forces that can be tailored for specific situations in a highly fluid environment.

### **Restrict armed security contractors to static security, with an exception for local nationals.**

Allowing local national contractors to participate in convoy and personal security would minimize the impact of such a restriction on military forces. Proponents argue that reserving an exception for local nationals gives the military more flexibility in using PSCs without adding significant risk. As discussed above, using local national contractors is an important element in DOD's counterinsurgency strategy. Local nationals understand the language and are subject to local jurisdiction. Few of the high-profile incidents between PSCs and local citizens involved local national security contractors who were working for the U.S. government. Opponents of this approach will still argue that such a restriction leaves DOD with insufficient forces to accomplish its mission in Iraq and Afghanistan, and that it limits the flexibility that allows DOD to mobilize and demobilize defensive security forces that can be tailored for specific situations in a highly fluid environment. Such a restriction could also hamper DOD in future military operations, particularly in the early days of a conflict when events are particularly fluid and the need to rapidly deploy security personnel could be acute. To address this last issue, Congress could empower a Combatant Commander to waive this restriction in initial phases of an operation, for a period not to exceed one year.

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