



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 is relying 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, as well as train security forces. 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 June 2009, there were over 18,000 armed private security contractors in Iraq and Afghanistan. Recent contracting trends indicate that the number of such contractors may continue to increase.

Many analysts and government officials believe that DOD would be unable to execute its mission without PSCs. Nonetheless, 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 where security contractors were 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 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 111th 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 types of tasks and roles 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.¹ 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.² Given the shortage of U.S. troops, PSCs are widely viewed as being 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 the negative effect that PSCs may be having on U.S. counterinsurgency efforts.

This report discusses the type 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. 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.³ This increased reliance on contractors has fueled the growth of the private security industry worldwide.

¹ 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.

² 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.

³ According to one report, "Not since the 17th century has there been such a reliance on private military actors to accomplish tasks directly affecting the success of military engagements." Fred Schreier and Marina Caparini. *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces, March 2005. p. 1. For discussions on the growth of private companies providing security and other support to military efforts worldwide, see, for example: Deborah D. Avant. *The Market for Force: The Consequences of Privatizing Security*. Cambridge, UK; New York: Cambridge University Press, 2005; Simon Chesterman and Chia Lehnardt. *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*. Oxford, UK; New York: Oxford University Press, 2007; and Singer, Peter W. (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.⁴ 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 include⁵

- 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.

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 June 31, 2009, there were 15,279 PSCs in Iraq, of which 2,047 (13%) provided unarmed services. This figure

(...continued)

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.

⁴ 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.”

⁵ 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.

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 estimated that citizens of some 30 countries are working as security contractors in Iraq.⁶ PSC employees are generally divided by nationality into three groups:

1. U.S. nationals;
2. Nationals from non-coalition countries such as Chile, Fiji, Nepal, and Nigeria; 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 reportedly more than 50 PSC companies employing more than 30,000 armed employees.⁷ In Afghanistan, there are reportedly about 40 licensed private security companies employing over 20,000 personnel, with another 30 companies applying for a license.⁸ Estimates of the total number of security contractors in Afghanistan, including those that are not licensed, are as high as 70,000.⁹

Congressional Focus on PSCs

Congress has generally focused more on private security contractors than on other specific contracting issues, even though such contractors only comprise roughly 5-10% 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 where 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

⁶ Conversation with Peter Singer, Brookings Institution, June 13, 2007.

⁷ Martin Chulov and Jon Boone, "Security industry: Ministers view private firms as an imposition to aid reconstruction," *The Guardian*, August 11, 2009, quoting Iraq interior ministry spokesman Abdul Kareem Khalaf. Estimates of number of contractors based on Email correspondence with Lawrence Peter, Director, Private Security Companies Association in Iraq, June 14, 2008.

⁸ "Enekas (Echo)," *National Afghanistan TV (state owned)*, June 8, 2009, as reported by "Afghan TV show discusses private security companies' operations, legality", *The British Broadcasting Corporation, BBC Monitoring South Asia*, June 15, 2009; *Weesa (Afghan Newspaper)*, April 7, 2009, as reported by "Afghan Ministry submits bill on private security companies to parliament", *The British Broadcasting Corporation, BBC Monitoring South Asia*, April 9, 2009.

⁹ David Zucchino, "Private security forces unnerve Afghans," *Chicago Tribune*, August 17, 2009.

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,¹⁰ the Senate Committee on Homeland Security and Governmental Affairs,¹¹ the House Oversight and Government Reform Committee¹², and the House Committee on Armed Services.¹³ 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*.¹⁴

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 weapon, kills or injures another person, or is killed or injured.¹⁵ 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 environments¹⁶ (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).

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ U.S. Congress, House Committee on Armed Services, *Contingency Contracting: Implementing a Call for Urgent Reform*, 110th Cong., 2nd sess., April 9, 2008.

¹⁴ 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.

¹⁵ P.L. 110-181, sec 862.

¹⁶ P.L. 110-417, sec 832.

Private Security Companies Working For the U.S. Government

Why the US 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.¹⁷

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 eight quarters, ending June 30, 2009. 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.¹⁸ 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 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.¹⁹ 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. DOD officials stated SPOT is fully functional and will contain all contractor data by

¹⁷ CRS Report MM70119, *Private Security Contractors: Possible Legislative Approaches*. Online Video. DVD., coordinated by Kennon H. Nakamura.

¹⁸ 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.

¹⁹ *Ibid.*

Q1 FY2010, at which time it will replace the CENTCOM quarterly census as the tracking mechanism for contractor data. SPOT is expected to track contractor data across the entire Iraq and Afghanistan theaters, including contractors based in neighboring countries.²⁰

Iraq

Number of Security Contractors

According to DOD, as of June 2009, there were 15,279 private security contractors in Iraq, of which 13,232 (87%) were armed. Of the armed security contractors in Iraq, 88% were third-country nationals, and 8% were Iraqis (see **Table 1**).

Table 1. Number of Armed Security Contractors in Iraq by Nationality
(June 30, 2009)

	Number of Americans	Number of Iraqis	Number of Third-Country Nationals	Total
Armed PSCs in Iraq	623	1,029	11,580	13,232
Percent of Total	5%	8%	88%	

Source: CENTCOM 3rd Quarter Contractor Census Report (as of June 30, 2009).

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

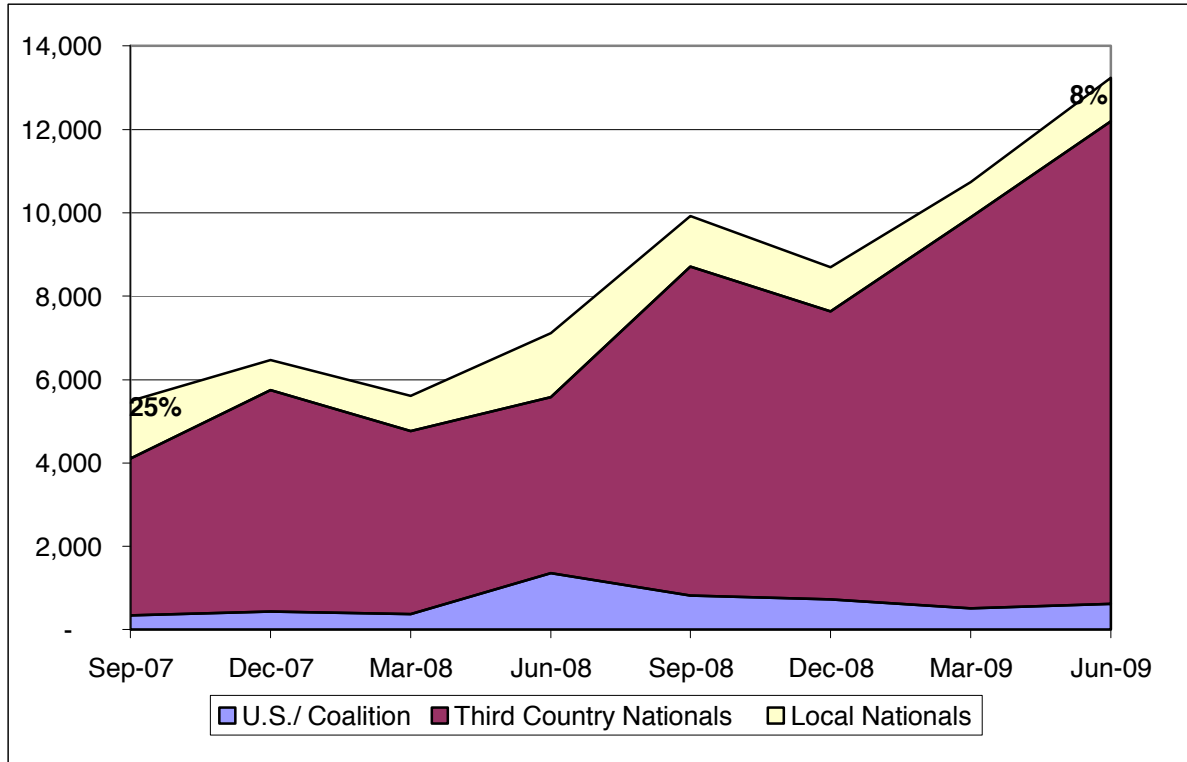
Nationality of Armed Contractors

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."²¹ The memorandum set forth a goal of increasing the percentage of local national contractors. From September 2007 to June 2009, the number of local national armed contractors remained relatively stable, whereas the number of third-country nationals increased from 3,769 to 11,580. As a result of the increase in third-country nationals, the percentage of local nationals serving as armed security contracts dropped from 25% in September 2007 to 8% in June 2009 (see **Figure 1**). In contrast to Iraq, where 8% of armed security contractors are local nationals, in Afghanistan, 95% are local nationals (see **Table 2** and **Figure 3**).

²⁰ In April 2009, SPOT won the Computerworld Honors Program's 21st Century Achievement Award. See http://www.cwhonors.org/documents/The_Laureate_09.pdf.

²¹ General Raymond T. Odierno, Memorandum, *Increased Employment of Iraq Citizens Through Command Contracts*, Multi-National Force-Iraq, January 31, 2009.

Figure I. Trend of Armed Security Contractors in Iraq by Nationality
(June 30, 2009)



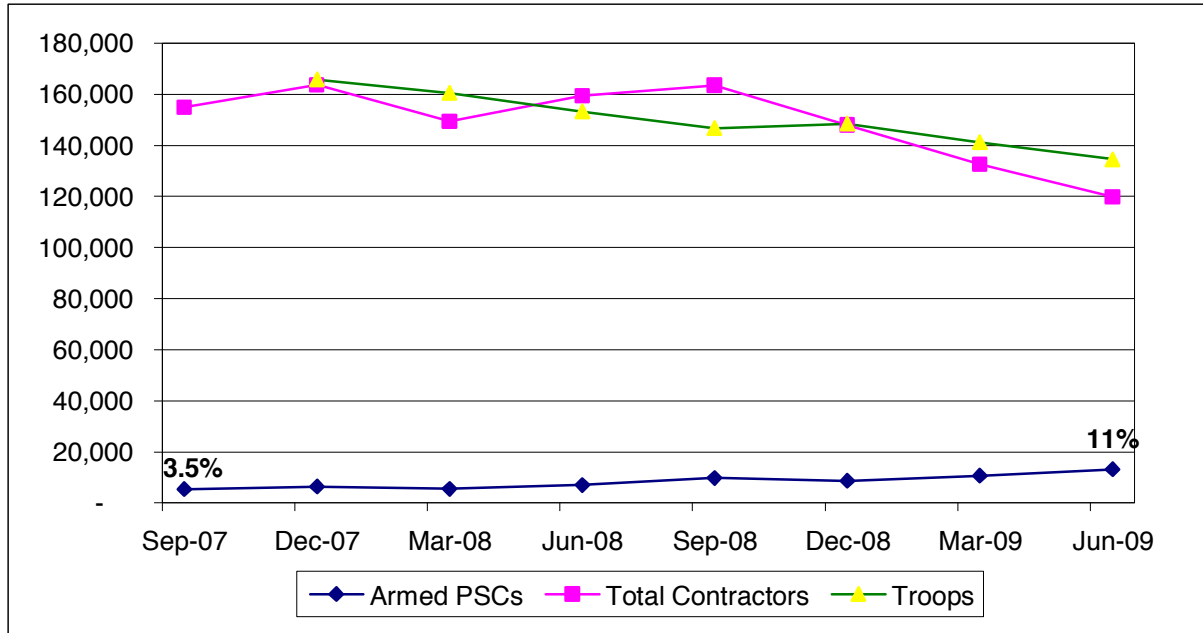
Source: CENTCOM Quarter Contractor Census Reports, FY2008-FY2009.

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

Armed Security Contractors Compared to Total Contractor and Troop Levels

According to DOD, since September 2007, the number of armed security contractors increased even though overall contractor and troop levels decreased over the same period (see **Figure 2**). The number of armed security contractors increased from 5,481 in September 2007 (3.5% of all contractors) to 13,232 in June 2009 (11% of all contractors).

Figure 2. Number of APSCs vs. Total Contractor and Troop Levels in Iraq
(June 2009)



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.

According to DOD, the number of armed security contractors in Iraq rose from 10,743 in the second quarter of FY2009 to 13,232 in the third quarter of 2009, an increase of 19%. DOD attributed the increase to an increased security need as the military begins to draw down forces and to improved ability to account for subcontractors providing security services. Analysts disagree on whether additional PSCs will be needed to fill the security void left by departing U.S. forces or whether fewer PSCs will be needed as the military footprint shrinks.

Afghanistan

Number of Contractors

According to DOD, as of June 2009, there were 5,198 private security contractors, of which 5,165 (99%) were armed. Of the armed security contractors, 95% were local nationals (see **Table 2**).

Table 2. Number of Armed Security Contractors by Nationality

(June 30, 2009)

	Number of Americans	Number of Afghans	Number of Third-Country Nationals	Total
Armed PSCs in Afghanistan	13	4,895	257	5,165
Percent of Total	<1%	95%	5%	

Source: CENTCOM 3rd Quarter Contractor Census Report (as of June 30, 2009).

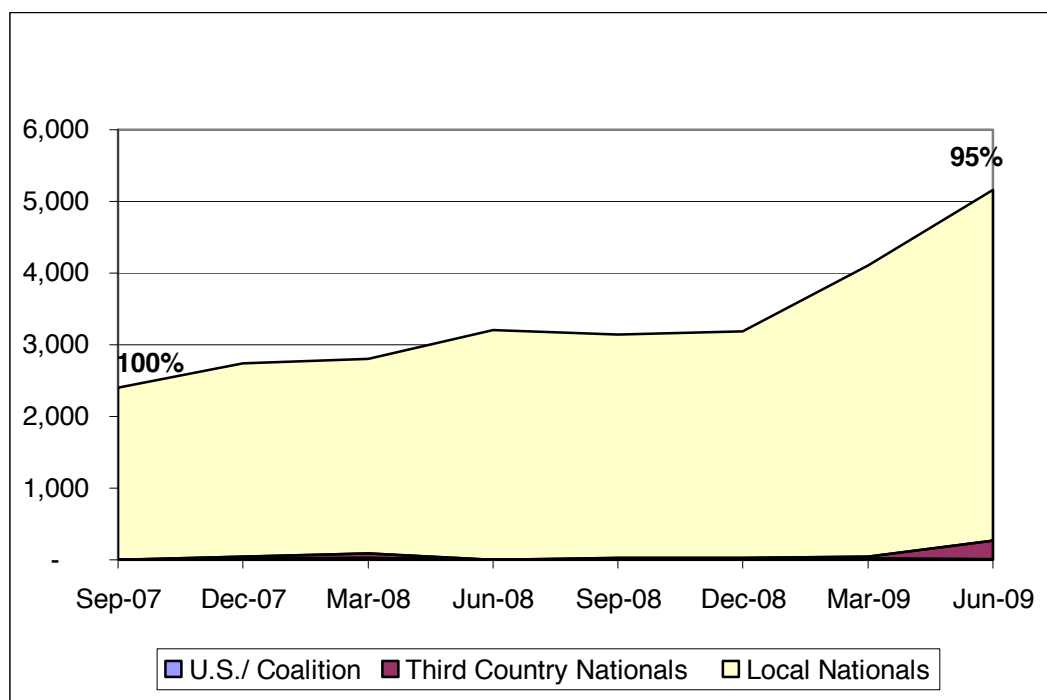
Notes: Sum of percentages does not equal 100% due to rounding. Actual numbers of employees working in Afghanistan vary widely on a daily basis due to personnel rotations, medical evacuations, and R&R travel.

Nationality of Contractors

According to DOD, since September 2007, local nationals have made up 95% or more of all armed security contractors in Afghanistan (see **Figure 3**).

Figure 3. Trend of Armed Security Contractors in Afghanistan by Nationality

(June 30, 2009)



Source: Department of Defense.

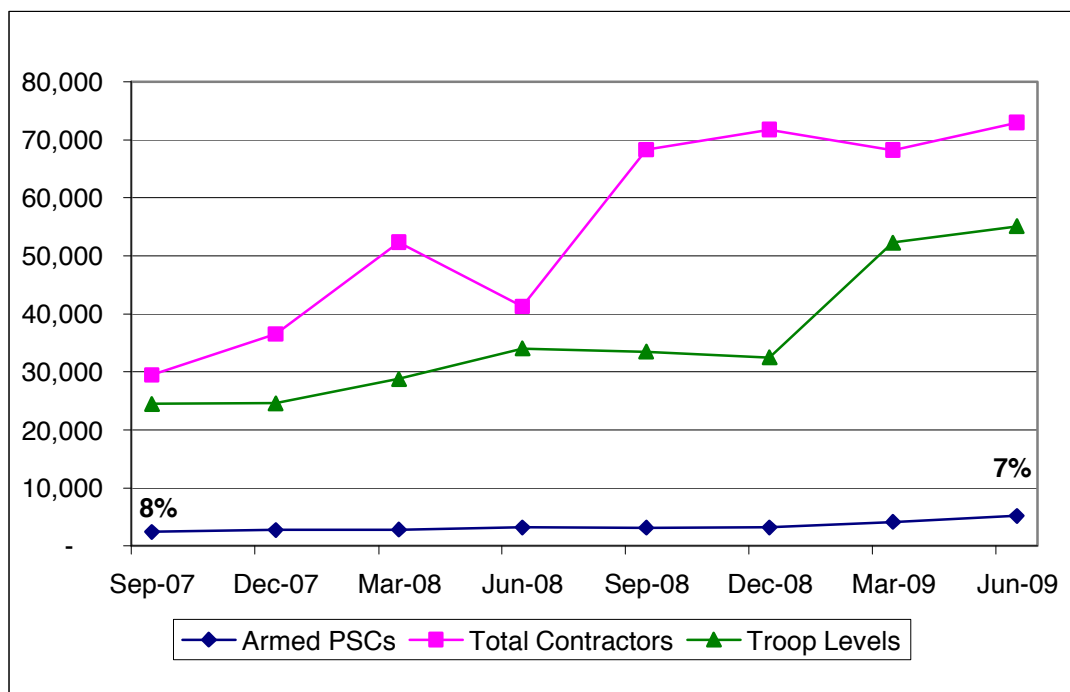
Notes: Percentages represent number of armed security contractors who are local nationals.

Armed Security Contractors Compared to Total Contractor and Troop Levels

According to DOD, since September 2007, the number of armed security contractors increased at a slower rate than overall contractor and troop levels (see **Figure 4**). The number of armed

security contractors increased from 2,401 in September 2007 (8% of all contractors) to 5,165 in June 2009 (7% of all contractors).

Figure 4. Number of APSCs vs. Total Contractor and Troop Levels in Afghanistan
(June 2009)



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.

According to DOD, the number of armed security contractors in Afghanistan rose from 4,111 in the second quarter of FY2009 to 5,165 in the third quarter of 2009, an increase of 20%. DOD attributed the increase to a build-up of forces.

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.²²

Abuses committed by contractors, including contractors working for other U.S. agencies, can also strengthen anti-American insurgents.²³ There have been published reports of local nationals being

²² Department of Defense, *Counterinsurgency*, FM 3-24, December 2006, p. 1-9

²³ Chairman of the Joint Chiefs of Staff, *Operational Contract Support*, Joint Publication 4-10, October 17, 2008, pp. (continued...)

abused and mistreated by DOD contractors in such incidents as the summary shooting by a private security contractor of an Afghan who was handcuffed,²⁴ the shooting of Iraqi civilians,²⁵ and the abuse of prisoners at Abu Ghraib prison in Iraq.²⁶ (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.²⁷ 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,²⁸ the shooting of 17 Iraqi civilians at a Baghdad traffic circle in Nisoor Square by Blackwater employees,²⁹ and the recent controversy over the behavior of security contractors from Armour Group who were hired to protect the U.S. embassy in Afghanistan.³⁰ Of the six incidents listed above, five were committed by U.S. companies and U.S. nationals.

According to many analysts, these events have in fact undermined the U.S. mission in Iraq and Afghanistan.³¹ 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."³² One senior military officer reportedly stated that the actions of armed PSCs "can turn an entire district against us."³³

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 amuck and armed Americans

(...continued)

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;

²⁴ 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.

²⁵ Mark Townsend, "National: Iraq victims sue UK security firm: Guards employed by Hampshire-based company are," *The Observer*, January 11, 2009, p. 14.

²⁶ 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.

²⁷ Department of Defense, Investigation of Intelligence Activities at Abu Ghraib, August 23, 2004. See <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA429125>.

²⁸ Tom Jackman, "Security Contractor Cleared in Two Firings," *Washington Post*, August 2, 2007, p. A-15.

²⁹ Blackwater has since changed its name to Xe.

³⁰ 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>.

³¹ See David Zucchino, "Private security forces unnerve Afghans," *Chicago Tribune*, August 17, 2009.

³² 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.

³³ Anna Mulrine and Keith Whitelaw, "Private Security Contractors Face Incoming Political Fire," *U.S. News & World Report*, October 15, 2007.

harassing and terrifying residents.³⁴ 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.³⁵

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.³⁶

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.³⁷

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 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.³⁸ This sentiment was echoed by then Senator Barack Obama, who stated "we

³⁴ 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.

³⁵ Noor Khan, "Afghan minister calls for disbanding of private security forces after killing of police chief," *Associated Press*, June 30, 2009, AP Newswire.

³⁶ 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.

³⁷ 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.

³⁸ 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 (continued...)

cannot win a fight for hearts and minds when we outsource critical missions to unaccountable contractors.”³⁹ 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 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.⁴⁰ 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,⁴¹ 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.⁴² In addition, Joint Forces Command is currently developing a handbook for commanders intended to distill doctrine and guidance for using PSCs during contingency operations.

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 Investigator for Iraqi

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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>.

³⁹ Hauser, C., *New Rules for Contractors are Urged by 2 Democrats*, the New York Times, October 4, 2007.

⁴⁰ Ashton Carter, *Private Security Contractors (PSCs) Operating in Contingency Operations*, Department of Defense, Acquisition, Technology, and Logistics, DODI 3020.50, July 22, 2009.

⁴¹ 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.

⁴² 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.

Reconstruction, the Government Accountability Office, and the Commission on Wartime Contracting, which called DOD's improved management of PSCs a success story.⁴³ 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.⁴⁴ DOD officials stated that improving the management of PSCs is a work in progress that could take three years or more to completely implement.

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.

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 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.

⁴³ 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.

⁴⁴ 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.

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 US 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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