

**MEMORANDUM OF AGREEMENT (MOA) BETWEEN
THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF STATE
ON USG PRIVATE SECURITY CONTRACTORS**

I. Purpose

The purpose of this MOA is to clearly define the authority and responsibility for the accountability and operations of USG Private Security Contractors (PSCs) in Iraq.

II. Country Covered by this MOA

The country covered by this MOA is Iraq.

III. Responsibility

A. Pursuant to 10 U.S.C. § 164 and 22 U.S.C. § 4802, the Secretary of Defense and the Combatant Commander (COCOM) are responsible for the security of all DOD elements and personnel under the operational control of the COCOM.

B. Pursuant to 22 U.S.C. § 4802, the Secretary of State is responsible for developing and implementing policies and programs to provide for the security of U.S. Government personnel on official duty in country other than those under the command of an area military commander.

C. Pursuant to this MOA the Secretary of State and the Secretary of Defense have agreed that they will jointly develop, implement, and follow core standards, policies, and procedures for the accountability, oversight, and discipline of PSCs.

IV. Standards

A. The Secretary of Defense and the Secretary of State shall jointly develop and implement core PSC standards which will include at a minimum:

- The management of USG PSC personnel.
- The coordination of USG PSC operations outside secure bases and U.S. diplomatic properties.
- A clear legal basis for holding USG private security contractors accountable under US law.
- Recognition of investigative jurisdictions and coordination for joint investigations where conduct of USG PSC personnel are to be investigated.

B. The COM and the COCOM shall make every effort to consult and coordinate responses to common threats.

V. Implementation, Coordination, and Dispute Resolution

A. In Iraq, the COM and the COCOM, acting when appropriate through their designated representatives, shall serve as the primary delegates of the Secretary of State and the Secretary of Defense, respectively, for implementation and coordination under this MOA.

1. The intent of this MOA is for the DOS and DOD to ensure that personnel working under contracts with other federal agencies or as subcontractors on DOS or DOD contracts are to be covered by the policies and procedures developed under this MOA. The DOD and DOS will identify those USG agencies and organizations and contractors having contractual arrangements for private security and ensure, to the maximum extent possible, that these agencies and their PSCs adhere to the core procedures and process required by this MOA.

2. In the event that issues arise under this MOA that the COM and COCOM are unable to resolve, they shall promptly refer such issues to the Washington representatives designated by the Secretary of State and the Secretary of Defense for resolution.

B. The Secretary of State and the Secretary of Defense shall designate Washington representatives to meet as frequently as necessary, but no less often than quarterly, for the purpose of reviewing the implementation of this MOA.

1. In the event that the Secretaries' Washington representatives are unable to resolve any such difference, or any other issue that may arise under this MOA, they shall promptly refer the matter to the Under Secretary of State for Management and the Deputy Under Secretary of Defense for Logistics and Material Readiness for resolution.

2. In the event that any matter cannot be resolved under the procedures specified above, it shall be referred to the Secretary of State and the Secretary of Defense for resolution

VI. Authorities

Nothing in this MOA shall otherwise affect the authorities of the Secretary of State, the Secretary of Defense, and the Chief of Mission or the COCOM.

VII Other Agreements and Arrangements

All existing agreements and arrangements, however styled, between DOS and DOD shall remain in force to the extent that they do not conflict with the provisions of this MOA.

VIII Annex:

The Parties further agree to ANNEX A: Deliverables. These deliverables are to be jointly developed by U.S. Embassy Baghdad and Multi-National Force – Iraq (MNF-I), and can be modified in writing upon mutual agreement by MNF-I and U.S. Embassy Baghdad.

IX. Implementation and Termination

To the extent this MOA (or the deliverables) developed hereunder are inconsistent with the MOA between DOS and DOD "Regarding Physical Security, Equipment and Personal Protective Services, dated 10 June 2004, this MOA shall govern. This MOA shall remain in force until terminated.

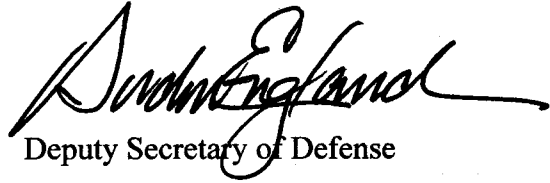
Signed:

Signed:



Deputy Secretary of State

Date: 12-5-07



Deputy Secretary of Defense

Date: 12-5-07

ANNEX A: DELIVERABLES

I. Executive Summary:

The following deliverables, jointly developed under the terms of this MOA by U.S. Embassy Baghdad and Multi-National Force – Iraq (MNF-I), are intended to improve coordination and accountability of their respective private security contractor operations in Iraq. These deliverables can be modified in writing upon mutual agreement by MNF-I and U.S. Embassy Baghdad.

II. Definitions

Private Security Contractor (PSC): A private company, and/or its personnel, that provides physical protection to or security for persons, places, buildings, facilities, supplies, or means of transportation.

U.S. Embassy Baghdad PSC: Refers to a Department of State (DOS)--affiliated PSC.

MNF-I PSC: Refers to a Department of Defense (DOD)--affiliated PSCs.

Personal Security Detail (PSD): A team of PSC personnel that provides physical protective services for the movement of protected persons and/or property.

Battlespace: The Area of Operations assigned to the Commander, MNF-I by the Commander, US CENTCOM for the purpose of military operations. This currently includes the air, land, sea, and space contained within the borders of Iraq.

MNC-I: Multi-National Corps – Iraq. The action-arm of MNF-I. MNC-I is the operational headquarters for the battlespace.

CF: Coalition Forces. The forces of two or more nations working for a common action. All forces working with the Multi-National Force – Iraq are coalition forces.

Serious incident: Any incident involving the use of deadly force, the discharge of a weapon (other than in training), or that resulted in death, serious injury, and/or significant property damage.

Coalition Operating Locations: Locations under the effective control of either MNF-I or Chief of Mission (COM), including the International Zone, CF Forward Operating Bases, Regional Embassy Offices, etc.

Contracting Officer: Refers to contracting officers as well as contracting officer representatives where appropriate.

III. Unity of Effort:

U.S. Embassy Baghdad and MNF-I together have the responsibility to safeguard USG and Coalition Force (CF) personnel conducting official business throughout Iraq. U.S. Embassy Baghdad and MNF-I are committed to reducing the number and strategic impact of serious incidents involving PSCs by thorough and impartial investigations of these incidents, transparent information and intelligence sharing, close coordination of PSD operations, and joint engagement with the Government of Iraq (GOI).

IV. Rules for the use of Force:

All USG PSC operations in Iraq will abide by the following common principles on the Rules for the Use of Force (RUF). U.S. Embassy Baghdad and MNF-I specific policies may be more, but not less, restrictive than these common principles. A PSC can only implement policies more restrictive than these RUF with the approval of its contracting officer, as well as either MNF-I or U.S. Embassy Baghdad as appropriate.

Policy/Definitions

a. Defense of Self or Others. PSCs always retain the inherent right to exercise self-defense in response to a hostile act or demonstrated hostile intent. PSCs are permitted to use deadly force in defense of others when there is a reasonable belief of imminent risk of death or serious bodily harm. Details regarding this authorization will be provided by the appropriate USG agency, and within the terms and conditions governing the PSC's contractual relationship with that agency.

b. Imminent Threat. The determination of whether the danger of death or serious bodily harm is imminent will be based on an assessment of all facts and circumstances known to the PSC at the time (i.e. totality of the circumstances), and should not be assessed with the benefit of hindsight. Imminent does not necessarily mean immediate or instantaneous. Individuals with the capability to inflict death or serious bodily harm and who demonstrate intent to do so may be considered an imminent threat.

c. Hostile Act. An attack or other use of force against the PSC, or designated persons or property. It also includes force used directly to preclude or impede the mission and/or duties of the PSC.

d. Hostile Intent. The imminent threat of the use of force against the PSC, or designated persons or property. It also includes the threat of force to preclude or impede the mission and/or duties of the PSC.

e. Assets Vital to National Security. For the purposes of MNF-I PSC operations in Iraq, defined as President-designated non-DOD and/or DOD property, the actual theft or sabotage of which the President determines would seriously jeopardize the fulfillment of a national defense mission and would create an imminent threat of death or serious bodily harm. Examples may include, but are not limited to, designated restricted areas containing strategic operational assets, sensitive codes or special access programs.

f. Inherently Dangerous Property. For the purposes of MNF-I PSC operations in Iraq, property is considered inherently dangerous if, in the hands of an unauthorized individual, it would create an imminent threat of death or serious bodily harm. Examples may include, but are not limited to: portable missiles, rockets, arms, ammunition, explosives, and chemical agents. On-scene DOD commanders are authorized to classify property as inherently dangerous. PSCs are not authorized to make such designations.

g. Mission essential and U.S. National Security Equipment/Property. For the purposes of MNF-I PSC operations in Iraq, PSC personnel can be specifically authorized to protect designated mission essential or U.S. national security equipment/property with force, including deadly force. Details regarding this authorization will be provided by appropriate USG agency, and within the terms and conditions governing the PSC's contractual relationship with that agency.

Procedures

a. De-Escalation.

(1) Whenever time and circumstances permit, the threatening individual/force should be warned and given the opportunity to withdraw or cease threatening actions.

(2) U.S. Embassy Baghdad and MNF-I will work to establish common graduated force methods and procedures for use by PSCs, including common signaling devices to be used by all USG PSCs operating in Iraq. The goal is to ensure that the Iraqis have a common expectation with respect to the visual and aural warnings used by PSCs operating in Iraq. U.S. Embassy Baghdad and MNF-I will work to develop a strategic engagement plan for educating the populace on these signals.

b. Use of Non-Deadly Force

(1) The use of force must be reasonable in intensity, duration and magnitude based on the totality of circumstances to counter the threat. If force is required, non-deadly force is authorized and may be used to control a situation and accomplish the mission, or to provide self-defense or in defense of the protected property, when doing so is reasonable under the circumstances.

(2) Agency-approved non-lethal weapons are authorized.

(3) Warnings shots may be authorized for DOD contractor personnel by the contracting officer, but only as part of their graduated force response and for no other purpose. Current DOS policies prohibit the use of warning shots by their PSCs.

c. Use of Deadly Force. Deadly force is authorized only under the following circumstances:

(1) **Inherent Right of Self-Defense.** Deadly force is authorized when a PSC reasonably believes that a person has committed a hostile act or demonstrated hostile intent and poses an imminent threat of death or serious bodily harm to the PSC.

(2) **Defense of Others.** Deadly force is authorized when a PSC reasonably believes that a person poses an imminent threat of death or serious bodily harm to the protectee(s) or other innocent persons in the vicinity.

(3) **Assets Vital to National Security.** For the purposes of MNF-I PSC operations in Iraq, deadly force is authorized when deadly force reasonably appears to be necessary to prevent the actual theft or sabotage of assets vital to national security. PSCs will be notified in their contract if they are employed to protect assets vital to national security.

(4) **Inherently Dangerous Property.** For the purposes of MNF-I PSC operations in Iraq, deadly force is authorized when deadly force reasonably appears to be necessary to prevent the actual theft or sabotage of inherently dangerous property. PSCs will be notified in their contract if they are employed to protect inherently dangerous property.

(5) If a PSC must fire a weapon as a means of deadly force, he/she must use only well-aimed shots with due regard for the safety of innocent bystander, and must immediately notify the appropriate operation center and request assistance as needed.

(6) PSC personnel, whether armed for personal protection or serving as contract security/PSC, shall not engage in offensive combat operations, alone or in conjunction with U.S., Coalition or host nation forces.

V. Authority to Possess and Carry Firearms:

U.S. Embassy Baghdad or MNF-I will grant PSCs authority to possess and carry firearms in accordance with their respective departmental policies. Additionally U.S. Embassy Baghdad and MNF-I will individually ensure that their respective PSCs maintain accurate inventories of weapons and ammunition.

The core standards for U.S. Embassy Baghdad or MNF-I authorizing personnel to possess and carry firearms are background checks, security clearances, training, qualifications,

and proficiency standards for individual assigned weapons.

Background Checks. The following sources can be used for accomplishing background checks: Interpol, FBI, Country of Origin Criminal Records, Country of Origin U.S. Embassy Information Request, CIA records, and /or any other records available.

Security clearances. Security clearance requirements will be established by the RSO or MNF-I based on the company or individual's position.

Training. Mandatory training for PSCs prior to operating in Iraq will include review of relevant USG and Iraqi laws, Rules for the Use of Force, Law of Armed Conflict, Graduated Force Procedures, and those relevant COM, CENTCOM, and/or MNF-I rules and regulations applicable to their contracts, as well as scenario-based training on a standard set of Use-of-Force vignettes kept up to date by MNF-I STRATOPS and RSO based on recent incidents and threat reporting. Refresher training will occur annually. PSCs are responsible for maintaining training documentation. A failure to maintain training qualifications will generally result in revocation of firearms authorization for the individual. Any PSC individual without firearms authorization will immediately surrender their weapon to the PSC and will remain unarmed until such time as they are retrained and the contracting officer determines that their training is sufficient.

Qualifications. Contractors will meet either the U.S. Army weapons qualification standards, or RSO standards, unless another standard of qualification is used that substantially meets the requirement and is agreed to in advance (e.g. for AK-47s). Ongoing weapons proficiency training will occur in accordance with the respective agency requirements and the PSC will maintain documentation records.

Authorized Weapons and Ammunition Types. All USG PSCs will only use those weapon types and ammunition specifically authorized by DOS or DOD as appropriate. U.S. Embassy Baghdad and MNF-I will notify each other of the specific weapon types and ammunition authorized for their respective PSC operations in Iraq, and will update each other with any changes to such authorizations. Any disagreements regarding weapons types and/or ammunition should be resolved between MNF-I and US Embassy Baghdad, if possible; if not, the issue will be forward to the Department of State and Department of Defense for final determination.

VI. Movement Coordination and Control:

All USG PSDs will coordinate their movements with either MNF-I or U.S. Embassy Baghdad operations centers.

In order to maximize CF support for USG PSD and helicopter operations and deconflict friendly forces, RSO Tactical Operations Center (TOC) and the Multi-National Corps Iraq

(MNC-I) Contractor Operations Cell (CONOC) will provide movement details (of both PSDs and helicopters) to MNC-I in advance of their respective movements outside of Coalition operating locations, to include time, route, destination, and convoy composition. Such notification should normally occur a minimum of 24 hours in advance or as soon as possible if short-notice missions are required.

MNC-I and RSO will exchange LNOs in their respective operation centers, will conduct planning using linked Command Post of the Future (CPOF) terminals, and will monitor all U.S. Embassy Baghdad PSD, MNF-I PSD, and CF movements outside Coalition operating locations real-time using shared electronic monitoring systems data. MNC-I will limit distribution of COM personnel movements, or other movements as designated by U.S. Embassy Baghdad, to only U.S. personnel with a need to know, and will coordinate with RSO to ensure such information is compartmentalized.

MNC-I will review all USG PSD movements and provide recommendations to the RSO TOC or CONOC, as appropriate, as to whether the movement should be altered or cancelled based on the threat levels along that route or disposition of Coalition Forces.

The RSO TOC and CONOC will generally honor MNC-I recommendations to alter or cancel missions. Any disagreements between MNC-I and U.S. Embassy Baghdad regarding PSD movements will be resolved by the DCS, MNF-I Strategic Operations (STRATOPS) and the DCM, U.S. Embassy Baghdad. Final movement authority for U.S. Embassy Baghdad rests with the COM.

If MNC-I battle space owners determine and articulate a substantial increase in the threat to USG PSDs during movements outside Coalition operating locations, such PSDs will comply with MNC-I recommendations to alter routes or abort missions.

MNC-I LNO will coordinate with RSO TOC and MNC-I on QRF, MEDEVAC, and/or Intelligence, Surveillance, and Reconnaissance (ISR) support as needed, as well as convoy closure reports.

As soon as possible after notification of USG PSD movements, and updating as needed, MNF-I will make RSO TOC and/or CONOC aware of any known checkpoints manned by CF or Iraqi Security Forces (ISF), as well as the proper near and far recognition procedures. USG PSDs will comply with all CF checkpoints and should avoid other checkpoints as possible. However, USG PSDs will be prepared to display appropriate audio and/or visual recognition procedures at CF or legitimate ISF checkpoints (i.e. verified in advance by MNF-I or during movement) should they be encountered.

U.S. Embassy Baghdad will liaise with MNF-I STRATOPS on PSC-related incidents and will be prepared to attend the STRATOPS evening battlefield update assessments at the request of MNF-I STRATOPS.

MNF-I and U.S. Embassy Baghdad will share all intelligence that may affect security operations.

VII. Serious Incident Response & Investigation:

To the maximum extent possible, MNF-I and the U.S. Embassy will closely coordinate the immediate response to any serious incident (as defined above) involving a USG PSC.

The U.S. Embassy Baghdad, through the RSO TOC, will notify MNC-I and MNF-I STRATOPS of any serious incident involving a PSC in its jurisdiction as soon as possible. CONOC will notify MNF-I and RSO of any serious incident involving a PSC in its jurisdiction as soon as possible. U.S. Embassy Baghdad and MNF-I will coordinate in the notification of the GOI as soon as possible after a serious incident occurs.

All USG PSCs involved in a serious incident will, to the extent permitted by the mission and the security situation, stop and render assistance as needed, including coordinating medical assistance, requesting support, and/or providing claim forms/information.

Should MNC-I respond to an incident involving a USG PSC, every attempt should be made to establish radio communication in order for situational awareness to be enhanced prior to QRF arrival at the scene. Upon MNC-I QRF arrival and with a positive and verified handoff (radio or visual), the MNC-I QRF element will assume command of the scene with the primary purpose being the safe extraction of the USG PSC.

In coordination with RSO where appropriate, MNC-I will take the lead on the immediate securing of a scene where a serious incident occurred, to the extent the security situation permits, in order to start identifying any injuries, fatalities, and property damage, and to preserve the ability to collect evidence.

RSO will request support from MNF-I STRATOPS for CF support to revisit the scene of a serious incident in order to conduct an investigation. MNF-I STRATOPS will coordinate with MNC-I, which will in turn facilitate the movement request with the closest battle space owner.

MNC-I will assist U.S. Embassy Baghdad in seeking Iraqi personnel who were witnesses to facilitate investigations and evidence collection. Additionally, CF personnel will assist U.S. Embassy Baghdad as requested with their distribution of timely and appropriate condolence payments. Such payments will be based on Iraqi cultural norms and will not be viewed as an admission of guilt.

U.S. Embassy Baghdad will have the lead responsibility for investigating a serious incident involving a U.S. Embassy Baghdad PSC, and MNF-I will have the lead responsibility for investigating a serious incident involving an MNF-I PSC. The entity conducting the investigation can request investigative assistance or relevant information from the other entity, which will be provided or shared to the greatest extent possible. While one entity is conducting

an investigation into a serious incident within its jurisdiction, the other entity will not deliberately take any action that may prejudice, impede, or negatively impact that investigation (e.g., interviewing witnesses or collecting evidence) without the consent of the lead investigating entity.

Where either U.S. Embassy Baghdad or MNF-I, based on a legitimate interest in a serious incident within the other's jurisdiction, requests that a joint investigation be conducted into the incident, the investigation will be conducted jointly by RSO and the relevant military criminal investigative authority. The lead for such an investigation will be determined in accordance with the above paragraph or by mutual agreement.

MNF-I STRATOPS will serve as the focal point for CF inquiries into RSO-related, serious incidents. Individual CF units will not call directly to the RSO TOC except to coordinate actions with the CF LNOs.

U.S. Embassy Baghdad and MNF-I will engage in transparent sharing of information with each other during the course of an investigation, to the extent that it will not compromise the investigation or potential criminal prosecution, and in consultation with a prosecutorial authority where one is involved. U.S. Embassy Baghdad and MNF-I will coordinate in the sharing of information regarding any serious incident with the GOI, and will follow a consistent approach to public affairs associated with any serious incident.

MNF-I and RSO will coordinate in advance regarding the arrest or detention of any PSC personnel in accordance with proper arrest authority, except in exigent circumstances, in which case notification will occur as soon as possible.

U.S. Embassy Baghdad and MNF-I will share results of their investigations in order to develop lessons learned and improve tactics, techniques, and procedures used by PSCs. The RSO and MNF-I STRATOPS Chief, Contractor Policy and Oversight Division, shall co-chair a Joint Incident Review Board on a quarterly basis to determine trends, and make recommendations for improvements in PSC operations. Other invitees could include representatives from DOD and DOS PSCs, and Major Subordinate Commands. Minutes of the board will be forwarded to DCS, MNF-I STRATOPS and DCM, U.S. Embassy Baghdad for their review and action as required.

MNF-I and U.S. Embassy Baghdad should jointly engage the GOI in discussions related to PSC operations.

VIII. Contract Management & Language:

DOD and DOS will work towards developing a mutually agreeable common database (such as DoD's SPOT) for the purpose of increasing PSC accountability and visibility.

DOS and DOD will ensure that their respective PSC contracts and subcontracts contain common language, through contract modifications if necessary, implementing relevant provisions of this MOA, including but not limited to RUF, communication systems, incident response and reporting, authorized weapons and ammunition, and penalties for violations of MNF-I and/or U.S. Embassy Baghdad policies and procedures.

Respective DOS and DOD contracting officers will reconcile contract language interpretation of Department of State Acquisition Regulations (DoSAR) and Defense Federal Acquisition Regulations (DFAR) through the current Federal Acquisition Regulations.

IX. Legal Accountability:

U.S. Embassy Baghdad and MNF-I will not tolerate misconduct by their respective PSCs and will enforce contractual obligations. Where there is evidence of criminal misconduct, U.S. Embassy Baghdad and MNF-I will make referrals to the appropriate prosecutorial authority.

DOD and DOS will continue to work together to expedite the enactment of legislation to establish a clear legal basis for holding USG PSCs in Iraq accountable under U.S. law.