



Chapter Title: Have Private Security Contractors Had an Adverse Effect on Local Iraqis' Perceptions of the Entire Occupying Force Because of the Legal Impunity with Which They Operated in Iraq Prior to 2009?

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Have Private Security Contractors Had an Adverse Effect on Local Iraqis' Perceptions of the Entire Occupying Force Because of the Legal Impunity with Which They Operated in Iraq Prior to 2009?

As noted in Chapter Two, the legal status of contractors in Iraq was altered significantly in 2009. Article 12 of the Status of Forces Agreement (SOFA) between the Iraqi and U.S. governments, which replaced the expiring UN mandate on January 1, 2009, states, "Iraq shall have the primary right to exercise jurisdiction over United States contractors and United States contractor employees." This removed the legal immunity that U.S. and third-country national (TCN) contractors had enjoyed in Iraq from 2003 through 2008 under CPA Order 17. While the language of the SOFA appears to make it applicable only to contractors working for the DoD, as opposed to DoS, USAID, or other contracting agencies, DoS officials have stated that they intend to abide by the SOFA and its jurisdictional claim over U.S. and TCN contractors. Other DoS officials have stated that they believe a separate agreement between the DoS and the government of Iraq will be worked out with respect to the legal status of DoS contractors, although it is unclear when such an agreement might be reached (CBS News, 2008).

Even with the SOFA's entry into force, however, PSCs are generally thought to be effectively immune from prosecution under U.S. law, as discussed in detail in Chapter Two. The legal void in which private security contractors in Iraq had operated until the SOFA entered into force in 2009 had a bearing on local Iraqis' perceptions of contractors and their activities. Some have argued that these perceptions have colored locals' views of coalition operations in general.

Confirmed Incidents of Armed Contractors Firing on Iraqi Civilians

Reports are plentiful of private security contractors committing serious, sometimes fatal, abuses of power in Iraq. Consider, for instance, the highly publicized September 2007 Nisour Square incident, in which a team of contractors working for the company known at that time as Blackwater (now called Xe Services) providing personal security details for State Department officials stopped traffic in a busy Baghdad square

and proceeded to shoot and kill 17 civilians, wounding numerous others (Glanz and Rubin, 2007a, 2007b; Opiel and Gordon, 2007; Johnston and Broder, 2007; Logan, 2007). Conflicting reports exist regarding whether the Blackwater/Xe contractors came under hostile fire and were acting in self-defense. The Blackwater/Xe guards said they believed that they had come under small-arms fire from insurgents, so they began firing machine guns, grenade launchers, and a sniper rifle in Nisour Square. But investigators concluded that the guards had indiscriminately fired in an unprovoked assault (Williams, 2010). The fact that these contractors were immune to prosecution under Iraqi law meant that months went by before they were indicted in the United States under the MEJA.

In another documented case from 2006, contractors working for Triple Canopy in Iraq shot and killed civilians for no apparent reason other than “for sport” (Fainaru, 2007a, p. A01). Unlike contractors involved in the more highly publicized Blackwater/Xe case, these Triple Canopy personnel completely escaped prosecution.

Brigadier General Karl Horst, deputy commander of the U.S. Army’s 3rd Infantry Division, identified this problem even earlier. He counted twelve shootings and at least six Iraqi civilian deaths within two months in 2005. As General Horst put it,

These guys [i.e., armed contractors] run loose in this country and do stupid stuff. There’s no authority over them, so you can’t come down on them hard when they escalate force. They shoot people, and someone else has to deal with the aftermath (quoted in Singer, 2007, p. 8).

There is evidence that such alleged abuses of power by private security contractors, carried out with impunity, have influenced local Iraqis’ perceptions of contractors and their activities and, arguably, of coalition operations in general. Extrapolating from their experiences with private security contractors, Iraqi citizens may take a negative view of the entire military occupation and coalition forces as a whole. But another perspective on this issue does exist. Other accounts hold that at least some private security firms have been flexible enough in their standard operating procedures to keep a low profile among local civilians and therefore have not colored Iraqi opinion negatively.

Interviews with family members of the Nisour Square victims indicate that they and other Iraqis resent both the contractors themselves and Blackwater/Xe as a whole. The incident fueled the perception among Iraqis more broadly that U.S. private security contractors can act with impunity. This engendered widespread resentment and led the Iraqi government to vow that the perpetrators of the Nisour Square deaths in Baghdad would be tried in Iraqi courts (Luban, 2007). Such resentment was exacerbated among both Iraqi civilians and government officials when, on December 31, 2009, Justice Ricardo M. Urbina dismissed the manslaughter and weapons charges against the Blackwater/Xe contractors involved in the Nisour Square incident, ruling that the U.S. Justice Department’s investigation had been badly tainted by statements the guards provided to the State Department under promises

of immunity. In late January 2010, the U.S. government appealed this ruling, and the Iraqi government started collecting signatures for a class-action lawsuit from victims who were wounded or lost family members in incidents involving Blackwater/Xe ("U.S. Appeals Ruling in Blackwater Case," 2010; "Iraq to Seek Compensation for Contractor Incidents," 2010).

Although Nisour Square and the incident involving the Triple Canopy contractors were two unusually extreme cases of the alleged abuse of power by private security contractors, less extreme instances have also been reported. Accounts maintain that some armed contractors, when conducting private security details, employ aggressive tactics to ward off potential attackers—for example, driving on the wrong side of the road and firing warning shots (Singer, 2007). Similar accounts describe contractors forcing Iraqis off the road while driving fast and recklessly. Armed contractors have also reportedly cleared areas by throwing full water bottles at local civilians while driving through (Montagne and Temple-Raston, 2007).

Retired U.S. Marine Colonel Thomas X. Hammes has argued that Blackwater/Xe's aggressive approach to protection has detracted from the overall counterinsurgency effort to win the allegiance of the local population:

The problem is [that] in protecting the principal, they had to be very aggressive, and each time they went out they had to offend locals, forcing them to the side of the road, being overpowering and intimidating, at times running vehicles off the road, making enemies each time they went out (quoted in Luban, 2007, p. 1).

Blackwater/Xe has received the majority of such criticism. But employees of other security firms have reportedly acted in similar ways both in Iraq and other theaters. A USAID official with experience in Afghanistan noted in a 2006 interview:

DynCorp, Kroll, Global, and their operations are in Afghanistan. The way that they behave in public is quite offensive by any standard. In a small town, they drive quickly; shooters shoot at traffic; they force their cars through. That is not only when they are escorting the Ambassador. It is also when they are just driving around town or to the airport. I questioned them on a number of occasions. They think that it is harder for a suicide bomber to kill you if you are driving very quickly and weaving through traffic. So they think of it as a safety precaution. It's not clear to me that this is true. This is an excellent example of misplacing our priorities . . . They exhibit a level of arrogance that is just difficult to describe unless you actually view it. . . . Fear is contrary to our interest. In the last four years, people have been forced to flee for their lives in the face of U.S. security vehicles. It is not the military that drives like that . . . there have been hundreds of times that I've seen PMCs do it. They behave in public in a threatening manner. It is part of their rules of engagement. Many of the shooters were decent guys. At the same time, as of July 2005, these kinds of intimidating incidents happened all the time (confidential interview, 2006).

The damage done by such alleged abuses of power by private security contractors, carried out with impunity, reportedly goes far beyond merely fostering a dim view among Iraqis of the contractors themselves. Extrapolating from their experiences with private security contractors, Iraqi citizens may take a negative view of the entire military occupation and coalition forces as a whole. According to media reports and interviews, resentment occurs mainly because Iraqi civilians do not distinguish between private contractors and U.S. or coalition forces in Iraq. Rather, they see them all as part of the same occupying force (Montagne and Temple-Raston, 2007). With regard specifically to the Nisour Square shooting, a National Public Radio report observed the following:

The more immediate concern is that Blackwater's actions in Iraq don't just reflect on the security company. It has become a broader American problem because Iraqis don't distinguish between the Blackwater employees and the American military more generally (Montagne and Temple-Raston, 2007).

When asked if he had learned who perpetrated the Nisour Square shootings after the fact, a family member of two of the Nisour Square victims answered, "You mean, like, security company? What difference this makes? They are Americans" (Montagne and Temple-Raston, 2007).

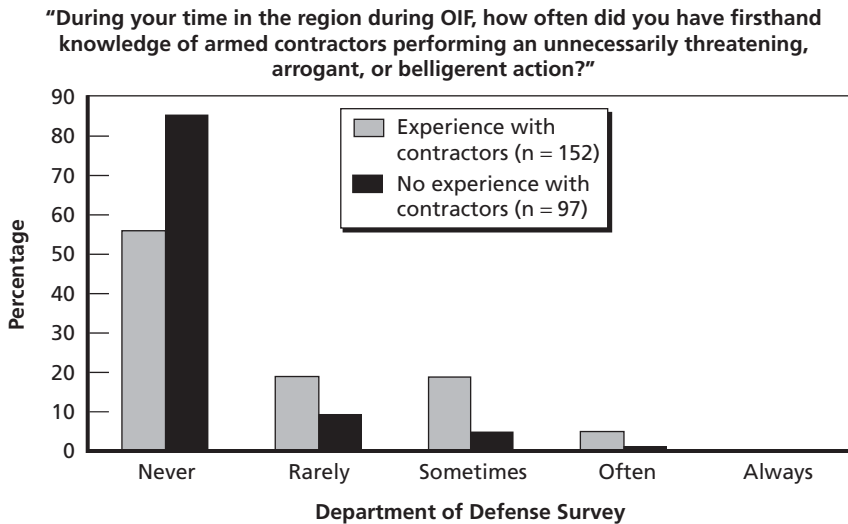
However, another perspective on the conduct of armed contractors does exist. According to a group of USAID interviewees, although more the exception than the rule, certain private security firms were able to be flexible in their standard operating procedures and keep a "low profile" among local civilians:

We hired Kroll, from a British base. They were former SAS guys. Other than some management problems, overall they did a pretty good—an excellent job . . . They learned how to keep a low profile. Now these other guys: Triple Canopy, Blackwater, etc.? They don't change their tactics . . . Kroll learned how to work with us. They were more controllable. [Their] guys on the ground did well . . . With Kroll it was not a problem. They kept guns in the car. It was very nonimposing (confidential interview, 2006).

Most Military and Diplomatic Personnel Do Not View Armed Contractors as "Running Wild" in Iraq, but a Considerable Number of Both Groups Do Report Troubling Incidents Involving Poor PSC Behavior Toward Iraqi Civilians

As noted in Chapter One, throughout this study we have imposed a high threshold of expectations for the behavior of armed contractors. This is due to the fact that their institutionalized position in the U.S. defense establishment is premised on their purpose of augmenting the force. Therefore, with regard to their impact on local civilians in the theater in which they operate, particularly when they serve as part of a counterinsurgency force, we expect that military and diplomatic survey respondents will

Figure 4.1
Department of Defense Survey: Threatening Action



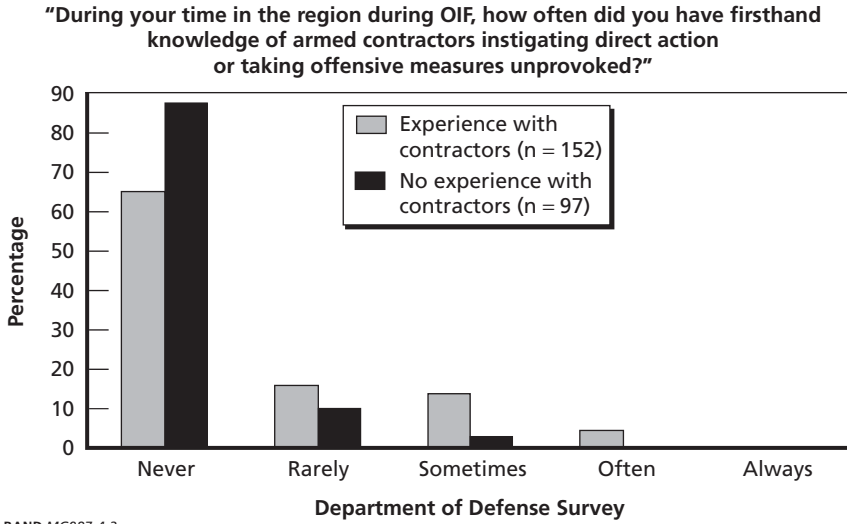
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perceive PSC behavior to be positive. Any evidence to the contrary, although presaged in reports such as those highlighting the Nisour Square incident, is a cause for concern.

In the experience of military personnel, incidents in which armed contractors behaved in an unnecessarily threatening, arrogant, or belligerent way in Iraq were not entirely uncommon. Although the majority of surveyed personnel had never witnessed an event of this sort, the numbers become much more striking when we control for those respondents who had experience with armed contractors. Although a majority of these respondents with contractor experience still reported never having witnessed armed contractors behaving in an unnecessarily threatening, arrogant, or belligerent manner in Iraq, the number of experienced respondents who reported having sometimes observed such behavior (20 percent of those with experience interacting with armed contractors) is a substantial figure, as is the number reporting having often observed such behavior (almost 5 percent; see Figure 4.1). This is particularly so when considering that we expect armed contractors to behave well when employed in support of a U.S. military mission, even if they are not employed directly by the United States.

In like manner, most military personnel had never witnessed armed contractors instigating direct action or taking offensive measures unprovoked (Figure 4.2). Again, it makes sense that this would be the case among the group with little to no exposure to contractors; however, even among those who did have experience with contractors, 65 percent had never witnessed this occurring. Yet, once again, the fact that 14 percent of this experienced group had sometimes witnessed armed contractors taking offensive measures unprovoked and almost 5 percent had often witnessed this happening, is not insignificant.

Figure 4.2
Department of Defense Survey: Unprovoked Action

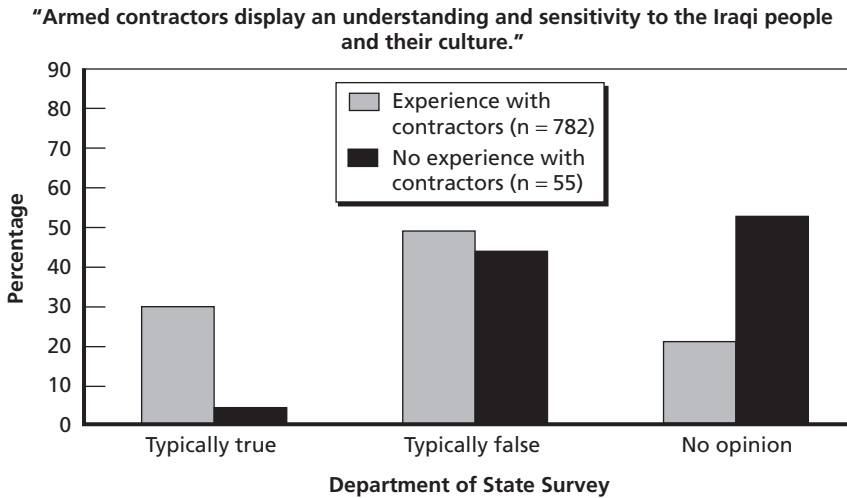


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The opinions of State Department personnel add another valuable perspective to the military insights when considering the debate around the behavior of private security contractors and its potential effect on how Iraqis view the occupying force. Almost 50 percent of diplomatic personnel with experience interacting with armed contractors did not think, for example, that armed contractors demonstrate an understanding and sensitivity to Iraqis and their culture (Figure 4.3).

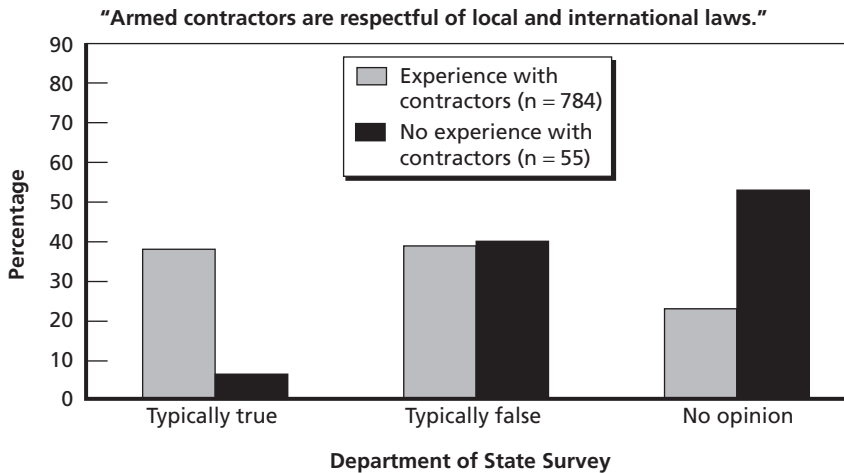
When it came to the issue of contractors’ respect for local and international laws, opinions among diplomatic personnel who had interacted with contractors were split

Figure 4.3
Department of State Survey: Sensitivity



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Figure 4.4
Department of State Survey: Respectful



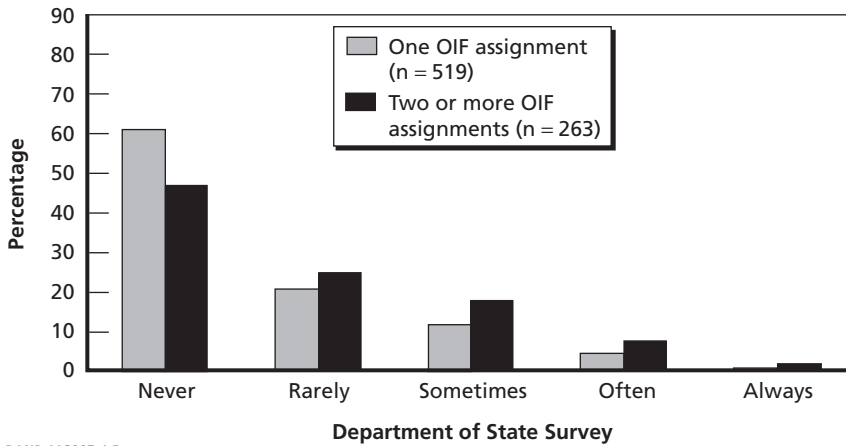
between those thinking that armed contractors do respect local and international laws and those thinking that they do not (38 percent and 39 percent, respectively; Figure 4.4).¹ The fact that a slightly higher percentage of DoS survey respondents felt that armed contractors are not respectful of local and international laws than those that did feel PSCs are respectful of such laws is a cause for deep concern, particularly in light of the counterinsurgency mission of the United States in Iraq and the possibility highlighted above that Iraqi civilians do not distinguish between coalition forces and armed contractors. In such a counterinsurgency situation, U.S forces do not want to be perceived as being disrespectful of Iraqi and international laws; yet contractor actions bring such perceptions into the realm of possibility.

A majority of State Department personnel who had been deployed to OIF once had also never had firsthand knowledge of armed contractors mistreating Iraqi civilians (Figure 4.5). However, in light of the fact that we would never expect PSCs to mistreat Iraqi civilians, the number of DoS respondents who sometimes had firsthand knowledge of such incidents is, again, a cause for concern. Interestingly, the likelihood increased with the number of postings a person had had: Of those with only one assignment to Iraq, 61 percent never and 12 percent sometimes knew firsthand about armed contractors mistreating civilians; of those with two or more assignments, 47 percent never and 18 percent sometimes had such knowledge.

¹ The opinions of diplomatic personnel did suggest that armed contractors were making some progress over time on this issue. Of those diplomats who had been assigned once to the region between 2001 and 2006, only 29 percent felt armed contractors respected local and international laws. But among those with a single assignment to the region later in the conflict, between 2007 and 2008, the percentage holding this view had increased considerably, to 40 percent.

Figure 4.5
Department of State Survey: Mistreatment

“During your service in Iraq, how often did you have firsthand knowledge of armed contractors mistreating civilians?”

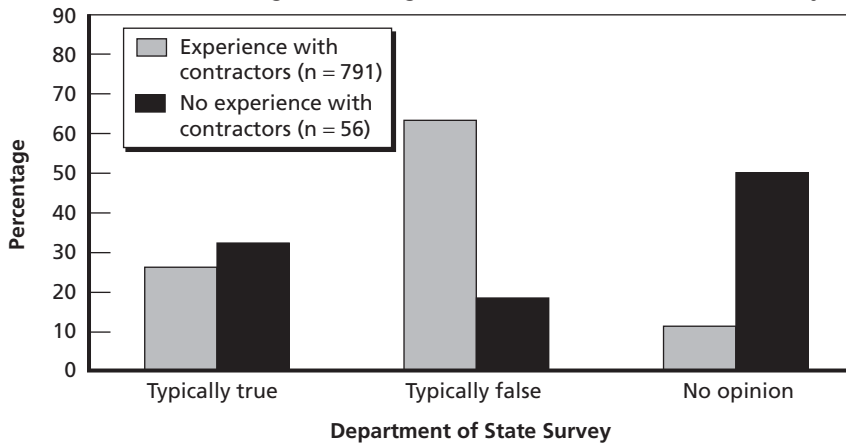


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With regard to the question of whether they perceived armed contractors to enjoy free reign to misbehave with little accountability, DoS respondents’ levels of experience with PSCs appear to play a decisive role. Nearly two-thirds of the experienced group felt that such a contention was false (Figure 4.6). Interestingly, however, their counterparts with little to no experience had a dramatically different view, with only about 18 percent believing it to be false, and 32 percent feeling that contractor accountability was lacking. This gap suggests that increased exposure to private security contractors over time causes awareness in the diplomatic community that these armed personnel are actually more accountable for their actions than one might initially think.

Figure 4.6
Department of State Survey: Free Reign

“Armed contractors are given free reign to misbehave with little accountability.”

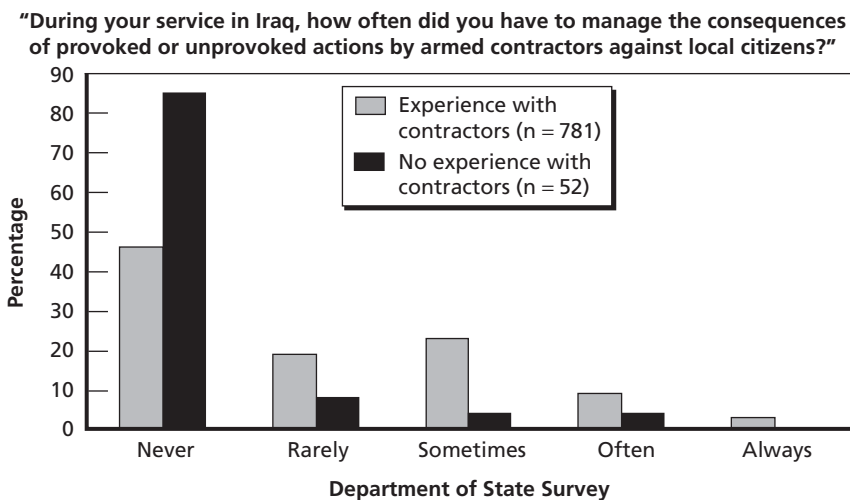


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Yet despite the mix of positive and negative views within the State Department on armed contractors and how they interact with Iraqi civilians, diplomatic personnel rarely had to manage any consequences of provoked or unprovoked action against local citizens (Figure 4.7). Those without experience with contractors would logically not report having had to do this, because less exposure would afford fewer opportunities to manage the consequences of any untoward actions. And indeed, nearly 90 percent had never been in this situation. But, of those State Department personnel posted to Iraq who had experience with armed contractors, almost half had never been called on in this way. As Figure 4.7 shows, about half of that number had to perform this role sometimes, and slightly less than that rarely had to do it. However, we must consider that having to manage the consequences of armed contractor actions against locals is entirely outside of the purview of what we should expect our deployed diplomatic personnel to spend their time doing. This is because, again, the entire purpose of private military and security contractors is to augment the force, not to detract from it or challenge it. In light of this, it is striking that 9 percent of DoS respondents with experience with armed contractors reported often having to manage the consequences of armed contractor actions.

All in all, it does not appear that a majority of either the military or State Department personnel perceive private security contractors to be “running wild” in Iraq. But there are significant and disconcerting indicators in the survey data that the military and diplomatic communities feel there might be a basis—at least in the attitudes that armed contractors bring to the country—for Iraqis to take a dim view of them, consequently damaging the standing of coalition forces in general among the local populace. Greater exposure to contractors over a longer span of time also seems to provide a more

Figure 4.7
Department of State Survey: Manage Consequences



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negative view of how contractors do indeed conduct themselves with regard to civilians in Iraq, while simultaneously providing a more positive view of the degree to which they are actually accountable for their actions.

Reforms Appear to Have Had a Positive Impact Thus Far

After the Nisour Square incident in September 2007, the Departments of Defense and State undertook steps to improve oversight over PSCs. Immediately after the incident, Secretary of Defense Robert Gates pressed all military commanders to investigate and pursue any wrongdoing by contractors (Department of Defense, 2007). In October 2007, the Pentagon announced that the military would improve oversight over coordination, movement, and training of the numerous armed parties in theater. The State Department also initiated new oversight measures. Cameras are now required in PSC vehicles, transmissions are to be recorded, and State Department personnel are embedded with personal security details (PSDs) (Broder and Johnston, 2007). On December 5, 2007, the State and Defense Departments signed a Memorandum of Agreement that defined areas of responsibility, required the establishment of coordination mechanisms, and provided tightened rules for the use of force (Department of Defense and Department of State, 2007). Survey results indicate that 75 percent of the State Department personnel who were in Iraq from 2007 through 2008 were aware of the reforms, indicating that the State Department successfully informed its employees about these measures.

There are several reasons to be skeptical about whether these measures will make a difference. First, the military had addressed the coordination problem long before the Nisour Square incident. The Reconstruction Operations Center had been established in 2004 to enhance coordination between the military and contractors. Second, even if the military intends to ensure a high training standard for contractors, there is some question as to whether this would significantly change contractor behavior. The required training standards under the WPPS contract are among the highest in the industry, and the Blackwater/Xe contractors involved in the Nisour Square incident had all been trained accordingly. Third, the State Department's plan of embedding its own personnel in the convoys to increase oversight is also unlikely to make a difference. State Department personnel were already in control of contractor oversight prior to the Nisour Square incident, and the addition of personnel to convoys is not intended to place them in command or to furnish them with enhanced legal powers for prosecution. Fourth, many vehicles had already been equipped with cameras before the incident (Isenberg, 2009). There is no guarantee that the cameras will catch incidents or all necessary information, since they usually cover only the front view. Fifth, rules for the use of force were strict prior to the Nisour Square incident. Force was only allowed in self-defense and the contractors had to comply with strict procedures pertaining to the escalation of force. Nonetheless, some firms gained a reputation of being trigger happy (Broder and Johnston, 2007).

In spite of the low probability that these reforms would be effective, the GAO was slightly more positive about the impact of the new regulations:

Since that incident, DoD and the State Department have taken steps to increase oversight and coordination over PSCs. . . . The improvements DoD and the State Department have made may reduce the number of PSC incidents in Iraq. However, these enhancements may not eliminate incidents. Moreover, while the increase in the number of DoD personnel devoted to PSC oversight in Iraq should improve oversight, more efforts are required to ensure that that these personnel are well-trained and qualified, and that positions are filled and sustained over time (GAO, 2008, p. 30).

Furthermore, the 2009 Commission on Wartime Contracting in Iraq and Afghanistan's Interim Report, *At What Cost: Contingency Contracting in Iraq and Afghanistan*, noted a significant decline in "WPPS use of deadly force incidents" between 2007 and 2009, attributing the improvement to the new policies that had been enacted:

Many congressional and agency process improvements in the management of personal security contracts appear to have led to a decrease in incidents of the use of deadly force. In addition to the recommendations made by the Secretary of State's Panel on Personal Protective Services in Iraq, beneficial changes include the initiative to move more military forces into the Iraqi provinces, and the subsequent policy changes initiated by Congress and implemented by the Departments of Defense and State. Another key improvement was the increased capability to conduct investigations (Commission on Wartime Contracting in Iraq and Afghanistan, 2009, p. 66).

Given these assessments, it appears that reforms aimed at improving the behavior of armed contractors with regard to Iraqi civilians have had at least a somewhat beneficial impact.

