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Committee on Foreign Relations
Subcommittee on International Organizations, Human Rights, and Oversight

"Status of Forces Agreements and UN Mandates:
What Authorities and Protections Do They Provide to U.S. Personnel"

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Thank you for the opportunity to address you here today on this important topic. The appropriate reach of Status of Forces Agreements, and, in particular, the question whether such agreements should immunize civilian contractors from host nation judicial proceedings, are issues that cannot be understood apart from the context in which civilian contractors are now operating, in Iraq, Afghanistan, and elsewhere. I should note that the basis of my remarks stems from both my own scholarly research,[1] as well as findings from a series of meetings I helped to organize and which were sponsored by Princeton University's Program in Law and Public Affairs. In these meetings, which have included governmental officials, contractors, uniformed military personnel, NGO representatives, and academics,[2] experts have reached a surprising degree of consensus on some critical issues. I have also participated in a Swiss government initiative to improve government contracting standards.[3]

As members of this Committee are no doubt aware, both our military and our foreign policy agencies are now employing private contractors to an unprecedented

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[1] Laura A. Dickinson, *Public Law Values in a Privatized World*, 31 YALE J. INT'L L. 383 (2006).
[2] *See Summary of Meeting*, PRINCETON PROBLEM-SOLVING WORKSHOP SERIES IN LAW AND SECURITY: A NEW LEGAL FRAMEWORK FOR MILITARY CONTRACTORS (Jan. 8 2007) [hereinafter Princeton Report], *available at* http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.
[3] *See* International Committee of the Red Cross, Privatisation of War: The Growing Use of Private Military and Security Companies, *available at* http://www.icrc.org/web/eng/siteeng0.nsf/html/privatisation-war.

degree. For example, current estimates suggest that there are almost as many contractors as troops in Iraq.[4] These contractors are serving meals, building facilities, transporting goods, and providing a broad range of logistical support to troops. They are training Iraqi police and performing other tasks to help build democracy in Iraq. And, in some cases, they are interrogating detainees and providing security to governmental officials, sites, and convoys. We don't know precisely how many security contractors are operating in Iraq, though estimates suggest there may be as many as 30,000.[5] Indeed, we are forced to rely on rough estimates because neither the State Department nor the Department of Defense, nor any other arm of government, keeps sufficient track.[6] And some reports

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[4] *See, e.g.*, Statement of Gordon England, Deputy Secretary of Defense, before the House Budget Committee, July 31, 2007 (citing the results of the U.S. Central Command CENTCOM Contractor Census, which counted about 129,000 contractor in Iraq as of April 2007, but did not include contractors from the U.S. Department of State or the U.S. Agency for International Development (USAID)); *see also* T. Christian Miller, *Contractors Outnumber Troops in Iraq*, L.A. TIMES, July 4, 2007, at 1. USAID estimated that 53,300 contractors worked for the agency in Iraq, with more than 53,000 of them Iraqis, and the State Department could not estimate the number of contractors. *See* Miller, *supra*. A more recent news article suggests that during the last quarter of 2007, there were 150,000 defense department contractors in Iraq, compared to 155,000 troops. *See* David Ivanovich, *Contractor Deaths up 17 Percent in Iraq in 2007*, HOUSTON CHRON., Feb. 10, 2008, at A1.

[5] This figure is the industry estimate. *See id.* Gary Motsek, Assistant Deputy Undersecretary of Defense for Program Support, who serves as the principal advisor to the Office of the Secretary of Defense leadership on policy and program support, *see* Dep't of Defense, Program Support, at http://www.acq.osd.mil/log/PS/bio.htm, estimates that the number of Defense Department Security contractors totaled only 6,000 as of July 2007, but others have put the figure closer to 10,000. Miller, *supra* note 1. A memorandum from the House Committee on Government Oversight and Reform indicated that the 2006 agreement between the State Department and Blackwater provided for 1,020 Blackwater employees to operate in Iraq, but this figure does not include the numbers of employees for Triple Canopy and Dyncorp, the other companies that have entered into security contracts with the State Department. House Comm. on Gov't Oversight and Reform, Memorandum, *Additional Information about Blackwater USA*, Oct. 1, 2007, at 4.

[6] In the 2007 Supplemental Appropriations Act, Congress required the Department of Defense to count the number of Defense Department Contractors in Iraq. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28 (May 5, 2007), § 3305. The Department gathers this information from the U.S. Central Command (CENTCOM) Contractor Census. Statement of Gordon England, Deputy Secretary of Defense, before the House Budget Committee, July 31, 2007. But this tally does not include contractors from the U.S. Department of State or USAID. *See* Miller, *supra* note 1.

suggest that even on-the-ground military commanders in Iraq may not know whether private security contractors are operating in their territory.[7]

While most contractors have performed admirably and filled vital roles—and more than 1,100 contractors have died in Iraq while doing so[8]—some have committed serious abuses without being held accountable. Perhaps the most notable recent case is the incident from September 16 of last year, when Blackwater security guards employed by the Department of State fired into a crowd in Baghdad's Nisour Square, killing seventeen people.[9] Subsequent reports by the Department of Justice and the military have concluded that at least 14, and possibly all, of the killings were unprovoked.[10] Yet no one has yet been indicted for the killings. In a similarly high-profile incident, contract interrogators and translators joined troops in sexually humiliating and brutally abusing detainees at the Abu Ghraib Prison in Iraq in 2003. Indeed, General Fay reported that the contractors, many of whom lacked training, were actually supervising uniformed military personnel at the prison.[11] Yet while twelve uniformed soldiers have faced punishment for their role in the abuse,[12] no contractors have been charged. A recent report from Human Rights First suggest that these incidents are just the tip of the iceberg and that there are many more cases in which security contractors or contract interrogators may have used

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[7] *See, e.g.*, PATRICK KENNEDY ET AL., REPORT OF THE SECRETARY OF STATE'S PANEL ON PERSONAL PROTECTIVE SERVICES IN IRAQ, at 6 (Oct. 2007) [hereinafter "Kennedy Report"].
[8] Ivanovich, *supra* note 4 (reporting that 1,123 contractors have died in Iraq since 2003).
[9] David Johnston & John M. Broder, *FBI Says Guards killed 14 without cause*, N.Y. TIMES, Nov. 14, 2007.
[10] Johnson & Broder, *supra* note 9.
[11] Maj. Gen. George R. Fay, AR-15-6 INVESTIGATION OF THE ABU GHRAIB DETENTION FACILITY AND 205TH MILITARY INTELLIGENCE BRIGADE (2004), at 51-52 *available at* http://news.findlaw.com/hdocs/docs/dod/ fay82504rpt.pdf [hereinafter Fay Report].
[12] Julian Barnes, *CIA Contractor Guilty in Beating of Detainee*, L.A. TIMES, Aug. 18, 2006, at 18. The cases include those of Sabrina Harman, Santos A. Cardona, Shawn Martin, Megan Ambuhl, Ivan Frederick, Roman Krol, Javal Davis, Armin Cruz, Jeremy Sivitz, Charles Graner, Lynndie England, and Michael Smith. See also Laura A. Dickinson, Abu Ghraib, *The Battle Over Institutional Culture and Respect for International Law within the U.S. Military, in* INTERNATIONAL LAW STORIES, at 405, 417 (2007).

excessive force.[13] In fact, CIA director Michael Hayden has testified that he believes that CIA contract interrogators have engaged in waterboarding.[14] But again there has been so far only one instance—the case of the CIA contract interrogator David Passaro—in which U.S. authorities have criminally prosecuted a contractor for violent crimes against a third party.[15]

We are left with the unmistakable conclusion that the use of private security contractors and interrogators potentially threatens core values embodied in our legal system, including (1) respect for human dignity and limits on the use of force and (2) a commitment to transparency and accountability.

What does this mean for the negotiation of Status of Forces Agreements, particularly in Afghanistan and Iraq? I would argue that until we can improve our system of holding contractors criminally accountable when they commit serious abuses, as well as take significant steps to improve oversight to prevent abuses from occurring, immunizing contractors from host nation legal process will remain problematic. Currently, neither system is working.

(1) Criminal responsibility in cases of serious abuse

As the lack of criminal prosecutions in the Abu Ghraib and September 16, 2007 Blackwater incident make clear, our accountability regime is seriously flawed. Congress will undoubtedly need to institute more effective measures to punish contractors if they

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[13] Human Rights First, PRIVATE SECURITY CONTRACTORS AT WAR, ENDING THE CULTURE OF IMPUNITY (2008), *available at* http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf.

[14] *See* Siobhan Gorman, *CIA Likely Let Contractors Perform Waterboarding*, WALL ST. J., Feb. 8, 2008 (reporting that, when asked whether CIA contractors engaged in waterboarding: "I'm not sure of the specifics . . . I'll give you a tentative answer: I believe so.").

[15] *See* Scott Shane, *C.I.A. Contractor Guilty in Beating of Afghan Who Later Died*, N.Y. TIMES, Aug. 18, 2006, at A8.

commit abuses. The Military Extraterritorial Jurisdiction Act (MEJA) Expansion and Enforcement Act of 2007,[16] which has already passed in the House of Representatives and which is pending in the Senate, would close important loopholes in the federal courts' jurisdiction over contractors who commit crimes overseas. Most notably, the Act would clarify ambiguity over whether U.S. federal courts would have jurisdiction to try contractors who are not employed by the Department of Defense, extending jurisdiction to all contractors and not merely those, as current law provides, whose work relates to "supporting the mission of the Department of Defense overseas."[17]

The criminal accountability problem is not only a problem of law on the books, however, but also a problem of the law in action. A plausible argument can be made that the existing version of MEJA would cover even State Department contractors in Iraq and Afghanistan, because they could be said to be supporting a broad DOD mission. Moreover, the Special Maritime and Territorial Jurisdiction,[18] which extends federal criminal jurisdiction to crimes committed by or against U.S. nationals overseas in certain facilities, should have covered the Abu Ghraib cases. The War Crimes Act[19] and Torture Act[20] also could provide jurisdiction in some cases, though these statutes are rarely used. Congress recently extended the Uniform Code of Military Justice to allow contractors to be tried in military courts, but no such prosecutions have taken place.

Thus, the issue is not only closing gaps in existing law, but strengthening enforcement. To that end, DOJ should be required to establish a dedicated office within the criminal division to investigate and prosecute contractor crime. That office should be

[16] MEJA Expansion and Enforcement Act of 2007, H.R. 2740, Passed in the House, Oct. 4, 2007.
[17] 18 U.S.C. § 3267.
[18] 18 U.S.C. § 7 (9)(a) (2001).
[19] 18 U.S.C. § 2241 (a) (2006).
[20] 18 U.S.C. § 2340.

staffed with experienced prosecutors, investigators, and other support staff. In addition, the FBI should have investigators on the ground in Iraq and Afghanistan, as the MEJA expansion bill would require, so that they can be on the scene, and cooperate with military investigators and civilian authorities to conduct investigations in a timely way. If no prosecutions take place in the civilian system, prosecution of security contractors or interrogators in military courts under the UCMJ, could be an option.

(2) Better contract oversight to prevent abuses

These types of back-end enforcement measures, while important, are only half of the picture. Front-end measures to improve oversight and control are also critical. I propose five steps Congress can take to improve contracting practices, oversight, and monitoring so as to better prevent abuses *before* they occur.

(i) Establish minimum standards for contractual terms

Every one of the private security contractors operating on our behalf overseas is there because the company entered into a contract with the federal government. The existence of such contracts gives the federal government significant power to dictate the terms under which contractors operate, if only such power were actually exercised. Thus, I recommend that Congress establish a set of minimum standards to guide the drafting of private security, interrogation, and other contracts. These minimum standards would explicitly make contractors subject to clear, consistent rules regarding the use of force, and establish specific requirements for training and recruitment. The Department of State and Defense have made significant progress in this area in the past few months, but they could do much more.

With respect to the use of force in particular, these rules should be both specific and consistent across governmental departments. Indeed, the Department of Defense and the Department of State rules have sometimes differed from each other. For example, according to Patrick Kennedy's report following the September 16 Blackwater incident, while the Defense Department has required its security contractors to fire aimed shots when responding to a threat, the Department of State in the past did not.[21] In addition, rules have often been vague or non-existent. The eleven work orders for the CACI interrogators did not expressly require that the private contractor interrogators comply with specific international human rights or humanitarian law rules such as those contained in the Torture Convention or the Geneva Conventions.[22] A congressional mandate that contracts should include such provisions is an easy and obvious reform.

Likewise, Congress could mandate more stringent requirements that contractor-employees receive training in the applicable limits on the use of force, including training in international human rights and humanitarian law. Experts have asserted that training is insufficient.[23] Thus, it is not surprising that an Army Inspector General report on the conditions that led to the Abu Ghraib scandal concluded that 35 percent of CACI's Iraqi interrogators did not even have any "formal training in military interrogation policies and techniques," let alone education in international law norms.[24] Nor is it surprising that

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[21] Kennedy Report, *supra* note 7, at 9.

[22] Work Orders Nos. 000035/0004, 000036/0004, 000037/0004, 000038/0004, 000064/0004, 000067/0004, 000070/0004, 000071/0004, 000072/0004, 000073/0004, & 000080/0004, issued under DOI-CACI, *available at* <http://http://publicintegrity.org/wow/docs/CACI_ordersAll.pdf.>.

[23] Princeton Report, supra note 2, at 6-7.

[24] U.S. Department of the Army, Inspector General, "Detainee Operations Inspection" (2004), pp. 87-89, *available at* <http://www4.army.mil/ocpa/reports/ArmyIGDetaineeAbuse/DAIG%20Detainee%20Operations%20Inspection%20Report.pdf>. *See also* Fay Report, *supra* note 11, at 19 (noting that that "contractors without

Patrick Kennedy concluded that the State Department security contractors had not received sufficient guidance in how to apply the rules regarding the use of force, and in particular, the use of deadly force.[25]

The Defense Department's recently proposed rule, that certain security contractors should receive training by military lawyers, is a strong measure that would be a significant improvement.[26] Yet, I would argue that Congress should legislatively require such training, rather than leaving it up to agency discretion, as the agencies have differed in their practices on this question.

Congressionally mandated standard contractual terms should also include consistent recruiting and vetting requirements for contractor employees. To give one example of the problems that remain, Blackwater fired an employee working as a security guard under its agreement with the State Department when that employee allegedly shot and killed an Iraqi security guard on December 24, 2006.[27] Yet subsequently, a Defense Department contractor hired the man as an employee, and the company was unaware of the prior incident.[28]

Vetting is even more critical—and more difficult—as the number of non-citizen contract employees rises. By some estimates, 80 percent of contract laborers in Iraq are

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training, qualifications, and certification created ineffective interrogation teams and the potential for non-compliance with applicable laws").

[25] Kennedy Report, *supra* note 7, at 6.

[26] Defense Federal Acquisition Regulations Supplement; DOD Law of War Program (DFARS Case 2006-D035), 73 Fed. Reg. 1853 (Jan. 10, 2008), proposed amendment to 48 C.F.R 252 (proposing requirement that contractor personnel accompanying the Armed Forces outside the United States must receive "basic training" in the law of war at a military-run training center or approved web-based source; and that some contractor personnel must receive "advanced training, commensurate with their duties and responsibilities" to be "conducted by Service Judge Advocates," and which "which will be coordinated with the servicing legal advisor in the operational chain of command, within the appropriate geographic combatant command").

[27] *Contractor Involved in Iraq Shooting Got Job In Kuwait*, CNN, Oct. 4, 2007, *available at* http://www.cnn.com/2007/POLITICS/10/04/blackwater.contractor/index.html.

[28] *Id.*

not U.S. citizens.[29] And while it is unclear whether the percentage of non-U.S. security contractors and interrogators is that high, there are reports that security contractors have hired third country nationals from South Africa, Colombia, Fiji, and Nepal.[30] In this context, training is not sufficient; vetting is necessary to ensure that the employees have not, for example, participated in human rights abuses as actors within repressive regimes.

Finally, in the increasingly global market for labor, recruiting practices are particularly important. Some reports have surfaced that contract employees have come to Iraq under false pretenses, and that some employers may have withheld passports.[31] The Defense Department has improved its standard contractual terms regarding vetting and recruiting. Nonetheless, Congress should mandate terms to insure consistency and a firm minimum standard that would prohibit such practices.

(ii) Encourage inter-agency coordination

Government officials from the multiple agencies that have hired security contractors (and interrogators) do not communicate well with each other in the field or in Washington, contributing to a climate of confusion that can contribute to abuse. As discussed above, some military commanders do not know when security contractors hired by other agencies pass through their area, because there has been no clear system in place to communicate that information to them. And, also as mentioned above, the agencies do not have a unified system even for counting, let alone keeping track of contractors. Furthermore, in investigating abuses, multiple agencies' officials are on the scene, though the precise jurisdiction of each agency is unclear, leading to further confusion. In the case

[29] *See, e.g.*, Miller, *supra* note 4.
[30] *See* Paul Salopek, *South Africa's Silent War in Iraq*, CHICAGO TRIB., Oct. 7, 2007, at A1.
[31] *See* Princeton Report, *supra* note 2, at 13.

of the Blackwater September 16 incident, for example, in addition to the multiple inquiries that the State Department conducted, the FBI and military authorities also conducted investigations. Indeed, the fact that the State Department officials may have granted immunity to some contractors has complicated the criminal investigations.[32]

Moreover, in some cases, the lines of authority and communication are so unclear that contractors are actually supervising governmental personnel, instead of the other way around. In addition to the Abu Ghraib case discussed above, an incident from Najaf in 2004 is instructive. Blackwater guards charged with defending a Coalition Provisional Authority site fought alongside a marine who appears to have asked the Blackwater guards for advice about whether or not to fire into a menacing crowd.[33]

For this reason, one of the clearest and strongest recommendations from the Princeton group was to improve inter-agency coordination of contractors, both on the ground and in Washington.[34] The memorandum of agreement between the State Department and the Defense Department to establish better inter-agency control of security contractors is an important step.[35] Yet this agreement only addresses two agencies and could go further. I would argue that Congress should encourage the National Security Council or some other entity to establish an inter-agency working group to set common standards for security contractors, to design uniform systems for keeping track of contractors, and for improving communication and clarifying lines of authority.

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[32] *See* Johnston & Broder, *supra* note 9.
[33] *See Contractors in Combat: Firefight from a rooftop in Iraq*, VIRGINIAN PILOT, July 25, 2006; JEREMY SCAHILL, BLACKWATER 123 (2007).
[34] Princeton Report, *supra* note 2, at 13-15.
[35] *See* Karen DeYoung, *State Department Contractors in Iraq Are Reined In*, WASH. POST, Dec. 6, 2007, at A24.

(iii) Expand the contract monitoring regime

Even when useful language is written into a contract, enforcement is lax because the agencies have not devoted enough resources to contract monitoring. An effective contractual regime must include sufficient numbers of trained and experienced governmental contract monitors. Recently the government has moved in precisely the wrong direction, however, by dramatically *reducing* its acquisitions workforce.[36] Moreover, even the personnel who are on the payroll do not have adequate incentives to work in Iraq and other conflict zones.[37] For these reasons, scholars and commentators, including the GAO, have been warning of a contract oversight crisis.

The problems caused by the sheer low numbers of personnel are exacerbated by a lack of expertise in the particular issues raised by security contractors and interrogators. Many of the contract personnel were trained in another era and did not learn how to manage service contracts, let alone service contracts that raise the specific concerns of security and interrogation. Few contract monitors, for example, are trained in international human rights and humanitarian law standards, or in the rules regarding the use of force.

Congress, therefore, should mandate that the agencies increase the number of monitoring and oversight personnel, ensure that they specialize in the types of tasks they are overseeing, and require that they, in turn, receive specific training in rules regarding the use of force and international humanitarian and human rights law. Furthermore,

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[36] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, DOD NEEDS TO EXERT MANAGEMENT AND OVERSIGHT TO BETTER CONTROL ACQUISITION OF SERVICES (Jan. 17 2007). For a detailed discussion of the depletion of the acquisition workforce, *see* Steven L. Schooner, *Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government*, 16 STAN. L. & POL. REV. 16 (2005).
[37] *See* Princeton Report, *supra* note 2, at 16.

Congress should allocate the funding so that the agencies have sufficient resources to fulfill this mandate.

Thus, Congress must provide more resources for contractor oversight personnel. Moreover, these monitors must be trained not only to root out fraud and corruption, but also to apply rules regarding the use of force and other important human rights and humanitarian law norms. Finally, government monitors should, as much as possible, be embedded with contractors authorized to use force, such as PSCs. This would allow some on-the-ground oversight, analogous to the role that JAG Corps lawyers play in advising military personnel on legal issues surrounding military operations.

(iv) Require regular reporting to Congress

One of the factors that is creating the oversight challenge is a lack of information, combined with the piecemeal way that much information about contractors comes to Congress (and to the public at large). Agency officials do testify periodically and provide information, but the information (such as details about the number of contractors and their functions) does not flow to Congress in a systematic way. Part of the difficulty stems from the multiplicity of agencies entering into agreements with contractors.

Recent legislation, and bills in the pipeline, would improve the situation, but do not go far enough. Thus, the provision of the MEJA Expansion Act that would require reporting to Congress on the number of cases investigated is an important step, but it focuses only on the Department of Justice.[38] Similarly, recent provisions in the Defense Authorization Act of 2008 enhance reporting requirements, but are insufficient because they do not require each agency to provide both quantitative and qualitative information

[38] H.R. 2740, *supra* note 16, at §2.

about contractor abuses.[39]

Congress should require each agency to report to Congress quarterly, or every six months. Moreover, these reports should not only identify the number of contractors and oversight personnel, but it should also provide information about the number of incidents in which security contractors fire their weapons and qualitative assessments about whether these incidents raised concerns. Furthermore, the reports should provide information about the follow-up: whether there was an investigation, what the conclusion was, and what happened subsequent to the investigation. If the State Department can report annually on the human rights conditions in all of the countries around the world,[40] the agencies should be able to provide Congress with minimal information about their own security contractors.

(v) Accreditation/licensing

Finally, Congress should encourage the creation of third-party monitoring, accreditation, and certification entities and then consider requiring such third-party approval as part of the contract. At least one industry organization, the International Peace Operations Association (IPOA), has launched this sort of accreditation system,[41] and independent organizations without industry ties could establish a rating system as well.

On this score, the domestic context provides a particularly rich set of models as to how an accreditation scheme might work. For example, in the healthcare field, state laws

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[39] National Defense Authorization Act for Fiscal Year 2008, H.R. 4986, passed in the House, Jan. 16, 2008, passed in the Senate, Jan. 22, 2008, signed by the President, Jan. 28, 2008.

[40] *See, e.g.*, U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007), *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/.

[41] *See, e.g.*, International Peace Operations Association Code of Conduct, *available* at http://www.ipoaonline.org/conduct/.

or contractual terms often specify that health maintenance organizations (HMOs) must receive accreditation by the National Committee for Quality Assurance (NCQA), an independent, non-profit organization, before receiving public funding.[42] NCQA rates HMOs along various benchmarks of quality. Until recently, NCQA certification was primarily voluntary, offering HMOs an advantage when competing for contracts.[43] When states became managed care purchasers, however, they adopted NCQA certification as a requirement for receiving public funding.[44] Accreditation by an independent organization would be the best approach, but no such organization yet exists. Congress might encourage the creation of such an organization by providing funding. Or, alternatively, Congress might, as it has done in the health care context, give agencies the authority to "deem" ratings by such an independent entity as sufficient to satisfy congressionally mandated standards.

Conclusion

It is against this background of a broken accountability and oversight regime that negotiating immunity for contractors serving in contingency operations is particularly problematic. Iraqis have criticized the reach of Coalition Provisional Authority Order 17, which immunizes contractors from legal process in Iraq, and the legal authority of which is ongoing, in part because there is no meaningful alternative means of holding contractors accountable when they do commit abuses. The criminal courts of Iraq,

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[42] *See, e.g.*, National Committee for Quality Assurance, *available at* http://www.ncqa.org/.

[43] Although NCQA's accreditation program is voluntary, almost half the HMOs in the nation, covering three quarters of all HMO enrolees, are currently involved in the NCQA Accreditation process. Significantly, employers increasingly require or request NCQA accreditation of the plans with which they do business. *See* National Comm. for Quality Assurance, NCQA: Overview, *available at* http://www.ncqa.org/Communications/Publications/overviewncqa.pdf.

[44] For an extended discussion of NCQA, see Dickinson, *supra* note 16.

Afghanistan, and other host nation countries may not have the capacity to try contractors employed by the United States. But until Congress and the agencies improve accountability and oversight, extending the immunity of contractors in host nations will remain problematic. Thus, I would recommend that Congress take steps to improve accountability in these areas. To that end, in addition to any legislation arising from this Committee, the work of the new Commission on Wartime Contracting in Iraq and Afghanistan, established in the Defense Authorization Act,[45] will provide an important forum for further consideration of these issues. Thank you very much for the opportunity to address these matters with you today.

[45] *See* H.R. 4986, *supra* note 39 at § 841.