



Commission on Wartime Contracting

IPOA Testimony

14 September 2009

Chairman Shays, Chairman Thibault, Members of the Commission, thank you for the opportunity to testify here on behalf of the IPOA, the Association of the Stability Operations Industry. Our Association represents more than 60 companies across an industry consisting of contractors performing reconstruction, logistics and security services around the world. My goal today is to provide the Association's views on ways to improve the stability operations industry and to ensure taxpayers obtain "best value" and receive professional and ethical services from our industry.

I would like to take a moment to offer condolences to the families of an IPOA member company personnel that was killed in the savage suicide attack on the NATO base at the Kabul Airport on the 8th of September, an attack that took place very close to Camp Sullivan, home to the Embassy security contractors. Four others were wounded. This tragic incident is yet another reminder of the often unseen and seldom-mentioned danger faced by our contract personnel that support the United States government around the globe.

IPOA is a unique association that works to make sure that the international community is able to tap into the enormous resources, capabilities and cost effectiveness of the private sector. IPOA was originally founded to address issues in Africa particularly to ensure that the UN and Africa Union were receiving the support they needed to give their peace operations a chance of success – in places that the West has largely abandoned.

Founded in April, 2001, IPOA's membership includes logistics and support companies, security sector reform and development companies, as well as private security companies (PSCs). IPOA's ethical foundation is grounded in the IPOA Code of Conduct, a document originally written by nongovernmental organizations and human rights lawyers and enforced by a Standards Committee – a jury of peer companies. Membership is not automatic and requires disclosures and information not typical of trade associations, and companies can be expelled if they violate the associations Code. IPOA works with humanitarian organizations and NGOs to regularly update and improve the Code of Conduct, and has participated in a number of international initiatives to support industry-wide standards, including the widely respected Montreux Document clarifying international law on the stability operations industry and

spearheaded by the International Committee of the Red Cross and the Swiss Government. The companies come from a variety of nations, backgrounds and do a variety of services, but they are similar in the fact that they all specialize in running their operations in weak and failed states, and they are united in their support of the IPOA Code of Conduct.

IPOA works to ensure Member companies operate professionally and has sponsored workshops and conferences on Human Rights, Trafficking in Persons, International Trafficking in Arms Regulations (ITAR), coordination between the private sector, NGO community and the military and many other topics. We have supported legislation expanding and clarifying the Military Extraterritorial Jurisdiction Act (MEJA) that is the primary instrument for holding contractors criminally accountable, and we have willingly supported numerous investigations of the industry by the Government Accountability Office (GAO), Congressional Budget Office (CBO) and this Commission on Wartime Contracting as well as many others.

While the majority of our Member companies do not provide armed security services, IPOA is involved in a number of initiatives focused on creating greater professionalism and ethics in that sector. We are close to completing a model Rules for the Use of Force (RUF) for Private Security Companies (PSCs) that enshrines key humanitarian concerns and will set the bar for high-end security firms. We have spearheaded an initiative in Congress to create 'third-party certification' for PSCs. We also advocate for our Code of Conduct to be recognized by procurement specialists for the value it brings to clients. Indeed, the Code is now being made part of the Afghanistan law for PSCs.

Contractors have always been used to support U.S. government policies abroad, including some 700,000 in World War II, 80,000 at peak in Vietnam, and of course in the Balkans and elsewhere. Operations in areas of conflict are not unusual and civilians have always been willing to take risks to support military operations. Currently in Afghanistan there are some 74,000 contractors supporting the U.S. mission, roughly 10% doing security work and the rest engaged in base support, logistics, translation, construction and other activities. Two thirds of these contractors are local Afghans, and the rest split between U.S. citizens and third country nationals (TCNs). It is because of these contractors that the relatively small numbers of NATO military forces are able to focus on their policy objectives and leave the cleaning, construction, gate guarding and base support to the private sector.

I often point out that Afghanistan and Iraq are the best supported, best supplied military operations in U.S. history – in the big picture the model of private sector support for the all-volunteer professional military works remarkably well - but no one denies that there have been problems with contractors in our industry. Indeed when operating in weak and failed states it would be astonishing if there were not any problems. IPOA's focus has always been on how best to address the problems and prevent the same ones from reoccurring in the future. We have been encouraged by positive legislative actions to enhance regulation and accountability in

the industry. We are seeing improvements coming down the road as well on everything from enhanced government oversight capabilities to movement towards improving insurance for contingency contractors.

Our industry employs civilians who have all the privacy and human rights due private citizens anywhere. At the same time we recognize that operations in high-risk environments require a balance between rights and responsibilities. In regard to the recent situation at the U.S. Embassy in Kabul, the Association strongly believes that hazing or humiliation should never be tolerated and indeed, personnel involved in such behavior are generally sent home and can be charged with crimes. No one has any plans to put cameras in bedrooms, and individual rights must always be respected. However, when personal behavior negatively impacts the mission or the client then a company has an obligation to step in and address the issue.

The recently published photographs created a great deal of public concern, but also within the industry as well, from companies and individual contractors. Clients of the stability industry, whether in the government or private sector, should expect professional services and they have a right to assume their contractors will not become an embarrassment. Needless to say, the consequences faced by the perpetrators are widely supported by the international community of professionals that comprise this industry. True professionals support removal of those who do not take their critical roles seriously. The Association is committed to working with U.S. government officials to implement ever improved standards of oversight, including enhanced vetting procedures for prospective employees.

More to the point, the technical aspects of contracting for services in conflict and post conflict environments is a unique art that the U.S. government has been forced to expand as a result of the conflicts since 9-11. Our industry and the government both have a responsibility to capture lessons learned and find ways to ensure mistakes are not repeated. We should be continually implementing changes in processes and procedures to improve the quality of services delivered to the customer – often the U.S. soldier or diplomat. Some in Congress have even suggested a separate unit of ‘contingency contract officers’ that would specialize in this kind of operation. We are hopeful that one of the outcomes of the Commission’s work is a series of recommendations to add to that “process improvement.” As such, the Association believes the Commission should consider the following.

First, many procurement and contract management rules are designed for benign environments such as the continental United States and do not take into account the unique intricacies of contracting in a contingency environment. While this is being addressed by changes to U.S. government methodologies and regulations related to contingency contracting, in the short term operations are still hampered by unnecessary bureaucratic delays that increase costs and risk in complex contingency operations. We would welcome a practical review or government-wide conference on how procurement and contract oversight could be tweaked to account for the

unique realities of contingency contracting. It would be ideal to get the contracting officers, the contracting officer representatives and industry executives and country managers together in an environment conducive to resolving many of these issues - as partners instead of as antagonists.

Next, we have to reconsider how government clients can gain the best results and greatest professionalism from their contractors. This addresses the heart of the current issue: intense competition is beneficial for obtaining a low price for the government, but focusing only on price when awarding a contract can ultimately degrade the quality of the service. The pressure to perform contractually is extreme and on winning a contract rapidly finding and vetting suitable personnel in a highly competitive environment can be exceedingly challenging. The pools of vetted and acceptable candidates willing to work in dangerous and austere conditions are not large, but with average margins of less than 10% - which in most cases have to cover unforeseen contractual contingencies – the salary flexibility is not great, further shrinking the willing pool of talent.

Too often current procurement processes force competing companies to focus narrowly on price with less effort spent on quality and performance. What may be seen as a “best value” determination by the customer is too often simply a choice of lowest bidder. In these highly sensitive operations, we believe there must be a true best-value competition conducted by qualified contracting officers that recognize unrealistically low-bid proposals, something that is often at the root of unsatisfactory performance. The Department of State is limited by law to technically acceptable, lowest bid. The Department of Defense has greater latitude to choose contracts that are ‘best value,’ for these kinds of contingency operations that makes far more sense. The upfront cost and effort to ensure thorough analysis of bids by experienced acquisition personnel will produce better results. Therefore, the IPOA is pleased by the ongoing affirmations by Congress and the Executive Branch that an improved and expanded acquisition workforce is the key to ending many of the contract deficiencies we have seen over the past decade. As a bottom line: procurement officials should be reemphasizing quality in the awarding of contracts and only a stronger acquisition workforce can accomplish that task.

During this legislative cycle, IPOA approached Congress with a request to require mandatory third-party certification of private security contractors. This was not a function that IPOA planned to perform, but rather a service that the IPOA believes is necessary to ensure a sufficient baseline is established for companies to be authorized to perform these services representing the U.S. Government, and subsequently U.S. government policy objectives, around the world. This concept has received support from a number of NGOs and academics.

As a trade association IPOA has been proactive in our efforts at self regulation but it is important to understand our role – we cannot replace government oversight and accountability, nor should we. We are not the first responder to contractual and legal issues. We can and do

supplement governments with our own codes and procedures. IPOA's focus is on ethical operations which is a concept that goes beyond contractual requirements and laws.

However, in conjunction with contract law, criminal laws, rules and regulations which are the primary roadmap for all companies, our Association provides further and supplemental guidelines and codes of conduct:

- As mentioned, we have our own Code of Conduct, written by NGOs and academics and upgraded every two years. All member companies must agree to abide by the Code on joining the Association.
- We have an oversight mechanism to address ethical issues and anyone – any individual or organization - is able to file complaints against IPOA Member companies based on our Code of Conduct to our Standards Committee. When a complaint is brought to the Committee and it is determined to relate to the IPOA Code of Conduct the Committee will research the issue and establish a plan of action. If violations are found, the Committee can recommend behavioral modifications and it has the authority to recommend the Board of Directors that a company in violation be expelled from the Association.
- Future enhancements include the creation of an annual survey that will require companies to match their performance and standards against the IPOA Code of Conduct.
- IPOA has been creating model Rules for the Use of Force (RUF) for PSCs, a project that received a good deal of NGO input and is near completion. The model RUF should be publically released in the next few weeks.
- In conjunction with the key framers of the Montreux Document we are working to design a universal code of conduct for the industry.

Indeed, I have just returned from a conference on international human rights policies and the role of non-state actors, such as the companies IPOA represents. More to the point, this testimony is at the same time as another event in London on the international Code of Conduct and Enforcement mechanism. That meeting is a follow-up on the ICRC and Swiss government-led effort to ensure international accountability and standards for the industry on a global scale. Due to my presence here today, we have sent IPOA's Director, JJ Messner in my place to ensure our participation and support for that ongoing international effort.

Finally, I urge the Commission to keep in mind that while the focus of this hearing is on Afghanistan and previous hearings have been on Iraq, in the long term we need to think about the thousands of contractors supporting humanitarian and international peacekeeping missions in Darfur, Eastern Congo, Haiti and elsewhere. Afghanistan and Iraq are important, especially from a U.S. policy perspective, but from a humanitarian perspective they pale in comparison – more than five million people have died in Eastern Congo alone since the beginning of that tragic conflict. Our industry is important to the U.S. missions, but critical to supporting international peace efforts as well, and any rules and regulations that come out of your recommendations should be consistent and supportive of our private sector support for those humanitarian operations in the future.

I look forward to your questions.