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United States Department of State

Washington, D.C. 20520

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2007 Feb 7 P 13:47

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**ACTION MEMO FOR UNDER SECRETARY FORE - M**

FROM: ARB/PCC – Marguerite Coffey *MC* Chair

SUBJECT: Approval of the S/ES Memo to DOD

*Under Secretary for Management*

**Recommendation**

That you approve the transmittal of the attached S/ES Memo to the DOD Executive Secretary regarding the deaths of personnel who appear to be affiliated with DOD activities in Iraq and Afghanistan. Proposed memorandum at Tab 1.

Approve ✓ H<sup>4</sup>

Disapprove \_\_\_\_\_

Background

*2-7-07*

The Omnibus Diplomatic Security and Antiterrorism Act of 1986 generally requires the Secretary of State to convene an Accountability Review Board (ARB) "in any case of serious injury, loss of life, or significant destruction of property, at or related to, a United States Government mission abroad" (entire text at Tab 2). When such an incident involves "any facility, installation, or personnel of the Department of Defense with respect to which the [Secretary of State] has delegated operational control of overseas security functions to the Secretary of Defense," the Secretary of Defense is required to conduct an appropriate inquiry and report to the Secretary of State and to Congress (22 U.S.C.4831 (a)(2)).

In June 2006, M/P was informed about a number of incidents involving injury or loss of life in Iraq about which it had previously been unaware.

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: CHARLES L DARIS  
DATE/CASE ID: 23 MAR 2011 200908726

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After reviewing the available information about a number of these incidents, and two others in Afghanistan, the Permanent Coordinating Committee (PCC) on ARBs determined that seven incidents appear to involve personnel associated with DoD and thus, should be forwarded to that agency for appropriate action. Such action may or may not include conducting the report and inquiry required by 22 U.S.C. 4831 (a)(2). Therefore, we recommend that you approve transmittal of the attached memorandum informing DoD about the seven incidents detailed in the attachments at Tab 3.

Attachments:

As stated.

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Document: M/P ARB – Grim List- Memo to DOD re seven incidents – December  
2006

Drafted: SACurley, 70550, December 11, 2006

Cleared:

M/P – Marguerite Coffey (cleared)  
NEA – L. Victor Hurtado (cleared)  
L – Jim Thessin (cleared)  
L/M – Kevin Gleeson (cleared)  
ODNI – Nels P. Nordquist (cleared)  
DS – Joe Morton (cleared)  
CA- Wanda Nesbitt (cleared)  
S/CT – Gerry Fejerstein (cleared)  
INR – Randall Fort (cleared)  
M: DOffutt (cleared)  
P: Eric Rubin (cleared)  
S/P: Todd Deatherage (cleared)  
S/ES-CR - Natalie Chagnon

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ORIG MEMO TO DOD  
RECEIPT # 3554990  
COPIES:

SES 200701902 -

United States Department of State

Washington, D.C. 20520

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February 8, 2007

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2007 Feb -08 15:26

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MEMORANDUM FOR CAPTAIN WILLIAM P. MARRIOTT  
EXECUTIVE SECRETARY  
DEPARTMENT OF DEFENSE

RELEASED IN FULL

Subject: Deaths of personnel in Afghanistan and Iraq

The Omnibus Diplomatic Security and Antiterrorism Act of 1986 requires the Secretary of State to convene an Accountability Review Board (ARB) "in any case of serious injury, loss of life or significant destruction of property at, or related to, a United States Government mission abroad" (entire Text at Tab 1). When such an incident involves "any facility or installation or personnel of the Department of Defense with respect to which the [Secretary of State] has delegated operational control of overseas security functions to the Secretary of Defense," the Secretary of Defense is required to conduct an appropriate inquiry and report to the Secretary of State and to Congress (22 U.S.C. 4831 (a)(2)).

In November and December 2006, the Department of State's Permanent Coordinating Committee on Accountability Review Boards (ARB-PCC) met to review a number of incidents in Iraq and Afghanistan that resulted in the deaths of personnel who appeared to be associated with the U.S. Government presence in one of those countries. The PCC determined that seven of the incidents appear to involve personnel associated with DoD and that reports of these incidents should be forwarded to DoD for appropriate action. Such action may or may not include the inquiry and report required by 22 U.S.C. 4831 (a)(2). Accordingly, please find the reports pertaining to the incidents attached at Tab 2.

Harry K. Thomas, Jr.  
Executive Secretary

Attachments:

1. Diplomatic Security and Antiterrorism Act of 1986
2. Spot Reports regarding seven incidents in Iraq

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: CHARLES L DARIS  
DATE/CASE ID: 23 MAR 2011 200908726

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TITLE 22, U.S. CODE. FOREIGN RELATIONS AND INTERCOURSE  
CHAPTER 58. DIPLOMATIC SECURITY  
PERFORMANCE AND ACCOUNTABILITY

§ 4831. Accountability Review Boards

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(a) In general.

(1) Convening a Board. Except as provided in paragraphs (2) and (3), in any case of serious injury, loss of life, or significant destruction of property at, or related to, a United States Government mission abroad, and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad, which is covered by the provisions of titles I through IV (other than a facility or installation subject to the control of a United States area military commander), the Secretary of State shall convene an Accountability Review Board (in this title [22 USCS §§ 4831 et seq.] referred to as the "Board"). The Secretary shall not convene a Board where the Secretary determines that a case clearly involves only causes unrelated to security.

(2) Department of Defense facilities and personnel. The Secretary of State is not required to convene a Board in the case of an incident described in paragraph (1) that involves any facility, installation, or personnel of the Department of Defense with respect to which the Secretary has delegated operational control of overseas security functions to the Secretary of Defense pursuant to section 106 of this Act [22 USCS § 4805]. In any such case, the Secretary of Defense shall conduct an appropriate inquiry. The Secretary of Defense shall report the findings and recommendations of such inquiry, and the action taken with respect to such recommendations, to the Secretary of State and Congress.

(3) Facilities in Afghanistan and Iraq.

(A) Limited exemptions from requirement to convene Board. The Secretary of State is not required to convene a Board in the case of an incident that—

(i) involves serious injury, loss of life, or significant destruction of property at, or related to, a United States Government mission in Afghanistan or Iraq; and

(ii) occurs during the period beginning on October 1, 2005, and ending on September 30, 2009.

(B) Reporting requirements. In the case of an incident described in subparagraph (A), the Secretary shall—

(i) promptly notify the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of the incident;

(ii) conduct an inquiry of the incident; and

(iii) upon completion of the inquiry required by clause (ii), submit to each such Committee a report on the findings and recommendations related to such inquiry and the actions taken with respect to such recommendations.

(b) Deadlines for convening Boards.

(1) In general. Except as provided in paragraph (2), the Secretary of State shall convene a Board not later than 60 days after the occurrence of an incident described in subsection (a)(1), except that

such 60-day period may be extended for one additional 60-day period if the Secretary determines that the additional period is necessary for the convening of the Board.

(2) Delay in cases involving intelligence activities. With respect to breaches of security involving intelligence activities, the Secretary of State may delay the establishment of a Board if, after consultation with the chairman of the Select Committee on Intelligence of the Senate and the chairman of the Permanent Select Committee on Intelligence of the House of Representatives, the Secretary determines that the establishment of a Board would compromise intelligence sources or methods. The Secretary shall promptly advise the chairmen of such committees of each determination pursuant to this paragraph to delay the establishment of a Board.

(c) Notification to Congress. Whenever the Secretary of State convenes a Board, the Secretary shall promptly inform the chairman of the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives--

- (1) that a Board has been convened;
- (2) of the membership of the Board; and
- (3) of other appropriate information about the Board.

#### § 4832. Accountability Review Board

(a) Membership. A Board shall consist of five members, 4 appointed by the Secretary of State, and 1 appointed by the Director of Central Intelligence. The Secretary of State shall designate the Chairperson of the Board. Members of the Board who are not Federal officers or employees shall each be paid at a rate not to exceed the maximum rate of basic pay payable for level GS-18 of the General Schedule [5 USCS § 5332 note] for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board. Members of the Board who are Federal officers or employees shall receive no additional pay by reason of such membership.

(b) Facilities, services, supplies, and staff.

(1) Supplied by Department of State. A Board shall obtain facilities, services, and supplies through the Department of State. All expenses of the Board, including necessary costs of travel, shall be paid by the Department of State. Travel expenses authorized under this paragraph shall be paid in accordance with subchapter I of chapter 57 of title 5, United States Code [5 USCS §§ 5701 et seq.], or other applicable law.

(2) Detail. At the request of a Board, employees of the Department of State or other Federal agencies, members of the Foreign Service, or members of the uniformed services may be temporarily assigned, with or without reimbursement, to assist the Board.

(3) Experts and consultants. A Board may employ and compensate (in accordance with section 3109 of title 5, United States Code) such experts and consultants as the Board considers necessary to carry out its functions. Experts and consultants so employed shall be responsible solely to the Board.

## § 4833. Procedures

## (a) Evidence.

## (1) United States Government personnel and contractors.

(A) With respect to any individual described in subparagraph (B), a Board may--

- (i) administer oaths and affirmations;
- (ii) require that depositions be given and interrogatories answered; and
- (iii) require the attendance and presentation of testimony and evidence by such individual.

Failure of any such individual to comply with a request of the Board shall be grounds for disciplinary action by the head of the Federal agency in which such individual is employed or serves, or in the case of a contractor, debarment.

(B) The individuals referred to in subparagraph (A) are--

(i) employees as defined by section 2105 of title 5, United States Code (including members of the Foreign Service);

(ii) members of the uniformed services as defined by section 101(3) of title 37, United States Code;

(iii) employees of instrumentalities of the United States; and

(iv) individuals employed by any person or entity under contract with agencies or instrumentalities of the United States Government to provide services, equipment, or personnel.

(2) Other persons. With respect to a person who is not described in paragraph (1)(B), a Board may administer oaths and affirmations and require that depositions be given and interrogatories answered.

## (3) Subpoenas.

(A) The Board may issue a subpoena for the attendance and testimony of any person (other than a person described in clause (i), (ii), or (iii) of paragraph (1)(B)) and the production of documentary or other evidence from any such person if the Board finds that such a subpoena is necessary in the interests of justice for the development of relevant evidence.

(B) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, a court of the United States within the jurisdiction of which a person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, may upon application of the Attorney General, issue to such person an order requiring such person to appear before the Board to give testimony or produce information as required by the subpoena.

(C) Subpoenaed witnesses shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(b) Confidentiality. A Board shall adopt for administrative proceedings under this title [22 USCS §§ 4831 et seq.] such procedures with respect to confidentiality as may be deemed necessary, including procedures relating to the conduct of closed proceedings or the submission and use of evidence in camera, to ensure in particular the protection of classified information relating to national defense, foreign policy, or intelligence matters. The Director of Central Intelligence shall establish the level of protection required for intelligence information and for information relating to intelligence personnel, including standards for secure storage.

(c) Records. Records pertaining to administrative proceedings under this title [22 USCS §§ 4831 et seq.] shall be separated from all other records of the Department of State and shall be maintained under appropriate safeguards to preserve confidentiality and classification of information. Such re-



records shall be prohibited from disclosure to the public until such time as a Board completes its work and is dismissed. The Department of State shall turn over to the Director of Central Intelligence intelligence information and information relating to intelligence personnel which shall then become records of the Central Intelligence Agency. After that time, only such exemptions from disclosure under section 552(b) of title 5, United States Code (relating to freedom of information), as apply to other records of the Department of State, and to any information transmitted under section 304(c) [22 USCS § 4834(c)] to the head of a Federal agency or instrumentality, shall be available for the remaining records of the Board.

(d) Status of boards. The provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) and section 552b of title 5 of the United States Code (relating to open meetings) shall not apply to any Board.

#### § 4834. Findings and recommendations by a Board

(a) Findings. A Board convened in any case shall examine the facts and circumstances surrounding the serious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be) and shall make written findings determining—

- (1) the extent to which the incident or incidents with respect to which the Board was convened was security related;
- (2) whether the security systems and security procedures at that mission were adequate;
- (3) whether the security systems and security procedures were properly implemented;
- (4) the impact of intelligence and information availability; and
- (5) such other facts and circumstances which may be relevant to the appropriate security management of United States missions abroad.

(b) Program recommendations. A Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations as appropriate to improve the security and efficiency of any program or operation which the Board has reviewed.

(c) Personnel recommendations. Whenever a Board finds reasonable cause to believe that an individual described in section 303(a)(1)(B) [22 USCS § 4833(a)(1)(B)] has breached the duty of that individual, the Board shall--

- (1) notify the individual concerned,
- (2) transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality, and
- (3) recommend that such agency or instrumentality initiate an appropriate investigatory or disciplinary action.

In determining whether an individual has breached a duty of that individual, the Board shall take into account any standard of conduct, law, rule, regulation, contract, or order which is pertinent to the performance of the duties of that individual.

(d) Reports.

(1) Program recommendations. In any case in which a Board transmits recommendations to the Secretary of State under subsection (b), the Secretary shall, not later than 90 days after the receipt of such recommendations, submit a report to the Congress on each such recommendation and the action taken with respect to that recommendation.

(2) Personnel recommendations. In any case in which a Board transmits a finding of reasonable cause under subsection (c), the head of the Federal agency or instrumentality receiving the information shall review the evidence and recommendations and shall, not later than 30 days after the receipt of that finding, transmit to the Congress a report specifying--

(A) the nature of the case and a summary of the evidence transmitted by the Board; and

(B) the decision by the Federal agency or instrumentality to take disciplinary or other appropriate action against that individual or the reasons for deciding not to take disciplinary or other action with respect to that individual.

§ 4835. Relation to other proceedings

Nothing in this title [22 USCS §§ 4831 et seq.] shall be construed to create administrative or judicial review remedies or rights of action not otherwise available by law, nor shall any provision of this title [22 USCS §§ 4831 et seq.] be construed to deprive any person of any right or legal defense which would otherwise be available to that person under any law, rule, or regulation.