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DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

DEC 07 2007

The Honorable Barack Obama
United States Senate
Washington, DC 20510

Dear Senator Obama:

This responds to your letter, dated September 19, 2007, requesting information on a number of issues concerning private security contractor accountability and amenability to prosecution under U.S. Federal law and the Uniform Code of Military Justice. Secretary Gates has asked me to respond on his behalf. Enclosed are answers to each of your questions. I am also attaching a copy of the Memorandum of Agreement (MOA) between the Department of Defense and the Department of State on U.S. Government Private Security Contractors that was signed on the 5th of December.

The Department stands ready to address further questions regarding contractor accountability. Thank you for your continued interest and support of the members of the Armed Forces.

Enclosure:
As stated

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1	GENERAL COUNSEL
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Private Security Contractor Accountability Questions

Q1. The press has reported several other instances involving Blackwater, including a reported shooting of the Iraqi Vice President's security guard, reported shootings of Interior Ministry employees, and reported armed standoffs between Blackwater employees and Iraqi police. Has the Pentagon investigated these or other incidents? If yes, what were the results of those investigations?

A1. As a private security contractor operating in Iraq, Blackwater is under contract to the Department of State (DoS). To my knowledge, this Department has not formally investigated the incidents about which you inquired. The Department of Defense (DoD), through its command law enforcement and military criminal investigative organizations, has existing authority to investigate crimes reported within its battle space and areas of military operations. When it is determined that the alleged offenders are not military members, DoD civilian employees, or DoD contractor employees, responsibility will normally be transferred to the responding civilian law enforcement and civilian criminal investigation authorities. Private security contractors under contract to the DoD, as well as DoD contractors otherwise authorized to carry weapons, are subject to United States Central Command (USCENTCOM) and Multi National Force-Iraq (MNF-I) orders and directives governing the reporting of weapons discharged and incidents in which individuals are injured or killed as a result of the discharge of a weapon.

Q2. Last year, Congress enacted and the President signed into law a provision stating that contractors operating in contingency operations would potentially fall under the Uniform Code of Military Justice (UCMJ). Is it your view that any illegal actions by private security contractors in Iraq would be punishable under the UCMJ? If not, under what legal process would they be held accountable?

A2. The amendment to Article 2(a)(10) of the Uniform Code of Military Justice (UCMJ) expanded military jurisdiction effective on the date of enactment, October 17, 2006, and is implemented through the rules, procedures, and policies of the Manual for Courts-Martial (MCM). This amendment extended UCMJ jurisdiction to persons serving with or accompanying the armed forces in the field during periods of declared war or a contingency operation. The effect of this amendment was to increase the categories of persons to whom the UCMJ and MCM apply. Separate implementing regulations are not required to give effect to this new jurisdiction.

Because of the unique nature of this UCMJ jurisdiction, which brings civilians into the court-martial forum, sound management dictates that this authority be reserved for exceptional situations. The amendment, during contingency operations, brings under UCMJ authority those persons serving with or accompanying the armed forces in the field, which includes DoD civilian employees and DoD contractors. Private contractors

of other Federal agencies or entities may or may not be subject to this jurisdiction, depending upon whether, at the time, they were serving with or accompanying our armed forces. The courts have construed the UCMJ term "in the field" to require the armed forces to be conducting operations with a view toward engaging the enemy or hostile forces, rather than as a reference to a specific location. As such, not all contingency operations qualify for UCMJ jurisdiction.

In those circumstances where the UCMJ is not applicable to private security contractors or other U.S. Federal agency contractors, they may be subject to prosecution under the Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C. § 3261 et seq., or other extraterritorial U.S. Federal law. Other Federal agency contractors are subject to MEJA jurisdiction when the offense committed is a felony-level offense and the contractor's employment relates to supporting the DoD mission overseas.

Your letter referenced the recent incident in Iraq involving Blackwater USA private security contractors under contract with the Department of State. I am informed that these private security contractors were not engaged in employment supporting the DoD mission overseas and, therefore, are not subject to Federal criminal prosecution under the Military Extraterritorial Jurisdiction Act. Similarly, they were not at the time serving with or accompanying the armed forces for Article 2(a)(10), UCMJ, jurisdiction purposes. Private security contractors who serve with or accompany the armed forces in the field during a contingency operation would be subject to UCMJ jurisdiction under the amendment to Article 2, UCMJ, but those who do not meet all these criteria are not subject to UCMJ jurisdiction. A joint working group established by Secretary Rice and Secretary Gates has developed a memorandum of agreement between our two Departments regarding U.S. Government private security contractors in Iraq and has identified this issue as likely to require additional clarity.

Q3. More than 13,000 private security contractors have been reported wounded in Iraq and reports suggest that many suffer from the same challenges that many of our soldiers, including post-traumatic stress disorder, once they return home. What steps are their contracting firms taking to ensure long term care for employees that require it?

A3. The requirement for workers' compensation insurance is a mandatory clause in all DoD contracts performing either entirely or in part outside the United States. This clause requires contractors to provide workers' compensation insurance mandated by the Defense Base Act (42 U.S.C. § 1651, et seq.) for their overseas workers.

Q4. Lastly, I am concerned about the impact of this incident - and similar incidents - on our overall effort to end the war in Iraq. Has the Department of Defense conducted an analysis of the consequences of turning over such armed functions in a war zone to contractors outside the chain of command, and whether this outsourcing is actually hurting, rather than helping, our counter-insurgency efforts, especially in winning local hearts and minds?

A4. The Department of Defense shares your concern on the impact this incident could have on our efforts to stabilize Iraq. As you know, DoD is working with the Department of State to develop processes to minimize the likelihood that such incidents involving U.S. government contractors will occur again. In this context, we also are addressing the rules for the use of force by such private security contractors to ensure that the use of deadly force is always defensive.