

THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON

September 25, 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Management of DoD Contractors and Contractor Personnel Accompanying  
U.S. Armed Forces in Contingency Operations Outside the United States

Defense contractors fulfill a variety of important functions for the Department of Defense, both inside the United States and abroad. These functions encompass vital support to our military forces engaged in combat operations in Iraq and Afghanistan to include security for convoys, sites, personnel and the like.

While investigations are still ongoing and no findings of wrongdoing determined, recent events regarding non-DoD contractors performing security service in Iraq have identified a need to better ensure that relevant DoD policies and processes are being followed. This review is applicable for all policies and processes to manage DoD contractors accompanying U.S. armed forces in contingency operations outside the United States. DoDI 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," is the comprehensive source of policy and procedures concerning DoD contractor personnel.

Geographic Combatant Commanders are responsible for establishing lines of command responsibility within their Area of Responsibility (AOR) for oversight and management of DoD contractors and for discipline of DoD contractor personnel when appropriate. Accordingly, addressees will ensure the consistency of their implementing guidance for policies outlined in DoDI 3020.41 and ensure contracts being executed within an AOR require DoD contractors to comply with the respective geographic Combatant Commander's guidance for the AOR including, for example, Rules on the Use of Force (RUF).

DoD contractor personnel (regardless of nationality) accompanying U.S. armed forces in contingency operations are currently subject to UCMJ jurisdiction. Commanders have UCMJ authority to disarm, apprehend, and detain DoD contractors suspected of having committed a felony offense in violation of the RUF, or outside the scope of their authorized mission, and to conduct the basic UCMJ pretrial process and trial procedures currently applicable to the courts-martial of military service members. Commanders also have available to them contract and administrative remedies, and other remedies, including discipline and possible criminal prosecution.

Under the Military Extraterritorial Jurisdiction Act (MEJA), federal jurisdiction exists over felony offenses committed outside the U.S. by contractor personnel of any federal agency or provisional authority whose employment relates to supporting the DoD mission. Implementing guidance under this Act is included in DoDI 5525.11, "Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," and military department regulations. This instruction requires DoD coordination with the Department of Justice for the return to the U.S. of contractor personnel subject to MEJA for prosecution.

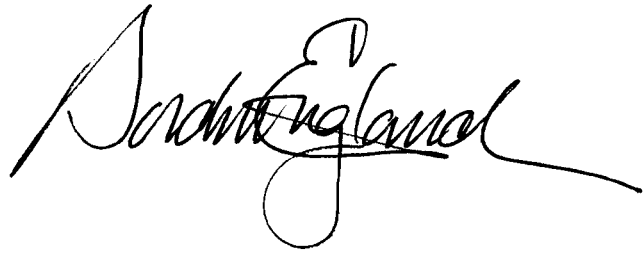
Pursuant to these authorities, addressees as appropriate will:

1. Ensure that all *required* clauses are included in DoD contracts when contract performance requires contractors and contractor personnel to accompany U.S. forces in contingency operations.
2. Verify that all DoD contractors ensure that their personnel authorized to carry weapons as security personnel or for personal protection have been properly trained and licensed for the weapons they are authorized to carry and appropriately trained on the applicable RUF.
3. Provide appropriate discipline for unauthorized possession, carrying, or discharging weapons.
4. Ensure that instructions have been issued to their command and to their contractors to prevent contractor personnel who are suspected of having committed a felony act or of having committed an act in violation of the RUF from being allowed to leave the country until approved by the senior commander in the country or until an investigation is completed and a decision is rendered by the flag officer court martial convening authority. Officials of contracting firms who arrange for, facilitate, or allow such personnel to leave the country before being cleared will be subject to disciplinary action under either UCMJ or MEJA.
5. Review periodically the existing RUF and make any changes necessary to minimize the risk of innocent civilian casualties or unnecessary destruction of civilian property.
6. Require DoD contractors performing security services to provide to the Combatant Commander copies of their Standard Operating Procedures (SOPs) and guidance to their contractor personnel on escalation of the use of force, the

use of deadly force, and on the rules for interaction with host country nationals who may be present and/or potentially involved in a situation perceived by contractor personnel as a potential threat to their mission or to themselves. Require that such SOPs and guidance be modified as necessary to be consistent with the RUF.

7. Review periodically the guidance and authorization for DoD contractor personnel to possess and carry weapons.

Over the past several months, the Department has been developing and staffing additional guidance regarding this UCMJ disciplinary authority over persons serving with or accompanying the armed forces during contingency operations. The UCMJ authority referenced in this memorandum remains in effect until modified by promulgation of such additional guidance.

A handwritten signature in black ink, appearing to read "Andrew England". The signature is written in a cursive style with a large, stylized initial 'A' and a long horizontal stroke extending to the right.