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Hon. Robert Gates, Secretary  
Department of Defense  
The Pentagon  
Washington, DC 20301

Dear Mr. Secretary:

We are writing out of concern for the victims of the recent brutal raid by Iraqi security forces on Camp Ashraf, Iraq, which is the home of some 3,400 members of the People's Mojahedin Organization of Iran (PMOI). As you know, the United States military provided protection for Camp Ashraf from May 2003 until the beginning of this year, when sovereignty over the territory was restored to Iraq. The Iraqi forces, barely half a year later, have now committed a number of grave crimes and breaches of international law.

In briefings and in interviews, senior officials of the Department of State and the Department of Defense have responded to questions about the unprovoked assault on Camp Ashraf by saying that the full transfer of sovereignty to the authorities of that country earlier this year absolves the United States of any responsibility for the consequences of the raid. Those consequences include at least nine deaths, nearly 500 injuries, and the removal from Ashraf of 36 persons, who seem to have become hostages of the Government of Iraq.

The American response is incorrect as a matter of law. The United States bears not only moral but legal responsibility for the events at Ashraf, and the "sovereignty" defense is simply inadequate. This conclusion may be derived from three sources: the Fourth Geneva Convention, the specific agreements made by the People of Ashraf with U.S. forces, and customary international law.

Before we deal with these issues, let us remind you of the letter we sent you on 12 September 2008 (a copy is attached) strongly warning about the consequences of any transfer of authority over Camp Ashraf to the Iraqi Government. We wrote, among other things, that in light of the announced Iraqi intention to close the Camp and to expel its members, the transfer was contrary to international law and inconsistent with the obligations of the United States. We emphasized that "The United States may not hand over the People of Ashraf to the Iraqi Government, without becoming legally responsible for the humanitarian catastrophe that is virtually certain to result."

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## **I. The Fourth Geneva Convention.**

There can be no argument that the United States was responsible for the protection of Ashraf until the beginning of this year. Accordingly, the United States still has obligations under the Convention for actions it took (or failed to take) prior to that date. Article 45 of the Convention provides that “protected persons,” such as the People of Ashraf, may be transferred only to a state party to the Convention (Iraq qualifies), which provides assurances to the transferring state that it will extend the protections of the Convention to the individuals concerned.

In this particular case, United States officials have repeatedly reported that they received written assurances from Iraq, prior to the transfer, that the People of Ashraf would be treated “humane[ly, and] in accordance with Iraq’s international . . . obligations.” Those assurances were, apparently, regularly reiterated by Iraqi authorities, according to statements made by State Department and U.S. military spokesmen. Assuming that this includes a commitment to honor the Convention, it seems beyond dispute that the assault on the Camp, the deaths, the injuries, and the taking of hostages (whether or not under the pretext of law enforcement) are inconsistent with that commitment.

It should also be noted that, according to a statement issued by U.S. Embassy in Baghdad in December 2008, after the transfer of the protection, the U.S. would continue to be responsible for monitoring the treatment of the residents of Ashraf by Iraqi authorities, in accordance with its international obligations.

Article 45 of the Fourth Convention specifically provides that if the transferee state fails to honor its obligations to protected individuals, the transferring party – here the United States – must “take effective measures to correct the situation, or shall request the return of the protected persons.” To underscore the seriousness of this requirement, it adds, “Such request must be complied with.”

The U.S. is aware of these breaches of the Iraqi promise (made to this country and therefore binding as a matter of treaty law) since American observers witnessed the raid on Ashraf and its aftermath. Yet it has neither taken “effective measures” nor requested the return of the People of Ashraf to U.S. control.

## **II. The Individual Undertakings.**

In July, 2004, each person at Ashraf was required to sign a document headed “Agreement for the Individuals of the PMOI.” That document reflects assent on the part of each such person to repudiate terrorism, not to possess weapons, to reject violence, and to obey the laws of Iraq. The Agreements also state that each person shall, until “viable disposition options” become available, “remain under the protection of Multi-National Forces-Iraq at Camp Ashraf.”

At least implicit in this undertaking – which was signed on behalf of the MNF-I at the level of battalion commander – is a correlative commitment of the Multi-National Forces to provide the

level of protection that the individuals were required to accept. The Agreement was intended, after all, to reflect a bilateral meeting of the minds, imposing obligations and conferring rights on both parties: the individual signers, and the United States military.

The United States has not been providing the promised level of protection. It may well be that at the time these documents were signed, it was contemplated that final disposition arrangements would have been made before the U.S. stood down from providing military assistance at Ashraf. But the documents do not say that. In exchange for a promise of protection until disposition options were explored and arranged, the People of Ashraf were asked to offer consideration, and they did so. The United States has not lived up to its side of the bargain.

### **III. International Customary Law Obligations.**

Quite aside from the questions of treaty law and contract law discussed in the previous paragraphs, the fact remains that United States service members witnessed a massacre at Camp Ashraf last week, and did nothing to abate it. It is true that, two days later, the U.S. Army arranged for the evacuation of some of the wounded to a military hospital. But while that step was most welcome, it was too little and too late.

As a matter of customary international law, agents of a state may not simply stand by and watch while violations of fundamental human rights are committed (see, among numerous other sources, common Article 1 to the four Geneva Conventions). That is surely the lesson learned from recent experiences in Rwanda and Bosnia. It is especially pressing in a situation like this one, in which the United States not only possessed the military might to cause the Iraqis to abandon their assault, but also had the authority on the ground to bring about that result.

Not only did this not happen, but it appears that U.S. soldiers were present during the assault to capture it on film, but said they had no orders that would have permitted them to intervene, even to save lives. When the attack started, the residents of Ashraf immediately informed both the U.S. military in the field and the U.S. Embassy in Baghdad. They requested help, including medical assistance to the wounded. For more than 48 hours no action was taken, on the stated basis that there was no instruction from Washington. It is simply inconceivable that Iraqi security forces would have continued their assault on Ashraf had they been confronted by a strong and unambiguous condemnation of the operation, whether from the highest military commanders in the theater, or from the Embassy in Baghdad. The raid, after all, constituted a violation of a bilateral undertaking given to the United States, and no one could have contested the standing of American authorities to condemn it, promptly, in the strongest terms.

Incidentally, such a clear condemnation has still, to this day, not been issued. This is especially troubling in light of the fact that the United States has invested so much blood and treasure trying to build a foundation for Iraqi democracy. The Iraqis then chose openly and directly to violate a solemn commitment given to the United States, taking care to do so while the U.S. Secretary of Defense was himself in Iraq.

For all of the foregoing reasons, the United States did and does bear international legal responsibility for the consequences of the raid on Camp Ashraf, and should be held accountable under the rules of international law governing such responsibility. The U.S. must now do several things to bring itself in compliance with international law. It must take every feasible measure to prevent such a crime from occurring again. It must investigate the conduct of the military missions on the ground, instructing its servicemen and women that, in the future, they may not stand passively by while innocent people (to whom the United States made commitments of ongoing protection) are being assaulted and killed.

There is little doubt that, absent firm U.S. engagement, the Iraqis have not finished their harassment of Ashraf. Quite clearly, they are doing the bidding, and possibly following the orders, of the mullahs in Tehran. We are aware that the leaders of Iran and Iraq appear to have reached an agreement, one of whose terms calls for the elimination of the PMOI presence in Iraq. And history has shown that the ruling regime will stop at nothing to eliminate its most organized opposition movement, the PMOI.

In the immediate run, the United States must do what it can to alleviate the suffering caused by the assault of two weeks ago. This includes, most importantly, ensuring that the 36 hostages being held in Khalis are released, whether to return to Ashraf, or, in the case of the seven who appear to be sick or injured, to receive medical care at the Army hospital at Balad. The armed Iraqi units currently inside Ashraf should immediately leave their positions, and set up their station at the entrance to the Camp. The United States should temporarily resume responsibility for the security of Camp Ashraf, until international protection, under the supervision of the United Nations, can be deployed to ensure that no further violations occur. Anything less would constitute not only an abandonment by the U.S. of the norms binding as a matter of international law, but an open invitation to the Iraqis to commit further outrages against the defenseless People of Ashraf.

Yours sincerely,



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M. Cherif Bassiouni,  
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Honorary President, Association Internationale de Droit Pénal  
Honorary President, International Committee of Jurists in Defense of Ashraf

cc: Hon. Hillary Rodham Clinton, Secretary of State  
Hon. Christopher Hill, U.S. Ambassador to Iraq