



Assemblée générale

Distr. générale
12 août 2011
Français
Original: anglais

Conseil des droits de l'homme

Dix-huitième session

Point 3 de l'ordre du jour

Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement

Rapport du Groupe de travail sur l'utilisation de mercenaires comme moyen de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples à disposer d'eux-mêmes

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Additif

Mission en Irak*

Résumé

De nombreuses sociétés militaires et de sécurité privées opèrent sur le territoire iraquien depuis une dizaine d'années. Une série d'incidents médiatisés mettant ces sociétés en cause, tels que la fusillade de la Place Nissour, en 2007, ont appelé l'attention sur les répercussions négatives de leurs activités sur les droits de l'homme des Iraquiens. Ces incidents, ajoutés à des violations rapportées dans d'autres parties du monde, ont incité à engager une action pour veiller à ce que les sociétés de sécurité et leur personnel aient à rendre des comptes pour les violations des droits de l'homme dont ils sont responsables.

Lors de sa mission en Irak, le Groupe de travail a appris que le nombre d'incidents impliquant des agents des sociétés militaires et de sécurité privées avait diminué ces dernières années. Cela s'expliquerait par diverses circonstances, dont la réduction des activités paramilitaires en Irak, la réglementation plus stricte imposée par les autorités iraqiennes et les efforts entrepris par les États-Unis pour renforcer le contrôle des agents travaillant pour eux en Irak. Le Groupe de travail salue l'action engagée par les autorités iraqiennes et américaines à cet égard.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le texte de l'annexe est distribué dans la langue originale et en arabe seulement.

Malgré la réduction du nombre d'incidents, l'Iraq reste confronté à l'«Ordonnance n° 17» de l'Autorité provisoire de la Coalition, qui accorde l'immunité de juridiction aux agents de sécurité privés. Cette immunité empêche de poursuivre les intéressés devant les tribunaux irakiens. Les poursuites engagées dans le pays d'origine des sociétés dont il s'agit n'aboutissent pas non plus. Quatre années après l'incident de la Place Nissour, la procédure ouverte contre les auteurs présumés est toujours en instance devant les tribunaux américains. D'autres auteurs présumés n'auraient même pas encore été traduits en justice à ce jour. Le Groupe de travail s'inquiète vivement du fait que les auteurs des violations commises entre 2003 et 2009 n'aient pas à répondre de leurs actes et rappelle que les victimes de ces violations et leur famille attendent toujours que justice soit faite.

Marquant une évolution bienvenue, l'Accord sur le statut des forces conclu entre l'Iraq et les États-Unis en 2009 contient une disposition qui lève l'immunité de certains agents de sécurité étrangers en Iraq. On ne sait pas trop cependant si cette innovation touche tous les agents employés sous contrat par le Gouvernement des États-Unis et si elle vaut de plein droit dans les juridictions irakiennes. Le Groupe de travail recommande de clarifier d'urgence cette situation juridique.

L'«Ordonnance n° 17» de l'Autorité provisoire de la Coalition régit le système d'octroi de licence aux sociétés militaires et de sécurité privées présentes en Iraq. Quoique l'Autorité provisoire de la Coalition ait été dissoute il y a plusieurs années, ce texte reste le fondement juridique de la réglementation imposée à ces sociétés par le Gouvernement irakien. Pour le Groupe de travail, ce n'est pas un fondement assez solide. L'Iraq a déposé un projet de loi portant réglementation des agences de sécurité, projet qui est en instance depuis 2008. Le Groupe de travail invite instamment le Gouvernement irakien à prendre les mesures voulues pour que la législation relative aux sociétés militaires et de sécurité privées soit adoptée d'urgence.

Le Groupe de travail réaffirme que garantir la sécurité de son peuple est une des responsabilités fondamentales de l'État. Le fait de sous-traiter la sécurité génère des risques pour les droits de l'homme et le Gouvernement irakien doit rester vigilant, consacrer les ressources nécessaires à la stricte réglementation des agences de sécurité, qu'elles soient internationales ou irakiennes, et faire respecter les droits de l'homme du peuple irakien.

Annexe

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: mission to Iraq (12-16 June 2011)

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I. Introduction

1. At the invitation of the Government of Iraq, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Iraq from 12 to 16 June 2011. In accordance with general practice, the Working Group was represented by two of its members, in this case, José Luis Gómez del Prado and Faiza Patel.¹

2. In accordance with Commission on Human Rights resolution 2005/2 and Human Rights Council resolution 7/10, the Working Group is called upon to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, as well as to study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination.

3. In the present report, a private military and/or security company (PMSC) is to be understood as a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities. Military services include specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities. Security services include armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.²

4. During the visit, the Working Group held meetings in Baghdad with representatives of the Ministries of Human Rights, Interior, Defence and Justice, members of the High Judicial Council, and members of the Committee on Defence and Security and the Committee on Human Rights at the Council of Representatives (the Parliament of Iraq). The Working Group regrets that the meeting with representatives of the Ministry of Foreign Affairs was cancelled and could not be rescheduled. The Working Group also had the opportunity to meet with representatives of civil society organizations, of the diplomatic community, of international organizations, and representatives of the private military and security industry. The Working Group would like to thank the United National Assistance Mission in Iraq (UNAMI) and especially its Human Rights Office for facilitating the mission.

II. International human rights commitments

5. Iraq has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Iraq is also a party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Optional

¹ The Working Group is composed of five independent experts serving in their personal capacities. José Luis Gómez del Prado (Spain) was the Chairperson-Rapporteur between January and July 2011.

During the same period, the other members were Amada Benavides de Pérez (Colombia), Najat al-Hajjaji (Libyan Arab Jamahiriya), Faiza Patel (Pakistan) and Alexander Nikitin (Russian Federation).

² See A/HRC/15/25, annex, art. 2.

Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It has ratified the Convention on the Prevention and Punishment of the Crime of Genocide. In 2010, Iraq ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Most recently in 2011, Iraq acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Iraq is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

III. Private military and security companies operating in Iraq

A. The context

7. In the last decade, Iraq has been a major theatre of operations for private military and security companies. The United States of America, which still has the largest military and diplomatic presence in Iraq, remains the most important user of private security in the country. PMSCs have been contracted by the United States to provide a wide range of military and security services in Iraq during the United States-led military operation launched in 2003 and its aftermath. The Department of Defense of the United States continues to be the main contractor of PMSCs. As the United States Armed Forces gradually withdraw from Iraq, the demand for the services of PMSCs by other stakeholders, such as the Department of State and USAID, strongly increases. This demand can be explained by several factors such as the lack of institution-building in law enforcement, the continuing situation of generalized violence, as well as the increase in United States Embassy activities in Iraq. The challenging security situation throughout most of the country also compels private businesses which are increasingly active in Iraq, to contract PMSCs. During the visit, the Working Group also heard that humanitarian agencies and non-governmental organizations (NGOs), as well as some journalists, use PMSCs to ensure their protection when working in Iraq. The Working Group was also informed that the United Nations does not currently use PMSCs in Iraq.

8. Despite some improvements in Iraq since 2007, which saw a peak in violence against civilians, the general security situation remains tense. In 2010, according to the United Nations Assistance Mission in Iraq (UNAMI), almost 3,000 civilians were killed and almost 14,500 wounded. While these figures are significantly lower than those recorded for 2007 when almost 18,000 people were reportedly killed, they still remain high. Many of the civilian casualties can be attributed to the use of improvised explosive devices (IEDs) by insurgent and terrorist groups.³ While general violence has decreased substantially since 2007, assassinations, targeted killings and extrajudicial executions seem to be on the rise. According to UNAMI, at least 71 civilians were assassinated in 2010.⁴

9. As United States forces gradually withdraw from the country, Iraqi security forces will resume full and sole responsibility for ensuring the safety and security of all Iraqi citizens and foreigners in the country. Concerns have been expressed by various stakeholders over the lack of training of Iraqi security forces, structural problems and the lack of political leadership (since there have been neither a Minister of Defence, nor a

³ See UNAMI, 2010 Report on Human Rights in Iraq, p. 3.

⁴ *Ibid.*, p. 7.

Minister of the Interior since the March 2010 elections).⁵ Such a vacuum in law enforcement is filled by a continuing and even growing role of PMSCs in Iraq and this is a matter of great concern.

10. The Office of the United Nations High Commissioner for Human Rights and UNAMI have regularly reported on the impact of PMSCs on human rights in Iraq, in particular on civilian deaths involving contractors (see below).

11. Concerns were raised about the impact of PMSCs on human rights when Iraq was reviewed by the Human Rights Council under its universal periodic review (UPR) in February 2010. The Council recommended that Iraq ensure that any collaboration agreement signed with other States or contracts concluded with private security companies guarantee the obligation of respecting international standards for the protection of human rights, as well as establish an adequate mechanism supervising the compliance with these standards by the actors involved". Iraq supported this recommendation (A/HRC/14/14, para. 81.28)..

B. Mapping of private military and security companies operating in Iraq

12. The Working Group was informed by the Ministry of the Interior that 117 PMSCs are currently licensed (or in the process of renewing their license) in accordance with the procedure first established in 2004 by Coalition Provisional Authority (CPA) memorandum 17 to operate in Iraq (see section III.D below). Of these, 89 companies are Iraqi and 28 are foreign.

13. According to the Ministry of the Interior, the total number of armed employees of the licensed PMSCs is about 35,000.⁶ As a point of comparison, as of March 2011, there were 303,000 agents in the Iraqi Police and another 45,000 in the Iraqi Federal Police.⁷

14. Since 2003, the United States Departments of Defense and State and USAID have been the largest clients of PMSCs in Iraq.⁸ According to the Special Inspector General for Iraq Reconstruction (SIGIR), 77 PMSCs had direct contracts or subcontracts with the Department of Defence, the Department of State and USAID between 2003 and 2008. They performed a range of security services, including providing static security (guarding sites), escorting individuals (personal security details), protecting convoys, as well as providing operational coordination, intelligence analysis, security advice and planning. In addition, another 233 PMSCs were contracted to provide various security services. In total, these 310 companies held contracts totalling almost \$6 billion since 2003. The top 10 PMSCs accounted for about 75 per cent of that total.⁹

15. The number of PMSC employees contracted by the United States Government has declined over the last couple of years. According to the Department of

⁵ See for instance International Crisis Group, "Loose ends: Iraq's security forces between US drawdown and withdrawal", Middle East Report No. 99, 26 October 2010.

⁶ See also Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 3.

⁷ See Office of the Special Inspector General for Iraq Reconstruction, Quarterly report to the US Congress, 30 April 2011, p. 85.

⁸ See Sarah K. Cotton et al., "Hired guns: views about armed contractors in Operation Iraqi Freedom", RAND Corporation, 2010, p. 3.

⁹ See Office of the Special Inspector General for Iraq Reconstruction, Agencies need improved financial data reporting for private security contractors, SIGIR-09-005, 30 October 2008, p. 3.

Defense, there were 8,327 private security contractor personnel working for the Department in Iraq as of December 2010, down from a peak of 15,279 in June 2009.¹⁰ In comparison, there were 47,300 American soldiers in Iraq at that date in 2010.

16. In addition to the employees of PMSCs contracted by the Department of Defense, the Working Group was told that there are an additional 3,500 employees working for PMSCs contracted by the Department of State. PMSCs contracted by the Department are hired under the Worldwide Personal Protective Service contract. They provide protection to American diplomats and foreign heads of State and static security for United States embassy facilities. It is expected that the number of private security contractors working for the Department of State will increase to as much as 5,500 in order to provide security to United States diplomats after their troops withdraw.¹¹ In this regard, the Working Group has noted discrepancies between various figures available for Department of State contractors.¹²

17. The Government of Iraq also contracts some PMSCs to provide certain security services. For instance, during the visit, the Working Group was informed that the security firm G4S holds a large contract with the Iraqi Ministry of Transport to provide security at Baghdad International Airport. However, the Working Group did not receive detailed information on the type and amount of security services contracted by the Government.

18. PMSCs have also been used by many other entities. The United Kingdom Foreign Office and Department for International Development have reportedly contracted some PMSCs in Iraq.¹³ During the visit, the Working Group received information indicating that PMSCs are also increasingly being contracted by the private industry, including international oil and gas companies, but also by non-governmental organizations.

19. Previously, the majority of PMSCs operating in Iraq were based in the United States or the United Kingdom. The Working Group was informed that this has changed in recent years. There has been a growing number of "Iraqi" PMSCs: according to the figures provided by the Ministry of the Interior, they now form the great majority of PMSCs licensed in Iraq (89 out of 117). It is not clear to what extent the companies categorized as Iraqi are in fact owned and managed by Iraqi. For instance, some of these companies, such as Sabre International, present themselves as "Iraq-registered, foreign-owned and managed".¹⁴ Others appear to be owned and managed by Iraqi nationals.

20. In terms of the nationality of the employees of PMSCs, the Working Group was informed by the Ministry of the Interior that the more than 35,000 PMSC employees in Iraq included 23,160 Iraqis and 12,672 foreigners. The proportion of Iraqi employees has increased dramatically in recent years. In contrast, in Afghanistan, which was visited by the

¹⁰ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 10.

¹¹ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 11.

¹² See Commission on Wartime Contracting in Iraq and Afghanistan, Special report 3 - "Better planning for Defense-to-State transition in Iraq needed to avoid mistakes and waste", 12 July 2010, p. 6.

¹³ See E. Speers Mears, "Security privatization in the Middle East", GCST Working Paper series, No.10, November 2010, p. 6.

¹⁴ See http://www.icoc-psp.org/uploads/Signatory_Companies_-_June_2011_-_Composite_List.pdf

Working Group in April 2009, the overwhelming majority of private security personnel (85 per cent) were Afghan nationals.¹⁵

21. For some contracts, however, third-party nationals dominate. For example, the overwhelming majority (89 per cent) of the Department of Defense's 8,327 security contractor employees are third-country nationals; 9 per cent are Americans and only 1 per cent are Iraqis.¹⁶ The Working Group received information that third-country national personnel were recruited from a broad range of countries, including Fiji, Nepal, South Africa, Sri Lanka, Uganda, Peru and other South American countries.¹⁷ There have been reports that nationals from some 30 countries have worked for PMSCs in Iraq.¹⁸ Despite American efforts in 2009 to increase the proportion of security personnel recruited locally, this proportion even decreased from 13 per cent to 1 per cent between 2009 and 2010. As of December 2010, there were only 113 Iraqi nationals employed by PMSCs contracted by the Department of Defense.¹⁹ In this regard, the Working Group was informed that while PMSCs contracted by the United States employed mainly foreigners, other PMSCs employed mainly Iraqis.

22. During the visit, the Working Group received information that the Government of Iraq has recently asked companies to terminate the employment of African and Asian personnel in an attempt to address the unemployment issue in the country. The licences of foreign companies, including security companies, which recruit these foreign workers, would be revoked.²⁰ The Working Group is concerned about such reports and recalls the international obligation of the State, contained most notably in the Convention on the Elimination of All Forms of Racial Discrimination to which Iraq is a party, to apply all regulations in a non-discriminatory manner.

23. The Private Security Companies Association of Iraq (PSCAI) was established in 2004 "to discuss and address matters of mutual interest and concern to the industry conducting operations in Iraq".²¹ More than 40 companies, Iraqi and foreign, are members of the PSCAI. It requires its members to be licensed or in the process of obtaining a license from the Iraqi Ministry of the Interior, or the Ministry of Interior of the Kurdistan Regional Government, or both.

¹⁵ See A/HRC/15/25/Add.2, para. 25.

¹⁶ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 10.

¹⁷ During the visit, the Working Group was informed by one PMSC that Fijians employees received US\$ 35 to 40,000 per year, while U.S. and E.U. employees could earn as much as US\$ 75 to 100,000 per year.

¹⁸ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 3. See also E. Speers Mears, "Security privatization in the Middle East", GCST Working Paper series, No.10, November 2010, p. 7.

¹⁹ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, pp. 12-13.

²⁰ See "Iraq decides to expel all foreign and Asian workers in May" (al-Iraqiya TV, May 19).

²¹ See www.psc.ai.org/index.html.

C. The legal framework

24. Between 2003 and 2004, the Coalition Provisional Authority issued some 100 Orders,²² which were published in the *Iraqi Official Gazette* and were part of Iraqi law.

25. CPA Order 17 on the status of the Coalition, Foreign Liaison Missions, Their Personnel and Contractors was signed on 23 June 2003 and revised on 27 June 2004. It provides that “contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto” (Section 4(3)). CPA memorandum 17 deals with the licensing system for PMSCs, As the CPA was dissolved in June 2004, both CPA Order 17 and CPA memorandum 17 do not constitute a clear and solid legal basis for defining the status of PMSCs and regulating their activities in Iraq.

26. The Law of Administration for the State of Iraq for the Transitional Period of 8 March 2004 provided that CPA Orders would remain in force until rescinded or amended by legislation duly enacted and having the force of law (art. 26). While this Law was annulled by virtue of article 143 of the new Constitution adopted in 2005, in practice it appears that CPA Orders are in force unless specifically annulled by Iraqi legislation. Since the transfer of authority to the Interim Government of Iraq in June 2004, some CPA Orders have been annulled by the Council of Representatives but others remain in force.

27. The Iraq and United States Governments negotiated a bilateral agreement to come into force on 1 January 2009 which includes a provision removing the immunity of some private foreign security contractors in Iraq. The Agreement between the United States of America and Iraq on the withdrawal of American forces from Iraq and the organization of their activities during their temporary presence in Iraq (hereinafter the Status of Forces Agreement, or SOFA) was first approved by the Iraqi Council of Ministers and signed on 17 November 2008. It was approved by the Iraqi Council of Representatives on 27 November 2008 and by the Iraqi Presidential Council on 4 December 2008.²³

28. For purposes of the exercise of jurisdiction, the Status of Forces Agreement creates two distinct classes of individuals: (a) United States forces, including the civilian component, and (b) American contractors and their employees. Iraq maintains exclusive jurisdiction over these contractors and their employees, but shares jurisdiction with the United States over forces, including the civilian component. As the term is defined in the agreement, “U.S. contractors and their employees” only applies to contractors that are operating under a contract/subcontract with or for the United States Forces.²⁴ Therefore, United States contractors operating in Iraq under contract to other U.S. departments/agencies are not subject to the terms of the Status of Forces Agreement.²⁵ During the visit, the Working Group was told that Department of State officials inform all their contractors that they are not immune from Iraqi jurisdiction. Nonetheless, the status of Department of State contractors, as well as that of contractors hired by other American

²² See Office of the Special Inspector General for Iraq Reconstruction, Quarterly report to the US Congress, 30 April 2011, p. 92.

²³ See R. Chuck Mason, “US-Iraq Withdrawal/Status of Forces Agreement: issues for congressional oversight”, Congressional Research Service Report for Congress, 13 July 2009, p. 5.

²⁴ “United States contractors” and “United States contractor employees” are defined as “non-Iraqi persons or legal entities, and their employees, who are citizens of the United States or a third country and who are in Iraq to supply goods, services, and security in Iraq to or on behalf of the United States Forces under a contract or subcontract with or for the United States Forces” (art. 2).

²⁵ See R. Chuck Mason, “US-Iraq Withdrawal/Status of Forces Agreement: issues for congressional oversight”, Congressional Research Service Report for Congress, 13 July 2009, p. 7.

agencies operating in Iraq, is not governed by the withdrawal of immunity in the Status of Forces Agreement and may well be governed by CPA Order 17. This apparent gap in the withdrawal of immunity is of significant concern to the Working Group.

29. There also appears to be some uncertainty as to whether the removal of immunity is fully applied in Iraqi courts. During the visit, the Working Group received inconsistent information in this regard. On the one hand, the Working Group heard from some representatives of the Iraqi authorities that the immunity clause contained in CPA Order 17 still applied because CPA Order 17 is still valid in its entirety until Iraqi legislation is adopted to annul it. On the other hand, the Working Group heard from other representatives of the Iraqi authorities that PMSCs were no longer immune from Iraqi jurisdiction.

30. In 2008, draft legislation was proposed by the Government in order to clarify the issue of immunity of PMSCs. The draft Law on subjecting the private security companies to Iraqi law provides that such companies are subject to Iraqi Law and states explicitly that the CPA Order 17 shall not apply to them and their employees. It also states that private security companies and their employees shall not enjoy any immunity for their work. This draft law was transmitted by the then Minister of State for Council of Representatives (COR) Affairs to the President of COR on 11 February 2008. The then Chair of the COR Committee on Security and Defence tabled the text for discussion in COR in May 2008. However, the Working Group was informed that the draft law has not been adopted so far. Because of the political situation in Iraq, several legislative proposals – including the draft legislation on subjecting PMSCs to Iraqi law -- have been delayed. In light of the lack of clarity concerning the continuing immunity of private security contractors in Iraq, this law should be adopted as a matter of priority.

D. The licensing process

31. CPA Order 17 requires that private military and security companies and their employees operating in Iraq comply with all CPA Orders, Regulations, Memoranda, and any implementing instructions or regulations governing the existence and activities of private security companies in Iraq, including registration and licensing of weapons and firearms (Section 4 (4)). The 26 June 2004 memorandum 17 issued by the CPA details the registration requirements for PMSCs. It requires all PMSCs operating in Iraq to register with the Iraqi authorities. As envisaged in memorandum 17, in 2004 the Iraqi Ministry of Interior set up a licensing process for PMSCs. The Working Group was informed that a Directorate of Registration and Evaluation of Security Companies was established within the Ministry of the Interior according to ministerial order no.9887 on 27 September 2004 in order to examine applications for licensing.

32. CPA memorandum 17 is the legal basis upon which the licensing process was developed. According to the memorandum, in order to obtain an operating licence from the Ministry of the Interior, PMSCs must first obtain a business licence from the Ministry of Trade. In addition to this license, PMSCs must provide the Ministry of the Interior with detailed information concerning the directors of the company, company officers and all employees. They must also provide information about the work to be carried out in Iraq, including copies of any contracts for services.

33. CPA memorandum 17 requires that PMSCs and their employees are vetted by the Iraqi Ministry of Interior. Ministry vetting standards (Sect. 2, para.6) require that employees be older than 20; be mentally and physically fit for duties; not have any serious criminal convictions; have passed the firearms tests. They must also “be willing to respect the law and all human rights and freedoms of all citizens of the country”. In applying for a licence, PMSCs must provide a list of all weapons and vehicles to be used by the company.

34. Before starting operations in Iraq, PMSCs have to submit a minimum refundable bond of \$25,000 to the Ministry of the Interior. They lose the bond if they do not provide regular information to the Ministry or if they or their employees breach Iraqi or other applicable law. Bonds are refunded when PMSCs cease operations in Iraq. PMSCs also have to submit evidence that they have sufficient public liability insurance to cover possible claims against them.

35. The PSCAI assists PMSCs in applying to the Ministry of the Interior for a licence to operate in Iraq. Amongst other things, it provides assistance to PMSCs in putting together their application. It maintains close contact with the Ministry in order to check on progress in the assessment of the application. According to the PSCAI, it attends the Ministry's inspections and "investigative interviews". All in all, the PSCAI seeks to facilitate the application process for PMSCs and serves as a link between PMSCs and the Ministry of Interior.

36. According to the PSCAI, there are at least two on-site visits by the Ministry of Interior to the PMSC applying for a license, one by the Ministry's Office of PSC Registration and one by the MOI Intelligence Office. The visits aim to check, among other things, weapons and vehicles, and undertake a personnel database check. Some visits are scheduled, others are conducted without notice.²⁶

37. Licences are granted for a period of one year. At the end of that period, PMSCs have to apply to renew their licence. As of December 2010, the Ministry of Interior had issued a total of 129 licences since 2005.²⁷ The Working Group has requested information from the authorities on the number of applications denied and the reasons for any denials, but has not received it by the time this report was finalised. Most licences are renewed on a yearly basis. Some have been suspended or revoked by the Ministry of Interior in cases of breaches of CPA memorandum 17 or any other law in force in Iraq. For example, following the shooting of civilians in Nissour Square in 2007, Iraq refused to renew PMSC Blackwater's application and the company no longer operates in Iraq. Approximately 30 PMSCs have either had their license revoked, let their license lapse or have gone out of business.²⁸

38. It should be noted here that PMSCs operating in the Kurdistan Region must be registered with the Ministry of Interior of the Kurdistan Regional Government (KRG). The registration requirements are quite similar to those of the Iraqi Ministry of the Interior.

39. CPA memorandum 17 is supplemented by instructions issued by the Iraqi Ministry of Interior. These instructions are updated and re-issued on a regular basis. The latest version of the Ministry's instructions dates from 2 April 2011.²⁹ These instructions emphasize that PMSCs should respect human rights. They also recall that only PMSCs licensed with the Ministry of Interior are allowed to operate in Iraq.

40. The Ministry of the Interior instructions deal mainly with practical issues regarding the operations of PMSCs in Iraq. One of the most prevalent complaints about PMSCs

²⁶ See PSCAI, Baghdad MOI PSC Registration Guide 2006, available at http://www.psc.ai.org/Docs/PSC_Registration_Process_2006.pdf

²⁷ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 3.

²⁸ See Moshe Schwartz, "The Department of Defense's use of private security contractors in Afghanistan and Iraq: background, analysis, and options for Congress", Congressional Research Service Report for Congress, 21 February 2011, p. 3.

²⁹ See Iraqi Ministry of the Interior, Instructions and directions of security companies, No. 19725, 2 April 2011.

operating in Iraq in previous years was that they could not be identified by the civilians with whom they interacted. In order to address this issue, Iraq now requires each PMSC to display the badge of the company on all its vehicles and to ensure that all employees wear the uniform of the company and carry ID cards issued by the Ministry. Employees must also carry valid weapons cards issued by the Ministry. The Working Group welcomes such measures which allow PMSC vehicles and employees to be clearly identifiable by the local population and for checks to be carried out easily. They contribute not only to transparency in the operations of PMSCs, but probably also have a deterrence value: individuals who are easily and publicly identifiable might be less inclined to commit crimes. During the visit, the Working Group has received information that Department of State contractors were somehow exempted from such requirements, although such information was denied by the United States authorities

41. During the visit, the Working Group has heard that after a slow start, the licensing process was fully up and running in 2006-2007. The licensing requirements are quite stringent. According to the PSCAI, the Ministry of the Interior undertakes inspections to the licensed PMSCs at least once a year, and sometimes as often as every three months. The Ministry confirmed to the Working Group that inspections were carried out on a regular basis. The Working Group was told by one PMSC that it had been inspected five times in the last year and that some inspections (also described by some as “raids”) to the compounds of PMSCs even take place in the middle of the night. This has encouraged PMSCs to keep their records up-to-date and available for inspection at all times. The paperwork to be provided by PMSCs and to be obtained from the Ministry of Interior is extensive. The licensing process is clearly a time-consuming and resource-intensive exercise. Nonetheless, it allows for close regulation and scrutiny of all companies, their employees and their activities.

42. While PMSCs are responsible for submitting all required documentation to the Ministry of the Interior and for maintaining their records, there is a corresponding responsibility on the part of the Ministry to process applications and issue the necessary cards in a timely manner. During the visit, the Working Group was told that Ministry regulations frequently change which leads to a lack of predictability for PMSCs. While regular briefings by the Ministry assist PMSCs in understanding new rules, further standardization of briefings and rules would no doubt contribute to the efficiency of the process. The Working Group heard of recent difficulties linked to the fact that no Minister of the Interior has been appointed for more than a year after the March 2010 general elections. As a result, applications to renew licences cannot be approved and existing licences are extended only for short periods of time. This has created problems since new weapons cards cannot be issued until licences are formally renewed. Without the appropriate weapons cards, the weapons are confiscated by the authorities.

43. The Iraqi authorities informed the Working Group that vetting requirements are strictly applied. The criminal records of all Iraqi employees are checked. With regard to foreign employees, the Working Group was informed that PMSCs have to submit a pledge that these employees have clean criminal records. However, the Working Group was also told by some representatives of the private military and security industry that they had been required to submit certificates proving the absence of criminal convictions. Considering that PMSC employees have often worked and lived in many different countries around the world and for several companies, the Working Group would recommend that PMSCs submit such certificates whenever possible.

E. Draft legislation on private military and security companies

44. As noted previously, CPA memorandum 17 remains the legal basis for the Iraqi Government's regulation of private military and security companies. In the view of the Working Group, this is not a firm basis for regulation. In 2008, the Government introduced legislation on private security companies which would replace CPA memorandum 17. This legislation has been pending in the Council of Representatives since 2008.³⁰

45. The draft legislation on the regulation of PMSCs incorporates all the elements contained in CPA memorandum 17. It introduces additional strictures for foreign PMSCs: Article 5 of the draft legislation provides that licences would only be granted to branches of foreign security companies "in cases of extreme security necessities with the approval of the Council of Ministers based on a proposal from the Minister of Interior". In addition, there should be no objection from the Ministry of Defence, the Ministry of State for National Security Affairs and approval should be obtained from the National Intelligence Agency (art. 9). The same process would be followed for employees of foreign PMSCs (art. 15). In order to ensure accountability, the draft legislation requires that PMSCs ensure that their employees are available to be brought before the competent authorities upon request. It also provides that a PMSC shall be jointly responsible with the employee for acts when committed in Iraq.

46. Like the CPA rules, the draft legislation requires that licensed companies inform the Ministry of the Interior of any crime committed in the course of their activities. An important new element is the requirement that PMSCs organize training programmes for their personnel on respect for human rights in coordination with the Ministry (art. 20, para. 8). The draft legislation also provides that PMSCs would continue to be prohibited from taking any action that would violate the rights and freedoms of citizens (art. 23). Any breach of that obligation could result in the withdrawal or suspension of the license to operate in Iraq (art. 27).

47. For reasons already mentioned above, the draft legislation has not been adopted yet. Although the Working Group was told by some Government officials that the draft legislation on PMSCs could be adopted before the end of the current parliamentary session which ends in November 2011, the prospects for adoption of this legislation remain unclear.

IV. Human rights impact

A. Impact of private military and security companies on the local population

48. Between 2003 and 2007, PMSC employees were implicated in a series of high-profile incidents involving the killing and injuring of Iraqi civilians.³¹ While some of these involved traffic accidents, others were marked by allegations of unprovoked shootings and complicity in torture and inhumane treatment of detainees.

49. Employees of the Titan Corporation and CACI International were allegedly involved in the torture and inhumane treatment of detainees at Abu Ghraib prison. While

³⁰ See UNAMI, Human Rights Report (1 January- 30 June 2008), para. 39.

³¹ See for instance the appendices of Human Rights First, Private security contractors at war: ending the culture of impunity (2008).

the incidents at Abu Ghraib have led to the convictions of some United States military personnel, no contractors have been prosecuted yet.³²

50. Blackwater, which used to have a large presence in Iraq, was implicated in several instances of human rights abuses. Between January 2005 and September 2007 alone, Blackwater employees were involved in 195 incidents involving firearms discharges. In the overwhelming majority of these incidents (84 per cent), they were the first to fire. These incidents resulted in significant Iraqi casualties and property damage.³³ Two incidents involving Blackwater employees received the most attention.

51. On 24 December 2006, a Blackwater employee named Andrew Moonen reportedly shot dead Raheem Khalif Hulaichi, the bodyguard of the Iraqi Vice-President, Adil Abdul-Mahdi. The shooting took place near the Prime Minister's compound in the Green Zone. Moonen was immediately flown out of the country, fired from the company and went on to work for another.³⁴ On 18 October 2010, a United States prosecutor ruled that there was insufficient evidence to prosecute him.³⁵

52. The most high-profile incident involving PMSCs was undoubtedly Nissour Square: on 16 September 2007, Blackwater employees killed 17 Iraqi civilians and injured many others at a crowded traffic circle in Baghdad. There have been reports that the Blackwater employees believed that they had come under small-arms fire from insurgents, so they fired back with machine guns, grenade launchers and a sniper rifle.³⁶ However, other reports indicate that the Blackwater employees opened fire first and then fired indiscriminately.³⁷ At the time of the event, the Working Group expressed its concern over the incident.³⁸

53. Unfortunately, Blackwater was far from being the only PMSC involved in incidents causing civilian deaths. For instance, in 2006, it was reported that employees of Triple Canopy fired and killed Iraqi civilians for no apparent reason other than "for sport". None of them were ever prosecuted.³⁹ Another company, Unity Resources Group (URG) was also involved in two incidents in Baghdad, one in March 2006 in which an Australian national was shot and one in October 2007 which left two Iraqi women dead.

54. While in Iraq, the Working Group learned that the number of incidents involving private military and security companies has decreased significantly in recent years and in fact, the Working Group was told by some interlocutors that there had been no incidents since 2009. This could be attributed to several factors: the decrease in their military-related activities in Iraq (especially in mobile protection); stricter regulation by the

³² See Human Rights First, *Private security contractors at war: ending the culture of impunity* (2008), pp. 52-53.

³³ See Memorandum to the members of the Committee on Oversight and Government Reform of the US House of Representatives – Additional information about Blackwater USA, 1 October 2007, page 6.

³⁴ See Human Rights First, *Private security contractors at war: ending the culture of impunity* (2008), page 46. See also Memorandum to the members of the Committee on Oversight and Government Reform of the US House of Representatives – Additional information about Blackwater USA, 1 October 2007, pp. 9-11.

³⁵ See UNAMI, 2010 Report on Human Rights in Iraq, p. 11.

³⁶ See Sarah K. Cotton et al., *Hired guns: views about armed contractors in Operation Iraqi Freedom*, RAND Corporation, 2010, p. 26.

³⁷ See UNAMI, *Human Rights Report* (1 July – 31 December 2007), paras. 25-26.

³⁸ See Press release, "Working Group on the use of mercenaries expresses concern over the killing of Iraqi civilians involving employees of private security company", 25 September 2007.

³⁹ See Sarah K. Cotton et al., *Hired guns: views about armed contractors in Operation Iraqi Freedom*, RAND Corporation, 2010, p. 26.

Iraqi authorities; and efforts by the United States to tighten oversight of its private security contractors operating in Iraq.

55. UNAMI reports confirm that the number of civilian deaths involving PMSCs has decreased since 2007. In the second half of 2007, there were at least five incidents allegedly involving PMSCs and resulting in the death of Iraqi civilians, including the Nissour Square incident.⁴⁰ In 2008, three incidents occurred in which Iraqi civilians were reportedly killed or injured by PMSC employees.⁴¹ In 2009, there was only one report of killing involving PMSC employees and that concerned the shooting of three PMSC employees (including one Iraqi) by another PMSC employee (see section below).⁴² In 2010, UNAMI reported only one incident of a civilian casualty involving PMSCs: On 8 July 2010, some PMSC employees allegedly opened fire on a vehicle on the road to Baghdad airport, killing one civilian.⁴³

56. The impact of PMSCs on the local population goes beyond the issue of civilian deaths and injuries. During the visit, the Working Group heard that PMSC employees entered or even damaged private properties, that they drove their vehicles carelessly and provoked traffic accidents, and that they behaved in a culturally insensitive manner towards the local population. According to a survey conducted amongst American military personnel, some felt that armed contractors behaved in a threatening, arrogant and even belligerent manner in Iraq.⁴⁴ According to another survey conducted amongst United States diplomatic personnel, a majority thought that armed contractors did not “demonstrate an understanding and sensitivity to Iraqis and their culture”.⁴⁵ There is little doubt that the Iraqi population shares these views. Indeed, although no similar survey was conducted amongst Iraqis, the Working Group was told that the local population was subject to provocations on the part of PMSC employees who, for instance, would point their guns towards people at checkpoints.

57. During the visit, the Working Group found that the Iraqi population did not seem to make clear distinctions between PMSC employees and United States military personnel. This confusion was particularly pronounced during the early years of the American presence when PMSCs frequently did not display identifying insignia. PMSCs therefore seemed to have a negative impact on Iraqis’ perceptions of the United States Army and the coalition forces in general.⁴⁶

B. Monitoring and reporting incidents of potential human rights violations

58. In the aftermath of the Nissour Square shooting in 2007, the United States authorities have reviewed and made improvements in the reporting procedures and

⁴⁰ See UNAMI, Human Rights Report (1 July – 31 December 2007), paras. 25-27.

⁴¹ See UNAMI, Human Rights Report (1 January – 30 June 2008), para.38 and UNAMI, Human Rights Report (1 July – 31 December 2008), para. 27.

⁴² See UNAMI, Human Rights Report (1 January – 30 June 2009), para.24 and UNAMI, Human Rights Report (1 July – 31 December 2009), para. 20.

⁴³ See UNAMI, 2010 Report on Human Rights in Iraq, p. 10.

⁴⁴ See Sarah K. Cotton et al., *Hired guns: views about armed contractors in Operation Iraqi Freedom*, RAND Corporation, 2010, p. 29.

⁴⁵ See Sarah K. Cotton et al., *Hired guns: views about armed contractors in Operation Iraqi Freedom*, RAND Corporation, 2010, p. 30.

⁴⁶ See for instance See Sarah K. Cotton et al., *Hired guns: views about armed contractors in Operation Iraqi Freedom*, RAND Corporation, 2010, p. 33.

oversight mechanisms for PMSCs working for them in Iraq.⁴⁷ For example, after the Nissour Square shooting, the Department of State required video-recording systems to be installed in all vehicles used by PMSCs when performing missions that directly support the Chief of the United States Mission (e.g. transporting State Department personnel, ambassadors, other diplomats, congressional delegations and other government employees). PMSCs are required to submit information on their movements to the United States forces in order to ensure coordination.⁴⁸

59. The licensing requirements put in place by the Iraqi authorities have been described in detail above. In addition, the Iraqi authorities have taken further measures to monitor the movements of PMSC employees. In this regard, the Working Group was informed that the Ministry of the Interior requires that PMSCs provide 72 hours' notice for any convoy movement and submit detailed information on the mission, including the route, the vehicles and weapons to be used.

60. The Working Group received information that as of March 2010, the Government of Iraq required that all PMSCs place cameras on all vehicles in convoys. Ministry of the Interior instructions now require that monitoring cameras be installed in all company vehicles and that footage of any incident be saved so that it can be viewed at any time, but the Working Group was informed by some PMSCs that the Ministry of the Interior has never checked their video records.

61. Iraqi authorities also informed the Working Group that a project on the monitoring of PMSC vehicles via satellite is under consideration. Through this project, the Iraqi authorities hope that PMSC vehicle locations would be determined through GPS equipment placed inside the vehicles. The vehicles' positions would be transmitted to control rooms monitored by the relevant Iraqi authorities. PMSC employees working in the vehicles could also be contacted from the control rooms.

62. In terms of reporting, the Ministry of the Interior instructions require that the Ministry be notified immediately of any incident or crime occurring during the company's work. The Working Group has requested information on the number of incidents reported to the Ministry and how these incident reports have been handled, but no information has been received so far. Whilst there had been instances in the past where PMSC employees would fire at Iraqi civilians from a moving vehicle and leave the scene,⁴⁹ the Working Group was told by representatives of PMSCs that they clearly instruct their employees to remain at the scene of any incident until the Iraqi police arrives and investigates the incident.

63. During the visit, the Working Group did not receive clear information on how complaints regarding human rights violations involving PMSCs were reported to the authorities by the local population. The Working Group was informed that incidents are not reported to the police because the local population reportedly has little trust in the criminal justice system.

64. Overall, it appears that significant progress has been made in setting up systems for monitoring the activities of PMSCs, both by the Government of the United

⁴⁷ See for instance Special Inspector General for Iraq Reconstruction, Opportunities to improve processes for reporting, investigating, and remediating serious incidents involving private security contractors in Iraq, SIGIR 09-019, 30 April 2009.

⁴⁸ Aegis was contracted to monitor and coordinate the movements of DoD contractors for the U.S. Army.

⁴⁹ See Memorandum to the members of the Committee on Oversight and Government Reform of the US House of Representatives – Additional information about Blackwater USA, 1 October 2007, p. 2.

States (which is the largest employer of contractors in Iraq) and by the Iraqi authorities. With regard to reporting incidents involving PMSCs, the Working Group did not receive sufficient information about the reporting mechanisms and whether they actually provide the civilian population with an effective means of redress.

C. Accountability and compensation to victims

65. In accordance with CPA Order 17, PMSCs contracted by the Government of the United States and operating in Iraq were immune from the Iraqi legal process until 2009, so none of their employees could be prosecuted in Iraq for violations of the rights of Iraqi civilians. Such cases should, however, have been prosecuted in American courts. In this regard, the Working Group recalls that the United States has an obligation to respect and ensure the rights laid down in the International Covenant on Civil and Political Rights to individuals under its jurisdiction but outside its territory.⁵⁰ This entails an obligation to investigate, prosecute and provide effective remedies for victims of violations committed by PMSCs contracted by the State and their employees.⁵¹

66. In December 2008, the Department of Justice tried to prosecute five Blackwater employees under the Military Extraterritorial Jurisdiction Act of 2000 for their involvement in the Nissour Square shooting. On 31 December 2009, the Federal District Court of Columbia dismissed the case on the ground that the evidence was inadmissible under the United States Constitution (A/HRC/15/25/Add.3, para. 89). On appeal, the Court of Appeal for the D.C. Circuit decided that some of the evidence was still admissible and the case was re-instated in April 2011. Four years after Nissour Square, the case against the alleged perpetrators is therefore still pending in American courts. Notwithstanding this case, the Working Group notes that for many other incidents which took place in Iraq before 2009, no prosecution took place in American courts and therefore no one was held accountable for such incidents (see section IV.A above).

67. The Working Group acknowledges that the Iraqi authorities could only take limited legal action with regard to PMSCs which were reportedly involved in human rights violations against Iraqi civilians before 2009. The Iraqis have, however, taken action against Blackwater, which is regarded by many as one of the main offenders. On 10 February 2010, the Iraqi Ministry of Interior ordered the firm Xe (formerly Blackwater) to leave the country with all its international employees within seven days. The Working Group was told by Iraqi authorities that they maintained lists of Blackwater employees so that they could not be hired by other PMSCs in Iraq. Other information suggests, however, that some 250 former Blackwater employees remained in Iraq and transferred to other PMSCs.⁵² The Working Group was unable to ascertain whether the persons who remained were implicated in human rights violations.

68. Even though PMSC employees cannot be prosecuted in Iraqi courts for incidents taking place before 2009, the Iraqi Ministry of Interior was notified of every such incident and could conduct an investigation in order to clarify the facts and identify those

⁵⁰ See CCPR/C/USA/CO/3/Rev.1, para. 10.

⁵¹ See Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (A/63/467 - S/2008/636), p. 7.

⁵² See UNAMI, 2010 Report on Human Rights in Iraq, p. 11.

responsible.⁵³ The Working Group was told by the Iraqi authorities that between 2003 and 2009, PMSCs and the United States Army were reluctant to share information on investigations and prosecutions. Notwithstanding this reported lack of cooperation on behalf of the other parties involved, the Iraqi authorities could have shared the results of local investigations with the American authorities more systematically in order to facilitate prosecutions in their courts. In this regard, the Iraqi authorities could request information on the status of prosecutions in the United States and, on behalf of the victims, demand that prosecutions take place where it is not the case. While the Iraqi authorities have intervened with the American authorities in the Nissour square case,⁵⁴ the Working Group did not receive any indication that they have systematically raised other cases with the United States authorities.

69. The combined effect of the immunity clause contained in CPA Order 17 and the failure to prosecute PMSC employees in home countries has led to impunity for human rights violations against Iraqi civilians between 2003 and 2009. The Working Group is deeply concerned about the ongoing failure to hold accountable those involved in such violations and to provide an effective remedy to the victims and/or their families. Some of the victims have filed civil claims in American courts (A/HRC/15/25/Add.3, para. 54). However, PMSC employees should still be prosecuted before United States courts for any crime committed in Iraq

70. Since 1 January 2009, PMSCs and their employees (at least those contracted by the Department of Defense) can be prosecuted in the Iraqi legal system according to the provisions of the Status of Forces Agreement. While Iraqi courts have had jurisdiction since 2009 over American contractors operating in Iraq, such contractors can only be prosecuted under the Iraqi Penal Code of 1969 since there is no specific Iraqi legislation on PMSCs.

71. On 3 June 2009, the Iraqi Ministry of Interior announced that the Iraqi Security Forces had arrested 5 employees of PMSC contracted by the United States in the course of an investigation into the killing of another PMSC employee, James Kitterman, an American national, in Baghdad's Green Zone.⁵⁵ It does not appear that this arrest has led to any prosecution.

72. According to the information available to the Working Group, only one prosecution has taken place so far in Iraq since 2009. Daniel Fitzsimons, a British national who was an employee of AmorGroup (now G4S), was convicted of killing Paul McGuigan (United Kingdom) and Darren Hoare (Australia) and injuring an Iraqi security guard. In February 2011, he was sentenced to 20 years' imprisonment.⁵⁶

73. While the number of incidents involving PMSCs has decreased substantially since 2009, some incidents have still occurred. For instance, as mentioned above, one incident of a civilian casualty involving PMSCs was reported to UNAMI in July 2010. During the visit, the Working Group requested information on this incident and its follow-up, but has not received any information indicating that any PMSC employee had been prosecuted in this case (see para. 55 above).

⁵³ See United States Government Accountability Office, *Rebuilding Iraq – DOD and State Department have improved oversight and coordination of private security contractors in Iraq, but further actions are needed to sustain improvements*, July 2008, p. 5.

⁵⁴ See UNAMI, *2010 Report on Human Rights in Iraq*, p. 11.

⁵⁵ See R. Chuck Mason, *US-Iraq Withdrawal/Status of Forces Agreement: issues for congressional oversight*, Congressional Research Service Report for Congress, 13 July 2009, pp. 7 and 8.

⁵⁶ See *The Guardian*, "Briton Danny Fitzsimons jailed in Iraq for contractors' murders", 28 February 2011.

74. With regard to compensation to victims and their families, the United States Department of Defense requests PMSCs to make payments “as soon as possible” in cases of wrongful death, injury or serious damage to property. However, it gives no indication as to what would constitute an appropriate amount of payment.⁵⁷ During the visit, the Working Group was told that the United States Embassy makes payments to families affected by the activities of their contractors (\$10,000 for death, \$5,000 for injury, \$2,500 for damage to property),⁵⁸ but did not receive detailed information on how many such payments have been made so far.

75. Iraqi legislation was adopted in 2009 to compensating the victims of military operations, military mistakes and terrorist actions (Law No. 20).⁵⁹ The Law applies retroactively from 2003. However, the Working Group did not receive detailed information on whether and when this law has ever been used to pay compensation to victims or their families for deaths or injuries caused by PMSC employees.

V. Conclusions and recommendations

76. As the discussion above demonstrates, the regulation of PMSCs in Iraq has come a long way from the situation that prevailed in the period 2003 to 2009. Prodded by public outrage over the Nissour Square shooting in 2007 and the general sense among the Iraqi population that contractors were acting with impunity, both the Government of the United States and Iraqi authorities have taken steps to tighten control over PMSCs. These initiatives, as well as the decrease in PMSCs military-related activities are likely the reason for the decrease in the number of incidents involving PMSCs in the last couple of years.

77. The Working Group welcomes these initiatives, but notes that accountability for human rights abuses committed during the 2003-2009 period remains elusive. Because of the immunity extended to contractors in Iraq during this time period, prosecutions in Iraq were foreclosed. This places an even greater responsibility on the home States of PMSCs to ensure prosecution of offenders. Unfortunately, such prosecutions have rarely been brought and have even more rarely been successful. In several cases, the home States have conducted domestic investigations and simply decided not to proceed (see section IV.A above). Even the prosecution for the shootings at Nissour Square – which were the catalyst for much of the regulation of PMSCs – remains mired in procedural battles in American courts. The Working Group remains deeply concerned about the lack of accountability for violations committed between 2003 and 2009 and recalls that the victims of such violations and their families are still waiting for justice.

78. The Working Group is also concerned that the removal of immunity in the 2009 Status of Forces Agreement may not cover all private foreign security contractors in Iraq. Furthermore, it is not clear whether this removal of immunity is fully applied in Iraqi courts. The Working Group recommends that this legal situation be clarified as a matter of priority and urgency.

⁵⁷ See Special Inspector General for Iraq Reconstruction, Opportunities to improve processes for reporting, investigating, and remediating serious incidents involving private security contractors in Iraq, SIGIR 09-019, 30 April 2009, p. 24.

⁵⁸ See Special Inspector General for Iraq Reconstruction, Opportunities to improve processes for reporting, investigating, and remediating serious incidents involving private security contractors in Iraq, SIGIR 09-019, 30 April 2009, p. 26.

⁵⁹ See UNAMI, Human Rights Report (1 July – 31 December 2009), para. 59.

79. The use of CPA Memorandum 17 as the legal basis for the Iraqi Government's regulation of private military and security companies, in the view of the Working Group, should be regarded as an interim measure. Iraqi legislation to replace CPA Memorandum 17 (which has been pending since 2008) should be adopted as a matter of priority.

80. While PMSCs are generally seen as enhancing security, the example of Iraq demonstrates that such contractors may indeed increase insecurity amongst the local population. The Working Group reiterates that providing security to its people is a fundamental responsibility of the State. Outsourcing security creates risks for human rights and the Government of Iraq must remain vigilant and devote the necessary resources to ensure that PMSCs – whether international or Iraqi – are stringently regulated and that they respect the human rights of the Iraqi people.

81. In light of the above observations, the Working Group recommends that the Government of Iraq:

- Clarify as a matter of urgency the legal situation of PMSCs operating in the country and in particular whether any PMSCs are entitled to immunity, either under CPA Order 17 or other agreements or legal instruments;
- Ensure the adoption of legislation on the regulation of PMSCs. The Government should also take the necessary steps to ensure its full implementation once the law is adopted;
- Clarify as a matter of urgency whether all PMSCs operating in Iraq, including those that are supporting diplomatic missions, are subject to the licensing procedure of the Ministry of the Interior;
- Continue its efforts to strengthen the monitoring and reporting mechanisms which have been put in place for PMSCs operating in the country, including vetting requirements for PMSC employees. The Government should also allocate sufficient resources to the Ministry of Interior which is in charge of these mechanisms;
- Ensure that CPA memorandum 17 and the regulations of the Ministry of the Interior concerning the licensing and regulation of PMSCs are applied in a non-discriminatory manner and are not used to target PMSC employees from particular regions;
- Establish an independent, public and easy-to-access complaints mechanism through which the local population can report human rights violations involving PMSCs;
- Ensure prompt investigation of incidents involving casualties caused by PMSC employees, prosecution of those responsible and adequate remedies, including compensation, for the victims or their families;
- Share with the relevant countries any information which might be relevant for the prosecution of PMSC employees involved in human rights violations in Iraq and request information on pending cases. The Government should also intervene with the relevant national authorities in order to encourage them to prosecute those PMSC employees responsible for human rights violations in Iraq, especially when these took place between 2003 and 2009;
- Consider acceding to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

- **The Government is encouraged to seek the assistance of UNAMI in the implementation of these recommendations.**

82. The Working Group also makes the following recommendations to the international community, in particular to the United States:

- **Strengthen oversight mechanisms in any contracts with PMSCs, including vetting requirements for PMSC employees;**
 - **Ensure that PMSCs alleged to have been involved in human rights violations are fully investigated and that those responsible for such violations are promptly brought to justice, including for any violations that took place between 2003 and 2009. Where necessary, the relevant countries should request the cooperation of the Iraqi authorities in obtaining the information necessary to prosecute and secure convictions;**
 - **In order to ensure that all citizens enjoy security, continue efforts to ensure that, particularly in conflict and post-conflict situations such as this one, priority is given to capacity-building activities and that national police forces are trained to respect human rights standards.**
-