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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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**

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Addendum

COMMUNICATIONS TO AND FROM GOVERNMENTS*

* The present document is being circulated in the languages of submission only.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 5	3
II. COMMUNICATIONS TO AND FROM GOVERNMENTS	6 - 51	3
Australia	6 - 11	3
Chile	12 - 17	4
Colombia	18 - 21	5
Iraq (Blackwater)	22 - 24	8
Iraq (URG)	25 - 27	9
Israel	28 - 33	10
Mexico	34 - 38	11
United States of America (Blackwater - Nissour Square)	39 - 45	12
United States of America (Blackwater - Chilean National)	46 - 51	14

I. INTRODUCTION

1. The Working Group has increasingly received information from Governments, non-governmental organizations (NGOs) and individuals concerning situations involving mercenaries, mercenary-related activities and activities of private military and security companies throughout the world. During the period under review, communications have been sent to Australia, Colombia, Israel, Mexico and the United States of America.
2. The Working Group has engaged proactively with civil society and NGOs in promoting the access to information and submission of information and/or allegations. The Working Group seeks to further cooperate with United Nations agencies and programmes, as well as NGOs, in view to strengthen effectiveness of protective actions.
3. The present report contains summaries of general and individual allegations transmitted to Governments during the period from 1 October 2007 to 15 December 2008. Government replies received after 31 January 2009 will be included in the next communications report of the Working Group.
4. Communications are presented by country of concern with a note on type of communication. The names of the concerned persons or victims whose cases are presented in this report have been intentionally replaced by initials in order to comply with confidentiality issues and respect of privacy. The full names of all persons have been provided to the Government concerned. With a view to preserving the presumption of innocence, the same procedure has been adopted by the Working Group with regard to the alleged perpetrators whose names have been transmitted to the Government.
5. In order to illustrate the importance of the various cases, the Working Group chose to submit the present report reflecting the languages of submission and/or original languages used in communications. The present document is submitted as an addendum to the Working Group report to the tenth session of the Human Rights Council.

II. COMMUNICATIONS TO AND FROM GOVERNMENTS

Australia

Letter of allegations and response

6. On 25 October 2007, the Working Group sent a communication to Australia concerning the alleged involvement of an Australian-run private military security company, Unity Resources Group (URG), in two incidents in Baghdad, one in October 2007 which left two Iraqi women dead, and another in March 2006 where an Australian national was shot.
7. On 4 December 2007, Australia sent a detailed response to the Working Group in which it stated that the Government understood that the Iraqi authorities were investigating the alleged incident and that URG had stated publicly that it was cooperating with the Iraqi authorities. It further stated that queries regarding the circumstances and the status of investigations should be directed to the Government of Iraq. It further provided information on the applicable Australian legal framework in general terms, without reference to the circumstances of the alleged incidents.

8. The content of the letter sent by the Working Group and the response from the Government of Australia are contained in the Working Group's previous report to the Human Rights Council (A/HRC/7/7/Add.1).

Follow-up by the Working Group

9. On 14 July 2008, the Working Group sent a follow-up letter to Australia requesting additional information about the two cases.

10. The Working Group thanked the Australian Government for its letter dated 4 December 2007 and indicated that it would welcome detailed information from the Australian Government on the following questions: (1) What is the nationality of the employees of Unity Resources Group involved in the incident of 9 October 2007? (2) Has there been any investigation from the part of the Australian Government regarding the death of the 72-year-old Australian national, in March 2006?

Observations on the follow-up

11. At the time of writing of this report, the Working Group had not received a response from the Government of the Australia with regard to these follow-up questions.

Chile

12. El 18 de enero de 2008, el Grupo de Trabajo envió una carta al Gobierno de Chile tras haber recibido información sobre el caso del Sr. A.G., de nacionalidad chilena, reclutado por la empresa Blackwater Security Consulting, registrada en los Estados Unidos para llevar a cabo servicios de seguridad en el Iraq.

13. De acuerdo con la información recibida, El Sr. A.G. supuestamente no habría recibido el reembolso de los gastos médicos derivados de su operación. Asimismo, el Sr. A.G. no habría recibido los salarios correspondientes al mes de septiembre de 2006 y al periodo comprendido entre junio y noviembre de 2007.

14. El Grupo de Trabajo solicitó información sobre: *a)* las investigaciones iniciadas en relación con este caso; *b)* el estatuto jurídico de las empresas militares y de seguridad privada registradas en el extranjero que reclutan a su personal en Chile; *c)* los recursos existentes en caso de incumplimiento de las obligaciones laborales de estas empresas;

Comentarios

15. El Grupo de Trabajo quisiera agradecer al Gobierno de Chile por su respuesta detallada enviada al 3 de marzo de 2008. El texto de dicha respuesta es presentado a continuación:

Respuesta del Gobierno (3 de marzo 2008)

Frente a la petición de información de un ciudadano chileno de iniciales A.G. en contra la empresa Blackwater Security Consulting, que hiciera el Presidente del Grupo de Trabajo

sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación, el jefe del área jurídica del Ministro de Defensa Nacional señala lo siguiente:

(1) En esa Secretaría de Estado no es conocida la situación de un ciudadano chileno de iniciales A.G. en litigio con la empresa Blackwater. Por lo mismo, se solicita nos puedan hacer llegar mayores antecedentes acerca del ciudadano chileno en comento y de la situación que le afecta, con el fin de poder recabar información acerca de la denuncia”.

(2) El Ministerio de Defensa indica que las actividades de seguridad privada que una persona natural chilena acuerde con una persona jurídica extranjera constituyen una relación contractual de derecho privado, por lo que los conflictos que eventualmente dimanen de esta relación también se mantienen en esa esfera.

16. Los párrafos restantes de la carta del Gobierno de Chile no son relevantes en esta alegación y en consecuencia, no son reproducidos aquí.

Comentarios

17. El Grupo de Trabajo contactó la fuente de la queja, para solicitarle información relacionada con la respuesta recibida.

Colombia

Carta de alegaciones

18. El Grupo de Trabajo envió una carta al Gobierno de Colombia durante 2006, tras haber recibido alegaciones sobre la supuesta implicación de contratistas privados en el conflicto colombiano en relación con los programas y asistencia militar del Plan Colombia por parte del Gobierno de los Estados Unidos de América, y la presencia de nacionales colombianos como contratistas independientes en el Iraq, y sus condiciones laborales.

19. Las comunicaciones enviadas por el Grupo de Trabajo a las autoridades esta reflejada en el informe que el Grupo de Trabajo presentó al Consejo de Derechos Humanos (A/HRC/4/42).

20. Con fecha de 5 de febrero 2008, el Grupo de Trabajo envió una carta al Gobierno de Colombia para recordar de la carta enviada el 3 de agosto 2007.

Comentarios

21. El Grupo de Trabajo quisiera agradecer al Gobierno de Colombia por su respuesta detallada enviada al 18 de febrero de 2008. No obstante, el Grupo de Trabajo reitera su interés en recibir informaciones sobre la presencia y permanencia de nacionales colombianos en el Iraq, así como las acciones de empresas militares y de seguridad privada en relación con las modalidades de contratación de esas personas para trabajar en el Iraq y sobre las medidas necesarias, adoptadas o en curso de ser adoptadas, para evitar el reclutamiento de nacionales colombianos para trabajar en zonas de conflicto armado. El texto de dicha respuesta es presentado a continuación:

Respuesta del Gobierno (18 de febrero 2008)

1.1 ¿Cuál es el marco jurídico que permite la presencia de contratistas militares privados en Colombia? El marco jurídico que regula la presencia de contratistas estadounidenses en Colombia esta compuesto por los siguientes instrumentos:

(A) Convenio general de Ayuda Económica, Técnica y Afín entre el Gobierno de la Republica de Colombia y el Gobierno de los Estados Unidos de América firmado en Bogotá el 23 de julio de 1962: El artículo III de este Convenio dispone que la ayuda económica, técnica y afín proporcionada por el Gobierno de los Estados Unidos de América debe ser ejecutada a través de una misión especial que es considerada parte de la misión diplomática del Gobierno de los Estados Unidos de América. De acuerdo con lo anterior, la misión especial y su personal reciben los privilegios e inmunidades a los cuales tienen derecho cualquier misión diplomática, según la Convención de Viena sobre Relaciones Diplomáticas de 1961.

(B) Acuerdo entre el Gobierno de la Republica de Colombia y el Gobierno de los Estados Unidos de América, relativo a una Misión del Ejército, una Misión Naval y una Misión Aérea de las Fuerzas Militares de los Estados Unidos de América en la República de Colombia, suscrito en Bogotá el 7 de octubre de 1974: El artículo 11 de este Acuerdo dispone que todo el personal asignado a la Misiones y sus familias gozarán de los mismos privilegios e inmunidades que corresponden al personal de la Embajada de los Estados Unidos de América en Colombia. Los aspectos disciplinarios del personal de las Misiones se regirán por los reglamentos de las Fuerzas Militares de los Estados Unidos.

(C) Anexo al Convenio General de Ayuda Económica, Técnica y Afín entre el Gobierno de la República de Colombia y el Gobierno de los Estados Unidos de América, firmado en Bogotá D.C., el 30 de agosto de 2004: El objeto de este Acuerdo es establecer y apoyar un programa bilateral de control de narcóticos, incluyendo un programa integral contra el narcotráfico, actividades terroristas y otras amenazas a la seguridad nacional de la República de Colombia, bajo los términos establecidos en el Convenio General de Ayuda Económica, Técnica y Afín de 1962. Las partes acuerdan suscribir subconvenios individuales, apéndices al Anexo, para detallar los proyectos por medio de los cuales se realiza su ejecución.

El Apéndice 1 regula lo concerniente al apoyo de la Policía Nacional de Colombia — Dirección de Antinarcóticos—. La parte operativa por parte del Gobierno de los Estados Unidos es la sección de Antinarcóticos (NAS), la cual tiene como responsabilidad financiar asesores de dirección terrestres y de aviación y otros especialistas con el fin de asesorar operacionalmente a la Dirección de Antinarcóticos y apoyar la implementación de proyectos de interés mutuo. Asimismo, el NAS tiene responsabilidad de financiar el entrenamiento que requiera la Dirección de Antinarcóticos, por medio de instructores del Gobierno de los Estados Unidos o de empresas privadas.

Considerando el Convenio General de 1962 y el Anexo a ese Convenio de 2004, el personal contratado por el NAS hace parte de la misión especial necesaria para proveer la ayuda que requiere Colombia, y tiene derecho a las inmunidades y privilegios de la Misión Diplomática del Gobierno de los Estados Unidos de America.

1.2 *¿Cuáles son los controles que hace el Estado colombiano frente a la presencia de contratistas?* El personal que compone las misiones militares mencionadas en la respuesta anterior, puede tener la calidad de acreditado o no acreditado según el artículo 5 del Acuerdo entre el Gobierno de la República de Colombia y el Gobierno de los Estados Unidos de América, relativo a una Misión del Ejército, una Misión Naval y una Misión Aérea de las Fuerzas Militares de los Estados Unidos de América en la República de Colombia, suscrito en Bogotá el 7 de octubre de 1974. El personal acreditado debe recibir un beneplácito por parte del Gobierno de Colombia, a través del Ministerio de Relaciones Exteriores.

El Comando General de las Fuerzas Militares ejerce una serie de controles sobre el personal no acreditado de las misiones militares de los Estados Unidos. Estos controles van desde la potestad misma de autorizar o no la entrada del personal, hasta la elaboración de informes a cargo de las unidades, acerca de la labor desempeñada por el personal. En cumplimiento del procedimiento establecido para el efecto, el Jefe del grupo militar del Gobierno de los Estados Unidos en Colombia, mediante comunicación escrita, solicita al Comandante General para efectuar visitas de personal militar y militar a las diferentes unidades de las Fuerzas Militares.

Previo visto bueno del Comandante General y del Jefe de Estado Mayor Conjunto, la solicitud es remitida a la Jefatura Logística Conjunta para cumplir el trámite administrativo consistente en informar a los Comandos de Fuerza las visitas autorizadas en las fechas respectivas y el objeto o motivo de las mismas. Es importante recalcar que es potestad del Comando general de las Fuerzas Militares aceptar o rechazar las solicitudes presentadas, ejerciendo en esa medida control no sólo sobre el número de personal militar que se encuentra en el país, sino sobre las actividades que ese personal puede desempeñar.

Al interior de cada unidad, el personal de la misma debe encargarse de brindar la seguridad y atención requerida al personal de las misiones militares de los Estados Unidos y, adicionalmente, rendir un informe de acuerdo al literal c) “Instrucciones de Coordinación” del número 3 de la Directiva Permanente Numero 300 de 2003, que dice: “Las Unidades deben rendir a los Comandantes de Fuerza y esos a su vez al Comando General un informe mensual (5 días primeros del mes), sobre los resultados obtenidos en desarrollo de las visitas realizadas por el personal de los Estados Unidos, como consecuencia de su gestión, en cada una de las unidades”.

En el caso del personal perteneciente a la Sección de Asuntos Narcóticos – NAS – la Embajada de los Estados Unidos solicita acreditación y correspondiente beneplácito, tanto de los funcionarios del Gobierno de los Estados Unidos como de los contratistas extranjeros, al Ministerio de Relaciones Exteriores del Gobierno de la República de Colombia.

1.3 *¿Cuáles son las empresas militares y de seguridad privadas extranjeras que operan en Colombia y en número de empleados que tienen?* No se tiene información. El Gobierno autoriza y supervisa al personal de los Estados Unidos acreditado o no acreditado que ingresa al país. El control no se realiza con respecto a la empresa en que trabaja.

1.3 *¿Son exactos los hechos a los que se refiere los casos descritos? ¿Ha recibido el Gobierno de Colombia alguna información adicional sobre dichas situaciones? De acuerdo con la información proporcionada por la Fuerzas Militares, ningún personal de Estados Unidos participa en las operaciones que sostienen las Fuerzas Militares o la Policía Nacional contra los grupos narcotraficantes y terroristas.*

2. *Por favor proporcione información detallada sobre las investigaciones iniciadas, incluyendo por un lado, investigaciones judiciales en relación con los hechos descritos, y por otro lado la posible participación directa de los contratistas en el conflicto armado. Si estas no hubieren tenido lugar o no hubieran sido concluidas, le rogamos que explique el motivo. El marco jurídico descrito en la pregunta 1.1. dispone que el personal de los Estados Unidos acreditado y no acreditado que integra a la misión especial para implementar la cooperación que brinda ese país, goza de las inmunidades y privilegios a los cuales tiene derecho cualquier misión diplomática, según la Convención de Viena sobre Relaciones Diplomáticas de 1961.*

Entre las inmunidades que se señala la Convención esta la “inmunidad de jurisdicción”, la cual especifica que corresponde al Estado que envía el personal que integra su misión diplomática, juzgar al mismo. Dicha inmunidad es absoluta en materia penal. Esta prerrogativa no es en beneficio personal, sino que se concede por razones funcionales, es decir, para asegurar el efectivo cumplimiento de las funciones asignadas por cuenta de su propio Estado.

3. *Por favor proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. No existe información, considerando la respuesta a la pregunta anterior.*

4. *Por favor proporcione información detallada sobre la presencia y permanencia de nacionales colombianos en Irak, así como las acciones de estas empresas en relación con las modalidades de contratación de esas personas para trabajar en Irak. N/A.*

5. *Por favor proporcione información detallada sobre las medidas necesarias, adoptadas o en curso de ser adoptadas, para evitar el reclutamiento de nacionales colombianos para trabajar en zonas de conflicto armado. N/A.*

Iraq (Blackwater)

22. On 25 September 2007, the Working Group sent a communication to Iraq concerning alleged a indiscriminate shooting of civilians, on 16 September 2007, in Baghdad, involving employees of a private security company, Blackwater.

23. The letter sent by the Working Group is contained in its previous report to the Human Rights Council (A/HRC/7/7/Add.1).

24. The Working Group would like to thank the Government of Iraq for its detailed response, dated 13 March 2008. The Working Group would like to reiterate its interest in continuing the dialogue on regulation of activities of private military security companies in Iraq. The text of the Government’s response follows.

Response from the Government (13 March 2008)

Are the facts described in the Working Group's letter accurate? Are there any currently ongoing investigations? The facts described in the letter are accurate as far as the events at Al-Nusur Square are concerned. The investigation into the incident was completed on 27 September 2007. The incident of 24 May 2007 was not accurately described; a civilian was murdered by the company without there having been any engagement with the Iraqi forces.

What is the legal status of private military and/or security contractors of foreign registered PMSCs operating in Iraq? Concerning the contractors involved in the incidents described above, which possible proceedings and/or action could be engaged under Iraqi law? Order No. 17 of 2004 (Revised) grants these companies immunity from Iraqi legal process or Iraqi criminal law, but allows the injured parties to institute proceedings against the perpetrators before the courts of the latter's country or to request a waiver of immunity under the same Order. The Iraqi Government will act to secure the rights of the victim's relatives in accordance with those provisions.

Does the firm Blackwater hold a licence to operate in Iraq from the Iraqi Ministry of Interior? The operating licence granted to the company by the Ministry of Internal Affairs expired on 1 February 2006 and the company was notified on 23 March 2006 of the need to renew it. The company did not do so, and its status was considered illegal.

What is the current status and application of Coalition Provisional Authority (CPA) Order No. 17, a law issued by the now dissolved CPA in Iraq and incorporated into Iraqi law? What are the currently valid requirements to register a private security company in Iraq? Are personnel of private security companies granted immunity under Iraqi law? Order No. 17 is still in force and is part of Iraqi law; Memorandum No. 17 of 2004 (Registration requirements for private security companies) lays down the registration requirements for private security companies in Iraq. The immunity referred to in the above-mentioned Order is still in effect.

What are the immediate steps envisaged by the Government of Iraq to prevent activities of private military and security companies from causing harm to and impede the enjoyment of human rights of civilians in Iraq in the future? A review of the regulations on the work of foreign private security companies operating in Iraq in order to guarantee Iraqi citizens the enjoyment of their human rights.

Are there legislative initiatives in Iraq which are aimed at further regulating and providing enhanced oversight of PMSCs and their employees? Yes.

Iraq (URG)

25. On 25 October 2007, the Working Group sent a letter to the Iraqi Government concerning the alleged involvement of an Australian-run private military security company, Unity Resources Group (URG), in two incidents in Baghdad, one in October 2007 which left two Iraqi women dead, and another in March 2006, in which an Australian national was shot.

26. The letter sent by the Working Group is contained in its previous report to the Human Rights Council (A/HRC/7/7/Add.1).

27. The Working Group would like to thank the Government of Iraq for its detailed response, dated 13 March 2008. The Working Group would like to reiterate its interest in continuing the dialogue on regulation of activities of private military security companies in Iraq. The text of the Government's response is as follows.

Response from the Government (13 March 2008)

As regards the legal status of the company in question, it holds a licence from the Ministry of Internal Affairs (No. 26 of 23 August 2007, valid until 23 August 2008). The licence was granted for the provision of protection services to the following: the Independent Electoral Commission of Iraq, the National Democratic Institute for International Affairs, the Research Triangle (Master Security Service Subcontractor ADG 31-2 Research Tractel Institution).

The investigation was investigated at the Masbah police station in the context of the Karradah court proceedings. The above-mentioned company provided pictures taken during the incident and contacted the victims' relatives in order to compensate them for the damage that they had suffered.

The company responsible for the incident stated that it had attempted to meet the families of the deceased but to no avail, as they had refused to accept compensation for their daughters' deaths.

The investigating judge decided to "close the case definitively".

Israel

Letter of allegations

28. On 17 October 2008, the Working Group sent a communication to Israel concerning allegations that Israeli private security companies are being used to guard the Wall as well as Israeli settlements inside the Palestinian territories.

29. The Working Group noted that it had received information in relation to Israel's use of Israeli private security contractors (PSCs) and noted that according to information it had received, Israeli PSCs would be used to maintain the Wall and its associated regime, and Israeli settlements inside the Palestinian territories. Further, private Israeli security companies would be assuming security functions for some settlements, including those associated with the Wall and those located in other areas of the West Bank. In addition, the checkpoints stationed along the Wall would be manned by private Israeli security companies employing Israeli personnel sometimes alongside Israeli soldiers, with some checkpoints now allegedly administered fully by PSCs. PSCs operating at checkpoints along the Wall would have been contracted by the Israeli Ministry of Defence and the Israeli Ministry of Public Security.

30. The Working Group recalled that the International Court of Justice (ICJ) in its 9 July 2004 Advisory Opinion had found that Israel's construction of a Wall in the Palestinian territories, including in and around East Jerusalem, and its associated regime, including settlements, are contrary to aspects of Israel's obligations under international law.

31. Without implying any conclusion as to the facts mentioned above, the Working Group indicated that it would welcome detailed information from the Government of Israel on the following issues: (a) the implications of the outsourcing to PSCs of checkpoints along the Wall and settlement security in relation to the International Court of Justice's finding that "the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent," an outcome impeding right to Palestinian self-determination; (b) which organ of the State of Israel contracts PSCs; (c) whether Israel considers PSCs deployed inside the Palestinian territories to be combatants according to the terms of Article 4(A)(2) of the 1949 Third Geneva Convention, and whether Israel's answer would differ depending on whether PSCs are stationed inside the Israeli-defined municipal boundaries of Jerusalem; (d) if Israel does not consider PSCs to be combatants per Article 4(A)(2) of the Third Geneva Convention, what legal status does Israel attribute to PSCs; (e) to whom in the hierarchy of the Israeli military forces are PSCs operating in the Occupied Palestinian Territory legally accountable, and whether Israel's answer differs depending on whether PSCs are stationed inside the Israeli-defined municipal boundaries of Jerusalem; (f) what legal regime under domestic law governs Israel's responsibility, as an Occupying Power, for the acts committed by PSCs inside the Occupied Palestinian Territory in violation of Israel's obligations under international law; (g) whether PSCs are individually criminally responsible under national law with regards to Israel's obligations under international human rights and humanitarian law, and whether Israel's answer differs depending on whether the PSC is stationed inside the Israeli-defined municipal boundaries of Jerusalem.

Follow-up

32. The Working Group received a response from the Permanent Mission of Israel dated 29 October 2008, requesting clarification on certain issues before sending the letter to the Government.

33. The Working Group has contacted the source of the allegation, inviting information with regard to the reply received.

México

Carta de alegaciones

34. El 24 de septiembre de 2008, el Grupo de Trabajo envió una carta al Gobierno de México tras haber recibido información en relación con serias violaciones a los derechos humanos cometidas por algunos elementos de la Policía Federal, de las entidades federativas y de municipios, quienes al parecer han sido asesorados por empresas militares privadas.

35. De acuerdo con la información recibida, miembros de la Policía Federal en León Guanajuato habrían sido entrenados en técnicas de tortura en el año 2006 por empleados de la empresa Global Risks Solutions Inc.

36. También se recibieron alegaciones de que las actividades en México de la Compañía estadounidense SY Coleman Corporation han generado una gran preocupación. Aparentemente, en agosto de 2007, la compañía SY Coleman convocó a ex militares para vigilar instalaciones de Pemex en Veracruz. Se habría reclutado ex militares de los Estados Unidos de América con experiencia internacional para realizar labores de vigilancia aérea y mantenimiento en “varias localidades de Veracruz, México”. A pesar de que el lugar de trabajo propuesto es bajo el espacio aéreo y en territorio mexicano, se habría previsto que el personal quedaría bajo jurisdicción estadounidense.

37. El Grupo de Trabajo solicitó información sobre: *a)* el presunto entrenamiento en el año 2006 de la Policía federal en León, Guanajato por empresas de seguridad privada; *b)* el estatuto jurídico de las empresas militares y de seguridad privada registradas en el extranjero que trabajan en el territorio mexicano; *c)* la presencia en el territorio nacional de contratistas extranjeros privados sin registro en México.

Comentarios

38. El Grupo de Trabajo no ha recibido a la fecha de presentación de ese informe ninguna respuesta del Gobierno de México en referencia a estas alegaciones.

United States of America (Blackwater – Nissour Square)

Letter of allegations

39. On 25 September 2007, the Working Group sent a communication to the United States of America concerning the alleged indiscriminate shooting of civilians, on 16 September 2007, in Baghdad, Iraq, involving employees of a private security company, Blackwater.

40. In its letter, the Working Group noted it had received information that employees of the firm Blackwater, based in the United States, were involved in this shooting incident, in which more than 10 civilian casualties and approximately 30 civilian wounded were reported, including women and children.

41. The Working Group indicated it had also received information that this particular incident is reportedly not the first of its kind or the first involving the private security company. The Working Group also highlighted that it had learned that there was an indication that the contract between the Embassy of the United States in Iraq and private military and security companies, was a Worldwide Personal Protective Services (WPPS) contract, which the concerned company shared with two other PMSCs.

42. The Working Group indicated that, without implying any conclusion as to the facts mentioned, it welcomed information concerning, inter alia: (a) the legal status of private military and/or security contractors of U.S.-registered PMSCs operating in Iraq, as well as licensing issues; (b) the contractors involved in the shooting, and which possible proceedings and/or action could potentially be engaged under Iraqi or United States law; (c) the legislative initiatives in Congress aimed at further regulating and providing enhanced oversight of PMSCs based in the

United States and their employees operating abroad; and (d) the immediate steps envisaged by the Government to prevent activities of PMSCs from causing harm to and impeding the enjoyment of human rights of civilians in Iraq in the future.

43. A summary of the letter sent by the Working Group is contained in its previous report to the Human Rights Council (A/HRC/7/7/Add.1).

Observations

44. The Working Group would like to thank the Government of the United States of America for its detailed response, dated 21 July 2008. The Working Group would like to reiterate its interest in continuing the dialogue on regulation of activities of private military security companies in the United States of America.

45. The text of the Government response follows.

Response from the Government (21 July 2008)

The Government of the United States regrets the loss of life as a result of the September 16, 2007 incident in Nissour Square. The incident is currently the subject of a thorough investigation by the Federal Bureau of Investigation.

Since this incident, the U.S. Government has taken numerous steps to strengthen oversight and accountability of PSCs working on its behalf in Iraq. In October 2007, the Panel on Personal Protective Services in Iraq commissioned by the Secretary of State made numerous recommendations for improving oversight of PSCs supporting U.S. Embassy Baghdad, such as the inclusion of a Diplomatic Security agent in each Embassy convoy. These recommendations are available on the Department of State website at: <http://www.state.gov/r/pa/prs/ps/2007/oct/94013.htm>. All of these recommendations have been or are in the process of being implemented.

In addition, on December 5, 2007, the U.S. Departments of State and Defense signed a Memorandum of Agreement (MOA) clearly defining the authority and responsibility for the oversight and accountability of U.S. Government PSCs in Iraq. The MOA reflects core principles in several key areas, including rules for the use of force, movement control and coordination, and incident reporting and investigations, which are being implemented through respective policies and directives by U.S. Embassy Baghdad and Multi-National Force – Iraq (MNF-I) officials. In January 2008, senior government officials held a conference with leaders of PSC companies to communicate the updated oversight standards, policies and procedures.

Moreover, U.S. Embassy and MNF-I officials have established direct channels of communication with senior Iraqi officials at the National Police, Ministry of Interior, and Ministry of Defense to ensure coordinated oversight efforts regarding PSCs. All U.S. Government PSCs are required to comply with applicable Iraqi laws, including registration and licensing requirements.

Regarding the legal status of U.S. Government PSCs in Iraq, Coalition Provisional Authority Order 17 (revised), which remains valid Iraqi law, provides PSCs and other contractors working on behalf of the U.S. Government immunity from Iraqi legal process for acts committed pursuant to the terms and conditions of their contract.

There are several U.S. laws, however, under which PSC personnel could potentially be subject to prosecution by the U.S. Government. The U.S. Government may prosecute any U.S. national for a number of specific crimes that expressly apply extraterritorially, regardless of where the crime is committed, including the crimes of torture and human trafficking. Under U.S. Special Maritime and Territorial Jurisdiction, the U.S. Government can prosecute a broad range of crimes if committed by or against a U.S. national on the premises of U.S. missions or military facilities or residences. The Military Extraterritorial Jurisdiction Act (MEJA) provides jurisdiction over contractors working for the Department of Defense, as well as contractors working for other U.S. departments and agencies to the extent their employment relates to supporting the mission of the Department of Defense overseas.

It should be noted that the Executive Branch is currently working with the U.S. Congress on legislation that would further enhance the existing framework of U.S. federal jurisdiction to investigate and, as appropriate, hold PSC personnel accountable for crimes allegedly committed in Iraq, Afghanistan, or elsewhere.

Finally, the Secretary of Defense recently issued a memorandum, "UCMJ Jurisdiction over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons serving With or accompanying the Armed Forces Overseas During Declared War and in Contingency Operations," March 10, 2008. This memorandum provides detailed guidance on the exercise of Uniform Code of Military Justice (UCMJ) jurisdiction over civilians and contractor personnel, including PSCs, serving with or accompanying the U.S. Armed Forces in the field.

United States of America (Blackwater – Chilean National)

Letter of allegations

46. On 8 January 2008, the Working Group sent a communication to the United States of America concerning the activities of a private military and security company, registered in the United States of America, and operating in Iraq.

47. The Working Group noted that it had received information that an individual of Chilean nationality had allegedly been injured on 7 May 2004, while working for Blackwater Security Consulting in Iraq, and needed an urgent surgery in the knee. Following this, the individual was allegedly given a false insurance policy with an inexistent number by Blackwater Security Consulting.

48. The Working Group further noted that Blackwater has allegedly not made any regulated procedure to assist the individual with his problem and allegedly manipulated the preliminary diagnostic and ordered the individual to keep doing his duties; the individual was assisted at the end of August and operated on in October.

49. It noted that the individual allegedly did not have an insurance policy and did not receive reimbursement for his medical expenses. In addition, he allegedly was not been paid his salaries of September 2006 and of June, July, August, September, October and November 2007.

50. Without implying any conclusion as to the facts mentioned above, the Working Group welcomed information on the following issues: (a) possible proceedings and/or action that could be engaged under United States law against the contractor involved in the alleged incident; (b) the immediate steps envisaged to prevent such actions by private military and security companies in the future, as those described in the recent incident, and in particular with regard to impact on all human rights; (c) legislative initiatives in Congress aimed at further regulating and providing enhanced oversight of PMSCs and their employees.

Observations

51. At the time of the writing of this report, the Working Group had not received information from the Government of the United States of America with regard to these allegations.
