

Arab Commission for Human Rights
ARENA (Asian Regional Exchange for New Alternatives)
Center for Constitutional Rights · Economists for Peace and Security
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Global Exchange · Global Policy Forum · Hague Appeal for Peace
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Lawyers' Committee on Nuclear Policy · Mennonite Central Committee
Middle East Research and Information Project · PLATFORM
Protection of Human Rights Defenders in the Arab World
Southern Africa Human Rights NGO Network, Tanzania Chapter
Tavola della Pace · UN Association of Australia · United Methodist Church
Women's International League for Peace and Freedom

To: Security Council Permanent Representatives

May 19, 2006

Dear Ambassador:

Resolution 1637 requires the Security Council to review the mandate of the Multinational Force (MNF) in Iraq no later than 15 June 2006. The resolution also requires a review of the Development Fund for Iraq (DFI) and of the work of the International Advisory and Monitoring Board (IAMB).

We are writing to urge the Council to conduct a rigorous and thorough review of these matters, using the standards of international law and financial oversight which the international community expects to be applied. As you are aware, the MNF stands accused of many serious violations of international law. The DFI and the reconstruction programs have been accused of widespread corruption and malfeasance. These are extremely serious matters for the Council to investigate and to act upon.

In light of the Council's impending review, we call attention to the following issues:

1. Detentions and Prisons

The MNF has held thousands of Iraqi prisoners for long periods without charge or trial.¹ The great majority of such prisoners have been denied fundamental rights such as contact with legal counsel and family members.² The MNF has denied human rights organizations' repeated requests for access to prisons and prisoners. The MNF has, apparently, even denied the International Committee of the Red Cross full access to prisoners.³ According to the United Nations Assistance Mission for Iraq, the MNF

held an estimated fourteen thousand prisoners as of February 2006 in four major prisons, as well as many local detention centers.⁴ UNAMI also reports that the Government of Iraq holds about fifteen thousand prisoners,⁵ and many sources confirm that these detainees are similarly held without charge or trial and often under deplorable conditions.⁶ In spite of numerous complaints by human rights organizations and by UN officials, the MNF has continued these practices for more than three years and it has done little to mitigate increasing detention violations by the Government of Iraq. These are clear violations of the *International Covenant on Civil and Political Rights (1966)*.

2. Prisoner Abuse and Torture

In numerous detention centers and prisons, MNF forces have subjected prisoners to cruel, inhuman and degrading treatment, identified by human rights authorities as abuse and torture. MNF guards and interrogators have subjected Iraqi detainees to an array of physical and psychological mistreatment, including severe and prolonged beating, hooding, submersion in water, forced nudity, sexual abuse, sleep deprivation, suffocation, electric shocks, threat by dogs, and other forms of humiliation and prolonged exposure.⁷ The cases of torture in Abu Ghraib prison are well-known to the whole world. In spite of MNF claims that such practices have now ceased, highly-credible sources suggest that illegal treatment continues.⁸ Amnesty International recently reported that detainees are being held in Iraq by the United States in “conditions which can amount to torture or ill-treatment.”⁹ Amnesty also reports that torture and gross abuse have become commonplace in prisons and detention centers controlled by the Government of Iraq. According to Amnesty, the MNF turns over detainees to Iraqi authorities when commanders are “well aware” of them.¹⁰ These are clear violations of the *UN Convention against Torture (1985)*, *The Hague Convention (1907)* and the *Geneva Convention (1949)*.

3. Use of Illegal, Indiscriminate and Especially Injurious Weapons

The MNF has made use of indiscriminate and especially injurious weapons that are banned by international convention or widely considered unacceptable and inhuman. The MNF has used MK-77,¹¹ a napalm-type weapon, as well as white phosphorus munitions.¹² These have been used directly against ground targets in densely populated areas, under circumstances highly likely to affect civilian populations.¹³ These weapons are extremely cruel – they stick to the flesh and burn victims to death. They are also indiscriminate and have incinerated many innocent civilians, including women and children. They are banned for these uses by *Protocol III of the UN Convention on Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects (1980)*. During the 2003 invasion, the Coalition also made use of depleted uranium¹⁴ and cluster bombs.¹⁵ Cluster bombs leave unexploded bomblets that later cause civilian death and injury and also can harm civilians when exploded in a populated area. Powder from exploded DU weapons is believed to cause long-term negative health effects. Many consider one or both to violate prohibitions against weapons that cause unnecessary suffering and indiscriminate harm, contained in *Protocol I of the Geneva Conventions*.

4. Attacks on Population Centers and Siege Tactics

The Security Council has insisted on the protection of civilians in armed conflict.¹⁶ But the MNF has repeatedly targeted heavily-populated civilian centers, using aerial and ground bombardment and heavy weapons. In addition to the two major offensives on Fallujah in 2004, there have also been assaults on other cities and towns

including al-Qaim, Tal Afar, Samarra, and Najaf. This type of operation, which appears to be ongoing, has resulted in many civilian casualties¹⁷ and massive destruction of the urban physical infrastructure,¹⁸ leaving large percentages of the population as refugees – some 200,000 refugees in the case of Fallujah alone.¹⁹ During these operations, MNF forces have reportedly cut off vital necessities, including water²⁰ and medical supplies²¹ – siege tactics explicitly prohibited under *Article 14 of the Second Protocol of the Geneva Conventions* – and they have clearly failed to respect the neutrality of medical facilities.²² These acts are prohibited under numerous articles of the *Geneva Conventions (1949)*.

5. Irregularities in Spending and Lack of Oversight of the Development Fund for Iraq

In May 2003, the Security Council created the Development Fund for Iraq under Resolution 1483 and the UN eventually turned over US\$9.978 billion to the Fund.²³ The Fund also received income from previously frozen funds and it has received regular revenues from Iraq's oil sales. Though under Coalition/MNF control or influence, a disturbingly large portion of these funds have been disbursed but not accounted for.²⁴ Investigations by US government accountants have revealed that many contracts have been awarded without bids.²⁵ In some cases, irregularities identified by US and international auditing bodies extend to outright theft.²⁶ Other irregularities, including sole-source contracts, missing documentation, massive overcharging, kickbacks, undocumented and unexplainable disbursement, have been repeatedly highlighted by auditors including the International Advisory and Monitoring Board and the Special Inspector General for Iraq Reconstruction.²⁷ In one contract scandal recently made public, of 150 clinics to be built, only 6 had been completed with \$186 million spent.²⁸ The MNF has thus allowed an environment of corruption to flourish, with ineffective control and oversight. Further, smuggling rings are diverting oil from official channels and shipping it out of the country on a large scale,²⁹ leaving the DFI with shrunken revenues, eroded by corruption, to pay for mounting Iraqi needs. The *UN Convention Against Corruption (2003)*, which recently entered into force, addresses many of these issues.

6. Gross Failure to Protect Cultural Heritage

In spite of many warnings from respected expert groups,³⁰ the Coalition failed to protect Iraq's priceless cultural heritage in the early weeks of the invasion and war. The National Library was badly damaged by fire and many of its archives were totally lost.³¹ Looters stole a large number of important objects from the National Museum.³² Looters also damaged or destroyed historic buildings and artifacts and looters began the wholesale pillage of Iraq's unprotected archeological sites.³³ Subsequently, the MNF constructed a military base on the archeological site of Babylon, where substantial damage resulted.³⁴ The MNF has failed to materially improve its protection of historic buildings and archaeological sites. Rebuilding and restoration by the MNF has been inadequate. Above all, the tragic and preventable looting of Iraq's archeological sites (some of the world's most important cultural heritage) continues.³⁵ These acts are prohibited under the *World Heritage Convention (1972)*.

7. Impunity

The rule of law cannot function in conditions of impunity. The Security Council has affirmed the importance of the rule of law and the end of impunity, as means towards peace and reconciliation.³⁶ However, the MNF has claimed broad impunity for its forces, for private security personnel, for foreign military and civilian contractors, and

even for the oil companies doing business with Iraq.³⁷ The Iraqi people and their government have virtually no legal recourse. The United States and other MNF members have applied limited legal reckoning in a few flagrant cases of torture and gross financial malfeasance, but even in the matter of torture, few cases have been thoroughly reviewed and brought to justice, as a recent report by Human Rights Watch, Human Rights First and the NYU School of Law makes clear.³⁸ Those with command responsibility have remained beyond the law. Since MNF officials cite Council mandates (Resolutions 1483, 1511, and 1546) as a primary legal basis for their action, the Council bears a special responsibility for these practices of impunity.

In conclusion, we urge the Security Council to review the MNF mandate rigorously and completely. At the very least, the Council could stipulate specific standards of conduct for the MNF to bring it into conformity with international law. For example, the Council could insist that detainees be charged after a short period or be released; it could mandate that all detention facilities be open to inspection by the ICRC and human rights organizations; it could prohibit attacks upon civilian centers; it could rule out the use of indiscriminate and especially injurious weapons; it could insist on adequate protection of heritage sites; it could set a high and rigorously enforced anti-corruption standard; it could establish an absolute prohibition on abuse and torture; and it could explore ways to end the practices of impunity.

We believe the time has come for the Security Council to assume its responsibility, to thoroughly discuss these matters in light of international law, to consult with the international community, and to substantially reconsider, revise or terminate the mandate it has given to the MNF.

Yours sincerely,

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- ¹ Amnesty International. *Beyond Abu Ghraib: Detention and Torture in Iraq* (March 2006), 16-22.
- ² Amnesty International. *Beyond Abu Ghraib: Detention and Torture in Iraq* (March 2006).
- ³ CPA Memorandum No. 3, section 6, para 8. The Memorandum further provides for the Iraqi Prisons and Detainee Ombudsman to have access to “security internees” but such access may also be denied “for reasons of imperative necessity as an exceptional and temporary measure.”
- ⁴ UN Assistance Mission for Iraq, *Human Rights Report*, January 1- February 28, 2006.
- ⁵ *Ibid.*
- ⁶ Human Rights Watch. *New Iraq? Torture and Ill-Treatment of Detainees in Iraqi Custody* (January 2005).
- ⁷ Amnesty International. *Beyond Abu Ghraib: Detention and Torture in Iraq* (March 2006).
- ⁸ *Ibid.*, 25-41.
- ⁹ Amnesty International, *US Government Creating a Climate of Torture* (May 3, 2006).
- ¹⁰ Amnesty International. *Beyond Abu Ghraib: Detention and Torture in Iraq* (March 2006), 8.
- ¹¹ Iraq Analysis Group. *Fire Bombs in Iraq: Napalm by Any Other Name* (March/April 2005).
- ¹² Jason E. Levy: “TTPs for the 60mm mortar section”. *Infantry Magazine* (May/June 2004) and Captain James T. Cobb, First Lieutenant Christopher A. LaCour and Sergeant First Class William H. Hight: “The Fight for Fallujah”. *Field Artillery* (March/April 2005).
- ¹³ Rai News 24, “Fallujah: La Strage Nascosta” [Fallujah: The hidden massacre] (November 2005).
- ¹⁴ Scott Peterson: “Remains of Toxic Bullets Litter Iraq”. *Christian Science Monitor* (May 15, 2003).
- ¹⁵ Human Rights Watch. *Off Target: The Conduct of the War and Civilians Casualties in Iraq* (December 2003).
- ¹⁶ UN Security Council Resolutions 1265 (1999), 1296 (2000), and 1674 (2006).
- ¹⁷ Iraq Body Count estimates over 600 civilian casualties, while the John Hopkins mortality study suggests civilian casualties rates in the city that would be consistent with well over 10,000 deaths during the spring and fall 2004 operations. No official records have been compiled. John Hopkins Bloomberg School of Public health. *Iraqi Civilian Deaths Increase Dramatically After Invasion* (October 28, 2004).
- ¹⁸ Dr. Hafid al-Dulaimi, head of Fallujah’s compensation commission, reports that 36,000 homes and 8,400 shops were destroyed. The destroyed homes would have sheltered about 200,000 people. Many thousand additional homes have been so badly damaged as to be uninhabitable. [see Steele and Jamal: “This Is our Guernica”, *Guardian* (April 27, 2005)].
- ¹⁹ UNAMI, *Situation Report* (November 1-14, 2004).
- ²⁰ Iraq Analysis Group. *Denial of Water to Iraqi Cities*. (November 10, 2004).
- ²¹ Mike Marqusee: “A Name that Lives in Infamy”. *Guardian*. (November 10, 2005).
- ²² Humanitarian Law Project/International Educational Development (HLP/IED and San Francisco-based Association of Humanitarian Lawyers (AHL), submitted a petition to the Inter-American Commission on Human Rights of the Organization of American States on behalf of “unnamed, unnumbered patients and medical staff both living and dead” at the medical facilities in Fallujah. The OAS has registered the lawsuit as “Petition No. P-1258-04 United States.”
- ²³ UN Office of the Iraq Programme website reports that transfers of \$1 billion each were made on 28 May, 31 October and 18 November 2003 from the United Nations Iraq escrow account, at the request of the Security Council contained in paragraph 17 of resolution 1483 (2003) of 22 May 2003. Another \$2.6 billion was transferred on 31 December 2003, a further \$2 billion on 31 March and \$0.5 billion on 19 April 2004. Three more transfers, totaling \$1.128 billion, were made in 2004 and three transfers totaling \$0.75 billion have been made in 2005.
- ²⁴ Christian Aid. Iraq. *The Missing Billions* (October 2004).
- ²⁵ The IAMB expressed concern over no-bid contracts in a letter to Ambassador Paul Bremer of April 5, 2004. Ref: IAMB – 6. Further, in December 2004, Iraq Revenue Watch reported that “Seventy-three percent of the value of contracts worth over \$5 million and paid for with DFI funds were not competitively bid.” Revenue Watch. Briefing Number 9, *Audit Finds More Irregularities and Mismanagement of Iraq’s Revenue* (December 2004), 2.
- ²⁶ Revenue Watch. Briefing Number 9, *op cit*, notes one case highlighted in a 2004 IAMB report where \$774,300 was stolen from a division’s vault. See “Development Fund for Iraq: Report of Factual Findings in connection with Disbursements for the period from 1 January 2004 to 28 June 2004,” KPMG Bahrain (September 2004), 23.
- ²⁷ See for example the Office of the Inspector General of the Coalition Provisional Authority, *Third Quarterly Report to Congress* (October 30, 2004), Appendix J, DoD Status Report on Iraq or Development Fund for Iraq, *Report of Factual Findings in connection with Disbursements, continued for the period from 1 January 2004 to 28 June 2004*, or other IAMB, CPA-IG and SIGIR reports.
- ²⁸ Jonathan Finer: “US Report Cites Progress, Shortfalls In Iraq Rebuilding,” *Washington Post* (May 1, 2006).
- ²⁹ As examined in a recent Iraqi Oil Ministry Report, described in Jim Muir: “Iraq Oil Gangs Syphon off Billions,” *Telegraph* (April 28, 2006).
- ³⁰ Including the Archeological Institute of America, Society for American Archeology, and UNESCO
- ³¹ “Prized Iraqi Annals Lost ‘In Blaze’” *BBC* (April 14, 2003).
- ³² John F. Burns: “Pillagers Strip Iraqi Museum of its Treasure”. *New York Times* (April 12, 2003).

³³ UNESCO News Service, “First Experts Meeting on the Iraqi Cultural Heritage” (April 17, 2003).

³⁴ British Museum, *Report on Meeting at Babylon* (December 11-13, 2004).

³⁵ Mark Fischer: “Tomb Raiders”. *Index on Censorship* (February 2006) and reproduced in the *Guardian* (January 19, 2006).

³⁶ UN Security Council Presidential Statement on Justice and the Rule of Law: the United Nations Role. S/PRST/2004/34 (October 6, 2004).

³⁷ Coalition Provisional Authority. Order 17. CPA/ORD/27 June 2004/17.

³⁸ Human Rights Watch, Human Rights First, and NYU Center for Human Rights and Global Justice, *By the Numbers: Findings of the Detainee Abuse and Accountability Project* (April 2006).