

US State Department offered immunity to Blackwater mercenaries

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1 November 2007

More than a month and a half after the September 16 massacre carried out in Baghdad by guards from the Blackwater USA security firm, it has come to light that the US State Department offered “limited” immunity to the mercenaries involved in shooting to death at least 17 Iraqi civilians.

The offer of immunity was granted to the Blackwater guards by State Department officials in Baghdad in the immediate aftermath of the shootings in exchange for giving sworn statements about the incident. This immunity was granted without the knowledge of the US Justice Department, and news of the deal apparently caught State Department officials in Washington off guard.

Under the “use immunity” granted to the mercenaries, any statements they make—and any evidence gathered as a result of the statements—cannot be used against them in any future prosecutions. A scenario could develop where State Department officials are privy to information they do not relay to prosecutors.

According to ABC News, each of the interviewed guards’ statements begins with the following: “I understand this statement is being given in furtherance of an official administrative inquiry,” and that, “I further understand that neither my statements nor any information or evidence gained by reason of my statement can be used against me in a criminal proceeding.”

News of the immunity offer has outraged relatives of the shooting victims, and has focused renewed attention on the operations of Blackwater and the other security firms operating in Iraq. While Blackwater CEO Erik Prince continues to maintain that the guards fired in self-defense, mounting evidence demonstrates that the massacre was unprovoked.

A preliminary investigation by the Iraqi government concluded that the Blackwater guards did not come under attack, but opened fire when a vehicle carrying a woman and a child moved slowly into the traffic circle and toward their convoy. A US military probe into the shootings also found that the shootings were unprovoked.

Iraqi officials are coming under pressure to hold the mercenaries to account. Sami al-Askari, a senior adviser to Iraqi Prime Minister Nouri al-Maliki, commented, “Blackwater

guards committed an unjustified crime in cold blood intended to kill as many Iraqis as possible. The American side says it needs much more time ... but the prime minister wants them [Blackwater] to leave now. They must leave.”

On Tuesday, the Iraqi cabinet authorized and sent to parliament for approval draft legislation lifting immunity for foreign private security companies. The measure would end a provision known as “Order 17,” established in 2004 under the Coalition Provisional Authority, granting full immunity from prosecution in Iraqi courts to foreign contractors, including private security firms.

The measure, however, would not be retroactive and would not apply to the security guards involved in the September 16 incident. It is also highly unlikely that the State Department and Blackwater would cooperate with any Iraqi prosecution in this or similar cases of violence against Iraqi civilians.

The immunity deal is also complicating the current FBI investigation into the shootings. Many of the dozen or so Blackwater guards involved have declined FBI interviews into the incident. The FBI probe is one of four currently under way. The Iraqi police, the Pentagon and a joint panel of the US Embassy and the Iraqi government have also undertaken inquiries.

Even without the immunity, it would be extremely difficult to prosecute the Blackwater mercenaries in US courts. Upon completion, the FBI will submit its evidence to Justice Department officials who will decide whether or not to prosecute. Any such prosecution, however, would face steep legal hurdles.

While the Military Extraterritorial Jurisdiction Act permits prosecution of contractors working abroad in support of Defense Department operations, it does not necessarily apply to contractors working for the civilian-led State Department.

A panel commissioned by the Secretary of State Condoleezza Rice in the wake of the September 16 shootings concluded as well that even if a private security guard committed cold-blooded murder, there may be no legal basis for prosecuting the guard in the US court system.

The panel’s report, drafted by Patrick Kennedy, the State Department’s director of management policy, concluded, “The panel is unaware of any basis for holding non-Department of

Defense contractors accountable under US law.”

The panel also recommended a series of toothless requirements governing security contractors, including having agents from the Bureau of Diplomatic Security accompany security convoys, and placing video recording, audio, and tracking equipment inside the vehicles.

Their report also advised that the mercenaries undergo training to increase their “cultural awareness.” According to the State Department’s own records, which likely underestimate such violent incidents, since the beginning of the year Blackwater guards have been deployed on 1,873 missions and have discharged weapons in the course of 56 of these. Sensitivity training is unlikely to alter this behavior.

In an interview with CNN, Blackwater’s Prince commented, “In the ideal sense, we would be subject to the Iraqi law, but that would mean ... there was a functioning Iraqi court system where Westerners would actually get a fair trial ... That’s not the case right now.”

The Blackwater guards and other security contractors are an integral component of the US occupation of Iraq. Blackwater USA has government contracts totaling at least \$800 million, providing security to US Ambassador Ryan Crocker and other diplomats. While every investigation undertaken to date has established that the Blackwater guards fired with impunity and without provocation in the September 16 incident, there have been no indications by the State Department that the security firm will be held to account for its actions.

Preliminary reports from the FBI probe into the incident corroborate earlier findings. Three witnesses interviewed as part of this investigation spoke to the *Los Angeles Times* after their debriefings. They said that the investigators were seeking to determine whether the security guards were fired upon first.

In interviews that lasted about two hours, the witnesses were shown a large aerial image of Nisoor Square, the scene of the massacre, and were asked “to explain how they arrived at the scene, what their vantage point was when the shooting occurred, their detailed recollection of events, and what the shooters looked like,” according to the *Times*.

All three witnesses told the FBI that they did not see anyone fire on the security guards. Hassan Jabbar Salman, a lawyer, said he was about 20 yards from the guards and was shot four times. “They asked me whether they were exposed to fire,” he said. “I replied to them that they were never exposed to any kind of fire.”

Another witness, Baraa Sadoon Ismail, 29, who still has two bullets and 60 bullet fragments in his abdomen from the shooting, told the FBI that he did not see anyone fire on the Blackwater guards.

Mohammed Hafidh Abdul-Razzaq, 37, lost his 10-year-old son Ali in the massacre. He was shot and killed as he sat in the back seat of his car. He saw no one open fire on the guards. Speaking to the *Christian Science Monitor*, Hafidh recalled the shooting as “a nightmare. I saw them shoot at people who were

already dead over and over again.”

In his interview with the FBI, Abdul-Razzaq recounted how he was trapped on all sides by stopped cars and was helpless as the security guards pummeled his car with bullets. When the shooting stopped, he ran to a nearby car to check on a shooting victim.

The *LA Times* described the horrifying scene as told by Abdul-Razzaq: “He said he had glimpsed his son earlier through the rear-view mirror, slumped against the door in the back seat, and assumed he must have fainted.

“But when he opened the door, blood and brain tissue poured from his son’s head. He slammed the door shut in disbelief. Then he jumped into the car, feeling his 10-year-old son’s chest to see whether his heart was still beating. The race to the hospital was futile.”

Witnesses Salman and Abdul-Razzaq both told the FBI investigators that they saw people in cars shot as they tried to turn and drive away, and even after they had jumped out of their cars and attempted to flee on foot.

Abdul-Razzaq’s sister, who was in the car with him that day, was also interviewed by the FBI. He told the *Times* that she told the investigators “that it would be better for them to bomb Iraq with an atomic bomb rather than kill one or two people on a daily basis. ‘Kill us all in a matter of seconds so that we may be free of this torment,’” she said.

A total of seven victims’ families have been offered cash payments for their losses, which the US Embassy claims is not an admission of guilt. Mohammed Hafidh refused to accept an envelope filled with \$12,500 in cash offered to him on October 24 by the US Embassy as compensation for his son’s death. Rejecting the offer by Patricia Butenis, deputy chief of mission at the embassy, he commented, “I told her that I want the courts to have their say,” according to the *Monitor*.

Haythem al-Rubaie, 37, lost his wife and son in the September 16 shooting. His son Ahmed was most likely the first to be killed as the car he was driving entered the roundabout in Nisoor Square. He was driving his mother Mahesen, a dermatologist, for errands in western Baghdad after dropping off his father. Rubaie refused to even meet with the embassy officials.



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