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INFO	LOG-00	NP-00	AID-00	AMAD-00	CTME-00	DOFE-00	WHA-00
	SRPP-00	EB-00	OIGO-00	FAAE-00	UTED-00	TEDE-00	INR-00
	L-00	NEA-00	DCP-01	NSAE-00	OIC-02	DHS-00	OPIC-01
	PA-00	PRS-00	P-00	SP-00	IRM-00	SS-00	STR-00
	TEST-00	TRSE-00	USIE-00	SA-00	PRM-00	DRL-01	G-00
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RELEASED IN PART  
B3, NSA50, B6

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STATE/L/NP:ECUMMINGS  
L/PM:JDOLAN (DRAFT)

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B3

UNCLAS STATE 092260

E.O. 12958: N/A  
TAGS: PHUM  
SUBJECT: RESPONSE TO UNHCHR SR REPORT ON YEMEN INCIDENT OF  
3 NOV 2002

1. RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA TO THE LETTER FROM SPECIAL RAPPORTEUR ON  
EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS ASMA  
JAHANGIR'S LETTER TO THE SECRETARY OF STATE DATED NOVEMBER  
15, 2002 AND TO THE FINDINGS OF THE SPECIAL RAPPORTEUR  
CONTAINED IN HER REPORT TO THE COMMISSION ON HUMAN RIGHTS (E  
CN.4 2003 3).

BEGIN TEXT

THE GOVERNMENT OF THE UNITED STATES WELCOMES THE OPPORTUNITY  
TO RESPOND TO THE ABOVE-MENTIONED LETTER INQUIRING INTO AN

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 29 JUN 2011 201000373

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INCIDENT IN THE REPUBLIC OF YEMEN ON ~~NOVEMBER 10, 2002~~ AND TO THE SPECIAL RAPPOREUR'S FINDINGS RELATED TO THIS INCIDENT WHICH ARE FOUND IN HER REPORT TO THE FIFTY-NINTH SESSION OF THE COMMISSION ON HUMAN RIGHTS. THE LETTER ALLEGES THAT A US-CONTROLLED PREDATOR DRONE AIRCRAFT KILLED SIX MEN TRAVELING IN A CAR, INCLUDING AT LEAST ONE INDIVIDUAL WHO WAS A SUSPECTED SENIOR FIGURE OF THE AL QAIDA ORGANIZATION. THE LETTER REFERS TO THE PROTECTIONS OF THE RIGHT TO LIFE AND SECURITY OF THE PERSON AND THE PROTECTION OF THIS RIGHT FROM ARBITRARY DEPRIVATION, AS PROVIDED BY THE UNIVERSAL DECLARATION ON HUMAN RIGHTS AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR). IN HER REPORT TO THE COMMISSION, THE SPECIAL RAPPOREUR "ACKNOWLEDGES THAT GOVERNMENTS HAVE A RESPONSIBILITY TO PROTECT THEIR CITIZENS AGAINST THE EXCESSES OF NON-STATE ACTORS OR OTHER AUTHORITIES, BUT THESE ACTIONS MUST BE TAKEN IN ACCORDANCE WITH INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW. IN THE OPINION OF THE SPECIAL RAPPOREUR, THE ATTACK IN YEMEN CONSTITUTES A CLEAR CASE OF EXTRAJUDICIAL KILLING."

THE GOVERNMENT OF THE UNITED STATES HAS NO COMMENT ON THE SPECIFIC ALLEGATIONS AND FINDINGS CONCERNING A NOVEMBER 2002 INCIDENT IN YEMEN, OR THE ACCURACY THEREOF. THE GOVERNMENT OF THE UNITED STATES RESPECTFULLY SUBMITS THAT INQUIRIES RELATED TO ALLEGATIONS STEMMING FROM ANY SUCH MILITARY OPERATIONS CONDUCTED DURING THE COURSE OF AN ARMED CONFLICT WITH AL QAIDA DO NOT FALL WITHIN THE MANDATE OF THE SPECIAL RAPPOREUR.

THE UNITED STATES ALSO DISAGREES WITH THE PREMISE OF THE LETTER AND THE CONCLUSIONS CONTAINED IN THE REPORT THAT MILITARY OPERATIONS AGAINST ENEMY COMBATANTS COULD BE REGARDED AS "EXTRAJUDICIAL EXECUTIONS BY CONSENT OF GOVERNMENTS." THE CONDUCT OF A GOVERNMENT IN LEGITIMATE MILITARY OPERATIONS, WHETHER AGAINST AL QAIDA OPERATIVES OR ANY OTHER LEGITIMATE MILITARY TARGET, WOULD BE GOVERNED BY THE INTERNATIONAL LAW OF ARMED CONFLICT.

IT IS RECALLED THAT IMMEDIATELY FOLLOWING THE ATTACKS OF SEPTEMBER 11, 2001, MOST OF THE WORLD, INCLUDING THE UNITED NATIONS SECURITY COUNCIL IN RESOLUTION 1368 AND NATO, CONDEMNED THESE ATTACKS AS A "THREAT TO INTERNATIONAL PEACE AND SECURITY," RECOGNIZED THE INHERENT RIGHT OF INDIVIDUAL AND COLLECTIVE SELF-DEFENSE, AND EXPRESSED DETERMINATION TO COMBAT BY ALL MEANS THREATS TO INTERNATIONAL PEACE AND SECURITY CAUSED BY TERRORIST ACTS. NATO'S NORTH ATLANTIC COUNCIL DETERMINED ON OCTOBER 2, 2001 THAT THE SEPTEMBER 11TH ATTACK WAS DIRECTED FROM ABROAD BY THE WORLD-WIDE TERRORIST NETWORK OF AL QAIDA AND "SHALL THEREFORE BE REGARDED AS AN ACTION COVERED BY ARTICLE 5 OF THE WASHINGTON TREATY, WHICH

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STATES THAT AN ARMED ATTACK ON ONE OR MORE OF THE ADLIES OF EUROPE OR NORTH AMERICA SHALL BE CONSIDERED AN ATTACK AGAINST THEM ALL." FOREIGN MINISTERS OF THE STATES PARTIES TO THE 1947 INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE (THE RIO TREATY) LIKEWISE RESOLVED ON SEPTEMBER 21, 2001 THAT "THESE ATTACKS AGAINST THE UNITED STATES ARE ATTACKS AGAINST ALL AMERICAN STATES AND THAT IN ACCORDANCE WITH ALL THE RELEVANT PROVISIONS OF THE . . . (RIO TREATY) . . . AND THE PRINCIPLE OF CONTINENTAL SOLIDARITY, ALL STATES PARTIES TO THE RIO TREATY SHALL PROVIDE EFFECTIVE RECIPROCAL ASSISTANCE TO ADDRESS SUCH ATTACKS AND THE THREAT OF ANY SIMILAR ATTACKS AGAINST ANY AMERICAN STATE, AND TO MAINTAIN THE PEACE AND SECURITY OF THE CONTINENT."

CONSISTENT WITH THIS WIDELY-HELD INTERNATIONAL VIEW, PRESIDENT BUSH STATED IN MILITARY ORDER NO. 1 OF NOVEMBER 13, 2001 THAT "INTERNATIONAL TERRORISTS, INCLUDING MEMBERS OF AL QAIDA, HAVE CARRIED OUT ATTACKS ON UNITED STATES DIPLOMATIC AND MILITARY PERSONNEL AND FACILITIES ABROAD AND ON CITIZENS AND PROPERTY WITHIN THE UNITED STATES ON A SCALE THAT HAS CREATED A STATE OF ARMED CONFLICT THAT REQUIRES THE USE OF THE UNITED STATES ARMED FORCES."

AL QAIDA AND RELATED TERRORIST NETWORKS ARE AT WAR AGAINST THE UNITED STATES. THEY HAVE TRAINED, EQUIPPED, AND SUPPORTED ARMED FORCES AND HAVE PLANNED AND EXECUTED ATTACKS AROUND THE WORLD AGAINST THE UNITED STATES ON A SCALE THAT FAR EXCEEDS CRIMINAL ACTIVITY. AL QAIDA ATTACKS HAVE DELIBERATELY TARGETED CIVILIANS AND PROTECTED SITES AND OBJECTS. FOR EXAMPLE, THE AL QAIDA NETWORK HEADED BY ABU MUSAB AL-ZARQAWI HELPED ESTABLISH A POISON AND EXPLOSIVE TRAINING CENTER CAMP LOCATED IN NORTHEASTERN IRAQ IN COOPERATION WITH THE RADICAL ORGANIZATION ANSAR AL-ISLAM. OTHER ATTACKS ATTRIBUTED TO AL QAIDA AND AL QAIDA-LINKED GROUPS INCLUDE THE ATTEMPTED BOMBING ON DECEMBER 22, 2001, OF A COMMERCIAL TRANSATLANTIC FLIGHT FROM PARIS TO MIAMI BY CONVICTED SHOE BOMBER RICHARD REID; ON JANUARY 23, 2002, THE KIDNAPPING OF UNITED STATES REPORTER DANIEL PEARL FROM KARACHI, PAKISTAN, WHO WAS LATER KILLED; ON MARCH 17, 2002, A GRENADE ATTACK ON A PROTESTANT CHURCH IN ISLAMABAD KILLING FIVE PEOPLE, INCLUDING TWO US CITIZENS; ON JUNE 14, 2002, A CAR BOMB ATTACK ON THE US CONSULATE IN KARACHI, PAKISTAN, KILLING 12 PAKISTANIS AND DAMAGING THE CONSULATE; ON OCTOBER 2, 2002, A BOMB EXPLOSION IN THE PHILIPPINES, RESULTING IN THE DEATH OF A US SERVICEMAN; ON OCTOBER 12, 2002, A CAR BOMB OUTSIDE A NIGHTCLUB IN BALI, INDONESIA, KILLING NEARLY 200 INTERNATIONAL TOURISTS AND INJURING ABOUT 300; ON OCTOBER 28, 2002, THE FATAL SHOOTING OF A USAID EMPLOYEE IN AMMAN, JORDAN; ON NOVEMBER 28, 2002, A SUICIDE CAR BOMBING AT A HOTEL IN MOMBASSA, KENYA, KILLING 15, AND THE SIMULTANEOUS

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NEAR-MISS SA-7 MISSILE ATTACK ON A UNCLASIFIED STARTING  
MOMBASSA FOR ISRAEL; ON FEBRUARY 28, 2003, ATTACKS BY A  
GUNMAN ON POLICE POSTS OUTSIDE THE US CONSULATE IN KARACHI,  
KILLING FOUR LOCAL POLICE; AND SEVERAL OTHER ATTACKS SINCE  
THE WAR STARTED IN AFGHANISTAN. MOREOVER, NO ONE NEEDS  
REMINING OF THE ATTACKS ON UNITED STATES PERSONS AND  
PROPERTY PRIOR TO 9/11 LINKED TO AL QAIDA, INCLUDING THE  
EMBASSY BOMBINGS IN KENYA AND TANZANIA AND THE ATTACK ON THE  
U.S.S. COLE IN YEMEN.

DESPITE COALITION SUCCESSES IN AFGHANISTAN AND AROUND THE  
WORLD, THE WAR IS FAR FROM OVER. THE AL QAIDA NETWORK TODAY  
IS A MULTINATIONAL ENTERPRISE WITH OPERATIONS IN MORE THAN 60  
COUNTRIES. SOME AL QAIDA OPERATIVES HAVE ESCAPED TO PLAN AND  
MOUNT FURTHER TERRORIST ATTACKS AGAINST THE UNITED STATES AND  
COALITION PARTNERS. THE CONTINUING MILITARY OPERATIONS  
UNDERTAKEN AGAINST THE UNITED STATES AND ITS NATIONALS BY THE  
AL QAIDA ORGANIZATION BOTH BEFORE AND AFTER SEPTEMBER 11  
NECESSITATE A MILITARY RESPONSE BY THE ARMED FORCES OF THE  
UNITED STATES. TO CONCLUDE OTHERWISE IS TO PERMIT AN ARMED  
GROUP TO WAGE WAR UNLAWFULLY AGAINST A SOVEREIGN STATE WHILE  
PRECLUDING THAT STATE FROM DEFENDING ITSELF.

INTERNATIONAL HUMANITARIAN LAW IS THE APPLICABLE LAW IN ARMED  
CONFLICT AND GOVERNS THE USE OF FORCE AGAINST LEGITIMATE  
MILITARY TARGETS. ACCORDINGLY, THE LAW TO BE APPLIED IN THE  
CONTEXT OF AN ARMED CONFLICT TO DETERMINE WHETHER AN  
INDIVIDUAL WAS ARBITRARILY DEPRIVED OF HIS OR HER LIFE IS THE  
LAW AND CUSTOMS OF WAR. UNDER THAT BODY OF LAW, ENEMY  
COMBATANTS MAY BE ATTACKED UNLESS THEY HAVE SURRENDERED OR  
ARE OTHERWISE RENDERED HORS DE COMBAT. AL QAIDA TERRORISTS  
WHO CONTINUE TO PLOT ATTACKS AGAINST THE UNITED STATES MAY BE  
LAWFUL SUBJECTS OF ARMED ATTACK IN APPROPRIATE CIRCUMSTANCES.

FOR THE FOREGOING REASONS, THE COMMISSION AND SPECIAL  
RAPPORTEUR LACKS COMPETENCE TO ADDRESS ISSUES OF THIS NATURE  
ARISING UNDER THE LAW OF ARMED CONFLICT.

COMPLEMENTARY CLOSING . . .  
POWELL

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