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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\***

**Chairperson: Ms. Amada Benavides de Pérez**

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\* This document is submitted late so as to include the most up-to-date information possible.

## **Summary**

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2, and its mandate is continued pursuant to Human Rights Council decision 1/102.

The Working Group is composed of Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. José Luis Gómez del Prado (Spain), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji). Ms. Amada Benavides de Pérez served as Chairperson-Rapporteur throughout 2006.

The present report is presented in accordance with the terms of the resolutions requesting that the Working Group report annually to the Human Rights Council on the progress made in the fulfilment of its mandate.

The first part of the report provides an overview of the activities undertaken, including country visits by the Working Group to Honduras and Ecuador (see also A/HRC/4/42/Add.1-2), and extracts from communications sent and responses received from Governments. Correspondence and consultations with intergovernmental and non-governmental organizations, and other actors, are also reflected.

In accordance with relevant resolutions concerning the Working Group, it devotes part of the report to identifying and studying the effects of the activities of mercenaries and mercenary-related activities in different parts of the world, demonstrating the variety of situations and contemporary manifestations of mercenarism (chap. II on country situations). The Working Group elaborates on the theme of the State as the primary holder of the use of force, also in light of the effects of the activities of private military and private security companies on the enjoyment of human rights (chap. III, thematic issue). In this chapter, the Working Group provides an overview of normative developments, notably the status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, to which it welcomed the deposit by the Republic of Moldova of its instrument of accession to become the twenty-eighth State party (chap. IV on national, regional and international legislation/status of the Convention). The Working Group further describes its envisioned future activities, notably a process of regional round tables, hosted by States which have indicated their interest, leading to a global round table, and the establishment of an academic network (chap. V).

The final chapter provides the conclusions and recommendations of the Working Group, noting the phenomenon of individuals recruited by private military and private security companies (PMSCs) to perform military services in armed conflicts, and a number of pertinent human rights issues concerned. The Working Group recommends, *inter alia*, that member States support the process of regional round tables and enable the Working Group to meet for three sessions annually (chap. VI).

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## **Introduction**

1. 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 was established in 2005 pursuant to Commission on Human Rights resolution 2005/2 and assumed by the Human Rights Council in its decision 1/102. It replaced the prior mandate of the Special Rapporteur (established in 1987). According to its mandate, the Working Group is requested, inter alia, to elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights; to seek opinions and contributions from Governments, intergovernmental and non-governmental organizations; to monitor mercenaries and mercenary-related activities in all their forms and manifestations.

2. On 19 December 2006, during its sixty-first session, the General Assembly adopted resolution 61/151 by which, inter alia, it requested all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services, as well as to impose a specific ban on such companies intervening in armed conflicts or actions to destabilize constitutional regimes. The General Assembly further requested the Working Group to continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary, as drafted by the first Special Rapporteur. It further requested the Working Group to take into account, in the discharge of its mandate, the fact that mercenary activities continue to occur in many parts of the world and are taking on new forms, manifestations and modalities, and, in this regard, requests its members to continue to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the exercise of the right of peoples to self-determination.

3. For the purposes of this report, and while recognizing the definitional challenges, the Working Group refers to private military and private security companies (hereinafter PMSCs) as including private companies which perform all kinds of security assistance, training, provision and consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military activities.

4. During 2006, the Working Group was composed of the following experts: Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. José Luis Gómez del Prado (Spain), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji). Ms. Amada Benavides de Pérez was elected Chairperson-Rapporteur in October 2005, a position that rotates on an annual basis. By unanimous decision of the Working Group in November 2006, the term of the current Chairperson-Rapporteur was extended until the next session of the Working Group in 2007.

## **I. ACTIVITIES OF THE WORKING GROUP**

### **A. Overview of activities**

5. The Working Group held its first session in Geneva from 10 to 14 October 2005 and from 13 to 17 February 2006 (E/CN.4/2006/11 and Add.1). It adopted its methods of work

and its initial thematic priorities and programme of work (see A/61/341). The Working Group undertook official missions to Honduras (21-25 August 2006) and to Ecuador (28 August-1 September 2006), reflected below (A/HRC/4/42/Add.1 and 2). It sent communications to States, and held consultations with Governments, intergovernmental and non-governmental organizations.

6. The Chairperson presented the Working Group's 2005 report to the Human Rights Council on 30 September 2006 and the Working Group's annual report to the General Assembly on 6 November 2006. In presenting the report to the General Assembly, the Chairperson-Rapporteur noted the increasing phenomenon of outsourcing by States of core military and security functions to private companies, and expressed the concern that some PMSCs are committing human rights violations with impunity whilst operating in armed conflicts.<sup>1</sup> The Chairperson-Rapporteur stated that such situations were often associated with the creation by transnational companies of satellite subsidiaries with legal personality in one country, providing services in another and recruiting personnel from third countries.

7. The Working Group sent a questionnaire to all Member States in mid-November 2005, and a reminder by note verbale on 12 June 2006. By 15 December 2006, the Working Group had received responses from 14 States: Armenia, Colombia, Costa Rica, Ghana, Honduras, Lebanon, Madagascar, Malaysia, Mauritius, Mexico, Morocco, Namibia, Panama and Venezuela (Bolivarian Republic of). A comprehensive survey of responses was included in the 2006 report of the Working Group to the General Assembly (A/61/341, paras. 46-64). Since this survey, the Working Group received a letter from the Government of Madagascar dated 18 September 2006, and welcomes its intention to accede to the International Convention on the Recruitment, Use, Financing and Training of Mercenaries (hereinafter the International Convention). The Working Group notes with appreciation the State responses received to date, and invites remaining States to submit their responses with a view to providing further analysis in a forthcoming report of the Working Group.

8. The Working Group sent a note verbale to 22 regional intergovernmental organizations on 25 April 2006, expressing an interest in initiating a dialogue and an exchange of views. By 15 December 2006, replies were received from the Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE), the Pacific Islands Forum (PIF), the Council of Europe (CoE) and the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS), expressing their willingness to cooperate. During 2007, the Working Group intends to take up these invitations of consultations to further exchange information and successful experiences.

9. In the course of 2006, the Working Group held numerous consultations, collectively and through the activities of individual Working Group members, with a variety of other actors, including United Nations special procedure mandate-holders, non-governmental organizations and academic institutions. The Chairperson-Rapporteur held an initial consultation with the

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<sup>1</sup> The full statements of the Chairperson-Rapporteur to the General Assembly and the Human Rights Council in 2006 are available at <http://www.ohchr.org/english/issues/mercenaries/index.htm>.

Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and his support staff, and participated in a regional consultation with the Special Representative in Bogota, on 18-19 January 2007. The Chairperson-Rapporteur also met with the Special Representative of the Secretary-General for children and armed conflict, and agreed to share information in particular concerning children being recruited by private military security companies. During the thirteenth annual meeting of the special procedure mandate-holders, held in June 2006 in Geneva, the Chairperson-Rapporteur and one Working Group member consulted with other independent experts, as well as with the Head of the Office of the United Nations High Commissioner for Refugees West Africa Unit. The Working Group Chairperson-Rapporteur also met with the Director of the Inter-American Institute of Human Rights in Costa Rica, in August 2006, to explore opportunities for cooperation.

10. In a joint statement with other mandate-holders for Human Rights Day, on 10 December 2006, the Chairperson-Rapporteur expressed that any successful effort to eradicate poverty must advocate for the full respect of all human rights, and stressed that eliminating poverty will greatly contribute to efforts to protect and promote human rights and human dignity.

## **B. Country visits**

11. The Chairperson-Rapporteur held consultations, during visits in 2006 to Geneva and New York, with the Permanent Missions of Chile, Colombia, Ecuador, Fiji, Ghana, Honduras, Papua New Guinea and Peru, including with regard to pending requests for invitations for the Working Group. With a view to undertake a regional visit to Latin America, the Working Group decided at its meeting in February 2006 to request invitations to visit Chile, Colombia, Ecuador, Honduras and Peru (see E/CN.4/2006/11/Add.1, para. 23).

12. During 2006, the Working Group undertook visits to Honduras and Ecuador. The Working Group expresses its appreciation for the speedy invitations and excellent cooperation in the preparations and execution of these visits, and commends the Governments of Honduras and Ecuador for their efforts and openness to consult in a constructive and progressive manner.

13. The Chairperson-Rapporteur and one Working Group member visited Honduras from 21 to 25 August 2006, at the invitation of the Government, to study the situation and verify information received concerning the recruitment and training of individuals from Honduras and other Latin American countries to perform security services in countries of conflict, and the legislation and regulation of private security companies offering military assistance, training, consultancy and security services operating in Honduras. Among its conclusions, the Working Group recommended the speedy accession to the International Convention, and strengthening and dissemination of the regulatory framework for private security companies in Honduras. The Working Group also encouraged the insertion of components on international human rights standards in the training provided by private security companies to their employees, and the maintenance by the authorities of a transparent registry of private security companies, including on issues of ownership, control and possible conflicts of interest. The Working Group further

urged the adoption of measures by the competent authorities to act with speed and vigour on complaints submitted by individuals who have served for PMSCs and returned from Iraq, and to consider the complicity and responsibility of private security companies and individuals involved. The Working Group has submitted a comprehensive report on its visit to Honduras, including its conclusions and recommendations, as an addendum to the present report to the Human Rights Council (A/HRC/4/42/Add.1).

14. At the invitation of the Government of Ecuador, the Chairperson and one member of the Working Group undertook a visit on 28 August to 1 September 2006. Among issues of interest, the Working Group studied the national mechanisms and legislation, including licensing and registration, and efforts to ensure that PMSCs in Ecuador operate in a legal framework in accordance with human rights standards. The Working Group also addressed the contracting of foreigners by PMSCs based in Manta, and studied the status of PMSC staff working in Ecuador, involving Ecuadorian and other nationals. The Working Group welcomed recent legislative and regulatory measures adopted by the Government, invited Ecuador to accede swiftly to the International Convention, and urged the Ecuadorian authorities to complete promptly the investigations surrounding PMSCs and to ensure effective remedies and actions with regard to the involvement of PMSCs in the spraying programme under “Plan Colombia”. The Working Group has submitted a report on its visit to Ecuador, including its conclusions and recommendations, as an annex to the present report (A/HRC/4/42/Add.2).

15. The Working Group is scheduled to visit Peru in early 2007, and welcomes the invitation from the Government.

16. The Working Group intends to undertake visits to a variety of countries relevant to different aspects of its mandate, including visits to countries with different relevance to conflict situations, including both “sending” and “receiving” States in terms of recruitment, use, financing and training of employees and employers of PMSCs and their subsidiaries and corporate structures. While the initial focus of the Working Group has been to visit countries where subsidiaries of foreign-registered PMSCs were recruiting employees, the focus of the Working Group is expected to evolve in the course of its mandate, with a view to provide a comprehensive assessment by the Working Group on the phenomenon of PMSCs operational in violent as well as low-level conflicts.

### C. Communications

17. This section gives a summary account of communications sent by the Working Group and received from Governments during 2006. Replies to communications sent by the Working Group in December 2006 will be included in the Working Group’s report to a later session of the Human Rights Council.

18. On 7 March and 25 April 2006, the Working Group sent follow-up communications to the Governments of Fiji and Papua New Guinea, respectively, with regard to further information received on the situation of a group of former soldiers of Fijian origin allegedly recruited to undertake mercenary activities in Bougainville, Papua New Guinea. The individuals, reportedly

entering Papua New Guinea without appropriate visas have allegedly been recruited to provide security training and advice for a former Bougainville leader controlling the “no-go zone” in the south of Bougainville. While it has been reported that individuals among this group have left Bougainville in the course of the year, occasional violence and clashes occurred throughout 2006, including in the areas of Buin and Siwai.

19. By 15 December 2006, the Working Group had not received written responses from the Governments of either Papua New Guinea or Fiji. The Working Group urges all actors involved in Papua New Guinea to undertake precautionary measures and de-escalate law-and-order challenges in the southern region of Bougainville.

20. On 10 March, 9 June and 17 July 2006, the Working Group sent communications to the Government of Chile, concerning information received about ex-military and ex-police from Chile allegedly recruited by PMSCs in Chile or abroad, with some of the PMSCs administered by Chilean nationals. In its communications to the Government, the Working Group conveyed information received of figures and dates of several contingents of ex-military personnel having departed to work in countries in conflict. The Working Group also noted a situation reported in September 2005, when 105 Chilean nationals entered Honduras with tourist visas, while allegedly being military trained by a PMSC. The Working Group noted that more than 600 ex-military personnel from Chile may have served as security guards in Iraq since March 2003. Accounts had also been received of alleged abuses, arbitrary detention and torture of Chileans when performing security work abroad, and those experiences of non-fulfilment of contracts were being processed by families in the Chilean judicial system. The Working Group also noted the common feature that the place of the signing of a contract with a PMSC commonly occurred in one country, while the place of execution of the contract was another country, and that the competent court and laws could be in a third country. Because of this legal situation and conflicts of laws, the Working Group noted occasions when the Chilean courts had not been competent to demand the payment of the wages and take other action.

21. On 25 April and 17 October 2006, the Working Group received responses from the Government of Chile. In the response of 25 April 2006, the Government of Chile requested further information on the allegations received, such as the number of individuals affected, the private companies involved, and the facts, locations and other information of the situation or situations of interest to the Working Group. In the response of 17 October 2006, and following a consultation in Geneva between the Permanent Representative of Chile and the Chairperson-Rapporteur, the Permanent Representative submitted:

On this point I can inform you that the Ministry of Foreign Affairs is coordinating a reply to the various allegations contained in your letter, which refer to a broad set of topics ranging from questions relating to the functioning in Chile of private companies engaged in recruiting ex-military and ex-police to serve as security guards abroad, through to the possible non-fulfilment of private contracts between those companies and the personnel recruited and including the filing with the Chilean courts of an application for *amparo* on the grounds of supposed ill-treatment and torture suffered by two persons recruited by one of the said companies while they were serving abroad ...

Notwithstanding the above, I am able to confirm to you that in May 2005 the brothers Jose and Juan Maturana Carrasco and Ms. Maria Martinez Acuna filed an application for *amparo* (under No. 12.429) with the Santiago Appeals Court against the company ESEU S.A., on which a ruling has apparently yet to be handed down.

I can further inform you that in July 2004 Senator Alejandro Navarro sought the backing of the Government for a bill aimed at prohibiting and making punishable in law the recruitment, financing, maintenance and dispatch of mercenaries abroad. The bill is currently at the initial legislative stage, for reporting by the Defence Committee.

22. The Working Group welcomes the information received from the Government of Chile, and looks forward to further exchanges on the situation.

23. By letter dated 7 March 2006, the Working Group recalled for the Government of Equatorial Guinea the communication sent on 2 June 2005 by the former Special Rapporteur on mercenaries, Ms. Shaista Shameem, concerning the reported situation in prison of alleged mercenaries convicted in 2004 of attempting to overthrow the Government of Equatorial Guinea. It related allegations of torture and mistreatment. The Working Group reiterated concerns vis-a-vis the situation, and urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons were respected and that accountability of any person guilty of the alleged violations was ensured.

24. By 15 December 2006, the Working Group had not received information on the situation from the Government of Equatorial Guinea.

25. On 5 and 12 December 2006, the Working Group sent urgent appeals to the Government of Honduras, conveying information of threats by telephone text messages received by lawyers of the Asociacion para una Sociedad mas Justa (ASJ) in Honduras. The Working Group was informed that ASJ staff provided juridical advice and support to some 12 former employees of a private security company, and that the threats allegedly originated from individuals of the private security company in question. The Working Group expressed its concern that one of the ASJ staff threatened was killed in Honduras by two unidentified men on motorbike on 4 December 2006. It also conveyed information of continued threats received by other ASJ personnel. The Working Group was informed that former employees of the private security company and their family members also received threats when bringing claims against the private security company over labour rights disputes, including charges of non-fulfilment of contracts and withholding of remuneration. The Working Group urged the Government of Honduras to undertake a prompt and comprehensive investigation into the killing of the individual on 4 December, and requested information on whether the private security company was legally registered and had obtained permits and licences to operate as a private security company in Honduras. In noting the creation of a special unit in the Ministry of Public Security, with the mandate to undertake joint inspections with the Ministry of Labour on PMSCs, the Working Group requested information as to whether the PMSC concerned had been or was being investigated, and what protective measures were taken by the Government to ensure the safety of the other individuals having received threats.

26. By the time of this report, the Working Group had not received information from the Government of Honduras in regard to these allegations (see paragraph 17 above).

## **II. COUNTRY SITUATIONS**

27. This section provides an overview of issues of interest to the Working Group in different regions. A section of situations in Africa will be submitted in a forthcoming report of the Working Group.

### **A. Asia-Pacific and the Middle East**

28. The Working Group has continued to follow the situation in Bougainville, Papua New Guinea, and reports of alleged Fijian mercenaries operating on this autonomous island (A/61/341, para. 81). The most recent information received by the Working Group is the emergence of a new group, calling itself “Bougainville Freedom Fighters” formed to engage with allegedly contracted mercenaries, and that a number of the alleged mercenaries were reported to have been wounded in an outbreak of violence in late November 2006.

29. The Chairperson-Rapporteur welcomed the opportunity to follow up on the repeated requests to visit Papua New Guinea and Fiji, respectively, in separate meetings with the respective countries’ Permanent Representative to the United Nations in New York in November 2006. In the meeting with the Permanent Representative of Fiji, the Chairperson-Rapporteur also noted information received that over 1,000 Fijians are currently working for PMSCs in Iraq and Kuwait. The Permanent Representative of Fiji informed the Working Group of the efforts undertaken by the Government, including sending of officials to Papua New Guinea, to urge eight Fijian former officers to return to Fiji. The Permanent Representative also expressed an understanding of the appeal for foreign PMSCs of the high standard of training of the Fijians recruited, who often have a military or police background. In both meetings the Chairperson expressed the importance of viewing the situation as a phenomenon in a regional and global context, and reiterated that a visit by the Working Group could share experiences and perspectives on the consequences of pertinent issues. The Working Group regrets that invitations to visit have not yet been extended by the Governments of Papua New Guinea and Fiji, respectively, and encourages the Governments to respond favourably to this request to undertake a visit to the region.

30. The Working Group notes with appreciation the positive response from the Secretary-General of the Pacific Islands Forum (PIF) to consult on issues related to the situation, and it is envisioned that this invitation to consult be taken up in 2007.

31. The Working Group has followed the developments in Iraq, and notes that the extensive use of PMSCs could lead to the privatization of the conflict.<sup>2</sup> With an estimated

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<sup>2</sup> Cf. Kim Sengupta, “UK: Blair accused of trying to ‘privatise’ war in Iraq”, *The Independent*, 30 October 2006. The result would be for the Government to take control of the war operations without being responsible for the illegal activities committed, according to D. Bigo “Les entreprises de coercition paramilitaires: de nouveaux mercenaires?”, *Cultures et Conflits*, L’Harmattan, Paris, 2004.

48,000 employees undertaking functions for the coalition forces in 2006, these PMSCs have collectively converted into the de facto second largest “coalition force” in Iraq; after the United States army (which in early December 2006 had 130,000 soldiers deployed) but more than the British army (approximately 7,200 soldiers).<sup>3</sup> The services of private military and security contractors (logistical support, supply transportation to the coalition forces, armed protection to convoys, persons and buildings as well as retraining the Iraqi army) have been playing a major role in shaping the security in Iraq.<sup>4</sup> However, the Working Group acknowledges that the PMSCs concerned do not operate as one entity or under one command. As pointed out by the United States Government Accountability Office (GAO), some PMSCs have also been involved in direct combat, producing collateral damages due principally to interferences of these private contractors in the work of the United States military.<sup>5</sup> In terms of personnel losses, by 15 November 2006 PMSCs had had 420 staff killed in Iraq, compared to 2,853 soldiers of the United States army and 125 for the British army.<sup>6</sup> The coalition appears to have preferred to cede more and more security responsibilities to the private sector. PMSCs in Iraq commonly operate without control, without visibility, without being accountable beyond the private company itself, and in complete impunity.

32. In Iraq, PMSC employees account for 3 of 10 soldiers deployed by the regular armed forces of the coalition. During the first Gulf War, in the early 1990s, only 1 of 100 was employed by a PMSC. The exponential expansion of PMSCs is not only reflected in the number of employees, but also in the quantity of contracts, which amounted to more than US\$ 100 billion in 2006.<sup>7</sup>

33. The Working Group notes information received that PMSCs operating in Iraq have recruited persons also with questionable backgrounds, with some employees having previously worked for repressive regimes.<sup>8</sup> It can be assumed that many of the contractors from South Africa, including those now training and providing support to Iraqi police, served earlier in the South African police and army also during the former apartheid regime. It was reported that

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<sup>3</sup> Information from the United States Congress Accountability Office, June 2006, cited in “Corporate mercenaries”, War on Want report, London, 2006.

<sup>4</sup> James Kwok, “Armed Entrepreneurs: Private Military Companies in Iraq”, Spring 2006, *Harvard International Review*.

<sup>5</sup> Ibid.

<sup>6</sup> Figures registered until 15 November 2006; see Jeremy Scahill, “Blood is thicker than Blackwater”, *The Nation*, 1 May 2006, [www.alertnet.org](http://www.alertnet.org), and <http://icasualties.org>.

<sup>7</sup> See Reuters, “In Iraq, contractor deaths near 650, legal fog thickens”, 10 October 2006; see also [alertnet.org](http://www.alertnet.org).

<sup>8</sup> Cf. Peter W. Singer, “The private military industry in Iraq: what we have learned and where next?”, Geneva Centre for Democratic Control of Armed Forces, 2004.

two South Africans working in Iraq received amnesty after confessing having committed crimes against humanity in South Africa, and one ex-policeman allegedly killed 15 anti-apartheid activists and placed explosives in the homes of between 40 and 60 political activists in South Africa.<sup>9</sup>

34. In its report to the General Assembly, the Working Group expressed its concern at the participation of the employees of two PMSCs in violating human rights, which occurred in the prison of Abu Ghraib (A/61/341, para. 69). These employees held key functions without being accountable to effective regulatory and control mechanisms, as the employees allegedly implicated have not been subject to any investigation nor sanctioned. Their alleged involvement, with others, in the Abu Ghraib torture scandal “has increased suspicion, especially from the United States military, of the reliability of (private) contractors” and contributed to hamper reconstruction efforts in Iraq.<sup>10</sup> The Working Group is concerned that these cases are not isolated, and could represent only a fraction of all cases. As one human rights NGO has noted, while commercialization of PMSCs perhaps could bring more efficiency, the privatization of the use of force inexorably leads to impunity; only 1 out of 20 cases of alleged human rights abuses by PMSC employees towards prisoners in Afghanistan and Iraq has been addressed by tribunals.<sup>11</sup>

35. The Working Group notes a study undertaken at John Hopkins University Bloomberg School of Public Health, which estimates that some 655,000 Iraqis have died during the war and the occupation of their country.<sup>12</sup> These figures have been disputed by the Governments of the United States, the United Kingdom and Iraq. While the exact figure remains to be verified, it would be relevant to also assess how many have been killed by PMSC employees. In this regard, the Working Group notes with concern a CNN television report on the activities of some PMSCs in Iraq, broadcast in June 2006, which included clippings from an amateur video of

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<sup>9</sup> Estimates vary between 200 and up to 4,000 South Africans working for PMSCs in Iraq. See G. Bell, “Anti-mercenary bill spurs security fears”, *Mail and Guardian*, 17 August 2006, cited in the report War on Want. See also Louis Nevaer, Pacific News Service, 4 May 2004 and M. Wines, “Anti-mercenary law passed”, *New York Times*, 30 August 2006. The Working Group also notes reports of South Africans having been directly implicated in March 2004 in the tentative coup d’etat in Equatorial Guinea side-to-side with the British owners of the private companies. See George Monbiot, “Pedigree dog of war”, *The Guardian*, 25 January 2005, and “Guerriers à louer”, programme *Temps Présent*, TV Suisse Romande, 2005.

<sup>10</sup> James Kwok, op. cit.

<sup>11</sup> Alan Cowell, “Rights Group criticizes US over ‘Outsourcing’ in Iraq”, *New York Times*, 24 May 2006. See annual report of Amnesty International USA, available at <http://www.amnestyusa.org/annualreport/2006/overview.html>.

<sup>12</sup> David Brown, “Study claims Iraq’s excess death toll has reached 655,000”, *Washington Post*, 10 November 2006.

shooting against cars on the streets of Baghdad, with indications of deadly impact.<sup>13</sup> According to the persons in the vehicle from where the shots were made, it constituted part of a convoy of vehicles of PMSCs.<sup>14</sup> One commentator's analysis indicated that private contractors, due to fear, often shoot randomly on the streets of Baghdad and other Iraqi cities to ensure priority and to keep a distance from other vehicles.<sup>15</sup>

36. As with the traditional and legal definition of a "mercenary", whose main motivation is personal enrichment and material compensation, PMSCs seek maximum financial return for the services they offer their clients. These motivations of PMSCs, which often seek to recruit contractors at lower cost to increase profits, have led to situations where contracts from Governments, such as the United States Department of Defense or the Department of State, are subcontracted to subsidiary companies. For example, the Working Group has received information that the original contract may generate approximately US\$ 11,000 per security guard per month for performing security services in countries of conflict. However, it is common for the originally contracted PMSC to engage a second, third or fourth subcontracting private entity to fulfil the original contract in full or in part. These processes often result in subcontractors recruiting staff, and performing training, in countries with low labour costs and high unemployment rates. The Working Group has received information of subcontracted individuals who may receive salaries reduced to between US\$ 1,000 and 2,000, with the surplus absorbed by the originally contracted PMSC or divided among the layers of subcontracted PMSCs. Furthermore, the Working Group is concerned that this profit-maximization of PMSCs can create incentives for duplication of costly services, and which are largely beyond the control of judicial accountability as well as of the military regular forces and their chains of command.

37. The Working Group is also concerned at what point the motivation of PMSCs for profit can lead to situations where national subsidiaries of large transnational PMSCs recruit personnel to be sent to countries of conflict as security guards, but upon arrival are assigned and expected to perform military functions for which they were not contracted or agreed to. The same motivations could have effects on situations such as the PMSC which was in charge of protecting a United States convoy that was passing through Falluja, Iraq, when its personnel were killed on 31 March 2004. The four guards were seized by Iraqi insurgents, dragged and burnt; scenes which have been broadcast worldwide.<sup>16</sup> The families of those guards filed a lawsuit against the PMSC in January 2005 for not having provided sufficient personnel and adequate means

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<sup>13</sup> Broadcast on 13 June 2006; available at [www.cnn.com](http://www.cnn.com), and the transcript at <http://transcripts.cnn.com/TRANSCRIPTS/0606/12/acd.02.html>.

<sup>14</sup> David Phinney, "From mercenaries to peacemakers?", 29 November 2005, [www.corpwatch.org](http://www.corpwatch.org).

<sup>15</sup> Sean Rayment, "Iraq: video exposes private security convoys shooting Iraqi drivers", *News Telegraph*, 27 November 2005, [www.corpwatch.org](http://www.corpwatch.org).

<sup>16</sup> This incident led to the seizure of Falluja by coalition forces in April 2004, which led to approximately 600 casualties.

of protection.<sup>17</sup> The PMSC, in its defence, argued that the guards were conducting ordinary military tasks, and sought for the case to be dismissed. The federal Court of Appeals of North Carolina, United States, decided in August 2006 that it was competent in the process brought by the family against the PMSC.

38. The Working Group notes that PMSCs are using two main arguments to promote their activities in countries of violent conflict, such as Iraq: efficiency and professionalism. Notwithstanding a principal concern of the Working Group whether PMSCs adequately take into account the norms of international human rights, international humanitarian law and public international law regulating the use of force, the argument of “efficiency” appears to be a myth. For example, in 2005, in a United States State Department programme which handles the protection of persons and operates worldwide, the Worldwide Personal Protective Services (WPPS), a PMSC attempted to improve its profits by presenting different departments of the same PMSC as if they constituted different companies. The WPPS contract obtained in 2004 would have been shared between the different entities with the effect of an inexplicable discrepancy of roughly US\$ 100 million above the figure fixed in the obtained contract, unless discovered and halted by an intervention by the authorities.<sup>18</sup> As to the argument of “professionalism”, it is correct that many PMSCs are employing ex-generals, former ministers and high-level civil servants and that a large number of them are managed by ex-military personnel from military schools.<sup>19</sup> However, and regardless of the level of ethics in their performance, efficiency and professionalism, the Working Group considers that their activities are carried out without legitimacy.<sup>20</sup>

## B. Central Asia and Eastern Europe

39. The Working Group welcomes the fact that the Republic of Moldova has acceded to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and notes that 7 out of 12 States of the Commonwealth of Independent States (CIS) have acceded to the International Convention.

40. In 2006, the Model Law “On counteracting mercenarism”, adopted in November 2005 by the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS-IPA), was officially circulated by CIS-IPA with the recommendation to CIS member States to elaborate and

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<sup>17</sup> Louis Hamsen, “Families sue Blackwater over deaths in Fallujah”, *The Virginia Pilot*, 6 January 2005, [www.corpwatch.org](http://www.corpwatch.org); Jeremy Scahill, “Blood is thicker than Blackwater”, *The Nation*, 1 May 2006.

<sup>18</sup> Jeremy Scahill, “Blackwater’s mercenary jackpot”, *The Nation*, 16 August 2006, [www.alertnet.org](http://www.alertnet.org).

<sup>19</sup> See “Corporate mercenaries”, War on Want report, London, 2006.

<sup>20</sup> Christian Olsson, “Vrai procès et faux débats: perspectives critiques sur les argumentaires de légitimation des entreprises de coercition para-privés”, *Cultures et Conflits*, L’Harmattan, Paris, 2004.

incorporate the provisions of the Model Law into national legislation. This CIS-IPA Model Law includes an expansion of the definition of mercenarism to cover non-material motivations; the inclusion in the definition of nationals contracted by foreign actors to undertake mercenary activities in their own countries; the explicit exclusion of peacekeeping activities from the definition of a mercenary; and acknowledgement of poor socio-economic conditions as social roots of mercenarism and thus the implications for adopting related measures to combat the problem (see E/CN.4/2006/11/Add.1, para. 19). The Working Group was informed by one Working Group member that in the Russian Federation and Ukraine, the respective Governments have established intergovernmental working groups to study and gradually adapt provisions of the CIS-IPA Model Law into national legislation.

41. The Working Group notes that legal proceedings have been initiated by the General Procurator of the Russian Federation against a group of Russian citizens who were extradited from the United States military base in Guantánamo Bay. These individuals, who had allegedly illegally crossed the border to Afghanistan in 2000, were reportedly captured among Taliban forces by Afghans, who handed them to the United States forces. These Russian “Talibes” originated from different ethnic backgrounds and regions of the Russian Federation: Bashkortostan (Volga area), Kabardino-Balkaria (North Caucasus), Tatarstan (Eastern Central area), Chelyabinsk (Central Siberia), and from Tyumen region (Northern-Eastern Siberia).<sup>21</sup>

42. With regard to the situation in the Chechen Republic, Russian Federation, a report from a Russian journal stated that among “foreign mercenaries” captured or killed in Chechnya during 2006 there were citizens of Algeria, Afghanistan, the United Kingdom of Great Britain and Northern Ireland, Egypt, Jordan, Iraq, Yemen, Saudi Arabia, Kuwait, Lebanon, the United Arab Emirates, Pakistan, the Syrian Arab Republic, the United States of America, Tajikistan, Tunisia, Turkey and Ukraine.<sup>22</sup>

43. The Working Group was informed that 12 citizens of Azerbaijan were imprisoned after standing trial on allegations of committing crimes of mercenarism. The individuals were sentenced to various length of prison terms, though most of them insisted they had participated in “jihad” for ideological reasons and did not receive material compensation.

44. In Kyrgyzstan a number of foreign citizens (including those of Uzbekistan) were placed on trial and sentenced for crimes committed in a “mercenary” capacity by forming unauthorized military formations within the territory of Uzbekistan (not affiliated with the Government of Uzbekistan) and having entered the territory of the Batkent region of Kyrgyzstan in 1999-2000. In Uzbekistan a national security service investigated activities of a number of individuals (Uzbek citizens) who participated in military operations in Afghanistan with the troops of Talibes.

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<sup>21</sup> By 15 December 2006, seven of the eight alleged mercenaries had been extradited to Russia, while one remained held by the United States for further investigations.

<sup>22</sup> *Military Diplomat Journal*, Russia, December 2003.

45. In Ukraine it was reported that seven citizens and one foreigner were convicted on charges of crimes of mercenarism; two other foreign citizens were deprived, through court decision, of the right to enter the territory of Ukraine. The General Procurator of Ukraine completed trials regarding four foreign citizens (from Greece, Iraq and Pakistan) who were planning to purchase and export large amounts of weapons as well as trying to recruit former military personnel for working abroad.

46. In Georgia, which is a signatory to the International Convention, provisions on mercenarism are absent in the country's Criminal Code. The Working Group was informed of a number of individuals involved in the armed hostilities in Abkhasia and South Ossetia regions.

### C. Latin America and Caribbean countries

47. The Working Group notes a phenomenon in Latin America (and other regions), of States increasingly ceding military and security core functions to PMSCs, with the risk that PMSCs are complicit in human rights violations while enjoying complete impunity. This was observed in visits undertaken by the Working Group, which noted the regional scope and effects of the situation.<sup>23</sup>

48. The Working Group notes the tendency that some PMSCs employ individuals from Latin America in order to perform security guard work in countries of conflict, including Iraq and Afghanistan. Front companies operate without legal personality or legal standing in the country or countries where the contract was signed and implemented, and often refer to the jurisdiction of a third country. In contracts signed by individuals from Honduras, accessed by the Working Group, it was stated that the "contracts are regulated under the laws of the State of Illinois (United States), also for those signed in Honduras. In the case of disagreements as to the fulfilment of contracts, the competent tribunal will be in any case along the will of the worker or where the service has been performed" (translated from Spanish). With regard to Peru, the Working Group has received information of some 200 individuals recruited by PMSCs for work in Iraq since 2003. Families of these Peruvian contractors were informed that "if they want to request compensation from the company, they have to do so in a court in the State of Virginia (United States), as the contract is under the jurisdiction of this State, to where the company moved its headquarters the past June" (translated from Spanish).<sup>24</sup>

49. The Working Group is concerned of persistent reports of contractual irregularities and mistreatment, including allegations of individuals having been contracted to perform non-military functions, but who find themselves in situations where they receive military training and are instructed on the use of automatic machine guns. The Working Group notes information received of individuals serving for PMSCs abroad being prevented from returning to their countries of origin. For example, an alleged situation of 35 Colombian citizens, contracted by a

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<sup>23</sup> While the Chilean cases were briefly described above, for more information regarding cases in Honduras and Ecuador, see A/HRC/4/42/Add.1 and 2.

<sup>24</sup> Paez, Ángel. "Mercenarios para Irak con ayuda del ejército", Interpress Services New Agency, at <http://www.ips.org> (visited on 28 October 2005).

PMSC to provide security services in Iraq, was not able to return to Colombia and received neither salaries nor travel support from the PMSC which had employed them, despite having met the conditions of the contracts.<sup>25</sup> Furthermore, the Working Group has also received accounts of isolation, arbitrary detention and degrading treatment when individuals have sought to return. For example, a Peruvian security guard serving with PMSCs in Iraq complained of having been held in custody and isolation in degrading conditions for six days, upon notifying his supervisors of his intention to return to Peru.<sup>26</sup>

50. Another element of concern is the access to medical services and treatment of injured PMSC contractors, directly affecting their right to life and right to health. The Working Group received information of complaints of injured persons required by PMSC supervisors to carry out their work without any medical assistance. One individual unable to walk was requested to fulfil his duties on crutches and wearing a bullet-proof vest, while carrying a machine gun. When one individual allegedly sought to invoke the clauses of the contract concerning medical assistance, his supervisors replied that his contract had been signed in Honduras and “that it had no validity for them”.<sup>27</sup> Similar situations are reported by Colombian workers, as declared by a former lieutenant of the army who was working for a PMSC in Iraq, indicating the limited or absent capacity to provide medical assistance to injured PMSC personnel, who are returned to their country of origin if unable to work effectively.<sup>28</sup> The Working Group is also concerned of reports of work under permanent stress up to 16 hours daily.<sup>29</sup>

51. The Working Group notes information received about training received by individuals, prior to being sent for security work abroad, in or near military bases of regular armies. In Honduras, the Working Group received testimonies that a PMSC used a training site in Lepaterique, in facilities most recently used as a scouting training centre, while also accessing training facilities of the army in Olancho (CAME). In Colombia, the contracted individuals have allegedly received training in the Military Cavalry School. With regard to Peru, the Working Group has received information about cooperation between a PMSC and the national army and reports of more than 200 individuals having received training in a state factory of arms and

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<sup>25</sup> *Revista Semana*, Bogotá, Edition 1268, 21 to 28 August, pp. 32-39; *Diario Mi pais*, Ecuador. Friday, 25 August 2003, p. 3.

<sup>26</sup> Radio Noticias 1160. Interview by programme “Cara a Cara” for the periodical *Zenaida Solís* in Lima, on 16 March 2006. Similar information was received by the Working Group during its visit to Honduras from individuals having worked for PMSCs in Iraq.

<sup>27</sup> Information received by Working Group of documents and memos signed by a PMSC operating in Iraq (on hold with authors).

<sup>28</sup> *Revista Semana*, Bogotá, Edición 1268, 21-28 August, p. 36.

<sup>29</sup> Ibid.; Radio Noticias 1160. Interview on programme “Cara a Cara” by journalist Zenaida Solís, Lima, 16 March 2006.

ammunition.<sup>30</sup> In addition, the question arises of the human rights violations committed by this personnel, trained by PMSCs with little control and without a clear country of origin, and operating with military functions without a clear understanding of the lines of control.

52. Another phenomenon of interest to the Working Group is the increasing use of force by PMSCs and private groups that are exercising domestic police functions in Latin American countries. This trend has led to a situation where in many countries the employees of PMSCs have surpassed the numbers of the police forces. For example, in Honduras, estimates vary that PMSCs, whether legally registered or illegal, effectively employ between 12,500 and 70,000 security guards, compared to the national police which has an estimated 8,000 police officers.

53. The Working Group notes that PMSCs also in the domestic context are increasingly permitted to take actions traditionally in the competence of the police. The Working Group considers it important to ensure effective State control of the activities of these domestically operating PMSCs, also with regard to arms control and licensing, as many illegal companies own large stocks of small arms and light weapons. Furthermore, the Working Group notes legislative efforts to prohibit currently serving police and military personnel from owning and operating PMSCs, as is the case in Honduras.<sup>31</sup>

54. The Working Group recognizes that petroleum, water and mineral areas and their infrastructure are strategic installations which may require special State protection also for reasons of national security. However, the Working Group also notes the tendency of some national military forces to privatize and offer their contracted services to extractive industries, mainly oil companies, as experienced in Ecuador. The Working Group reiterates the importance of national armies to protect all individuals in their jurisdiction. Building on the work of prior Special Rapporteurs and the outcome of the third Meeting of Experts, hosted by the Office of the High Commissioner for Human Rights, the Working Group is concerned of the complex relations between the protection of national resources and their geo-strategic importance, the actions and interests of PMSCs, and the repression on social movements.<sup>32</sup> The creation of private armies and the practice of illegal exploitation of natural resources have been inextricably linked with the continuation of armed conflicts in several situations around the world, including in Latin America.

55. The Working Group notes the existence of bilateral agreements providing for the immunity of nationals, and including personnel of PMSCs, from judicial proceedings and exemption from bringing cases to the International Criminal Court. The Working Group notes

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<sup>30</sup> Paez, Ángel. “Mercenarios para Irak con ayuda del ejército”. Interpress Services New Agency, at <http://www.ips.org> (visited on 28 October 2005).

<sup>31</sup> Cf. article 102 of the Organic Law of the National Police in Honduras.

<sup>32</sup> For pertinent reports of the former Special Rapporteur, Mr. Bernales Ballesteros and Ms. Shaista Shameem, see <http://www.ohchr.org/english/issues/mMercenaries/specialrap.htm>.

that such agreements, including with regard to Ecuador and Colombia,<sup>33</sup> have been criticized by local NGOs for not having been properly approved by the national legislatures. The result is that criminal acts by PMSC employees can go unpunished. This is of concern to the Working Group. It notes information received of employees of PMSCs operating under Plan Colombia with allegations of illicit drug and munitions, trafficking and sexual assaults on minors. None of these cases have been treated by the judiciary in Colombia due to the immunity enjoyed by the persons in question. The Working Group notes the need to end the legal loophole of PMSCs as non-State actors, and for States to avoid using PMSCs as means to conduct its policies in impunity.

### **III. THEMATIC ISSUE: THE STATE AS PRINCIPAL HOLDER OF THE USE OF FORCE**

56. The Working Group notes that the phenomenon of mercenaries has passed from being an activity of an individual into becoming an activity of wider scope and reach, with private military and security companies lending services that are traditionally and characteristically among the core functions and competencies of the State. This phenomenon is in some cases impeding the enjoyment of human rights. The Working Group is interested in elucidating this surrender of the monopoly of the use of the force on the part of States, and notes that privatization or delegation of security does not diminish the responsibilities of the State under international law.<sup>34</sup>

57. The Working Group notes the position of several Governments that consider the issue of a mercenary recruitment as an issue of “labour mobility” rather than an issue for prosecution of the crime of mercenarism. In this regard, an argument commonly forwarded is that labour contracts and their acceptance do not concern the State, as these constitute private acts. However, the Working Group reiterates existing State obligations to establish procedures backed by a juridical system to ensure the protection of their nationals, especially in the field of security and labour.

58. The Working Group considers that certain provisions of international human rights instruments require States to protect against violations by both State agents and private persons or entities. Therefore, States must take appropriate steps to prevent, and if not, investigate and punish, violations and harm caused by private entities. States are under a duty to exercise due diligence to prevent and punish abuses also by non-State actors, and States are encouraged to take legislative and other measures to ensure victims have access to effective remedies as determined and enforced by relevant authorities.<sup>35</sup> In ensuring due diligence under international

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<sup>33</sup> Text of bilateral agreement between the Governments of the United States and Colombia, signed on 17 September 2003.

<sup>34</sup> See the “Rapport du Conseil fédéral Suisse sur les entreprises de sécurité et les entreprises militaires privées” (pursuant to the postulat Stähelin 04.3267 du 1er juin 2004: Entreprises privées chargées de tâches de sécurité) of 2 December 2005.

<sup>35</sup> See CCPR/C/21/Rev.1/Add.13, general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant (2004), para. 8.

law, this may require positive action to avoid responsibilities of complicity for human rights violations, within certain spheres of influence. The Working Group thus urges States to further develop international and national regulation, control and monitoring of the activities of PMSCs, including registration and licensing, in order to provide effective oversight and ensure that services provided by PMSCs operate in a legal framework in accordance with human rights standards.

59. The Working Group observes that it is weak national legislations on the operation of PMSCs that enable multinational companies to profit in the transnational market for private security services. On the basis of country visits undertaken and information received, the Working Group has observed at least three national conditions which allow the recruitment of personnel for these private companies: (a) unemployment, and/or underemployment, and the availability of low-wage labour trained in security and military functions; (b) a migratory population ready to work abroad; and (c) scarce or weak national legislation that allows largely unmonitored activities of PMSCs. In this regard, the Working Group notes that experiences of recruitment for these services display elements and features similar to that of human trafficking.

60. Certainly one of the problems which the Working Group encounters is how to interpret whether PMSCs and their employees should be considered as mercenaries. The problem with the current definition is twofold: either nearly everyone engaged privately in armed conflict is covered by the definition, or no one is, thus making the Convention very difficult if not impossible to implement, and the monitoring work of the Working Group particularly challenging. In the strict interpretation of the definition of “mercenaries” in international law and the domestic law in several countries, private soldiering for private gain will be defined as a mercenary under certain criteria, and subject to prosecution. However, the definition as it currently stands is no longer satisfactory because activities by contracted personnel, whether contracted by the State or intergovernmental organizations, could be caught by the definition which criminalizes private actors engaged in armed conflict. According to the definition laid down in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and in international humanitarian law, the Working Group is, however, of the position that it cannot be said *strictu sensu* that PMSCs or their employees satisfy all its requisites. To address this legal loophole, it would be necessary either to amend the International Convention, as has been proposed already by the first Special Rapporteur on mercenaries, or to elaborate an Additional Protocol, which would complement the Convention. Despite its limitations, accession to the International Convention is a positive step and thus encouraged by the Working Group.

61. However, in order to clarify exactly what can be permitted as having a legitimate status in armed conflict, and what is not, Member States need to decide what the international community will accept as State responsibility for the use of force. Activities of PMSCs which will not be permitted can be defined as mercenarism and those engaging in impermissible activities prosecuted under the International Convention or other law.

62. To effectively address these outstanding challenges of its mandate, the Working Group reiterates and supports the proposal of the former Special Rapporteur, Ms. Shaista Shameem, for

States to hold a round table, under the auspices of the United Nations, on the paradigm shift associated with the subject of mercenarism in the globalized market for arms and military and security personnel as evidenced in the situations of violent conflicts (see A/60/263, paras. 45-55).

#### **IV. NATIONAL, REGIONAL AND INTERNATIONAL LEGISLATION AND STATUS OF THE CONVENTION**

63. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which the General Assembly adopted by resolution 44/34 of 4 December 1989, entered into force on 20 October 2001 when the twenty-second instrument of ratification or accession was deposited with the Secretary-General of the United Nations. The Republic of Moldova deposited its instrument of accession on 28 February 2006. There are now the following 28 States parties to the Convention: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus, Georgia, Guinea, Italy, Liberia, the Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Moldova, New Zealand, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.

64. By means of its questionnaire, country visits and public records, the Working Group noted the indication of forthcoming treaty action from the following States: Bangladesh, Ecuador, Ghana, Honduras, Lebanon, Madagascar, Mauritius, Morocco, Peru and Venezuela (Bolivarian Republic of) to accede to the International Convention. The Working Group reiterates its availability to advise on and support these processes.

65. The Working Group also noted recent developments at the national, regional and international levels, including the adoption of a Model Law “On counteracting mercenarism” of the Commonwealth of Independent States Inter-Parliamentary Assembly, and emerging legislation in South Africa. The Working Group also welcomes an initiative promoted by the Government of Switzerland and the International Committee of the Red Cross (ICRC) aimed at establishing a juridical framework and at promoting an intergovernmental dialogue on the status and regulation needed concerning private military and private security companies.

#### **V. FUTURE ACTIVITIES**

##### **A. Regional round tables**

66. Following the thematic discussion above about the State holding the monopoly of the use of force, the Working Group questions whether current trends regarding the privatization of security are being supported by Member States. To stimulate debate, highlight the issues and consequences of the current course, and seek agreement on this critical issue, the Working Group suggests the holding of a global round table, under the auspices of the United Nations. This process would contribute towards understanding the responsibilities of different actors in the current context, including the regulation of PMSCs, and the respective obligations of various actors for the protection and promotion of human rights.

67. The Working Group suggests that the global round table be preceded by regional preparatory round tables, and welcomes the willingness indicated by a number of States to host such meetings: Armenia, Costa Rica, Ghana, Honduras, Lebanon, Morocco, Mexico and Venezuela (Bolivarian Republic of). Before receiving suggestions from Governments, intergovernmental and non-governmental organizations to be included in the agenda of the regional preparatory round tables, below are some examples of questions that could be raised for discussion at these round tables:

- Should States reclaim full responsibility for their armed forces, without outsourcing any of their functions to private actors?
- Alternatively, should States outsource as many of their military functions as they need but retain a contractual relationship with the private entities, therefore retaining their monopoly on the use of force, and therefore also retaining their prime responsibility for the ultimate outcomes and effects?
- Are States prepared to hand over security and military services to private companies, and to consider the consequences and implement measures to ensure that private companies and individual employees are accountable and do not enjoy impunity for human rights violations?
- If States are able to cede the monopoly of the use of force to PMSCs, what are the exact human rights obligations and responsibilities of non-State actors?
- What are the main human rights and humanitarian principles to be articulated between the State contracting out their military functions and the private actors?
- Should intergovernmental organizations also consider formalizing an arrangement, currently ad hoc, on the use of private actors to provide security, and even advanced military activities in situations where, say, genocide, or serious human rights violations are taking place, prior to the use of peacekeeping and peace-building initiatives?<sup>36</sup>
- If there is to be a “shared monopoly” of the use of force, between States and intergovernmental organizations on one hand and private actors on the other, what should be the terms and conditions of such a shared responsibility?

68. Provided financial and other resources, the Working Group would welcome the holding of the regional preparatory round tables during 2007, on the issue of the monopoly by the State of the use of force, with a view to holding a global round table in 2008. The outcome of the regional preparatory round tables will be reported to the Human Rights Council and the General Assembly.

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<sup>36</sup> See also report of the Secretary-General, “In larger freedom” (A/59/2005).

## B. Academic network

69. In its resolution 2005/2 establishing the Working Group, the Commission on Human Rights specifically asked it to “study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination” and to “monitor and 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”.

70. To fulfil this mandate, the Working Group approved at its meeting in February 2006 its methods of work, with the objective, among others, to identify and prepare studies on new forms, manifestations and modalities of the activities of mercenaries and the activities of PMSCs. The Working Group has since considered the possibilities to establish a worldwide network of experts dedicated to study the activities related to mercenarism and monitoring of PMSCs, to support the conceptual and analytical work on this matter, and provide information on new tendencies on these manifestations around the world (E/CN.4/2006/11, para. 33). In its meeting with representatives of regional coordinators, the Working Group explored the possibility and invited Governments to propose academic institutions and individuals which could form part of this academic network. In terms of criteria for the identification of experts, it is intended that “in order to assure comparative representation of various national and regional approaches to regulating mercenarism, the Working Group will explore the possibility of consultancy and expertise from external experts of various regions” (E/CN.4/2006/11/Add.1, para. 30).

71. The Working Group will also make contact with experts, from all regions, having attended the series of three expert meetings hosted by the Office of the High Commissioner for Human Rights between 2001-2004, and whose contributions specifically analysed the manifestations and tendencies of mercenary activities in the dawn of the twenty-first century. It is intended that those interested among these experts would provide part of a core group of the academic network, for the elaboration of research output, and that an electronic resource be developed and dedicated to the activities of the academic network.

## VI. CONCLUSIONS AND RECOMMENDATIONS

72. **The Working Group welcomes the cooperation it has received from States towards fulfilling its mandate. The Working Group invites all Governments to cooperate, including by means of following up on communications and by extending invitations for the Working Group to visit, and by sharing their experiences of efforts to address the issues of mercenarism, mercenary-related activities and the activities of private military and private security companies.**

73. **On the basis of its activities in 2006, the Working Group draws the attention to the phenomenon by which individuals from Latin America, and other regions, are being recruited by PMSCs to perform military services in zones of international or non-international armed conflict, with a number of pertinent human rights issues concerning: (a) the civilians affected in countries of conflict; (b) the individuals recruited by PMSCs; and (c) and the related responsibilities of States and PMSCs, respectively. The**

**Working Group notes that unemployment, underemployment and the precariousness of the conditions in the origin countries, invite some individuals to take these employments in spite of the excessive risks.**

74. **In order to clarify what the international community will accept as State responsibilities in this regard, States are encouraged to hold a round table, preceded by regional preparatory round tables, to reach a policy decision on the fundamental question regarding the monopoly by the State of the use of force. Such a round table could also serve to elucidate which controls are needed to allow PMSCs to carry out activities where the use of force is necessary.**

75. **The Working Group will continue to monitor a number of situations which are relevant to all aspects of its mandate, including countries used as sites for the recruitment, use, financing and training of individuals to serve in PMSCs domestically or abroad. While the initial focus of the Working Group has been to visit countries where subsidiaries of foreign-registered PMSCs were recruiting employees, the focus of the Working Group is expected to evolve to enable a comprehensive assessment of the issues pertaining to its mandate.**

76. **To this end, the Working Group issues the following recommendations:**

- The Working Group calls upon all States that have no yet done so to consider taking the necessary action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (entered in force in 2001). It encourages States parties to introduce national level legislation against mercenarism, through introducing and adopting specific provisions in the national criminal codes, or to introduce separate legislation on mercenaries. The Working Group also invites Member States to consider also regional standards for possible incorporation in domestic legislation, notably where such instruments are adopted by subregional organizations, as is the case with African Union, the Commonwealth of Independent States and the Economic Community of West African States;**
- The Working Group recommends the urgent need to embark on a process of determining the future of the monopoly of States on the use of force, and suggests a process of regional preparatory round tables during 2007 to lead to a global round table in 2008;**
- The Working Group urges States to meet the challenge of regulating and attributing the responsibility that arises from the structure and transnational nature of the PMSC industry and its global reach, as well as the exponential growth of the numbers and activities of PMSCs in different regions. To this end, the Working Group urges States to avoid granting blanket immunity, leading to effective impunity, to PMSCs and their personnel;**
- The Working Group recommends thresholds of permissible activities, enhanced regulation and oversight of PMSCs at the national levels, including the establishment of regulatory systems of registration and licensing of PMSCs and**

individuals working for them. Such regulation should include defining minimum requirements for transparency and accountability of firms, screening and vetting of personnel, and establish a monitoring system including parliamentary oversight. States should impose a specific ban on PMSCs intervening in internal or international armed conflicts or actions aiming at destabilizing constitutional regimes;

- The Working Group recommends human rights components in education and training programmes to be offered to the staff of PMSCs, including on international humanitarian law, international human rights law, and United Nations standards on the use of force;
- The Working Group recommends that, in order to fulfil the complex mandate and challenges given to it under Commission resolution 2005/2 and assumed by the Human Rights Council, as well as by General Assembly resolution 61/151, it be allowed to hold three sessions per year, two in Geneva and one in New York.

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