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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 63/164 and Commission on Human Rights resolution 2005/2, the 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.

* A/64/150.



Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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. It is mandated, inter alia, to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, and to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market.

From April 2009, the Working Group has been headed by its Chairperson-Rapporteur, Shaista Shameem (Fiji), and its members are Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), José Luis Gómez del Prado (Spain) and Alexander Nikitin (Russian Federation).

The present report is prepared in accordance with paragraph 20 of General Assembly resolution 63/164.

Section I of the report introduces its contents, section II outlines the activities undertaken by the Working Group, including its work on a possible new draft international convention on the regulation of private military and security companies. Section III presents some of the findings and conclusions of the field missions the Working Group conducted in Afghanistan and the United States of America, while section IV summarizes the second regional consultation for Eastern European and Central Asian countries held in October 2008. Section V refers to actions taken by the Working Group under the communications procedures, and section VI addresses the Working Group's future activities. Section VII contains its conclusions and recommendations.

The report contains as an annex, the status of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries as at 2 July 2009, with 17 signatories and 32 State parties.

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I. Introduction

1. At its sixty-first session, the Commission on Human Rights, by its resolution 2005/2, decided to establish a 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, made up of five independent experts, for an initial period of three years. From April 2009, the Working Group has been headed by its Chairperson-Rapporteur, Shaista Shameem (Fiji), and its members are Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), José Luis Gómez del Prado (Spain) and Alexander Nikitin (Russian Federation). From April 2008 to the end of March 2009, Alexander Nikitin (Russian Federation) was the Chairperson-Rapporteur of the Working Group.

2. At its tenth session, the Human Rights Council requested the Working Group, in its resolution 10/11, to: (a) consult with intergovernmental, non-governmental organizations, academic institutions and experts on the content and scope of a possible draft convention on private companies offering military assistance, consultancy and other military security-related services on the international market, and an accompanying Model Law, and other legal instruments; (b) share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such a convention and transmit their replies to the Working Group; (c) report to the fifteenth session of the Human Rights Council on the progress achieved in the elaboration of the draft legal for proper consideration and action. Since the adoption of the new resolution, the Working Group has concentrated its effort on drafting elements of a possible draft convention and consulted with a wide range of non-governmental organizations (NGOs), academic institutions and experts on the content and scope of this possible new legal instrument.

3. For the purposes of the present report, the Working Group refers to private military and security companies as including private companies that perform all types of security assistance, training, intelligence and other consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military and/or security-type activities, particularly in situations of armed conflict.

4. Pursuant to its mandate, the Working Group has continued to monitor mercenaries, mercenary-related activities in all their forms and manifestations, as well as to 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. The Working Group notes that its mandate and work have steadily evolved in the recent years to reflect the increasing worldwide attention to the growing number of private military and security companies and the wide scope of their activities as well as to the growing concern regarding a lack of transparency and accountability of these companies and their impact on the enjoyment of human rights. Despite limited reports on individual mercenaries fighting in armed conflict for profit and in some cases with the aim of overthrowing a legitimate Government, the Working Group has gathered information over the last few years on situations where private security contractors legally working in a country have been involved as individuals in illegal mercenary activity in another country. The Working Group believes that a new international legal instrument

would help to define those activities that can legally be carried out by private military and security companies according to international law from the activities that should remain essential governmental functions and could not in any circumstances be outsourced.

5. During the period of review, the Working Group held four sessions, including its seventh session, held in New York from 27 to 31 July 2009, undertook visits to Afghanistan and to the United States of America and convened a regional consultation for Eastern European and Central Asian countries on the effects of activities of private military and security companies on the enjoyment of human rights in the region and on the steps taken towards regulation and oversight. The Working Group has also sent letters of allegation to Governments regarding specific incidents and alleged human rights violations.

6. The Working Group noted that the use of private military and security companies worldwide continued to increase gradually over the last year, with up to 80 per cent of all such companies registered in the United Kingdom and the United States.¹ The majority of these companies were operating in Iraq and Afghanistan and were conducting a wide range of activities, from static security to escort of convoys, training and intelligence services.

7. Given the concentration of these companies in a handful of countries of origin/home States (States of nationality of a private military and security company, that is, where such a company is registered or incorporated, namely, the United States and the United Kingdom) or receiving countries/territorial States (States on whose territory these companies operate, namely, Iraq and Afghanistan), some argue that the phenomenon does not represent an international concern and will decline with the gradual withdrawal of the United States and other international troops from Iraq and Afghanistan. The Working Group believes that given the lucrative character of the industry, which operates in armed conflicts, post-conflict situations and troubled areas where extractive transnational corporations function, the phenomenon is likely to increase, diversify and spread to more countries. Following visits to Ecuador in 2006, and Chile, Peru and Fiji in 2007, the Working Group already reported on the recruitment of a large number of independent contractors in these countries by foreign companies contracted by the United States or the United Kingdom Governments and some of the consequences, including the lack of control by the home countries of these contractors as well as often the poor working conditions and lack of protection for these third country nationals.² The presence and activities of these companies are also growing rapidly on the African continent where some companies are, among other things, providing training of security forces in some countries. Often, contracts are settled between donor countries and private military and security companies without the possibility for national authorities and civil society being able to participate in the decision-making regarding these contracts and to play their constitutional and legitimate roles in democratic governance of the security sector.³

¹ Geneva Centre for the Democratic Control of Armed Forces, F. Schreier, M. Caparini, *Privatising security: law, practice and governance of private military and security companies*, Occasional Paper No. 6, quoted in A/HRC/10/14/Add.2.

² See the Working Group mission reports, available from http://ap.ohchr.org/documents/sdpage_e.aspx?m=152&t=9.

³ Adedeji Ebo, "Local ownership and emerging trends in SSR; a case study of outsourcing in Liberia", Timothy Donais, editor, in *Local Ownership and Security Sector Reform*, Geneva Centre for the Democratic Control of Armed Forces, 2008.

8. The Working Group is concerned by the growing trend towards privatization of military and security services and its consequences for the public. As suggested by the Human Rights Council in its resolution 7/21, the Working Group recommends a discussion at the international level on the fundamental question of the role of a State as holder of the monopoly of the legitimate use of force, with the objective of facilitating a critical understanding of the responsibilities of the different actors, including private military and security companies, and their respective obligations for the protection and promotion of human rights and in reaching a common understanding as to which additional regulation and controls are needed at the international level. In its work on a possible draft convention on the regulation of private military and security companies, the Working Group is discussing a number of elements of what they consider to be inherently governmental functions that should not under any circumstances be outsourced to non-State entities under a new legally binding instrument. Pursuant to the Human Rights Council resolution 10/11, these elements will be submitted to Member States for their consideration.

9. The Working Group remains concerned at the impact of private military and security companies on the enjoyment of human rights and, in particular, concerning accountability in case of criminal offences and human rights violations as well as access to remedy for victims of these violations. Too often proper investigations of incidents involving these companies are not launched owing to insufficient evidence or to the difficulty of investigating in zones of conflict, and due to the fact that in a situation when a lawsuit is filed, it can take years before victims obtain some form of redress. Some Governments still have special agreements with private military and security companies granting them immunity from prosecution. Situations where armed individuals are not subject to the control or the laws of the State have led to dramatic events and are unacceptable. No one can be immune from prosecution for criminal offences and human rights violations.

10. Proper vetting and background screening of personnel of employees is crucial, as was demonstrated by the recent shooting by a British contractor of colleagues from the same company, ArmorGroup, in Iraq in early August 2009. The contractor was suffering from severe post-traumatic stress and had earlier been dismissed while working in Iraq by the security firm Aegis for “extreme negligence” and was awaiting trial for assault, having already been convicted of three other crimes, including robbery, possession of ammunition and public order offences.⁴ The Working Group is also reviewing conditions of employment of third-country nationals employed by private military and security companies, and is disturbed by numerous testimonies of individual contractors, who were not provided with adequate working conditions, protection and insurances and who, in some instances, had their passports and travel documents confiscated, leaving them with no means to return home. Finally, the Working Group deplores the lack of information accessible to the public on the number of private military and security companies operating in conflict or post-conflict zones, including information on the companies, the number and nationality of personnel, casualties, number and types of weapons and vehicles as well as on the activities for which they are contracted. The Working Group calls for further transparency and information on those contracts, within legitimate limitations such as national security and privacy.

⁴ “The human timebomb: why was he given Iraq job?”, *The Independent*, 14 August 2009.

11. Pursuant to General Assembly resolution 63/164, the Working Group submits its fourth report to the General Assembly, for consideration at its sixty-fourth session.

II. Activities of the Working Group

A. Fourth to seventh sessions of the Working Group

12. At its fourth session, held in New York from 2 to 5 September 2008, the Working Group held discussions with Member States, United Nations departments, including the Department of Peacekeeping Operations, the Office of Legal Affairs and the Office for Disarmament Affairs, representatives of civil society, academics and representatives of private military and security companies. In particular, the fourth session was an occasion to discuss with relevant actors the key principles for a system of international regulation of private military and security companies contracted to Governments.

13. At its fifth session, held in Geneva from 15 to 19 December 2008, the Working Group considered a number of communications and country situations, and met with representatives of the Permanent Missions of Honduras and Ecuador to discuss follow-up to the Working Group's visits to these countries. The Working Group also met with representatives of the Democratic Republic of the Congo to discuss the political and social situation in the eastern part of the country and the presence of militias and private military and security companies. The delegation welcomed the request of the Working Group to conduct a visit to the country. In addition, the Working Group held meetings with United Nations system agencies and organs, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC), academics, NGOs and an association of private military and security companies.

14. From 30 March to 3 April 2009, the Working Group held its sixth session in Geneva. Ms. Shaista Shameem was elected Chairperson by consensus. In line with the request of the Human Rights Council (resolution 10/11), the Working Group devoted several meetings to discuss elements for a possible draft convention, its scope, content and structure. The Working Group also discussed its workplan regarding the process of consultation on the draft convention with NGOs, academics and experts. The Working Group met with representatives from the Swiss Foreign Affairs Department on the follow-up to the Montreux Document and discussed the Swiss Initiative for an international code of conduct for private military and security companies (see A/HRC/10/14, paras. 42-51). The complementarity of their respective initiatives was underlined and it was agreed to continue working in close cooperation, with the Working Group concentrating its work on a draft international binding legal instrument. The Working Group also met with representatives of the Western Europe and Others Group and briefed them on its mandate and current activities. The Working Group recalled the human rights violations for which private military and security companies have been responsible so far and the lack of accountability and redress for victims in the current system. They also stressed the importance of regular interaction with the Western Europe and Others Group and hoped for increased support for their mandate and activities. The Chairperson of the Western Europe and Others Group recommended that the Working Group brief them

at their next session in Geneva. Finally, the Working Group was briefed on the initiative of the United Nations Inter-Agency Security Management Network to develop a United Nations-wide policy on security and on contracting private security companies. The Working Group welcomes this initiative, which aims at defining the situations and rules regarding the hiring of armed guards as well as the type of personnel that can be recruited following rigorous vetting and training. It is crucial for the United Nations to have clear and transparent system-wide policy, guidelines, and oversight mechanisms on the use of private security contractors.

15. From 27 to 31 July, the Working Group held its seventh session in New York. A significant part of the session was devoted to discussing elements for a possible draft convention, its scope, content and structure. The Chairperson of the Working Group participated as a panellist in a policy forum on the regulation of private military and security companies, organized by the International Peace Academy. The Academy also organized a closed-door workshop for the Working Group with some 30 experts, academics and representatives of NGOs and the industry for the purpose of discussing the elements of a possible draft convention. The preliminary discussion with these experts was valuable and served to fine-tune the Working Group's work in progress on the convention. In addition, the Working Group considered a number of situations and communications and held meetings with United Nations system agencies and departments based at Headquarters in New York. It also received information on the continuing recruitment of mercenaries, including children, in the Great Lakes region of Africa and in West Africa. The Working Group will continue to monitor these allegations and study the causes and the measures taken by the concerned Governments to put an end to these activities.

B. Elaboration of a draft convention

16. With the adoption on 20 March 2009 of a new Human Rights Council resolution, by which the Working Group was requested, *inter alia*, to (a) consult with intergovernmental, non-governmental organizations, academic institutions and experts on the content and scope of a possible draft Convention on private companies offering military assistance, consultancy and other military security-related services on the international market, and an accompanying Model Law, and other legal instruments; and (b) share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such convention and transmit their replies to the Working Group, the Working Group concentrated its efforts since March on discussing the content and scope and elaborating a draft of such a convention.

17. In the view of the Working Group, the purpose of the draft convention is to reaffirm and strengthen the principle of State responsibility for the legitimate use of force and to identify those functions which are, under international law, inherently governmental and cannot be outsourced to non-State entities as a matter of public interest. The draft convention also seeks to promote cooperation among States regarding licensing and regulation of the activities of private military and security companies in order to more effectively monitor and address challenges to the full implementation of human rights obligations. The draft convention devises mechanisms to ensure proper national and international oversight and monitoring of

the activities of such companies as well as to investigate reports of abuses and violations of human rights and international humanitarian law.

18. The draft text of the convention was circulated in July 2009 to some 250 experts, academics and NGOs worldwide for comments. On 29 July, the Working Group held a closed workshop with selected experts to discuss the content and scope of the draft convention. The Working Group was pleased to receive positive feedback from the NGOs and academics attending the workshop and responded to many questions and observations on the philosophy, scope and detailed elements of the draft convention. The Working Group is now in the process of consolidating the draft convention on the basis of the comments received orally or in writing and expects to circulate it to Member States in early 2010 for their input.

C. Other activities

19. The Academic Network set up in Bogota in January 2007 to study and monitor the activities of mercenaries and private military and security companies in Latin America continued its activities during the period under review. On 7 and 8 May 2009, a member of the Working Group, together with the Academic Network organized and participated as a keynote speaker in a seminar held in Bogota on the topic "Mercenaries and private military and security companies in Latin America". The seminar gathered a large participation, including members of the Colombian Senate, private military and security companies operating in Colombia, international experts and journalists. On 25 July, the Colombian Academic Network met again at the initiative of a member of the Working Group to discuss the elements of the draft convention on the regulation, oversight and monitoring of private military and security companies. Staff of OHCHR and ICRC in Colombia also attended the meeting as observers. The conclusions and recommendations were presented at the seventh session of the Working Group. Other consultations with academics and NGOs in the Latin American region are envisioned through the Academic Network.

20. The Swiss Government, together with the Geneva Centre for the Democratic Control of Armed Forces, organized a series of events on the self-regulation of private military and security companies, to which the Working Group was associated. A member of the Working Group attended two of the three workshops organized by the Centre in March and April 2009 on the topic "Working towards an international code of conduct for private military and security companies". The first workshop was aimed at the leading international private military and security companies and industry associations, the second gathered representatives of civil society and research institutions, while the third congregated representatives of Governments, regional organizations and the United Nations. The workshops aimed at identifying the elements essential to an effective international code of conduct for the security industry.

21. Two members of the Working Group also participated in a Wilton Park Conference held in Nyon, Switzerland, from 4 to 6 June. The Conference was organized by the Swiss Federal Department of Foreign Affairs, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces and the Geneva Academy of International Humanitarian Law and Human Rights to discuss the initiative to establish a possible international code of conduct for private military

and security companies.⁵ It gathered representatives of major private military and security companies, industry associations in the United States, United Kingdom and South Africa, interested Governments, including those that contract such companies, international governmental and non-governmental organizations and other legal and human rights experts to discuss whether and how to codify standards for the operation of all private military and security companies in compliance with human rights and international humanitarian law. The conference also sought to examine how self-commitment by the private military and security industry can be effectively monitored and enforced.

22. The Working Group took an active part in the consultations on a possible international code of conduct for private military and security companies. The Working Group hopes that the views of the Working Group, as well as those of NGOs and experts expressed at the meetings would be fully integrated when setting up the mechanism. The Working Group believes that such an international code of conduct should be accompanied by “an independent and authoritative ‘watchdog’”, as recommended by some participants, which would be able to offer a trustworthy and effective complaint and redress mechanism for victims.

23. The Working Group welcomes the Swiss Initiative insofar as it represents a first step towards the regulation, oversight and monitoring of the activities of private military and security companies. The Working Group believes, nevertheless, that self-regulation is not sufficient and should be accompanied by national regulations, and an international binding instrument establishing an independent international monitoring mechanism.

24. In addition to regular press releases before and after country visits or Working Group sessions, the Working Group issued a press statement on 29 April 2009, expressing its grave concerns at reports that a group of five persons, including foreigners, were involved in a plot against the Bolivian Government. On 16 April, the Bolivian police launched an operation in the eastern city of Santa Cruz against a group that were allegedly planning assassination attempts against the democratically elected President and other senior officials of the Government. During a police operation, three individuals were killed, while two others were arrested. Communications to the Bolivian Government as well as to the countries of origin of the nationals allegedly involved in the plot were sent to seek further information regarding the incident. The Working Group would like to thank those countries that have replied to its communication. It will continue to monitor closely the situation in the Plurinational State of Bolivia, and calls upon all Governments concerned to provide the Working Group with more detailed information as the investigation into the incident proceeds.

III. Country visits

A. Visit to Afghanistan

25. A delegation of the Working Group, composed of two of its members, visited Afghanistan from 4 to 9 April 2009. Owing to the volatile security situation in the

⁵ For a full report of the Wilton Park Conference, see <http://www.wiltonpark.org.uk/themes/governance/pastconference.aspx?confref=WP979>.

country, the Working Group was only able to visit Kabul and Jalalabad, in the eastern province of Nangarhar. The Working Group considered information on the number and types of private military and security companies operating in the country as well as on the scope and extent of their activities. It focused in particular on the system of regulation of activities of private military and security companies registered in Afghanistan, the requirements for transparency and accountability of these companies and their personnel, and at instances that might have given rise to impunity of contractors for violations of human rights. The Working Group also looked at the issue of access to effective remedies for the victims of violations.

26. The comprehensive report of the mission, including its conclusions and recommendations, will be presented to the Human Rights Council at its fifteenth session. However, the present section provides an overview of its preliminary observations expressed upon the completion of the visit.

27. During the visit, the Working Group met with the Office of the President, Ministries of Foreign Affairs, Justice, Interior and Defence, as well as the chairs and members of the Committee on Legislative Affairs of the Wolesi Jirga, and the Committee on Internal Security, National Security and Local Organs of Power of the Meshrano Jirga. The Group also had the opportunity to meet with representatives of the Afghan Independent Human Rights Commission and heard the views of civil society and representatives of the private military and security companies. Meetings were also held with representatives of the international community, as well as the United Nations Assistance Mission in Afghanistan and specialized agencies. In its visit to Jalalabad, the Working Group met with the Provincial Governor and other local authorities.

28. The Working Group commended the Government of Afghanistan for the enactment of a specific regulation on national and international private security companies operating in the country. Afghanistan is among the few countries where there is specific legislation on the issue. The regulation, which was adopted in February 2008, has led to the licensing of 39 Afghan and foreign companies and the registration of their personnel and weapons. The Working Group was informed that companies which were not licensed through this process had to cease their activities accordingly or would otherwise be considered as illegal armed groups. The Government was not able to confirm whether those companies that had not obtained a licence had indeed ceased their operations in the country or if they were still operating illegally. The Working Group expressed concern at this lack of oversight and adequate sanction for those companies possibly operating illegally in some part of the country.

29. The Working Group met with several international and local NGOs. The vast majority of them stressed that the high presence of armed private guards did not generate a feeling of increased security for the Afghan population and that, to the contrary, the high number of armed individuals, vehicles and weapons created a feeling of fear and insecurity. Most NGOs pointed to the difficulty for Afghan citizens to distinguish between international troops and international or local security contractors. This, they said, complicated the process to report accurately incidents and human rights violations. The Working Group was informed about criminal offences committed by private security contractors but, despite several accounts that human rights violations had occurred, it could not obtain documented and verifiable evidence of those violations. The Working Group would recommend

the setting up of a central mechanism for individuals and private security contractors to report serious incidents involving casualties committed by private security contractors and ensure proper investigation and access for remedy for the victims.

30. During the Working Group's visit to the country, the Ministry of Justice introduced in Parliament a draft law on private security companies. The Working Group did not receive a copy of the law but understands that the language of the new law reflects the wording of the regulation. The Working Group is of the general view that legislation, which would ensure oversight and monitoring by the State of private security companies, as well as their accountability, is a positive development. The law should ensure full protection of human rights and ensure that victims enjoy an effective remedy. The Working Group recommended the speedy adoption of new legislation following a broad consultative process and adequate awareness campaign. The Government should also take all steps necessary to ensure the full implementation of the new law.

31. The Working Group reiterated the fundamental principle of the control of the State over the legitimate use of force. The State should retain control and oversight over the legal use of force, which should not be outsourced to non-State actors without exercising proper control. In that regard, the Working Group welcomed the expressed willingness of the Government of Afghanistan to gradually increase the capacity and training of the State army, police and security forces in order to ensure the safety and security of its population and of the international community present in its territory, while ensuring respect for the rule of law and human rights.

B. Visit to the United States of America

32. The Working Group recently conducted a two-week visit to the United States. The Working Group held meetings in Washington, D.C., with senior Government officials, a member of Congress and senior staff of members of Congress and Committees, academics, experts and representatives of civil society and the private security industry. It also met with several civil society organizations in New York.

33. The purpose of the visit was to obtain direct and first-hand information on the use of private military and security contractors by the United States Government abroad as well as on the governmental policy and legal framework, and the regulatory and oversight system in place to monitor the impact of the activities of private military and security companies on human rights and ensure accountability for human rights violations. In June 2009, some 240,000 private sector employees were supporting United States military operations in Iraq and Afghanistan with additional contractors working for the United States Department of State and the United States Agency for International Development.

34. The tragic events of 16 September 2007 in Nisoor Square in Baghdad, in which employees of Blackwater opened fire, killing 17 and injuring more than 20 civilians, prompted more attention to the need for oversight and accountability of private military and security companies, at both the national and international levels. On 25 September 2007, the Working Group sent an allegation letter to the United States Government on this incident (see A/HRC/10/14/Add.1).

35. The Working Group is pleased that the United States Government has since taken serious corrective actions. It welcomes the recent adoption by the United States authorities of legislation and regulations aimed at strengthening further the oversight and accountability of private military and security companies, such as Section 862 of the National Defense Authorization Act of 28 January 2008 and the Department of Defense “Interim Finale Rule” of 17 July 2009.

36. The most significant development towards the end of impunity for United States security contractors has been undoubtedly the termination of the Coalition Provisional Authority Order 17, which provided immunity to contractors contracted by the United States. The new status of forces agreement, which entered into force on 1 January 2009, provides that “members of the United States Forces and of the civilian component will respect Iraqi laws, customs, traditions and conventions”.⁶ The Working Group welcomes the adoption of the new status of forces agreement, which has put an end to a situation that should have never been allowed. In carrying out their activities, private military and security companies and their personnel should be obliged to comply with international humanitarian law and human rights law and to abide by relevant national laws. The Working Group was assured by Government officials of the United States that the Government would not contract with companies whose personnel had been convicted of human rights violations or criminal offences.

37. The Working Group presented a list of preliminary recommendations at the end of its visit, including a call for the adoption of a comprehensive legislation for all contractors and civilian employees, including more transparency in contracting with companies by the intelligence agencies; the strengthening of the Department of Justice investigative resource capacity and the appointment of an independent prosecutor for prosecuting cases of human rights violations and criminal offences committed by individuals or companies contracted to the United States Government; the publication of statistical information on cases of human rights violations committed by private military and security companies that are being investigated as well as on the number of private military and security contractors injured or killed while supporting United States operations; the provision of greater transparency and freedom of information on private military and security companies operating under United States contracts; the establishment of a system of federal licensing of private military and security companies and a vetting procedure; the launching by Congress of an investigation into the use of private military and security companies for rendition flights; and, finally, ensuring the right of all victims to an effective remedy and swift access to justice in the appropriate jurisdiction.

38. The comprehensive report of the mission, including its conclusions and recommendations, will be presented to the Human Rights Council at its fifteenth session.

⁶ Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of the United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, art. 3.

C. Follow-up to visits

39. The Working Group held meetings with representatives of the Governments of Honduras and Ecuador in December 2008 and the Government of Peru in April 2009 to discuss the follow-up to the recommendations made in its reports following its visits to these countries.

40. In April 2009, the Foreign and Commonwealth Office of the United Kingdom launched a consultation process on a governmental proposal to introduce a package of measures to improve standards in the private military and security industry in the United Kingdom and worldwide.⁷ In its document, the Government explained that it rejected the options of licensing activities or companies on the ground that, among other things, there was no suitable enforcement authority that could effectively investigate violations and that a Government-approved register of companies would be difficult to create, maintain and use effectively. The package of measures recommended by the Government combined a self-regulation initiative through the trade association with an international approach to promote higher global standards. The trade association would take the lead in drafting a code of conduct based on high national standards and would have responsibility to enforce it. The Government would use its leverage as buyer to pressure private military and security companies to adhere to and observe the code. The Government would extend international cooperation by building on the Montreux Document and advocating an extension of the initiative to create internationally agreed standards for companies. The Government would also support the establishment of an effective impartial and transparent complaint mechanism.

41. In its letter dated 15 July 2009 to the Foreign and Commonwealth Office of the United Kingdom, the Working Group welcomed this initiative of the United Kingdom Government geared towards improving standards for private military and security companies. In its report of 19 February 2009 following its visit to the United Kingdom (A/HRC/10/Add.2), the Working Group recommended to the Government to make public the results of the 2005 Review of the United Kingdom Green Paper on the regulation of private military and security companies, or to undertake a new review, and to conduct a comprehensive discussion between the concerned bodies on the options for regulation. The Working Group considers the recent consultation as a positive step in this regard.

42. While the Working Group recognizes that the self-regulatory option through the trade associations recommended by the Government envisions enforcement, monitoring and sanctions mechanisms, it regrets that the Government did not consider the legislative option as a valid option for the United Kingdom.

43. The Working Group reiterated its recommendations included in its report of the visit to the United Kingdom (*ibid.*) and specifically in paragraph 41 of the report, where it highlighted a set of basic principles, which included the identification by the Government of activities that under no circumstances could be outsourced to private military and security companies; a registration system of private military and security companies with minimum transparency requirements; a licensing system of private military and security companies that would include an

⁷ Consultation document, Foreign and Commonwealth Office, Consultation on promoting high standards of conduct by private military and security companies internationally.

adequate vetting system; an external complaint mechanism open to individuals, State agencies, foreign Governments and other companies to ensure criminal responsibility of individuals and civil liability of the companies; and a monitoring system of oversight of the activities of private military and security companies by the Parliament.

D. Other missions in preparation

44. By a letter dated 12 January 2009, the Working Group has been extended an invitation to visit the Sudan. The Working Group is currently considering possible dates for a visit to the Sudan as well as to Equatorial Guinea, whose authorities expressed their readiness to receive the Working Group. The Democratic Republic of the Congo expressed its verbal acceptance should the Working Group envision a mission in the country in 2010. The Working Group is also considering other possible country visits on the basis of the most recent information received on mercenaries or activities of private military and security companies.

IV. Regional consultations

45. The Working Group convened its second regional consultation for Eastern European and Central Asian countries from 17 to 18 October 2008, in Moscow (see A/HRC/10/14/Add.3).

46. This regional consultation was organized pursuant to paragraph 15 of General Assembly resolution 62/145, by which the Assembly expressed its appreciation to the Office of the High Commissioner for its support for convening in Panama the regional governmental consultation for Latin American and Caribbean States, and requested the Office of the High Commissioner to convene other regional governmental consultations on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in particular regarding the effects of the activities of private military and security companies on the enjoyment of human rights.

47. The consultation sought to gain a regional perspective about the current practices related to mercenaries and private military and security companies registered, operating or recruiting personnel in the region. It also provided an opportunity to discuss the fundamental question of the role of the State as holder of the monopoly of the legitimate use of force and to share information on steps taken by States in the region to introduce legislation and other measures to regulate and monitor activities of private military and security companies on the international market. The participants discussed general guidelines, norms and basic principles for the regulation and oversight of the activities of private military and security companies to encourage the further protection of human rights.

48. The consultation was attended by representatives of the Governments of Armenia, Bosnia and Herzegovina, Kyrgyzstan, Lithuania, Poland, the Republic of Moldova, the Russian Federation, Serbia, Slovenia, Tajikistan and Ukraine. Also attending were representatives from the Collective Security Treaty Organization, ICRC, the United Nations and civil society, academics and a representative from a private military and security company.

49. The Working Group observed that the private military and security industry was expanding globally, and underlined that the rapid rate of this growth had shifted the discussion from whether non-State actors should be allowed to use force to how they should use such force. In accordance with General Assembly resolution 62/145, the Working Group stated its belief that it was essential to actively pursue the debate on the fundamental question on the role of the State as holder of the monopoly of the legitimate use of force.

50. The Working Group reiterated its conclusion that legal codification of the comprehensive system of oversight and regulation for the private military and security industry should be based upon certain identified principles presented in the previous report to the General Assembly (A/63/325, para. 90). The Working Group also stressed the importance of developing an effective system for the licensing of the private military and security industry and the training of its employees as well as an effective vetting system for the selection of employees of private military and security companies. The Working Group presented its view of a comprehensive regulatory framework that would include international and regional binding agreements containing internal petitionary or complaints mechanisms, national legislation and policy, parliamentary control and oversight, self-regulation by the industry itself and independent monitoring by civil society institutions.

51. The draft text of a possible convention on regulating private military and security companies prepared by Russian experts as well as the findings of a model law project⁸ by the School of Law at the University of Wisconsin-Madison were presented to the participants.

52. The Working Group plans to hold regional consultations for the Asia region in October 2009 and for Africa and Western Europe in 2010 to discuss the impact of traditional forms of mercenary activities as well as activities of private military and security companies on the enjoyment of human rights. The Working Group thanks the Governments of Thailand and Spain for offering to host these consultations.

V. Communications

53. The Working Group continues to receive information from Governments, NGOs and individuals concerning situations involving mercenaries, mercenary-related activities as well as allegations of human rights violations by private military and security companies. During the year under review, communications were sent to the Plurinational State of Bolivia, Croatia, Hungary, Israel, Ireland, Peru and Romania. The Working Group would like to thank the Governments of the Plurinational State of Bolivia, Hungary, Croatia, Romania and Ireland for their prompt replies to its communications. The communications and summaries of responses received from Governments will be reflected in the report of the Working Group to the Human Rights Council at its fifteenth session.

54. The Working Group reiterates its interest in receiving responses from the Governments concerned in regard to allegations submitted and considers response to its communications as an important part of the cooperation of Governments with its mandate.

⁸ *Wisconsin International Law Journal*, Vol. 26, No. 4, pp. 1078-1094.

VI. Future activities

55. The United Nations Working Group will continue its efforts towards building consensus for a possible international draft convention on private military and security companies. The Working Group began its consultations with intergovernmental and non-governmental organizations, academic institutions and experts in July. To this date, the Working Group has sent the draft convention for consultation to some 250 experts.

56. From September to December 2009, the Working Group will review comments from intergovernmental, NGOs, academic institutions and experts and will adapt and consolidate its draft convention accordingly. In accordance with paragraph 13 (b) of Human Rights Council resolution 10/11, the Working Group will subsequently share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, requesting their input on the content and scope of such a convention and to transmit their replies to the Working Group. The Council requested the Working Group to report to it at its fifteenth session on the progress achieved in the elaboration of the draft legal instrument for proper consideration and action.

57. The Working Group will also pursue its efforts to elaborate an accompanying Model Law that would assist countries that are engaged in drafting national legislation on the regulation of private military and security companies.

58. In addition and pursuant to Human Rights Council resolution 7/21, from 26 to 28 October 2009, the Working Group will convene a regional consultation for Asia in Bangkok on the topic "Traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in particular regarding the effects of the activities of private military and security companies on the enjoyment of human rights". The Working Group would like to thank the Government of Thailand for hosting this regional consultation.

59. The Working Group will also pursue its preparation for the regional consultation for Africa. From 13 to 15 October 2010, the last regional consultation will be held in Madrid for the Western European and Others Group. The Working Group would like to express its gratitude to the Government of Spain for hosting the regional consultations for Western Europe.

60. The Working Group will pursue consultations with Member States to promote the widest ratification and accession of States to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

VII. Conclusions and recommendations

61. The Working Group recommends that the approach of the international community to private military and security companies should imply greater State responsibility for the activities of private military and security companies worldwide, including responsibility for where and how they operate and their impact on the full enjoyment of human rights. Governments should devise national and international mechanisms to monitor abuses and violations of

human rights and international humanitarian law and ensure that victims have access to appropriate remedies. The Working Group also urges Governments to end all existing agreements that confer immunity from prosecution for criminal offences and human rights violations to private military and security companies.

62. In addition to monitoring mechanisms, a complaint mechanism open to individuals, State agencies, foreign Governments and other companies and entities should be established to provide an avenue for victims to be heard and a means to request information from the concerned Government and, where necessary, seeking preventive, investigatory or remedial action. The Working Group believes that, in addition to complaint mechanisms at the national level, the international community should set up an international independent complaints procedure. The Working Group envisioned such a mechanism in its draft convention.

63. The Working Group welcomes the ongoing debate in some countries, notably in the United States, on the definition of what constitutes inherently governmental functions that under no circumstances could be outsourced by the State to the private sector. The Working Group believes that there are certain functions, including participation in direct hostilities, the handling and detainment of prisoners of war, civilian internees, terrorists, and others defined under international humanitarian law, the direction and control of intelligence interrogations and intelligence gathering and analysis as well as certain law enforcement functions that cannot, under international law, be outsourced. National legislation on the private military and security industry should clearly specify the types of activities prohibited for nationally registered companies, including mercenary-related activities or participating in overthrowing legitimate Governments and political authorities; both of these activities are banned by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Working Group is proposing a definition of fundamental State functions that cannot be outsourced, in its draft convention for consideration by Member States.

64. The Working Group is concerned by the lack of effective parliamentary and public scrutiny on the scope and type of contracts allocated to private military and security companies, given the lack of transparency on the type of contractual arrangements between Governments and private military and security companies. The Working Group calls for further transparency and freedom of information on the number of such companies operating in conflict or post-conflict zones, information on the companies, number and nationality of personnel, casualties, number and types of weapons and vehicles as well as on the activities for which they are contracted, to be provided pursuant to legitimate limitations posed by national security and privacy.

65. In line with the mandate it has been given by both the General Assembly and Human Rights Council to make recommendations regarding the creation of new legal instruments to fill the gaps in existing legislation, the Working Group has prepared a draft of a possible new international convention on the regulation, oversight and monitoring of private military and security companies referred to above. Pursuant to paragraph 13 (b) of Human Rights Council resolution 10/11, the Working Group will share with Member States,

through the Office of the United Nations High Commissioner for Human Rights, this draft convention, requesting their input on the content and scope of such a convention. The Working Group expects to disseminate the draft convention in the first trimester of 2010 to all States Members of the United Nations and invites them to provide their input on the content and scope of such a convention.

66. The Working Group notes with appreciation that over the course of 2008, two additional States became party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, bringing the total number of States parties to 32. The Working Group commends the Governments of Honduras and of the Syrian Arab Republic for their ratification and reiterates its appeal to all Member States to ratify the Convention, as it remains an important international legal instrument for the prevention of the use of mercenaries as a means of violating human rights and the rights of people to self-determination.

67. The Working Group expresses its appreciation to all Member States, departments, programmes, bodies and agencies of the United Nations, including experts and non-governmental organizations, which assisted it in the fulfilment of its mandate.

Annex

Status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as at 2 July 2009

The International Convention against the recruitment, use, financing and training of mercenaries was adopted by the General Assembly in its resolution 44/34 on 4 December 1989, and entered into force on 20 October 2001.^a The status of the 1989 International Convention as at 2 July 2009, with 17 signatories and 32 State parties, is presented below. Reservations are not reflected in the present annex.

<i>State</i>	<i>Signature, succession to signature (a)</i>	<i>Ratification, accession (b)</i>
Angola	28 December 1990	
Azerbaijan		4 December 1997 ^b
Barbados		10 July 1992 ^b
Belarus	13 December 1990	28 May 1997
Belgium		31 May 2002 ^b
Cameroon	21 December 1990	26 January 1996
Congo	20 June 1990	
Costa Rica		20 September 2001 ^b
Croatia		27 March 2000 ^b
Cuba		9 February 2007 ^b
Cyprus		8 July 1993 ^b
Democratic Republic of the Congo	20 March 1990	
Georgia		8 June 1995 ^b
Germany	20 December 1990	
Guinea		18 July 2003 ^b
Honduras		1 April 2008 ^b
Italy	5 February 1990	21 August 1995
Liberia		16 September 2005 ^b
Libyan Arab Jamahiriya		22 September 2000 ^b
Maldives	17 July 1990	11 September 1991

^a Available from <http://treaties.un.org> (accessed on 2 July 2009).

<i>State</i>	<i>Signature, succession to signature (a)</i>	<i>Ratification, accession (b)</i>
Mali		12 April 2002 ^b
Mauritania		9 February 1998 ^b
Montenegro	23 October 2006 ^a	
Morocco	5 October 1990	
New Zealand		22 September 2004 ^b
Nigeria	4 April 1990	
Peru		23 March 2007 ^b
Poland	28 December 1990	
Qatar		26 March 1999 ^b
Republic of Moldova		28 February 2006 ^b
Romania	17 December 1990	
Saudi Arabia		14 April 1997 ^b
Senegal		9 June 1999 ^b
Serbia	12 March 2001 ^a	
Seychelles		12 March 1990 ^b
Suriname	27 February 1990	10 August 1990
Syrian Arab Republic		23 October 2008 ^b
Togo		25 February 1991 ^b
Turkmenistan		18 September 1996 ^b
Ukraine	21 September 1990	13 September 1993
Uruguay	20 November 1990	14 July 1999
Uzbekistan		19 January 1998 ^b