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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Impact of the use of private military and security services in  
humanitarian action****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***Summary*

In the present report, the Working Group examines the increasing role that private military and security companies play in the humanitarian sphere. In doing so, the Working Group sheds light on the extent and nature of private military and security companies' role in humanitarian action and on the diversity of services offered, including in the contexts of armed conflict, and natural and man-made humanitarian emergencies. The report highlights the impacts of commercialization of humanitarian aid on the humanitarian principles of impartiality, neutrality and operational independence. It addresses the fundamental lack of transparency around, and oversight over, the operations of these private military and security companies, noting the lack of accountability and further stressing that significant regulatory gaps remain.

The report highlights the importance of specifically considering the impacts of the use of private military and security services on humanitarian operations, their principles, and the potential for abuses of human rights and international humanitarian law. It concludes by reviewing the limitations of relevant policy tools, and makes suggestions on ways to ensure more robust regulation over these private actors and the protection of humanitarian independence.



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## I. Introduction

1. The present report is submitted pursuant to the Commission on Human Rights resolution 2005/2, in which the Commission established the mandate 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, and Human Rights Council resolution 42/9, in which the Council renewed that mandate. The report covers the activities of the Working Group since its previous report to the Council.<sup>1</sup> The thematic section analyses the human rights impact of the role of private military and security companies in humanitarian action.

2. During the reporting period, the Working Group was composed of Jelena Aparac (Chair-Rapporteur), Lilian Bobsa, Chris Kwaja, Ravindran Daniel and Sorcha MacLeod.

## II. Selected activities of the Working Group

### A. Annual sessions

3. The Working Group held its forty-first and forty-second sessions from 23 to 27 November 2020 and from 12 to 16 April 2021, respectively. During the sessions, members of the Working Group held bilateral meetings with representatives of Member States, and of international and non-governmental organizations, as well as other relevant interlocutors, and convened expert meetings, panel events and consultations. Ms. Aparac was appointed as the new Chair-Rapporteur in November 2020. Both sessions were held virtually, due to travel restrictions related to the coronavirus disease (COVID-19) pandemic.

### B. Communications and statements

4. The Working Group sent several communications jointly with other special procedure mandate holders. A media statement was issued highlighting concerns over pardons granted to four convicted private security contractors for war crimes in Iraq in violation of international law. Allegation letters and a joint press release were addressed to three Governments regarding the alleged recruitment of mercenaries in the context of the Nagorno-Karabakh hostilities in violation of international humanitarian law in November 2020. Allegation letters were also addressed to a Government and a private company regarding the alleged ill-treatment and abuse of unaccompanied migrant children in an asylum centre in Serbia by private security officers. The Working Group has also highlighted allegations of human rights violations by private security forces in the context of hostilities in the Central African Republic, following presidential elections in 2020. This was followed by a joint media statement. Finally, the Working Group welcomed, via a press release, the decision by the United States of America to stop using privately run federal prisons, stressing further that the bill in question should extend to ending the outsourcing of all detention centres, including those holding migrants and asylum seekers. The Working Group issued several joint statements, including on non-State actors. It also supported a letter to the International Criminal Court, pursuant to article 15 of the Rome Statute, on possible crimes within the Court's jurisdiction in the context of the use of private military and security companies and land grabbing in Cambodia.

### C. Selected activities

5. On 5 October 2020, the Working Group co-hosted, with Privacy International, a virtual panel discussion on the impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants. The event followed the presentation of the Working Group's report to the Human Rights Council on this topic.<sup>2</sup> Mr. Kwaja highlighted the ramifications of the border security industry on the

<sup>1</sup> A/HRC/45/9.

<sup>2</sup> Ibid.

human rights and dignity of all migrants. Participants reflected on the growing practice of States to contract companies to undertake security services, including in the context of privatization of immigration detention facilities, and expressed concern about the impact of this trend on the human rights of migrants.

6. On 2 November 2020, Mr. Kwaja presented the Working Group's report on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities,<sup>3</sup> stressing that mercenary activities worldwide had gained ground recently, threatening human rights, the protection of civilians and international peace and security.

7. The Working Group and the Centre for Military Studies co-hosted, on 16 November 2020, a virtual panel discussion with leading experts and practitioners on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities. The presenters highlighted challenges around the pervasive secrecy of mercenary and mercenary-related activities. They also warned against the practice of States of using them as a tool to influence armed conflicts abroad while denying involvement and circumventing legal responsibilities. More than 100 participants from academia, civil society and permanent missions and other practitioners attended the event and echoed the concerns of the Working Group on the evolving forms of mercenarism.

8. In December 2020 and March 2021, the Working Group convened two virtual expert consultations on the themes of: (a) the provision of military and security products and services in cyberspace by cybermercenaries and related actors, and its human rights impacts; and (b) the role of private military and security companies in humanitarian action. The consultations were attended by academics, technical advisers from the United Nations system, non-governmental organizations (NGOs) and the private sector. The deliberations from the consultations informed the Working Group's 2021 reports to the Human Rights Council and the General Assembly.

9. On 5 March 2021, the Working Group on mercenaries participated in a side event entitled "Human rights responsibilities of armed non-State actors", organized by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, in partnership with the Geneva Academy of International Humanitarian Law and Human Rights and the Federal Department of Foreign Affairs of Switzerland. The Chair of the Working Group, Ms. Aparac, addressed the human rights obligations of non-State actors, including foreign fighters and private military and security companies. She also stressed that interconnections between companies or between companies and States increased the risk of impunity in the absence of transparent and public contractual relationships.

10. The Working Group took part in the second session of the open-ended intergovernmental working group on monitoring and oversight of the activities of private military and security companies, held from 26 to 29 April 2021. The Chair of the Working Group highlighted the Working Group's long-standing efforts to promote effective regulation of private military and security companies, in particular to develop measures designed both to prevent and to ensure accountability for human rights and international humanitarian law abuses committed by private military and security company personnel, and to ensure their enforcement. Ms. Aparac reiterated that only clear legal norms backed by State enforcement could ensure accountability and provide effective remedies for victims. The Working Group proposed a number of specific recommendations for inclusion in any future instrument, such as the fact that State and non-State actors should generally refrain from the use and recruitment of private military and security companies and their personnel, in particular when there is an increased risk of human rights and international humanitarian law abuses.

11. On 28 April 2021, Ms. Bobea took part in the launch by the Geneva Centre for Security Sector Governance of an e-learning course on strengthening oversight capacities of national human rights institutions, with a specific focus on Latin America and the Caribbean.

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<sup>3</sup> A/75/259.

## D. Country visits

12. The Working Group places great importance on undertaking country visits. Despite sending numerous requests for country visits and reminders to follow up on previous letters, most requests did not receive a response. Nevertheless, the Working Group remains engaged to conduct visits to Bosnia and Herzegovina in 2021 and Australia in 2022, subject to COVID-19-related travel restrictions. The Working Group thanks all Member States who have responded positively to its request for a visit, notably Côte d'Ivoire, and looks forward to receiving invitations from other Member States for official visits in 2022 and the near future.

## III. Thematic report

13. This year's report focuses on the role of private military and security companies in humanitarian action. Over the years, the Working Group has raised awareness about the role and impact of business actors on the human rights of vulnerable populations, most recently within the United Nations and in immigration and border management contexts. Considerable attention has been paid to the relationship between humanitarian actors and State security forces. Less attention has been afforded, however, to the proliferation of private security providers providing services in this sector.

14. The growing reliance on private military and security companies by humanitarian actors has brought about significant challenges with regard to protection of civilians, and to human rights and international humanitarian law violations. Most importantly, the role of these private companies in humanitarian action, and the commercialization of humanitarian aid, raises concerns over their impacts on the humanitarian principles of impartiality, neutrality and operational independence.<sup>4</sup> The Working Group continues to receive allegations concerning private military and security companies involved in humanitarian contexts. The present report aims to assess the extent and the nature of private military and security companies' role in humanitarian action, and to contribute to greater awareness of the surrounding operational and human rights issues.

15. The thematic report begins by laying out the contexts in which this business sector emerged and operates, highlighting human rights and international humanitarian law concerns regarding the presence of private military and security companies. The report sheds light on the nature and diversity of services provided by these private companies in the humanitarian field and addresses their impact on human rights. It analyses the fundamental lack of transparency around these operations, most notably in the relationships between clients and these service providers. It looks at the consequences for effective oversight, accountability and remedies for victims of human rights and international humanitarian law violations, resulting directly or indirectly from private military and security companies' operations. The report concludes by proposing recommendations to States, companies, and humanitarian actors, including the United Nations.

### Methodology and definitions

16. The methodology included a mixed-methods approach consisting of an extensive desk review; in-depth policy analysis of contracts and procedures related to contracting private military and security companies; and submission inputs and interview notes. Furthermore, the Working Group facilitated a virtual round table on the subject, at which humanitarian specialists and academics shared insights and critical analysis. The deliberations assisted the Working Group to prioritize the main issues relevant to this thematic report.

17. The present report builds on previous work undertaken by the Working Group, including its 2020 report on the impact of the use of private military and security services in immigration and border management,<sup>5</sup> its 2016 global study on national regulatory

<sup>4</sup> See, for example, General Assembly resolution 58/114.

<sup>5</sup> A/HRC/45/9.

frameworks and legislation on private military and security companies<sup>6</sup> and its 2014 report on the use of private military and security companies by the United Nations.<sup>7</sup> In January 2021, the Working Group issued a call for submissions, seeking contributions from all relevant stakeholders. The Working Group is grateful to all those who responded to the call for inputs, participated in the events and so generously shared their knowledge and expertise.

18. Challenges faced by the Working Group included the lack of transparency surrounding private military and security company operations, including their use in humanitarian operations, and the difficulty in identifying the respective roles and responsibilities of the multiple State and non-State actors involved. Understanding the role of private military and security companies is a challenging task, not least because access to readily available data is limited. Moreover, very little research has been conducted on the use of private military and security companies in the humanitarian sector.

19. Two terms used throughout the report merit specific attention. Firstly, the Working Group uses the term “private military and security companies” to refer to corporate entities providing, on a compensatory basis, military and/or security services by physical persons and/or legal entities.<sup>8</sup> This definition focuses on the activities performed by corporate entities rather than on the way that a company may self-identify. In line with this definition, the thematic report focuses on those companies that provide private military and security services, including not only private military and security companies, but also defence companies, corporations that specialize in information and in advanced technologies, and airlines. While identifying under a different label, these companies are major providers of security-related services in humanitarian action.<sup>9</sup>

20. Secondly, “humanitarian action” is action undertaken “beyond providing immediate relief, and covers a spectrum of activities that starts with disaster preparedness, then includes humanitarian response, and finally extends into early recovery”.<sup>10</sup> Humanitarian action can be conducted in the context of armed conflict or during peacetime. The term “humanitarian actors” is used in the report to define all actors whose primary objective is to save lives and alleviate suffering in a manner that respects and restores personal dignity. The principles of independence, neutrality and impartiality guide humanitarian work, and necessitate the autonomy of humanitarian actors. As such, they are not subject to control of, or subordination to, economic, political, military or other non-humanitarian objectives. Operationally, the humanitarian *space* means that an impartial and independent assessment of need determines what actions must be taken.<sup>11</sup>

## **IV. Role of and service provision by private military and security companies in the context of humanitarian action**

### **A. Contemporary challenges for humanitarian action and privatization**

21. The decades since the end of the cold war have witnessed a significant expansion in the number, type and size of humanitarian organizations, including actors operating in humanitarian emergencies. In its efforts to keep pace with the growing demands of protracted conflicts, man-made and natural disasters, pandemics and displacement, the “humanitarian landscape” as traditionally understood is undergoing significant change. This has seen a rise

<sup>6</sup> A/HRC/36/47.

<sup>7</sup> A/69/338.

<sup>8</sup> For the full definition, see A/HRC/15/25, annex, art. 2.

<sup>9</sup> Submission from the International Code of Conduct Association, available from [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx).

<sup>10</sup> The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, available at [www.unhcr.org/50b491b09.pdf](http://www.unhcr.org/50b491b09.pdf), p. 10.

<sup>11</sup> Filipa Schmitz, “A humanitarian–development nexus that works”, ICRC blog, 21 June 2018, available at <https://blogs.icrc.org/law-and-policy/2018/06/21/humanitarian-development-nexus-that-works>.

in “new” actors, including private military and security companies, and the emergence of new forms and modalities of humanitarian assistance.

22. According to the *Global Humanitarian Overview 2021*, 235 million people will need humanitarian assistance and protection in 2021. This number has risen to 1 in 33 people worldwide. It is a significant increase from 1 in 45 in 2020, which was already the highest figure in decades. In 2021, the United Nations and partner humanitarian organizations are projected to provide humanitarian assistance to 160 million people.<sup>12</sup> Meanwhile, complex emergencies and conflicts are more intense and protracted, they are taking a heavier toll on civilians, and they are disproportionately affecting women and children.<sup>13</sup>

23. Consequently, humanitarian actors operate extensively in remote field settings for prolonged periods, conducting a wide spectrum of tasks stemming from provision of humanitarian relief to long-term development operations. However, attacks against humanitarian workers are on the rise. Adequate security standards for organizations and their staff are now expected in humanitarian environments and shortcomings risk legal liability. Over recent decades, hundreds of aid workers have been victims of killings, injuries and kidnappings.<sup>14</sup>

24. The Working Group notes the increasing commodification of services provided in humanitarian contexts. While this kind of competition is not new, the Working Group is concerned about the growing legitimization of the efforts of these private actors. The global demand for humanitarian assistance has stimulated a competitive and lucrative market of commodified services and goods produced and delivered by private military and security companies. Commercialization of security may, in turn, raise concerns regarding the ability of private actors to use force, to influence political agendas, to transfer technical skills and knowledge away from the host State, and to move decision-making beyond the reach of State accountability mechanisms. A lack of clarity as to the chain of command or control over private military and security company personnel may also obscure accountability. Increasing dependence on private security can mean that such actors play roles in shaping the “politics of protection” and the conceptualization of security concerns in various contexts, as they directly influence and redefine the environment in which humanitarian entities intervene, by intersecting with the State’s military forces and with private business.<sup>15</sup>

25. The presence of private military and security companies has taken place in a context in which the humanitarian space is treated as being full of security threats that can be managed, if not mitigated, by security services.<sup>16</sup> The Working Group notes an increased propensity for criminalization of humanitarian actions, particularly if such actions do not align with State objectives. Humanitarian actors also operate in contexts where there is growing anti-terrorism legislation. They are often required to negotiate access to populations in need with armed groups that may be defined by some as terrorist groups. This may result in humanitarian actors seeking the expertise of private military and security companies, as the presence of the latter is deemed critical for operational effectiveness, further compromising adherence to the principles of impartiality, neutrality and independence. Humanitarian actors may also be perceived as supporting actors suspected of terrorism

<sup>12</sup> Available from <https://gho.unocha.org>.

<sup>13</sup> See S/2020/366.

<sup>14</sup> Fabrice Weissman, “MSF and kidnappings – the secrets and the dilemmas”, 18 September 2020, available at <https://msf-crash.org/en/publications/war-and-humanitarianism/msf-and-kidnappings-secrets-and-dilemmas>; and Jane Warren, “Aid workers under attack”, *Royal Society for the Prevention of Accidents Occupational Safety and Health Journal*, vol. 50, No. 1 (2020), pp. 17–20.

<sup>15</sup> Peter W. Singer, “Humanitarian principles, private military agents: some implications of the privatized military industry for the humanitarian community”, in *Resetting the Rules of Engagement: Trends and Issues in Military-Humanitarian Relations*, Victoria Wheeler and Adele Harmer, eds. (Humanitarian Policy Group Report 21, February 2006).

In 2018 alone, 221 violent attacks were carried out against humanitarian workers, generating 126 fatalities, wounding 144 aid workers, and involving the kidnapping of 130 humanitarian providers. Jane Warren, “Aid workers under attack”, *Royal Society for the Prevention of Accidents Occupational Safety and Health Journal*, vol. 50, No. 1 (2020).

<sup>16</sup> See further Albert Mbell Nimpence, “Is donor State ‘securitization’ a threat or an opportunity for humanitarianism?”, *Young African Leaders Journal of Development*, vol. 3 (2021).

whenever they engage in humanitarian dialogue with them. Added to this challenge is the presence of private military and security companies in situations of armed conflict where they act as combatants.<sup>17</sup>

26. In the overall context of securitization, the ethics of neutrality and independence that demark humanitarian action are becoming progressively blurred by the involvement of contractually-orientated private military and security companies. Meanwhile, these companies are subject to a structural context determined by (contractual) dependency, on clients in humanitarian contexts, and by competition with other security actors. Their corporate survival hinges on being accepted by others as a legitimate security actor, while their services are primarily assessed on short-term economic performance rather than on responding to the needs of civilian populations during humanitarian emergencies.

## **B. Type of services provided by private military and security companies in humanitarian contexts**

27. Services offered by private military and security companies in the humanitarian sector are clearly extensive and expanding. Humanitarian actors have contracted these companies to provide armed protection for aid convoys and accompanying personnel. The provision of static guarding services (armed and unarmed) for humanitarian agencies premises, such as camps, buildings, storage facilities and staff residences, are commonplace.<sup>18</sup> Private military and security companies have also been contracted by humanitarian agencies, particularly NGOs, to provide technological and security expertise,<sup>19</sup> risk assessments and analysis,<sup>20</sup> security management and tracking systems, crisis management, kidnapping and ransom situation management, and security awareness training.

28. Private military and security companies often provide logistical services – including ground vehicle and air vehicle maintenance, flight operations, transportation of humanitarian aid and personnel, managing cargo and logistics, and communications. Additionally, these private actors are involved in evacuation services, including management and security of evacuation facilities, and military and medical evacuations in the contexts of armed conflicts, natural disasters, epidemics, and other crises.

29. Inevitably, the use of private military and security companies by humanitarian actors gives rise to specific issues of concern, not least the potential for human rights and international humanitarian law abuses, or ordinary criminal offences. The tendency to transfer civilian tasks to these private companies embodies risks, including their lack of training on the promotion of gender, race, ethnic and class equality in the distribution of social goods and humanitarian aid.

## **C. Biosecurity and natural disasters**

30. In recent years, private military and security companies have also been engaged in health crisis responses, including in the contexts of the Ebola epidemic and the COVID-19

<sup>17</sup> See further

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26025>,  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26305>  
and

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25681>.

<sup>18</sup> Defence Systems Limited, for example, supplied security guards to the United Nations Children's Fund (UNICEF) in the Sudan and Somalia, and to the World Food Programme in Angola. The Office of the United Nations High Commissioner for Refugees contracted ArmorGroup Kenya for the provision of office security guards. See further Åse Gilje Østensen, "UN use of private military and security companies: practices and policies", *SSR Papers*, Paper No. 3 (Geneva Centre for the Democratic Control of Armed Forces, 2011), pp. 14–15.

<sup>19</sup> Jan Litavski, "The challenges of the private security sector in the new century", *Quarterly of the Centre for Euro-Atlantic Studies* (2012), see [www.ceas-serbia.org](http://www.ceas-serbia.org).

<sup>20</sup> Åse Gilje Østensen, "UN use of private military and security companies: practices and policies", p. 15.

pandemic, risking securitization of the health sector. They have been hired to run detention centres, guard medical facilities, provide track and trace services, and so on. This gives rise to a number of concerns, not least in regard to data protection, duty of care to private military and security company personnel and their families who are at increased risk of exposure to disease, and local perceptions of medical facilities being guarded by these private security guards, particularly when they are armed.<sup>21</sup>

31. There have been reports of human rights abuses, including excessive force being used to enforce COVID-19-related restrictions, and increasing health risks to vulnerable groups, including in detention contexts.<sup>22</sup> Where detention is involved, marginalized groups, such as LGBTQ+ persons, minorities, unaccompanied minors, the elderly and pregnant women are at increased risk, particularly where there is overcrowding.<sup>23</sup>

32. The provision of relief in the context of natural disasters and environmental degradation also constitutes an area in which we increasingly see an overlap between humanitarian actors, State entities, and private military and security companies.

#### **D. Involvement of private military and security companies in peace operations**

33. Peacekeeping mandates have evolved from reactive, physical protection efforts to comprehensive, whole-of-mission protection strategies. Peace operations contribute to everyday security through patrolling and their deterrent presence. In limited cases, peace operations have engaged proactively in robust operations against armed groups to neutralize threats to civilians. Security in peace operation environments has grown in importance for the United Nations, particularly following its experiences in Rwanda and Somalia in the 1990s. This has been coupled with a shift from a “when to leave” policy to one of “how to stay” in high-risk environments.<sup>24</sup>

34. However, increased use by peace operations of underregulated private military and security companies to support security risk management may often pose challenges to protection of civilians. A particular issue of concern arises when private military and security companies supporting United Nations operations engage in the use of force. That stated, when the United Nations engages private military and security companies it requires them to have a use-of-force policy that aligns with the use-of-force policy of the United Nations. Any use of force must meet the criteria of being: reasonable and proportional to the threat; necessary under the circumstances known at that time, and there must be no reasonable alternative; and the minimum required to negate the threat. Use of deadly force may only be in self-defence or to protect persons against imminent threat of harm.

35. There is often a lack of clarity about the roles and responsibilities of these private military and security actors. Missions have been deployed recently where there is little or no “peace to keep”. Without clearly articulated parameters, protection lacks both outer limits and minimal expectations as to what is required. A clearer articulation of the scope of these private actors’ services would help clarify their engagement in humanitarian contexts and address protection concerns. An added concern with the use of private military and security companies in peace operations is that they are market-driven entities and ongoing instability sustains the

<sup>21</sup> Sorcha MacLeod, “Private security, human rights and COVID-19: regulatory challenges at the margins”, University of Copenhagen Faculty of Law research paper No. 99 (21 October 2020), available from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3716492](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3716492).

<sup>22</sup> CIVICUS: World Alliance for Citizen Participation, “Freedom of expression and the COVID-19 pandemic: a snapshot of restrictions and attacks” (2021).

<sup>23</sup> Sorcha MacLeod, “Private security, human rights and COVID-19: regulatory challenges at the margins”, pp. 9–13; see also A/HRC/45/9, para. 50.

<sup>24</sup> Elke Krahnemann and Anna Leander, “Contracting security: markets in the making of MONUSCO peacekeeping”, *International Peacekeeping*, vol. 26, No. 2 (2019), p. 170.

industry. This leaves open questions regarding these private companies' interests in peace process outcomes.<sup>25</sup>

36. The Working Group dealt extensively with the use of private military and security companies by the United Nations in its 2014 report<sup>26</sup> and notes with regret that the challenges associated with using these companies remain, and that use of them and interaction with them by the United Nations in its operations continues to exacerbate human rights risks for vulnerable populations.

## **E. Expenditure on private military and security companies in humanitarian action**

37. The Working Group attempted to identify an aggregate of how much humanitarian actors are spending on private military and security companies. Most organizations were unable to provide figures for such expenditures or even estimates of costs. There are several reasons for such difficulties.

38. Firstly, organizations do not track expenditures on security separately, with a distinct budget line. Security services may be undertaken as part of a project and budgeted accordingly. Secondly, organizations that have a decentralized structure and a large presence on the ground may have difficulties in collecting information at the headquarters level, owing to real or perceived impediments to documenting and communicating costs. Thirdly, security provision among United Nations agencies, funds and programmes is fragmented. All major agencies have their own security management structures and are protective of their independence.<sup>27</sup> Finally, with regard to external resources, differences in internal hiring administrative rules and procurement procedures are often key barriers to the computation of costs. Expenditures are registered in accordance with the nature of the service (advisory services, technical support etc.), not the output, therefore costs directly allocated to security services are not documented appropriately.

39. While the Working Group recognizes the above-mentioned challenges and the resources needed to monitor and document expenditures, its experts note that in the absence of such data it is difficult to determine how management arrives at evidence-informed decisions on contracting private military and security companies.

## **V. Normative framework**

40. Under international humanitarian law, States parties to a conflict have a duty and primary responsibility to provide humanitarian assistance to civilian populations under their control.<sup>28</sup> Third States (which do not participate in the conflict) have the right to assist victims of an armed conflict, but not a duty to do so. Any such actions must be in accordance with humanitarian principles. Third States must also permit humanitarian aid to transit through their territory. International humanitarian law also protects the right of the civilian population to receive humanitarian assistance.<sup>29</sup>

41. Under certain circumstances, other actors have a right, but not a duty, to provide humanitarian assistance. This is mostly applicable to humanitarian organizations that undertake relief operations. Aside from the International Committee of the Red Cross (ICRC)

<sup>25</sup> Huseyin Yigit, "Privatization of peacekeeping: UN's institutional capacity to control private military and security companies" (Naval Postgraduate School, Monterey, United States of America, 2013).

<sup>26</sup> A/69/338.

<sup>27</sup> United Nations System Chief Executives Board for Coordination, Inter-Agency Security Management Network Meeting, thirteenth session, Vienna, 22–25 June 2010, CEB/2010/HLCM/20, point 78.

<sup>28</sup> International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law Database*, rule 55, see [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule55](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55).

<sup>29</sup> *Ibid.*

specifically mentioned in the Geneva Conventions, other entities may provide humanitarian assistance provided that they are impartial.<sup>30</sup>

42. Humanitarian action is governed by the humanitarian principles of humanity, neutrality, impartiality and operational independence from political or other agendas.<sup>31</sup> These principles originate from international humanitarian law applicable in armed conflict, but they have been since also deemed applicable in peacetime,<sup>32</sup> including during responses to natural disasters and pandemics. Moreover, the right to humane treatment is core to both human rights law and international humanitarian law.<sup>33</sup>

43. Although international humanitarian law and humanitarian principles regulate humanitarian assistance, they do not mention private military and security actors. There is an absence of a singular and binding international legal framework for regulating, monitoring, and providing oversight over private military and security companies and their personnel. They are not subject to significant regulation apart from State company laws. In recent years, there have been a number of multi-stakeholder initiatives (that have included Governments, civil society and industry) which are self-regulatory in nature, for this business sector. These have not, however, considered the relationship between private military and security companies and humanitarian actors.<sup>34</sup>

44. The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict was formulated in 2008. It reaffirms existing obligations under international humanitarian law and international human rights law applicable to States, including due diligence, in the context of their relationships to private military and security companies. It also identifies good practices for regulating these private companies. Notably, contracting States are expected to abide by the requirements regarding respect for human rights and international humanitarian law. The Montreux Document is, however, limited in several significant respects, and is limited in its scope of application, given that it is focused on private military and security companies in armed conflict situations.

45. The International Code of Conduct for Private Security Service Providers was drawn up in 2010. It applies directly to signatory private military and security companies when operating in “complex environments”. It lists a broad spectrum of rules that draw on international human rights law and international humanitarian law. The Code also commits signatory companies to exercising due diligence to ensure compliance with the Code, including in personnel vetting, and in ensuring monitoring of conduct. Companies commit to ensure that personnel receive training on international humanitarian law, international human rights law, international criminal law, and relevant criminal law. Signatory companies agree to establish accessible complaints mechanisms, and to offer remedy to victims.<sup>35</sup>

46. The International Code of Conduct Association provides certification of compliance by private companies. This is done through an industry-based “quality and management standard”, subject to recognition by the Association’s Board of Directors. Certification of a private military and security company should attest to its exercising due diligence in ensuring

<sup>30</sup> See, for example, arts. 10–11, 15 (1), 59 (2) and 61 (1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War; art. 70 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); art. 18 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

<sup>31</sup> See further information from the Office for the Coordination of Humanitarian Affairs about the four humanitarian principles, available at [www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples\\_eng\\_June12.pdf](http://www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf).

<sup>32</sup> General Assembly resolutions 46/182 and 58/114.

<sup>33</sup> See art. 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; and common art. 3 to the Geneva Conventions of 12 August 1949.

<sup>34</sup> Sorcha MacLeod, “Private security companies and shared responsibility: the turn to multi-stakeholder standard-setting and monitoring through self-regulation-‘plus’”, *Netherlands International Law Review*, vol. 62 (2015), pp. 119, 124 and 127.

<sup>35</sup> See further Nigel D. White, “Due diligence obligations of conduct: developing a responsibility regime for PMSCs”, in *Private Military and Security Companies (PMSCs) and the Quest for Accountability*, George Andreopoulos and John Kleinig, eds. (London, Routledge, 2015), p. 34.

that human rights standards are complied with in its systems and processes, and with respect to clients and contractors.<sup>36</sup>

47. The Guiding Principles on Business and Human Rights reaffirm the primacy of State responsibility for human rights violations.<sup>37</sup> They stipulate that States should consider preventative and remedial measures when dealing with conduct of businesses.<sup>38</sup> The Guiding Principles stress that businesses must ensure respect for human rights in their operations. They refer to States' due diligence duty to protect against human rights abuses by third parties, including businesses. They also refer to corporations' due diligence obligations to avoid and mitigate any adverse human rights impacts they may have.<sup>39</sup>

48. In addition, the Working Group notes the positive attempts to bring into being a single document containing legal provisions governing humanitarian action. In 2016, the International Law Commission finalized its Draft Articles on the protection of persons in the event of disasters and recommended to the General Assembly the elaboration of a convention on the basis of this text.<sup>40</sup> The project aims to ensure the effectiveness of humanitarian assistance, while preserving the territorial sovereignty of the State affected by a disaster. It preserves the specificity of international humanitarian law. It has the merit of unifying the assistance regime in peacetime, by placing protection in cases of natural, environmental, technological or industrial disasters under the same umbrella.<sup>41</sup> The Working Group strongly encourages States to consider the issue of the role of private security providers in this context.

49. Against this background, the Working Group is concerned about the potential for misuse of humanitarian assistance by private security providers. Use of private security providers has the propensity to undermine the security of humanitarian actors by blurring humanitarian action with military and security priorities. Moreover, when private military and security companies provide armed protection to humanitarian actors, they may undermine the neutrality of the assistance and therefore the delivery of relief to a population in need, creating additional security concerns for humanitarian actors.<sup>42</sup> States that have valid reasons to suspect that the delivery of aid is not targeted at such relief may refuse the delivery of aid on its territory.<sup>43</sup> This might arguably be justified where private military and security companies are used in aid delivery.

50. Given the weaknesses of self-regulatory regimes, experts, including the Working Group, have explored and advocated for an international binding framework to regulate private military and security companies.<sup>44</sup>

## VI. Human rights and international humanitarian law abuses

51. The Working Group continues to receive information about private military and security personnel being reportedly involved in human rights abuses, including enforced disappearances, summary executions, indiscriminate killings, and sexual exploitation and

<sup>36</sup> A/74/244, para. 58; and see further Sorcha MacLeod, "Private security companies and shared responsibility: the turn to multi-stakeholder standard-setting and monitoring through self-regulation- 'plus'".

<sup>37</sup> *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HR/PUB/11/04 (2011).

<sup>38</sup> A/HRC/17/31, annex, commentary on principle 1.

<sup>39</sup> *Ibid.*, principles 13, 15 and 17–21.

<sup>40</sup> A/71/10, para. 46.

<sup>41</sup> Alina Miron, "Les fondements normatifs de l'assistance humanitaire dans les autres situations : catastrophes naturelles, technologiques, environnementales et pandémies", sect. 1 "Catastrophes", in Sandra Szurek, Marina Eudes and Philippe Ryfman, *Droit et pratique de l'action humanitaire* (L.G.D.J., 2019).

<sup>42</sup> See art. 23 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

<sup>43</sup> See, for example, art. 59 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War; and ICRC *Customary International Humanitarian Law Database*, rule 55.

<sup>44</sup> See, for example, A/HRC/WG.10/3/2, paras. 48–51.

abuse.<sup>45</sup> Moreover, private military and security personnel may contribute to human rights violations committed by others as a result of services that they provide. In such instances, humanitarian actors using services of that private company may be associated with its actions and even with its other clients at a local level.<sup>46</sup> Moreover, where there is a failure by humanitarian organizations to exercise due diligence in the private military and security company contracting process, and to maintain oversight, they may inadvertently hire personnel with links to parties to a conflict, or to persons implicated in human rights violations. If force is used by private military and security company personnel, it could undermine the principle of neutrality and give the impression that the humanitarian actors are involved in a conflict.<sup>47</sup> Accordingly, working with companies with dubious human rights records does cause reputational damage, create security risks, and significantly undermine operations.

## A. Indiscriminate attacks and private military and security companies

52. Numerous allegations have been made against private military and security companies for indiscriminate and excessive use of force against civilians, resulting in many civilian deaths. Such incidents have also occurred when these personnel have been engaged in humanitarian-type support services, including the guarding of convoys, personnel and premises. When armed private security personnel operate closely alongside military personnel, such as State armies or United Nations peace operations, and engage in the use of force, this can compromise the principle of distinction between civilian and military persons and objects, creating confusion about legitimate targets.<sup>48</sup>

53. Failure to distinguish between civilian and military targets constitutes a violation of the fundamental principle of distinction at the heart of international humanitarian law. Examples involving armed private military and security companies illustrate difficulties that may arise in using them, that impact negatively on human rights. Armed private military and security personnel are at times not easily distinguishable from military actors. They may therefore be perceived as legitimate military targets. In turn, they may respond with force. On occasion, private military and security personnel have used force when not targeted. If such private military and security companies are accompanying or working with humanitarian actors, the latter will likely be associated with them. This risks humanitarian actors and their premises being perceived as legitimate military targets, drawing them into a conflict.

54. In an unprovoked incident in Iraq in 2007, four Blackwater private security guards indiscriminately fired on Iraqi civilians in Nisour Square. This resulted in the injuring of 17 civilians, and the killing of 14, including women and children.<sup>49</sup> Blackwater was hired to guard coalition buildings and employees.<sup>50</sup> Subsequent convictions, ranging from 30 years' to life imprisonment, of the four guards by a United States court were considered an

<sup>45</sup> James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford University Press, 2014).

<sup>46</sup> The United Nations Office for Project Services utilized ArmorGroup to conduct demining operations in Afghanistan in 2008. ArmorGroup reportedly contacted warlords to provide guarding duties. Lou Pingot, *Dangerous Partnership: Private Military and Security Companies and the UN*, Report (Global Policy Forum and Rosa Luxemburg Foundation, 2012), p. 28.

<sup>47</sup> Rob Grace, "Surmounting contemporary challenges to humanitarian-military relations", in *Civilian-Military Coordination in Humanitarian Response: Expanding the Evidence Base* (Watson Institute, August 2020), pp. 4 and 37.

<sup>48</sup> See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26025>.

<sup>49</sup> James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies*.

<sup>50</sup> Karen A. Mingst, "Private contractors and NGOs: new issues about humanitarian standards", paper presented at the International Studies Association Convention, Honolulu, United States, March 2005, p. 8.

anomaly.<sup>51</sup> The four were pardoned in 2020 by the then President, Donald Trump – an affront to justice.<sup>52</sup> More recently, Dyck Advisory Group, which was hired by the Government of Mozambique to counter violence by the Al-Shabaab insurgent group in Cabo Delgado in Northern Mozambique, has been accused of the indiscriminate killings of civilians, and of failing to distinguish between civilian and military targets.<sup>53</sup>

55. Use of indiscriminate or excessive force impinges on the right to life. The loss of the life of another person in self-defence is dictated by the principle of proportionality, and it must be the only means possible of preserving one's own life.<sup>54</sup> In a number of the above-mentioned incidents, the use of force against civilian personnel was not proportional, and, in most incidents, it was not even predicated on the right to self-defence. These private military and security companies were not operating in support of humanitarian actors in these particular circumstances. Nevertheless, they were associated with operations of actors who have justified or based many of their operations on the protection of civilians.

## B. Interoperability

56. In the recent situation of the Central African Republic, addressed by the Working Group,<sup>55</sup> Russian private military and security companies supporting State military structures against rebel groups have also been subject to serious allegations.<sup>56</sup> The accusations include mass summary executions of prisoners, indiscriminate targeting of civilians and civilian objects, enforced disappearances, forced displacement, violations of the right to health, attacks on humanitarian actors, and torture. In addition to expressing concern to the Central African Republic, the Russian Federation, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the companies involved about human rights and international humanitarian law violations, including impeding humanitarian access, the Working Group expressed concern regarding the “proximity and interoperability” between the Russian contractors in the Central African Republic and the United Nations mission, MINUSCA. It noted that, “blurring of the lines between civil, military and peacekeeping operations during the hostilities creates confusion about the legitimate targets and increases the risks for widespread human rights and humanitarian law abuses”.<sup>57</sup> It has further been reported that humanitarian dialogue and access has been very difficult to negotiate with these commercial entities.

## C. Sexual exploitation and abuse

57. The Working Group dealt with the gendered human rights impacts of the use of private military and security companies in a 2019 report.<sup>58</sup> Private military and security companies frequently provide their services in fragile State contexts, in which sexual violence is often rampant. The reports of the Secretary-General of the United Nations on sexual exploitation

<sup>51</sup> Submission from the Centre for Advanced Study in International Humanitarian Law, available from [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx).

<sup>52</sup> “US pardons for Blackwater guards an ‘affront to justice’ – UN experts”, available at [www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26633&LangID=E](http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26633&LangID=E).

<sup>53</sup> Amnesty International, “*What I Saw is Death*”: War Crimes in Mozambique’s Forgotten Cape (2021).

<sup>54</sup> See further Federico Lenzerini and Francesco Francioni, “The role of human rights in the regulation of private military and security companies”, in Francesco Francioni and Natalino Ronzitti, eds., *War by Contract: Human Rights, Humanitarian Law and Private Contractors*, (Oxford University Press, 2011), pp. 61–66.

<sup>55</sup> “CAR: Experts alarmed by government’s use of ‘Russian trainers’, close contacts with UN peacekeepers”, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26961&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26961&LangID=E).

<sup>56</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26305>.

<sup>57</sup> Ibid.

<sup>58</sup> A/74/244.

and abuse give some detail on allegations against contractors. However, it is not possible to decipher whether these allegations against contractors included any private military and security personnel. The extent to which sexual exploitation and abuse is an issue when these private actors are used in the context of humanitarian work is unclear. Nevertheless, should sexual exploitation and abuse occur, it creates multiple risks – including reputational and operational – for humanitarian agencies engaging with the private military and security actors that have records of sexual exploitation and abuse or sexual violence.

## **VII. Lack of transparency, oversight, accountability and effective remedies**

### **A. Lack of transparency and challenges in accessing information**

58. Transparency regarding the use of private military and security companies is lacking,<sup>59</sup> including about their use in humanitarian action. There is a dearth of public information on these companies' operational details and contracts between them and their clients, which remain confidential.<sup>60</sup> Meanwhile, privatization of security reduces levels of control and oversight over those involved in security provision, particularly when private entities act outside their State of incorporation and in States with humanitarian needs, where domestic institutions may be ill-capacitated.

59. Regarding private military and security companies, there is often a lack of clarity around contractual hierarchies, corporate structures, and relationships between parent companies, subsidiaries and subcontractors.<sup>61</sup> Additionally, these companies are frequently established, dissolved, merged and moved, or operate through multiple subsidiaries.<sup>62</sup> This is coupled with multiple contractual and insurance layers across jurisdictions,<sup>63</sup> which further complicates ascertaining at what level responsibility should fall when human rights abuses occur. Local private military and security companies are also frequently hired by humanitarian actors, also giving rise to concerns regarding potential negative impacts on civilian populations and humanitarian principles.

60. In the humanitarian sector there is an even greater need for transparency regarding the procurement of private military and security companies, including on the tendering process, procurement procedures, and the exercise of human rights due diligence. Humanitarian actors often fail to systematically conduct adequate due diligence on the security companies they contract, including the carrying out of a review of their ownership structures, which results in risks of being associated with misconduct. Moreover, there can be a disconnect between the organization's policies at the headquarters level and practice in the field. Some agencies require security providers to fill out questionnaires, only to select a company that fails to meet their criteria.<sup>64</sup> Furthermore, selecting the right security provider might not always fall within the expertise of humanitarian agencies, and some of them are curtailed by limited budgets for such contracts.

### **B. Oversight and accountability**

61. Security privatization in the humanitarian sector creates a plurality of private military and security actors that are subject to inadequate oversight and control mechanisms. States exercise oversight over their armed forces when they deploy overseas – military law travels with them. The same extent of control over individuals does not necessarily apply to private

<sup>59</sup> Alan Bryden and Marina Caparini, eds., *Private Actors and Security Governance* (Geneva Centre for the Democratic Control of Armed Forces, January 2006), p. 200.

<sup>60</sup> A/HRC/45/9, para. 62.

<sup>61</sup> See, for example, A/74/244, para. 28; and A/HRC/7/7, paras. 16 and 51.

<sup>62</sup> A/HRC/45/9, para. 62; and A/74/244, para. 28.

<sup>63</sup> See further A/HRC/7/7, para. 51.

<sup>64</sup> Jamie Williamson, "Aid agency security is a disaster waiting to happen", *The New Humanitarian* (18 May 2021).

military and security company personnel.<sup>65</sup> However, States and international organizations retain human rights and international humanitarian law obligations when contracting these companies, including extraterritorially.

62. In the case of States and international organizations, responsibility for human rights violations revolves around attribution of responsibility for the conduct of private military and security company personnel. States and international organizations have due diligence obligations towards local populations under human rights and international humanitarian law instruments, which may include State obligations to investigate and prosecute perpetrators, the putting in place of preventative measures, and the provision of avenues for redress for harm caused by human rights violations, including by non-State actors. For instance, pursuant to common article 1 to the Geneva Conventions of 12 August 1949, States have an obligation to respect and to ensure respect for international humanitarian law in all situations within their jurisdiction or under their control. This is particularly relevant in cases where States recruit or contract private military and security companies when providing humanitarian assistance to civilian populations. However, the more unclear the layers of responsibility are, the more difficult it is to pursue accountability.<sup>66</sup> This is partially because rules on the attribution of conduct do not translate well to private military and security companies.

63. The Working Group conducted a study on national laws and systems for the monitoring of activities of private military and security companies. It established that although most States have systems in place for monitoring private military and security companies operating in their territory, these systems often do not extend to overseas activities. Internal State monitoring processes do not generally cover compliance with human rights and international humanitarian law. Monitoring mechanisms rather tend to focus on violations of “permissible activities, licensing, authorization, recruitment and other administrative processes”, resulting in possible administrative sanctions. Provision for penal and civil sanctioning of these companies is rare.<sup>67</sup> References to human rights and international humanitarian law norms, and requirements for vetting, are often absent from licensing and authorization procedures.<sup>68</sup>

64. Crimes committed by private military and security company personnel are most likely to be domestic criminal law-type violations as opposed to international crimes, necessitating treatment within domestic jurisdiction. In the absence of recourse to justice, there is a risk of a perception of impunity. Prosecution of these personnel before national courts is challenging, due to factors such as jurisdiction, the collecting and preservation of evidence, conducting investigations in overseas territories, the willingness of States to pursue such cases, and relocation of personnel.<sup>69</sup> Women may face additional barriers in accessing justice, not least gender discrimination.<sup>70</sup>

65. The applicability of international criminal law to private military and security company personnel is also fraught with difficulties. International criminal law relates to accountability for war crimes, crimes against humanity and genocide, prosecutable at the domestic and international levels. International criminal courts do not have jurisdiction over corporate entities, but over individuals. However, significant thresholds have to be met for prosecution, at least at an international level. Barriers include gravity of offences, triggering mechanisms, and jurisdictional and judicial cooperation. Obtaining evidence where private military and security personnel commit crimes while operating in complex humanitarian emergencies will likely prove challenging.

<sup>65</sup> See A/HRC/36/47.

<sup>66</sup> Jean d’Aspremont et al., “Sharing responsibility between non-State actors and States in international law: introduction”, *Netherlands International Law Review*, vol. 62 (July 2015), p. 62.

<sup>67</sup> A/HRC/36/47, paras. 43–46 and 50.

<sup>68</sup> *Ibid.*, paras. 52–53.

<sup>69</sup> Angela Snell, “The absence of justice: private military contractors, sexual assault, and the U.S. government’s policy of indifference”, *University of Illinois Law Review* (January 2011), pp. 1125 and 1149.

<sup>70</sup> A/74/244, para. 28.

### C. Access to effective remedies

66. Access to a remedy for victims of human rights and international humanitarian law abuses, or crimes by private military and security company personnel, is contingent on the existence of reporting mechanisms, the accessibility of avenues through which to pursue a case against an entity or an individual, and financial resources, among numerous other factors. In many instances, grievance mechanisms within a private military and security company will not be known; they may not exist, or may operate on an ad hoc basis.

67. The rights of victims of human rights abuses to an effective remedy is firmly embedded in international law.<sup>71</sup> Reparation may include cessation of wrongful conduct, guarantees of non-repetition, compensation, satisfaction, or a commitment to take disciplinary or penal action against those responsible for harm done.<sup>72</sup> States' obligations to protect and fulfil human rights extend to protecting against human rights abuses by third parties, including private military and security companies.<sup>73</sup> Failures by a State to exercise due diligence with respect to these private actors may give rise to a right to a remedy, which could in theory be pursued against a State implicated in a private actor's conduct, or where it has failed to exercise due diligence.

## VIII. Conclusions and recommendations

### A. Conclusions

68. **The Working Group is concerned about the increasing involvement of private military and security providers in humanitarian action, given that it may compromise the effectiveness of security as a State function and a public good, reserving security only for those who can afford it. The report has noted that some private military and security providers work for several clients simultaneously, which may compromise humanitarian operations and the neutrality of their mandates. Findings also point to the fact that the growing number of private military and security companies active in the humanitarian space exacerbates the risk of violations of human rights and international humanitarian law, and undermines humanitarian principles.**

69. **Accordingly, the growing diversification of their markets is alarming given that they increasingly operate in close proximity to vulnerable populations. This diversification of services renders regulation and oversight over them even more critical. It is thus necessary to critically reflect on the types of situations and spaces in which they operate, and the array of human rights and international humanitarian law violations that can and do arise. In addressing gaps in the regulatory framework governing the conduct of private military and security companies, such reflections should be taken into consideration. In particular, the Working Group calls on States to regulate, at a minimum, critical issues such as prevention of human rights and international humanitarian law abuses, the scope of permissible activities of private military and security companies, accountability, and remedies for victims of such abuses.**

70. **Robust State regulation and oversight over private military and security companies through domestic legislation is also essential. States can establish independent mechanisms to monitor companies and to ensure they are properly vetting personnel. The role of the donors, specifically States, is critical in the ongoing process of redefining the "security industry of humanitarian action". States should also create**

<sup>71</sup> See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, annex.

<sup>72</sup> *Ibid.*; and Dinah Shelton, *Remedies in International Human Rights Law*, second edition (Oxford University Press, 2006), pp. 76 and 80.

<sup>73</sup> See, for example, Human Rights Committee, general comment No. 31 (2004); and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010).

mechanisms for sanctioning non-compliance with the laws applicable to private military and security companies, including human rights standards. Increased transparency around the use of private military and security companies, and effective regulation and oversight, would place increased pressure on these private companies to ensure that both they and their personnel adhere to human rights and international humanitarian law standards, in line with the multitude of relevant guidelines and codes that have been developed to guide them over recent years. In turn, humanitarian actors have the responsibility to ensure that those they work with adhere to human rights and international humanitarian law norms by embedding such commitments explicitly in contracts with private providers.

71. Going forward, the Working Group encourages a multidimensional response to the regulation of private military and security companies. Only a comprehensive approach adopted at State and international levels can effectively regulate these private companies and ensure accountability. In the context of humanitarian action, this necessitates further assessment on the use of private military and security companies by humanitarian actors, and other actors conducting operations in humanitarian contexts, in order to develop empirical evidence for evaluating the human rights implications of such actions. States that have been active in contracting private security providers for decades should lead the way in such efforts.

72. There is also a need for further efforts by the private military and security industry and the humanitarian sector themselves to self-regulate. For humanitarian organizations, the Global Interagency Security Forum has, for instance, created a tool/module to assist humanitarian agencies with exercising human rights due diligence in their contracting of private military and security companies.<sup>74</sup> As noted, the Working Group has welcomed multi-stakeholder efforts instigated to address regulatory gaps. However, the resultant documents are non-binding and voluntary in nature,<sup>75</sup> and they can under no circumstances be considered as a sufficient regulatory framework.

## B. Recommendations

### 1. To States

73. States have a duty to respect, promote and fulfil their human rights obligations, and they have the obligation to respect and ensure respect of international humanitarian law. When States outsource their functions to non-State actors, including private military and security companies, they are responsible for their conduct. They have an additional obligation to monitor their contractual partners, and to ensure that they respect relevant legal rules.

74. In circumstances where a company is incorporated in, or licensed to operate in, a State, the State must ensure effective domestic regulation and oversight over these companies, including through legislation, monitoring and certification processes. In their own procurement of these private companies, States should adopt a zero-tolerance policy on corruption in the contracting process.<sup>76</sup>

75. States should integrate mandatory human rights due diligence requirements for humanitarian agencies, to ensure that these agencies exercise human rights due diligence in contracting private military and security companies.

76. States should develop a robust oversight culture over their own certification bodies for private military and security companies. Any persons involved in

<sup>74</sup> See <https://gisf.ngo/gisf-resources>.

<sup>75</sup> See the Global Policy Forum page at <https://archive.globalpolicy.org/pmscs/50211-regulation-and-oversight-of-pmscs.html#inter>.

<sup>76</sup> Submission from the International Code of Conduct Association, available from [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx).

accreditation should be required to be competent in international human rights law and international humanitarian law.

77. Host States should ensure that any private military and security company operating in their territory complies with national laws, and international humanitarian and human rights standards. They should refuse entry and licences to those who commit or contribute to abuses of civilian populations.

## 2. To humanitarian actors

78. Humanitarian actors contracting private military and security companies need to ensure effective human rights due diligence in procuring these services, and this should be integrated into procurement guidelines. This necessitates background screening of these companies, their ownership, and any prior allegations of violations of human rights or international humanitarian law against them, and of the company's human rights policies, and training and personnel vetting procedures. Moreover, humanitarian actors should not contract solely on the basis of lowest cost, but ensure fully adherence to their own procurement criteria. Care should be taken to ensure that those involved in local procurement fully comply with headquarters policies. Humanitarian actors should commit to greater transparency on the specific criteria they are using in procurement of these companies. They should also provide for public and open selection criteria, which include adherence to humanitarian principles, and explain the impact on their selection decisions.<sup>77</sup> Companies that come up short on human rights compliance should not be contracted.

79. Humanitarian actors should consider requiring validated conformance to international standards and best practices as a condition for contracting a private military and security company. Independent third-party certification and International Code of Conduct Association membership could lead to greater independent oversight and monitoring of companies.<sup>78</sup>

## 3. To the United Nations

80. The Working Group reiterates its call to the United Nations to ensure the effective implementation of the rules outlined in the Guidelines on the Use of Armed Security Services from Private Security Companies, and to develop appropriate penalties for non-compliance by contracted companies with these Guidelines.<sup>79</sup>

81. United Nations Member States and United Nations entities should call for, and support, independent and impartial investigations when human rights and/or international humanitarian law abuses have allegedly been perpetrated by private actors operating under a United Nations contract. Situations in which the United Nations maintains any relationship with a private military and security company, even in the absence of a contract, should be closely monitored to ensure adequate human rights investigations.

82. The United Nations and its Member States need to work on the development and provision of security solutions from within United Nations internal security resources, those of host countries, and those of Member States deploying to peace operations. In doing so, States should reconsider restrictions on the use of their military contingents.

83. Where private military and security companies are hired to manage data, such as in the context of the COVID-19 pandemic and track and trace services, the companies should ensure that the data management and systems used comply with

<sup>77</sup> Post-tender feedback should be provided to companies not selected. Submission from the International Code of Conduct Association, available from [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx).

<sup>78</sup> Submission from the International Stability Operations Association, available from [www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx](http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/report-pmsc-humanitarian-action-2021.aspx).

<sup>79</sup> A/69/338, para. 83.

international and domestic law, and ensure data protection and privacy. Any data gathered must be lawfully obtained, necessary, and proportionate to the public health aim. Moreover, it must be stored securely for a specified period of time, after which such data should be destroyed.

84. The United Nations should further break down its statistics on sexual exploitation and abuse by “contractors” to specify whether any of them fall within the private military and security company category. Other options for compiling statistics on human rights violations by private military and security sector personnel should be explored.

**4. To private military and security companies**

85. Companies should be cognizant of heightened risks of being implicated in human rights and international humanitarian law violations when operating in the humanitarian space, particularly when armed. They should ensure that they have adequate human rights due diligence procedures and processes in place to prevent violations by their personnel. This should include stringent vetting and screening processes; and clearly articulated policies on human rights, international humanitarian law and sexual exploitation and abuse, which outline consequences for violations, and reporting mechanisms. Companies should cooperate with any remediation or judicial processes and ensure that implicated personnel are not rotated elsewhere.

86. Companies should bear in mind the risks of working with multiple clients and across a variety of mandates, and how this can impact on their operations with humanitarian actors.

**5. To other actors**

87. Finally, the International Code of Conduct Association and the Montreux Document Forum, and any other such multi-stakeholder initiatives, should consider how to explicitly address gaps in regulation in the context of private military and security services being utilized by humanitarian actors.

88. All actors operating within the humanitarian space should refrain from recruiting private military and security companies – national or international.

89. All actors operating in the humanitarian field should consider developing disaggregated data on armed actors which includes private military and security companies, and mercenaries. Failure to do so risks incomplete mapping of arms carriers, placing humanitarian operations at further security risks.

90. The Working Group also recommends moving beyond self-regulatory regimes. It calls for a binding international regulatory framework governing the conduct of private military and security companies. Any such framework should fully reflect the broadened operating spaces of these companies, including in the humanitarian field.

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