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**THE RIGHT OF PEOPLES TO SELF-DETERMINATION
AND ITS APPLICATION TO PEOPLES UNDER COLONIAL
OR ALIEN DOMINATION OR FOREIGN OCCUPATION**

**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 people to self-determination on the resumed first
session (10 to 14 October 2005 and 13 to 17 February 2006)**

Addendum

Chairperson: Amada Benavides de Pérez

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2.

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

This report presents the results of a meeting, held from 13 to 17 February 2006 in Geneva, which completed the Working Group's first session, held from 10 to 14 October 2005. The Working Group met with the participation of representatives of the Office of the High Commissioner for Human Rights. It consulted States and intergovernmental and non-governmental organizations on the implementation of the Group's mandate.

The Working Group adopted a text outlining its methods of work, including the establishment of a monitoring and complaint mechanism to address complaints regarding mercenaries' activities.

Concerning substantive areas of work, the Working Group reviewed several country situations and considered appropriate action.

The members also agreed to proceed with establishing a network of academics working on the study of mercenarism and mercenary-related activities; to undertake a comparative analysis of relevant national and regional legislation; and to recommend the convening of a high-level round table under United Nations auspices to discuss the role of the State as primary holder of the monopoly on the use of force.

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Introduction

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination met in Geneva from 13 to 17 February 2006 to conclude its first session, which commenced in Geneva in October 2005. Working Group members Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. José Luis Gómez del Prado (Spain), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji) attended.

I. INTERPRETATION OF THE MANDATE AND METHODS OF WORK

2. The Working Group discussed and adopted a document outlining its methods of work, key features of which are as follows:

- During the course of its deliberations, when dealing with specific cases or situations, the Working Group renders opinions which are incorporated annually in its reports to the Commission on Human Rights and the General Assembly;
- Within the meaning of its mandate and in order to encourage the further protection of human rights posed by current and emergent threats caused by mercenaries, mercenary-related activities and activities of private military and security companies, the Working Group will endeavour to elaborate concrete proposals and advisory opinions on possible new standards, general guidelines or basic principles;
- The Working Group will identify and prepare studies on emerging issues, manifestations and trends regarding mercenaries, mercenary-related activities and activities of private military and security companies;
- As a general rule, within the meaning of resolution 2005/2, the Working Group will examine situations where mercenaries, mercenary-related activities and non-State actors, including private military and private security companies, impede the enjoyment of human rights, interfere with the self-determination of peoples and the constitutional and social order of States, either as part of security measures, or in armed conflict or in any other situations. The Working Group will also examine, as a special category, situations where children are used as mercenaries or involved in mercenary-related activities;
- Communications addressed to the Working Group may be received from States, State organs, intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or their representatives. In this respect the Working Group will develop a model questionnaire for the submission of information;
- The Working Group will make use of the “urgent action” procedure when a case so merits.

3. The Working Group was informed by the Secretariat that current budget provisions allow for only one session to be held annually. However, in order to comply with the complex mandate given to it by the Commission on Human Rights and to be on an equal footing with other Working Groups of the special procedures of the Commission, it considers that it would be necessary to hold three sessions annually. In this regard, the Working Group seeks the support of the Commission in permitting additional meetings to be held.

II. ACTIVITIES OF THE WORKING GROUP

Activities since the October 2005 meeting

4. In mid-November 2005, the Working Group sent introductory letters with a list of questions concerning its mandate and activities to all Member States, as well as a range of international organizations and non-governmental organizations. The Working Group is encouraged by the responses of States, demonstrating their willingness to engage constructively with the Working Group in the sharing of information, and for several expressions of interest in hosting round tables.

5. On 24 November 2005, one member of the Working Group participated in a meeting on the “privatization of armed forces”, organized in Geneva by the Swiss Committee of UNESCO. The meeting brought together a variety of academics and NGOs and offered an opportunity for the member to introduce and clarify the mandate of the Working Group.

6. On 3 December 2005, two members of the Working Group participated in the Workshop on Regulating the Private Commercial Military Sector, hosted by the Institute for International Law and Justice in New York. The members reported that there was apparently limited support for the International Convention against the Recruitment, Use, Financing and Training of Mercenaries among private military and security companies. Representatives of these companies also expressed their conviction that their activities were legal on the basis of having been contracted by Governments and having established corporate structures. The members recognized the benefits of gaining views directly from the private military actors and academics, and hoped to benefit from further opportunities for such direct exchanges.

7. In October and November one member of the Working Group participated at the sessions of the Commonwealth of Independent States (CIS) Inter-Parliamentary Assembly (IPA) and its Defense and Security Commission presenting a new model law “On counteracting mercenarism” which was unanimously adopted by the 26th session of the CIS IPA.

Communications

8. In November 2005, the Working Group sent introductory letters with a list of questions concerning its mandate and activities to all Member States, to eight international organizations and to a number of non-governmental organizations (NGOs). Responses were received from the following States: Armenia, Colombia, Costa Rica, Lebanon, Mauritius, Mexico, Spain and Switzerland. Of the components of intergovernmental organizations, the United Nations Office for Legal Affairs (OLA), the United Nations Research Institute for Social Development (UNRISD) and the Department of Safety and Security (DSS) of the Secretariat replied. Of the NGOs, Médecins Sans Frontières International responded.

9. The following correspondence has been received by the Working Group:
 - A letter from a Vice-President of the Parliament of Chile, dated 25 October 2005;
 - A letter from Amnesty International, dated 7 November 2005;
 - A letter from the Ambassador of the Netherlands at the Permanent Mission in Geneva, dated 9 February 2006.
10. On behalf of the Working Group, the Chairperson sent the following communications:
 - A letter to the Government of Fiji, dated 23 December 2005;
 - A letter to the Government of Papua New Guinea, dated 23 December 2005;
 - A response to the Vice-President of the Parliament of Chile, dated 30 January 2006;
 - A letter in response to the Ambassador of the Netherlands, dated 17 February 2006.
11. At its February 2006 meeting, the Working Group decided to send the following communications: letters to the Government of Chile; the Government of Honduras; the African Union; the Government of Papua New Guinea; the Government of Fiji; the Government of Equatorial Guinea; and Amnesty International.

Activities at the February 2006 meeting

12. During consultations held with Governments, the Working Group sought support for a high-level policy round table under the auspices of the United Nations. The Working Group also invited States to recommend institutes and researchers for an academic network of studies on mercenarism. In conveying its appreciation to those States which had responded to the questionnaire, the Working Group encouraged States to submit legislation and regulations relevant to mercenaries, mercenary-related activities and activities of private military and security companies, in order to continue its work on comparative analysis. The text of the regional legislation on mercenarism from another regional inter-State organization (CIS) was provided to the representative of the African Union for acquaintance and comparison with the Organization of African Unity (OAU) regional Convention for the Elimination of Mercenarism in Africa.
13. The Working Group held consultations with the African Union. It requested information on the application of the 1977 OAU Convention, and expressed its interest in exploring opportunities for cooperation with the African Union in the future. The Working Group approved the proposal made by the African Union to send a letter requesting relevant legislation that the African Commission on Human and Peoples' Rights and the African Union could provide to the Working Group, and initiating dialogue and collaboration.
14. The representative from the International Committee of the Red Cross (ICRC) made a presentation on the approaches of international humanitarian law, including the definition of

mercenaries and the responsibilities of States with respect to private military and security companies. A distinction was made between the protection that international humanitarian law extends to combatants compared to civilians, and the approach codified in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which expressly prohibits and criminalizes mercenary activities. Under international humanitarian law, a captured person from the regular armed forces benefits from a prisoner-of-war (POW) status, which offers certain protections with regard to detention and treatment, and cannot be prosecuted for having engaged in armed conflict. However, if a mercenary is captured, the person does not benefit from POW status and can be prosecuted for having been directly engaged in hostilities. The ICRC representative stressed that, regardless of whether a person is recognized as a mercenary or not according to international humanitarian law, the person can be prosecuted under other standards and instruments. In the light of the many concerns raised about the definition of mercenary by the ICRC, the Working Group agreed to continue this dialogue with the ICRC at every session of the Working Group.

15. The consultations with NGOs included representatives from the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the International Service for Human Rights, the American Jurists Association and the Geneva International Peace Research Institute. NGOs were invited to take part in the academic network, and to submit information on situations and allegations. The NGOs were also requested to provide the Working Group with information about the incidence of NGOs employing private companies in the field for protection, and to assist the Working Group with their views about whether or not a legal distinction should be made between a mercenary per se and a mercenary violating human rights in terms of the Working Group's work emphasis.

16. The Working Group received presentations from staff at OHCHR on the Quick Response Desk, as well as on developments with regard to the issue of "the private sector and human rights". Noting the appointment of a Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, the Working Group expressed the wish to explore opportunities for further cooperation.

III. NATIONAL, REGIONAL AND INTERNATIONAL LEGISLATION

17. In accordance with its mandate to continue work done with regard to the strengthening of the international legal framework for the prevention and punishment of the recruitment, use, financing and training of mercenaries, the Working Group discussed various aspects of national, regional and international legislation.

18. In particular, with regard to national legislation, the members examined the responses from States to the above-mentioned questionnaire about their intention to strengthen national legislation addressing mercenaries.

19. With respect to the regional level, Working Group member Alexander Nikitin made a presentation of the CIS Model Law "On counteracting mercenarism", which had been adopted by the CIS Inter-Parliamentary Assembly on 19 November 2005. He drew attention to novel features of the model law, including: basing the new extended legal definition of a mercenary

upon principles corresponding to the recommendations of the former Special Rapporteur on mercenaries, Mr. Ballesteros; the expansion of the definition of mercenarism to cover non-material motivations; the inclusion in the definition of nationals contracted by foreign actors to undertake mercenary activities in their own countries; the explicit exclusion of peacekeeping activities from the definition of a mercenary; the promotion of internal coordination among national ministries to ensure a more comprehensive approach to addressing mercenarism and mercenary-related activity; acknowledgment of poor socio-economic conditions as social roots of mercenarism and thus the implications for adopting related measures to combat the problem; the obligation for States to notify other States of mercenary activity, and to cooperate with international organizations in issues of counteracting mercenarism. The Working Group members took note of this new regional legal instrument.

20. Members also discussed further the possibility of compiling and analysing all relevant legislation on mercenaries and mercenary-related activity and disseminating such a collection of documents, with a view to raising awareness of the issue and corresponding approaches adopted. In this regard, the Working Group took note of two relevant instruments of the Economic Community of West African States (ECOWAS) indirectly relating to the use of mercenaries in this subregional context, which were introduced and circulated - the 1999 Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, adopted by the 16 member States of ECOWAS, and the 2001 Protocol on Democracy and Good Governance supplementary to the prior instrument. These instruments were also referred to in the discussion with the representative of the African Union.

21. The Working Group also discussed the status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in particular the relevance of the definition to modern contexts. In this respect, the members agreed that it would be important to address fundamental questions such as the core actors with respect to the use of force, at a forum which would allow for high-level political as well as more philosophical and methodological consideration of the issues. As such, the group further endorsed the promotion of a high-level round table to be held under United Nations auspices. The Working Group was informed by the Secretariat of the financial implications of such a gathering, and that there was currently no corresponding budget allocation. However it was envisaged that such a high-level round table would be supported by a separate budget line from the United Nations, especially taking into consideration that some national Governments expressed interest and readiness in hosting such an international forum on their territory.

IV. COUNTRY SITUATIONS

22. The Group reviewed country situations that were brought to its attention. With respect to allegations, the members examined information provided by an NGO regarding the situation of convicted alleged mercenaries in **Equatorial Guinea**. It was reported that alleged mercenaries, including five South African nationals, convicted in 2004 of attempting to overthrow the Government and murder the President of Equatorial Guinea, had been ill-treated and denied food and medical care since their arrest in March 2004. The group noted that in June 2005 the

Special Rapporteur on mercenaries, in response to an earlier NGO report on this issue, wrote to the Government of Equatorial Guinea, requesting information concerning the steps taken by the competent authorities in compliance with the relevant international provisions. It was also noted that there had been no response to this letter at the time of the meeting. The Working Group decided to send a letter to the Government of Equatorial Guinea recalling that there had been no response to the previous letter and requesting further information on the situation.

23. The members also examined the situation brought to their attention of alleged Chilean mercenaries active in **Honduras** in September 2005. The Working Group decided that it would send a letter to the Government of **Chile**, seeking further clarification of the details of the case. It would also seek an invitation from the Government to visit the country in order to investigate the situation further. Given the regional dimensions of the situation, the Working Group would also approach and seek invitations from the Governments of Colombia, Ecuador, Peru and Venezuela to visit those countries with a view to a possible regional mission.

24. In the course of its monitoring functions, the attention of the Group had also been drawn to the last case of alleged Fijian mercenaries on the island of Bougainville, an autonomous province of **Papua New Guinea**. The Working Group was further informed by the monitoring undertaken by the former Special Rapporteurs on mercenaries since 1988 on the situation in Bougainville. The Group recalled prior reports by former Special Rapporteur Mr. Ballesteros (notably E/CN.4/1998/31 and A/52/495), indicating past involvement of a private military company in the country. The Working Group decided to request an invitation for a country visit from the Governments of **Fiji** and **Papua New Guinea** to investigate the situation further.

25. The Working Group also took note of a note verbale sent by the Government of **Cuba** in August 2005, in which attention was drawn to alleged mercenaries of Cuban origin being arrested, tried and convicted in **Panama** and subsequently pardoned and freed by the President of Panama. In this regard, the former Special Rapporteur, Ms. Shameem, had in October 2004 responded to a previous letter from the Government of Cuba in which the Special Rapporteur was seeking further information which would clarify the nature of the acts committed and their links to mercenarism. There has been no response to this letter as of the date of this report. The note verbale also made reference to abuses and torture in the Abu Ghraib prison in **Iraq** and the Guantánamo naval base in Cuba, allegedly perpetrated by "military contractors". It also drew attention to the detention in March 2004 in **Zimbabwe** of 64 alleged mercenaries, and 15 other persons also detained in **Equatorial Guinea**, who were reportedly organizing a coup d'état in Equatorial Guinea. The Working Group would monitor and follow up on the situations.

V. PRIVATE MILITARY AND SECURITY COMPANIES

26. The Working Group noted that some United Nations departments, funds, programmes and organizations in the system, as well as NGOs, were reportedly utilizing the services of private military and security companies. In this regard, the Working Group expressed the intention to seek further information on the nature and scope of this practice and the criteria used for selecting these companies, with a view to ensuring the appropriate application of international human rights standards and international humanitarian law.

27. The Working Group noted with concern the range of human rights reportedly violated in the course of the operations of private military and security companies recruiting employees from Latin America and other developing regions of the world. These included infringement of the right to security of persons, the rights of workers and respect for national sovereignty and human rights. In particular, the reported practice of differentiated salary scales applied by private military companies (PMCs) and private security companies (PSCs) to employees from different regions of the world may be viewed as breaching the right to non-discrimination.

28. In this respect, the members agreed that the normative provisions of the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (E/CN.4/Sub.2/2003/12/Rev.2) of 2003 approved by the Sub-Commission on the Promotion and Protection of Human Rights should apply to private companies in those cases where such companies were operating and providing military and security services in more than one country. The Norms should also apply when private companies operate as a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

VI. FUTURE ACTIVITIES

29. In keeping with the Working Group's mandate to study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination, the Working Group decided to establish a network of academics to further support the gathering of information on and study of different regional experiences. Such a network will be drawn in part from experts identified by States.

30. The Working Group will compile and undertake a comparative analysis of relevant national, regional and international legislation on mercenaries and mercenary-related activity and will explore possibilities of utilizing the Internet for providing wide public accessibility of this information and documentation. In order to assure comparative representation of various national and regional approaches to regulating mercenarism, the Working Group will explore the possibility of consultancy and expertise from external experts of various regions.

31. The above activities would also contribute to the Working Group's efforts at standard setting in addressing the issues of mercenaries, mercenary-related activities, and the activities of private companies offering military assistance, consultancy and security services on the international market.

VII. RECOMMENDATIONS

32. The Working Group recommends the application of the normative provisions of the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights to those private military and security companies operating and providing military and security services in more than one country or as a cluster of economic entities operating in two or more countries. Particular consideration should be given in this regard to the right to security of persons, the rights of workers and respect for national sovereignty, territorial integrity and human rights.

33. **Noting that only 27 States have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Working Group recommends to Member States which have not yet done so, to consider signing and ratifying the International Convention and incorporating relevant legal norms into national legislation.**
34. **The Working Group encourages States to incorporate regional legislation on mercenarism into national law where (as with the African Union, ECOWAS and the Commonwealth of Independent States) such regional frameworks exist.**
35. **The Working Group supports the recommendation of the former Special Rapporteur on mercenaries (A/60/263), in requesting States to consider the convening of a high-level round table under the auspices of the United Nations to undertake discussion of the fundamental question of the role of the State as primary holder of the monopoly on the use of force. Such a meeting will facilitate a critical understanding as to the responsibilities of different actors in the current context, including private military and security companies, and their respective obligations for the protection and promotion of human rights.**
36. **The Working Group recommends to the Commission that, in order to fulfil the mandate given to it under resolution 2005/2 and to be on an equal footing with other Working Groups of the special procedures of the Commission, it consider its proposals for three sessions per year and for the above-mentioned round table, and to allocate appropriate funds.**
37. **The Working Group recommends that, in order to ensure that the military assistance, consultancy and security services offered by private companies at the international level neither impede the enjoyment nor violate human rights, Governments of States from which these private companies export such services should adopt relevant legislation, set up regulatory mechanisms to control and monitor their activities including a system of registering and licensing which would authorize these companies to operate and to be sanctioned when the Norms are not respected.**
38. **The Working Group also encourages Governments importing the military assistance, consultancy and security services provided by private companies to establish regulatory mechanisms for the registering and licensing of these companies in order to ensure that the import of the services provided by these private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country.**
