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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**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**

**Chairperson-Rapporteur: José Luis Gomez del Prado**

## 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 resolution 2005/2 of the Commission on Human Rights. The Working Group is composed of Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. José Luis Gómez del Prado (Spain), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji). Mr. José Luis Gómez del Prado was elected as Chairperson-Rapporteur on 19 February 2007.

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

Section I introduces the report and section II presents an overview of activities undertaken during the reporting period.

The Working Group devotes a thematic section (section III) of the report to transnational issues, including the privatization of warfare, the activities of private military and security companies, and extraterritorial and accountability issues. Section IV addresses the status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the Working Group welcomes the accession of Cuba and Peru to this instrument during the period under review.

In section V, the Working Group further describes future activities it envisages, in particular a process of regional consultations with States, leading to a global round table, and section VI contains its conclusions and recommendations. Inter alia, the Working Group recommends to Member States to support the process of regional consultations and to enable the Working Group to hold three annual sessions. It recommends regional and other intergovernmental organizations, in particular the European Union and the Organization of American States, to elaborate a common system to regulate private military and security companies exporting their services abroad. It urges Governments of States from which private military and security companies export military assistance, consultancy and security services to avoid granting immunity to these companies and their personnel.

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## **I. INTRODUCTION**

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination was established in 2005, pursuant to resolution 2005/2 of the Commission on Human Rights and assumed by the Human Rights Council, which replaced the previous mandate of the Special Rapporteur established in 1987.
2. In 2007, the Working Group was composed of the following experts: Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia), Mr. José Luis Gómez del Prado (Spain), Mr. Alexander Nikitin (Russian Federation) and Ms. Shaista Shameem (Fiji). Mr. José Luis Gómez del Prado was elected Chairperson-Rapporteur in February 2007, a position that rotates on an annual basis.
3. For the purpose of this report, and while recognizing the definitional challenges, the Working Group refers to private military and private security companies (PMSCs) as including private companies which perform all types of security assistance, training, provision and consulting services, i.e. ranging from unarmed logistical support, armed security guards, and those involved in defensive or offensive military and/or security-related activities, particularly in armed conflict areas and/or post-conflict situations.

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

### **A. Second session of the Working Group**

4. The Working Group on the use of mercenaries held its second session at the United Nations Office at Geneva from 19 to 23 February 2007. It elected Mr. José Luis Gomez del Prado as its Chairperson-Rapporteur for the coming year. During the session, the Working Group held consultations with Member States, United Nations agencies and organs, including different divisions and branches of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Labour Organization (ILO), the International Committee of the Red Cross (ICRC), regional and other intergovernmental organizations, non-governmental organizations (NGOs), and an association of PMSCs.
5. A representative of ICRC continued dialogue with the Working Group on approaches of international humanitarian law, including the definition of mercenaries and the responsibilities of States with respect to PMSCs and their employees. The ICRC representative noted that few PMSC employees are regular combatants and members of armed forces, and they are thus civilians and lose protection under international humanitarian law when taking direct part in hostilities.
6. A consultation was held with ILO, and its representative informed the Working Group of relevant ILO legal instruments and mechanisms which could be useful to consider when identifying principles relating to PMSCs, including ILO Convention No. 181 on Private Employment Agencies and its accompanying recommendation No. 188.

7. Among consultations with a number of other institutions and NGOs, the Working Group held a dialogue with researchers from the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and was informed about regulatory efforts of outsourcing military functions and comparative research on experiences in the United States of America and South Africa, and its effects on situations such as in Iraq and Afghanistan. The Business and Human Rights Resource Centre (BHRRC) presented information regarding PMSCs and impact of their activities on human rights, and has created a thematic section on this issue on the BHRRC website.<sup>1</sup>

8. The Working Group held a consultation with the International Peace Operations Association (IPOA), a trade association representing some 30 PMSCs. The representative noted the self-regulatory sets of voluntary codes of conduct developed within the industry, which in general would support also further regulation to bring certainty and protection to serious firms. The Working Group emphasized the need for licensing, regulating and monitoring of PMSCs at the national level and for PMSCs to operate in a legal framework consistent with human rights standards.

9. The Working Group considered a number of country situations. Following its deliberations, the Working Group decided to send letters of request, or renewed requests, to visit Afghanistan, Central African Republic, Chad, Equatorial Guinea, Fiji, Ghana, Iraq, Papua New Guinea, South Africa, United States of America and Zimbabwe. As to regulatory initiatives and in order to address newer forms of mercenarism and activities of PMSCs, the Working Group agreed in the short term to foster the ratification/accession of Member States to the existing International Convention against the Recruitment, Use, Financing and Training of Mercenaries and in the longer-term, to seek support for a process towards an additional protocol to the Convention. On 23 February 2007, the Working Group issued a press release upon concluding its second session.<sup>2</sup>

## **B. Field missions**

10. The Working Group visited Peru, Fiji and Chile during 2007, and expresses its appreciation for these invitations. While the comprehensive reports of the missions are reflected in the addendums to this annual report, this section provides an overview of the main findings.

11. A delegation of the Working Group, composed of the Chairperson-Rapporteur and one member, visited Peru from 29 January to 2 February 2007.<sup>3</sup> The Working Group recommended,

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<sup>1</sup> See <http://www.businesshumanrights.org/Categories/UNintlorgs/UNintergovernmentalorgs/UN/UNWorkingGrouponuseofmercenaries>.

<sup>2</sup> See <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/1D59617B2E30442FC125728E003539CD?opendocument>.

<sup>3</sup> This report will be issued as an addendum to the present one.

inter alia, that in the process of bringing Peru's legislation into line with the International Convention, Peru adopt the broadest possible interpretation in order to typify at the domestic level not only the traditional offence of acting as a mercenary but also mercenary-related activities, taking into account the emergent trends of the activities of private military and security companies operating domestically and/or abroad.

12. A delegation of the Working Group, composed of the Chairperson-Rapporteur and one member, visited Fiji from 14 to 18 May 2007.<sup>4</sup> The Working Group recommended, inter alia, the accession of Fiji to the International Convention and the development of accompanying national legislation, the establishment of a system of regulation, licensing, control and monitoring of private military and security companies in order to provide effective oversight, and the adoption of measures to address issues of reintegration and post-traumatic stress disorders for individuals returning from security work abroad.

13. A delegation of the Working Group, composed of the Chairperson-Rapporteur and one member, visited Chile from 9 to 13 July 2007.<sup>5</sup> The Working Group recommended, inter alia, the penalization and legislation at the national level with a view to adopting the broadest possible criteria of the offence of mercenarism, the swift conclusions of the investigations in the military courts and urgent measures be taken to safeguard the rights of Chilean nationals still working in Iraq.

14. The Working Group intends to undertake visits to a variety of countries relevant to different aspects of its mandate, including States that hire PMSCs, States on whose territory PMSCs operate, and States where PMSCs are incorporated and registered, in terms of recruitment, use, financing and training of employees and employers of PMSCs and their subsidiaries and corporate structures. It reiterates its appreciation to the Member States which have invited it and contributed, thus, to enabling the fulfilment of its mandate. It welcomes indications from other States of forthcoming invitations, and renews its appeal for invitations from Afghanistan, Central African Republic, Chad, Colombia, Equatorial Guinea, Ghana, Iraq, Papua New Guinea, South Africa, United States of America and Zimbabwe.<sup>6</sup>

### **C. Communications**

15. The Working Group has increasingly received information from Governments, NGOs and individuals concerning situations involving mercenaries, mercenary-related activities and private military and security companies. During the year under review, communications have been

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<sup>4</sup> Idem.

<sup>5</sup> Idem.

<sup>6</sup> By letter of 19 April 2007, the Government of Iraq stated that "the security situation in Iraq would not allow the working group to do their work in an effective manner".

sent to Australia, Colombia, Ecuador, Honduras, Iraq, Peru, and the United States of America. These communications and summaries of responses received from Governments are reflected in an addendum to the present report.

#### **D. Other activities**

16. The Chairperson-Rapporteur presented the Working Group's annual report to the Human Rights Council on 21 March 2007 (A/HRC/4/42 and Add.1 and 2) and the Working Group's annual report to the General Assembly on 8 November 2007 (A/62/302). In presenting the report to the General Assembly, the Chairperson-Rapporteur reiterated the significance of the increasing phenomenon of outsourcing by States of core military and security functions to private companies, and expressed the concern that some PMSCs were committing human rights violations with de facto impunity whilst operating in armed conflicts. The Chairperson-Rapporteur stated that such situations are often associated with the creation by transnational companies of satellite subsidiaries with legal personality in one country, providing services in another and recruiting personnel from third countries.

17. The Working Group sent a questionnaire to all Member States in April 2007. A survey of the responses received was included in the 2007 report of the Working Group to the General Assembly. Since this survey, the Working Group has received further responses and it invites submissions from remaining Governments with a view to providing a comprehensive and comparative analysis in a forthcoming annual report of the Working Group.

18. As part of its consultations with regional and other intergovernmental organizations, and to study also regional standards and developments, the Working Group sent, in May 2007, a questionnaire concerning its mandate and activities. A summary of responses received was included in the 2007 report of the Working Group to the General Assembly.

19. In the course of 2007, the Chairperson-Rapporteur of the Working Group has consulted with delegates of over 40 Permanent Missions to the United Nations Office at Geneva.

20. The Chairperson-Rapporteur and one member of the Working Group participated in the 14th annual meeting of mandate-holders in Geneva from 18 to 22 June 2007. During this visit, the Chairperson-Rapporteur held other consultations, which included participation in a meeting hosted on 19 June 2007 by the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.<sup>7</sup>

21. Furthermore, the Chairperson-Rapporteur and members undertook activities including consultations with stakeholders and participation in workshops and university lectures in their respective regions. The Chairperson-Rapporteur and Ms. Benavides de Pérez participated in the following activities:

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<sup>7</sup> For a summary of this meeting, see [www.reports-and-materials.org/Ruggie-special-procedures-19-Jun-2007.pdf](http://www.reports-and-materials.org/Ruggie-special-procedures-19-Jun-2007.pdf).

- Workshop on “The Human Rights Special Procedures: The Institution of the Special Rapporteur”, organized by the United Nations University and the Raoul Wallenberg Institute, in Lund, Sweden, from 2 to 4 May 2007.<sup>8</sup>
- Meeting on “Dialogue on private military and security companies and human rights”, organized by the Business and Human Rights Resource Centre in London on 8 May 2007.<sup>9</sup>

22. The Chairperson-Rapporteur chaired and made a presentation to the seminar “Privatization of Security and Warfare and impacts on human rights”, hosted by the Business and Human Rights Resource Centre held at the Palais des Nations in Geneva on 21 March 2007. He also participated in the round table on “The United Nations confronts the new forms of mercenarism”, held at the Law Faculty of the Universidad Complutense of Madrid on 24 May 2007. He made a presentation to the Seminar on Poverty, Inequality and Torture: Addressing the Economic, Social and Cultural Root Causes of Violence through the UN Procedures, organized by the World Organization against Torture in Geneva from 18 to 22 June 2007. Furthermore, he made a presentation on “Privatizing the Use of Force: Accountability Issues and Implications for Local Communities” in a working session of a seminar on “Transforming Societies Emerging from Conflicts: An Agenda for Equality and Social Justice”, organized by the University of Deusto in Bilbao, Spain, on 28 and 29 June 2007. He also made a presentation at the meeting on the Global Campaign for a Declaration on the Human Right to Peace, co-hosted by UNESCO and the Spanish Society for the Advancement of International Human Rights Law on 12 September 2007 at the United Nations Office in Geneva.

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

#### **A. Privatization of warfare and security**

23. The Working Group observes that in the last 20 years there has been, primarily in Western European and North American countries and particularly in the United States and the United Kingdom, a significant increase in private military and security companies which provide its services in zones of low-intensity armed conflict and post-conflict situation such as Afghanistan, the Balkans, Iraq, Colombia, Somalia and the Sudan. Parallel to this privatization of warfare at the international level, there has also been increased demand for private security and protection of property at the domestic level all over the world.<sup>10</sup>

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<sup>8</sup> The workshop produced the Lund Statement, which was issued as Human Rights Council document A/HRC/5/18.

<sup>9</sup> For a summary note of this dialogue see <http://www.business-humanrights.org/Links/Repository/978963/jump>.

<sup>10</sup> H. Wulf, “Reconstructing the Public Monopoly of Legitimate Force”, in *Private Actors and Security Governance*, A. Bryden, M. Caparini (eds.), DCAF, 2006.



24. The globalization of the world economy and the shifting from centralized government to diffused “governance”<sup>11</sup> or “ungovernance”,<sup>12</sup> together with the downsizing of regular armed forces of States, which have had important reductions in the public sector both in developed and developing countries<sup>13</sup> are some of the causes behind the rapid development of the privatization of violence. In many of today’s “failed states”, the globalization of the economy, together with the bottom-up privatization of violence, in which non-State actors such as paramilitaries and warlords control natural resources, has had destructive effects because of the attempts by foreign actors to link their wealth (oil, gas, diamonds, timber and precious metals) to the world market and to control their national economy.<sup>14</sup> Classical inter-State wars with clear front lines have almost disappeared. Instead, we witness low-intensity armed conflicts; a widespread use of light weapons; and the privatization of military functions and asymmetry of the parties in the conflict.<sup>15</sup>

25. The outsourcing of a number of basic functions which traditionally were carried out by national armies or police forces, known as the top-down privatization, has blurred the borderlines between the public services of the State and the private commercial sector creating a dangerous “grey zone”. In zones of armed conflict the employees of transnational private military and security companies, contracted as civilians but armed as military personnel, operate in these “grey zones” with uncertainties as to whether their status is that of a combatant or of a civilian. As has been synthesized by one analyst, the development of private military and security companies has produced a new type of security guards and private soldiers who operate in war zones and high-risk insecurity areas under murky legal restraints.<sup>16</sup> These new modalities have replaced to a certain extent the use of traditional individual mercenaries.

26. Private military and security companies fill the vacuum mainly left in three types of unstable situations: (i) in zones of low-intensity armed conflict (the new asymmetrical wars) where the armies are not fully deployed or in post-conflict situations with a high level of insecurity; (ii) in armed conflicts when international organizations do not intervene; and (iii) in troubled areas in developing countries where there is no presence of the State and extractive

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<sup>11</sup> E. Krahnemann, “Private Firms and the New Security”, 43rd Annual Convention, International Studies Association, New Orleans, 2002.

<sup>12</sup> Anna Leander, “Global Ungovernance: Mercenaries, States and the Control over Violence”, Copenhagen Peace Research Institute, 2001.

<sup>13</sup> G. Carbonnier, “Privatisations, sous-traitance et partenariats public-privé: charity.com ou business.org?”, IRRC December, 2004, vol. 86, No. 856.

<sup>14</sup> H. Munkler, “The new wars”, Polity Press, Cambridge, 2005.

<sup>15</sup> H. Munkler, *ibid.*

<sup>16</sup> Robert Y. Pelton, “Licensed to Kill”, Crown Publishers, New York, 2006, p. 342.

transnational corporations operate.<sup>17</sup> An emerging trend in Latin America but also in other regions of the world indicates situations of private security companies protecting transnational extractive corporations whose employees are often involved in suppressing the legitimate social protest of communities and human rights and environmental organizations of the areas where these corporations operate. Furthermore, in exchange for providing security services to some African Governments, PMSCs have in some cases received concessions for the exploitation of natural resources.<sup>18</sup>

27. PMSCs are at present rarely held accountable by effective oversight mechanisms at parliamentary levels, whether in the States that contracts them or in the countries where they operate. It also appears that PMSCs determine and influence the demand for security services. As regards their involvement in institution-building in post-conflict situations their services raise questions regarding sustainability and their actual contribution in ending low-intensity conflicts. Outsourcing military and security functions has an inherent danger in ensuring State control over the use of force.<sup>19</sup>

28. The distinction between humanitarian non-profitable organizations and corporations working for pecuniary gain<sup>20</sup> is also being blurred by PMSCs. In conflict or post-conflict areas, such as Afghanistan and Iraq, where PMSCs sometimes provide security details and protection work to humanitarian NGOs, it has become difficult for the population as well as government officials to distinguish one from another. Humanitarian and aid-type assistance risk becoming associated with an intervening force and PMSCs which may be perceived as biased. PMSCs do not hesitate to utilize the aims of humanitarian non-profit organizations to advertise their activities. One of such companies recurrently puts an ad in the *Journal of International Peace Operations (IPOA)*<sup>21</sup> in relation with its activities in Afghanistan, Somalia, Congo, Bosnia and Herzegovina, the Sudan and Iraq displaying a picture of an individual feeding a malnourished baby with the following message “*Through selfless commitment and compassion for all people,*

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<sup>17</sup> In the privatization of warfare and the utilization of private security companies to protect multinational extractive corporations one can find elements of bygone historical periods, the use of force by non-State actors. J.E. Thompson, *Mercenaries, Pirates and Sovereigns: State-building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, 1994. In such situations, multinational corporations contract private security companies whose employees are often found involved in social conflicts with the local populations.

<sup>18</sup> E/CN.4/2000/NGO/148.

<sup>19</sup> H. Wulf, *supra*.

<sup>20</sup> G. Carbonnier, *ibid*.

<sup>21</sup> Publication of the International Peace Operations Association and the Peace Operations Institute, vol. 2, No. 4, January/February 2007, Washington.

*Blackwater works to make a difference in the world and provides hope to those who still live in desperate times*". The increasing importance of these PMSCs poses a number of essential questions regarding the way they operate in these various situations as well as to the need for regulatory mechanisms.

## **B. The PMSC industry**

29. The Working Group notes that the PMSC industry currently provides in the international market a broad spectrum of services such as building and site security, convoy and transport security, close individual security, advisory and training of local forces, air support, logistical support, prison security, propaganda tactics, intelligence, covert operations and surveillance. These tasks were traditionally fulfilled by the national armed forces and the police. PMSCs also provide armed protection for transnational corporations in unstable regions. Their services are used by Governments and NGOs, transnational corporations, humanitarian organizations, the media and international organizations.

30. The PMSC industry is transnational in nature and is growing very rapidly, particularly since the recent conflict situations in Afghanistan and Iraq, with an aggregated estimate of contracts between US\$ 20 billion and US\$ 100 billion annually. Although the industry has developed worldwide, highly professional companies from the United States of America and the United Kingdom would be responsible for more than 70 per cent of the services in the world market.<sup>22</sup> Some PMSCs are listed on stock markets and generate profits for their investors. Most of these corporations engage in their executive board structures former military personnel of high rank, or senior officers of the civil or the intelligence services, a phenomenon many scholars describe as the "revolving door syndrome".<sup>23</sup>

31. In Iraq, the number of "private contractors" fulfilling a number of military and quasi-military tasks varies according to different sources and the manner they are counted, ranging between 20,000 and 100,000 persons working for PMSCs. Most estimates agree to a figure between 20,000<sup>24</sup> and nearly 50,000 foreign armed "private contractors".<sup>25</sup> According to the Private Security Company Association of Iraq there would be some 70,000 persons providing armed protection, out of which 14,000 would be unregistered Iraqis and 20,000 unregistered foreigners.<sup>26</sup> Other semi-official estimates give the following figures: 3,000 to 5,000

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<sup>22</sup> See [www.sourcewatch.org](http://www.sourcewatch.org).

<sup>23</sup> Center for Media and Democracy, [sourcewatch.org](http://sourcewatch.org); E. Krahnemann, *supra*; R.Y. Pelton, *supra*.

<sup>24</sup> Figures given by the Pentagon, see: S. Fairnau "Cutting Cost, Bending Rules and a Trail of Broken Lives", *Washington Post*, 29 July 2007.

<sup>25</sup> United States Government Accountability Office 2006 report; J. Scahill, "A very private army", *The Guardian*, 1 August 2007.

<sup>26</sup> M. Caparini, "Regulation of PSCs: Legal and Policy Challenges", United Nations Council of Human Rights, Parallel event co-hosted by Business and Human Rights Resource Center, 21 March 2007.

United States security contractors, 7,000 to 10,000 expatriates such as Australians, British, Canadians and South Africans, 15,000 to 20,000 third-country nationals from countries such as Bulgaria, Colombia, Chile, El Salvador, Fiji, Honduras, Nepal, Peru, the Philippines, Romania, Russian Federation, Ukraine and others, as well as 25,000 to 30,000 Iraqi host-country nationals.<sup>27</sup> According to a United States Government Accountability Office report there would be more than 100,000 contractors of which 48,000 working as private soldiers. The “human insecurity” in Iraq presents a threat to the international security.<sup>28</sup>

32. The Working Group has received reliable information indicating the existence in Afghanistan of some 2,000 to 3,000 Afghans fulfilling military functions in assistance of United States military forces pursuit of terrorists since 2001.<sup>29</sup> In addition, the Working Group received estimations of some 4,000 to 6,000 expatriates from the United States of America, the United Kingdom, Australia, New Zealand and South Africa, some 1,500 to 2,000 third country nationals from Nepal, Fiji, Singapore, the Philippines and Nigeria, and some 15,000 to 20,000 Afghan nationals performing private security functions in Afghanistan.<sup>30</sup> PMSCs in Afghanistan are using the three hierarchical model, as in Iraq. PMSCs in Afghanistan might have played a significant role in alienating the population against “foreigners”.<sup>31</sup> There appears to remain developments towards a national regulation of the industry in Afghanistan, while in the meanwhile there is limited information available to the national authorities or coalition forces concerning the figures of PMSCs, their employees, office locations and areas of operations, weapons, ammunitions and vehicles.

33. A number of the contracts for Afghanistan and Iraq outsourced by United States government departments to PMSCs are in their turn subcontracted to other companies registered in the United States or abroad. Many of them are private employment agencies (and some of them “ghost” companies, which may have never been legally registered) entrusted with the

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<sup>27</sup> Robert Y. Pelton, *supra* (p. 213). As of March 2005, there were over 20,000 foreign private military contractors in Iraq, P.W. Singer, “Outsourcing War”, *Foreign Affairs*, March 2005.

<sup>28</sup> Every month another 30,000 to 50,000 Iraqis flee their homes. Out of a population of 27 million, nearly 2 million Iraqis have been internally displaced and another 2 million are refugees in the Middle East, mostly in Jordan, Syrian Arab Republic, Turkey, Lebanon and Egypt: (*Los Angeles Times*, editorial, 20 May 2007). It is the greatest mass exodus of people ever in the Middle East and dwarfs anything seen in Europe since the Second World War. <http://www.informationclearinghouse.info/article18097.htm>. UNHCR figures: 2.2 million refugees and 750,000 IDPs.

<sup>29</sup> Antonio Giustozzi, “The privatization of war and security in Afghanistan: future or dead end?”, *Economics of Peace and Security Journal*, vol. 2 (1): 30-34, p. 31.

<sup>30</sup> Swisspeace, “The Impact of Private Military and Security Companies on the Local Population in Post-Conflict Countries. A Comparative Study for Afghanistan and Angola”, Bern, 2007 (draft and forthcoming report, on hold with the authors).

<sup>31</sup> A. Giustozzi, *supra*.

selection of former military and police personnel from third countries. The same pattern of employing third-country nationals has also been used by the Government of the United States and a PMSC, DynCorp, to implement the “Plan Colombia” in a manner which has allegedly in effect bypassed limitations imposed by the United States Congress.<sup>32</sup>

34. One of the major PMSCs providing military and security services in armed conflicts or post-conflict zones is Blackwater, a PMSC based in the United States. It is estimated to have some 2,300 private soldiers in nine countries and a database of more than 20,000 former military personnel ready for deployment and engagement on a short notice anywhere in the world. Its division in the Barbados, Blackwater’s Greystone Ltd., employs third-country nationals from countries such as Chile, Nepal, El Salvador, Honduras and others at salaries which are lower than those recruited in the United States.<sup>33</sup> Behind the humanitarian façade, one of the main objectives of the corporation, as indicated by its founder, Erik Prince, would be to obtain for his own private military force a substantial piece of the current United Nations peacekeeping US\$ 6-10 billion budget.<sup>34</sup> Blackwater has been involved since the very first days of the occupation in Iraq and its convoys have been ambushed, its helicopters brought down, and it had 30 casualties including in a high-profile incident in Fallujah.<sup>35</sup> In August 2006, the Federal Court of Appeals of North Carolina decided that it was competent in the lawsuit brought by the families of the four “guards” against Blackwater for not having provided them with adequate protection.<sup>36</sup>

35. The Working Group has been informed that major PMSCs based in the United States and operating in Afghanistan and Iraq include Blackwater, DynCorp, MPRI, Ronco, Triple Canopy and Vinell Corporation. Among the main British-based PMSCs are Aegis Defence Services, which obtained a contract from the United States Government to coordinate the other security companies operating in Iraq; ArmorGroup, Control Risks Group, Enrinys, Global Risk Group,

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<sup>32</sup> During the first phase of the Plan only 400 United States militaries had been authorized to operate in Colombian territory, plus 400 civilian contractors authorized by the United States Congress. In October 2004, the Congress allowed the Government to increase its presence in Colombia up to 800 militaries and 600 civilians. See J.H. Torres, “Mercenaries in Colombia”, Seminar on Privatization of security and warfare and impacts on human rights, Geneva, 21 March 2007.

<sup>33</sup> J. Scahill, *Blackwater: The Rise of the World’s Most Powerful Mercenary Army*, Avalon, 2007.

<sup>34</sup> Robert Y. Pelton, *supra*, p. 4.

<sup>35</sup> J. Scahill, “A very private war”, *The Guardian*, 1 August 2007.

<sup>36</sup> Louis Hamsen, “Families sue Blackwater over deaths in Fallujah”, *The Virginia Pilot*, 6 January 2005, [www.corpwatch.org](http://www.corpwatch.org); J. Scahill, “Blood is thicker than Blackwater”, *The Nation*, 1 May 2006.

Ronin Concepts and Saladin.<sup>37</sup> There would also be companies from South Africa, Israel, the Balkans, the European Union, Canada,<sup>38</sup> Eastern Europe and Switzerland<sup>39</sup> which would operate in zones of armed conflict or troubled areas.

36. A number of these PMSCs are members of the International Peace Organization Association (IPOA), a non-profit trade association which promotes the activities and image of its member firms. The British Association of Private Security Companies (BAPSC), was launched to promote the interests and regulate the activities of United Kingdom firms that provide armed defensive security services in countries outside the United Kingdom.<sup>40</sup> According to its chairperson,<sup>41</sup> the services the 23 members of the Association provide to Iraq are probably the largest export of the United Kingdom to that country.

37. Self-regulation is promoted by both IPOA and BAPSC, which have both adopted a voluntary code of conduct integrating some human rights and international humanitarian norms. However, the Working Group considers that there are obvious limitations of self-regulatory initiatives and accountability merely to stockholders, if these measures are to the exclusion of external oversight and enforcement mechanisms to monitor the activities of those companies or that of their employees.

### **C. Recruitment, working conditions and compensation of “private security guards”**

38. The Working Group is concerned that private contractors perform military and quasi-military tasks in situations of conflict. PMSC employees often find themselves working in a situation of armed conflict where they are constantly exposed to “great risk and immediate danger” in a “hostile environment” including but not limited to “the threats inherent in a war situation”.<sup>42</sup> Recruited by PMSC these individuals often operate in a grey area with limited oversight or army control. Most of them are neither nationals of one of the parties to the conflict nor residents of the country in conflict. Although they were not specifically recruited to take part in hostilities, their contracts did not specify either that they would receive military training and

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<sup>37</sup> E. Krahnmann, “Regulating Private Military Companies: What Role for the EU?”, *Contemporary Security Policy*, vol. 26, No. 1 (April 2005).

<sup>38</sup> In 2006, it acquired Kroll Security International, a London security company which operates in Iraq. Four of the British nationals kidnapped in Baghdad in May 2007 worked for GardaWorld. David Pallister, *The Guardian*, cited in *Courrier International*, 30 May 2007.

<sup>39</sup> “Nouveaux mercenaires: que fait la Suisse?”, Plateforme d’information humanrights.ch.

<sup>40</sup> See: [www.bapsc.org.uk](http://www.bapsc.org.uk) and [www.sourcewatch.org](http://www.sourcewatch.org). One of the major British PMSCs in Iraq allegedly supply hired Gurkhas, Fijian paramilitaries and former SAS veterans. See I. Traynor, “The privatization of war”, *The Guardian*, 10 December 2003.

<sup>41</sup> A former civil servant of the British Department for International Development.

<sup>42</sup> A/HRC/4/42/Add.1, para 33.

would be militarily armed. Recruited in their respective countries from all over the world as “private security guards” to provide protection, most of them have in fact taken part in an internal low-intensity armed conflict. These third-countries nationals are not members of the armed forces of a party to the conflict and they have not been officially sent by their respective States.<sup>43</sup> Many individuals interviewed by the Working Group on its missions have been essentially motivated by private gain. These are all characteristics of the mercenary-related activities and modalities of the conflicts of the twenty-first century.

39. The Working Group has received information about deceptive recruitment and exploitation of nationals from developing countries to work for these PMSC in situations of violence and armed conflict such as Iraq. The Working Group is increasingly concerned at the effects of such exploitation and the resulting challenges in terms of compensation and jurisdictional uncertainties. When contractors sign their contracts they commonly waive a number of rights, including their right to seek legal recourse against the subsidiary company which has selected and contracted them, or the company which employs them “including even where loss, damage, personal injury or death is caused or contributed to any manner by the company”.<sup>44</sup> There is also the example of thousands of Fijians who were lured into paying fees for prospective security work abroad which did not materialize.

40. In other instances, the contracts were signed under fraudulent conditions in order to avoid domestic jurisdictions, either immediately upon departure or upon arrival in the country of destination. Once performing security work in Iraq, many Chileans, Fijians, Hondurans and Peruvians have experienced contractual irregularities and poor working conditions, including excessive working hours, partial or full non-payment of salaries, ill-treatment and the neglect of basic needs such as access to medical services.<sup>45</sup> In some instances, the insurance policies were faked or could only be enforced in the United States. There have also been reports of insurance brokers only paying immediately 30 per cent of the claims, and the rest not until an administrative tribunal compels them. In other cases where the guards had been injured they

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<sup>43</sup> This could exclude United States, British and Iraqi employees of PMSCs but not the Chileans, Colombians, Fijians, Filipinos, Hondurans, Nepali, Peruvians and others.

<sup>44</sup> The Working Group has observed similar or related clauses in employment contracts for Chileans by the company Neskovin, registered in Uruguay and recruiting for the company Blackwater in the United States of America, and Global Guards, registered in Panama and recruiting for the company Triple Canopy in the United States. Similar practices have involved contracts for Peruvians by the company Defion, recruiting for Triple Canopy, and Hondurans contracted by the company Your Solutions also recruiting for Triple Canopy.

<sup>45</sup> Most contractors do not provide health care for their employees, and care is not authorized at military facilities except when life is at stake. However, some routine health care has been provided to private contractors. W. Pincus, “Army Examines Possibility of Private Medical Contractor”, *Washington Post*, 3 September 2007.

were pressured to continue to fulfil their work duties even with the help of crutches. If injured or killed, the claims presented by these private security guards or their families are often denied, or they find difficulties to obtain health care or compensation. A number of Peruvians injured in Iraq, for example, are still waiting for the compensation they had been promised.<sup>46</sup>

41. In Iraq, PMSCs appears to have filled a gap,<sup>47</sup> particularly because of the reluctance of contributing sufficient regular troops, and because engaging “private guards” has less political consequences and offer States considerable political distance.<sup>48</sup> This army of private security guards constitutes the second largest force in Iraq after that of the United States Army. In order to maximize profit PMSC and their affiliates have stimulated the demand of former military personnel and ex-policemen of developing countries by advertising attractive salaries for jobs in zones of armed conflict such as Iraq. This demand has been easily fuelled in countries with unemployment and/or underemployment, a migratory population ready to perform security work abroad, and largely unmonitored activities of private security companies. The majority of third-country nationals have accepted jobs as “private security guards” for socio-economic reasons such as unemployment, debts or to provide a better education to their children, and other opportunities.

42. In Iraq, the casualties among private security guards constitute also the largest number after that of the United States Army. As of August 2007, over 1,000 private contractors would have died since 2003, according to figures of the United States Department of Labor, and more than 12,000 injured.<sup>49</sup> Added to the military toll, the human cost (over 3,670 deaths and some 30,000 injured) of the United States war effort would be nearly 25 per cent higher.<sup>50</sup> Among 414 private security guards’ casualties<sup>51</sup> there were the deaths of citizens from the

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<sup>46</sup> BBC, “Peru’s war zone workers”, <http://www.bbc.co.uk/>. R. Brooks, “Deniable, disposable casualties”, *Los Angeles Times*, 1 June 2007.

<sup>47</sup> Some 160,000 in mid-2007. According to the testimony of General B.R. McCaffrey before the House Armed Services Committee the Government has been “forced to use US and foreign contractors to substitute for required military functions”, *Earthtimes.org*, 31 July 2007.

<sup>48</sup> *The Economist*, London: 10 April 2004, vol. 371, Iss. 8370, p. 38.

<sup>49</sup> US Labor Department figures are based on compensation claims filed by the individual contracted or family members of those killed or incapacitated.

<sup>50</sup> US Department of Labor; D. Ivanovitch, “Information incomplete on contractors in Iraq”, *Houston Chronicle*, 8 August 2007; H. Witt, “770 civilian contractors among America’s hidden dead”, *Chicago Tribune*. The number given by the Brooking Institute for the same period is of 470 casualties.

<sup>51</sup> Also victims of the collateral damages of the conflict are truck drivers and many labourers from countries such as India, Nepal, Pakistan, Philippines, Sierra Leone and Sri Lanka who have also been deceptively recruited and trafficked to Iraq. See the article by W. Branigin, *Washington Post*, 27 July 2007.



United States (159), United Kingdom (43), South Africa (22), Nepal (19), Fiji (19), Philippines (14), Canada (5), Australia (5), New Zealand (4), but also from Bulgaria, Colombia, Croatia, Honduras, Hungary, Italy, Japan, Peru, Poland, Romania, Sweden and Ukraine.<sup>52</sup> Private contractors are increasingly the targets of insurgents. The United States Army Corps of Engineers has registered a substantial increase in the attacks on supply convoys carrying supplies into and around Iraq (14.7 per cent in 2007 compared to 5.5 per cent in 2005 for the same period of time).<sup>53</sup>

43. However, their exact numbers, precise tasks and the accurate number of casualties remain unknown.<sup>54</sup> The figures of 100,000 private contractors working in Iraq on United States contracts, given by the United States Central Command, would include neither subcontractors nor contractors working for other clients.<sup>55</sup> The ratio of private contractors in Iraq could be thus almost of one for every single United States military personnel. It should be also pointed out that as a result of the situation and the increasing demand for protection, contractors in Iraq may allocate some 25 per cent of their budget to private security. In the competition among PMSCs by offering the lowest prices to obtain contracts in Iraq, protective measures for their employees would have been neglected.

#### **D. Lack of accountability**

44. These new emerging non-State entities transcend the power of Governments and are eroding the traditional concept of sovereignty and the monopoly of the use of force. PMSCs the main aim of which is profit-making do not provide a sound basis for long-term stability. Without accountability and oversight, PMSCs have often reinforced the potential for conflict as has been the case in the Balkans,<sup>56</sup> Sierra Leone, Liberia and the Democratic Republic of the Congo. The proliferation of PMSC activities “fuels the ungovernance of political violence and undermines, or makes more difficult the establishment of, the state monopoly on legitimate violence”.<sup>57</sup>

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<sup>52</sup> For the period 2003-2007, <http://icasualties.org/oif/Civ.aspx>.

<sup>53</sup> US Congressional Research Services, Report on Private Security Contractors in Iraq, 2007.

<sup>54</sup> T. Engelhardt, “The devil’s dictionary of war in Iraq”, *The Financial Express*, 26 April 2007.

<sup>55</sup> M. Caparini, supra. According to the *Christian Science Monitor* (18 July 2007), there are 180,000 contractors. There would be 630 companies working in Iraq on contract for the United States Government, with personnel from more than 100 countries. Scahill, supra.

<sup>56</sup> The Sarajevo Client Guidelines for the Procurement of Private Security Companies identifies best practices for post-conflict situations. See South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), <http://www.see.sac.org>.

<sup>57</sup> Anna Leander, supra, p. 8.

45. In Iraq, by Order 17 issued by the Administrator of the Coalition Provisional Authority on 27 June 2004, contractors are immune from prosecution.<sup>58</sup> Something similar occurs in Colombia where any of the abuses which may be committed by United States military personnel and private contractors working under Plan Colombia can neither be investigated nor judged.<sup>59</sup> Furthermore, following an agreement between Colombia and the United States of America in 2003, the Government of Colombia would not be able to submit to the jurisdiction of the International Criminal Court United States armed forces personnel and private contractors working for transnational private security companies who have committed crimes against humanity.<sup>60</sup>

46. The Working Group has reported the alleged involvement in human rights abuses in the prison of Abu Ghraib in Iraq of employees of two PMSCs who have never been subject to external investigations nor legally sanctioned, despite assurances given by the Government of the United States of America.<sup>61</sup> The Working Group also notes reports of erratic behaviour of some PMSCs employees in Iraq with mottos such as: “what happens here today, stays with us today”.<sup>62</sup> It has also been alleged that “private security guards” would also detain Iraqis without authorization.<sup>63</sup> According to Iraqi officials and information from the United Nations Assistance Mission in Iraq (UNAMI),<sup>64</sup> on 16 September 2007, in al-Nusur Square in the neighbourhood of Mansour in Baghdad, security contractors protecting a United States State Department convoy, which was allegedly attacked, opened fire on civilians killing at least 11 persons, with alleged use of security company helicopters firing into the streets, resulting in civilian casualties and injuries. The security firm Blackwater claimed that its personnel came under attack by “armed enemies” and fired back in self-defence. Iraqi authorities and witnesses claim the security

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<sup>58</sup> US Congressional Research Services, *supra*, p. 16.

<sup>59</sup> The aerial spraying of Glyphosate and other toxicity-enhancing adjuvants by DynCorp, to eradicate illicit coca leaves cultivation along the southern Colombian border with Ecuador would have caused a number of adverse health consequences, including genetic damage (A/HRC.4/42/Add.2, paras. 47-51).

<sup>60</sup> J.H. Torres, *supra*.

<sup>61</sup> A/61/341, paras. 69 and 71 and A/HRC/4/42, para. 35.

<sup>62</sup> J. Scahill, *supra*, Steve Fainaru, “For Hired Guns”, *Washington Post*, 15 April 2007.

<sup>63</sup> This is in addition to scores of gangs active in major Iraqi cities, *Iraq Today*, <http://warnewstoday.blogspot.com/> visited on 20 August 2007.

<sup>64</sup> Information gathered from Human Rights Office Contribution to the UNAMI SitRep: 17-23 September 2007.

personnel opened fire unprovoked. The Iraqi Ministry of Interior, in a preliminary report, shares this view. Iraq's Prime Minister and Interior Ministry announced that it would reassess all PMSCs operating in the country and the freezing of the activities of Blackwater in Iraq.<sup>65</sup>

47. The preliminary results of a peace research institute study on how PMSCs are perceived by the local population in Afghanistan (and Angola), indicate that employees of PMSCs may contribute to insecurity by perpetuating a "culture of war", and raise concerns as to the lack of transparency blurring responsibility and accountability of PMSCs and their employees. The local population in Afghanistan also appears to consider that PMSCs are diverting needed funds for reconstruction to pay private security companies, which thus paradoxically may in effect prevent the stabilization of peace in the country.<sup>66</sup> It notes that among the PMSC contractors there are South Africans now training and providing support to the Iraqi police who served earlier in the South African police and army during the former apartheid regime, some of whom have committed crimes against humanity.<sup>67</sup>

48. There are differing accounts as to whether commercialization of PMSCs brings more efficiency,<sup>68</sup> but the privatization of the use of force without accountability and oversight leads inexorably to impunity. Outsourcing, contracting and hiring PMSCs may be attempts to evade direct legal responsibilities, and in some cases, as for the United States of America, an element of its foreign policy. The Working Group considers that security is a universal human right for all and considers that States relinquish their responsibilities when security becomes a privilege only available to those who can afford it.<sup>69</sup>

49. The international community should be concerned about the impacts of the activities of PMSCs affecting matters of peace and the enjoyment of human rights in low-intensity armed conflicts and post-conflict situations, since the conduct of PMSCs is rather governed by profit interests than by compliance with international norms. According to some commentators,

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<sup>65</sup> See Joshua Partlow, "State Depart. Convoy Attacked in Baghdad, Sparking a Shooting", *Washington Post*, 17 September 2007; "The real story of Baghdad's Bloody Sunday", *The Independent*, 21 September 2007.

<sup>66</sup> Swisspeace, *supra*.

<sup>67</sup> A/HRC/4/42, para. 33.

<sup>68</sup> The United States Army would have recognized that two overlapping contracts to protect its Corps of Engineers in Iraq by a private army equivalent to three military battalions were costing millions of dollars in duplicate, Steve Fainaru, "Security Costs Soaring", *Washington Post*, 12 August 2007.

<sup>69</sup> Sami Makki, "Sociétés militaires privées dans le chaos irakien", *Le Monde diplomatique*, novembre 2004.

the current situation in Iraq is creating an economy based on privatized war and reconstruction efforts.<sup>70</sup> It is the primary responsibility of States under international and domestic law for public security, law and order, and the Working Group emphasizes that States cannot abandon their international responsibilities to non-State actors by outsourcing certain tasks.

### E. Transnational issues

50. The Working Group noted that the provision of military and security services by transnational companies in conflict or post-conflict situations raises important issues regarding transparency, control of the means of violence and accountability. It poses political, legal and human rights questions to the international community.

51. In monitoring the manifestations and emerging trends of mercenaries and mercenary-related activities in different parts of the world as well as the effects of the activities of PMSCs on the enjoyment of human rights, the Working Group has identified transnational issues relating to:

- **The status of the international private security guards in war zones.** Former military personnel and policemen from all parts of the world are recruited to provide “passive or static security” in Afghanistan and Iraq. They are trained and equipped militarily. Attacked by the insurgency, they find themselves in low-intensity conflicts without a clear front line,<sup>71</sup> where it is impossible to distinguish between offensive and defensive operations. They are neither civilians nor combatants, would undermine the Geneva Conventions by operating in a grey area, and may be easily assimilated to mercenaries or irregular fighters;<sup>72</sup>
- **Blurring the areas between non-profit humanitarian organizations and PMSCs working for pecuniary gain.** Many of the PMSCs present themselves as organizations working for humanitarian and peace-building objectives when in fact there could be commercial interests in prolonged conflicts;<sup>73</sup>

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<sup>70</sup> Naomi Klein, “The failure is a new face of success”, *The Guardian*, 12 September 2007.

<sup>71</sup> S. Chesterman and Ch. Lehnardt, Eds., *From Mercenaries to Market: The Rise and Regulations of PMC*, Oxford University Press, 2007.

<sup>72</sup> For ICRC, a small number of PMSC employees operating in armed conflict or post-conflict situations could be considered as combatants, some as mercenaries and the majority would be civilians who would lose protection under international humanitarian law when taking direct part in hostilities. See Emmanuela-Chiara Gillard, “Business goes to war: private military/security companies and international humanitarian law”, *IRRC*, vol. 88, No. 863, September 2006.

<sup>73</sup> The new low-intensity wars may last decades with no end in sight, H. Munkler, *supra*.

- **A labyrinth of contractual and insurance layers.** Transnational PMSCs, their national subsidiaries, subcontracted companies or private employment agencies select, recruit and train former military and policemen as “security guards” from all over the world to be sent to zones of low-intensity conflict. PMSCs having obtained a contract from the United States State Department or the Department of Defense generally subcontract to another company which in turn may subcontract to another one or contract a private employment agency in a given country establishing thus a number of contractual layers which is difficult to disentangle. In general, the individual engaged signs a contract with a company which is not registered in his country and which he discovers once he arrives in the zone of armed conflict. To this labyrinth there is the additional complexity of layers of insurance brokers and insurance companies to obtain a compensation for an injury or the death of a private contractor. Often, private security companies registered in the United States do not make the contract under the United States Defense Base Act with an insurance broker as they are under obligation to. It has also been reported that insurance brokers would only pay immediately 30 per cent of the claims and the rest of the claims not until an administrative tribunal compels them;
- **Enforcement and jurisdiction of the contracts.** The individuals signing their contracts with PMSCs renounce important rights such as the jurisdiction of their national courts. The contracts are governed by the laws of a given state in the United States of America or elsewhere. In addition, the individual accepts a declaration renouncing some of his legal rights. These individuals are recruited as “security guards”, but thereafter they received military training and are engaged in an armed conflict. Contracts are signed either immediately upon departure or upon arrival in the country of destination;
- **Training of the private security guards.** In some cases training of the private security guards has been made in military premises in the country the individuals have been recruited or in the premises of the PMSC in the United States. In general, however, military training has been conducted in other countries in order to avoid legal complaints from the authorities of the country from where the individuals have been recruited. Jordan, Afghanistan and Iraq seem to be the places where such military training has been carried out, but also a number of Chileans were trained in Honduras;
- **Human rights violations and lack of accountability.** PMSCs are often operating outside government control and with limited effective oversight from State organs. When involved in crimes or human rights violations, these private security guards have often not been sanctioned or brought before a court of justice, as exemplified by the involvement of contractors in the torture scandal in Abu Ghraib and shootings against civilians in Iraq.<sup>74</sup> As observed in many incidents, PMSC employees can use excessive

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<sup>74</sup> A/61/341, para. 69. See also David Phinney, “From mercenaries to peacemakers?”, 29 November 2005, [www.corpwatch.org](http://www.corpwatch.org); Steve Fainaru, “For Hired Guns”, *Washington Post*, 15 April 2007; J. Scahill, “A very private war”, *The Guardian*, 1 August 2007; R. Norton-Taylor, “Afghanistan Close to Anarchy: Warns a General”, *The Guardian*, 21 July 2006.

force and shoot indiscriminately resulting in civilian casualties.<sup>75</sup> The Working Group has also received information of cases where PMSC employees have used forbidden arms or used experimental ammunition prohibited by international law.<sup>76</sup> Often, they circulate without identification and drive in unidentified sport utility vehicles (SUVs) with tinted glasses and no plates, behaving similarly to the infamous death squads. In Afghanistan and Iraq, the staff of PMSCs “is extremely difficult to identify”<sup>77</sup>. Local populations do not have the means to file a complaint with the authorities or the contracting State. In Iraq, for instance, the United States Army does not accept to receive complaints for abuses which may have been committed by employees of PMSCs. In a number of cases, these private security companies sacrifice the safety of their employees to cut costs and obtain more profits;<sup>78</sup>

- **Responsibilities of the States which outsource military functions. Indirect implication of other States.** States may contract these companies in attempts to avoid direct legal responsibilities. Complaints which have been brought to the attention of Governments appear to be redirected to the private company itself. It also leads to States having its citizens involved in armed conflicts for which the Government has never been consulted, but the behaviour of the companies or the nationals employed by them may nonetheless damage the international image of the States concerned. As pointed out by the Human Rights Committee, States have the responsibility to take appropriate measures or exercise due diligence to prevent, punish, investigate and redress the harm

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<sup>75</sup> On 16 September 2007, according to UNAMI in the neighbourhood of Mansour in Baghdad, security contractors protecting a US State Department convoy which was attacked opened fire on civilians killing at least 11 persons, with security company helicopters firing into the streets resulting in civilian casualties and injuries.

<sup>76</sup> The information on the use of forbidden ammunitions was provided to the Working Group by a former military who had been employed as “security guard” in Iraq by a PMSC. There are reports of use of armour piercing-limited penetration (APLPs) ammunitions, which are blended metal bullets which go through steel and anti-bulletproof vests and that instead of passing through a human body they shatter creating untreatable wounds. Ibid, Scahill, p. 78. In March 2007, the United States military barred the Crescent Security Company from bases in Iraq after it was found with weapons prohibited for private security companies. See: Steve Fainaru, “Cutting costs, Bending Rules, And a Trail to Broken Lives”, *The Washington Post*, 29 July 2007.

<sup>77</sup> Emamanuela-Chiara Gillard, *supra* (p. 535).

<sup>78</sup> Such as the Fallujah incident of 2004 involving the deaths of four private guards working for Blackwater or the ambushing and kidnapping of five Crescent Security Group private guards, near Safwan on 16 November 2006. Steve Fainaru, “Cutting Costs, Bending Rules, And a Trail to Broken Lives”, *The Washington Post*, 29 July 2007.

caused by acts of PMSCs or their staff that impair human rights.<sup>79</sup> States which contract PMSCs to export their activities abroad have to respect their international legal obligations, which cannot be eluded by outsourcing some of its functions;

- **Frontier conflicts.** The use of PMSCs for aerial fumigation of herbicides which may endanger the health of populations living in areas of a country bordering with another, such as under Plan Colombia, may create serious diplomatic incidents.

#### **IV. STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES**

52. The Working Group continues to promote universal accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as the only global instrument dedicated to addressing mercenaries and mercenary-related activities. During the year under review, the Working Group welcomes that the Governments of Cuba and Peru have deposited their instruments of accession with the Secretary-General of the United Nations. It notes there are now 30 States parties to the Convention: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cuba, Cyprus, Georgia, Guinea, Italy, Liberia, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Moldova, New Zealand, Peru, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.<sup>80</sup> The Working Group notes and welcomes indications of treaty action towards acceding to the International Convention by Algeria, Bangladesh, Armenia, Ecuador, El Salvador, Ghana, Haiti, Honduras, Lebanon, Madagascar, Mauritius, Morocco, Sudan, Tunisia, Venezuela and Yemen. The Working Group reiterates its availability to advise on and support these processes.

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

53. During 2008, the Working Group will continue to promote the widest ratification/accession of States to the International Convention. It will also pursue its consultations with the delegations of Armenia, Afghanistan, Central African Republic, Chad, Colombia, Equatorial Guinea, Ghana, Iraq, Papua New Guinea, South Africa, United States of America and Zimbabwe with a view to obtain invitations to carry out country visits.

54. The Working Group will hold a governmental consultation with representatives of the Latin American and Caribbean States in Panama City, hosted by the OHCHR Regional Office for Central America and the Caribbean. The aim of this consultation is to gather a regional

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<sup>79</sup> General comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 8.

<sup>80</sup> For the status of the International Convention, please see annex I.

perspective of the current practices of private military and security companies recruiting personnel to be deployed in armed conflict and to review steps taken by States to regulate and monitor the activities of PMSCs. It will also attempt to develop regulatory options and best practices aimed at ensuring that PMSC activities are in conformity with international human rights standards.

55. This informative consultation will be used as a first step in view of the proposal recommended by the Working Group to convene a high-level round table to discuss the fundamental role of the State as holder of the monopoly of the use of force. The Working Group intends, if the necessary resources are available, to conduct two additional governmental consultations during 2008 and two more in 2009, similar to the one to be held for the Latin American and Caribbean Region in Panama, in order to present to the high-level round table of States, to be convened under the auspices of the United Nations, a global perception of the emerging issues, manifestations and trends regarding mercenary-related activities and their impact on human rights which will contain the regional views of the States of the five regions.

## VI. CONCLUSIONS AND RECOMMENDATIONS

56. **In the course of 2006 and 2007, the Working Group has monitored the activities of private companies offering military assistance, consultancy and security services at the international level. It has conducted field missions to Chile, Ecuador, Fiji, Honduras and Peru which have permitted it to identify how PMSCs recruit, train, use or finance former military personnel and ex-policemen to operate in armed conflict or highly dangerous post-conflict situations. It has also studied emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights. On the basis of this information, it is of the opinion that many of such manifestations are new modalities of mercenary-related activities.**

57. **The proliferation of PMSCs in the world is a direct consequence of the outsourcing and privatization by member States of many military and security functions. A large number of these companies are the supply side for contracts granted by the Department of Defense or the State Department of the United States of America in connection with low-intensity armed conflicts or post-conflict situations such as in Afghanistan, Colombia and Iraq. To implement their contracts and at the same time make the most lucrative profits, some of these transnational companies, through subsidiaries or hiring companies, create, stimulate and fuel the demand in developing countries. Former military personnel and ex-policemen are recruited as “security guards”, but once in low-intensity armed conflicts or post-conflict situations, they become in fact private soldiers militarily armed. Provisions in national legislations granting immunity to PMSC personnel can easily become de facto impunity, with these private soldiers being only accountable to the company employing them. Some Governments appear to consider these individuals as**



neither civilians nor combatants, though heavily armed; these individuals are the new modalities of mercenarism. They might also be easily associated with the unclear concept of “irregular combatants”. They often encounter contractual irregularities, poor working conditions, failures in obtaining basic needs and problems to obtain financial compensation for injuries received.<sup>81</sup>

58. The Working Group is concerned at the low state of ratifications and accessions of the International Convention (30 States parties), a major tool available at the international level which promotes the control of States in the outsourcing of functions regarding the use of force.

59. The Working Group is also concerned at the lack of regulations at the regional and national levels regarding private military and security companies which often operate without effective oversight and accountability. Weak or insufficient domestic legislation, regulation and control of PMSCs encourage these transnational companies to seek to recruit former military personnel and ex-policemen from other countries as “security guards” in low-intensity armed conflicts. Because of the difficulty of war-torn States to regulate and control PMSCs, a significant part of the responsibility falls on States from where these transnational companies export military and security services to regulate and control these companies. The Working Group is also concerned that in spite of drawing the attention of the Governments, including in some of the countries in which it has conducted field missions, the recruiting of former militaries and ex-policemen by PMSCs for employment as “security guards” in zones of armed conflict such as Iraq seems to continue.

60. To this end, the Working Group makes the following recommendations:

- Calls upon all States that have not yet done so to consider taking necessary action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and incorporate relevant legal norms into their national legislation. Within this context, the Working Group considers that a model law could be elaborated with a view to facilitating accession of those States which wish to become party to the Convention, by indicating steps to be taken in order to adapt international norms into domestic legislation;
- Recommends regional and other intergovernmental organizations, in particular the European Union and the Organization of American States, to elaborate a common system to regulate private military and security companies exporting their services abroad;
- Encourages States to incorporate relevant international legislation on these issues, as well as relevant regional legislation where such regional frameworks exist (e.g. African Union, Economic Community of West African States, Commonwealth of Independent States), into national law;

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<sup>81</sup> A/HRC/4/42, paras. 49-50 and A/HRC/4/42/Add.1, para. 19.

- **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 of nor violate human rights, Governments of States from which these private companies export such services should adopt legislation and 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 allow them to be sanctioned when the norms are not respected;**
- **Recommends that States outsourcing activities relating to military assistance, consultancy and security services to private military and security companies should demand the authorization of States from which former military personnel and policemen are recruited by such companies to work in armed conflict or post-conflict situations before the recruitment takes place;**
- **Urges Governments of States from which private military and security companies export military assistance, consultancy and security services to avoid granting immunity to these companies and their personnel;**
- **Encourages Governments which import 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 imported services provided by these private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country;**
- **Encourages Governments, when establishing such regulatory systems of registration and licensing of PMSCs and individuals working for them, to include defining minimum requirements for obligatory transparency and accountability of firms, background screening and vetting of PMSC personnel, ensure adequate training of PMSC personnel on international human rights and international humanitarian law, as well as rules of engagement consistent with applicable law and international standards, and to establish effective complaint and monitoring systems including parliamentary oversight. Such regulatory systems should include thresholds of permissible activities, and States should impose a specific ban on PMSCs intervening in internal or international armed conflicts or actions aimed at destabilizing constitutional regimes;**
- **Encourages States from which former military personnel and ex-policemen are being recruited by private security companies to be deployed to low-intensity zones of armed conflict or post-conflict situations to take the necessary measures to avoid such mercenary recruitment and to issue public statements and apply policies aimed at discouraging such practices;**
- **Recommends that United Nations departments, offices, organizations, programmes and funds establish an effective selection and vetting system and guidelines containing relevant criteria aimed at regulating and monitoring the activities of private security/military companies working under their respective authorities. They should also ensure that the guidelines comply with human rights standards and international humanitarian law;**

- **Recommends that regional governmental consultations followed by a high-level round table be convened under the auspices of the United Nations, to discuss the fundamental question of the role of the State as holder of the monopoly of the use of force. Such meetings will facilitate a critical understanding of responsibilities of the different actors, including PMSCs, in the current context and their respective obligations in reaching a common understanding as to which additional regulations and controls are needed at the international level;**
- **The Working Group recommends that in order to fulfil the complex mandate and challenges given to it under resolution 2005/2 of the Commission on Human Rights and assumed by the Human Rights Council, as well as by General Assembly resolution 61/151, it be allowed to hold three sessions per year, two in Geneva and one in New York;**
- **Requests the Human Rights Council to support the activities proposed by the Working Group by including them in a relevant resolution.**

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