

MERCENARISM AND PRIVATE MILITARY AND SECURITY COMPANIES

An overview of the work carried out by 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



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

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The Working Group also acknowledges the important contribution provided to the mandate by former members and the former Special Rapporteur on mercenaries, which are also highlighted in this publication.



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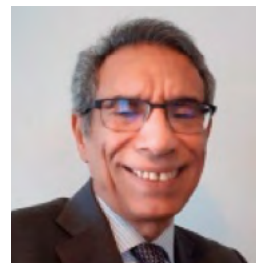
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Introduction

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 is a human rights mechanism that is part of the Special Procedures of the United Nations Human Rights Council. Through this publication the Working Group members provide an overview of their recent work and highlight the human rights violations covered by their mandate.



The Working Group has been tasked by the United Nations Human Rights Council to study the human rights violations, in particular to the right of peoples to self-determination, committed by mercenaries and those engaged in mercenary-related activities as well as private military and security companies. Through fact-finding missions, thematic studies and individual allegations, the Working Group has been able to collect and produce a wealth of information regarding these specific phenomena. This publication summarises and emphasises significant aspects of the work of the experts.

After briefly setting out the origins of the Working Group and its working methods, the publication delves into the two core elements of the mandate, namely mercenaries or mercenary-related activities and private military and security companies. As part of the mercenary-related activities, the foreign fighter phenomenon is addressed as the Group also devoted much research to this subject resulting in reports to the General Assembly in 2014 and 2015. Several achievements of the experts are also highlighted. To conclude, the publication analyses a series of key challenges which have frequently arisen during the tenure of the Working Group members.

The Working Group hopes that this publication will contribute to furthering two of its fundamental objectives: the creation of an international binding regulation of the activities of private military and security companies, and improvement of measures designed to prohibit mercenarism and mercenary-related activities.

Special procedures of the United Nations Human Rights Council

The special procedures are a group of independent human rights experts with mandates to report and advise on human rights violations and concerns from a thematic or country-specific perspective. They are a human rights mechanism of the Human Rights Council, a United Nations inter-governmental body constituted of 47 United Nations Member States which are elected by the UN General Assembly. These human rights experts are selected by the Human Rights Council.

The independent experts are not United Nations staff and are not remunerated. They work with the support of the Office of the United Nations High Commissioner for Human Rights. Their tasks are defined in the resolutions of the Human Rights Council creating or extending their mandates. Special procedures mandates are either represented by a single independent expert or by a working group constituted of five independent experts.

Introduction to the mandate

A. From Special Rapporteur to Working Group – an evolving mandate

1) Special Rapporteur

Following a request from the Economic and Social Council, the former United Nations Commission on Human Rights (replaced by the Human Rights Council) appointed a Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination in 1987.¹ The resolution establishing the mandate,² specifically noted the deep concern of the Economic and Social Council regarding the increasing threat caused by the activities of mercenaries for all States, particularly African States, and other developing States. It also recognised that mercenarism was a threat to international peace and security, and like genocide, was a crime against humanity. The decision of the Commission on Human Rights came after several decades of sustained attention from the United Nations on mercenarism. The Security Council had issued resolutions regarding the use of mercenaries to overthrow Governments in the Democratic Republic of the Congo in 1967, the People's Republic of Benin in 1977 and in the Republic of Seychelles in 1981.³ Throughout the 1960s, the General Assembly also repeatedly adopted resolutions calling for the implementation of the right to self-determination in the context of continued colonial rule in Africa, as well as condemning the use of mercenaries against movements for national liberation and independence.⁴ In addition, the General Assembly decided to act upon the threat posed by mercenaries



Right of peoples to self-determination

The right of peoples to self-determination is established by the Charter of the United Nations. It is at the core of international human rights law and is common to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This right is also defined in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations which underlines that “By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”^a

^a (A/RES/25/2625)

¹ E/RES/1986/43

² Ibid

³ S/RES/239, S/RES/405, S/RES/419, S/RES/496, and S/RES/507

⁴ A/RES/2465, A/RES/2548, and A/RES/2708

and launched in 1979 a drafting process for an international convention to prohibit the recruitment, use, financing and training of mercenaries.⁵ The International Convention against the Recruitment, Use, Financing and Training of Mercenaries was finally adopted in 1989 and entered into force in 2001. The African Union, at the time the Organisation of African Unity, had also chosen to act in the face of repeated use of mercenaries across the continent and adopted the Convention for the Elimination of Mercenarism in Africa in 1977, which entered into force in 1985.

The newly appointed Special Rapporteur was mandated by the Commission on Human Rights “to examine the question of the use of mercenaries as a means of violating human rights and of impeding the exercise of the right of peoples to self-determination”.⁶ Through a following resolution the Special Rapporteur was also

1989 Int Convention definition of mercenaries

The 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries has the following definition of a mercenary:

1. A mercenary is any person who:
 - (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
 - (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
 - (d) Is not a member of the armed forces of a party to the conflict; and
 - (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
2. A mercenary is also any person who, in any other situation:
 - (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
 - (ii) Undermining the territorial integrity of a State;
 - (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
 - (c) Is neither a national nor a resident of the State against which such an act is directed;
 - (d) Has not been sent by a State on official duty; and
 - (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

⁵ A/RES/35/48

⁶ E/CN.4/RES/1987/16, §1

tasked with developing “further the position that mercenary acts and mercenarism in general are a means of violating human rights and thwarting the self-determination of peoples” as well as studying “credible and reliable reports of mercenary activity in African and other developing countries to determine the scope and implications of such activities and the possible responsibility of third parties”.⁷

The first Special Rapporteur to be appointed in 1987 was Mr Enrique Bernales Ballesteros,⁸ whose tenure was continually renewed until 2004. He reported to both the Commission on Human Rights and the General Assembly and recommended concrete responses to mercenary activities. During his tenure, the Special Rapporteur undertook numerous country visits to States that had been affected by mercenary activities.⁹ The first sixteen years of the mandate coincided with regional upheavals caused by the end of the Cold War and enabled the Special Rapporteur to report on the extensive use of mercenaries to destabilise governments. He also documented the evolution of mercenarism, including the development of the use of private companies that often involved mercenaries. In several of his reports in the 1990s, the Special Rapporteur identified the emerging trend of private military and security companies which were gradually taking over roles previously associated with mercenaries.¹⁰ The Special Rapporteur also highlighted the links between mercenarism and terrorism.¹¹

Additional Protocol I to the 1949 Geneva Conventions

The Additional Protocol was adopted in 1977 and contained the first international definition of mercenaries.

Article 47 – Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
 - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
 - (e) is not a member of the armed forces of a Party to the conflict; and
 - (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

⁷ E/CN.4/RES/1988/7, §10, 12

⁸ Mr Enrique Bernales Ballesteros is from Peru.

⁹ During his tenure, he visited Angola, Croatia, Cuba, El Salvador, the Federal Republic of Yugoslavia, the Maldives, Nicaragua, Panama, South Africa, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

¹⁰ E/CN.4/1996/27, E/CN.4/1997/24, E/CN.4/1998/31 and E/CN.4/1999/11

¹¹ E/CN.4/2001/19

The emerging international standards on mercenarism guided the work of the Special Rapporteur and enabled him to advocate for the adoption and implementation of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Convention for the Elimination of Mercenarism. The definition of mercenaries contained in this Convention was itself largely based on article 47 of Additional Protocol I to the 1949 Geneva Conventions. The Special Rapporteur continuously pushed for the ratification of the 1989 Convention which to date still lacks substantial support, with only thirty-five States Parties.¹²

Nonetheless, the Special Rapporteur sought to go beyond the restrictive international legal definitions of mercenaries and aimed to expand the analysis of human rights violations committed by mercenaries beyond the context of armed conflicts. He thus emphasised the role of mercenaries in criminal activities such as trafficking in persons, weapons, precious stones as well as drugs.

In view of the new forms, manifestations and modalities taken by mercenary activities, the Special Rapporteur suggested in 2004 a more comprehensive definition of a mercenary. He raised his concerns regarding “the absence of a clear, unambiguous and comprehensive legal definition of a mercenary”¹³ and proposed the following alternative to Article 1 of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

Mr Enrique Bernales Ballesteros’s successor as Special Rapporteur in 2004 was Ms Shaista Shameem¹⁴ for a year as she was then integrated into the newly formed 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. Ms Shaista Shameem focused her brief tenure on adopting a more practical approach to mercenarism by rethinking the international definition and existing international standards. Moreover, she entered into contact with private military and security companies in order to foster the development of codes of conduct.¹⁵

2) Working Group

In 2005, the Commission on Human Rights adopted a resolution¹⁶, which ended the mandate of the Special Rapporteur on the use of mercenaries and established 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



as its replacement. The Working Group was composed of five independent experts from each of the five regional groups: African States, Asia-Pacific States, Latin American and Caribbean States, Western European and other States, and Eastern European States. The Working Group was tasked with elaborating and presenting “concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-

¹² https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en, last accessed on 3/03/17

¹³ E/CN.4/2004/15, §37

¹⁴ Ms Shaista Shameem is from Fiji.

¹⁵ A/60/263

¹⁶ E/CN.4/RES/2005/2

determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities”; monitoring “mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world”; studying and identifying “emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination”; and monitoring and studying “the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities”.¹⁷ Furthermore, the Working Group was mandated to pursue the work undertaken by the Special Rapporteur regarding international standards and a new definition of mercenaries.

The five initial Working Group members were Ms Najat Al-Hajjaji, Ms Amada Benavides de Pérez, Mr José Luis Gómez del Prado, Mr Alexander Nikitin and Ms Shaista Shameem.¹⁸ During their tenure from 2005 to 2011, the experts focused on private military and security companies and produced a draft convention on the regulation of such companies.¹⁹ As part of this process, the Working Group held regional consultations in all five regions between 2007 and 2010.²⁰ From 2011 to date, the Working Group has included Mr Gabor Rona, Ms Patricia Arias, Mr Anton Katz, Ms Elzbieta Karska and Mr Saeed Mokbil and Ms Faiza Patel who was replaced by Mr Mokbil.²¹

B. Working methods

During its first session, the Working Group adopted its methods of work. A Chairperson-Rapporteur is selected annually. The Working Group holds three sessions per year of five working days each, with two taking place in Geneva and one in New York.²² The Working Group members are elected by the Human Rights Council²³ for a period of three years and can be renewed once for a further three years.

The Working Group must report annually on its activities to the Human Rights Council, during its autumn session, and to the General Assembly during its annual session. This reporting duty is normally undertaken by the Chairperson-Rapporteur. Four core working methods are common to all independent experts within the Special procedures mechanism of the Human Rights Council.



¹⁷ Ibid, §12

¹⁸ Ms Najat Al-Hajjaji is from the Libyan Arab Jamahiriya, Ms Amada Benavides de Pérez is from Colombia, Mr José Luis Gómez del Prado is from Spain, Mr Alexander Nikitin is from the Russian Federation and Ms Shaista Shameem is from Fiji.

¹⁹ A/HRC/15/25 and A/HRC/18/32

²⁰ A/66/317

²¹ Their biographies are available in the first annex of this publication. Ms Faiza Patel is from Pakistan.

²² A/HRC/RES/7/21

²³ The Commission on Human Rights was replaced in 2006 by the Human Rights Council following a decision by the General Assembly (A/RES/60/251).

1) Country visits

The Working Group conducts fact-finding missions to countries at the invitation of the national authorities. The Working Group will normally initiate the process by requesting a country visit. If the concerned government accepts the request, a fact-finding mission can take place and will normally last for seven working days, unless otherwise agreed by the Working Group and the concerned government. Usually, the Chairperson-Rapporteur of the Working Group and another member from the concerned region will undertake the country visit, along with staff from the OHCHR Secretariat.



The experts will request a visit based on a review of the situation in selected countries. Key elements which will guide their decision to send a request are allegations of human rights violations committed by mercenaries and those engaged in mercenary-related activities, or private military and security companies, the presence of such an industry, and the existence of relevant national regulatory frameworks.

Country visits enable the Working Group to gather first-hand information on mercenarism including mercenary-related activities in all their forms and manifestations, as well as on the activities of private military and security companies and their impact on human rights, particularly the right to self-determination. Country visits also present opportunities for the Working Group to engage with national authorities and provide expert advice based on its findings. At the end of the visit, the experts deliver an end of visit statement with preliminary conclusions and also organise a press conference to bring wider attention to their findings. A full report on the visit is presented at the following Human Rights Council autumn session as an addendum to the thematic report. At the end of a country visit report, there is a set of conclusions and recommendations which is an essential guidance tool for authorities and other concerned actors. Moreover, this list of action points provides a practical way to track progress and the implementation of reforms.

Since its establishment, the Working Group has undertaken twenty country visits. A detailed list of the visits and the reports is in the third annex to this publication.

2) Thematic reports

The Working Group has a mandate to annually report to the Human Rights Council and to the General Assembly and present a summary of its activities. Through these reports, the Working Group focuses on specific issues which become the subject of thematic studies. Within these reports, the experts are able to regularly update the international community on issues of concern relating to mercenarism, mercenary-related activities and private military and security companies with a particular focus on their impact on human rights.



In preparation of these thematic studies, the Working Group has convened expert panel meetings, consulted States, civil society

representatives and various stakeholders through questionnaires and private and public meetings, in order to gather the relevant and current information on the topic in focus. The thematic reports conclude with concrete recommendations aimed at guiding States and other relevant stakeholders on the issues that have been covered.

To date, the Working Group has presented twenty-three thematic reports. A detailed list of the reports is in the second annex of this publication. The content of most of the thematic reports will be detailed in the following chapter.

3) Awareness raising

In order to raise awareness about its mandate and the conclusions and recommendations of its reports, the Working Group has undertaken several activities. Press releases are published at the end of country visits, and may also be issued in to address human rights violations perpetrated by mercenaries and private military and security companies, or in the framework of a thematic study. Press statements are also issued in collaboration with other human rights experts within the Special Procedures system, particularly to address a relevant human rights concern.



Working Group members participate in conferences, seminars, and meetings with stakeholders to both gain and impart information about human rights violations and other matters relevant to the Working Group's mandate.

By holding consultations, exhibitions and events during the Human Rights Council sessions in Geneva, as well as during their own sessions in Geneva (twice a year) and New York (once a year) the Working Group is able to maintain a dialogue with States, the private military and security industry, civil society organisations, victims of human rights violations and other stakeholders.

The Working Group has held events on a variety of subjects such as the use of private military and security companies in places of deprivation of liberty, the privatisation of war, the use of private military and security companies by the United Nations, the regulation of private military and security companies, as well as foreign fighters and new forms of mercenarism. A summary of all these events as well as relevant documents are available on the webpage of the Working Group.²⁴

4) Communications



The communication procedure consists of an individual complaint mechanism which enables the Working Group to receive allegations of human rights violations directly from victims, their representatives or non-governmental organisations. Reported allegations may not be based solely on media reports and must be from dependable and reliable sources. They address individual or collective human rights violations as well as legislative or government policies and industry practices which may adversely impact human rights.

²⁴ <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>

There is no requirement to exhaust domestic remedies prior to submitting information to the Working Group.

Communications take the form of a diplomatic letter sent by the Working Group to the authorities of the concerned State or to a non-state actor if the violation is alleged to have been committed by, for example, a company. They are classified either as urgent appeals in cases of imminent threat or as allegation letters when the alleged violation has occurred or may happen in the future. Through communications, independent experts aim to obtain further information on the alleged facts, call for on-going violations to immediately cease and request accountability measures as well as remedies for the victims. These letters are initially confidential and are then placed into the public domain generally three months later, as are any responses from the State authorities or concerned non-state actors.

Since the creation of the Working Group in 2005 to March 2017, 76 communications were sent to governments and non-state actors of which 38 were from the Working Group while the other half were joint letters with other independent experts in the Special Procedures mechanism. During this period, the Working Group received only 23 replies.

Noteworthy case

The Working Group addressed through several joint communications alleged violations of the human rights of asylum seekers held at immigration detention facilities under the control of the Government of Australia and managed by private security companies. These communications were sent to all concerned actors namely Australia, Nauru, Papua New Guinea and the private security companies.^o

^o Special procedure communications: AUS 5/2016, NRU 1/2016, OTH 18/2016, AUS 6/2015, NRU 2/2015, PNG 1/2015, AUS 4/2014, PNG 4/2014, AUS 1/2014 and PNG 2/2014

Recent thematic work

A. Mercenaries and mercenary-related activities

1) Mercenaries

Since its inception in 2005, the Working Group has closely monitored reports of mercenary activities and has analysed the evolution of this phenomenon. In several thematic reports, it has provided an update on recent mercenary activities and covered ongoing political situations including the crises in Côte d'Ivoire and Libya where mercenaries were reportedly used.²⁵

Through its latest report to the General Assembly in autumn 2016, the Working Group took stock of the evolution of mercenarism and related phenomena such as foreign fighters. The experts reiterated the position of the first Special Rapporteur who had concluded that the international legal definition of a mercenary was exceedingly narrow and difficult to apply.²⁶

The Working Group emphasised that mercenarism was a particularly old practice dating back to the classical world, but underlined that it had evolved and declined with the development of conscription based on nationalism, in the nineteenth century. The use of mercenaries only re-emerged with the wars of decolonisation and ensuing civil wars. The experts noted that following this surge in mercenary activity which motivated the creation of their mandate, the phenomenon had largely subsided but then re-emerged in a somewhat different form through the growth of private military companies. Companies such as Executive Outcomes operated in conflicts in Angola and Sierra Leone, and Sandline International was active in Papua New Guinea and also in Sierra Leone. Private military companies of this type, which had effectively been parties to armed conflicts, declined and were replaced with companies that sought not to engage in active combat, but rather, to limit themselves to purely defensive roles in support of States and their militaries. This change distanced most of the activities of such companies from the narrow international legal definition of mercenarism. The experts observed that presently, mercenaries and private military company personnel are often recruited through networks based on previous military service experience with the specific aim of providing highly trained and effective individuals. In addition, it could be established in general terms that since mercenaries were recruited through financial incentives they were a tool of the wealthy, the powerful and closely associated to States.²⁷

The country visits of the Working Group have also enabled the experts to study the detrimental impact of mercenarism. For example, during their visit to Comoros in 2014, the members observed the dire consequences of successive coups d'état undertaken with the support of mercenaries that were present in the country after it gained independence in 1975. Indeed, at least 20 coups d'état or attempts took place during the first twenty years of the country's independence. The case of Comoros is a clear example of the violation of the right to self-determination resulting from the activities of mercenaries. The experts emphasised how the extent of the damage caused by such instability was not limited to the realm of civil

²⁵ A/67/340 and A/68/339

²⁶ A/71/318

²⁷ Ibid

and political rights, but also how it had severely impacted the economic and social rights and welfare of Comorians.²⁸ There has been little in the way of accountability for this interference by foreign elements with the right of Comorians to govern themselves.

The visit to Côte d'Ivoire in 2014 was another opportunity for the Working Group to underline the serious human rights violations caused by mercenary-related activities. The country had lived through two civil wars over a decade with the involvement of mercenaries on both occasions.²⁹ Around 4,500 mercenaries were allegedly recruited over the two conflicts and were directly linked to attacks against civilians which included "extrajudicial killings, rape, torture, enforced disappearance and abductions as well as pillaging and arbitrary arrest and detention".³⁰ The Working Group insisted that mercenaries and their contractors having served both sides of the conflict had to be prosecuted. Indeed, there was a risk of only investigating those who had served the previous regime with little efforts to deal with actors such as *dozos*³¹ who had been linked to several human rights abuses.

2) Mercenary-related activities: foreign fighters

The Working Group decided in 2014 to address a specific type of mercenary-related activity and to further pursue the work of the first Special Rapporteur regarding the new modalities of mercenary activity. In the context of the protracted conflict in Syria, fighters from various parts of the world were reportedly travelling to the region to fight for financial gains and for religious or ideological motivations. This prompted the Working Group to undertake a year-long study which focused on analysing the linkages between foreign fighters and mercenaries.³²

The Working Group used as its definition for foreign fighters "individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-state armed group in an armed conflict."³³ Through this characterisation, the experts identified key similarities to mercenaries, including the trait of being an external actor intervening in a conflict. They also pointed out similarities in the types of activities in which foreign fighters were involved, such as armed conflicts, terrorism and organised crime. What is more, even though a key difference between many foreign fighters and mercenaries was the ideological motivation of the former, the incentive of financial or material gain was also existed for foreign fighters.

Through their research, the experts noted that the absence of an international definition of foreign fighters had led to misconceptions such as the focus on the fighting element which left out a sizeable contingent of individuals who travelled to provide non-violent support. There were also additional difficulties caused by the use at the international level of the term "foreign terrorist fighters" which, due to the absence of a consensual international legal definition of terrorism, could be conflated with the concept of foreign fighters who were not necessarily engaged in terrorist groups or activities.³⁴

²⁸ A/HRC/27/50/Add.1

²⁹ A/HRC/30/34/Add.1

³⁰ Ibid, §20

³¹ "Dozos are traditional hunters who belong to a brotherhood and are reported to have mystical powers." They originate from several countries in the region including Côte d'Ivoire. "Dozos fought alongside the Forces républicaines in support of the current regime and were reported to have committed scores of human rights violations between 2009 and 2013." (A/HRC/30/34/Add.1, §46)

³² A/70/330

³³ Ibid, §13

³⁴ A/70/330

As part of their thematic engagement on this subject, the Working Group undertook fact finding missions to Tunisia, Belgium, Ukraine and to the European Union institutions.³⁵ The country visit to Tunisia in 2015 brought to the fore striking issues such as the underlying causes which pushed youths to become foreign fighters. At the time of the visit, Tunisians represented one of the largest groups among the foreign fighters active in the Syrian Arab Republic. The experts welcomed efforts by the Tunisian authorities to establish programmes addressing radicalisation and the issue of returning foreign fighters. The Working Group took this opportunity to share with the Government information on the numerous rehabilitation and reintegration programmes that it had compiled during its thematic research on foreign fighters.³⁶

The 2016 visit of the Working Group to Ukraine provided an opportunity to analyse foreign fighters who were engaged in the conflict in the country. The experts concluded that the substantial presence of foreign fighters and mercenaries in Ukraine had contributed to the exacerbation of the conflict in the east of the country. The Working Group was faced with a complex context in which it was often difficult to establish clearly if individuals were foreign fighters or mercenaries or possibly both. Following their visit, the experts urged the authorities to ensure full accountability for human rights violations committed by foreign fighters and mercenaries by, inter alia facilitating legal cooperation between Ukraine and the countries of origin of perpetrators.³⁷

International definition of a foreign terrorist fighter

Individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.^a

^a S/RES/2178

The report of the Working Group in 2016 further demonstrated the experts' perspective on the phenomenon of foreign fighters. The experts noted that foreign fighters were historically motivated to join a conflict for ideological reasons. Foreign fighters could generally be associated with insurgencies or specific causes serving the less powerful. Their existence was thus not new and the Working Group enumerated five broad categories of past and present state reaction to foreign fighters: "nineteenth-century foreign enlistment legislation; newly created specific foreign fighter legislation; controls relating to the removal of citizenship; controls restricting movement or allowing for the confiscation of passports; and other anti-terror provisions."³⁸ The Working Group concluded that the adoption of specific international measures regulating foreign fighters was problematic due to the remote possibility of achieving a consensus among States on whether or not the presence of foreign fighters was legitimate or illegal in all circumstances.

³⁵ A/HRC/33/43/Add.1, A/HRC/33/43/Add.2, A/HRC/33/43/Add.3 and A/HRC/33/43/Add.4

³⁶ A/HRC/33/43/Add.1

³⁷ A/HRC/33/43/Add.3

³⁸ A/71/318, §17

B. Regulation of private military and security companies

The current Working Group members took over a large body of the work that was undertaken by their predecessors on the regulation of private military and security companies. Much of their focus has been on advocating for the robust regulation of private military and security companies to ensure accountability and remedies to victims for their human rights and humanitarian law violations.

The experts used as their working definition for private military and security companies “a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.” They further defined military services as “specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities”, and security services as “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities”.³⁹



The Working Group has maintained the position that the most effective way to regulate private military and security companies is through an international legally binding instrument, and has also emphasised the importance of the soft law and self-regulatory approaches such as the Montreux Document and the International Code of Conduct for Private Security Service Providers. The Montreux Document is an intergovernmental initiative that reiterates existing international obligations of States and “best practices” to regulate private military and security companies operating in armed conflicts. The Code of Conduct is a multi-stakeholder initiative, with the involvement of private security companies, States and civil society organisations, which creates a set of principles, rules and procedures that signatories should apply in their operations.⁴⁰

1) Research on national regulation concerning private military and security companies

In 2012, the Working Group launched a global study of national regulation of private military and security companies and shared its findings through annual reports to the Human Rights Council.⁴¹ The global study covered 60 States from the various regions of the world. With the findings from the global study, the experts highlighted the need for international regulation of private military and security companies in view of the existing regulatory gaps at the national and regional levels.⁴²

To highlight the different approaches to regulation by States, the Working Group initially analysed three

³⁹ A/HRC/24/45, §5

⁴⁰ Nelleke Van Amstel and Tilman Rodenhäuser, *The Montreux Document and the International Code of Conduct: Understanding the Relationship between International Initiatives to Regulate the Global Private Security Industry*, DCAF, 2016

⁴¹ A/HRC/21/43, A/HRC/24/45, A/HRC/27/50, A/HRC/30/34 and A/HRC/33/43

⁴² A/HRC/21/43



examples of legislation: South Africa, Switzerland and the United States of America. The experts identified three core elements in regulation efforts: “the banning of certain activities of such companies; requiring these companies to be registered with national authorities and licensing their activities abroad; and efforts to establish jurisdiction in the home countries of such companies for violations of human rights and criminal law that occurred abroad.”⁴³

In its subsequent report on national regulation, the Working Group focused on several English speaking countries in Africa, namely Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe. Through this review, the experts noted that only South Africa had a comprehensive legislative framework regarding the regulation of private military and security companies. Other factors to emerge in this comparative exercise included the need for the use of consistent terminology and, in light of the transnational nature of larger private operators, to ensure the extraterritorial application of the legislation. Furthermore, a strong discrepancy among the analysed countries was found in the regulation on the use of force and firearms by private military and security companies. Lastly, the Working Group observed that trainings on international humanitarian law and human rights law were not required for personnel being employed by private military and security companies.⁴⁴

The experts further analysed the situation in eight French speaking countries in Africa (Burkina Faso, Cameroon, Côte d’Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal and Tunisia) as well as in eight Asian States (China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates). In the case of the African States, the Working Group observed that they all had regulations for private security companies but none for private military companies. The experts underlined a particularly worrying aspect regarding the rules on acquisition and possession of weapons by private security personnel, which varied enormously between the eight African States. In addition, accountability was mainly available through administrative sanctions with little to no emphasis placed on penal sanctions and enforceable remedies for victims.⁴⁵

Through this research on national regulation, the Working Group was also able to highlight a series of good practices. It welcomed, for example, the requirement for a security company to provide compensation when a security guard causes injuries as well as the need for such companies to have insurance to cover potential valid claims. Furthermore, the experts underscored the positive example of China where the regulation of personnel and related training was particularly thorough, though it lacked a human rights module.⁴⁶

In their third analysis of national regulation, the Working Group focused on eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama), eight countries in South America (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador,

⁴³ A/HRC/21/43, §52

⁴⁴ A/HRC/24/45

⁴⁵ A/HRC/27/50

⁴⁶ Ibid

Peru and Uruguay) and four countries in Europe (France, Hungary, Switzerland and the United Kingdom). This large review of countries confirmed certain trends such as the absence of legislation which regulates the activities of private military and security companies abroad. Moreover, it underlined that existing regulations mainly covered private security companies with a gap in respect to private military companies. As was noted in previous analyses, the acquisition of weapons as well as the use of force and firearms was often partially and inconsistently regulated.⁴⁷

The 2016 report covered the situation in six countries of the Commonwealth of Independent States (Azerbaijan, Kazakhstan, Kyrgyzstan, the Republic of Moldova, Tajikistan and Uzbekistan), four countries in the Pacific region (Australia, New Zealand, Nauru and Papua New Guinea) and the United States of America. Overall, the experts expressed the need in Commonwealth of Independent States to have strong accountability mechanisms dedicated to the regulation of private military and security company activities. With the Pacific region studies, the experts noted the need to establish specific rules on the direct participation of private military and security companies in hostilities and rules on the export of weapons and firearms by company personnel.⁴⁸

In the final report of the global study, which was presented to the Human Rights Council in September 2017, the experts provided an overview of all the regional studies that have been carried out, particularly highlighting the gaps in national regulation and the need for more robust regulation through an internationally legally binding instrument. Indeed, the gaps in legislation entail a threat to several human rights such as the right to life, the right to security, the prohibition of arbitrary deprivation of liberty, the prohibition of torture, cruel, inhumane or degrading treatment, and the right of victims to effective remedies. Mining and other extractive operations occurring on the territory of tribal, aboriginal and minority populations, present particularly acute concerns about the impact of private military and security services on social, economic and cultural rights, as well as the right of peoples to self-determination. Additionally, the global study confirmed that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries had only been ratified by a few States and even when it had been ratified, its implementation was generally wanting.

The Working Group has repeatedly raised the need for States to give greater attention and due diligence to counter the human rights implications of the activities of private military and security companies. The experts also emphasised the need for an international binding instrument in light of existing regulatory gaps evident in the global study. The growing number and power of private military and security companies operating at a transnational level, whether through their involvement in armed conflicts or in peace time situations, emphasises the need for strong action by the international community.

⁴⁷ A/HRC/30/34

⁴⁸ A/HRC/33/43

2) Collaborations on the regulation of private military and security companies

The expertise of the Working Group has been sought several times in the context of efforts to regulate private military and security companies. Of note, the experts commented on the draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers as well as on the Swiss draft federal law on the provision of private security services abroad, both in 2012.⁴⁹ Some of the comments from the Working Group were taken on board in the case of the former document with the final version of the Charter including the need to undertake a human rights assessment for private military and security companies operating in complex environments.⁵⁰ The experts have indeed strongly supported the International Code of Conduct for Private Security Service Providers' Association as it increasingly becomes a standard used by contractors. A key priority of the Working Group members has been, for example, to develop the capacity of the Association in its monitoring role. The Working Group has also repeatedly cooperated with the Montreux Document Forum and has participated on several occasions in its policy setting discussions.

Moreover, the Working Group provided written comments to the draft United Nations Policy Manual on Armed Private Security Companies, the United Nations Security Operations Manual and the Guidelines on the Use of Armed Security Services from Private Security Companies. A fundamental input to the Under-Secretary-General for Safety and Security was the need to ensure the mainstreaming of human rights in policy and operational documents.⁵¹ This meant, for example, screening armed private security companies based on their human rights records as well as undertaking human rights impact assessments.

The experts also provided legal assistance for individual cases through the submission of amicus curiae briefs. The most notable case that they joined is the one of *Al-Shimari v. CACI International, Inc. and Al-Quraishi v. L-3 Services, Inc.* which concerned allegations of torture against four Iraqi civilians by private military company personnel in Abu Ghraib prison, in Iraq.⁵² This case is crucial for it is one of the rare examples of victims being able to seek justice in the country where the private company is registered. Through the United States' Alien Tort Statute, the Center for Constitutional Rights brought to court two government contractors, namely CACI International Inc. and L-3 Services Incorporated for violations of United States federal law as well as international law. The case against CACI International Inc. and CACI Premier Technology, Inc. is still pending in a United States District Court.⁵³

3) Country visits

The fact-finding missions of the Working Group have provided crucial opportunities for the experts to engage with national authorities on regulating private military and security companies. During their visit to Somalia in 2012, Working Group members observed that the presence and activities of private military and security companies were "broadly deleterious to the security situation in the country."⁵⁴ Nonetheless, the majority of international actors pointed out that they could not operate in Somalia without the protection offered by private military and security companies. The Working Group thus concluded that it was of the

⁴⁹ A/HRC/21/43

⁵⁰ A/68/339

⁵¹ A/67/340

⁵² A/HRC/21/43

⁵³ <https://ccrjustice.org/home/what-we-do/our-cases/al-shimari-v-caci-et-al>, last accessed on 4/04/17

⁵⁴ A/HRC/24/45/Add.2, §66



upmost importance to regulate and monitor these companies and ensure that the national authorities did not neglect the development of the official Somali security apparatus.

The Working Group conducted two visits to Honduras in 2006 and 2013. In the latter visit, the Working Group followed up on the recommendations made from the visit in 2006 and was particularly concerned by the significant role played by private security companies and their involvement in human rights violations in the Bajo Aguán region. The report for this visit made recommendations to the Honduran authorities to address the concerns raised.⁵⁵ During the 2006 visit, the

Working Group highlighted the case of a private security company operating in Honduras that recruited Hondurans and Chileans for duty in Iraq.⁵⁶ Honduras acceded to the International Convention on mercenaries in 2008 following the visit of the Working Group.

The 2016 visit to the European Union institutions was an important opportunity for the Working Group to review the use of private military and security companies by international organisations. The experts welcomed the existence of a blacklist of private military and security companies which did not meet the standards set by the European Union. It was particularly noteworthy that this list relied on inputs from civil society. The Working Group was also confronted with the strong bias by the European Union and its member States for voluntary efforts, rather than compulsory rules, to regulate private military and security companies. The experts thus proposed to have as a minimum a European-wide obligation for these companies, operating in or for the European Union, to be members of the International Code of Conduct for Private Security Service Providers' Association.⁵⁷

⁵⁵ A/HRC/24/45/Add.1

⁵⁶ A/HRC/4/42/Add.1

⁵⁷ A/HRC/33/43/Add.4

Key achievements

A. Regulating the United Nations' use of private military and security companies

The Working Group began engaging in 2010 with the United Nations Department of Safety and Security in order to ensure that the use by the United Nations of private military and security companies did not violate human rights. The experts noted at the time that there was no system-wide policy regarding the outsourcing of military and security services to private companies



by the United Nations.⁵⁸ The current experts pursued this exchange with the United Nations, which culminated in the publication of a thematic report on this issue.⁵⁹

As part of their research on advocacy regarding this issue, the experts held a panel discussion in 2013 which focused first on the use of private military and security companies as armed guards by the United Nations and second on their use by the United Nations in peacekeeping operations. The United Nations clearly stated that it did not resort to private military companies and underlined that if a peacekeeping contributing Member State chose to resort to a private military company as part of its contingent it was solely responsible for any misconduct. Through the panels, the Working Group also concluded from testimonies of Staff Union representatives that there was growing concern regarding the increasing use of private military and security companies and their capacity to effectively protect United Nations staff.⁶⁰

To begin with, the Working Group noticed a lack of transparency regarding the use of private security companies by the United Nations, with little to no information on the number or name of the companies being contracted or details regarding unarmed services. Secondly, it was concluded that despite the principle of “last resort”, established by the Secretary General and the General Assembly, there was no clear guidance on how to demonstrate that all the other options have been exhausted.⁶¹

Having commented on the United Nations Policy on Armed Private Security Companies and the Guidelines on the Use of Armed Security Services from Private Security Companies, the Working Group noted the gaps and limitations of these documents. For example, the screening of the personnel was to be provided by the company without any oversight by the United Nations thus basing the whole procedure only on the word of the company. Another worrying absence in the measures taken was the limitation of the Guidelines to armed services thus overlooking the non-negligible use, and potential for rights violations, including through the use of force, in the use of *unarmed* services. The experts emphasised that private military and

⁵⁸ A/65/325

⁵⁹ A/69/338

⁶⁰ Ibid

⁶¹ Ibid

security companies employed by implementing partners or agents of the United Nations were not covered by the Guidelines. Lastly, the Working Group underscored that there were no sanctions in the Guidelines for the violation of human rights by private military and security companies.⁶²

Following constructive meetings and exchanges between the Working Group and the United Nations Department of Safety and Security, the Inter Agency Security Management Network⁶³ agreed to create a working group tasked with developing guidelines on unarmed services provided by private military and security companies and contracted by the United Nations. The United Nations Department of Safety and Security is leading this process and has also looked into the other recommendations made by the Working Group. The experts were given the opportunity to provide comments to the draft Guidelines and Policy documents on the use of unarmed private security companies developed by the working group of the Inter Agency Security Management Network. These inputs were endorsed by the Network in June 2016. The creation of an evaluation unit has been discussed to monitor the implementation of the Working Group's recommendations in respect of both armed and unarmed private security companies.

B. Bringing a human rights perspective to the issue of foreign fighters



Through its report to the General Assembly on foreign fighters, the Working Group emphasised the direct linkage between this phenomenon and self-determination. Indeed, the experts noted that non-state armed groups tended to frame their cause as an exercise of the right to self-determination with foreign fighters often intervening either to support or block this struggle.⁶⁴

The experts brought to the fore the contemporary understanding of the right to self-determination which could be construed as a struggle for greater democracy and human rights, also known as the internal right to self-determination. The current claims for self-determination could thus be analysed separately from the previous struggles which had taken place during decolonisation and “understood as the right of peoples to determine their own political and economic system, including by participatory political processes.”⁶⁵

The Working Group concluded that the arrival of foreign fighters will often act as a destabilising factor causing a radicalisation of the conflict and its prolongation. Indeed, foreign fighters will frequently have different ideological and political motivations as well as objectives in comparison to local groups involved since the beginning of a conflict. The experts consequently emphasised the threat posed by foreign fighters to the right to self-determination and to human rights in general as they will often have more brutal methods.⁶⁶

⁶² Ibid

⁶³ The Inter-Agency Security Management Network reviews policies and resources regarding the United Nations security management system. The Network is chaired by the Under-Secretary General for Safety and Security.

⁶⁴ A/70/330

⁶⁵ Ibid, § 38

⁶⁶ A/70/330

The Working Group also noted human rights violations either inherent in, or likely to occur as a consequence of measures adopted to limit the impact of foreign fighters. A first type of violation was linked to the issuance of travel bans to conflict zones which may result in the prosecution of individuals as foreign fighters regardless of their intent. The absence of a clear international definition of terrorism further led to human rights violations through the politicisation of prosecutions. Also, the threat of foreign fighters had been used by some governments to justify the use of mass surveillance or extended powers of detention. Lastly, the Working Group underlined the worrying trend of the adoption of exclusion orders or procedures to revoke citizenship in respect to foreign fighters which may lead to human rights violations such as statelessness.⁶⁷

For example, during their visit to Tunisia in 2015, the experts were concerned with the adoption of the Law against terrorism and money laundering which included provisions that allowed closed trials, the concealment of information from the defence and a lengthy period of detention without charges. At the time of the visit, the Ministry of Interior was adopting measures to impose travel bans that did not require the individual to be informed and did not allow any appeal.⁶⁸

Another instance of disregard for human rights was observed during the 2016 visit to the European Union institutions. The adoption of a new directive to combat terrorism was not preceded by an impact assessment,⁶⁹ as per usual practice, in view of the urgency of the matter, according to the European Union officials. The Working Group was concerned with such an approach and urged the European Union institutions to reconsider the need for a human rights-based analysis of the directive.⁷⁰

Throughout their work on this subject, the experts emphasised that current responses to the phenomenon of foreign fighters were limited to the realm of security with repressive and coercive measures being applied while there were inadequate efforts to develop preventive measures. Effective rehabilitation and reintegration measures for foreign fighters were needed in most States. The Working Group also called for enhanced cooperation between States in sharing evidence to ensure that there is accountability for crimes committed by foreign fighters.⁷¹

The fact-finding mission to Belgium in 2015 was an opportunity for the Working Group to observe the limitations of a response mainly based on security, repression and prevention. The experts insisted on the need to address root causes of alienation which facilitated the recruitment of foreign fighters among Belgians of North African descent. Islamophobia and anti-immigrant feelings, for example, were not being dealt with comprehensively at relevant government levels.⁷²

⁶⁷ Ibid

⁶⁸ A/HRC/33/43/Add.1

⁶⁹ The impact assessment includes a human rights impact assessment.

⁷⁰ A/HRC/33/43/Add.4

⁷¹ A/70/330

⁷² A/HRC/33/43/Add.2

Key challenges

A. Achieving an accountability framework

As has been discussed in the previous sections, the utmost priority of the Working Group has been to advocate and promote the need for effective accountability measures of mercenaries, mercenary-related activities and private military and security personnel. The experts and their predecessors have endeavoured to propose innovative solutions and embrace constructive propositions from different stakeholders. Nonetheless, their key proposals for a new, realistic definition of mercenarism and for a binding international instrument regulating the actions of private military and security companies have faced substantial obstacles.



In 2010, following the presentation to the Human Rights Council of a draft convention on private military and security companies by the Working Group, the Council decided to establish an open-ended intergovernmental working group to consider the possibility of elaborating an international legal framework on the regulation, monitoring and oversight of the activities of private military and security companies.⁷³ The open-ended intergovernmental working group has held, since then, six sessions and has not progressed towards the creation of an international binding instrument. This is due to a strong dichotomy in approaches between States wishing to enforce obligations and others preferring a soft law response based on self-regulation. Throughout these sessions, the Working Group has had a role of “resource person” and has actively used the sessions as an advocacy opportunity to reach States and promote a consensus on a binding instrument.

The Working Group has emphasised its support to both soft law options of regulation and an international binding instrument. The Working Group has thus supported the Montreux Document Forum and the International Code of Conduct for Private Security Service Providers’ Association as a means to improve regulation in this industry. It has nonetheless repeatedly noted the need to develop an effective compliance mechanism which could provide remedies for victims. In September 2017, the Human Rights Council adopted a resolution to establish an open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. The first session of this intergovernmental working group will take place in 2018.⁷⁴

The Working Group was pleased to observe that specific judicial actions have been taken to prosecute private military and security companies involved in human rights violations. For example, the notable Blackwater case regarding the killing of 14 Iraqi civilians in 2007 in Baghdad by private military contractors

⁷³ A/HRC/RES/15/26

⁷⁴ A/HRC/RES/36/11

led to the conviction in 2014 of four Blackwater employees.⁷⁵

Regarding mercenaries and mercenary-related activities such as foreign fighters, the over-restrictive existing definition or the absence of a comprehensive legal framework have led to few possibilities of prosecuting perpetrators of human rights violations. Until a comprehensive international framework is attained, the Working Group will continue to advocate for the reform of national legislation either through its thematic reports or following its country visits.

During their visit to Comoros in 2014, the experts observed that the lack of adequate accountability mechanisms had enabled a particular mercenary to be involved in several coups d'état over decades without ever being prosecuted. When this said mercenary was eventually caught up by the judiciary in France, he was only handed a five year suspended prison sentence.⁷⁶

The Working Group views with utmost importance, the need for the international community, particularly Member States of the United Nations, to ensure the accountability of perpetrators engaged in mercenarism, mercenary-related activities and violations of rights within the private military and security industry. General trends of privatisation of the use of force as well as an increased presence of non-state actors in armed conflicts will lead to more frequent human rights violations by these actors operating in a legal vacuum.

B. Engagement with the private sector

The Working Group has endeavoured to interact with individual private military and security companies, and collectively as well, through its contacts with the International Code of Conduct for Private Security Service Providers' Association. In addition, it has included in several of its public panel discussions speakers from the private sector. In 2015, the Working Group held consultations directly with private military and security companies to seek their feedback on regulation efforts.

There has been a clear difference in approach between the private military and security industry and the Working Group, with the former preferring to limit regulation efforts to non-binding instruments. Nonetheless, the Working Group has managed to engage with the private sector through its communications. Indeed, when allegations of human rights violations by private military and security personnel have been conveyed by the Working Group to these very companies, they have systematically and substantively responded.⁷⁷ A noteworthy example concerns the alleged beating, abduction and subsequent murder of an environmental human rights defender by private security personnel contracted by the Asia Pulp and Paper Company in Indonesia in 2015. The Company responded to the communication and detailed its reaction which reportedly entailed suspending the activities of its supplier in the location of the crime and crucially in terminating the relationship with the security supplier. Furthermore, the company reportedly cooperated with the police investigation and provided support to the family of the victim.⁷⁸

⁷⁵ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15217&LangID=E> and <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15840&LangID=E>

⁷⁶ A/HRC/27/50/Add.1

⁷⁷ Special procedure communications: OTH 18/2016, OTH 3/2015 and OTH 4/2014

⁷⁸ Special procedure communication: OTH 3/2015

C. Bringing to the fore the voice of victims



In view of the extremely complex phenomena that the Working Group deals with, the victims of human rights violations are generally diverse and numerous. This consequently renders their identification and recognition by the Working Group particularly difficult. The best opportunity for the experts to meet victims and their representatives has been through country visits.

The use of communications is also a fundamental way for the Working Group to enter directly into contact with victims and more importantly bring their voice to the international community. Unfortunately, as noted earlier on, the few communications sent and the low response

rate confirm the difficulty for victims to reach and receive the necessary attention at the international level.

In September 2016, the Working Group convened an event during the thirty-third session of the Human Rights Council with the presence of victims of abuses committed by private military and security company personnel. The experts had highlighted the case of *Al Shimari v. CACI et al.* through several communications⁷⁹ and their *amicus curiae* contribution. They invited one of the plaintiffs in the case to the event and he was able to share his traumatic experience of torture in Abu Ghraib at the hands of personnel from CACI. Moreover, the event included a virtual reality showing on the experience of victims of abuse committed by foreign fighters. Through this format, the experts were able to provide a unique international platform to these victims.

⁷⁹ Special procedure communications: USA 6/2014 and USA 6/2013

Concluding remarks

The Working Group has devoted much effort to advocating and promoting measures to eradicate mercenarism and mercenary-like activities. While traditional forms of mercenarism have waned due to the changing nature of armed conflict, the activities of foreign fighters are on the rise. The Working Group has further observed that mercenaries also participate in concerted acts of violence in situations where there is no armed conflict, for example in the situation of



Comoros. In their various country missions, the Working Group members observed that mercenaries and foreign fighters engage in activities that result in human rights violations, and they continue to pose threats to human rights wherever they exist. The Working Group's missions to countries such as Comoros, Côte d'Ivoire, Belgium, Tunisia, Ukraine and recently, the Central African Republic, provides ample information on both traditional mercenarism and foreign fighters and their human rights impact. Recommendations made to the relevant concerned States repeatedly emphasise the need to strengthen accountability and eliminate impunity for human rights violations committed by these actors.

With regard to private military and security companies, the Working Group has consistently observed through its global study on national legislation, that regulation is inconsistent and many gaps still exist. States mostly focus regulation on private security companies and seldom regulate private military companies. Often, private security firms do not refer to military activities in the definition of their functions or services provided, and these are generally not recognized as military activities. However, many of them perform activities corresponding to military activities. In many situations private military and security companies often engage in direct participation in hostilities which is of serious concern to the Working Group, given the threat this poses to human rights. The increasing development of technologies, including those that can potentially be used as weapons, and the likelihood of private military and security companies utilising these technologies, further highlights the need to effectively regulate this industry. While voluntary and self-regulatory mechanisms are both necessary and useful, increasingly powerful multinational business entities are taking over traditional State functions that involve potential and actual use of force. The Working Group underscores that the principal motivation of profit cannot and should not be expected to operate in the absence of strict mandatory regulation. Vetting of personnel, licensing and registration criteria, limitations on permissible functions, accountability for perpetrators of human rights violations and enforceable remedies for their victims can only be assured through strong regulatory measures established within domestic and international law. In this regard, the Working Group maintains its position that an international binding instrument is the best option forward in ensuring that human rights are fully protected wherever private contractors operate. A binding instrument would also ensure that remedies are available for victims and that perpetrators are held accountable, should human rights violations occur.

The current Working Group members hope that their successors on this important mandate will be able to build on the initiatives outlined in this publication, and continue to strengthen engagement with victims of human rights violations committed by mercenaries, mercenary-related actors and private military and security company personnel.

Annexes

A. Biographies of the current Working Group members⁸⁰

Ms Patricia Arias (Chile)

Ms. Patricia Arias (Chile) holds a Masters in Criminology from Catholic University of Louvain (Belgium), and studied law at Universidad de Chile school of Law. She is a licensed criminologist. Her work has focused on public policies within the framework of international human rights standards and in areas such as public and private security. She also worked extensively on gender discrimination, sexual and gender-based violence, child abuse, criminalized populations and with various penitentiary systems. Her other areas of research have focused on juvenile delinquency, terrorism, mercenarism, and migration. She is currently a researcher at the Henry Dunant Foundation Latin America, and teaches human rights. She is a certified member of the Justice Rapid Response Expert Roster.

Ms Elżbieta Karska (Poland)

Ms Elżbieta Karska (Poland) holds a Master in Law, a Ph.D in International Law, and a Habilitated Doctor of Law in International Law and European Law from the University of Wrocław, Wrocław, Poland. She researches and teaches in subjects including Public International Law, Protection of Human Rights Law, International Humanitarian Law, and International Criminal Law. She is a member of the Polish Branch of the International Law Association and has volunteered with the Polish Red Cross in dissemination of International Humanitarian Law. Currently, she is a Professor of International Law at the Cardinal Stefan Wyszyński, University of Warsaw, Faculty of Law and Administration, Head of the Chair of Human Rights Protection and International Humanitarian Law.

Mr Anton Katz (South Africa)

Mr Anton Katz (South Africa), studied international law at the Universities of Cape Town (B.Sc and LLB degrees) and Columbia School of Law (LLM). His practice as a senior advocate (barrister) at the Cape Town Bar involves a range of human rights issues, principally concerning international law and constitutional law. He advises and represents clients at the highest level on mainly public law legal issues and problems. Those that consult him and those whom he represents include international organisations, States, different levels of government, non-governmental organisations and individuals. He has worked as a consultant to the United Nations Office on Drugs and Crime concerning the implementation of extradition and mutual legal assistance and the African Union, advising on the implementation of its Convention on the Prevention and Combating of Terrorism. Mr Katz also presides as a High Court judge in Cape Town on an ad hoc basis.

Mr Gabor Rona (United States)

Mr Gabor Rona (United States), is a graduate of Vermont Law School and Columbia Law School. He is a Visiting Professor of Law at Cardozo Law School, where he teaches international human rights law and humanitarian law. He formerly served as the International Legal Director of Human Rights First and before

⁸⁰ <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/Members.aspx>

that, was a Legal Advisor in the Legal Division of the International Committee of the Red Cross (ICRC) in Geneva. He has published extensively on human rights and humanitarian law applicable to terrorism and counterterrorism.

Mr Saeed Mokbil (Yemen)

Mr Saeed Mokbil holds a Masters Degree from college of International law and international relations of Kiev University and diploma in journalism from International Institute of Journalism - Berlin with 25 years of experience in human rights, including in monitoring, reporting and submitting communications on human rights violations and country reports to United Nations mechanisms. His professional experience includes positions with OHCHR, International Service for Human Rights as well as posts in diplomatic missions in Geneva and Ethiopia, and in the Ministry of Foreign Affairs of Yemen and lastly as Executive Director of the International Organization for the Least Developed Countries (non-governmental organization). He has taken part in country missions related to the mandate and has field experience from Darfur, Ethiopia, Somalia and Yemen.

B. List of thematic reports

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| 2017 | Report to the 72 nd session of the General Assembly: | The use of private military and security companies in places of deprivation of liberty and the impact on human rights | A/72/286 |
| | Report to the 36 th session of the Human Rights Council: | Overview of the global study on national legislation covering private military and security companies | A/HRC/36/47 |
| 2016 | Report to the 71 st session of the General Assembly: | Tracing the evolution of the phenomena of mercenaries and foreign fighters | A/71/318 |
| | Report to the 33 rd session of the Human Rights Council: | National regulatory frameworks on private military and security companies | A/HRC/33/43 |
| 2015 | Report to the 70 th session of the General Assembly: | Foreign fighters | A/70/330 |
| | Report to the 30 th session of the Human Rights Council: | National regulatory frameworks on private military and security companies | A/HRC/30/34 |
| 2014 | Report to the 69 th session of the General Assembly: | Use by the United Nations of private military and security companies | A/69/338 |
| | Report to the 27 th session of the Human Rights Council: | National regulatory frameworks on private military and security companies | A/HRC/27/50 |
| 2013 | Report to the 68 th session of the General Assembly: | Update on mercenary activities and regulation of private military and security companies | A/68/339 |
| | Report to the 24 th session of the Human Rights Council: | National regulatory frameworks on private military and security companies | A/HRC/24/45 |
| 2012 | Report to the 67 th session of the General Assembly: | Update on mercenary activities and regulation of private military and security companies | A/67/340 |
| | Report to the 21 st session of the Human Rights Council: | National regulatory frameworks on private military and security companies | A/HRC/21/43 |
| 2011 | Report to the 66 th session of the General Assembly: | Activities update and stocktaking from the last six years | A/66/317 |
| | Report to the 18 th session of the Human Rights Council: | Activities update and stocktaking from the last six years | A/HRC/18/32 |

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| 2010 | Report to the 65 th session of the General Assembly: | Accountability of private military and security companies and proposed draft convention on private military and security companies | A/65/325 |
| | Report to the 15 th session of the Human Rights Council: | Proposed draft convention on private military and security companies | A/HRC/15/25 |
| | | Communications to and from Governments | A/HRC/15/25/Add.1 |
| | | Report on the regional consultation on the regulation of private military and security companies in Bangkok | A/HRC/15/25/Add.4 |
| | | Report on the regional consultation on the regulation of private military and security companies in Addis Ababa | A/HRC/15/25/Add.5 |
| | | Report on the regional consultation on the regulation of private military and security companies in Geneva | A/HRC/15/25/Add.6 |
| 2009 | Report to the 64 th session of the General Assembly: | Activities update and consideration of a convention on private military and security companies | A/64/311 |
| | Report to the 10 th session of the Human Rights Council: | Activities update and consideration of a convention on private military and security companies | A/HRC/10/14 |
| | | Communications to and from governments | A/HRC/10/14/Add.1 |
| | | Report on the regional consultation on private military and security companies in Moscow | A/HRC/10/14/Add.3 |
| 2008 | Report to the 63 rd session of the General Assembly: | Activities update and consideration of a convention on private military and security companies | A/63/325 |
| | Reports to the 7 th session of the Human Rights Council: | Activities update and the state as principal holder of the use of force | A/HRC/7/7 |
| | | Communications to and from governments | A/HRC/7/7/Add.1 |
| | | Report on the regional consultation on private military and security companies in Panama | A/HRC/7/7/Add.5 |
| 2007 | Report to the 62 nd session of the General Assembly: | Activities update | A/62/301 |
| | Report to the 4 th session of the Human Rights Council: | Activities update and the state as principal holder of the use of force | A/HRC/4/42 |
| 2006 | Report to the 61 st session of the General Assembly: | Activities update and private military and security companies | A/61/341 |
| | Report to the 62 nd session of the Commission on Human Rights: | Methods of work and activities planning | E/CN.4/2006/11 |
| | | Addendum | E/CN.4/2006/11/Add.1 |

C. List of country visits

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| 10 to 19 October 2016 | Mission to Central African Republic | A/HRC/36/47/Add.1 |
| 25 to 28 April 2016 | Mission to European Union institutions | A/HRC/33/43/Add.4 |
| 14 to 18 March 2016 | Mission to Ukraine | A/HRC/33/43/Add.3 |
| 12 to 16 October 2015 | Mission to Belgium | A/HRC/33/43/Add.2 |
| 1 to 8 July 2015 | Mission to Tunisia | A/HRC/33/43/Add.1 |

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| 7 to 10 October 2014 | Mission to Côte d'Ivoire | A/HRC/30/34/Add.1 |
| 7 to 16 May 2014 | Mission to Comoros | A/HRC/27/50/Add.1 |
| 18 to 22 February 2013 | Mission to Honduras | A/HRC/24/45/Add.1 |
| 8 to 14 December 2012 | Mission to Somalia | A/HRC/24/45/Add.2 |
| 12 to 16 June 2011 | Mission to Iraq | A/HRC/18/32/Add.4 |
| 10 to 19 November 2010 | Mission to South Africa | A/HRC/18/32/Add.3 |
| 16 to 20 August 2010 | Mission to Equatorial Guinea | A/HRC/18/32/Add.2 |
| 20 July to 3 August 2009 | Mission to the United States of America | A/HRC/15/25/Add.3 |
| 4 to 9 April 2009 | Mission to Afghanistan | A/HRC/15/25/Add.2 |
| 26 to 30 May 2008 | Mission to the United Kingdom | A/HRC/10/14/Add.2 |
| 9 to 13 July 2007 | Mission to Chile | A/HRC/7/7/Add.4 |
| 14 to 18 May 2007 | Mission to Fiji | A/HRC/7/7/Add.3 |
| 29 January to 2 February 2007 | Mission to Peru | A/HRC/7/7/Add.2 |
| 28 August 2006 to 1 September 2006 | Mission to Ecuador | A/HRC/4/42/Add.2 |
| 21 to 25 August 2006 | Mission to Honduras | A/HRC/4/42/Add.1 |

D. List of reports from the open-ended intergovernmental working group

The open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies was created in 2010 following the extensive work of the Working Group on private military and security companies. The experts have consistently served as resource persons for the sessions of the open-ended intergovernmental working group.

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| 2017 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its sixth session | A/HRC/36/36 |
| 2016 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its fifth session | A/HRC/WG.10/5/2 |
| 2015 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its fourth session | A/HRC/30/47 |
| 2014 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its third session | A/HRC/WG.10/3/2 |
| 2012 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its second session | A/HRC/22/41 |
| 2011 | Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its first session | A/HRC/WG.10/1/4 |
| | Draft of a possible Convention on private military and security companies | A/HRC/WG.10/1/2 |

