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**Human Rights Council**

**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**

**First session**

Geneva, 23 – 27 May 2011

**Why we need an International Convention on  
Private Military and Security Companies (PMSCs)**

Submission by the Working Group on the use of mercenaries as a means of impeding the  
exercise of the right of peoples to self-determination

1. In the last decade, many States have increasingly relied on private military and security companies (PMSCs) to perform military and security functions, which had historically been performed by State forces. The wars in Iraq and Afghanistan typify this trend. But the use of PMSCs is widespread, covering circumstances as varied as anti-piracy in the Horn of Africa to drug interdiction in Latin America.

2. The Working Group on the use of mercenaries has repeatedly expressed its concern regarding the impact of the activities of PMSCs on human rights. Its mission reports have provided detailed information regarding human rights violations perpetrated by PMSC employees, in particular when operating in conflict or post-conflict scenarios. In these circumstances, PMSCs have on occasion been drawn into military-type activities, including combat, and there have been a number of reports of their use of firearms against civilians. These incidents are exacerbated by the lack of transparency about PMSC activities and the lack of mechanisms for holding PMSCs accountable for human rights violations.

3. As requested by the Human Rights Council, the Working Group, on the basis of extensive consultations with governments and civil society, prepared the text of a draft convention to regulate the activities of PMSCs. The Working Group circulated a draft of such a convention in July 2009 to more than 250 experts, academics and non-governmental organizations. As a result of comments received and discussions with various stakeholders, the Working Group prepared a note on the elements for a possible draft convention on PMSCs, which was transmitted in January 2010 to all Member States for comments. In parallel to this process, the Working Group also received feedback on the necessary elements of a possible draft convention on PMSCs during the regional consultations held in Addis Ababa, Bangkok, Geneva and Moscow.

4. In total, the Working Group received more than 400 suggestions, amendments, proposals and formulations from a wide variety of stakeholders, including Member States, international organizations, and private military and security companies. At the conclusion of this broad and inclusive consultative process, the Working Group presented a draft text of a possible convention on

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PMSCs to the Human Rights Council at its September 2010 session (A/HRC/15/25). At that meeting, the Council established an open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework, including the option of a legally binding instrument on the regulation, monitoring and oversight of the activities of PMSCs, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries (A/HRC/RES/15/26).

### **Self-regulation cannot address the problem of impunity.**

5. The International Code of Conduct signed in November 2010 by a number of PMSCs in essence recognizes that these companies need standards. While the Code is an important initiative and the Working Group is hopeful that it will raise standards across the industry, it does not address the key issue of accountability. As a non-governmental instrument which is not legally-binding and is not backed by State sanctions, it cannot address the essential human rights issue of accountability for those PMSCs and their employees who commit human rights abuses. In addition, the voluntary nature of the Code of Conduct means that it cannot meet the goal of ensuring that all PMSCs are covered.

### **National regulation is not sufficient to address the problem of impunity.**

6. Regulatory tools to monitor the activities of PMSCs are sorely lacking at the national level. Given the danger posed by the types of activities carried out by PMSCs and the types of environments in which they operate, at the very minimum, States should register and license these companies and regulate the types of functions that they can perform. They should also monitor their activities and ensure that they have the ability to prosecute where necessary in order to ensure accountability. Only a handful of countries currently have legislation that meets these minimum criteria.

7. Even where national regulation has been adopted, it has serious limitations. The transnational nature of many PMSC activities means that some PMSCs can easily escape national regulation. Only an international convention could ensure that participating States apply minimum standards to regulate PMSC activities. Moreover, national prosecutions have rarely been successful because of the difficulty

in identifying witnesses and collecting evidence abroad. In light of these limitations, the problem of impunity needs to be address at the international level.

**Current international law does not sufficiently address the issue of PMSCs.**

8. PMSCs, as non-State actors, are not subject to international human rights obligations. Moreover, employees of PMSCs, even in cases when they conduct mercenary-like activities, cannot usually be considered as mercenaries under the definitions set out in either the Geneva Conventions or the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

9. Although States are obliged under international human rights law to take appropriate measures and to exercise due diligence to prevent, punish, investigate and redress the harm caused by PMSCs, in practice this obligation is rarely fulfilled. In light of the current lack of accountability of PMSCs for their activities, it is imperative to more explicitly and in greater detail enumerate the obligations of States vis-à-vis PMSCs in a legally binding document.

**Victims should have the right to an effective remedy.**

10. In addition to the need to hold PMSCs and their employees accountable for their actions, victims of human rights violations involving PMSCs and/or their employees should be able to exercise their right to an effective remedy. Ideally, they should be able to do so locally. However, victims often live in countries with weak judicial systems. Even where victims are able to bring cases to the courts in the countries where PMSCs are established, such cases are rarely successful for the same reasons that criminal prosecutions often fail (availability of witnesses, lack of evidence, etc). An international convention would reaffirm the right of victims to an effective remedy, create an obligation of mutual legal assistance and provide an international avenue for those who cannot exercise this right at the national level.

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