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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

* A/65/150.

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The present report addresses the challenges stemming from the use of private military and security companies and their impact on the enjoyment of human rights. It discusses the trend towards increasing privatization of security and its underlying consequences and points to a growing dependency of some States on private military and security companies. It also reports on challenges regarding the accountability of private military and security companies and their personnel.

The report also presents an overview of the activities carried out by the Working Group during the period under review, including its three regular sessions and the three regional consultations it held (for Asia and the Pacific, Africa and Western European and others Group) on traditional and new forms of mercenary activities. The report provides a brief overview of the United Nations policy vis-à-vis the use of private security contractors and information on the progress achieved in the elaboration of a possible draft convention on private military and security companies. The main elements of such a possible draft convention are contained in the annex for the consideration of Member States.

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I. Introduction

1. Pursuant to its mandate, the Working Group has continued to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market.

2. The Working Group found that the trend towards extensive privatization of security is intensifying, while the private security industry, and in particular the export/import of private security services, remains fundamentally unregulated at the international level and often insufficiently regulated at the national level. The United States of America and the United Kingdom of Great Britain and Northern Ireland continue to be the lead suppliers as well as primary contractors of private military and security companies, mainly to support their presence in Iraq and Afghanistan. In addition to international companies, local private military and security companies are also proliferating on national markets in all parts of the world. Private military and security companies continue to provide a wide range of services, including personnel protection, site security and convoy security for military and civilian personnel working for international institutions, Governments or private entities, as well as policing and security protection services, intelligence data collection and analysis, private administration of prisons, interrogation of detainees and reportedly covert operations.

3. The Working Group continues to observe a lack of transparency regarding the activities carried out by these companies and remains concerned about the lack of accountability of these companies and their personnel for human rights abuses as well as with their overall impact on the enjoyment of human rights.

4. The Working Group focused its work during the reporting period on the elaboration of a draft of a possible new international convention on the regulation, monitoring and oversight of private military and security companies, which it believes would help distinguish the activities that could legally be carried out by such companies according to international law from the activities that should remain inherently State functions and could not under any circumstances be outsourced. The new legal instrument would establish minimum international standards for States parties to regulate the activities of private military and security companies and their personnel and provides for a monitoring mechanism at the level of the United Nations. The elements and key provisions of the proposed draft convention as prepared by the Working Group are available in the annex to the present report for the consideration of Member States.

II. Update on recent activities of mercenaries and private military and security companies and the issue of accountability

5. The Working Group continued to collect information regarding the activities of mercenaries and private military and security companies around the world. It observed that the trend towards increasing privatization of security in many parts of the world was intensifying. In addition to the extensive use of international private military and security companies in conflict situations like in Afghanistan and Iraq,

the privatization of security has also been occurring at the national level, with the risk of security becoming a commodity that only the rich would be able to afford and the risk of having a lack of accountability and responsibility on the part of such private actors. The Working Group is concerned that with the trend towards the erosion of the State monopoly of the legitimate use of force, the State is evading its duty to provide security for all its citizens equally.

A. Increased “dependency” on private military and security contractors

6. Many States are increasingly relying on private military and security contractors in the performance of military and security functions, which, until recently, had been performed by Government officials.

7. For instance, a two-year study of the United States intelligence community by *The Washington Post*¹ published on 19, 20 and 21 July 2010 found that contractors, and in particular military and security contractors, were playing a key role in intelligence activities in the United States. The study concluded that the Government of the United States had developed a “dependency” on private contractors, raising the question as to whether the Government was still in control of its most sensitive activities.

8. *The Washington Post* description of the wide range of activities² in which private contractors are involved demonstrates the extent of their involvement in performing functions, which, until now, had been performed by Government officials and could fall under the category of “inherently State functions”.

9. Some private military and security companies have grown so powerful, in terms of the military equipment they possess and the expertise they have developed that they have become an indispensable partner in the military and security activities of some Governments. The Working Group is concerned that this dependency may lead to a situation where such partnership may become predominant over the consideration of the past human rights records of the companies. As stated by Leon Panetta, current director of the Central Intelligence Agency, contracting with corporations whose responsibility is to their shareholders does present “an inherent conflict”.³

10. For instance, in June 2010, the Government of the United States granted the private military and security company Blackwater/Xe new contracts worth about \$220 million to protect United States Government facilities in Afghanistan and elsewhere and to provide protective services to the CIA. At the same time, the company is facing several lawsuits, including one criminal suit brought by the Government of the United States against five employees of the company in relation

¹ <http://projects.washingtonpost.com/top-secret-america/>.

² According to the study, private contractors for the Central Intelligence Agency (CIA) have engaged in such activities as intelligence gathering and analysis of terrorist networks and local factions in war zones, espionage, protection of CIA officials, kidnapping of suspected extremists, interrogation of detainees held at secret prisons, training of United States intelligence officers and killing of enemy fighters.

³ *The Washington Post*, Top Secret America, National Security Inc., 20 July 2010.

to the company's involvement in the killing of 17 civilians in Nisoor Square, Baghdad, in September 2007.⁴

11. Granting lucrative contracts to companies that have not demonstrated any interest in promoting high operational and ethical standards in their work is also in contradiction with the stated commitment of the Government of the United States to work towards a global code of conduct for the respect of human rights and international humanitarian law by private military and security companies.

12. Given that private military and security companies often operate in situations where Governments are unable to ensure respect for the rule of law, and in particular for international human rights obligations, the international community should ensure that Governments do their utmost to protect human rights and ensure respect of human rights by the companies they contract.

B. Privatization of security

13. The privatization of security is a global trend with developing countries in Africa and Latin America at the forefront of the private security market. In several countries, private security is one of the few growing sectors of the economy and one of the main private employers. The world's largest security company, Group4Securicor (G4S) employs nearly 600,000 people and is the second largest private employer in the world. It is present in some 30 countries in Africa and 22 countries in Central and Latin America.⁵ In South Africa for example, reported figures show that there are over 6,000 registered and active private security companies in the country, employing close to 400,000 security guards, double the number of police officers. Kenya has some 2,000 private security companies registered which employ close to 50,000 people; in Angola, 300 private security companies have around 35,000 staff, and Nigeria has some 2,000 companies.⁶ In Colombia, 3,392 private military and security companies were registered as of June 2009, and 500 new ones were seeking to register their companies.⁷

14. The presence of international private military and security companies in Africa is also growing as companies take advantage of low wages and growing markets for their services in these emerging economies. These countries have become a useful recruiting ground for international private military and security companies, which have recruited thousands of third-country nationals for their operations in Afghanistan and Iraq. In Uganda alone, more than 10,000 recruits have been trained to work in the private security business in Iraq.⁸

15. The extensive privatization of security in developing countries, where Government institutions frequently remain weak, raises important questions about the long-term security implications of such privatization, including its impact on public security, on reinforcing inequalities between the rich and the poor, and on the

⁴ "CIA hires Xe, formerly Blackwater, to guard facilities in Afghanistan, elsewhere", *The Washington Post*, 24 June 2010.

⁵ See <http://www.g4s.com/en/>.

⁶ Rita Abrahamsen and Michael C. Williams, "Privatizing Africa's everyday security", *Open Democracy*, 1 July 2010.

⁷ See <http://priv-war.eu/wordpress/wp-content/uploads/2009/12/nr-19-09-col.pdf>.

⁸ "Why Ugandans want to work in Iraq", *BBC News*, 6 November 2009.

accountability and responsibility of such private actors. Often, private security companies have been called upon to fulfil protection needs that the national police forces have been unable to provide, not only because of a lack of sufficient resources but also because the police are often a major source of public insecurity, taking part in violence, intimidation and acts of corruption.

16. Nevertheless, one should not overlook the potentially wide-ranging consequences for the use of private security companies on State institutions and their ability to provide public services. The Working Group found that companies might also play a role in exacerbating conflicts or increasing instability in some situations. For example, in Afghanistan, the Group found that the presence and activities of private military and security companies in Afghanistan was very much interconnected with the large number of unauthorized armed groups of various kinds on Afghan territory, reinforcing the perception that the companies were a threat to stability (see A/HRC/15/25/Add.2, para. 14). In other countries, the companies have been involved in repressing social protests in relation to multinational companies involved in infrastructure, mining, oil and other natural resources activities.

C. Lack of accountability of mercenaries, private military and security companies and their personnel

17. Legal proceedings against private military and security companies and their personnel for criminal activities or human rights abuses are relatively rare. In the few criminal and civil actions that have been brought, private military and security companies have argued that courts lacked jurisdiction to examine the alleged abuses committed abroad (for example, for American private military and security companies in the case of Iraq). They have also argued that the conduct in question does not meet the threshold of “violation of international law” serious enough to trigger the application of the United States Alien Tort Claims Act. In addition, they use the arguments that these are non-justiciable political questions and that the constraints are linked to providing evidence to hinder effective prosecution.⁹

18. In general, the Working Group observed that in conflict situations, like in Afghanistan or Iraq, allegations of human rights abuses perpetrated by employees of the private military and security companies were not properly reported and investigated. In addition to a lack of effective oversight structures, often victims were unable to identify the perpetrators of the abuses owing to difficulties in distinguishing between the many military actors, be they national forces, international forces or private military and security companies. Private military and security company personnel are not always wearing distinctive uniforms and identification badges and often drive unmarked sport utility vehicles with tinted glasses and no plates, which add to the confusion.

19. The Working Group has been informed that Aegis has been contracted by the United States Department of Defense to monitor the vehicles of private military and security companies at all times through a global positioning system, including audio and video devices, which can provide the exact location at a given point in time of the vehicle as well as information on the staff in the vehicle and on any incidents if

⁹ Francesco Francioni, “Private military contractors and international law: an introduction”, *European Journal of International Law*, vol. 19, No. 5 (2008).

they occur. This information could be made available to local governments in the event of incidents in order to assist them in investigating any allegations of human rights abuses. It would also demonstrate the commitment of the companies to ensure further transparency of their operations and to promote accountability.

20. In the sections below, the Working Group discusses the ongoing practice of granting immunity to private contractors, as well as the few prosecution cases of private military and security companies, of their personnel and of mercenaries.

1. Immunity agreements

21. The Working Group expressed its serious concern in a press statement issued on 10 November 2009 about the immunity provided to United States personnel and defence contractors under a new United States-Colombian military accord. The Supplemental Agreement for Cooperation and Technical Assistance in Defense and Security, signed on 3 November 2009, granted the United States permission to station up to 800 military personnel and 600 private security contractors, operating on seven Colombian military bases. Article VIII of the Agreement provided privileges, exemptions and immunities to contractors, amounting to a limitation of the effective exercise of judicial jurisdiction of Colombia over United States private military and security contractors operating on its territory. In addition, the Agreement did not specify any mechanism of supervision and control by the Colombian authorities of private military and security companies hired by the Government of the United States to operate in Colombia.

22. The Working Group would like to recall that in Iraq, the United States had to renegotiate its status of forces agreement with the Iraqi authorities in 2008 after the shooting by Blackwater/Xe personnel of 17 civilians in Nisoor Square, Baghdad, on 16 September 2007. The initial status of forces agreement contained a provision, the “Coalition Provisional Authority Order 17”, which granted immunity to contractors working for the Government of the United States. As of 1 January 2009, Iraq now has jurisdiction over such contractors under the Withdrawal Agreement negotiated between the United States and Iraq. To date, none of the Blackwater guards involved in the incident have been convicted.¹⁰

23. The granting of immunity to private contractors significantly diminishes their accountability for any crimes that they or their employees may commit and undermines the ability of victims to have access to justice and effective remedies. Given the lack of a comprehensive international legal framework governing the activities of private military and security companies, it is crucial that in all cases private military and security contractors be subject to local laws and to prosecution in local courts under such laws.

2. Prosecutions of private military and security companies and their personnel

24. The Working Group remains concerned at the lack of effective prosecutions of private military and security companies and their personnel. In the United States,

¹⁰ The Government of the United States has appealed a decision of 31 December 2009 of Judge Ricardo M. Urbina of the United States Federal District Court for the District of Columbia to dismiss the indictment against five Blackwater guards, stating that evidence against them was inadmissible under the United States Constitution. The case is pending before the Court of Appeals.

several civil lawsuits have been lodged against such companies, but against significant legal obstacles, including the defence that the private military and security companies and their personnel could not be held liable for their actions given that the companies were operating under the exclusive control of the Government. The companies have also argued that they should enjoy immunity even for illegal conduct, including acts of torture, because they are contractors carrying out governmental functions. Private military and security companies and their personnel have also challenged the applicability of international law to them, claiming that international law obligations, including the prohibitions on torture and war crimes, do not extend to them since they are non-State actors (see A/HRC/15/25/Add.3).

25. However, the Working Group is encouraged by the recent decision of the United States District Court for the district of Maryland Greenbelt Division to proceed with the case against L-3 Services, Inc., a military contractor that had provided civilian translators for United States military forces in Iraq. The plaintiffs, a group of 72 Iraqi citizens, alleged that L-3 personnel had tortured and physically and mentally abused them during their detention. Though L-3 filed motions to dismiss using the arguments as discussed above, for the first time a court denied those arguments and allowed the case to go forward.¹¹

3. Prosecutions and punishment of mercenaries

26. “Classical” mercenaries have been tried and convicted for criminal behaviour only in a handful of cases. Two of these cases are particularly notorious. The first is the trial in Equatorial Guinea of a number of mercenaries, including Simon Mann and Nick du Toit for their involvement in the attempted coup against President Obiang of Equatorial Guinea in 2004. The second was the conviction of the Israeli mercenary Yair Klein by a court in Colombia for training several members of Colombian paramilitary groups and militias of drug traffickers during the 1980s and 1990s. The Working Group notes that in the case of Equatorial Guinea, all mercenaries involved in the coup were pardoned and freed in November 2009 after having been sentenced to over 30 years imprisonment just over a year before. The Working Group raised this issue during its mission to Equatorial Guinea in August 2010, together with the allegations that the trials had failed to comply with international human rights standards and that some of the accused had been subjected to torture and ill-treatment. The Group will report on its findings in 2011.

27. Yair Klein was convicted in February 2001 by the Criminal Court of the Manizales District, Colombia, for instruction in and teaching of military and terrorist tactics, techniques and methods, committed with mercenaries and accomplices¹² and sentenced in absentia to 10 years in prison. The Government of Colombia made unsuccessful attempts to claim his extradition from Israel. In March 2007, Interpol issued an international arrest warrant for Y. Klein, who was subsequently arrested in August 2007 at the airport in Moscow and placed in custody until his transfer to Colombia, which had requested extradition.

28. Despite the authorization given by a Russian tribunal to extradite Y. Klein to Colombia, the European Court of Human Rights decided to suspend the extradition

¹¹ Case 8:08-cv-01696-PJM, Document 103, filed 29/7/10.

¹² European Court of Human Rights, case of Klein v. Russia, application No. 24268/08, 1 April 2010.

procedure and on 1 April 2010 ruled that the implementation of the extradition order would give rise to a violation of article 3 of the European Convention of Human Rights (prohibition of torture and inhuman or degrading treatment or punishment).

29. The Colombian authorities have expressed their concerns and disappointment over this Court ruling, which they said provided de facto immunity for the crimes committed by Klein and his trainees and denied truth and justice for their victims. While the Working Group respects the judgement of the European Court of Human Rights on the issue of extradition, it is concerned that the decision may lead to a situation where Y. Klein would not be held accountable for his criminal activities and human rights abuses.

D. Contracting and use of private military and security companies by the United Nations

30. The Working Group contacted a number of United Nations officials to gather information on the policy of the United Nations regarding the use of private military and security companies in the context of the United Nations peacekeeping missions or other United Nations activities in conflict-affected areas. Many private military and security companies are very keen to advertise their actual or hypothetical work with the United Nations and humanitarian organizations in order to portray a positive image of their activities and have been intensely lobbying to obtain contracts in peacekeeping operations.¹³ However, the interests of private military and security companies remain purely financial.

31. The United Nations is using the services of private military and security personnel in some of the conflict zones in which it is engaged. However, it lacks a firm system-wide policy governing the hiring of private military and security companies, including issues related to the vetting and monitoring of the companies and their personnel. The problem of accountability of private military and security company personnel becomes even more complex when private military contractors are used by international organizations, such as the United Nations, the European Union or the North Atlantic Treaty Organization. The concept of the institutional responsibility of intergovernmental organizations is still elusive and should prompt the United Nations to take precautionary measures to ensure that if and when it outsources its security and protection functions, it does so in accordance with the Charter of the United Nations and with international human rights standards and that it does so with proper management and oversight.

32. The Working Group sent letters in February 2010 to the Departments of Safety and Security, Management and Field Support requesting information from them about United Nations policies regarding the use of private military and security companies and the types of activities that the United Nations was contracting out to such companies and to individual security contractors, as well as information regarding the oversight mechanisms in place, including vetting procedures of personnel working as contractors for the United Nations. The Group regrets that

¹³ E. Prince, founder of Xe/Blackwater, indicated that one of the main objectives of the security industry would be to obtain a substantial piece of the current United Nations peacekeeping budget estimated at \$6 billion to \$10 billion per year. See Robert Y. Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York, Crown Publishing Group, 2006).

none of the departments have replied in writing to its letters and invites them to cooperate with its mandate.

33. In July 2010, at the request of the Working Group, and while in session in New York, the members of the Group met with senior representatives of the Department of Safety and Security, who underlined the readiness of the department to cooperate and exchange views with the Group on the issue.

34. Representatives of the Department of Safety and Security noted that the United Nations had been confronted with increased security challenges to ensure protection of its facilities and staff around the world. They informed the Working Group that in order to provide protection for the 12,000 to 14,000 United Nations facilities worldwide, close to 60 per cent of the United Nations offices were using the services of private military and security companies. Most were local companies, providing guard services for the office, as well as residential security for the staff.

35. The Department of Safety and Security stated that there was currently no United Nations system-wide policy regarding the outsourcing of military and security functions of the Organization to private companies and that each United Nations agency could decide to use private military and security companies and to contract them directly. However, in 2008, members of the United Nations Inter-Agency Security Management Network¹⁴ started raising serious concerns regarding the increased use of private security providers by the United Nations and the need for further policy on the issue. The discussions have begun in the framework of the Network.

36. The Department of Safety and Security informed the Working Group that the Inter-Agency Security Management Network, at a recent meeting held in Vienna, in June 2010, had agreed to form a working group tasked with elaborating a system-wide policy for the use of private military and security companies. The primary purpose of the working group would be to consider a set of criteria for the use of private military and security companies, with the understanding that the companies would only be used as a last resort in situations where the United Nations did not have better alternatives, based on risk assessments carried out for each location.

37. The Working Group welcomes this United Nations initiative to reflect on such a core question regarding the security of its staff and facilities, including the use of private military and security companies. The Group understands the importance for the United Nations to be able to provide its assistance in tense and volatile situations while ensuring maximum security for its staff and facilities. In these conditions, pressure will continue to grow on the United Nations to hire more private military and security personnel. However, the Working Group believes that without proper policy and oversight, there is a risk that incidents could happen and have a negative effect on the image of the Organization and the United Nations role in providing assistance in the field. The United Nations should serve as a model for Member States and other organizations in the application of international human

¹⁴ The Inter-Agency Security Management Network brings together representatives of all partners in the United Nations Network, including United Nations agencies, funds and programmes to coordinate security practices and policies across the United Nations system. The Inter-Agency Security Management Network is chaired by the Under-Secretary-General for Safety and Security and meets usually twice a year to review all existing and proposed policies, procedures and practices of the United Nations security management system and to report and make recommendations on these to the High-Level Committee on Management.

rights standards and should have a clear policy on where and in what conditions it will hire private military and security companies and on its oversight system. The United Nations should also have mechanisms to ensure that in cases of human rights abuses, private military and security contractors will be held accountable. The Working Group stands ready to provide its expertise to the United Nations while it is elaborating its policy, specifically in relation to definitions, principles, criteria and norms currently elaborated by the Working Group within its draft convention on the regulation of private military and security companies.

III. Activities of the Working Group

38. In accordance with its mandated practice, the Working Group held three regular sessions during the year, two in Geneva and one in New York. The Working Group continued its work on the elaboration of a possible new international convention on the regulation of the activities of private military and security companies. It also convened three regional governmental consultations on traditional and new forms of mercenary activities, held regular meetings with the representatives of member States, non-governmental organizations and with experts. The Working Group continued to receive and review information regarding the activities of mercenaries and private military and security companies and their impact on human rights and decided on appropriate action.

A. Regional consultations

39. In accordance with General Assembly resolution 64/151, the Working Group held three regional consultations with States representatives during the reporting period.

40. After the first consultation for Latin America and the Caribbean, held in Panama in December 2007 (see A/HRC/7/7/Add.5) and the second, for Eastern Europe and Central Asia, held in Moscow in October 2008 (see A/HRC/10/14/Add.3), the Working Group held regional consultations for Asia and the Pacific in Bangkok in October 2009 (see A/HRC/15/25/Add.4), for Africa in Addis Ababa in March 2010 (see A/HRC/15/25/Add.5) and for the Western European and Others Group in Geneva in April 2010 (see A/HRC/15/25/Add.6).

41. Participants at the consultation for Asia and the Pacific¹⁵ noted that private military and security companies were on the rise and active in the region and that the legal framework applicable to those groups needed to be clarified and further strengthened. Participants exchanged views on their national experience with private military and security companies, with the representatives of Afghanistan and Fiji giving comprehensive presentations on the situation of the companies in their respective countries. The Working Group presented the elements of its proposed draft convention on private military and security companies and engaged in a discussion over its purpose, scope and main principles, receiving comments and recommendations.

¹⁵ The consultation was attended by representatives of Afghanistan, Bangladesh, Cambodia, China, Fiji, the Islamic Republic of Iran, Jordan, Myanmar, Pakistan, Qatar, Samoa, Thailand, Viet Nam and Yemen, as well as by the observer of Palestine.

42. The consultation in Addis Ababa was attended by representatives of 20 African countries and by representatives from the Commission of the African Union.¹⁶ Participants provided comprehensive information on, and engaged in discussions of, recent mercenary activities on the continent and their impact on human rights, together with the growing activities of local and foreign private military and security companies in Africa. The Working Group provided a comprehensive presentation of the elements of the draft convention, and States expressed strong support for the work done by the Group on the preparation of the draft convention.

43. The regional consultation held in Geneva in April with the representatives of Western European and Others Group¹⁷ focused on initiatives taken at the national and regional level by Western States, as well as on elements for a possible new draft convention. The Working Group expressed its appreciation for the constructive comments it had received from many countries of the Western European and Others Group. While the Working Group noted the reservations of the European Union and others with regard to a possible new convention on the issue, it underlined the shared goal to establish more effective regulation of the private security industry in order to protect individuals from human rights abuses and to ensure that when such abuses occurred, those responsible would be held accountable and that victims would have access to effective remedies.

B. Country visits

44. The Working Group undertook two country visits in the course of 2009, one to Afghanistan and the other to the United States (see A/64/311). The full reports are contained in the addenda to document A/HRC/15/25.

45. The Working Group conducted a visit to Equatorial Guinea from 16 to 21 August 2010 to review the measures taken by the Government in the context of the attempted coups d'état conducted by mercenaries in 2004 and thereafter, including the judicial proceedings related to those cases. The Group also inquired about the trials conducted in relation to the 17 February 2009 attack on the presidential palace by alleged mercenaries, and in particular whether the due process guarantees as contained in international human rights instruments were respected.

46. The Working Group was invited to visit South Africa to discuss the current efforts of the Government to ensure oversight and monitoring of the activities of South African private military and security companies and their personnel operating abroad. The visit is scheduled for November 2011.

¹⁶ The consultation was attended by representatives of Algeria, Angola, Burkina Faso, Cameroon, the Central African Republic, the Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Madagascar, Malawi, Mauritius, Morocco, Mozambique, the Niger, Sierra Leone, the Sudan, Uganda, Zambia and Zimbabwe, and representatives from the Commission of the African Union.

¹⁷ The consultation was attended by representatives of Australia, Austria, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and representatives from the European Union.

C. Communications

47. The Working Group continues to receive information from Governments, non-governmental organizations and individuals concerning situations involving mercenaries, mercenary-related activities and allegations of human rights abuses by private military and security companies. In addition, since the Working Group last reported to the General Assembly, communications have been sent to Australia, Colombia, Fiji, Guinea, Israel, Papua New Guinea, South Africa and the United States. The Working Group would like to thank the Governments of South Africa and the United States for their prompt replies to its communications. The Working Group reiterates its interest in receiving responses from the concerned Governments in regard to allegations submitted and considers the responses to its communications to be an important part of the cooperation by Governments with its mandate. The communications and summaries of the responses received from Governments are contained in document A/HRC/15/25/Add.1.

IV. Progress achieved in the elaboration of a possible draft convention on private military and security companies

48. Following the adoption of Human Rights Council resolution 10/11 on the elaboration of a possible draft convention on private military and security companies, the Working Group continued to focus its work on the draft convention and organized a series of consultations from July 2009 to May 2010 with a wide range of stakeholders on the content and scope of such a legal instrument.

49. The initial draft of the convention was circulated on 15 July 2009 to some 250 experts, academics and non-governmental organizations for comments. In response, the Working Group received some 60 submissions, comprising a total of over 400 comments and recommendations. The Working Group also held consultations with experts and civil society representatives during its seventh session, held in New York in July 2009, in collaboration with the International Peace Institute. From September to December 2009, the Working Group considered the comments received from all the above-mentioned stakeholders and drafted an amended version of the draft convention.

50. In a second phase and in accordance with the above-mentioned resolution, in which the Human Rights Council requested the Working Group to share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such a convention and to transmit their replies to the Working Group, the Working Group prepared a note on elements for a possible draft convention on private military and security companies containing the main principles and provisions of the draft convention and circulated it to all States Members of the United Nations for their comments on 4 January 2010.

51. The Working Group received submissions from Australia, Azerbaijan, Belarus, Canada, Cuba, Ecuador, Egypt, Guatemala, Lebanon, Mauritius, Qatar, the Russian Federation, Serbia, Slovenia, South Africa, Spain (on behalf of the States Members of the United Nations that are members of the European Union), Switzerland, Trinidad and Tobago, the United Kingdom and the United States. The Working

Group also received comments and recommendations from some 20 intergovernmental organizations and institutions of the Commonwealth of Independent States.

52. The Working Group also received feedback on the elements of the proposed draft convention during the three regional consultations it had held with the representatives of member States in Addis Ababa, Bangkok and Geneva (see section A above). In addition, the Working Group organized briefings for all permanent missions to the United Nations during its sessions in Geneva in April 2010 and in New York in July 2010.

53. The annex to the present report contains the elements for a possible draft convention on the regulation, monitoring and oversight of private military and security companies for consideration by Member States. The full text of the draft convention developed by the Working Group is contained in the report of the Working Group to the Human Rights Council at its fifteenth session (see A/HRC/15/25, annex).

54. The aim of a new binding legal instrument is not to ban private military and security companies but to establish minimum international standards for States parties to regulate the activities of the companies and their personnel and to set up an international oversight mechanism. The draft convention proposes:

(a) To reaffirm and strengthen the State responsibility for the use of force and to reiterate the importance of the State monopoly of the legitimate use of force;

(b) To identify the functions that are inherently State functions and that cannot be outsourced to private military and security companies under any circumstances;

(c) To limit the use of force and firearms by private military and security companies according to international human rights standards;

(d) To request that State parties develop national regimes for the licensing, regulation and oversight of the activities of private military and security companies and their subcontractors;

(e) To promote international cooperation between States regarding the licensing and regulation of the activities of private military and security companies and their oversight;

(f) To establish the increased responsibility of “home States” (where private military and security companies are registered) for the export of military and security services of private military and security companies registered and licensed in their country;

(g) To request States of operation of private military and security companies to ensure effective control over the activities of foreign private military and security companies operating on their territory;

(h) To establish an international register of private military and security companies based on information provided by member States;

(i) To establish a committee on the regulation, oversight and monitoring of private military and security companies, in accordance with established procedures

in international human rights treaties in order to monitor the measures taken by States parties to implement the convention.

55. The proposed convention would apply to States and intergovernmental organizations, within the limits of their competence, with respect to private military and security companies, their activities and personnel. It would apply to all situations where private military and security companies are used, regardless of whether the situation would be considered to constitute armed conflict.

56. The proposed convention would establish a committee on the regulation, oversight and monitoring of private military and security companies in order to monitor the legislative, judicial, administrative or other measures that States parties have adopted to give effect to the provisions of the convention. In accordance with established procedures in international human rights treaties, the committee would receive reports by States parties on the legislative, judicial, administrative or other measures that they had adopted and that would give effect to the provisions of the convention. The draft convention would also envisage an inquiry procedure and an individual complaint procedure. The committee could receive complaints from States parties considering that another State Party was not giving effect to the provisions of the convention and could set up an ad hoc conciliation commission if deemed necessary.

57. Finally, the draft proposes that the Secretary-General establish an international register of private military and security companies operating on the international market based on information provided by States parties. For the purposes of the register, each State party would be obligated to annually provide data for the register on the imports and exports of the military and security services of private military and security companies and to provide standardized information on private military and security companies registered in and licensed by the State party. The obligation to share information on companies in an open and transparent way would also facilitate greater public and parliamentary scrutiny.

V. Conclusions and recommendations

58. **The Working Group would like to emphasize its utmost concern about the impact of the activities of private military and security companies on the enjoyment of human rights, in particular when operating in conflict, post-conflict or low-intensity armed situations, and notes that private military and security companies and their personnel are rarely held accountable for violations of human rights.**

59. **It urges States to renounce the inclusion of immunity provisions in bilateral agreements for their national contractors working abroad.**

60. **It welcomes the recent initiative of the Secretariat to elaborate a comprehensive policy regarding the use of private military and security companies by the United Nations and calls on the United Nations to elaborate a clear set of criteria, vetting standards and an oversight mechanism to monitor the compliance of private security contractors with United Nations policy. The Working Group recommends that in the process of this work, the Inter-Agency Security Management Network take into consideration the definitions, criteria and principles regarding the use, regulation and oversight of private military**

and security companies, as developed by the Working Group in cooperation with member States and non-governmental organizations and experts and as contained in its draft convention elaborated by the Group. In this regard, the Working Group recommends that the United Nations ensure adequate vetting of the personnel of private military and security companies as well as ensure appropriate human rights and international humanitarian law training. It also recommends that the United Nations set up a specific and transparent register of private military and security companies vetted and recommended for contracting with the United Nations. No companies with criminal records or whose personnel are under investigation for human rights abuses should be allowed to be contracted by the United Nations.

61. The Working Group recalls that it had submitted to the Human Rights Council at its fifteenth session a possible draft convention for the regulation, monitoring and oversight of private military and security companies. The Working Group believes that the Human Rights Council would constitute the best forum for the development of a new international instrument for the regulation, oversight and monitoring of private military and security companies, which would address the human rights impact of the activities of private military and security companies.

62. The Working Group is of the opinion that voluntary codes of conduct for private military and security companies are a useful mechanism and should be encouraged. However, it firmly believes that they should be combined with the elaboration and adoption of legally binding instruments at the national, regional and international levels.

63. The Working Group encourages Member States to carefully consider the draft proposal for a possible new international legal instrument regulating private military and security companies and recommends to all Member States, in particular those confronted with the phenomenon of private military and security companies, as contracting States, States of operations, home States or States whose nationals are employed to work for a private military and security company, to contribute to the Human Rights Council open-ended Working Group tasked with elaborating a new convention regulating private military and security companies, taking into account the initial work done by the Working Group on the use of mercenaries, if such a mechanism is established.

Annex

Elements of a proposed draft convention on private military and security companies

Preamble

The preamble makes reference, inter alia, to:

- The general principles enshrined in the Charter of the United Nations, the *erga omnes* obligations related to the protection of human rights, the principles of sovereign equality of all States, the territorial integrity and political independence of every State, the right of peoples to self-determination, and the prohibition of the threat and use of force in international relations
- The principles and rules of international human rights and humanitarian law and their complementarity
- The principles contained in the Rome Statute of the International Criminal Court and the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes
- The duty of all States to prevent abuses of international human rights and humanitarian law or other abuses committed by or involving transnational corporations and other business enterprises
- The duty of all States to prevent human rights violations through legislative and other measures, the duty to investigate reports of violations and, where appropriate, prosecute and punish offenders as well as to provide adequate remedies to the victims
- The United Nations Code of Conduct for Law Enforcement Officials, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Non-Binding Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys; the Montreux Document of 17 September 2008 on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, the United Nations Global Compact initiative for businesses
- The increasing outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force
- The increasing and alarming cases of abuses of international human rights law and international humanitarian law committed by private military and security companies and their personnel, and aware of the pressing need to establish effective measures to ensure that the activities of private military and security companies are carried out in accordance with international law
- The fact that self-regulation of private military and security companies is insufficient to ensure the observance of international human rights law and international humanitarian law by the personnel of these companies

- The urgency for States parties to agree on international minimum legal standards to regulate and monitor the activities of private military and security companies

Purposes of the convention (Article 1)

The purposes of the convention are:

- To reaffirm and strengthen the State responsibility for the use of force within the comprehensive framework of State obligation to respect, protect and fulfil human rights, and to provide remedies for victims of human rights violations
- To identify those functions which are inherently State functions and which cannot be outsourced under any circumstances
- To regulate the activities of private military and security companies and subcontractors
- To promote international cooperation between States regarding licensing and regulation of the activities of private military and security companies in order to more effectively address any challenges to the full implementation of their human rights obligations including the right of peoples to self-determination
- To establish and implement mechanisms to monitor the activities of private military and security companies and violations of international human rights and humanitarian law, in particular any illegal or arbitrary use of force committed by private military and security companies, to prosecute the violators and to provide remedies to the victims

Definitions (Article 2)

The convention proposes a number of definitions, including the following:

- **Private military and/or security company (PMSC):** a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.
- **Military services:** 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.
- **Security services:** armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, elaboration and implementation of informational security measures and other related activities.
- **Export of military and/or security services:** an export of military and/or security services from the home State in which a PMSC is registered or export of military and/or security services which a PMSC provides outside the State

in which it is registered or where it has its principle place of management or headquarters.

- **Import of military and/or security services:** an import of military and/or security services which a PMSC registered in a foreign State provides.
- **Inherently State functions:** functions, which are consistent with the principle of the State monopoly on the legitimate use of force and that a State cannot outsource or delegate to PMSCs under any circumstances. Among such functions are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees and other functions that a State Party considers as inherently State functions.
- **Contracting States:** States that directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC or where a PMSC operates through its subsidiary companies.
- **States of operations:** States on whose territory PMSCs operate.
- **Home States:** States of nationality of a PMSC, namely, where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, the State where the company has its principal place of management or headquarters is the home State.
- **Third States:** States other than the contracting, home States or States of operation whose nationals are employed to work for a PMSC.

Scope of application (Article 3)

- The convention applies to States and intergovernmental organizations within the limits of their competence with respect to PMSCs, their activities and personnel.
- References to “States parties” in the convention shall apply to intergovernmental organizations within the limits of their competence.
- The convention applies to all situations whether or not the situation is qualified as an armed conflict.

General principles

The convention is based on the following principles:

- **State responsibility vis-à-vis private military and security companies (Article 4)**
 - Each State party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the State.
 - Each State party must ensure that the PMSCs it has contracted are trained in and respect international human rights and international humanitarian law.
 - No State party can delegate or outsource inherently State functions to PMSCs.
 - Each State party shall take such legislative and other measures as may be necessary to establish procedures for contracting PMSCs, licensing procedures for the export and import of military and security personnel and services and the effective customs and other forms of control over export/import and re-export/re-import of firearms used by PMSCs.
 - Each State party, in accordance with its domestic law, shall take legislative and other measures required to introduce full or partial prohibition on the delegation or outsourcing of military and/or security services.
- **Rule of law (Article 5)**
 - Each State party shall ensure that PMSCs, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law.
 - Each State party shall take such legislative, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable for violations of applicable national or international law.
 - Each State party shall ensure that any contract or agreement between the State party and a PMSC on provision of military and/or security services entered into by a PMSC as well as its employees is in accordance with international law and is consistent with the legislation of the home State, the contracting State, the State of operations and third States whose nationals are employed to work for a PMSC under this contract.
- **State sovereignty (Article 6)**
 - States parties shall ensure that PMSCs and their personnel under no circumstances carry out activities that undermine the sovereignty of another State, its territorial integrity and/or that contravene the principle of sovereign equality and obligation of non-intervention in the domestic affairs of other States and the principle of self-determination of peoples.

- Nothing in the convention entitles a State party to undertake in the territory of another State the exercise of jurisdiction and performance of inherently State functions under international as well as domestic laws.

- **Respect and protection of international human rights and humanitarian law (Article 7)**

- Each State party shall take legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable in accordance with the convention and to ensure respect for, and protection of international human rights and humanitarian law.
- Each State party shall ensure that PMSCs and their personnel apply due diligence to ensure that their activities do not contribute directly or indirectly to violations of human rights and international humanitarian law.

- Superiors of PMSC personnel, such as:

- a. Governmental officials, whether they are military commanders or civilian superiors; or
- b. Directors or managers of PMSCs;

may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. No clause in a contract shall be interpreted as evading the responsibility of superiors under international law.

- **Prohibition of the use of force (Article 8)**

- Each State party shall take such legislative, administrative and other measures as may be necessary to make it illegal for and prohibit PMSCs and their personnel to directly participate in hostilities, terrorist acts and military actions aimed at, or which States have grounds for suspecting would result in the overthrow of a Government; the coercive change of internationally acknowledged borders of the State; the violation of sovereignty; explicitly targeting civilians or causing disproportionate harm.
- Each State party shall ensure that the activities of PMSCs and their personnel do not cause or exacerbate inter- or intra-State warfare or conflict.
- Each State party shall ensure that PMSCs and their personnel do not provide training that could facilitate its client's direct participation in hostilities, terrorist acts and military actions.

- **Prohibition of delegation and/or outsourcing inherently State functions (Article 9)**

- Each State party shall define and limit the scope of activities of PMSCs and specifically prohibit the outsourcing to PMSCs of functions which are defined as inherently State functions.

• **Prohibition of outsourcing the use of certain arms
(Article 10)**

- Each State party, without prejudice to its respective conventional obligations, has the duty to respect the principles of international humanitarian law such as the “basic rules” on the prohibition of certain methods and means of warfare as set out in article 35 of Additional Protocol I of 1977 to the Geneva Conventions of 1949, which refers to the prohibition of weapons that cause superfluous injury or unnecessary suffering or that are to cause widespread, long-term and severe damage to the natural environment.
- Each State party shall take such legislative, administrative and other measures as may be necessary to prevent PMSCs and their personnel from using weapons likely to adversely and/or irreversibly damage the environment on a massive scale.
- Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel under no circumstances use, threaten to use and/or engage in any activities related to nuclear weapons, chemical weapons, biological and toxin weapons, their components and carriers.

• **Prohibition on illegal acquisition, possession and trafficking in firearms, their parts and components and ammunition
(Article 11)**

- Each State party shall establish and maintain an effective system of licensing or other authorization, which prohibits PMSCs, their personnel and any subcontracted personnel from trafficking in firearms, their parts, components or ammunition.
- Each State party shall take such measures as may be necessary to ensure that its licensing or authorization procedures are robust and secure and that the authenticity of licensing or authorization documents can be independently verified or validated.
- Each State party shall regulate the possession and use of firearms by personnel of PMSCs inside the premises of the client they have been contracted to protect, and restrict them from possession and use of firearms outside the limits of the premises in which they have been contracted to provide security.

National legislative regulation, oversight and monitoring

• **Specific legislative regulation
(Article 12)**

- Each State party shall develop and adopt national legislation to adequately and effectively regulate the activities of PMSCs.

• **National regime of regulation and oversight
(Article 13)**

- Each State party shall establish a comprehensive domestic regime of regulation and oversight over the activities in its territory of PMSCs and their personnel including all foreign personnel, in order to prohibit and investigate illegal activities as defined by the convention as well as by relevant national laws.
- States parties shall apply practical measures for sharing information on companies providing military and security services outside their territories and for establishing control over the provision of such services, as consistent with the safeguards aimed at ensuring the proper use of information without impeding their legal implementation in any way.
- States parties shall endeavour to develop and encourage global, regional, subregional and bilateral cooperation among judicial bodies and law enforcement agencies as well as financial regulation bodies in order to monitor and control any use of force by PMSCs.
- States parties shall investigate reports of violations of international humanitarian law and human rights norms by private military companies and private security companies and ensure civil and criminal prosecution and punishment of offenders.
- States parties shall take appropriate action against companies that commit human rights violations or engage in any criminal activity, inter alia, by revoking their licences and reporting to the Committee on the record of activities of these companies.

• **Licensing
(Article 14)**

- Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel carry out their activities exclusively under the respective licences and authorizations.
- Each State party shall ensure that all licences and authorizations issued to PMSCs and their personnel shall be registered in the general registry of the State and shall be granted following a transparent and open procedure.
- Each State party shall establish criteria for granting licences and authorizations to PMSCs, taking into account in particular any records or reports of human rights violations committed by the companies, providing and/or ensuring training in international human rights and humanitarian law and the existence of robust due diligence measures.

• **Licensing import and export of military and/or security services
(Article 15)**

- Each State party shall take such legislative, judicial, administrative and other measures as may be required to ensure that PMSCs and their personnel import and export their services only under the respective licences and authorizations.

- Each State party which imports or exports private military and security services shall publicize their scope and activities and keep the Committee informed about its licensing regime as well as provide regular and updated information on any changes and supplements to the import or export of these services, including details of any subsidiaries or holding companies of the PMSC in question.

- **Registration and accountability**
(Article 16)

- Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to establish:
 - (a) Specific and obligatory procedures on governmental registration of PMSCs;
 - (b) Specific legal requirements for persons employed by PMSCs concerning, inter alia, their training and experience;
 - (c) A ban on the registration of PMSCs in offshore zones.
- Each State party shall establish and maintain a general State registry of PMSCs operating in their jurisdiction, including information on any subsidiaries or holding companies of each registered PMSC.
- Each State party shall identify or establish a governmental body responsible for the registration of PMSCs and exercise oversight over their activities.

- **State obligations vis-à-vis PMSCs and their personnel**
(Article 17)

- Each State party shall ensure that all PMSCs registered or operating on its territory comply with fundamental international labour standards.
- Each State party shall ensure that personnel of PMSCs are professionally trained to respect relevant international human rights law and international humanitarian law.
- Each State party shall ensure that PMSC personnel are professionally trained and vetted according to the applicable international standards, in particular regarding the use of specific equipment and firearms.
- Each State party shall ensure that personnel of PMSCs strictly adhere to relevant norms of international human rights law and international humanitarian law, including through prompt investigation, prosecution and punishment of violations of human rights and humanitarian law.
- Each State party shall ensure that the personnel of PMSCs providing military and security services in the territory of a foreign country undertake to respect the sovereignty and laws of the country of operations.

- **Regulation of the use of force and firearms
(Article 18)**

- Each State party shall establish rules on the use of force and firearms by the personnel of PMSCs.
- States parties shall ensure that in providing military and security services, employees of PMSCs shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.
- In providing military and security services, employees may use force or firearms only (a) to defend him/herself or other employees of the company against what he/she believes to be an imminent unlawful threat of death or serious bodily injury, in respect of the exercise of the essential right of self-defence; (b) to defend persons whom he/she is under a contract to protect against what he/she believes to be an imminent unlawful threat of death or serious bodily injury; (c) to resist what he/she reasonably believes to be an attempt to unlawfully abduct him/her, other employees of the company or a person whom he/she is under contract to protect; (d) to prevent or put a stop to the commission of a serious crime that would involve or involves a grave threat to life or of serious bodily injury.
- Each State party shall ensure that all incidents involving the use of force and firearms by PMSCs are promptly reported to the competent State bodies and ensure appropriate investigation of the incident by competent authorities.

State responsibility to impose criminal, civil and/or administrative sanctions on offenders and provide remedies to victims

- **Criminal, civil and/or administrative offences in the sphere of private military and security services
(Article 19)**

- Each State party shall ensure that the acts of carrying out inherently State functions are offences under its national law.
- Each State party shall ensure that the unlawful use of force and firearms, unlawful use of certain arms and illicit trafficking in arms by PMSCs and their personnel are punished as criminal offences under its national law.
- Each State party shall ensure that all activities of PMSCs occurring without the required licence and authorization, including the export and import of military and security services are offences under its national law.
- Each State party shall take such legislative, judicial, administrative and other measures to ensure, in accordance with their obligations under international human rights law, international criminal law and international humanitarian law, that individual criminal responsibility is established and that PMSCs and their personnel are held accountable for any violations of the law, that no recourse is taken to immunity agreements, and that effective remedies are provided to victims.

- In relation to imposing penalties for offences listed in this article, due consideration should be paid to offences committed against vulnerable groups.

- **Liability of legal persons and entities**
(Article 20)

- Each State party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons and entities for the offences established in accordance with the convention.
- Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative or a combination of these.
- Such liability shall be without prejudice to the criminal liability of the natural persons who have actually committed the offences.
- Each State party shall, in particular, ensure that legal persons held liable in accordance with the convention are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.

- **Establishment of jurisdiction**
(Article 21)

- Each State party shall take such measures as may be necessary to establish its jurisdiction through its domestic law over the offences set out in the convention, when (a) the offence is committed in the territory of that State; (b) the offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or (c) the offence is committed by a national of that State.
- A State party may also establish its jurisdiction over any of the offences set out in the convention when (a) the offence is committed against a national of that State; or (b) the offence is committed by a stateless person who has his or her habitual residence in the territory of that State.
- The convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

- **Obligations related to prosecution**
(Article 23)

- Each State party shall take such measures as are necessary to investigate, prosecute and punish violations of the convention, and to ensure effective remedies to victims.
- Each State party in the interests of justice, shall take such measures as necessary to ensure that no immunity agreement from prosecution for PMSCs and their personnel for violations of international human rights law and international humanitarian law are enforced.
- Each State party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in the convention is found, shall in the cases contemplated in article 21, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

- **Extradition**
(Article 24)

- To the extent that the crimes set out in the convention are not mentioned specifically in any extradition treaty existing between States parties, they shall be deemed to be included as extraditable offences in the treaty. States parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded by them.

- **Mutual legal assistance**
(Article 25)

- The States parties shall afford one another mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the convention.

- **Transfer of criminal proceedings**
(Article 26)

- States parties may transfer to one another proceedings for the prosecution of offences under the convention in cases where such transfer is considered to be in the interests of the proper administration of justice.

- **International fund for the rehabilitation of victims**
(Article 28)

- States parties shall consider establishing an international fund to be administered by the Secretary-General to provide reparation to victims of offences under the convention and/or assist in their rehabilitation.
- The establishment of such a fund shall be without prejudice to the obligation of PMSCs and/or the individuals criminally liable to directly compensate victims of violations.

International Oversight and Monitoring

- **Committee on the regulation, oversight and monitoring of PMSCs**
(Article 29)

- For the purpose of reviewing the application of the convention, there shall be established a committee on the regulation, oversight and monitoring of PMSCs.

- **International Register of PMSCs**
(Article 30)

- States parties request the committee to establish and maintain an international register of PMSCs operating on the international market, based on information provided by States parties.

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- Each State party shall provide annually for the register data on imports and exports of military and security services of PMSCs and standardized information on PMSCs registered in and licensed by the State party.

- **Reports by States parties**

- (Article 31)

- Each State party undertakes to submit to the Secretary-General of the United Nations, for consideration by the committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the convention.

- **Inquiry procedure**

- (Article 33)

- If the committee receives reliable information indicating grave or systematic violations of the provisions set forth in the convention, the committee shall invite the State where the offences have been reported to have occurred and/or the State of registration of the PMSC reportedly involved in such offences to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
 - Taking into account any observations which may have been submitted by the State(s) concerned as well as any other relevant information available to it, the committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the committee urgently.

- **Complaints against parties**

- (Article 34)

- A State Party to the convention may at any time declare under this article that it recognizes the competence of the committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations the convention.

- **Conciliation Commission**

- (Article 35)

- If a matter referred to the committee is not resolved to the satisfaction of the States parties concerned, the committee may, with the prior consent of the States parties concerned, appoint an ad hoc conciliation commission. The members of the commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for the convention.

- **Individual and group petitions**
(Article 37)

- A State party may at the time of ratification of the convention or at any time afterwards declare that it recognizes the competence of the committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State party of provisions of the convention. The committee shall not admit any communication concerning a State party which has not made such a declaration.

Final provisions

- Standard provisions regarding signature, entry into force, amendment, denunciation, reservations, conference of States parties, depository and languages (articles 40 to 49).

- **Intergovernmental organizations**
(Article 42)

- Intergovernmental organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the convention.
- References to “States parties” in the convention shall apply to such organizations within the limits of their competence.
- Intergovernmental organizations, in matters within their competence, may exercise their right to vote in the Meeting of States Parties.
