1. Overview

The General Assembly considered the issue of self-determination through its Third Committee under Item 66 entitled 'Rights of peoples to self-determination'. The Item consisted of a presentation by the Chairperson 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 (the Working Group). This was followed by an interactive dialogue with the Chairperson and a general discussion on the issue of the right of peoples to self-determination.

As in previous years, Pakistan introduced a resolution on the universal realisation of the right of peoples to self-determination, Cuba introduced a resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and Egypt introduced a resolution on the right of the Palestinian people to self-determination. While all resolutions were adopted, only the first one was adopted without a vote.

2. Reports before the Third Committee

Two documents were submitted to the Third Committee: the report of the Secretary-General on the universal realisation of the right of peoples to self-determination¹ and the report of the Working Group.² The report of the Secretary-General examines developments with regard to the right of peoples to self-determination at the 62nd session of the Commission on Human Rights; the first session of the Human Rights Council; and in the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; as well as in other areas. The report of the Working Group outlines the Working Group's working methods and activities, both present and future, and looks at responses by 13 States to a questionnaire on its mandate and activities. It explores the effects of the activities of private companies offering international military assistance, consultancy and security services on human rights. The report also provides information on mercenary-related activities in Africa, Fiji, Papua New Guinea, Latin America and the Caribbean and studies international and national legislation on mercenarism.

2.1 Presentation of the report of the Working Group

The Chairperson of the Working Group, Ms. Amada Benavides de Pérez, presented the Working Group's annual report to the Third Committee. She stressed that the scope of the Working Group's mandate had been broadened to include a focus on private military and security companies (PMSCs) as

Governments were increasingly delegating core military functions to these companies. This was particularly concerning since PMSCs, especially transnational companies, cannot easily be held accountable for human rights violations. The Working Group therefore welcomed the increasing body of work on the responsibility of private companies and explained that it was working to establish new standards for these PMSCs. In this regard, Ms. Benavides recalled the Working Group's desire to organise a high-level round table on the State's monopoly on the use of force. She pointed to PMSCs and mercenary activities in Fiji, Papua New Guinea, Iraq and West Africa and stressed the link between mercenarism and PMSCs, and the extractive industry such as mining. The Chairperson also mentioned that the Working Group had requested invitations to visit five Latin American countries, of which Honduras, Ecuador and Peru had responded positively.

2.2 Interactive dialogue

Only two States took part in the interactive dialogue with the Chairperson of the Working Group. Ecuador framed the discussion in a global context, arguing that increasing mercenary activities were the result of globalisation and the global fight against terror and its disregard for human rights and reliance on unilateral actions. It asked the Chairperson what Latin American countries could do to strengthen the regional struggle against mercenarism. Cuba expressed its full support for the Working Group and the convening of a high-level round table on the State's monopoly on the use of force and inquired what topics should be given priority at this round table.

The Chairperson agreed with Ecuador that mercenarism has developed and evolved inter alia as a result of globalisation and increasing privatisation. She argued that the privatisation of core State functions like security creates certain risks, since no measures have been developed to regulate and monitor PMSCs, especially with regard to their respect for human rights. However, she stressed that PMSCs activities could not be categorised as mercenarism and that a new framework was needed to deal with them. In response to both States' comments, Ms. Benavides emphasised the need to address the erosion of States' monopoly on the use of force, notably by implementing regulating and monitoring measures, adapting the definition of mercenarism to this new phenomenon and developing both international and national legislation on the responsibilities of non-State actors with regard to human rights violations. Ms. Benavides indicated that the Working Group was planning to work on this issue in cooperation with the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.

2.3 Debate

During the debate, States put forward a broad range of interpretations of the right of peoples to self-determination. A number of countries, including Sudan, India and the Libyan Arab Jamahiriya, stressed the need to restrict this right to countries under occupation, arguing that to extend it further would undermine national sovereignty and territorial integrity. Sudan and Cuba also contended that the right to self-determination should not be used to justify an intervention doctrine, with Sudan claiming that this could threaten international peace and security. Other countries, like Brazil, India and Moldova, simply emphasised that self-determination should not undermine national sovereignty and territorial integrity. Brazil used this argument in relation indigenous peoples' right to self-determination, while

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3 Notably the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

4 The Chairperson mentioned the possibility of developing an optional protocol to the International Convention on Mercenaries.
India focused on ethnic, religious or racial groups. Some countries offered a more expanded understanding of the right to self-determination. Cuba for example, argued that violations of the right to self-determination also arose from practices of domination and control of developing countries. Egypt took a strong stance, arguing that the right to self-determination should be viewed as recognition of peoples’ right to fight occupation by all necessary means. Pakistan and Venezuela also argued that self-determination included the right to determine economic, political, social and cultural systems.

Most States emphasised the centrality of the right of peoples to self-determination and its necessity for the realisation of all individual human rights. Many expressed concern at the fact that 60 years after its enunciation in core UN and international documents like the United Nations Charter and the Vienna Declaration and Programme of Action, the principle of self-determination was still not fully realised. Several States, notably San Lucia and Algeria, therefore stressed the need to accelerate and complete the decolonisation. San Lucia pointed to the remaining 16 non self-governing territories and its perceived failure of the first and second international decades for decolonisation and argued that issues of self-determination and decolonisation should be taken up both by the Human Rights Council (the Council) and the Human Rights Committee.

As usual, the Palestinian peoples’ right to self-determination was a dominant topic, brought up by nearly all members of the Arab Group and many other States. The opinions expressed ranged from moderate calls for greater attention to be paid to the conflict to stronger calls, notably by Cuba and Egypt, for Israel to withdraw from all occupied territories and accusations from Iran, Palestine and South Africa of violations of human rights and international humanitarian law. On the opposite side of the spectrum, Israel argued that Palestinians’ right to self-determination should not come at the expense of Israel’s security. It claimed that the Hamas Government’s refusal to accept Israel’s right to exist was in fact a denial of the Israelis’ right to self-determination. Several countries argued that the continued violation of the Palestinians’ right to self-determination constituted a threat to regional and international peace and security. Many States therefore called on the international community, notably the Council (Iran, Egypt), the Security Council (Egypt) and the Quartet on the Middle East (India), to live up to its responsibilities and previous commitments to Palestine and ensure that negotiations resume.

Generally States referred to issues in their particular regional, national or historical context. Pakistan referred to Kashmir and Jammu; Algeria focused on Western Sahara; San Lucia addressed the issue of small non-self-governing islands; Moldova referred to Transnistria; and Venezuela and Cuba expressed support for the right of the Puerto Rican people to self-determination. Beyond these references, a number of States focused more extensively on particular situations. Armenia and Azerbaijan engaged in a long verbal exchange over the Nagorno-Karabkh region. Azerbaijan argued that there was no case for secession and called on Armenia to withdraw its troops from the area. Armenia argued that any claim of sovereignty or applicability of the concept of territorial integrity was irrelevant to Nagorno-Karabkh as it had not always been part of Azerbaijan. Cuba focused on the USA, describing Guantanamo as a gaping wound in its sovereignty and territorial integrity and arguing that the USA had threatened Cuba’s right to self-determination through the use of mercenary activities, nuclear threat and a ‘genocidal’ blockade.

6 China, Sudan, Venezuela, Algeria, Indonesia.
7 Iran, South Africa, Palestine and Syria.
The topic of mercenaries was almost only mentioned by Cuba, which focused on evolving forms of mercenary activities, such as international private security companies, and their impact on human rights.

3. **Resolutions**

3.1 **Resolution on the universal realisation of the right of peoples to self-determination**

The Resolution:

- Reaffirms that the universal realisation of the right of peoples to self-determination is a condition for the guarantee and observance of all human rights;
- Opposes foreign military intervention, aggression and occupation and calls on all States to cease all such actions;
- Requests the Human Rights Council to continue to give special attention to violations of human rights arising from foreign military intervention, aggression and occupation.

The Resolution was an update of the same-titled resolution adopted in 2005 and was adopted without a vote by both the Third Committee and the General Assembly. Despite joining the consensus, the European Union (EU) regretted the lack of dialogue and consultation on the Resolution, arguing that its text did not reflect substantive changes in international law. The EU also contended that the Resolution was too narrow and contained inaccuracies, notably applying the right to self-determination to nations and not peoples as it was meant to be. The EU emphasised that it did not believe that the right to self-determination was a precondition to the enjoyment of other human rights.

3.2 **Resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination**

The Resolution:

- Reaffirms that the use of mercenaries violates the purposes and principles of the United Nations;
- Urges States to take all necessary steps to ensure that their territories and nationals are not being used for mercenary activities, notably by acceding or ratifying the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*;
- Requests States and the Working Group to pay particular attention to private companies offering international military consultancy and security services;
- Requests the Secretary-General and the Office of the High Commissioner for Human Rights to support the Working Group, both financially and professionally.

The Resolution was substantially the same as the one adopted in 2004, as no resolution was put forward in 2005. The main differences were linked to the replacement of the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination with a Working Group on the issue in 2005.

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* General Assembly Resolution 61/150.
* General Assembly Resolution 61/151.
The vote

The Third Committee adopted the Resolution by 116 votes in favour and 49 against with five abstentions) after the Finnish delegation called for a vote. The Resolution was subsequently adopted by the General Assembly by 127 votes in favour and 51 against with seven abstentions.

Opposition to the Resolution overwhelmingly came from the EU, Eastern European States, as well as Australia, Canada, the USA, Israel and Japan. The abstentions were also almost completely made up of States from these groups, including Liechtenstein, New Zealand, the Republic of Korea and Switzerland.

The USA and the EU both explained their vote against the Resolution. They did not believe the Third Committee was the appropriate forum for discussions about mercenarism. The USA argued that the Security Council, being mandated to look at issues of international peace and security, would be a more appropriate forum. The EU stressed that the issue of mercenarism should not be approached primarily from a human rights perspective and contended that discussions of the link between mercenarism and terrorism should take place in the General Assembly's Legal Committee. Argentina clarified that despite voting in favour of the Resolution, it believed that the discussion of mercenarism and the Resolution should have taken place in the context of decolonisation. It explained that it would have liked to see more references to resolutions on decolonisation, such as resolutions on the Malvinas Islands.

3.3 Resolution on the right of the Palestinian people to self-determination

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<tr>
<th>The Resolution:</th>
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<tr>
<td>☐ Reaffirms the right of the Palestinian people to self-determination, including the right to an independent State;</td>
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<td>☐ Urges States and UN agencies and bodies to support the realisation of this right;</td>
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<tr>
<td>☐ Refers to the International Court of Justice's advisory opinion on the construction of the wall in the Palestinian Occupied Territory;</td>
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<tr>
<td>☐ Notes the urgent need to resume negotiations in the Middle East peace process.</td>
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The Resolution merely provided an update of the same-titled resolution adopted in 2005.

The vote

The Third Committee adopted the resolution was adopted by 162 votes in favour and 4 against with 4 abstentions. The votes against came from Israel, Micronesia, Palau and the USA and the abstentions from Australia, Canada, Haiti and Georgia. The General Assembly then adopted the Resolution by 176 votes in favour and 5 against with 5 abstentions.

In explaining their vote, Israel, the USA, Australia and Canada insisted on their support of the right of the Palestinian people to self-determination and the achievement of a two-state solution through the Quartet's Road Map for Peace. Australia abstained because of its concern over the one-sided nature of the Resolution and did not think it would have a constructive effect. Canada stressed that the

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10 General Assembly Resolution 61/152.
Resolution did not absolve both parties' responsibility to find a peaceful solution to the conflict through democratic means. The USA pointed to Hamas' failure to renounce terror, recognise Israel and uphold previous agreements and argued that the Resolution reflected an outdated approach whereby the UN represented the only forum for discussion of Palestinian sovereignty. Additionally, it claimed that this outdated approach would undermine the UN's role in the Quartet. Israel explained its vote against the Resolution by claiming it was one-sided and ignored history and reality. It argued that the Resolution did not recognise that Israel is in a battle for the preservation of its right to exist and that Hamas itself denied Israel's right to self-determination.

In response to these arguments, the Palestinian delegate hoped that in the future the USA would vote in favour of similar resolutions, in accordance to its stated position of supporting a two-State solution. The EU urged the Palestinian Authority to work towards national unity and called on Israel to stop actions threatening final-status discussions, reiterating that it would not accept changes to the 1967 borders.

4. Looking forward

This year's discussions on self-determination were similar to the ones that took place in 2005. The same three countries introduced resolutions on the universal realisation of the right to self-determination, the right of the Palestinian peoples to self-determination and the use of mercenaries. The first two resolutions were exactly the same as in 2005, except for updates. The Resolution on the use of mercenaries was substantially the same as the one adopted in 2004 with a few differences linked mainly to the fact that the Working Group replaced a Special Rapporteur on the issue in 2005. Despite the ongoing review of the special procedures of the Human Rights Council, the resolution on mercenaries made recommendations directly relating to the Working Group's future, requesting it to continue its work and asking the Secretary-General and the High Commissioner for Human Rights to provide the Working Group with the necessary professional and financial assistance and support to fulfil its mandate.

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11 No resolution on the use of mercenaries was put forward at the General's 60th session in 2005.